

# Does Finnis Get Natural Rights for Everyone?

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The most impressive attempt of which I am aware which argues that minimally decent treatment, human rights, for all human beings is a necessary requirement of reason is the one put forth by John Finnis in *Natural Law and Natural Rights*.<sup>1</sup> The object of Finnis's project is to show that the liberal morality of human rights can be derived from the requirements of reason (*per se nota* truths), without having to invoke any special Divine revelation or metaphysics (although Finnis is careful to note that his theory is not incompatible with these<sup>2</sup>). Finnis contends that every moral obligation, every ought and its cognates, is derivable from practical reason,<sup>3</sup> and then, by extension that law should reflect this morality which is required by reason. It is in this sense that Finnis's theory is one of natural law, as opposed to *positive* law. What is especially noteworthy about Finnis's project is that he alleges that the minimal requirements of morality can *in toto* be got out of what he calls the principles of practical reasonableness. Practical reasonableness, for Finnis, amounts to the human capacity for exercising freedom and reason, the characteristics of human personality which enable one to grasp the *requirements* of practical reasonableness, which are requisites for one to express, shape and select one's participation in what Finnis calls the "basic goods" or "basic values".<sup>4</sup> If one behaves in accordance with the principles of practical reasonableness and promotes the basic goods, i.e., if one acts in a manner which is self-evidently reasonable, human rights (what Finnis prefers to call "natural rights"), the minimally decent treatment of all persons, will result. But in order to see whether Finnis's project succeeds, we will have to examine closely his assumptions and the philosophical moves he makes.

There are (at least) seven basic goods (values) in Finnis's scheme, each of which is itself self-evident, not in the sense that they are always superficially obvious, but in the sense that they always can be seen, in principle and upon deep reflection, to be good, and no one of them is more basic or fundamental than any of the others. The seven he lists are: life, knowledge, play, aesthetic experience, sociability (friendship),<sup>5</sup> practical reasonableness and 'religion,' which, by the way, is not the practice of any particular religion, but the good of thinking about

“cosmic” questions generally.<sup>6</sup> While all of the basic goods are equally reasonable to pursue, they cannot all be maximized by an agent within the finitude of one lifetime. Therefore, one must choose a plan of life, and this will of necessity entail trade-offs of choices among participation in the goods. Finnis writes:

If one is to act intelligently at all one must choose to realize and participate in some basic value or values rather than others, and this inevitable concentration of effort will indirectly impoverish, inhibit, or interfere with the realization of those other values.<sup>7</sup>

Thus, there is an infinite number of life plans one may choose in pursuit of some basic good(s) or other on the basis of personality, upbringing, etc., none of which is better than any other.<sup>8</sup> But one must choose a life-plan, and if one is rational, she will choose one of the literally infinite number of life-plans which the principles of practical reasonableness make available.

The principles (or “requirements”) of practical reasonableness, then, enable an agent to sort out a plan of life which expresses the basic goods in some combination or other: “As with each of the basic forms of good, each of these requirements [of practical reasonableness] is fundamental, underived, irreducible, and hence is capable when focused upon of seeming the most important.”<sup>9</sup> Both the goods and the principles of practical reasonableness are, so far, pre-moral, on Finnis’s view. It is only when one acts (reasonably) in accordance with them, that human rights for all persons result. That is, if and when an agent recognizes the basic goods and the principles of practical reasonableness, and if and when she acts in accordance with them, the alleged result will be that some things will never be done to anybody,<sup>10</sup> and some other things will be done for everybody.<sup>11</sup> Of the nine principles of practical reasonableness listed by Finnis three concern us especially because they are the ones which purportedly generate equal human rights for all human beings. The three I shall examine, then, are: 1) “respect every basic value in every act”; 2) “show no arbitrary preferences amongst persons,” and 3) the requirement of practical reasonableness that one should favour and foster “the common good of one’s communities.” To these I now turn.

