
The Good of Play in John Finnis's *Natural Law and Natural Rights*

El bien del juego en Natural Law and Natural Rights, de John Finnis

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Abstract: Despite the scrutiny that has been given to John Finnis's masterwork, *Natural Law and Natural Rights*, relatively little attention has been given to a feature of that work that plays a recurring role, namely, the place of the basic human good of *play* in the book. In addition to a number of passing references, that good is discussed in an extended way on three occasions. The first is when the good of play is introduced, as part of Finnis's taxonomy of basic human goods; the second is in his discussion of Aristotle's understanding of friendship, when Finnis reframes Aristotle's friendship of pleasure as instead friendship of play; and then finally, in Finnis's concluding chapter, with its discussion of the «further point» of morality, where Finnis, following Plato, describes the point of morality as participation in a divine play. Play's presence at the end of *Natural Law and Natural Rights*, indeed, in one of the culminating passages of the book, suggests that this good should be paid more attention than has been given to it. After a review of Finnis's various discussions of play, I argue that Finnis's account provides resources for answering Thomas Nagel's skeptical doubts about life's meaning; and for furthering Finnis's own claims about the authority of law.

Keywords: natural law, basic goods, play, friendship, meaning of life, authority of law.

Resumen: A pesar del análisis a que se ha visto sometida la obra maestra de Finnis, *Natural Law and Natural Rights*, se ha prestado relativamente poca atención a un rasgo suyo: el recurrentemente citado bien humano del juego y el lugar que su estudio ocupa en dicho libro. La primera referencia aparece con ocasión de su presentación dentro de la taxonomía de bienes humanos básicos finnisianos. La segunda, aparece de la mano de una reflexión sobre la amistad aristotélica, en la que Finnis reformula dicha noción, originalmente descrita como relación de placer, como una relación de participación en un juego. En el último capítulo, Finnis, se refiere al juego, en tanto que referente no inmediato de la moralidad. En este punto sigue a Platón que lo considera como la participación en una obra divina. La presencia del juego al final de *Natural Law and Natural Rights*, de hecho, en uno de los pasajes culminantes del libro, sugiere que a este bien se le debe dedicar más atención de la que hasta el momento se le ha venido dispensado. Después de revisar las diversas discusiones de Finnis sobre el juego, sostengo que su relato cuenta con recursos suficientes para responder a las dudas escépticas de Thomas Nagel sobre el sentido de la vida así como para dotar de un mayor recorrido a las propias afirmaciones de Finnis acerca de la autoridad del derecho.

Palabras clave: ley natural, bienes básicos, juego, amistad, sentido de la vida, autoridad de la ley.

Few contemporary works of either natural law ethics, or natural law jurisprudence, have been subject to the kind of scrutiny that has been given to John Finnis's masterwork, *Natural Law and Natural Rights*¹. Yet little attention has been given to a feature of that work that plays a recurring role, namely, the place of the basic human good of *play* in the book. In addition to a number of passing references, that good is discussed in an extended way on three occasions. The first is when the good of play is introduced, as part of Finnis's taxonomy of basic human goods; the second is in his discussion of Aristotle's understanding of friendship, when Finnis reframes Aristotle's friendship of pleasure as instead friendship of play; and then finally, in Finnis's concluding chapter, with its discussion of the «further point» of morality, where Finnis, following Plato, describes the point of morality as participation in a divine play.

Play's presence at the end of *Natural Law and Natural Rights* (hereafter, *NLNR*), indeed, in one of the culminating passages of the book, suggests that this good should be paid more attention than has been given to it. After a review of Finnis's various discussions of play, I argue that Finnis's account provides resources for answering Thomas Nagel's skeptical doubts about life's meaning; and for furthering Finnis's own claims about the authority of law.

I. BASIC GOODS AND THE GOOD OF PLAY

Chapters III and IV introduce the key starting points of Finnis's practical philosophy, basic human goods. Practical reason is reason directed towards action; such direction can only be provided by practical thought's grasp of reasons *for* action, and practical reason's governing principles are thus directives towards the most fundamental reasons for action, basic human goods.

