
What Good is John Finnis? Assessing the Personal and Common Good in *Natural Law and Natural Rights*

¿Qué tipo de bien es John Finnis? Un estudio sobre el bien personal y común en Natural Law and Natural Rights

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Resumen: *Natural Law and Natural Rights*, de John Finnis ha tenido un impacto significativo en el campo de la filosofía del derecho, especialmente en algunos temas concretos. En alguna medida sus tesis recuperaron para el iusnaturalismo la relevancia que estos planteamientos tuvieron, al menos, durante cinco décadas. Sin embargo, dicha recuperación significó algo más que la clásica comprensión de una ley natural inclusiva de la ley positiva y de mayor espectro referencial que ésta. En el discurso académico y popular el enfoque de Finnis, sus colaboradores y discípulos constituye, de hecho, una «nueva» ley natural. En este artículo se analiza el origen y fundamento de la ley natural (la clásica y la «nueva»): en particular, el concepto de «bien» (tanto individual como común) que se asume en *Natural Law and Natural Rights*. La definición de este concepto y su papel en los preceptos primarios de la ley natural son fundamentales y determinantes de cara a la elaboración y desarrollo de los argumentos subsiguientes. La primera parte destaca la gran contribución del libro en el campo iusfilosófico: la defensa de la objetividad del bien. La segunda explora la comprensión de Finnis del concepto de bien y, en particular, las formas en que reinterpreta o se aparta de Tomás de Aquino y Aristóteles. La tercera parte describe cómo tales diferencias afectan a un ejercicio de comprensión del bien común.

Palabras clave: Bien individual, bien común, ley natural.

Abstract: John Finnis' *Natural Law and Natural Rights* has significantly impacted the field of general jurisprudence in important ways. Finnis' thesis restored to some extent the place of natural law jurisprudence to more prominence than it had enjoyed for at least five decades. Yet, Finnis' restoration was more than a resuscitation of the classical case for a natural law that was greater than and in fact included human positive law. In academic and popular discourse, the approach of Finnis and his collaborators and disciples is «new» natural law. This article focuses on the beginning and foundation of natural law (classical and «new»): the concept of «good» (both individual and common) in *Natural Law and Natural Rights*. The definition of this concept and its role in the primary precepts of natural law is fundamental to all future arguments over and elaborations of natural law. Part I highlights the greatest contribution of the book to the defense of natural law jurisprudence: the defense of the objectivity of the good. Part II explores Finnis' understanding of the concept of good and, in particular, the ways in which it reinterprets or departs from Aquinas and Aristotle. Part III traces how these differences affect the work's understanding of the common good.

Keywords: Individual good; common good; natural law.

The year 2020 marks the fortieth anniversary of the publication of the first edition of John Finnis' *Natural Law and Natural Rights* (NLNR). The work, and its second edition in 2011, have significantly impacted the field of general jurisprudence in important ways. Finnis' thesis restored to some extent the place of the school of natural law jurisprudence to more prominence than it had enjoyed for at least five decades before its appearance. Legal Positivism, in its various forms, appeared to dominate legal philosophy in 1980. Yet, Finnis' restoration was more than a resuscitation of the classical case for a natural law that was greater than and included human positive law. In academic and popular discourse, the approach of Finnis and his collaborators and disciples is «new» natural law. In many respects Finnis either reinterpreted Aquinas and Aristotle or outright departed from their premises, definitions, and conclusions. In this article, we will focus on the beginning and foundation of natural law (classical and «new»). We will consider the concept of «good» (both individual and common) in *Natural Law and Natural Rights*. The definition of this concept and its role in the primary precepts of natural law is fundamental to all future arguments over and elaborations of natural law.

In part I, we will highlight the greatest contribution of NLNR to the defense of natural law jurisprudence: its defense of the objectivity of the good. In part II, we will explore Finnis' understanding of the concept of good and the basic goods in NLNR and, in particular, the ways in which he reinterprets or departs from Aquinas and Aristotle. In part III, we will trace how these differences affect the work's understanding of the common good.

I. GREATEST CONTRIBUTION: THE DEFENSE OF THE OBJECTIVE NATURE OF GOOD

John Finnis must be given due credit for responding forcefully to the many critics from the twentieth century who denied the objective existence and/or knowability of basic goods of human life. A major objection to natural law's definition of the concept of the basic good is rooted in subjectivism. According to this criticism «good» is inherently a subjective concept, not objective in content. The good is whatever an individual person defines it to be for him. This subjectivist view was most famously on display by the United States' judiciary in the case of *Planned Parenthood v. Casey*, in which the opinion of the court stated: «At the heart of liberty is the right to define one's own concept

of existence, of meaning, of the universe, and of the mystery of human life»¹. According to this view, concepts such as meaning and good can only be subjectively defined by each person; they have no objective meaning. John Finnis summarizes this subjectivist approach, which he labels skeptical, thus:

«Our practical judgments of value, they [the Skeptics] say, are ultimately no more than expressions of our feelings and desires; we project our desires on to objects, and objectify our feelings about objects by mistakenly ascribing to those objects such ‘qualities’ as goodness, value, desirability, perfection, etc. If one says ‘knowledge is good and ignorance is bad’, one may think one is affirming something objective, something that is correct and would be so even if one were not aware of the value of knowledge and were content with ignorance. Indeed (the sceptics grant), some such beliefs are built into our ordinary thought and language. But if one thinks this about what one is affirming, one is, they say, in error. Really one’s affirmations express only a subjective concern. One can affirm, correctly or truly, no more than that one regards knowledge as something satisfying an aim or desire which one happens to have (and which one has, probably, because it is an aim widely shared or commended in one’s community)»².

Contrary to this claim that good can only be defined with reference to an individual’s desire or preference, Finnis argues that there are basic or fundamental goods which are objectively (meaning independently of anyone’s subjective belief or feeling) good. Finnis argues persuasively: «They [the basic goods] are objective; their validity is not a matter of convention, nor is it relative to anybody’s individual purposes...»³. Importantly Finnis maintains that the basic goods remain good regardless of how many people misunderstand them or fail to pursue them: «Principles of this sort would hold good, as principles, however extensively they were overlooked, misapplied, or defied in practical thinking, and however little they were recognized by those who reflectively theorize about human thinking»⁴. Certainly Finnis has not convinced all the forces of skepticism to lay down their arms and embrace the

¹ *Planned Parenthood of SE. Pennsylvania v. Casey*, 505 U.S. 833, 851, 112 S. Ct. 2791, 2807, 120 L. Ed. 2d 674 (1992).

² FINNIS, J., *Natural Law and Natural Rights*, Oxford University Press, Oxford, 2011², pp. 78-79.

³ *Ibid.*, p. 69.

⁴ *Ibid.*, p. 38.

objective nature of the basic goods but his defense has brought intellectual commitment to the objective nature of the good back into philosophic and juridical discourse.

Finnis' second significant contribution is that he does not claim too much with respect to the objective basic goods. He maintains the classical distinction between the immutable basic goods which remain unchanging and the legitimate variation that may occur in chosen paths to pursue or participate in those goods. The basic goods are not subjectively defined but they permit great scope for individuals to determine how they will participate in these basic goods. As Finnis states: «To have this choice between... commitment to... one intelligent and reasonable project (say, understanding this book) and other eligible projects for giving definite shape to one's participation in one's selected value, and between one way of carrying out that project and other appropriate ways, is the primary respect in which we can call ourselves both free and responsible»⁵. Professor Jean Porter refers to this same distinction as the indeterminacy of natural law⁶. Finnis does make clear that these legitimate choices are not without constraint. His seventh principle of practical reason requires: «that one should not choose to do any act which *of itself does nothing but* damage or impede a realization or participation of any one or more of the basic forms of human good»⁷. In Chapter 2 of *The Architecture of Law: Rebuilding Law in the Classical Tradition*, I rely on the eternal law, a concept minimized by Finnis, to explain this distinction. I describe the eternal law as establishing definitively the end of human existence so that the ultimate end we pursue is not a subject of our free choice. Yet, we are free to elect legitimate means to attain the end established by the eternal law so long as those means are oriented, and not in opposition, to those fixed ends⁸.