The first self-evident principle which purportedly generates minimally decent treatment is the principle that one should respect every basic value in every act, which is a positive way of stating the negative truth that one should never “choose directly against any basic value, whether in oneself or in one’s fellow human beings.”<sup>12</sup> One must *never directly choose against* a basic good. Finnis holds that this generates some “absolute human claim-rights”, such as:

the right not to have one's life taken directly as a means to any further end...the right not to be positively lied to in any situation.. .the related right not to be condemned on knowingly false charges...the right not to be deprived, or required to deprive oneself, of one's procreative capacity; and the right to be taken into respectful consideration in any assessment of what the common good requires.<sup>13</sup>

So Finnis's argument runs thus:

- (1) There are goods which are basic.
- (2) It is always unreasonable to choose against a basic good.
- (3) To do some things to human beings would involve choosing against (one or more of) the basic goods.
- (4) Therefore, some things, if one is reasonable, must never be done to human beings.

There are, however, some problems with this line of argumentation.

To begin with, it is questionable whether all of the basic values which Finnis says we should never disrespect are, in fact, basic. For example, one might reasonably ask whether life itself is actually basic in Finnis's scheme. It seems to me that one could reasonably make out a case that it is not life itself which is of value, but a certain *quality* or *kind* of life which is valuable for a human being, viz., one which includes what we might call the Kantian categories of personhood, freedom and reason. Of the so-called basic goods Finnis lists, the only good which I think is literally indisputably basic is the good of knowledge (because any attempt to assert the contrary would be self-refuting on account of the fact that it would presumably have to be asserted *qua* true), which is why Finnis chooses to write an entire chapter on it as his illustrative example of a basic good ("because the materials for analysis [of it are] so readily available" <sup>14</sup>). But Finnis asserts that, "the other forms of human good..., *so far as I can see*, are likewise irreducibly basic."<sup>15</sup> Maybe. But, there is at least some good reason for doubting this. And if (all of) the goods are not actually basic as Finnis suggests, and the absolute rights in his theory are generated on the basis of the goods being basic, then the first premise in Finnis's argument is, if not actually false, at least highly restricted. And this introduces the second, and perhaps even more serious, problem with this argument.

The second problem is that, *arguendo*, even if these goods are basic as they appear to Finnis, they only *proscribe* a few actions by securing a few negative rights: *they fail completely to secure any positive rights at all*. For example, if it is the case that I ought not kill you because human life is a basic good which I can never reasonably act directly against, why am I obligated, if there is not something in it for me which makes it reasonable for me to do so, to share my food and resources with you to

keep you alive? The liberal morality of minimally decent treatment of every human being, human rights, consists of more than negative proscriptions, a few things not being done to anybody; it also *prescribes* positively that some things must be done for, or granted to, everybody. So if I have earned my excess wealth legitimately, what creates an obligation for me, as Finnis thinks there is, to share it with some hungry stranger (much less one who may be in a far off place and whom I almost certainly never shall meet)? I suspect that it is this difficulty which lures Finnis into trying to smuggle positive rights in by way of negative language. Consider again what Finnis has to say on this:

[I]t is always unreasonable to choose directly against any basic value, whether in oneself or in one's fellow human beings....Correlative to the exceptionless duties entailed by this requirement are, therefore, exceptionless or absolute human claim-rights—most obviously, the right not to have one's life taken directly as a means to any further end...the right not to be positively lied to in any situation...the related right not to be condemned on knowingly false charges...the right not to be deprived, or required to deprive oneself, of one's procreative capacity; and the right to be taken into respectful consideration in any assessment of what the common good requires.<sup>16</sup>

The fallacy committed here is the leap which is made from the negative rights (the rights “not to” have something or other done to one) to positive rights (the “rights to” have something or other done, or given, to one). The duty not to interfere with people in a certain way (their negative right), which may (if the goods in question are indeed basic) reasonably be established by the principle “never directly harm a basic value,” is suddenly being linked with, or stretched into, a duty to positively promote them in some way (a positive right for them). But the principle “never directly harm a basic value” can never establish an obligation to positively promote someone, a positive, benefit right. The latter is not entailed by the former.<sup>17</sup> Extending positive, benefit, rights to people, I agree, is a requirement of morality, but to argue from the requirements of morality would be to get ahead of ourselves. For this is precisely the liberal (welfare) morality of minimally decent treatment which Finnis is telling us has its ground in reasonableness. It cannot itself be invoked as a foundation until it is shown to be reasonable. So, while not harming the basic goods may get us some few negative rights, it is still nowhere near minimally decent treatment, the treatment mandated by the content of human rights. What Finnis is left with, then, is essentially a distribution problem. So we might ask, will either of the other purportedly self-evident principles of practical reasonableness solve it?