Those goods include, as elaborated in *NLNR*, life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion. Together, these goods provide the starting points of all practical deliberation; the demands of morality can be understood as the requirement to deliberate and choose reasonably amongst the options these goods make available to an agent.

¹ FINNIS, J., *Natural Law and Natural Rights*, 2nd ed., Oxford University Press, Oxford, 2011.

In presenting his taxonomy Finnis writes:

«The third aspect of human well-being is play. A certain sort of morality analyzing human goods may overlook this basic value, but an anthropologist will not fail to observe this large and irreducible element in human culture. More importantly, each one of us can see the point in engaging in performances which have no point beyond the performance itself, enjoyed for its own sake. The performance may be solitary or social, intellectual or physical, strenuous or relaxed, highly structured or relatively informal, conventional or ad hoc in its pattern... An element of play can enter into any human activity, even the drafting of enactments, but it is always analytically distinguishable from its serious context; and some activities, enterprises, and institutions are entirely or primarily pure play. Play then has and is its own value»².

Finnis elaborates briefly on this in a note in the original 1980 edition by citing books by Johan Huizinga, Josef Pieper, and Hugo Rahner, and quoting Huizinga:

«Summing up the formal characteristics of play, we might call it a free activity standing quite consciously outside «ordinary» life as being «not serious», but at the same time absorbing the player intensely and utterly. It is an activity connected with no material interest, and no profit can be gained by it. It proceeds within its own proper boundaries of space and time according to fixed rules and in an orderly manner...»³.

And Finnis cites as an example of play «in drafting enactments» a passage in Huizinga, in which the boundary between legislation and poetry in Old Frisian and Old Icelandic is porous⁴.

In the Postscript to *NLNR*, published with the 2nd edition of the book in 2011, Finnis articulates what he takes to be a «more adequate and accurate characterization» of the good: «excellence-in-performance, for its own sake, whether in ‘work’ or ‘play’»⁵. Finnis believes this revised understanding is

² FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 87.

³ *Ibid.*, 93, quoting HUIZINGA, J., *Homo Ludens: A Study of the Play-Element in Culture*, Martino Press, 2014, 32.

⁴ HUIZINGA, J., *Homo Ludens: A Study of the Play-Element in Culture*, pp. 127-128.

⁵ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, 448.

«implied» in note cited above, presumably because of its references to play as an «activity» that is «absorbing», proceeding in accord with «fixed rules and in an orderly manner»; in short, performance, not merely random or chaotic, but ordered and hence «excellent», and enjoyed «for its own sake».

Nevertheless, the revised understanding may seem also somewhat at odds with the idea of play; when children are at play, or indeed, when adults play with children, is excellence in performance for its own sake characteristic of what they are engaged in in the way it is for a superior player of some sport, for example?⁶ And is there really but one good at stake in two activities as seemingly different in their degree of «seriousness» as work and play?⁶

I believe we can see the answers to both questions as affirmative. First, in typical forms of play, the standards of excellence of performance are entirely internal to the type of play in question: there is no form of excellence at chess or basketball that can be understood apart from understanding the rules constitutive of those games themselves. This point does not touch upon the more generic features of a performance that make it suitable for play; Huizinga, for example identifies features such as «rhythm, harmony, change, alternation, contrast and climax» as answering to the innate needs of the «play-sense»⁷. Huizinga's claim seems plausible, and has explanatory value in understanding a wide variety of cultural forms as involving «play», as discussed in his book. But clearly if he is correct, then a performance integrating some or all aspects of this list will have its own internal set of «rules» or standards, whether formal or informal, according to which excellence can be achieved in a performance which is enjoyable because sharing these features. And this extends even to the playing of a child's game, such as tea with an imaginary friend, building with blocks, or a rumpus with a parent. That the rules governing the child's performance are rudimentary and allow only for a limited degree of *skill* in relation to other more refined forms of performance is no different from the fact that the child's efforts at knowledge acquisition or friendship are also limited in their own ways. The rules are often usually implicit rather than articulated, and indeed in many cases in a child's play seem to be made up on the spot⁸.

