

Topic 2. Natural Law – Modern Updates

(Part A)

Background

There are two modern updates of Natural Law your syllabus wishes you to study:

1. John Finnis' Natural Law Theory
2. Bernard Hoose's Proportionalism

1. John Finnis' Natural Law Theory

Section 1a - Background To Finnis

- **John Finnis** (1940 -) is an Australian philosopher specialising in the philosophy of law. He was Professor of Law and Legal Philosophy at Oxford University from 1989 to 2010.
- Finnis is author of 'Natural Law and Natural Rights' (1980), an important contribution to the philosophy of law and a restatement of Natural Law theory.

Section 1b - Background To Finnis' Natural Law Theory

- Aristotle (384-322 BCE) was an early proponent that there was a natural justice, which was valid to everyone.
- However, Natural Law theory was fundamentally developed by Aquinas (1225-1274 AD). Aquinas claimed Natural Law was an aspect of God's eternal law, accessed through human, God given, rationality i.e. humans can reason that the purpose of life is to re-establish a right relationship with God.
- Finnis accepts the idea that there is a natural justice, that is applicable to all humanity. However, unlike Aquinas, he argues that Natural Law's purpose is to ensure a person is able to live a worthwhile life and to 'flourish' i.e. to establish what is really 'good' for humankind.

Section 2 – The Basic Goods

- Finnis' Natural Law Theory starts with him rejecting Aquinas' primary precepts. Finnis instead argues that to flourish humans need seven basic, self-evident, universal goods, which apply equally to everyone at all times.
- Finnis believed the basic goods exist independent of human thought, and so we can put them in 'reality' in the same sense that maths lives in reality. He believes that the Basic Goods are evident from practical reasoning and not theoretical reasoning.
- We can distinguish between theoretical reason, which describes what is true, with practical reason, which describes how to act.
- Practical reason has many principles that cannot be proved, such as the assumption that experience corresponds to reality or the preference for a simple explanation over a complex one (the principle of Ockham's Razor).
- However, if you deny principles like the above you will find it impossible to pursue knowledge and you won't be able to get anywhere at all. Moreover, you can just see that principles, like the above, are true by simply looking around.
- Finnis argues the basic goods are the same. They are self-evident truths. Therefore, they cannot be derived from God's law, or logic, or the inclinations of a human brain. They just obviously exist i.e. if you deny them, you cannot get anywhere, you cannot make decisions about what is best for your life.
- Finnis calls them 'basic goods' because they are self-evident basic needs of all human beings.

The Seven Basic Goods

1. Life – covers various aspects of life from bodily health to procreation (in the 2011 update of his book 'Natural Law and Natural Rights' he added marriage between a man and a woman to the list),
2. Knowledge (for its own sake) – means been well informed.

3. Friendship and Sociability – on a basic level it means at least been sociable, but ultimately acting in the interests of one's friends.
4. Play (for its own sake) – refers to recreation, enjoyment and fun.
5. Aesthetic Experience – means an appreciation of beauty and art
6. Practical Reasonableness – using one's intelligence to solve moral problems such as what to do, how to live and shaping one's character.
7. Religion - a connection with, and participation with, the orders that transcend individual humanity i.e. concern for answering ultimate questions but not necessarily been involved in a religious institution.
 - Finnis does make an important distinction here. It is not true that everyone is automatically aware of all the basic goods – a toddler may not understand the need for 'Practical Reasonableness'. But such principles are known to every educated, mature person.
 - In the same way, Finnis acknowledges that there are people who do not respect the basic goods; it is these people that are wrong/bad.
 - The basic goods work as an explanation of why we do things. Activities are worthwhile doing because they participate in one or more of the basic goods.
 - Finnis believed that other positive qualities, like freedom or humility, are merely methods by which we can achieve one or more of the basic goods.
 - Other motivations for action, such as the pursuit of pleasure or material gain, are misguided and motivated by human inclination rather than practical reason.