The second requirement of practical reasonableness which Finnis

adduces in order to make minimally decent treatment for all human beings, human rights, appear reasonable (that is, as something which is self-evidently true or something which can be seen upon reflection to be in the interest of the agent), is the requirement which he calls “no arbitrary preferences amongst persons”. Finnis is here telling us that we act unreasonably if we arbitrarily treat persons differentially, if we do not “treat like cases alike”.<sup>18</sup> Although Finnis admits that it is reasonable for me to take my own well-being as the first claim on my interest, concern and effort, simply because it is mine (unenlightened self-interest), he also holds that there is no basis for evaluating someone else’s well-being differently from my own simply because “I am I and you are you.”<sup>19</sup> This principle, Finnis tells us, is merely expressing the requirement that “moral judgments and preferences be universalizable.”<sup>20</sup>

What Finnis is doing here, however, is simply putting forward a formal principle. It is indeed reasonable beyond dispute, a necessary and self-evident truth, that “like cases should be treated alike.” What is a far more interesting question, however, and one which Finnis never asks, let alone attempts to answer, is what is the respect in which humans are equal which ensures that every one of them is entitled to positive human rights and minimally decent treatment: what makes it the case that, in Finnis’s words, “the objective” should be “the flourishing of *all* members of the community”?<sup>21</sup> Universalizability is one thing, but what respect is it in which all humans are alike such that their flourishing, at least to a minimal degree, should be ensured (positively promoted)? How does this formal principle solve the distribution problem of how to get what Finnis calls a “threshold level” of “the basic human goods” to “each member of the community”?<sup>22</sup> Finnis needs more than universalizability for this. He needs either to show that to accord all people human rights is always in the interests of an agent (reasonable), or he needs a prior theory of human value in order to justify the treatment that he wants to accord to each person, viz., that of minimal morality or human rights.

If Finnis thinks, as the form of his argument seems to indicate that he does, that he has in essence secured the minimally decent treatment of human rights on the basis of a formal principle, then it is apparent that his formal principle *has built into it already* a substantive conception of human value. What he is doing, in other words, is simply begging the question that humans are equal.<sup>23</sup> There should be no *arbitrary* discrimination, and like cases should be treated alike, are principles one surely can reasonably take to be self-evidently true. But this does not result in minimally decent treatment unless it is *assumed that humans are already equal, already alike*, in the relevant respect(s) which entitle them to minimally decent treatment. Finnis, however, has not shown us what

the relevant respects are, other than that the lives and goods in question *are* human lives and goods. To say that all humans are equal because all humans are human is an empty tautology. It amounts to the trivial fact that all individual humans are tokens of the type human. The fact that all humans are human is not morally interesting unless one is taking for granted absolute human value. But such a theory of absolute human value (which may actually be operative, as I think it is) is a completely separate ground for morality from Finnis's practical reasonableness. The closest Finnis comes to identifying any relevant respect in which humans are equal, and therefore entitled to "a threshold level" of treatment, that I can find, is his assertion that it is a requirement of practical reasonableness that there be a "fundamental impartiality among the human subjects who are or may be partakers of [the basic] goods."<sup>24</sup> But then we might ask, why should we treat those who do not participate in the basic goods (or at least who participate in them to a very small degree) and those who participate in the basic goods to a very great extent impartially? Is this not a relevant difference which if Finnis himself were reasonable he would take into account? And there is no denying that this differential amongst persons exists. For Finnis himself makes the point repeatedly that humans vary in their degree of participation in the basic goods and the principles of practical reasonableness. Indeed, he concedes that some even fail to recognize the basic goods for what (Finnis claims) they are, i.e., *basic goods*. He writes: "[D]eath, pain, joylessness, trash, hatred and destruction of others, incoherence, and any other form[s] of human ruin... can be embraced, as if they were intrinsic goods, by persons who once accepted them only as means to ends and whose personalities were skewed by their wrongdoing."<sup>25</sup> Some people, that is, can become so corrupted that they actually mistake what we might call "basic bads" for basic goods. Furthermore, Finnis repudiates H. L. A. Hart's contention that "natural law theory in all its protean guises attempts to assert that human beings are equally devoted to and united in their conception of aims ([such as] the pursuit of knowledge [and/or] justice to their fellow men)."<sup>26</sup> Finnis avers to the contrary that "human beings are *not equally* devoted to the pursuit of knowledge or justice, and are far from united in their conception of what constitutes worthwhile knowledge or a demand of justice."<sup>27</sup> What becomes clear, then, is that in Finnis's project people are good to varying degrees because they *participate* in, and instantiate, the basic goods to varying degrees. He writes, "[T]he basic forms of good are opportunities of *being*; the more fully a man participates in them the more he is what he can be."<sup>28</sup> Why then, since humans are apparently viewed in this theory as place-holders for the goods to be instantiated or participated in, are humans not valued on the basis of their very different actual