Thus, Finnis' greatest contribution to the restoration of natural law jurisprudence to academic and legal discourse has been his defense of the objectivity and knowability of the ultimate forms of good and the constrained variation of choices that may be elected when participating in those goods. Yet, if we

⁵ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 108.

⁶ PORTER, J., *Ministers of the Law: A Natural Law Theory of Legal Authority*, Eerdmans, Grand Rapids, MI, 2010, p. 81.

⁷ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 123.

⁸ *Vid.*, MCCALL, B., «Building Law on a Solid Foundation: The Eternal Law», *The Architecture of Law: Rebuilding Law in the Classical Tradition*, University of Notre Dame Press, Notre Dame, IN, 2018, pp. 49-79.

delve deeper in to Finnis' defense of these principles we will discover in what ways he departs from the classical tradition and thereby weakens the effectiveness of his argument. We begin by turning to his definition of basic good.

II. FINNIS' DEFINITION OF «GOOD» COMPARED TO AQUINAS'

II.1. *Finnis' Understanding of the Basic Goods*

In defining the basic goods that are at the heart of *Natural Law and Natural Rights*, Finnis makes an important distinction between two senses of the word «good». One sense describes the object of an individual's willed action which is the «good» sought as the direct end of the action⁹. Here Finnis seems to refer to the sense in which Aristotle explained that every agent acts for an end. Good, in this particular sense, means the end sought in a particular case. The second sense refers to the universal concept of good that is the form of all the individual good actions¹⁰. Throughout the work Finnis tends to refer to this more universal meaning with the word «value» so as to make clear he is referring to the universal meaning rather than the particular one. Finnis' distinction is similar to the distinction drawn by Alasdair MacIntyre between what is good for me within the limitations of a particular situation and what is good *per se*¹¹. Although distinct, for both Finnis and MacIntyre, these senses of good are related. What is good in a particular situation is constrained by what is good *per se*.

With this distinction in mind we can turn to Finnis' definition of good in the more universal sense, the forms of basic values that serve «to orient one's practical reasoning, and can be instantiated (rather than 'applied') in indefinitely many, more specific, practical principles and premises»¹². The core of the definition of good (used in the basic sense of the term) is summarized in

⁹ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 61 (defining this sense to be «some particular objective or goal that one is considering as desirable»).

¹⁰ *Ibid.*, p. 61 (defining this second as referring to «a general form of good that can be participated in or realized in indefinitely many ways on indefinitely many occasions»).

¹¹ MACINTYRE, A., *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy, and Tradition: Being Gifford Lectures Delivered in the University of Edinburgh in 1988*, University of Notre Dame Press, Notre Dame, IN, 1990, p. 62.

¹² FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 63.

this statement: «It amounts to no more than saying that any sane person is capable of seeing that life, knowledge, fellowship, offspring, and a few other such basic aspects of human existence are, as such, good, *i.e.*, worth having, leaving to one side all particular predicaments and implications, all assessments of relative importance, all moral demands, and in short, all questions of whether and how one is to devote oneself to these goods»¹³. In essence a basic good is something that is always «worthwhile» pursuing in general and as noted above can never be «damaged» directly by the choices one makes. Having established this core of a definition, Finnis' approach to completing the definition is to describe the nature of the basic goods that comprise this concept of good. In the second edition of *Natural Law and Natural Rights*, he identifies seven basic (in the sense of irreducible) goods¹⁴. This list resembles in many respects the list of first precepts of the natural law identified by St. Thomas Aquinas in his Treatise on Law¹⁵. The first precepts of natural law in Aquinas' system serve a similar function to the concept of basic good in Finnis' «new» natural law. They identify the universal forms of good that are to be sought after and which cannot be directly controverted. Yet, notwithstanding some overlap in Aquinas' and Finnis' lists of aspects of the good¹⁶, their understanding of these goods is radically different. The two points of departure are the demonstrability and commensurability of the goods they list. Finnis maintains that the basic goods are both indemonstrable and incommensurable; whereas, Aquinas understands the goods to be demonstrable from the natural inclinations (even if not derived through a formal syllogism), and he understands them to exist in a hierarchical relationship.

¹³ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 30

¹⁴ *Ibid.*, pp. 85-90.

¹⁵ *Vid.*, AQUINAS, T., *Summa Theologica*, trans. Fathers of the English Dominican Province, Benziger Brothers, I-II, q. 94, a. 2, New York, 1947.

¹⁶ Finnis' list includes life, knowledge, play, aesthetic experience, sociability, practical reasonableness, «religion» (*vid.*, FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 85-90). Unlike Aquinas list, which remains at the general level, Finnis mixes general and specific aspects of the good, such as life and play. Also, Finnis indicates that what he means by the term «religion» is not the same as the truth about God (from Aquinas' list) by placing the word in quotation marks. By it he means the vague notion of conformity to some sort of order. As with Finnis' discussion of God, which is reduced to the vague «D», he here empties the term «religion» of most of its particular meaning. The most he can countenance by religion is the relationship of the other goods «of the whole cosmos and to the origin, if any, of that order» (FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 89).

II.2. *First Difference: Goods are Indemonstrable*

Although Finnis uses the term «self-evident» which is often the English phrase used to translate Aquinas' concept of things known *per se nota*, Finnis understands self-evident principles differently than Aquinas does. Finnis claims a self-evident principle is «obvious» and «it cannot be demonstrated, but equally it needs not demonstration»¹⁷. Finnis' definition of self-evident as «obvious» leads him to the conclusion that self-evident principles are indemonstrable¹⁸. This definition differs significantly from Aquinas' understanding of self-evident, or *per se nota*. For Aquinas, such propositions although not known through syllogistic reasoning are still the products of rational thought. They become known by properly understanding the terms themselves. This does not mean the proposition is utterly indemonstrable. It is demonstrable, not through syllogistic reasoning, but rather through the knowledge of the essence of the very terms contained within the proposition. The terms that must be known to arrive at the primary principles of natural law are the elements of the definition of Man. The terms in the definition that leads to the identification of the good are themselves demonstrable. Such knowledge is a product of the speculative not the practical intellect. Practical reasoning about the nature of the good is reliant upon truths which are demonstrated by the speculative intellect. Each aspect of the primary definition of good is derived from an element of the definition of Man as a rational, sentient, living, corporeal substance. This definition is known through speculative reasoning on the metaphysical nature of Man. Once known speculatively then the corresponding elements of the definition of good are known immediately without *further* demonstration. Thus, unlike Finnis, Aquinas does not require deductive reasoning to produce the primary goods but does require prior speculative reasoning to know the definition of man from which the primary precepts of natural law are known through themselves. Only once the terms of this definition of man are known are the goods self-evident. For Aquinas, in contrast to Finnis, they are not «obvious» to everyone. They are only self-evident to one who has come to know the definition of Man's essence¹⁹. They are not ob-

¹⁷ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 65.

¹⁸ *Ibid.*, p. 85.

¹⁹ For a more complete discussion of Aquinas' method *vid.*, MCCALL, B., «Discovering the Framework: The Natural Law», *The Architecture of Law: Rebuilding Law in the Classical Tradition*, University of Notre Dame Press, Notre Dame, IN, 2018, pp. 81-126.

vious to those who have not come to understand this definition. The primary precepts, according to Aquinas, are self-evident, but the terms necessary to make those precepts self-evident are not themselves self-evident or obvious. Aquinas makes this clear when discussing the differing degrees of difficulty in coming to know the self-evident primary precepts. He makes clear that the meaning of the term «man» is not known to everyone²⁰.