⁶ My discussion in the following paragraphs converges with that in MURPHY, M, *Natural Law and Practical Rationality*, Cambridge University Press, 2001, pp. 111-114.

⁷ HUIZINGA, J., *Homo Ludens: A Study of the Play-Element in Culture*, *op. cit.*, p. 75.

⁸ Yet they are also available to be repeated; the first time a crawling baby looks back at her parents and then «runs (crawls) away» in order to be chased, the game is invented for the first time; yet it is available as a form of spontaneous play to be enjoyed for months thereafter.

These facts do not, to my mind, rule out the possibility of excellence in performance in accordance with these rules or standards. So, child's play is both real play and, when done well, involves genuine excellence in performance.

What, then, are we to make of the difference between «work» and «play», and how can Finnis's revised account acknowledge both the differences and the unity of the two? The difference cannot be simply that in work there is a material outcome, for this is true of every form of play simply in virtue of the play being a form of performance. Take, for example, dancing, a paradigmatic way in which the good of play is realized. Dancing issues in *a dance*, a material, albeit transient reality. Similarly, every game results in a *play of the game*, again, a transient but material reality.

Neither, though, should the contrast rest with transience versus permanence of result, for the work of a symphony results in the transient performance of a piece of music every bit as much as does the play of the spontaneous family performance after Sunday supper.

Rather, when what is engaged in is to be considered work, the standards of excellence cannot be entirely internal to the performance. Thus, the work of a physician, or a builder, or a legislative draftsman, for example, is in each case structured by some need that must be met: the need for an intervention to preserve or restore health, the need for this wooden item that will store one's table settings, or the need to establish laws that will bring about justice and peace in a society.

Yet in each case, not only the material reality with its structuring principles, but the performance guided by those principles can, in a way that is not true of every material reality, be pursued for its own sake. The physician can seek excellence in her art and then practice the art for the sake of its excellent performance in addition to the governing need of health for which she initially acts. Similarly, the cabinet maker and draftsman can act not only for the sake of the ends of their art, but for the sake of the excellent performance that their skills and the norms of the art make possible.

Huizinga focuses on the element of competition central to play, and that element can certainly, as his book makes clear, enter into the sphere of work, further turning it into a form of play, sometimes at the expense of its success qua work. But one can also, I would argue, see in those practitioners of work who approach it as play an aspect of the *playful*, of treating something seriously but also not entirely in earnest. This too connects the activity of adults in engaged in skilled activities to the activities of children engaged in unskilled but still excellent play: the achievement of excellence in performance for its own sake

can bring with it, in its liberation, even if only temporary or conceptual, from ends or goals, a lightheartedness and exuberance even in trying circumstances, as one «plays the game» one finds oneself in, whether tending to the sick in a health emergency, building in a way that manifests spontaneity, or the examples of playful drafting of legislation that Finnis found «beautiful» in Huizinga's book. I will return to the nature of this spirit of play in the later discussions.

Reference to the «spirit of play» allows me to make a further point about play, namely that play is an expressive activity. Willingness to engage in play manifests a particular kind of character, as does the way in which one plays. Not all persons find themselves capable of lightheartedness of exuberance, of the freedom characteristic of play. Those bound exclusively to the ends of their work, unable to enjoy their performance for its own sake, suffer reduced flourishing, whether, as Finnis puts it, because of the nature of their work, or for moral reasons⁹. One's manner of play, the style in which one plays, is also deeply expressive: *who one is* is made manifest, given an embodied realization, in one's play.

With all this said, I will close this section by situating play within the «four orders» that Finnis and Germain Grisez take from St Thomas Aquinas¹⁰. The orders are four ways that mind is related to order, according to Aquinas. There is first the order that mind is not responsible for but can come to know, the order of nature; second, there is the order introduced into mind's reflections and considerations, an order which includes the order of logic, the order of related concepts, and the like; third is the order introduced by reason into the will, which includes the order of ethics; and finally, the order mind introduces into material nature, the order of artifacts.