capacities and tendencies to do so? It would seem that, unless there is some assumption or stipulation already in place that every human being possesses a baseline of value, it would be entirely reasonable to discriminate on this basis, and this would open the way for “special pleading” and “double standards” which were *not at all* “arbitrary”.<sup>29</sup> In short, I do believe that Finnis is begging the question here, that he is surreptitiously smuggling in what is in his own words “an unwavering recognition of the literally immeasurable value of human personality in each of its basic aspects (the solid core of the notion of human dignity)...”<sup>30</sup> If this were not the case, we would be valuing humans in proportion to their participation in, and instantiation of, the basic goods apart from any concern about minimal distribution. To sum up, with this “no arbitrary preferences amongst persons” principle Finnis is simply begging the question that humans are equal in the relevant respects, and this is something which, *upon reflection*, is found *not to be* a self-evident truth—although *prima facie*, given a shared background of traditional morality, it is somewhat understandable how it might easily be mistaken for one.<sup>31</sup> So neither the principle that one should never harm a basic good nor the principle that one should never make arbitrary preferences amongst persons has grounded the full panoply of human rights. But Finnis has one more trick in his bag: the requirement of practical reasonableness that one should always “favour” and “foster” “the common good of one’s communities.” Perhaps with this he will succeed.

Finnis develops a notion of the common good at least partly in order to assist him in addressing the questions which continue to be most embarrassing for him, viz., questions of distribution, such as: what makes it the case that some things should be done for everybody, that one should always grant the *prescriptive* dimension of morality and human rights to every person? It might be the case that I can see, on the basis of never directly harming the good of truth/knowledge, why I should never lie to someone; and maybe, on the basis of never directly harming the good of life, I can see why I should never arbitrarily kill someone, but the question persists as to why it is *reasonable* for me to share my legitimately acquired resources with someone else who is needy? What grounds the claim of Article 25 of the *UN Declaration of Human Rights* which states that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>32</sup>

Or (to use an illustration regarding the promotion of someone which is not economic), even if I concede that I should not murder my ex-wife,

who wishes to take away the most precious things in the world to me, my children and the lion's share of my hard-earned assets, what on earth makes it reasonable for me, i.e., how would it be in my interest, to throw her a life-preserver if I saw her drowning off a beach and there were no one else around? Finnis purports to answer what we might call these questions of 'the broad distribution of justice' by making it a requirement of practical reasonableness that one ought to favour and foster the common good of his or her communities. But is this requirement *necessarily* reasonable as Finnis seems to suggest that it is?

Distributive justice, in Finnis's theory, just is "what practical reasonableness *requires* of particular people (in their dealings with other people)."<sup>33</sup> Thus, what Finnis must show is how it is that practical reasonableness requires the distribution of basic human goods, up to "a certain threshold level in each member of the community... [as a] fundamental component of the common good".<sup>34</sup> Finnis's claim must be that it is a requirement of practical reasonableness to promote the common good, which will in turn ensure minimally decent treatment and the distribution of a "threshold level" of goods, resources and opportunities to all humans. If I have understood it correctly, his argument runs as follows:

- (1) My community of the common good is the entire human community.
- (2) The common good entails that there be a threshold level of distribution of goods for every member of my community.
- (3) My contributing to (the common good of) my community is always good for me (reasonable, in my interest).
- (4) Therefore, it is always good (reasonable, in my interest) for me to promote the common good of my community (every human person).

This argument, however, has some serious flaws. I shall begin by an examination of the soundness of the third premise.

