When is human normativity first known?

Response to John Finnis

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Like many others, I have learned a lot from John Finnis's works on natural law and St. Thomas Aquinas's political thought. There are numerous questions I would like to ask and issues I would like to raise in response to Finnis's Barry Lecture, such as my different reading of Alasdair MacIntyre's works. But I will focus on one question that targets two of the three topics of his lecture: when is human normativity first known?

Finnis nicely elucidates how 'four distinct kinds of normativity'—natural, logical, practical or moral, and technical—are exhibited in overlapping ways in everyday human affairs. Finnis, along with Christopher Tollefson and others, have employed Aquinas's discussion of these four orders of reason to set up their distinctive approach to natural law theory. Finnis holds that human normativity is first known by practical reason within the 3rd order of normativity. But I want to query why, given two other theses held by Finnis, he does not hold that human normativity can be first known in one way by commonsense or non-practical theoretical reason, and also first known in another way by practical reason. The first thesis pertains to Finnis's view about the 1st and 3rd of the four orders of normativity. The second thesis concerns how practical insights into basic goods are informed by theoretical insights that are themselves informed by the data of experience. Let us start with the first thesis.

Finnis's Barry Lecture focuses on the 1st and 3rd orders of the four kinds of normativity. The 1st order of normativity is found in meta-

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physics, natural philosophy, philosophical anthropology, and other disciplines. It is by theoretical reason that we disclose and understand the 1st order of normativity in nature. By contrast, it is by practical reason that we encounter the 3rd order of normativity which discloses the basic goods which perfect and benefit humans in their practical reasoning and human actions. Finnis provides a rich exposition of how these two orders of reason and normativity are distinct yet interrelated. He contends that the respective first principles of the 1st and 3rd orders of normativity are 'underived first principles' that are '*per se nota* (known by the meaning of their terms) and *indemonstrabilia*'. We might use this distinction of normative orders to elaborate on my principal question: how do the basic human goods we know and seek by practical reason from the 3rd order of normativity relate to human nature known in the 1st order of normativity?

Finnis has employed Aristotle's heuristic from *De Anima* II.4—that *objects* specify *operations*, which specify *powers*, which specify *nature*—to argue against rival theories of natural law which argue ethics must start with a metaphysics of human nature. These rival natural law theorists contend all practical reasoning presupposes theoretical reasoning about human nature that discloses which good objects fulfil the powers of our nature. From facts about human nature, we can infer what goods we *ought* to pursue. Finnis has argued that Aristotle's heuristic illuminates why such theories of natural law have matters backward. We cannot know human nature without first having an understanding of human powers, and these human powers cannot be differentiated and known without first cataloguing our various human operations and their objects, including our practical operations in pursuit of good objects. Contrary to these rival theories of natural law, it is impossible for ethics to *start* with a metaphysical theory of human nature and use it to derive an account of which good objects can serve as the first principles of the first operations of practical reason. Humans must already be engaged in operations of practical reasoning in pursuit of goods long before we can study such objects and operations and use them to inform our ontological theory of human powers and human nature. Far from a theory of human nature informing us for the first time about what are the goods and first principles of practical reason, it is instead the self-evidently good objects sought by operations of practical reason that provide

key data for theoretically establishing that reason is a power ontologically grounded in human nature and which plays a decisive role in formulating the differentia of human beings as *rational* animals.

In line with Aristotle's heuristic, Finnis has argued for a natural law theory that acknowledges that the first principles of practical reason are self-evident basic goods (e.g., life, excellence or skilfulness in work and play, knowledge, friendship, marriage, practical reasonableness, and religion) in the 3rd order of normativity.[1] As we have seen, these first principles in the 3rd order of normativity cannot be deduced or inferred from the first principles in the 1st order of normativity.

Some of Finnis's critics have objected that his natural law theory problematically isolates these two orders of normativity from each other, which makes metaphysical anthropology irrelevant to understanding why certain goods fulfil and perfect humans and certain bads do not. Finnis argues this is not so. He contends here, and elsewhere, that the discoveries about basic goods that fulfil humans through practical engagements come first in the epistemological order of discovery, but that they are ultimately grounded in the 1st-order ontological anthropology of human nature and powers. In other words, we first discover goods that fulfil us in the practical 3rd order. Only later do we learn from the distinct 1st order of metaphysical anthropology that these goods are perfections of the powers we have in virtue of our human nature.

