
STATE'S AUTHORITY VERSUS INDIVIDUAL RIGHTS, AN ATTEMPT AT BALANCING POWERS AND DUTIES THROUGH FINNIS' LENSES

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ABSTRACT

Complex societies often pose conflicts and limitations to individual's rights. Their balance includes possibly imposing negative rights and duties by modern state authority, to maintain functioning social orders. The extent to which institutions with law making powers can impose stultifications and what constitutes as fair authority to do so has been differentially interpreted.

By combining modern notions of rights with classical concerns for basic goods, Finnis's natural law theory argues for the existence and importance of achieving such basic goods through practical reasonableness, while upholding the common-good of society. Albeit alluding to lack of legal obligation in moral sense to obey unjust laws, he attempts to capture the focal meaning of law to fulfill societies coordination problems with reciprocity between subject and ruler and a generalized moral obligation for obeying the law.¹

This paper will attempt to analyze the said reciprocity in light of individuals absolute and limited rights, duties and considerations of constituting just authorities and the impact of unjust exercise of law imposition on citizen's obligations. It will also examine whether Finnis's presumptive moral obligation to obey authority is theoretically overarching to give space for contradicting its very own objective of promoting common-good of citizens in exercising rights.

¹ JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 354 (2nd ed. 2011)

Introduction to Finnis's Natural Law

Moral benchmarks for legal justness is the guiding proponent of natural law. It evolved as an external standpoint, qualifying acceptance of laws due to congruence with moral grounds more than authoritative pronouncements. Such 'higher laws' under traditional natural law stemmed from religious teaching. As noted by Cicero, god's true legal promulgation has universal application in agreement with nature, leading an everlasting and intrinsic existence with denial attracting strict liabilities.² Early church writers looked at divine interventions in human affairs to express a higher inherent standard in everyday things. Most prominent of them was Thomas Aquinas, according to whom, authorities' positive laws ought to be influenced and derived from natural law with space for choosing what would be compatible within dictates of the said natural law.³

A leading modern natural law scholar expounding on Aquinas's views is John Finnis. In trying to answer 'how should one live' and deriving answers for ethical questions, Finnis claims the existence of seven 'basic goods'.⁴ They include life, knowledge, play, aesthetic, friendship, religion and practical reasonableness and are separable but equally valuable in pursuance.⁵ They cannot be further broken down and are strived by individuals independent of any external requirements. They are claimed to be self-evidentially important, as their truths are indemonstrable.⁶ Any attempt to do so would be impossible without using the very thing to be proved where he takes the example of not being able to deny knowledge without engaging in it first.⁷ The denial of basic values is argued to inevitably lead to unreasonableness while its engagement being the highest form of pleasure.

Complete satisfaction of all basic goods is not pragmatically possible, therefore, Finnis recognizes choice making in alternative achievements. He prescribes the practical reasonableness path, which in itself is a basic good, to altercate between the options and choice question, through the usage of which basic moral thresholds being intrinsic to natural law emerges.⁸ Therefore, basic goods are pre-legal system elements and morality is encompassed in their achievement through principles of reasonableness. Hittinger critiques the objective

² BRIAN BIX, JURISPRUDENCE THEORY AND CONTEXT 68 (5th ed. 2009) 68

³ *Id.* at 69

⁴ *Id.* at 75

⁵ SURI RATNAPALA, JURISPRUDENCE 175 (2nd ed., 2013)

⁶ *Id.*

⁷ *Id.* at 176

⁸ BRIAN, *supra* note 2 at. 76

equality of basic goods as antithetical to individuals' choice making i.e. the very possible choice presupposed some prior hierarchal valuation by individuals.⁹ However, Finnis's practical reasonableness includes a coherent 'life plan', introducing harmonious ordering of goods for morally appropriate life choices.¹⁰ On the criticism of ambiguity over choice between multiple life plans and changing preferences of goods within these structures, Finnis argues that the right to choose fulfilling certain goods over others relates to individual temperament without affecting the relationship of basic goods to one another, which continues to be premised on equality.¹¹

Therefore, individuals in Finnis's scheme adhere to the achievement of basic goods with individual choices through practical reasonableness. He argues that under no circumstance can actions to the detriment of basic goods be encouraged i.e. the means which require their flouting can never justify ends irrespective of the benefit's magnitude as basic goods are the highest form of ends.¹² This hints at absolute natural rights in individual's achievement and enjoyment of basic goods. Practical reasonableness therefore includes never choosing against a basic good.¹³