Section 3 – The Nine Requirements of Practical Reason

- Finnis also believed there were nine, interrelated principles, of practical reason.
- These help to create the optimum conditions in which to achieve the seven basic goods i.e. in order to make right moral decisions in your life, you act rationally in accordance with the nine requirements, that then helps you successfully achieve the basic goods.
- Finnis argued that, like the seven basic goods, the nine requirements of practical reason were self-evident.
- The nine principles are:
 1. You should view your life as a whole, and not live moment to moment, based on achieving the basic goods.
 2. You naturally have to prioritise certain goods over others (e.g. a student would prioritise knowledge over fun!!), but you should always do so with good reason. You should never arbitrarily discount one of the basic goods.
 3. Basic goods apply equally to all people. You can be self-interested to the extent that you are in the best position to look after yourself, but you should always take into account the good of others i.e. you must not neglect others.
 4. You should make sure that you do not become obsessed with a particular project i.e. if it is not helping you flourish then find another project that fulfils a basic good.
 5. You should actually do projects and make an effort to flourish i.e. don't just sit around or repeat old habits
 6. Aim to do good and avoid evil, by actions that fulfil the basic goods.
 7. You should never commit an act that directly harms a basic good, even if it will indirectly benefit a different basic good. For example, you should not kill even if it will indirectly save more lives later.
 8. You should foster the common good of the community, not just for you as an individual.
 9. You should act according to your conscience and practical reason, not the authority of someone else.

Section 4 - Making Decisions using the Seven Goods and the Nine Requirements

- The seven goods and the nine requirements apply equally to everyone. To make specific decisions in your life, you think reasonably, in accordance with the nine requirements, and then decide how you will pursue the basic goods.

- There is plenty of scope for discretion in Finnis' version of Natural Law. If you are deciding what to do with your day, you could choose to listen to music, or to go college, or to go to a party, or to volunteer for disaster relief. These are all, in principle, valid choices i.e. they all support one of the basic goods.
- However, some choices are wrong, e.g. murdering someone, or spending all day in an empty room doing nothing, but there are many equally correct choices.
- The seven goods are all equally fundamental, and do not exist in a hierarchy. Therefore, although some acts are wrong (because they do not participate in a basic good), there is no single correct act.
- This is an important distinction between theoretical and practical reason: in theoretical reason, if two statements contradict then at least one of them must be false. In practical reason, there can be two contradictory acts that are both morally correct choices. It is up to a human's free will to choose which act they will adopt.
- In this way, the seven goods and the nine requirements specify the overarching structure and goals, but do not determine the minutiae of day-to-day life.

Section 5 - The Common Good & Authority

Common Good

- Humans naturally need to live in groups. This is both required explicitly by the basic good of sociability, and implicitly by all the other goods, because we are most productive when we are working together. Hence, one of the nine requirements of practical reason is 'You should foster the common good of the community.'
- The common good is the situation where each member of the community can effectively pursue the basic goods for themselves. Like one of the basic goods, the common good is never achieved, it is only participated in.

Authority and the need for laws

- To best achieve the common good, certain acts need to be performed by the whole community rather than specific people. Examples are respect for the rules of games or respect each other's lives and safety.
- Such community-wide actions require coordination, and coordination requires authority; though not necessarily coercive authority.
- Finnis believes that one of the strongest and most effective sources of authority is the law, and therefore, Finnis concludes, the law is a morally necessary component of society.
- Finnis argues some laws directly serve basic goods (e.g. the law against murder).
- Most laws however, are not so direct – instead they create a stable society in which people have the freedom and ability to pursue the basic goods.
- The authors of the law need to create a legal system that supports the basic goods and in accordance with practical reason. It is a morally 'good' legal system only if it does this.
- Finnis finally argues that if you accept a legal system, then you have a legal obligation to obey every law. The argument runs like this:
 1. I ought to pursue the basic goods
 2. Society needs to coordinate in order to best achieve the basic goods
 3. The law is an effective way of coordinating society this way
 4. Therefore, I ought to obey the law.
- Therefore, you have both a legal and moral obligation to respect and obey the law. The law is therefore justified to put in place sanctions for those that disobey the law.

Section 6 – Application to Immigration and Capital Punishment

A. Immigration:

Definition: The action of coming to live permanently in a foreign country.

- Finnis' Natural Law Theory can be seen to send mixed messages about immigration. This is because the seven basic goods and nine requirements of practical reason do not give specific

ethical guidance. Therefore, some of the seven basic goods and nine requirements of practical reason seem to support immigration and some seem to oppose it:

The basic goods and requirements of practical reason that support immigration:

Basic Goods

- Friendship and Sociability: the basic good friendship can be seen to support immigration because we should extend the hand of friendship to all – including immigrants.
- Aesthetic Experience – it could be argued that immigration supports this basic good because immigration opens up a society to a wider variety of cultural aesthetic influences, such as art or poetry.
- Religion – It could be argued that immigration opens up different avenues to answer the ultimate questions that transcend humanity. As immigrants may bring with them different answers to such questions e.g. a Buddhist, Muslim, Hindu perspective etc.