The third premise of this argument only holds good, i.e., is sound, just in case there is reciprocity between me and the community in question. That is to say, my contributing to the common good, or putting effort and resources into the community, is only good for me if I get back from the community *at least as much* as I put into it.<sup>35</sup> If I do not think that I will get back at least as much from the community as I am putting in, I am not being reasonable by investing so much in it. I must not lose on the deal. It is for this reason that Finnis draws a close parallel between what he calls "friendship" and his conception of the common good.<sup>36</sup> For Finnis, the concept of "friendship" itself has reciprocity built into it.<sup>37</sup> Each friend must have, as well as his own, the other friend's interests and well-being as an aspect of his own well-being. While Finnis tries to minimize this

instrumental good of friendship in order to secure its status as a basic good, he acknowledges that it does entail that there is “a sharing, community, mutuality, and reciprocity....”<sup>38</sup> And, of course, it must. For if it did not, if there were no reciprocity and concern for well-being were to move in only one direction (say, away from the agent and toward the other), then it would be a case of charity, benevolence, or some such thing — not friendship. Thus, because the common good is, on Finnis’s view, friendship-writ- small, it entails an element of reciprocity. It is good for me, and every other individual in my community, to contribute to the common good because the community helps to “secure the whole ensemble of material and other conditions, including forms of collaboration, that tend to favour, facilitate, and foster the realization by each individual of his or her personal development.”<sup>39</sup> It is reasonable, in other words, for me to put something into the community because I will get at least that much out.

The problem, however, is that it is just simply not true that this is always and necessarily the case, and, thus, this cannot be the (sole) ground for human rights, which must be granted absolutely to every person, everywhen and everywhere. The state of affairs described in (3) might obtain if everyone else in my community were reasonable (rational), intelligent and sensible—if there were no inefficiency, waste or free-riders—but they are not, so it does not. For example, people might always happily and reasonably contribute to the common good of their communities through paying taxes if we were still in the Garden of Eden. But people often (rightly) think that their governments and municipalities are wastefully squandering their tax monies, and they are often furious about the number of free-riders who intentionally “abuse the system.”<sup>40</sup> There is not *always necessarily* a mutually beneficial reciprocity between individuals and their communities: people do not necessarily always get out of them what they put into them, and in such cases it is not unreasonable for them to discontinue contributing to the so-called common good.<sup>41</sup> For the common good is not always ‘*common*’ good, i.e., it is not always good for everyone; it is regularly good only for some ones in particular, such as those who are recipients of welfare. And it does not help the argument to suggest here that I should contribute because I may someday myself be in need of welfare. Such a suggestion is simply a ‘play it safe’ kind of argument, which may not be reasonable on account of the way the odds are shaping up. In short, it is not *necessarily* in my interest to contribute to the so-called common good of the communities of which I am a part, and since human rights are meant to be accorded to all persons absolutely, the common good cannot be the (sole) ground of my granting and respecting them.

And this introduces another problem with this argument from the common good having to do with the first premise, which is this: I simply do not have a mutually beneficial reciprocal relationship (“friendship”) with every human being on the globe, which is what would be required if it were to be in my interest (reasonable for me) to grant, or at least do my part in granting, (at least the positive, welfare) human rights to every human being on earth. Since it is neither practically nor actually the case, much less necessarily and self-evidently the case, that I have a friendship, a mutually beneficial reciprocal relationship, with every other human being, why then am I obligated to share my resources with them to see that they receive a humane share of the world’s wealth, a “threshold level” of distribution? If I actually were in reality friends with everyone in the world, if there really were the reciprocity of friendship, albeit of an attenuated nature, between me and every other person, *then* it would be reasonable for me to share some of my resources with them, because they would offer me something of equal value in return. But what does a poor Haitian or a down-trodden Rumanian have to offer me, clearly by comparison a wealthy and powerful American, in return (apart from gratitude)? I suspect that it is precisely this component of reciprocity which is built into the concept of friendship which inspired Nietzsche’s (and Aristotle’s?) claim that friendship can only be shared amongst equals. Reciprocity is (at least part of) what makes friendship distinct from charity or benevolence. There is not the same notion of sacrifice built into the former as there is in the latter. And a ‘play it safe’ suggestion will not save this argument either. For the suggestion that I should extend friendship (human rights and minimally decent treatment) to everyone around the world, including those who might resent me, hate me, wish me ill and want anything but to be called my friend, on account of the possibility that I may someday in the future secure their friendship, would seem to be anything but reasonable. To gamble thus would be (probably not even) as reasonable as suggesting that I should presently donate resources to all the various religions around the world because I may someday come to believe that one of them (and I know not which one) will be helpful to me in answering the “big questions” of life. Any suggestion that such a wager is reasonable would be to stretch the term ‘reasonable’ well beyond its ordinary semantic range. This is why Finnis himself admits that “the problem of assessing the extent of one’s responsibilities in reason for the welfare of persons in other political communities (the problem of international justice) is one of the most difficult of all practical problems.”<sup>42</sup> And, as I hope to have shown, it is not just a practical problem, it is for him a theoretical problem as well. So the argument from the common good fails because: 1) it is not necessarily