A speculative knowledge of nature (the essence of Man) is necessary for the primary precepts of natural law to be known. As Luis Cortest has keenly observed, Finnis, unlike Aquinas, is committed to the primacy of human practical reason over nature²¹. For Finnis, according to Cortest, actions are wrong because they are contrary to practical reason, which makes them contrary to nature²². Aquinas starts with speculative knowledge of human nature and then uses reason to recognize and deduce principles that make clear what actions are consonant with or contrary to nature. Thus, for Aquinas, nature precedes the application of human reason both in the order of being and in the order of knowledge. Reasoning from natural facts is only possible because God's rational plan underlies nature, but this places the eternal reason, not practical reason, before nature. For Finnis, this order is reversed, and he thus begins his considerations from practical reason and ends with nature. In Finnis' scheme, there are no facts, such as the composite nature of man, to serve as points of departure from which practical reason can work. As a result, Finnis must merely postulate indemonstrable goods and defend them as obvious since nature is not there as a factual departure point for reasoning. Rather than a systemic, rational exploration of the reality of man's nature, Finnis merely claims that «it is obvious that those who are well informed, etc., simply *are* better off... Am I not compelled to admit it, willy-nilly?»²³ As a result, self-evident principles for Finnis are not «formulated reflectively»²⁴. Aquinas thinks we can do more than admissions «willy-nilly». Knowledge of the self-evident primary principles of natural law is «formulated reflectively» by reflecting on

²⁰ AQUINAS, T., *Summa Theologica*, op. cit., I-II, q. 94, a. 2.

²¹ Vid., CORTEST, L., *The Disfigured Face: Traditional Natural Law and Its Encounter with Modernity*, Fordham University Press, New York, 2008, pp. 96-97.

²² Vid., e.g., FINNIS, J., *Aquinas: Moral, Political, and Legal Theory*, Oxford University Press, Oxford, 1998, pp. 152-53: «for both reasons [extramarital sex] is against reason, and consequently against nature».

²³ FINNIS, J., *Natural Law and Natural Rights*, op. cit., p. 72.

²⁴ *Ibid.*, p. 68.

the metaphysical facts of human nature that can be known by the speculative intellect. Such reflection leads one to identify the activities suited to such a nature, or in other words activities toward which human nature is inclined. The natural inclinations are fundamental philosophical concepts that identify those actions suited to a particular nature. These fitting actions are the terms through which the precepts of natural law can be known –not as obvious, but as necessarily true by virtue of their own definition. Understanding rationality as an activity proper to the soul –or to which the soul is inclined by its nature– demonstrates that knowledge is a good suited to a being composed, at least in part, of a rational soul.

Ironically, placing reason before nature makes Finnis' approach less rational than Aquinas'. Finnis can only assert without rational reflection that the goods simply are obvious. Starting with nature permits a rational reflection on that starting point rather than a mere «eureka» of obviousness. All reasoning, including practical must commence from facts upon which it can reflect. Since Finnis refuses to admit natural facts, he has nothing from which reason can commence and must therefore simply posit the goods «willy-nilly».

Yet, for Aquinas reasoning about the facts of the natural inclinations allows him to put reason to work. Practical reason has something upon which to reflect, the natural inclinations. Jean Porter has brilliantly explained the complexity of this rational process of the scholastics. She has explained that Aquinas and the other Scholastics did not mechanically derive natural law precepts simply from *observing* nature but from *reasoning* about it, because nature needs to be interpreted: «They [Scholastics] are aware that the facts of human nature and experience must be interpreted in light of our best theological and philosophical understandings in order to become morally significant»²⁵. Her reference to «best theological and philosophical understandings» means that practical reasoning cannot be undertaken without prior speculative knowledge. In this sense, the natural law precepts do not simply emerge as obvious from looking around «willy-nilly» at «nature». Only in light of these «theological and philosophical understandings» of man's nature, which are

²⁵ PORTER, J., *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics*, Eerdmans, Grand Rapids, MI, 1999, p. 170; *vid.*, also AQUINAS, T., *Commentary on the Nichomachean Ethics*, trans. C.I. Litzinger, Henry Regnery Co., bk. 5, lect. 12, n. 1019, Chicago, 1964 (noting that man possesses a twofold nature, that which is common to animals and that which is unique to man, rationality requiring a more complicated analysis of natural justice than simply the observation of animals).

products of the speculative intellect, do the precepts become self-evident and carry moral significance. For Aquinas and other Scholastics, some speculative knowledge about human nature is essential to knowledge of the first principles of practical reason. Finnis simply asserts that the basic goods are goods because it is obviously so.

Finnis' rejection of the primacy of nature also leads to a rejection of Aquinas' understanding of the natural inclinations as the basis of discovering the objective aspects of the good. For Aquinas, the inclinations are the objective potencies legislated into universal human nature by the eternal law distinguishable from the felt inclinations or urges of the subject individual²⁶. Finnis, on the other hand, speaks of «felt inclinations»²⁷, using the term synonymously with subjective «desires» and «felt want»²⁸. Although in his attempt to avoid a subjective understanding of the goods, Finnis claims that subjectively felt desires are not the appropriate means to knowing the primary precepts of the natural law²⁹, he is left employing the language of subjective feeling to explain the obviousness of the basic goods. Alongside his claim that felt desires are not a sure way to know the basic goods, he makes arguments such as the following that are clearly reliant on subjective feelings and experiences: «Curiosity is a name for the *desire* or inclination or *felt want* that we have when, just for the sake of knowing, we *want* to find out about something. One *wants* «to know the answer to a particular question»³⁰. In arguing that knowledge is a basic good, Finnis explains that «the value of truth becomes obvious only *to one who has experienced the urge to question...*»³¹. This tension between a claim to reject subjective experience and using the language of subjective felt experience to identify the basic goods ultimately leads Finnis to the conclusion that we simply admit the basic goods «willy-nilly». This unresolved tension unfortunately undermines Finnis otherwise laudable critique of skepticism. Rather than rooting knowledge in objective metaphysical facts legislated by an eternal law, he roots it in feelings and felt experience.

²⁶ For a more complete exploration of the scholastic conception of inclination *vid.*, MCCALL, B., «Discovering the Framework: The Natural Law», *op. cit.*, pp. 81-126.

²⁷ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 65.

²⁸ *Ibid.*, pp. 60, 66.

²⁹ *Ibid.*, p. 69 («The criterion of truth of self-evident propositions is not the 'feeling of certitude' about it»).

³⁰ *Ibid.*, p. 60 (emphasis added).

³¹ *Ibid.*, p. 65 (emphasis added).

Contrary to Finnis' claim that Aquinas does not base his understanding of natural law on metaphysical knowledge³², Aquinas does root his understanding of natural law on primary philosophical truths concerning the essence of man. Each primary precept of natural law is derived from a different inclination related to an aspect of human nature³³. When Finnis dismisses natural inclinations as a component of demonstrating through themselves the primary precepts, he should be, rightly, rejecting subjectively felt desires, but not the natural inclinations as understood by Aquinas. Yet since Finnis rejects Aquinas' understanding of the natural inclinations as sources of essential speculative knowledge, he ultimately returns full circle to felt desires and urges as the source of knowledge of the goods. The need to experience feelings subjectively creeps into Finnis' argument as a necessary component: «The value of truth becomes *obvious only to one who has experienced* the urge to question... who likewise *could enjoy* the advantage of attaining correct answers»³⁴.

II.3. *Second Difference: Goods are Incommensurable*

The second difference between the natural law taught by Aquinas and the «new» natural law of Finnis involves the relationship among the aspects of the good. Aquinas' list of the primary precepts includes the Aristotelian notion³⁵ that they exist in an ordered hierarchy. The Aristotelian tradition, which in this respect accords with the Platonic, precludes any conflict of goods. Rooted in a metaphysics of cosmic order and harmony, Plato, Aristotle, and Aquinas all agree that «there exists a cosmic order which dictates the place of each virtue in a total harmonious scheme of human life»³⁶. The cosmic hierarchy

³² FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 33–34 («They [the forms of good] are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about 'the function of a human being'»).

³³ For a more complete discussion *vid.*, MCCALL, B., «Examining the Framework: The Content of the Natural Law», *op. cit.*, *The Architecture of Law*, University of Notre Dame Press, Notre Dame, IN, 2018, pp. 127–174.

³⁴ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 65 (emphasis added).

³⁵ «But that variety [of components of the supreme good], as Aristotle conceived it, is susceptible of a kind of ordering» (*vid.*, MACINTYRE, A., *Whose Justice? Which Rationality?*, University of Notre Dame Press, Notre Dame, IN, 1988, p. 133).