Rights, Duties and the Common Good

Influence of natural law traditions on modern rights doctrines is undeniable. Modern theorists refer to natural rights as something proceeding social arrangements, being indispensable from individuals i.e. moral properties and duties correlating to such rights arising by their virtue.¹⁴ Inchoate doctrinal beginnings can be traced back to Aquinas's natural law as objective orders of equity. In the *Summa Theologia*, Aquinas invokes some form of human freedom i.e. the pursuit of basic human goals to be free from the interference of others.¹⁵ Finnis, claiming to find a natural rights doctrine through Aquinas, expounds on the different degrees of rights arising from his basic goods proposition, enabling individuals participation more fully in such goods.¹⁶ For instance, owning property can be seen as auxiliary to furtherance of basic goods like life, aesthetic experience, knowledge and even religion by allowing individuals to decorate,

⁹ Alex Wallin, 'John Finnis's Natural Law Theory and a Critique of the Incommensurable Nature of Basic Goods' 35(1) *Campbell L. Rev.* 59, 73 (2012)

¹⁰ FINNIS *supra* note 1 at. 125, 73

¹¹ ALEX *supra* note 9 at. 78

¹² *Id.*

¹³ FINNIS *supra* note 1 at. 126

¹⁴ Jean Porter, 'From Natural Law to Human Rights: Or, Why Rights Talk Matters' 14 *J.L.R.* 77, 83 (1999)

¹⁵ *Id.* at 85

¹⁶ Thomas Russman, 'Balancing Rights: The Modern Problem' 26(4) 296, 299 (1981)

obtain academic material and contribute to religion-institutions. Although such rights are important factors, they can't be put on the same pedestal of absolute rights.

Pursuing basic goods of their choice simultaneously by all individuals in society, at the expense of others would defeat the very purpose of complete realization of indispensable rights as it would encroach upon one another and create a system of chaos. Therefore, Finnis's proposition of 'practical reasonableness' includes the need to act in accordance to 'the common good' of society.¹⁷ It creates a set of negative rights and lays out that one should never directly choose against the basic value of self or others. It includes with such negative rights like the right to not have one's life taken directly, to be lied to, condemned on false charges etc, the positive duty i.e. the right to consider assisting common good requirements.¹⁸ This duty imposing positive promotion of the common good, are critiqued by some to appear as a stretch from the rights argument. However, they can be justified as positive actionable requirements of morality.¹⁹

The benefit of the common good is illustrated through the mutual advantage of furthering friendship which is a basic good by showing concern for others in society. The idea is grounded in subsidiarity i.e. the assumption that every group's existence depends on its comprised individuals.²⁰ Therefore, a common good must facilitate realization of individuals' development in political communities wherein this concern is auxiliary to fully achieving individuals' basic goods. Wide alternative options in common good achievement require some form of selection. According to Finnis, it can be done only through law's authority as unanimity is not pragmatic in modern societies.²¹

Authoritative Requirements and the Meaning of Law

The meaning of Laws might change with differing contexts according to Finnis.²² Referring to law's constitution, he sticks to capturing its 'focal meaning' as rules propounded in accordance to regulative frameworks for a community, flowing through an effective authority backed by sanctions with the objective of resolving coordination problems and moving towards achievement of common goods.²³ Such a central case with a focal sense of legal validity

¹⁷ SURI *supra* note 5 at. 177

¹⁸ FINNIS *supra* note 1 at. 225

¹⁹ Mark Discher, 'Does Finnis Get Natural Rights for Everyone?' 80 *New Blackfriars* 19, 22 (1999)

²⁰ *Id.*

²¹ FINNIS *supra* note 1 at. 232-233

²² *Id.* at 278

²³ *Id.* at 277

requires the law to align with moral necessities. The claim of generic and presumptive moral obligation to obey all laws stems from this function of law making authorities.²⁴ Authority here is taken to possess the ability of acting authoritatively, implying persons and institutions acting in accordance to its said stipulations not for other reasons outside of the mere existence of such stipulations. Legal orders arising from authoritative set-ups have the ability to uphold the common good by creating a system of rules for society's subscription. Such rules applying in their clear, stable and prospective form creates a reference point for individuals in planning and executing their private affairs, ascribing individuals with dignity in being 'self-directing agents'.²⁵

Establishing legal orders through constitutional governance is noted in reducing scopes of authority abuse, and their exercise by referencing pre-determined rules are developed in systemic fairness. Coordination solutions are therefore, grounded to such rules, and are not arbitrary partisan considerations. This over-arching presumption about their competencies in giving just outcomes from valuable legal systems based on the features of prospectively, generality and etc. are essential in enabling individuals to live in communities and balance incommensurable possibilities of human flourishing.²⁶ As legal order is the superior mechanism to attain common good, practical reasonableness may qualify it as authoritative when it is a just authority encompassing of the aforementioned features. The moral obligation then to obey laws is generic, independent on the context of the law and flows from the acceptance of authority.