true that I will get out of my community at least as much as I put into it, and 2) it is neither actually nor necessarily the case that I have a mutually beneficial reciprocal relationship with every person on the planet. Thus, if human rights and minimally decent treatment *are* to be extended to absolutely everyone on the planet, something more than the argument from the common good is needed.

In conclusion, Finnis's project does not succeed in showing the self-evidence of minimally decent morality, human rights. What Finnis needs is: 1) an absolute conception of the value of persons which entails that they absolutely be granted the positive, benefit rights,<sup>43</sup> and/or 2) a mechanism of distribution which is not subject to contingent states of affairs. Contrary to what Finnis avers, upon deep reflection, human equality, a necessary baseline of value for each human being which issues in human rights, does not qualify as a *per se notum* truth, nor does it obviously derive from them.

- 1 Unless otherwise indicated, page references in this section are to John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980).
- 2 Pp. 48–9 and ch. XIII.
- 3 '[O]bligation' and related "notions" all "may be related to some form or forms of rational necessity (p. 297).'
- 4 Pp. 88 and 100ff.
- 5 This would probably be better called the good of 'sociality', since it is sociality itself, and not the ability to be social which is the basic good. Nonetheless, I shall follow Finnis's nomenclature.
- 6 P. 89.
- 7 Pp. 119–120.
- 8 "[O]ne's reasons for choosing the particular ranking [of the basic goods] that one does choose are reasons that properly relate to one's temperament, upbringing, capacities, and opportunities, not to differences of rank of intrinsic value between the basic values (p. 94)."
- 9 P. 102.
- 10 P. 225.
- 11 Pp. 174, 223–6.
- 12 P. 225.
- 13 P. 225.
- 14 P. 81.
- 15 P. 59. Emphasis mine.
- 16 P. 225. Emphasis mine.
- 17 It is interesting that Finnis chooses to label this principle "respect for every basic value in every act" rather than what it actually is, the principle that "it is always unreasonable to choose directly against any basic value," since the principle is fundamentally negative, not positive. This tendency to stretch obligations not to interfere into obligations to positively promote is an oft committed fallacy. It was Jan Narveson who first made me aware of it at a conference on Equality at the University of Reading in April 1996. Narveson, a staunch advocate of libertarianism, said in a paper he delivered there that, although he agreed it would be wrong for middle- and upper-class members

of society to kill children born to recipients of welfare in North American inner-cities, they have no obligation *in virtue of that fact to feed them*. I might speculate that perhaps Finnis is prone to make this unwarranted inference from negative prohibitions to positive obligations on account of his tendency to view matters from a legal perspective, which often involves formulations which move, for example, from “do not lie” to “tell the truth, the whole truth, and nothing but the truth.” Narveson went on to explain that positive (welfare, benefit) rights, rights which go beyond mere non-interference to positive promotion in some way, are a carry-over from traditional religious morality. Without that religious framework, he claimed, such positive rights do not exist! Narveson is surely correct that positive rights are deeply imbedded in Judeo-Christian tradition and teaching. (See, for example, Nicholas Wolterstorff’s brief survey of this aspect of the tradition in his “Christianity and Social Justice” in *Christian Scholar’s Review*, vol. 16, no. 3, March, 1987.) For more on the fallacy of moving from negative to positive rights see Narveson, “Negative and Positive Rights in Gewirth’s *Reason and Morality*” in *Gewirth’s Ethical Rationalism*, Edward Regis, Jr., ed., University of Chicago Press.