³⁶ MACINTYRE, A., *After Virtue: A Study in Moral Theory*, 3rd ed., University of Notre Dame Press, Notre Dame, IN, 2007, p. 142.

involves a dependence of each good upon the others: «The presence of each requires the presence of all»³⁷. The components or parts of the good are inextricably connected to their ordering with the whole, which corresponds to the cosmic order. This cosmic unity precludes the goods composing it from coming into conflict. Any apparent conflict among goods results from our misunderstanding of the cosmic order or our pursuit of goods in a manner and to an extent out of place in this order. The Platonic/Aristotelian tradition finds a principle of unity that orders but leaves in place a plurality of goods. A hierarchical relationship is the key holding this unity in plurality together. As Alasdair MacIntyre comments: «For Aristotle, as for Plato, the good life for man is itself single and unitary, compounded of a hierarchy of goods»³⁸. The perverted natural law doctrine of Thomas Hobbes attempts to resolve the apparent conflict of goods in a different way. He finds unity by eliminating plurality. He collapses the components of the good into a one-dimensional good. He reduced every natural law precept to one passion (as distinguished from natural inclination) and one good – self-preservation from violent death³⁹. In contrast, the Platonic/Aristotelian/Thomistic tradition was three-dimensional in an ascending hierarchy. Although in general Finnis has more in common with Aquinas than Hobbes (since he acknowledges multiple goods and not merely one), his philosophy makes a distinct break with this tradition and results, like Hobbes's, in a one-dimensional account of the good, albeit for a different reason. Although Finnis accepts the multiplicity of goods, they all reside on a one-dimensional plane of incommensurability. For Aquinas, the list of goods is not an incommensurable list of goods; the list ascends in an ordered hierarchical structure of definitions based on the hierarchical nature of man⁴⁰. The goods that serve as the ends of the primary precepts of

³⁷ MACINTYRE, A., *After Virtue: A Study in Moral Theory*, op. cit., p. 142. Although here MacIntyre is referring to virtue rather than good, the same point applies since the virtues are habits oriented to each of the goods.

³⁸ *Ibid.*, p. 157.

³⁹ STRAUSS, L., *Natural Right and History*, Chicago University Press, Chicago, 1953, pp. 180-81.

⁴⁰ This principle of ordering based on man's nature is the subtle correction that Aquinas makes to Aristotle, who explains the rank order as originating within the structure of the *polis* (vid., STRAUSS, L., *Natural Right and History*, op. cit., pp. 180-181). By situating the order within the nature of the *polis*, Aristotle's argument is susceptible of being understood as the hierarchy of goods being a matter of social convention. Yet since life in the *polis* is an aspect of man's nature, the hierarchy is not a matter of mere convention. Yet Aquinas's explanation more explicitly makes the hierarchy a given ontological fact.

natural law are not independent autonomous incommensurable ends. They are deeply interconnected. As MacIntyre explains: «It is important that these *inclinationes* are ordered. We educate our children for the sake of their being able to participate in the pursuit of knowledge; we subordinate our need for self-preservation if the lives of our children or the security of our community are gravely endangered»⁴¹. The good of education of youth is oriented toward the good of the pursuit of knowledge. The good of preserving one's life must be understood in the context of the higher ordered goods, the education of children and the life in a community. An example of the relevance of this hierarchy to practical reason is present in Aquinas' consideration of whether every lie is a sin. Aquinas concludes that one cannot lie to preserve the property, bodily integrity, or even the life of a person⁴². Although the good intention of saving a life may mitigate the gravity of the lie, because a lie is inordinate by excess or defect with respect to the good of truth, a lie is always wrong. This conclusion is understandable if the good of truth is a higher-ranked good than life. It becomes incomprehensible, or at least difficult to understand, if truth and life are incommensurable.

As MacIntyre's work – on the relationship among the virtues, the narrative unity of a human life, and the ultimate good – suggests, the unifying good is more complex than the one-dimensional good of Hobbes. MacIntyre's position at first may appear contradictory. He asserts the reality of a unifying good that gives order and meaning to the goods that are ends relative to the virtues, yet he acknowledges the variety of the forms that good takes in different lives unfolding their own narrative⁴³. His approach to identification of the unifying good follows this method. First we must ask: «What is the good for me?»⁴⁴ Subsequently, when I ask the question, «What is the good for man?», the answer to that question involves determining what answers to the former question, with respect to different lives, have in common⁴⁵. The answer to the particular question will vary from person to person, depending upon their own personal narrative, which will include its own particular setting and character roles intersecting the narratives of different characters. Thus, his answer appears to be both a single unified good and a variety of different goods. This

⁴¹ MACINTYRE, A., *Whose Justice? Which Rationality*, op. cit., p. 174.

⁴² AQUINAS, T., *Summa Theologica*, op. cit., II-II, q. 110, a. 3, ad. 4.

⁴³ MACINTYRE, A., *After Virtue*, op. cit., pp. 204–25.

⁴⁴ *Ibid.*, p. 218.

⁴⁵ *Ibid.*, pp. 218–19.

apparent contradiction can be resolved by understanding the eternal law (a form of law that finds no place in Finnis' jurisprudence) and its relationship to the natural law.

MacIntyre is certainly not advocating the pluralist liberalism of limitless variation in conceptions of human good. Although not explicitly stated by MacIntyre, the unstated premise that saves his explanation from sliding into pluralistic liberalism is the eternal law. The eternal law fixes the ultimate, supernatural, and natural end of man and legislates it into human nature. The aspects of human nature that give rise to the natural inclinations that point to the aspects of the good have been promulgated by the eternal law⁴⁶. Yet this legislation is not in the mode of detailed precept specifying means, but rather the form of a type or an exemplar⁴⁷. Through the freedom to elect particular means to weave a life narrative that arrives at a product still governed by the type, the eternal law permits a variation in the precise narrative nature of the good life while restraining that variation within the type or exemplar. That which is good for a monk, a teacher, a parent, an architect, and so on will vary in details; but those details will be constrained within the pattern formed by what within each of these types of narratives is common to all the narratives. The medieval concept of «station in life» is a concept that captures this diversity in unity. All stations in life vary in the details of what is good for them. The particular good for a contemplative monk is not the same as what is good for a crusading knight⁴⁸. Yet each of these stations in life is an alternative route to that which is good for man as such – on the natural level, the happiness of conformity of all aspects of life to the common unity of purpose, which brings knowledge of the truth, and on the supernatural level, eternal union with the source of that truth, God. MacIntyre's analysis would be significantly strengthened by reference to the eternal law so as to avoid the misconception of the ultimate good being seen as pluralistic liberalism, which simply seeks to facilitate each writing his life however he wills. The eternal law legislates the ultimate end by way of exemplar, which permits the election of means that do in fact lead to this ultimate end. Thus, not every narrative and not every elec-

⁴⁶ For a further explanation on the promulgation of the eternal law *vid.*, MCCALL, B., «Building Law on a Solid Foundation: The Eternal Law», *op. cit.*, pp. 49-79.

⁴⁷ *Ibid.*, pp. 49-79. For a further discussion of the eternal law as exemplar.

⁴⁸ MacIntyre uses different examples but makes a similar point: «What the good life is for a fifth-century Athenian general will not be the same as what it was for a medieval nun or a seventeenth-century farmer» (MACINTYRE, A., *After Virtue*, *op. cit.*, p. 220).

tion of a plot turn in every narrative is possible under the ultimate exemplar, just as not every painting of every woman and a child is consistent with an exemplar of the Madonna and Child. A narrative that effectively lives a story that elects the vices and not the virtues, or that does not reflect the order among the aspects of the good, is not a narrative written according to the exemplar of eternal law. Transferring the exemplar to the artistic realm emphasized by MacIntyre – the telling of stories – helps illustrate this point. A story containing characters named King Arthur and Sir Gowen and Sir Perceval in which the characters engage in guerrilla war with the Anglo-Saxons, slaughter the innocent, and seek demonic preternatural powers rather than the Holy Grail is a story, but it is not one following the exemplar called Arthurian legend. Yet the genre of Arthurian legends contains a vast variety of different stories that are consistent with this type of narrative. Although every correct answer to the question «What is good for me?» is consistent with the correct answer to the question «What is good for man?», since the former will follow the exemplar of the latter, not every willed narrative life is consistent with the correct answer to the latter question, or for that matter the former.

