

## **Practical Reasoning in Natural Law Theories**

Vincent Luizzi  
Southwestern Center for Value Studies  
Southwest Texas State University



An essential component of many natural law theories is an appeal to reason to formulate an adequate conception of law. Thus Aquinas — law is “an ordinance of reason for the common good, promulgated by him who has the care of the community.”<sup>1</sup> And Cicero — “the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite. This reason when firmly fixed and fully developed in the human mind is Law.”<sup>2</sup> Hooker — “A law therefore generally taken, is a directive rule unto goodness of operation.... The rule of voluntary agents on earth is the sentence that reason giveth concerning the goodness of those things which they are to do.”<sup>3</sup> Vico is interesting in that natural law is human reason called “human jurisprudence, which looks to the facts themselves and benignly bends the rule of law to all the requirements of the equity of the causes.”<sup>4</sup> Finnis, a contemporary natural law theorist, tells us in his recent work, *Natural Law and Natural Rights* (reviewed VL, III, 1, 1982), that his focal meaning of law was “reflectively constructed by tracing the implications of certain requirements of practical reason, given certain basic values and certain empirical features and persons and their communities.”<sup>5</sup>

To the extent that reason mentioned in the insights above involves the cognitive structuring of our actions, let us refer to it as practical, as is usual, thus speaking specifically of the significance of practical reason in natural law theories. I wish to explore the significance of practical reasoning in Finnis’ natural law theory. In so doing, I believe I can bring out comments of a general sort that bear on any natural law theory tied to practical reasoning. For Finnis’ work may be seen as indicating the opposing directions in which natural law theories may pull. In making this apparent, and in consort with the difficulties associated with it, a direction for further natural law theorizing can be set.

Finnis tells us that there are certain basic human goods.<sup>6</sup> Natural laws set out the basic principles concerning these goods,<sup>7</sup> and both the goods and the principles are discoverable by practical reason.<sup>8</sup> But upon analysis Finnis’ account of the basic goods is pro-

—Continued on page 19

## PRACTICAL REASONING

—Continued from page 1

blematic, and ultimately the role he assigns to practical reasoning is ambiguous.

Basic values, including knowledge, life, play, aesthetic experience, sociability, religion and practical reasonableness, we are told, are “self-evident”.<sup>9</sup> In addition, we are told that this value of practical reasonableness is “complex.” It is defined as “the basic good of being able to bring one’s own intelligence to bear effectively...on the problems of choosing one’s actions and life-style and shaping one’s own character....This value is thus complex, involving freedom and reason, integrity and authenticity. But it has a sufficient unity to be treated as one; and for a label I choose ‘practical reasonableness.’”<sup>10</sup>

What I wish to question is the extent to which such a good is self-evident when we learn of the full scope of its complexity. At first blush, it seems that the good involved here may be simple, that its implications for human beings are profound, but that the self-evidence of these implications is no more so than the self-evidence of a complex theorem, like the Pythagorean theorem, even though such a theorem proceeds from certain self-evident axioms. If so, the possible ways in which the value may enter the human experience should be kept distinct from the value itself.

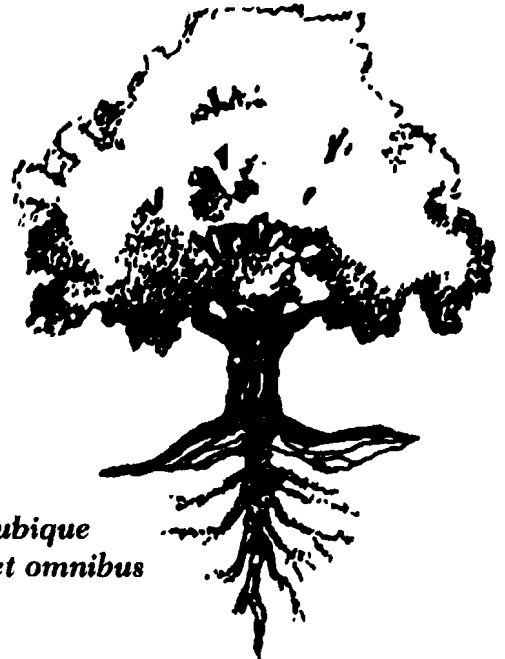
Let us look more carefully at this allegation. Finnis tells us at various points in the work the following: (1) practical reasonableness “has goals,”<sup>11</sup> (2) it is explicated with respect to goods,<sup>12</sup> (3) law is an “aspect” of it<sup>13</sup> (some views of law are more reasonable than others), (4) community is the “outcome of practical reasonableness, intelligence, and effort,”<sup>14</sup> (5) among the “requirements” of practical reasonableness is justice, “an ensemble” of such requirements “that hold because the human person must seek to realize and respect human goods in self and community,”<sup>15</sup> and (6) practical reasonableness “requires that the activities of individuals, families, and special associations be coordinated,” such requirements being the “foundation of the defining features of law.”<sup>16</sup> We recall from above that this value “involves” “freedom and reason, integrity and authenticity.” And finally, we find that this value “is participated in precisely by shaping one’s participation in the other basic goods, by guiding one’s commitments, one’s selection of projects, and what one does in carrying them out.”<sup>17</sup>

This writer finds no such self-evidence of a value of practical reasonableness as Finnis describes it. At most, there seem to be reasonable implications for law, community, and justice of this basic value described sometimes as “practical reasoning that issues in action, reasonable order.”<sup>18</sup> But talk of this value as having

goals, outcomes, requirements, along with what it “involves,” seems contrived or awkward and seems to confirm the lack of self-evident conceptual integrity of which we were suspicious.