Like most, perhaps all, of human life, the good of play enters into all the orders. Play operates with materials given by nature: sound, motion, physical material, and of course, those animal instincts which we see at work in the play-like activity of non-human creation, and which are transformed in human play. As I have said, play introduces its own internal rules for the govern-

⁹ «... working merely for pay is either a vice or a misfortune (depending on the nature of the work and one's circumstances)»; FINNIS, J. «Human Acts», in *Intention and Identity: Collected Essays Volume II*, Oxford University Press, 2011, p. 150. This illustrates one way in which play is essential to childhood: those who do not learn to play cannot treat work as also play.

¹⁰ Finnis discusses the orders in FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 136-9; in the Postscript to the 2nd edition, he expresses dissatisfaction at having diverged from Aquinas's ordering of the orders.

ance of a performance. Whenever there are rules, they are logically related to one another by relations of implication, exclusion, or priority. Play is a basic good; recognition of it as desirable and choiceworthy is the beginning of mind's introduction of play-order into the will. And play, as I have said, results in a newly fashioned material reality, the reality of a dance, a play of the game, a swapping of jokes (using language), all of which have an artifactual character that should not efface their also obviously «ethical» character.

II. FRIENDSHIPS OF PLAY

Aristotle is well known for his threefold taxonomy of friendship¹¹. First, there are friendships of utility, in which the purpose of each «friend» is to make use of the relationship to his or her advantage. Second, there are friendships of pleasure; we tend to understand this as encompassing relationships in which the partners find one another enjoyable («fun») to be around. Third are what Finnis calls the paradigm case of friendship, relationships in which each partner seeks the (genuine) good of the other (reasonably identified by Aristotle as friendships of virtue). Aristotle identifies the paradigm case as «friendship of virtue», and it is easy to see the connection: in the paradigm case, the good willed for the other and oneself is the true good, which includes one's all around *moral* well-being, or virtue. What is incompatible with virtue is thus *not* willed for the friend¹².

Finnis makes use of this threefold distinction in his chapter on «Community, Communities, and Common Good» (Chapter VI), but provides a new interpretation of Aristotle's second form of friendship. He writes that we engage in such «relationships 'for fun'. But a better name would be relationships of *play*»¹³. For, as he notes, the central feature of play is that «the activity or performance is valued by the participants for its own sake»¹⁴, or, in his later language, that excellence of performance is so valued. And this is what is sought in a relationship of play, that, as between «friends» in this sense, there should be a good «play of the game». That is the common good, the unifying

¹¹ ARISTOTLE, *Nicomachean Ethics*, Book VIII.

¹² As Finnis makes clear later: «For in friendship one values what one's friend values (save where he is mistaken in his valuation)...»; FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 407.

¹³ *Ibid.*, p. 140.

¹⁴ *Ibidem.*

feature that brings the players/friends together into a form of community, an order unified by its orientation to that common good.

How broadly should we understand the scope of such a relationship? Finnis gives a narrow instance, swapping jokes, that falls within the conception, and an extremely broad instance that does not, Rawls's conception of the shared end of institutions such as the family or the state as «the successful *carrying out* of just institutions»¹⁵. «Carrying out» helpfully signals that there is no «particular thing» that such relationships aim at, but, in Finnis's view, at the same time assimilates these communities «too closely to games in which 'a good play of the game' *is* the shared final end»¹⁶. But for well-ordered institutions, the final end is human flourishing, of which good playing of games, or good play, is but one constitutive end. So, it is a mistake to interpret the friendship of play overly broadly.

Yet clearly, it need not be limited to mere joke-swapping, or deliberate game-playing; instead, using the broader characterization of play that encompasses the excellence of performance common to both play and work, we can see that an element of friendship of play can enter into almost any form of community between persons in which the mutual performances engaged in by the participants become a focal point of their attention and will beyond whatever *other* common good it is that orders their community. When the joint activities are pursued in this way, then they can themselves become «the source of their [the participants'] pleasure or satisfaction»¹⁷.