Conflict between Laws and Rights

Authorities may impose laws infringing individual rights for common good furtherance. This requires clarifications on the extent of protection allotted to different types of rights. In presumed systemically fair structures, such intrusions on rights exercised by individuals for effectuation of auxiliary objects to final basic goods, like the rights to property as seen above is permissible and in some instances even considered necessity for distributive equity and justice. Therefore, they are called limited rights who may be abridged by authority for beneficial ends.²⁷ But such an action on absolute rights i.e. rights flowing from basic goods

²⁴ S. Aiyar, 'The Problem of Law's Authority: John Finnis and Joseph Raz on Legal Obligation' 19(4) Law and Philosophy 465, 466 (2000)

²⁵ *Id.* at 469

²⁶ *Id.*

²⁷ THOMAS *supra* note 16 at 301

themselves doesn't fulfil the moral validity. There can never be a justification for actions with the sole purpose of hindering basic goods on claims of impossible long-term beneficial ends and such unjustness is antithetical to law's 'central case'.²⁸

The absolute immunity for basic goods can be criticized as an arbitrary standard, raising the question of what constitutes one set of goods as basic in the first place.²⁹ It may also have contradicting results when protection of two conflicting goods is in question. However, inferring from the distinction Finnis draws between combatants and non-combatants in his '*Natural Law and Natural Rights*', the most authoritative modern statement of natural law,³⁰ while hypothesizing state conversations with enemies,³¹ it can be concluded that he alludes to accepting the violating basic goods of another such as life, if it is in pursuance of protecting one's own basic goods from being violated and nothing less. The strict sense in which self-defense acts as an exception to the violation of indispensable rights may be noted here as the highest standard of circumvention.

Here, Finnis doesn't completely disregards laws not aligning to his 'central case' as natural law is believed only to determine the manner of assimilating morals into law and not its legal validity.³² Therefore, examples of customary international laws, laws which don't fully comply with the objective of promoting common goods and even laws inferred as unjust to rights of individuals will find space under his definition of law. Positive laws which are just have the power of binding consciousness according to Aquinas. However, instead of denouncing those not aligning to natural laws ideals as no law at all, he called them 'perversions of law'.³³ Finnis interprets this as indication to unjust laws not being laws in the terms focal-sense, however continuing to remain as law in the term's secondary sense barring its otherwise laudatory implications.³⁴

Duty to Obey Authority

Finnis lists out four possible senses categorizing legal obligations. The first sense includes sanctions for non-compliance which he dismisses as theoretically banal.³⁵ It secondly includes

²⁸ *Id.* at 302

²⁹ MARK *supra* note 19 at 19

³⁰ MICHEAL FREEMAN, LLYODS INTRODUCTION TO JURISPRUDENCE 132 (7th ed. 2001)

³¹ FINNIS *supra* note 1 at. 224

³² AIYAR *supra* note 24 at 200

³³ BRIAN *supra* note 2 at 71

³⁴ FINNIS *supra* note 1 at 364

³⁵ SURI *supra* note 5 at 7

legal obligation to obey in legal senses which too reaches its ends at being validated by Courts and if done so, is void of any other consideration to invoke obedience choices.³⁶ In the *third sense*, legal obligation is extended by transmigration a moral sense to it. Here, Finnis faces the criticism that all he postulates is merely moral theory.³⁷ He rejects this by pointing out moral arguments often resorted to by judges and lawyers and its linkage with practical reasonableness which is an element of legal theory.³⁸ He believes that no moral obligations within the legal sense can be created to obey unjust laws. These laws, although valid, are incapable of invoking moral obedience which stems from practical reasonableness. The obligation towards such laws may then be disregarded.

However, there are exceptions rendering moral obligation to re-emerge from unjust laws. Firstly, when the law is for the common good it requires obedience although the authors motive may be questionable.³⁹ To illustrate, when a legislation is made mandating only right-side driving in roads on the pretext of uniformity for road-safety, all must comply irrespective of whether the motive is genuine or it is to drive the right-hand car manufacturers out of the market because the consequence of this act in preserving road order and safety thereby reducing accidents is an outcome effectuating common good of saving lives. Secondly the members who are not unjustly burdened by the law face no lack of moral obligation in performing its requirements.⁴⁰ Instances where indirect taxes that place more emphasis on consumption expenditures can have a negative effect on small incomes households resulting in distributive injustice. However, a rich individuals unaffected negatively can't invoke this as a means to denounce their moral obligation in compliance.