18 P. 173.

19 P. 107.

20 P. 107.

21 P. 174.

22 *Ibid.*

23 The requirement which he discusses just before this one is the one he calls “no arbitrary preferences amongst values”, and this makes sense *if indeed* the values are all equally basic. But to follow up that principle with “no arbitrary preferences amongst persons” is a bit misleading, for it begs the question that “human subjects who.... may be partakers of those goods” are basic in a manner similar to the goods themselves (p. 107).

24 *Ibid.*

25 P. 114.

26 H. L. A. Hart, “Positivism and the Separation of Law and Morals” (1958) in *Harvard Law Review*. 593, reprinted Dworkin, ed., *Philosophy of Law* (Oxford: 1977), 17, p. 36, quoted by Finnis, p. 29.

27 *Ibid.* Emphasis mine.

28 P. 103. Emphasis his.

29 P. 107.

30 P. 225.

31 And I suspect that this is why Finnis can also include “following one’s conscience” as one of his principles of practical reasonableness, since it still remains the case, although it may be diminishing, that people’s consciences in the West are formed in large part by a traditional (religious and Enlightenment) morality which views each human being as a locus of infinite worth.

32 I have discovered that Henry David Aiken makes precisely this point in connection with this and other articles of the *UN Declaration*. He writes:

...[In] article 26 of the *Declaration* it is asserted that everyone “has the right to a standard of living adequate for the health and well-being of himself and of his family” But plainly this right is not construable either as a liberty or in terms essentially involving liberty [i.e., a negative right of non-interference]. Indeed, a great

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many of the rights specified in the *Declaration* are directed not to the liberties of men but to substantive gratification of their wants or needs, even in circumstances where they feel, or have, no corresponding desire for the satisfactions in question. Moreover, some of these rights are clearly directed at the fulfilment of certain (ideal) conditions that involve, not the liberty to do as one likes without interference or even the satisfaction of wants or needs, but the implementation of an ideal conception of the human personality ("Rights, Human and Otherwise" in *Monist*, vol. 52, no. 4, October, 1968, 505-6).

33 P. 175. Emphasis his.

34 P. 174.

35 I recognize that Finnis does not believe that goods and bads are commensurable (as consequentialism assumes that they are), and I am in general agreement with him on this point. Nonetheless, in order for his argument to work he must hold that an agent can "do the maths" at least in the sense that she can see that it is "reasonable" for her to contribute to the common good. For if she could perform absolutely no calculations at all, in any sense of the word, she could never determine that it was indeed "reasonable" for her to foster and promote the common good of her community. Even if it is a matter of vague, intuitive perception, she must be able somehow to make this determination, this "measurement."

36 See pp. 142, 147, 164, *et passim*.

37 Pp. 141-3

38 P. 142. Emphasis mine. Finnis writes, "The intrinsic value of having a true friend does not consist precisely in the services the friend may render him...or...the pleasure the friend may give him...but in the state of affairs itself that we call friendship."

39 P. 147.

40 It would appear that the most being "reasonable" can achieve is what the best in contemporary Game Theory delivers, which is nowhere near mandating that, regardless of the actions of other agent(s), one must necessarily act in some specified manner, such as, for example, with minimally decent morality. For helpful introductions to Game Theory see J. R. Lucas, *Responsibility* (Oxford: Clarendon Press, 1993), pp. 41ff., and Richard Dawkins, *The Selfish Gene* (Oxford: Oxford University Press, 1976), pp. 74ff.

41 Imagine the likelihood of getting back what you put into a community which, as is logically possible, comprised, or even simply consisted largely of, individuals whose personalities were so "skewed by their wrongdoing" that they mistook the "basic bads" for basic goods (p. 114).

42 P. 127.

43 It is precisely this that separates Finnis's conception of the individual *vis-à-vis* the community from Jacques Maritain's view of the individual person in his short work, *The Person and the Common Good*. Maritain establishes an absolute conception of the value of every human person as a "whole" in himself or herself on the basis of the *imago Dei* (pp. 20, 42), and thus adduces (what I think is) a marvellous little formulation: "to say that society is a whole composed of persons is to say that society is a whole composed of wholes" (Notre Dame, University of Notre Dame Press, 1966 ed.), pp. 56-7.