Whether or not done for the sake of structural unity, Finnis has posited a value on which all other values hinge and which provides a great unifying concept for his natural law theory in which natural laws set out the basic principles concerning the human goods that practical reason can discover. That our practical reasoning discovers the natural laws, upon which positive laws should be based, by looking to the human goods which it too can discover is indeed a pleasing architectonic. But why, with respect to each basic good, can we not begin to ask what its goals are? what it involves? what its requirements are? as Finnis has done for practical reasonableness. Why can we not eventually wonder what we have to guide us in our articulation of positive laws other than our practical reasoning, along with some reference points that illuminate some basic human commitments, namely Finnis’ basic goods? This approach does not undermine the whole of Finnis’ project except insofar as Finnis wishes to posit a rigid ontology of natural laws based on the goods he has ascertained. (Finnis tells us at one point that a natural law theory is to “trace how to derive sound laws from unchanging principles.”)<sup>19</sup> But again, if we approach each good with the inventiveness with which Finnis explores practical reasonableness, we might expect the natural laws to be as varied as the implications of the corresponding goods, not to mention the variations that may be introduced

—Continued on next page



*ubique  
et omnibus*

## PRACTICAL REASONING

—Continued from page 19

from rational men's differing about these implications. If so, the simpler description seems to be that laws, which are attempts of men to structure their lives, simply accord with the advice of practical reason, that faculty of human beings which allows these laws so to accord.

Put differently, either the concept of practical reasonableness should be simplified and restricted or the free play associated with the analysis of practical reasonableness should be accorded to other basic values. Either alternative suggests that Finnis would have a different sort of theory. On the one hand, Finnis can preserve what seems to be the absoluteness he wishes a natural law theory to have, at least with regard to the existence of permanent, unchanging natural laws, here derived from clearly circumscribable and definable goods. But this he would do at the expense of allowing practical reasonableness to be clearly at the pivotal point of his architectonic system which he seemed to accomplish via his broad depiction of the bounds of this self-evident value. On the other hand, Finnis can plausibly retain his analysis of practical reasonableness if he accords broad principles of interpretation to his analysis of other basic goods. This would suggest that the chances of deriving a single set of fixed and permanent laws are reduced.



The right to search for truth implies also a duty; one must not conceal any part of what one has recognized to be true.

—Albert Einstein

This tension that we find in Finnis' work illustrates, in part, two of the major, yet opposing, moves that can be, and have been, made in natural law theory. In one, a natural law is nothing more than what (practical) reason dictates and what positive laws are to accord with. At the other extreme is the view that practical reason can discover fixed principles, natural laws, with which positive laws are to accord. While the two views are not necessarily incompatible, the distinctive flavors of each are evident upon attempting to suggest any changes in the advice of practical reasoning. The first view can handle such changes with ease whereas the latter can handle them only with the appearance of fudging. That the alternatives for interpreting Finnis' work boil down to either of these approaches is indicative of their primacy and perhaps also of limitation in the variety of natural law theories that can plausibly be constructed. When we are presented with these alternatives, the lean advice that natural law theory may offer legislators is disturbing. On the other hand, do we not find the advice to be,

"Be practically reasonable," and, on the other, "Formulate positive laws in accord with 'permanent' and 'unchanging' principles over which natural law theorists have disagreed'?"

So skeptical a conclusion, however, is not warranted, since, for one thing, it purports to halt natural law theorizing on false grounds. On the one hand is the suggestion that there is nothing to natural law theory if it can be summed up in a single thought; on the other, that natural law theorists must be wrong in their basic commitment if they are in disagreement among each other. What natural law theorists should learn from this, I believe, is that much hard thought must be given to what I shall call meta-natural law theory — thought about the scope and bounds of a natural law theory, about modes of validating it, about the minimal commitments necessary for one to be considered a natural law theorist, and about the varieties a natural law theory may take. Finnis does this to some extent, commenting in a variety of passages on such issues.<sup>20</sup> Yet, if the analysis above is correct, even this most recent and very sophisticated contribution to natural law theory raises these foundational issues anew and speaks for further thought on these matters.

<sup>1</sup>Aquinas, quoted in M. Golding, *Philosophy of Law* (Englewood Cliffs: Prentice-Hall, Inc., 1975), p. 30.

<sup>2</sup>Cicero, *Laws*, Book I, sec. 5; quotation taken from George C. Christie, *Jurisprudence* (St. Paul: West Publishing Co., 1973), p. 81.

<sup>3</sup>Richard Hooker, *The Laws of Ecclesiastical Polity*; quotation taken from Christie, *Jurisprudence*, p. 135.

<sup>4</sup>G. Vico in *Scienza Nuova, The New Science of Giambattista Vico*, revised translation of the third edition (1774) by T. G. Bergin and M.H. Fisch (Ithaca: Cornell University Press, 1968), p. 338.

<sup>5</sup>J. Finnis, *Natural Law and Natural Rights* (Oxford Clarendon Press, 1980), p. 277.

<sup>6</sup>Finnis, p. 60.

<sup>7</sup>*Ibid.*, p. 97.

<sup>8</sup>*Ibid.*, p. 322.

<sup>9</sup>*Ibid.*, p. 81.

<sup>10</sup>*Ibid.*, p. 88.

<sup>11</sup>*Ibid.*, p. 16.

<sup>12</sup>*Ibid.*, p. 376.

<sup>13</sup>*Ibid.*, p. 15.

<sup>14</sup>*Ibid.*, p. 136.

<sup>15</sup>*Ibid.*, p. 160.

<sup>16</sup>*Ibid.*, p. 149.

<sup>17</sup>*Ibid.*, p. 101.

<sup>18</sup>*Ibid.*, p. 88.

<sup>19</sup>*Ibid.*, p. 18.

<sup>20</sup>*Ibid.*; see, e.g., pp. 18, 281, and 290.