MacIntyre leaves this understanding of the eternal law as an unstated premise in his argument for a plurality of individual goods, ordered by and to an ultimate unitary good, but Finnis explicitly refuses MacIntyre's unstated premise. Finnis does include a brief discussion of the eternal law, but it is literally an appendage to his theory. Not only is any discussion of God and eternal law placed at the very end of the book, but Finnis concludes that if God and eternal law exist, they are superfluous to natural law and his seven incommensurable goods: «What can be established by argumentation from the existence and general features of this world, concerning the uncaused cause of the world, does not directly assist us in answering those practical questions»⁴⁹. Finnis' thesis consistently remains that consideration of first principles about God and the universe can be detached from considerations of practical reason: «The kinds of 'detachability'... never went much beyond the simple thought that, as it is possible to do physics without raising or pressing further questions, so to some extent it is possible to have a practical and theoretical understanding of practical reason's principles and their implications for reasonable choice, and so for individual and communal self-constitution, without raising

⁴⁹ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 405.

further or pressing questions»⁵⁰. Yet philosophy and jurisprudence are not like physics. They are concerned with more than the forces that affect non-rational objects. They concern human actions, and therefore the cause and ultimate end of human freedom to act is essential to an understanding of the details. This dismissal of the eternal law as ultimately unnecessary has a profound effect on Finnis' understanding of the relationship among what he calls the basic goods.

Without the unifying principle of eternal law that establishes the hierarchy of man's nature and thus the hierarchy of goods, Finnis is compelled to depart from Aquinas' understanding of the goods as corresponding to the hierarchical aspect of man's essence that is established by eternal law. Finnis aligns himself with the modern dogma, «which holds that the variety and heterogeneity of human goods is such that their pursuit cannot be reconciled in any single moral order»⁵¹. For Finnis, the definition of the «basic goods» as incommensurable accepts this modern dogma. He maintains that the good is composed of disparate elements because they are incommensurable⁵². Although Finnis cannot deny that Aquinas lists the elements of the good in a threefold hierarchy, as with eternal law, he dismisses the ordering as irrelevant, a «questionable example» that «plays no part in his [Aquinas'] practical (ethical) elaboration of the significance and consequences of the primary precept of natural law»⁵³. He argues Aquinas' order is not «derivable (nor sought by Aquinas to be derived) from any speculative considerations» and «should be set aside as an irrelevant schematization»⁵⁴. We have already seen that speculative knowledge is essential to Aquinas' understanding of how the first principles of natural law are known. Speculative knowledge about man's nature is essential to discovery of the natural inclinations that point to the primary precepts. As to the hierarchy playing «no role» in Aquinas' «practical (ethical) elaboration of the primary precept», the entire Second Part of the Second Part of the *Summa Theologica* disproves this claim. Aquinas elaborates the virtues (the habits of obeying the precepts of natural law) as a hierarchical

⁵⁰ FINNIS, J., «Grounds of Law and Legal Theory: A Response», *Legal Theory*, vol. 13, 2007, p. 343.

⁵¹ MACINTYRE, A., *After Virtue*, *op. cit.*, p. 142.

⁵² FINNIS, J. *Natural Law and Natural Rights*, *op. cit.*, pp. 92–95.

⁵³ *Ibid.*, p. 94. *Vid.*, also *ibid.*, p. 410 (rejecting any ranking or ordering of the basic human value so that union with God or religion is considered of a higher order).

⁵⁴ *Ibid.*, pp. 102–103.

system. The virtues themselves are ordered in a hierarchy that Aquinas follows: Theological virtues followed by cardinal virtues divided into intellectual and moral. Even within the consideration of individual virtues Aquinas reveals a hierarchy. For example when considering the moral virtue of Justice Aquinas identifies other virtues that depend upon or are ordered toward Justice such as religion, piety, observance, and Epikeia⁵⁵. This entire part of the text is rooted in the hierarchy introduced by Aquinas in the identification of the first precepts of the natural law in First Part of the Second Part of the *Summa*.

Finnis' dismissal of this hierarchy has consequences. Just as modern liberal individualism rejects the social nature of man and apprehends each person as a disconnected and incommensurable end disconnected from society, in like manner Finnis rejects the hierarchical nature of the various goods and denies that these goods are ordered parts of a whole, the supreme good. Even Pauline Westerman, a legal positivist, understands this difference to be a radical departure from Aquinas' philosophy. She explains that Aquinas' understanding of natural law «enables us to see that it is the general tendency of creatures, including ourselves, to move upwards on the scale of being and goodness and that there are several ends, which are hierarchically ordered»⁵⁶. Finnis, by departing from this hierarchy, not only aligns himself with modernity rather than Aristotle⁵⁷, but also opens his approach to an important error in rationality. According to Aristotle, one of the sources of error in practical rationality is to mistake a means for an end and an intermediate end for the supreme end. Without an ordered conception of the components of the supreme good, Finnis' conception of practical rationality is open to failure when the components need to be ordered to compose the supreme good, which is the end of all of the component goods. MacIntyre summarizes this failure of some forms of practical reasoning thus:

«One mark of educational failure will be a tendency on the part of individual citizens to identify as *the* good and *the* best some good which is merely an external by-product of those activities in which excellence is achieved... Such errors are evidence of an individual having failed to understand the

⁵⁵ *Vid.*, AQUINAS, T., *Summa Theologica*, *op. cit.*, II-II, q. 81-120.

⁵⁶ WESTERMANN, P., *The Disintegration of Natural Law Theory: Aquinas to Finnis*, Brill, Leiden, 1998, p. 56.

⁵⁷ *Vid.*, MACINTYRE, A., *Whose Justice? Which Rationality?*, *op. cit.*, p. 133: «From the standpoint of modernity... there can be no uniquely rational way of ordering goods within a scheme of life».

way in which goods are rank-ordered, a failure which involves a defective conception of the overall character of the best life for human beings as structured in the best kind of *polis*»⁵⁸.

One who sees the goods of life as incommensurable and incapable of an ordered ranking only reaches such conclusion by misunderstanding or misconceiving of the goods composing the supreme good. According to MacIntyre, apparently unresolvable conflict among goods «arises from the inadequacies of reason, not from the character of moral reality»⁵⁹. The goods are not incommensurable; if they seem to be, it is only because we err in understanding them.

An understanding of the nature of man, as Aquinas sees it, clarifies the relationship among the elements of the hierarchy of the good required to be done by the natural law. For Aquinas, man is on a higher level of being than other animals (occupies a higher position in the hierarchy). He more perfectly reflects the completeness of being. Yet man is not in opposition to the form of lower animals, but rather animal is contained within the definition of man⁶⁰. Man is a *rational animal*. The higher order, man, in addition to his unique rationality, contains the lower attributes of irrational animals, which include inclinations to procreation and care of offspring. The higher ranked potency of rationality (that inclines man to the good of the knowledge of truth) includes within itself the lower ranked goods of preserving life and procreation and education of children. These ordered goods are not really in conflict with each other just as man is not metaphysically in conflict with himself. Men must pursue the higher ranked good of seeking to know the truth about God in a manner that is consistent with the lower ordered aspects of his nature (the preservation of life and rearing and education of children).

According to Finnis, admitting a hierarchy of elements of the good may necessitate choices among them⁶¹. It would entail a moral system where one resolves conflicts by choosing between conflicting goods, choosing knowledge in opposition to preserving life. Although Finnis concedes that people can and should subjectively order their commitment to one or more of the basic

⁵⁸ MACINTYRE, A., *Whose Justice? Which Rationality?*, *op. cit.*, p. 127.

⁵⁹ *Ibid.*, p. 142.

⁶⁰ AQUINAS, T., *Summa Theologica*, *op. cit.*, I-II, q. 94, a. 1.