Other critics have objected that immediate practical insights into basic goods like life, knowledge, marriage, etc. would be impossible without some prior theoretical understanding of *what* life, knowledge, marriage, etc. are. Finnis recognizes this point; he explicitly affirms that practical insights into the basic goods are informed by prior theoretical insights into the data of experience. Before someone can achieve self-evident and indemonstrable practical insights into the basic goods of life, knowledge, marriage, etc., one must first have elementary theoretical insights that life, knowledge, marriage, etc. are all fields of possibility, and these theoretical insights are made on the basis of the data we experience. Following our experiences of the relevant data and subsequent theoretical insights into fields of possi-

[1] John Finnis, *Collected Essays*, Vol. 1: *Reason in Action* (Oxford University Press, 2011), 244 n. 25.

bility,

> Only then does *practical* insight add the *further*, practical understanding that that field of possibility is also a field of opportunity, benefit, a perfection, etc. When that second, practical insight is followed through by chosen commitments to study, reflection, investigation, and so forth, one's original understandings both of knowledge's possibility and of its worth are greatly deepened and enhanced. I think this mutual reinforcement of theoretical and practical insight is pervasive.[2]

What is included in these initial theoretical insights into the data of experience? What is contained in understanding life, knowledge, marriage, etc. as *fields of possibility*? Which order of normativity do these experiences of data and theoretical insights draw upon? With respect to this last question, it seems obvious that they do not come from the 2nd order of logic or the 4th order of art or *techne*. They also cannot come from the practical 3rd order of normativity since practical reason's first insights must be informed by and so presuppose these experiences and initial theoretical insights. Hence, they must come from—and it seems no one would deny that they do come from—the 1st order of normativity, which includes metaphysics and anthropology. What does this ontological order disclose to our primitive theoretical insights into the data of experience concerning the basic fields of possibility?

Finnis claims that our later systematic metaphysical enquiries can disclose which powers belong to human nature and so can explain why certain objects known to be goods from the earlier epistemological order of practical discovery, are the goods they are because they fulfil humans on account of perfecting their powers. Metaphysically speaking, human life, knowledge, marriage, etc. are the goods they are only because they fulfil human nature. According to Finnis, we only learn such theoretical facts from the 1st order of normativity *after* we have discovered these human basic goods from practical insights that fall within the 3rd order of normativity. So, I ask again, if the natural normativity of human goods from the 1st order of normativity is *not* included in our initial theoretical insights concerning the basic fields of possibility which inform our first practical insights

[2] Finnis, *Reason in Action*, 39.

into basic goods, then what *else* is included in these first theoretical insights about the basic fields of possibility?

Finnis's position seems intentionally crafted to exclude any 1st-order normativity from our first theoretical insights into fields of possibility. We grasp that life is possible, knowledge is possible, marriage is possible, etc., but we do not theoretically grasp—at least not initially—any normative or functional criteria for life, knowledge, marriage, etc. Such functions (*erga*) would necessarily include notions of why certain objects and operations, by fulfilling their function, are counted goods, and why others which fail to fulfil or realize certain functions (e.g., of life, knowledge, marriage) are privations of goods (e.g., illness, death; ignorance, error; adultery, divorce). But this information is precisely what Finnis excludes from our first theoretical insights. He wants to maintain that objects or fields of possibility apprehended within the 1st order of normativity cannot yet be understood either as normative or as goods and bads for humans without prior practical insights from the 3rd order of normativity. Yet I would object that it is impossible to understand what life, knowledge, marriage, etc. are as fields of possibility apart from their essential conceptual connections to normative functional criteria. Without some normative criteria for what knowledge is as the intellectual conformity of the mind to reality, we cannot distinguish knowledge from ignorance, falsehood, or error; indeed, we cannot deploy the concept accurately apart from the constellation of epistemic notions bound up with any commonsense or philosophical definition of knowledge. I develop aspects of this argument below.

Why then does Finnis appear to exclude 1st-order normativity from the first theoretical insights into the fields of possibility that belong to the 1st order of normativity? Call this the 'exclusion thesis'. I think Finnis adopts this exclusion thesis for at least three reasons. First, he does so in order to preserve the distinctness of the four orders of normativity and to secure the thesis that the first principles of practical reason from the 3rd normative order are in fact self-evident, indemonstrable primitives. Second, he thinks the Aristotelian heuristic—and the operative distinction between the epistemological and ontological lines of enquiry based upon this heuristic—necessitates this exclusion, since we must start with the practical operations and objects before we can metaphysically establish human powers and

human nature. Third, he also holds we cannot derive the basic goods and practical *oughts* from theoretical facts about what *is* the case. The human normativity and goods taken from the 1st order or normativity cannot thereby elicit inherently rationally desirable objects that normatively direct our reasoning towards human actions. In his Barry Lecture, Finnis queries, 'Why should free human persons treat as foundationally directive for choice the natural goodness, or natural normativity, of the given-in-nature, even in "human nature"?' (20).