Overcoming the Criticism on Presumptive Moral Obligations

Finally, Finnis propounds the fourth stipulated sense of moral obligation in a collateral sense to obey laws as a means to not render ineffective the parts of the legal order which are just. Therefore, even with lack of moral obligations in the third legal sense, there may still be one to obey when the legal systems and authorities are generally considered desirable and good and disobedience may cause to undermine public-order.⁴¹ This moral reason for minimum

³⁶ FINNIS *supra* note 1 at 357

³⁷ Seow Tan, 'Validity and Obligation in Natural Law Theory: Does Finnis Come Too Close to Positivism?' 15 Regent University L. Rev. 195, 204 (2003)

³⁸ *Id.* at 357-359

³⁹ *Id.* at 360

⁴⁰ *Id.*

⁴¹ SURI *supra* note 5 at 9

compliance is argued by Finnis to be an extension Aquinas's proposition that generally, there exists no duty to obey unjust laws however, when reasons such as 'avoidance of scandal or disobedience' prevails, they must be conformed to.⁴² The importance of keeping authoritative legal systems which are generally conducive to effectively solve societies coordination problems intact overarches here in eclipsing individual instances of unjust promulgations. Therefore, there exist a minimum obligation to obey to a degree that would avoid bringing the whole law into contempt, i.e. the just parts of the legal order.

This collateral obligation, albeit also moral in nature is different from the generic and presumptive moral obligation to obey all laws by just authorities, namely modern states in contemporary contexts. Therefore, while concerning repugnant laws which act against the common good and try to interfere with absolute rights of individuals, there is no generic obligatory moral pressure but only a minimalistic form of obligation extending to upholding those parts of the law which may be just to stop the public-order from collapsing. The extent of this minimalistic compliance seems to depend on the content of law, i.e. the degree of its justness. In such cases, it may be inferred that legal obligations are not content independent as Finnis claims. This may even appear to align with the Razian critique of the general moral obligation to obey regardless of content, stating that there is no such universal and independent moral duty.⁴³

However, this paradox can be overcome by viewing what law facilitates as one out of various alternatives to achieving common good.⁴⁴ Therefore, which alternative law obliges is content independent for legal compliance as obligation arises not because of law but the already existing moral obligation towards common good. Therefore, obligation to obey may be content-independent as claimed by Finnis while the degrees of the very obligation may vary according to law's content. For instance, if a largely just system imposes laws infringing absolute rights of religious minorities, their disobedience by undermining the whole law could set a bad example.⁴⁵ However, on whether this would escape the moral obligation in the fourth sense, practical reasoning requirement must be noted. Here, arbitrary undermining of certain group rights can't qualify as just for common-good as no additional benefit is brought to rest of the community and secondly, might be a precedence for other generalized rights

⁴² BRIAN *supra* note 2 at 72

⁴³ AIYAR *supra* note 24 at 471

⁴⁴ *Id.* at 479

⁴⁵ SEOW *supra* note 37 at 209.

infringement by authorities, being detrimental to the functioning order. In such cases, moral obligation in collateral sense gets defeated.

A critique on the impracticability of requiring citizens to determine degrees of legal justness, which may even cause social disharmony is often forwarded.⁴⁶ However, justness determination is guided by principles of reasonableness which acts as a practical path to morality and can be exercised by everyone. Application of its basic tenants collectively is enough in aligning individual choices with what are just laws. It is also important to note the pre-requisite of desirable and just authorities for obedience obligations. Finnis even traverses the extent of pointing out inherent unjustness in pluralistic democratic societies in their ability to appropriately consider action towards common goods and inability to streamline multiple narratives.⁴⁷ This further deepens the complexity of the question on fair authority constitution in modern times. It can therefore be concluded as a transformative question, the answer to which will keep modifying as societies continue to progress and test the effectiveness of using authorities in the hope of administering just legal systems.

Conclusion

Individual's absolute rights flowing from basic goods can be exercised by practicing reasonableness with an inferred duty in achieving common goods. Law and authority are indispensable to fair dealing and human flourishing. Limited rights may be infringed by laws to effectuate its goal. Unjust laws undermining common goods still falls within the bounds of law under valid authority and legal validity. However, the moral obligation to obey them is contingent on the degree to which they perverse justness, although there may exist a generic moral acceptance and obligation of legal authority which is good and just. This does not undermine individual's pursuance of their absolute rights but rather balances out the moral desirability of one's community and social coordination requirements with individual rights to pragmatically achieve common goods.

⁴⁶ *Id.* at 202

⁴⁷ John Finnis, *Unjust Laws in a Democratic Society: Some Philosophical and Theological Reflections* 71(4) Notre Dame L. Rev. 595 (1996)