⁶¹ *Vid.*, FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 92–95.

goods⁶², he maintains that «there is no objective hierarchy amongst them»⁶³. They are incommensurable⁶⁴. He may be concerned that a hierarchy necessitates moral rules, which choose one element of the good in opposition to the other, or where one element can become merely instrumental to the higher ranked element⁶⁵. Such a moral system would result in choosing to pursue knowledge and destroy life since knowledge is higher than life in the hierarchy. This may be what Finnis means when he suggests that a hierarchical commensuration of the elements of the good results in fanaticism⁶⁶.

Yet hierarchy understood in the sense that each higher ordered good contains within it all lower ordered goods, can never involve an imperative to do something furthering an aspect of the good that necessitates the destruction of another lower element of the hierarchy, because the higher good contains within its very own definition the lower. Aquinas explains this relation among the hierarchical ends of man in his commentary on Aristotle's *Ethics*:

«There are also, it seems, many degrees of ends. Some of these we choose purely for the sake of something else, riches, for instance, which are sought for their utility in human living... All such instruments are ends sought merely because of their usefulness. It is obvious that such ends are imperfect [incomplete]. The best end, namely, the ultimate end, must be perfect [complete]. Therefore, if there is only one such end, it must be the ultimate end we are looking for. If, however, there are many perfect ends, the most perfect [complete] of these should be the best and the ultimate»⁶⁷.

Thus, a command to do the highest-ranked good must be a complete end, which contains within it the other incomplete ends. If the highest good were in opposition to a lower good, the higher good would not be more perfect as it would lack the good of the lower. Aristotle expresses the concept: «Human good turns out to be activity of soul in accordance with virtue, and if there are more than one virtue, in accordance with the best and

⁶² FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 93.

⁶³ *Ibid.*, p. 92.

⁶⁴ *Ibid.*, p. 93.

⁶⁵ *Ibid.*, p. 93.

⁶⁶ *Ibid.*, p. 110.

⁶⁷ AQUINAS, T., *Commentary on the Nichomachean Ethics*, *op. cit.*, bk. 1, lect. 9, n. 110. I have placed the word «complete» after «perfect» as a reminder that for Aquinas perfection means completeness or fullness of being.

most complete»⁶⁸. The best end necessarily contains within itself all of the other elements of the hierarchy of the definition of that end, since to be the best it must be the most complete. In this way one could never say that the injunction to do the good identified as education children could require one to choose to kill later conceived children so as to focus all educational resources on the first born (violate the good of the lower good of preservation of life), because contained within the education of children is the element of life preservation, which is a lower order (less complete good). Complying with the highest element of the hierarchy to know the truth about God can never involve a requirement to violate the precept to preserve life. Thus, if one concluded that one will know the truth about God only after this life, and then concluded he should commit suicide so as to further this inclination, this conclusion would be checked by the fact that the element of the good called «knowledge of the truth about God» contains within it the preservation of human life, and thus it would be a violation of the very element of knowing the truth about God to take one's life (since not taking life is part of the element of knowing the truth about God). Yet, at the same time it would be impermissible to deny the truth about God to preserve life because life must be preserved in order to know the truth about God. This is the lesson taught us about hierarchy by the martyrs. Thus, we must pursue the higher ordered good in a manner consistent with the lower order. We must pursue the lower order goods in a manner that such pursuit is directed toward attaining the higher ordered goods. We preserve life so that we can come to know the truth about God. We learn about this truth in a manner that respects the preservation of life. Daniel Mahoney explains in his Forward to the English Translation of Pierre Manent's most recent work this relationship among the lowest level good self-preservation and higher ordered ones: «Selfpreservation can never be the great desideratum for a human being guided by reflective choice and a conscience that honors truth and virtue. The great task of human beings is living well, and not preserving this-worldly existence indefinitely. On this Plato, Aristotle, Seneca, and Saint Paul would surely agree»⁶⁹.

This proper understanding of the hierarchy of the primary ends or goods and their corresponding natural law primary precepts not only conveys the

⁶⁸ ARISTOTLE, *Nicomachean Ethics*, in *The Basic Works of Aristotle*, McKeon, R.(ed.), Random House, New York, 1941, 1.7.1098a 17–18.

⁶⁹ MAHONEY, D., «Forward», *Natural Law and Human Rights: Toward a Recovery of Practical Reason*, Notre Dame University Press, Notre Dame, IN, 2020, p. 12.

idea that each higher level contains the lower orders, but also indicates a directional movement, or rule. Aquinas has defined the «good» commanded by the first principle of the natural law both as the «end» of man (his fullness of being) and as «that which all things seek after»⁷⁰. The cognitive and volitional elements of human action are interrelated. The good involves knowing the end and seeking after it or moving toward it. Aquinas combines these two elements in a passage in *De Veritate*:

«Since the essence of good consists in this, that something perfects another as an end, whatever is found to have the character of an end also has that of good. [The first element of good is that we know it by that which equates to its perfection or its end.] Now two things are essential to an end: it must be sought or desired by things which have not attained the end, and it must be loved by things which share the end, and be, as it were, enjoyable to them [The inclination shared by men or that which all things seek after]»⁷¹.

As Aquinas argued in the *Commentary on the Nichomachean Ethics*, when faced with a hierarchy of ends we should be ruled by the most complete of those ends, the end that contains all the lower order of ends. Thus, the inclination of man directs him ultimately upward in the fullness of being toward a higher end (and ultimately nudges him to consider the possibility of a supernatural end). A higher good is to be chosen over a lower good, not in the sense of being in opposition to it, but rather in the sense that the choice of the lower good must be informed by, or subsumed by, consideration of the highest good. Thus, in choosing the highest good we also choose the way in which to respect the lower. We can understand this relationship by considering Aquinas's criterion of *inconvenientem* in the relationship between lower-ranked and higher-ranked goods. In his *Commentary on the Sentences*⁷², Aquinas explains: «Whatever renders an action disproportionate [*inconvenientem*]⁷³ to the end

⁷⁰ AQUINAS, T., *Summa Theologica*, op. cit., I-II, q. 94, a. 2.

⁷¹ AQUINAS, T., *De Veritate*, trans. James V. McGlynn, Henry Regnery, Chicago, 1953, 21.2.

⁷² This text has been incorporated into the Supplement of the *Summa Theologica*.

⁷³ The English word «improportionate» does not completely capture the meaning of the Latin *inconvenientem*. Etymologically, the word means «not to come together with». Thus, something *inconvenientem* does not come together well with something else. Thus, the lower goods to be pursued must come together with the higher goods, or they are inconvenient. I explore this concept in greater detail when considering the secondary precepts of natural law in Chapter 4 of *The Architecture of Law*.

which nature intends to obtain by a certain work is said to be contrary to the natural law»⁷⁴. Thus, the lower-order goods must be pursued in a way that is not *inconvenientem* to the attainment of the more complete, higher good.

Some conclusions about the content of the primary principles of the natural law can be drawn from this hierarchy of goods or ends. The first precept of the natural law is the most complete: «Do good». Good is defined as «an end directing action». Based on these premises, Aquinas concludes that the natural law commands all virtuous acts, acts that are directed toward the hierarchically supreme end of man:

«Thus, all virtuous acts belong to the natural law. For it has been stated (Article 2) that to the natural law belongs everything to which man is inclined according to his nature. Now each thing is inclined naturally to an operation that is suitable to it according to its form: thus fire is inclined to give heat. Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue. Consequently, considered thus, all acts of virtue are prescribed by the natural law: since each one's reason naturally dictates to him to act virtuously»⁷⁵.

Since reason is the hierarchical peak of man's nature, it is the good that completes all the lower goods. A life that fosters and educates new life in a human society is most complete when it accords with reason. Thus, reason completes the lower goods by indicating that they are to be pursued, but only in accordance with reason. This highest natural good in man thus interacts dialectically with the inclinations common to other beings. Thus, the particular way in which man is to live, procreate, rear children, and live together in society differs from other animals in that these inclinations in man are all directed toward the good of reason. The medieval jurist Huguccio considers an example of this interaction of the lower good of procreation and rearing of children with the higher good of reason:

«Marriage is the natural law, that is, its effect, that is, it derives from it... But of what kind of union is it to be understood? Of souls, or of bodies? I respond: Of souls, because that is marriage. Hence, the jurist [Ulpian] says, 'The union of husband and wife, which we call marriage, derives from this'. But marriage is nothing else than a union of souls. But from which natural

⁷⁴ AQUINAS, T., *Summa Theologica*, op. cit., supp., q. 65, a. 1.