Each of these reasons for the exclusion thesis is worth taking seriously, but I question whether Finnis needs the exclusion thesis in order to meet them. Indeed, the last quotation gives us some grounds for thinking Finnis does not hold the exclusion thesis after all. His challenge is not 'why think facts about human natural goodness from the 1st order of normativity can be known prior to our first practical insights?' Rather, he is questioning why anyone should hold that theoretical knowledge of natural goodness on its own could be practically directive. After all, there are plenty of facts we can know about the natural goodness of beavers, dogs, or the care of neonate human children (when one has no direct responsibilities for any children) from the 1st order of normativity that do not thereby provide rational grounds for inferring what one *ought* to do. We do not need the exclusion thesis to preserve this contrast; all we need is a distinction between *theoretical goods* from the 1st order of normativity and *practical goods* from the 3rd order of normativity. We should not conflate non-practical insights into theoretical goods with the distinctive practical orientation we have towards practical goods. Theoretical goods are not equivalent to the basic goods of practical reason which are the primitive practical goods of the 3rd order of normativity.

This distinction between theoretical goods and practical goods is compatible with the second and third reasons given above, but it also secures better the first reason insofar as it does not suggest, as the exclusion thesis does, that the 1st order of human normativity is unavailable to theoretical reason until it is unlocked by the 3rd order of normativity. Indeed, we might object that the exclusion thesis cannot avoid adopting a *projectionist* account of natural goodness in the 1st order, where it is projected onto reality from the standpoint of the 3rd order of normativity. Such a projectionist account would entail the rejection of realism about natural goodness and teleology in the

1st order of normativity. In short, the exclusion thesis and its projectionist implications appear to undermine Finnis's claim that the first principles in the 1st and 3rd orders of normativity are self-evident, indemonstrable, and not derived from the other orders.

If we reject the exclusion thesis and take on board this distinction between theoretical and practical goods, then another position becomes available—a position which Finnis might actually hold, but I am not sure. This second position does not alter Finnis's account of the order of discovery from (a) experience of the data of life, knowledge, marriage, etc., to (b) theoretical insights that life, knowledge, marriage, etc. are fields of possibility, to (c) the practical insight that life, knowledge, marriage, etc. are basic goods that perfect, fulfil, and benefit humans.

What distinguishes this second position—from the first position which I take to be Finnis's—is it maintains that the (b*) theoretical insights into life, knowledge, marriage, etc. as fields of possibility from the 1st order of normativity already include an elementary normative appreciation that knowledge is the *fulfilment* and *perfection* of intellectual enquiry. So, this second position holds that we cannot have theoretical insight into knowledge without grasping the 1st-order normative notion that knowledge *perfects* the mind by achieving a conforming of understanding and judgment with the reality experienced. Likewise, life and health are *perfections* and *fulfilments* maintained by certain operations and not others which thwart or undermine capacities for health and life. In short, this second position contends that some basic commonsense truths about natural goodness and normativity for humans are necessarily included in the initial theoretical insights into these basic fields of possibility from the 1st order of normativity.

Note well, this second position is not claiming that any of these theoretically known fulfilments or perfections are *practically* understood as *goods* to be sought by practical reason. It also is not claiming that from these theoretically known facts about human natural goodness we can deduce or infer basic goods or moral oughts for practical reason. This second position holds, like Finnis, that grasping the basic goods requires a distinct primitive, immediate, indemonstrable practical insight from the 3rd order of normativity. But, apparently unlike Finnis's position, what practical reason grasps as self-evident

basic goods in this primary practical insight is informed by these prior theoretical insights into the natural goodness and functional normativity of life, knowledge, marriage, etc. as fields of possibility. Our primitive practical insights into self-evident practical-goods of the 3rd order of normativity are informed by—but are neither reducible to nor deduced and inferred from—prior theoretical insights into theoretical-goods of the 1st order of normativity.

One might object that this second proposal seems inconsistent with Aristotle's heuristic. Does not it face precisely the problems Finnis has consistently raised against rival theories of natural law that try to base ethics and the basic goods of the 3rd order of normativity upon the metaphysics of human nature known in the 1st order of normativity?