Thus, while friendships of play may be rather narrow in scope, encompassing *only* the good of the performance, they can also supervene upon friendships of both utility and virtue, and indeed in both cases it should hardly be unexpected that this would happen. One might even go further and say that the paradigm case of friendship must contain aspects of friendship of play, since excellence of performance will be part of the good that is mutually willed between friends who adequately recognize the basic goodness of such performance. Indeed, for friends in the paradigmatic sense, *any* activities mutually engaged in between that allow for excellence in their performance will be also opportunities for mutual play¹⁸.

¹⁵ RAWLS, J., *A Theory of Justice*, *op. cit.*, Harvard University Press, 1971, p. 527.

¹⁶ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 157.

¹⁷ *Ibid.*, p. 140.

¹⁸ Including, one may infer, in the excellence of spousal intercourse; *vid.*, *ibid.*, p. 86.

III. DIVINE PLAY AND THE FURTHER POINT OF MORALITY

I turn now to Finnis's discussion of play in the final chapter of the book, «Nature, Reason, God», Chapter XIII. Some, including H.L.A. Hart, who commissioned *Natural Law and Natural Rights*, have thought this chapter sits uneasily in the overall scheme of the book; many think it can be, in Mark Murphy's words, «detached» from the rest¹⁹. Finnis, by contrast, has concluded several of his books, and even collections, with reflections that situate his topic (jurisprudence, ethics, political thought) within the larger framework of concern with and for the divine. What is striking in *NLNR*, however, is that this concern comes to its conclusion in the final section of the book precisely in a discussion of the good of play and its relationship both to the «further point» of morality and other existential questions.

The chapter begins with ruminations on the way in which moral demands, while objective and justified, can nevertheless seem to have a kind of relativity and subjectivity to them. Goods are transient, as are human lives; goods conflict, both within individual lives, and across multiple lives; human lives and goods are part of a broader universe the overall purpose or good of which is opaque. These limitations have practical consequences:

«In the absence of any answers to such questions, the basic human values will seem, to any thoughtful person, to be weakened, in their attractiveness to reasonableness, by a certain relativity or subjectivity – not so much the subjectivity of arbitrary opining, but rather the subjectivity of the merely relative to us...»²⁰.

Finnis's worry strikes me as having some resonance with that of Thomas Nagel, in his essay «The Absurd»²¹. Nagel's understanding of objectivity in human action is similar to Finnis's: we seek justification for our action in objective ends that can withstand critical scrutiny. Yet Nagel holds that through

¹⁹ For an account of Hart's role in the coming-to-be of *Natural Law and Natural Rights* – including Hart's determination of the title – and his reservations about the final chapter, *vid.*, LEGARRE, S., «HLA Hart and the Making of the New Natural Law Theory», *Jurisprudence. An International Journal of Legal and Political Thought*, vol. 8, n. 1, Universidad Católica Argentina, 2017, p. 82. For Murphy's comments on the «detachability» of Chapter XIII's theses, *vid.*, MURPHY, M., «Finnis on Nature, Reason, God», *Legal Theory*, vol. 13, 2008, p., 187.

²⁰ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, 373.

²¹ NAGEL, T., «The Absurd» in *Mortal Questions*, Cambridge University Press, 1979.

a «step back», we see that all our justifications terminate in what is «merely» human, and all efforts to find some larger scheme in which to place our human concerns must in the end come back to something that nevertheless can be of concern to us – merely to us, as it were. Nagel finds in this inevitable anthropocentrism a failure of our aspiration to objectivity. We will see, in the discussion below, whether Finnis’s incorporation of the idea of divine and human play can overcome this Nagelian worry, as well as other more practical concerns about the way in which limitations on human goods might undermine, for example, the reasonableness of self-sacrifice.