⁷⁵ *Ibid.*, I-II, q. 94, a. 3.

law does this union arise? From reason, which directs a man that he should be joined with a woman through marriage, either for the sake of offspring, or on account of incontinence. For by such a law, that is, led by reason, did Adam consent to take Eve in marriage, when he said, ‘this now is bone of my bones’, and so on; and so does anyone consent, who now contracts marriage... And this latter union is derived both from that natural law which is said to be an instinct of nature, and from that which is said to be reason. For man is moved by a certain appetite of the natural sensuality, that he should be joined in the flesh to a woman, and immediately reason follows, directing him that he should not be joined with anyone except a wife, and in a legitimate way, that is, for the sake of children, or to pay his debt; for any other union, whatever with the wife or with another woman is not derived from any natural law, but is contrary to it»⁷⁶.

Although this passage verges into secondary precepts of the natural law, it demonstrates how the natural inclinations of nonrational beings are only a starting point for the consideration of the natural inclinations of man. These common inclinations (toward physical union) are affected by the higher good of reason, which imprints a particular character on the same animal inclination. As Jean Porter points out, for the Scholastics, the human inclination to procreate involves more than the inclination in other animals. For humans, in addition to the joining of male and female to produce an offspring, it is also about procreating a being that is fully human, which involves – because of the human rational nature destined for society – educating and socializing offspring⁷⁷. Coming to know the primary principles through the natural inclinations involves more than simply «observing nature». As Porter commented, it involves examining these observations in light of «our best theological and philosophical understandings»⁷⁸.

Porter rightly observes that Finnis’ rejection of the role of metaphysics and hierarchy in natural law reasoning often leads him to reach similar conclusions to classical natural law jurists but for very different reasons. She explains:

«There is more fundamental difference between the «new natural law» of Grisez and Finnis and the scholastic conception of the natural law that cannot be brought out simply by a comparison of relevant texts on the natu-

⁷⁶ Quoted in PORTER, J., *Natural and Divine Law*, op. cit., p. 200.

⁷⁷ PORTER, J., *Natural and Divine Law*, op. cit., pp. 205, 213.

⁷⁸ *Ibid.*, p. 170.

ral law and reason... Even the traditional Catholic prohibition of the use of contraceptives is interpreted by them as a sin against life, which represents the same stance of will as is present in murder, rather than as a violation of the natural processes of sexuality. No scholastic would interpret reason in such a way as to drive a wedge between the pre-rational aspects of our nature and rationality»⁷⁹.

In this section we have thus observed that the conception of the individual good which all seek after found in *Natural Law and Natural Rights* is very different from that of Aristotle and Aquinas. The basic goods for Finnis are not demonstrable and do not rely on speculative knowledge about the nature of Man. They are also incommensurable and not ordered in a hierarchy of being. These differences in the definition of the good sought by individual persons have consequences for Finnis' understanding of the common good.

III. THE COMMON GOOD

III.1. *Finnis' Definition of the Common Good*

The way in which Finnis understands the basic goods in which individuals participate affects his understanding of the common good. We have already seen that for Finnis the basic goods are incommensurable values among which individuals may subjectively choose to order their priorities. Although these goods are universally available to all people as ends, we know them not by understanding universal human nature but by our subjective experience of feeling urges that lead us to see them as obvious. These qualities of the basic goods, as Finnis understands them, lead him to empty the common good of much of its traditional content. The common good becomes merely a means to realizing the personal goods of individuals through useful coordination. According to Finnis the common good promotes collaboration to realize individually chosen goods. The common good is no longer a true good (in the sense of an end in itself) but merely a means to pursue the basic goods sought by individuals. Finnis essentially removes both the aspect of «common» and «good» from the common good.

⁷⁹ PORTER, J., *Natural and Divine Law*, *op. cit.*, p. 93.

We can observe these aspects of Finnis' conception in the definition he offers of the common good as «a set of conditions which *enables* the members of a community to attain *for themselves* reasonable objectives, or to realize reasonably *for themselves* the value(s), for the sake of which they have reason to collaborate with each other (positively and/or negatively) in a community»⁸⁰. In this definition we can see that the common good is not a good in and of itself. It merely enables individuals to pursue the goods they choose for themselves. They do not pursue the collaboration of the common good for itself but for their individual goods, «for the sake of which» they collaborate». The entire focus of the common good is once again subjective. It is oriented to the individual.

The common good as Finnis understands it is also value neutral. It is ambivalent about the subjective selection of goods by individuals. He notes: «Notice that this definition [of the common good] neither asserts nor entails that the members of a community must all have the same values [which in his terminology is equivalent to goods] or objectives (or set of values or objectives); it implies only that there be some set (or set of sets) of conditions which needs to obtain *if each of the members is to attain his or her own objectives*»⁸¹. Although Finnis tries to claim that the political common good is a good in and of itself he does not explain how the «point of this all-round association would be to secure the whole ensemble of material and other conditions, including forms of collaboration, that tend to favor, facilitate, and foster the realization by each individual of his or her personal development» and at the same time «this personal development includes, as an integral element and not merely as a means or precondition, both individual self-direction and community with others in family, friendship, work, and play»⁸². Proof that he cannot reconcile the claim that the common good is more than instrumental with his definition of it as a means to attain individual goods can be found in the fact that Finnis does not list the common good as one of the basic goods or values. It must,

⁸⁰ FINNIS, J., *Natural Law and Natural Right*, *op. cit.*, p. 155 (emphasis added). In an earlier passage he gives a slightly longer elaboration of this more succinct definition as «the factor or set of factors (whether a value, a concrete operational objective, or the conditions for realizing a value or attaining an objective) which, as considerations in someone's practical reasoning, would make sense of or give reason for that individual's collaboration with others and would likewise, from their point of view, give reason for their collaboration with each other and with that individual» (p. 154).

⁸¹ *Ibid.*, p. 156 (emphasis added).

⁸² *Ibid.*, pp. 147-48.

by his definition of basic goods, therefore be reducible into one or more of the basic goods⁸³ and merely instrumental to the participation in those basic goods by individuals.

We may strive to obtain one or more of the basic goods in community, but that community has no distinct good or end that it pursues as a community. At one point, Finnis comments that the ancient analogy of a political community as a ship of state might lead one to believe that a political community can have a real and distinct good that it pursues as an end. «But here, as so often, we must recall the distinction between, on the one hand, values in which we participate but which we do not exhaust and, on the other hand, the particular projects we undertake and objectives we pursue (normally, if we are reasonable, as ways of participating in values) and which can at a given point of time be said to have been fully attained, or not, as the case may be... There is no reason to suppose that political community has any aim or destination of the latter sort»⁸⁴.

Finnis' defense of the good of the individual is understandable given the distortion of the concept of the common good by the many totalitarian regimes of the century in which *Natural Law and Natural Rights* was composed. The collectivists placed the common good in opposition to the individual good which they believed must be sacrificed for the good of the collective. Finnis is correct in refuting this error and making clear the common good cannot require the frustration of the good of the individuals forming the community. Yet, the way in which he does so empties the concept of any content and makes the common good merely a method of coordination that is a means for individuals to participate in the individual basic goods.

III.2. *Common Good as a True Good: What is Good for the Part is Good for the Whole*

In contrast to Finnis' understanding of the common good, the great twentieth century Thomist Charles de Koninck argued that the concept of the common good is opposed not only to the collectivist errors but also to the personalists errors who saw the common good as subordinate to the individual

⁸³ FINNIS, J., *Natural Law and Natural Right*, op. cit., p. 167.

⁸⁴ *Ibid.*, p. 158.

good⁸⁵. Let us contrast this understanding of the common good with Finnis' definition.