Requirements of Practical Reason

- Basic goods apply equally to all people. You can be self-interested to the extent that you are in the best position to look after yourself, but you should always take into account the good of others i.e. you must not neglect others. Therefore, we should not neglect the needs of immigrants.
- Aim to do good and avoid evil, by actions that fulfil the basic goods. It could be argued that helping immigrants, particularly from war torn areas, is doing 'good' and to neglect them is evil.
- You should foster the common good of the community, not just for you as an individual. If we consider the world as a community, then we must help others by allowing immigration.
- You should act according to your conscience and practical reason, not the authority of someone else. It could be argued that helping people by allowing immigration is the right thing to do and our consciences would support that.

The basic goods and requirements of practical reason that against immigration:

Basic Goods

- Friendship and Sociability – on a basic level it means at least been sociable, but ultimately acting in the interests of one's friends. This point could limit friendship to a close-knit group of friends. Therefore, this basic good does not include people we do not know – like immigrants.
- Aesthetic Experience – means an appreciation of beauty and art. Allowing immigration could erode a cultural identity and thus a culture's idea on aesthetics (such as art could be lost).

Requirements of Practical Reason

- You should foster the common good of the community, not just for you as an individual. It could be argued that mass immigration disrupts a particular society. Therefore, the only way to foster the common good for a community is to reject immigration.

Other

- Also, as we have seen if a law in society is to reject immigration (a little like with the Trump administration in the USA) then we should accept that because following the law is the best way to achieve the common basic goods.
- Perhaps the best way to understand Finnis' Natural Law theories view on immigration is to look at recent articles about immigration written by Finnis. He argues that controlled immigration is a good thing because the benefits to a community outweigh the problems e.g. it helps people within that community achieve the basic goods. However, mass immigration would have the opposite effect because of the disruption to a community this would cause e.g. a break down in local services and/or law and order. This would stop a community being able to achieve the basic goods.

B. Capital Punishment:

Definition: The legally authorised killing of someone as punishment for a crime.

- Again Finnis' Natural Law Theory can be seen to send mixed messages about capital punishment. This is because the seven basic goods and nine requirements of practical reason do not give specific ethical guidance. Therefore, some of the seven basic goods and nine requirements of practical reason seem to support capital punishment and some seem to oppose it:

The basic goods and requirements of practical reason that support capital punishment:

Basic Goods

- Friendship and Sociability – on a basic level it means at least been sociable, but ultimately acting in the interests of one's friends. If one of our friends is either directly affected by a killing or is a potential target of killer; then it could be argued that it is in the interests of our friend to support capital punishment for the killer.
- Practical Reasonableness – using one's intelligence to solve moral problems. Is it not an obvious externally fact that a murderer, by taking someone else life, forfeits their own. Therefore, supporting capital punishment.

Requirements of Practical Reason

- Basic goods apply equally to all people. You can be self-interested to the extent that you are in the best position to look after yourself, but you should always take into account the good of others. Therefore, for the good of others, on the whole, should not a community support capital punishment – thus removing the continued threat posed, by say, a murderer.
- You should foster the common good of the community, not just for you as an individual. Is not the common good of a community fostered by removing those members of a society that do not, in an extreme way, support the basic goods e.g. capital punishment for murderers and rapists etc.

The basic goods and requirements of practical reason that oppose capital punishment:

Basic Goods

- Life – covers various aspects of life from bodily health. This basic good supports the concept and importance of life. For obvious reasons capital punishment would go against this basic good.
- Practical Reasonableness – using one's intelligence to solve moral problems. Does our practical reasonableness point us in the direction that capital punishment is wrong? Is it not obvious from observation that killing, in any form, is wrong.

Requirements of Practical Reason

- You should never commit an act that directly harms a basic good, even if it will indirectly benefit a different basic good. For example, you should not kill even if it will indirectly save more lives later. Therefore, capital punishment should never be carried out because capital punishment would harm the basic good of 'life'.
- You should act according to your conscience. It could be argued that our conscience tells us that killing is always wrong and therefore capital punishment is never acceptable.

Other

- Also, as we have seen if a law in society is to support or reject capital punishment then we should accept that because following the law is the best way to achieve the common basic goods.
- Perhaps the best way to understand Finnis' Natural Law theories view on capital punishment is to consider Finnis' view on the law. Finnis argues that if you accept a legal system, then you have a legal obligation to obey every law. The argument runs like this:
 1. I ought to pursue the basic goods
 2. Society needs to coordinate in order to best achieve the basic goods
 3. The law is an effective way of coordinating society this way
 4. Therefore, I ought to obey the law.
- Therefore, you have both a legal and moral obligation to respect and obey the law. The law is therefore justified to put in place sanctions for those that disobey the law. If that includes capital punishment, then we should accept it.