In short, no. What is mistaken and contrary to Aristotle's heuristic in those rival natural law theories is their contention that we can somehow *start* with a commonsense theory—i.e., everyday non-practical knowledge—of human *nature* and its *powers* and derive from them an understanding of which kinds of good objects we ought to pursue and which kinds of operations we ought to perform to acquire these goods. This proposed second position does not make this mistake any more than Finnis does in his holding that the first practical insights into the basic goods of the 3rd order of normativity presuppose being informed by first theoretical insights into the basic fields of possibility known from data of the 1st order of normativity. The dispute at issue is instead whether or not these initial theoretical insights into fields of possibility (e.g., life, knowledge, marriage) necessarily include in their very conception elementary features of natural normativity or functional criteria of theoretical goods and theoretical bads. We do not need a systematic, rigorous, and parsimonious ontology of human powers grounded in human nature to grasp *what knowledge is*. But if we are to grasp 'knowledge' at all and in any sense, then our initial apprehension must include some sense that it is the conformity of intellectual assertions with reality and that assertions which fail to conform to what is the case, do not qualify as knowledge. The theoretical good of knowledge consists in conforming the mind to reality; apart from this minimal functional criterion one cannot be said to have grasped knowledge as a field of possibility. But knowing this theoretical good is not equivalent to grasping

it as a practical good, that is, as an intelligible, desirable end that is normatively directive of one's practical reasoning and human acting. This point could easily be elaborated for life, excellence or skilfulness in work and play, friendship, marriage, practical reasonableness, and religion. There could not be theoretical insights into these as fields of possibility, nor could we understand *what* each of these possibilities is, without also having some elemental theoretical sense of their functional criteria drawn from the 1st order of normativity.

It seems to me that Finnis should agree with this contention. For it was precisely these kinds of considerations from the 1st order of normativity that Finnis drew upon and which led him to recognize that marriage is a distinct field of possibility and so also a distinct basic good.[3] Indeed, it would be impossible for Finnis to identify marriage as a distinct basic good within the 3rd order of normativity if he could not identify marriage as a distinct field of possibility within the 1st order of normativity. If there were no distinct theoretical insights demarcating friendship from marriage, then there could not be the distinct self-evident and indemonstrable practical insights into the distinct basic goods of friendship and marriage. But these distinct theoretical insights into friendship and marriage had to be based on some intelligible criteria which drew upon the data of experience. What were these criteria? In response to Timothy Chappell's criticisms of Finnis's adoption of marriage as a basic good, Finnis writes:

> Chappell's list of goods he thinks explain the good of marriage conspicuously omits the very good which gives the friendship of spouses its marital point and its commitment to permanent exclusiveness in sharing of sexual pleasure: its orientation to procreation and parenthood.[4]

Marriage, unlike friendship, has the distinctive functional criteria of procreation and parenthood, that is, 'marriage is understood and lived as both the instituting of a new family and the continuing of earlier ones.'[5] These functional criteria from the 1st order of norma-

[3] See Finnis, *Reason in Action*, 9-12; *Natural Law and Natural Rights*, 2nd ed. (Oxford University Press, 2011), 446-47; *Aquinas: Moral, Political, and Legal Theory* (Oxford University Press, 1999), 81-83, 97-98.

[4] Finnis, *Reason in Action*, 9.

[5] Finnis, *Reason in Action*, 10 n. 5.

tivity identify a distinct field of possibility grasped by theoretical reason, within which a primitive insight of practical reason grasps the basic good of marriage, which is a first principle in the 3rd order of normativity. To use my terminology, the theoretical good of marriage informs but it can neither be equated with nor be the basis for any deduction or inference which concludes that there is a practical good of marriage and it ought to be pursued. The latter practical good can only be grasped by a distinct and primitive insight of practical reason from the 3rd order of normativity.

By way of conclusion, let me return to my opening question. When is human normativity first known? I have argued that, given Finnis's other commitments, he should answer: it depends on which order of human normativity is in question. Human normativity is first known by a theoretical insight into theoretical goods of human beings from the 1st order of normativity. And human normativity is first known by a practical insight into practical goods within the 3rd order of normativity. This practical insight is informed by the 1st order of normativity's fields of possibility known by initial theoretical insights, but this practical insight discerns something more concerning human normativity which is not grasped by any theoretical insights. This practical insight from the 3rd order of normativity grasps basic goods of human normativity as being rationally desirable and rationally directive of human actions.

If my argument here is sound, then it has shown that with respect to the problem of how we grasp the first principles or basic goods of the natural law, there is less principled distance and disagreement than is commonly supposed between Finnis's theory of natural law and some rival theories of natural law. Granted, there are still significant disagreements concerning whether the basic goods are incommensurable, pre-moral, and other issues, but I hope my arguments have forged a path toward some significant points of agreement.