For de Koninck, the core of the definition of the common good requires that whatever is proposed as the common good must be both *good* (i.e., objectively oriented to a good) and *common* to members of the species. A good, as discussed in part II, is a perfection of the intrinsic nature of a thing. The more perfectly a thing conforms to what it is, the more it partakes of the attribute of goodness. Since an individual exists as a particular instantiation of a universal, individuals who are transcendently related to the same universal share a common nature and hence a common mode of perfection. That which is therefore good for all instances of a universal is a common good. To be common, a good must be a good that is not unique to one individual or group of individuals, but it must be a good common to all in the relevant species. «Common» here means capable of being participated in by more than an individual. A purely personal good is one that is good only for the individual and cannot be participated in by others. A common good is more universal in that it can be the good or end not of one singular person, but of many persons. The common good is the composite of all the goods common to human nature and is equivalent to the end of human nature itself. The common good is more than the collection of the private good of each person. It is, however, not separable from the good of the individual members because that which is good for an individual is always consonant with that good common to all. As De Koninck explains, «The common good is not a good other than the good of the particulars, a good which is merely the good of the collectivity looked upon as a kind of singular»⁸⁶. Because of this connection, an individual can say that the common good is his good and by that claim he does not mean it is his good in opposition to the good of other members of society. The common good is his good and also the good of others. Since the common good transcends the singular good, it is each member's good simultaneously because it is the end of each member by virtue of their common metaphysical composition.

Yet how is it that the common good can at the same time be the good of the individual within a society but also a distinct good that is great than the

⁸⁵ DE KONINCK, C., «On the Primacy of the Common Good: Against the Personalists and The Principle of the New Order» *The Aquinas Review*, vol. 4, 1997, http://ldataworks.com/aqr/V4_BC_text.html#BC_h003

⁸⁶ DE KONINCK, C., «On the Primacy of the Common Good: Against the Personalists and The Principle of the New Order» *op. cit.*, II: «Negation of the Primacy of the Speculative».

good of the aggregate individuals? The key to reconcile these two claims lies in one of the primary precepts of the natural law as identified by Aquinas. As we have noted Aquinas orders these primary precepts in an ascending hierarchy. Here is how he defines the highest level of that hierarchy, the inclinations that derive from man's spiritual nature: «Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law...»⁸⁷. An aspect of the common human nature instantiated in an individual is the natural inclination to «live in society». Man cannot ascend the hierarchy of being and attain his highest good without living in common in society with other humans. For this reason Aristotle defines man as a «social and political animal» and claims that a being that does not live in society is either a beast or a god (*i.e.*, below or above human nature)⁸⁸. A society is a partnership that pursues a good in common. Thus, it is part of what is good for the individual to pursue the common good of a society.

The common good is not merely an instrumental method for individuals to pursue the basic goods. It is something greater than the basic good of individuals. Yet, part of what is good for the individual can only be lived in society by pursuing the distinct common good, the individual is also perfecting an aspect of human nature instantiated in him.

Yet what is this distinct common good that transcends individual good? Finnis gives it no real content beyond coordination and cooperation. Aquinas defines the end of the common good as «justice and peace»⁸⁹. Justice is defined by Aquinas as «a habit whereby a man renders to each one his due by a constant and perpetual will»⁹⁰. In this definition we can see the connection between the social and the individual. Justice is a virtue that requires others. There must be «one» to whom «his due» is rendered. Part of the common good is working toward a society in which justice is practiced. Yet, as Aquinas points out by improving upon its definition in Justinian's *Digest*⁹¹, is a habit. By working for the aspect of the common good captured by the term justice,

⁸⁷ AQUINAS, T., *Summa Theologica*, *op. cit.*, I-II, q. 94, a. 2.

⁸⁸ ARISTOTLE, *Politics* in *The Basic Works of Aristotle*, McKeon, R. (ed.), Random House, New York, 1941, bk.1, 1253a.

⁸⁹ AQUINAS, T., *Summa Theologica*, *op. cit.*, I-II, q. 96, a. 2.

⁹⁰ *Ibid.*, II-II, q. 58, a. 1.

⁹¹ *Ibid.*, II-II, q. 58, a. 1.

an individual grows in the habit of justice individually. Aquinas begins his definition of peace by taking Augustine's definition of it as the tranquility of order⁹². Peace, according to Aquinas, is both a tranquility «between one man and another, in so far as the wills of various hearts agree together in consenting to the same thing» and «the union of the appetites even in one man»⁹³. Again it is important to note that this tranquility of order is both greater than the individual in that it penetrates into the individual by unifying his appetites but also transcends the individual as it involves such tranquility among individuals. It is in this sense that de Koninck observed that common good «reaches the singular more than the singular good: it is the greater good of the singular»⁹⁴. The common good is simultaneously a good of the individual and greater than that good.

Jeremiah Newman, a natural law scholar of the twentieth century, emphasized how this tranquility of order was something that diffused itself through the community by describing it as «[a] dynamic order, the good life of the multitude»⁹⁵. This order is not merely orderly coordination that assists individuals qua individuals to attain their end. Its primary aspect is the actualization of the good life by the members of the community as members of the community⁹⁶.

Aquinas emphasizes that this tranquility of order is not merely instrumental for the individual; it is not just a means for the individual to set his internal appetites in order. Peace is not a virtue itself but rather the «proper act» of the virtue of charity⁹⁷. The tranquility of order is an end (joy is the other) of the virtue of charity. Thus, the tranquility of order is a good sought by the virtue of charity. Finnis clearly does not conceive of the common good as a basic good since he neither includes it nor its components (justice and peace) in his list of the basic goods.

Yet, justice and peace do not exhaust the definition of the common good. They comprise what we might call the natural common good. The

⁹² AQUINAS, T., *Summa Theologica*, *op. cit.*, II-II, q. 29, a. 1, obj. 1.

⁹³ *Ibid.*, a. 1.

⁹⁴ DE KONINCK, C., «On the Primacy of the Common Good», *op. cit.*, II: «Negation of the Primacy of the Speculative».

⁹⁵ NEWMAN, J., *Foundations of Justice: A Historico-Critical Study in Thomism*, Cork University Press, Cork, 1954, pp. 37–38.

⁹⁶ *Ibid.*, p. 38.

⁹⁷ AQUINAS, T., *Summa Theologica*, *op. cit.*, II-II, q. 29, a. 4.

common good sought by man's nature. These two elements of the common good are all sought within human society that culminates in political society. Yet, as Aquinas notes, «Man is not ordained to the body politic, according to all that he is and has»⁹⁸. This observation points to another dimension of the common good. On a natural level peace and justice comprise the common good sought by Man's nature. But as Aquinas observes Man's happiness ultimately exists on the supernatural level. The supernatural end sought by Man «consist[s] in nothing else than the vision of the Divine»⁹⁹. This end is both individual but also common. On the supernatural level, the end of the individual is to possess this Divine Essence. Yet, this is also the common end of the species. This possession is to be simultaneously individual and common. Aquinas explains that this end is more than an individual desiring for himself beatitude: «Therefore, to love the good in which the blessed participate so that it might be had or possessed does not make man well-disposed toward beatitude, because the wicked also desire this good. But to love that good for its own sake in order that it might remain and be made wide-spread, and that nothing might act against that good, this does dispose man well toward that society of the blessed»¹⁰⁰. The «society of the blessed» desires this good to be wide spread. Dante portrays this communal nature of the society of the blessed poetically in his depiction of Heaven in cantos 30 and 31 of the *Paradiso*.

IV. CONCLUSION

Since Finnis' definition of individual good differs significantly from the classical definition by rejecting its connection to human nature and by rejecting the inherent hierarchy of goods, his understanding of the common good is also impoverished. Although he valiantly argues to defeat the collectivist usurpation and distortion of the common good, in so doing he empties it of any independent meaning beyond a means to participating personal good. For Finnis, the common good turns out to be a mere instrumentality

⁹⁸ AQUINAS, T., *Summa Theologica*, *op. cit.*, I-II, q. 21, a. 4, reply to obj. 3.

⁹⁹ *Ibid.*, q. 3, a. 8.

¹⁰⁰ AQUINAS, T., *On Charity*, trans. Lottie H. Kendzierski, art. 2, Marquette University Press, Milwaukee, 1960.

to the participation of the basic goods. It supports coordination so that individuals can attain the basic goods and the common good finds no place in the list of basic goods. He collapses its purpose, like the personalists, into the individual good.

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