In XIII. 2, Finnis provides an argument for the existence of a state of affairs that explains why the contingently existing universe exists; that state of affairs must include an uncaused (hence, free) cause; and a necessary being responsible for the uncaused causing. This necessary being we may call «God», shortening several steps of Finnis’s dialectic in Section XIII. 3, which also introduces the notion of God’s eternal law. In Section XIII. 4, Finnis discusses Aquinas’s account of the way in which the natural law is a *participation* in that eternal law.

Finally, Section XIII. 5 begins with a discussion of God’s will, understood not as an instance of the most hierarchical power manifesting dominance over everything subservient to it, but rather, and «relying upon some definite revelation», as favoring

«... both the basic goods, and human adherence to the principles of practical reasonableness in the pursuit of those goods...[F]riendship with God, some sharing in God’s life and knowledge and love-of-goods, is available to those who positively favor what God positively favors»²².

This consideration makes clear that there is an answer to a problem that «is not mine», namely the problem of why one should obey God’s will; that question lacks force in the light of the shift from God as superior will to God as willing one’s good. But it also allows Finnis to return to the problem that *was* identified as his: «the possibility of a deeper explanation of obligation; the reasonableness of self-sacrifice in human friendship; the relevance of our limited place in human history and the universe; the point of living according to the principles and requirements of practical reasonableness»²³.

²² FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 405.

²³ *Ibidem*.

The final five pages of *Natural Law and Natural Rights* address these questions by way of a condensed set of reflections on four basic goods: friendship, practical reasonableness, play, and religion.

First: granting that God creates as an expression of His own divine goodness, willing the good of that creation, and in a special (participatory) way the good of *personal* creation, makes possible the pursuit of human goods guided by principles of practical reasonableness as an act (ongoing, dynamic) of friendship. In the paradigm case of friendship, each friend wills the good of the other; yet a straightforward path to this is blocked by the fact that God cannot be benefited by any act of ours. Nevertheless, in willing what God wills, and cooperating with God in bringing about what God wills, one does will God's good – *i.e.*, one wills the good that God wills – in an intelligible way. There is thus available a deeper account of obligation; the common good, which all are obligated to promote and foster, can now be pursued for the sake of friendship with God.

Finnis also holds that this understanding of friendship with the divine casts light on the rationality of self-sacrifice for another and the necessity of pursuing the truly *common* good. Our concern for the good of others now becomes incorporated into our willing what is willed by one whose love is extended to others and to ourselves «knowing fully the true worth and all-explaining point of everything, of the existence of every person, and of the history of every community»²⁴. It seems to me that here Finnis gestures at the possibility that friendship with the divine makes possible the theological virtue of *hope*; willing in accordance with the being who loves in this way gives a reason to believe that in some way self-sacrifice for another will be redeemed, a reason that a full embrace of the truths of (revealed) Christianity of course confirms and deepens.

Turning to Plato's reflections in the *Laws*, Finnis then argues that our understanding of practical reasonableness is likewise deepened. Practical reasonableness for Plato is a golden cord, which «works only with our support... The pull of this cord is soft and gentle»²⁵. But the cord itself is precisely a divine gift to us that makes possible our cooperation with God in pursuit of our proper role, whatever that may be –«perhaps as a plaything, perhaps for some serious purpose» (Plato will shortly reduce the apparent distance be-

²⁴ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 406.

²⁵ *Ibid.*, p. 406. Finnis has in mind a passage in PLATO, *Laws*, at 645a.

tween these two possibilities)²⁶. Seen in this light, the demands of practical reasonableness need be understood neither as pursued merely for «self-cultivation», nor as imposing sheer categorical imperatives, but as the constitutive means by which cooperation in the divine plan is to be pursued. Like the good of friendship, practical reasonableness becomes re-situated in a larger, less anthropocentric, framework.

And this brings us to the good of play. On the Athenian Stranger's telling, human beings have been made «as God's plaything, and this, indeed, is the finest thing of all. All of us, men and women, ought to fall in with this role, and spend our lives in playing this noblest of plays»²⁷. As Finnis notes, the «plaything» imagery is somewhat pagan:

«... man the plaything is not, perhaps, man the fellow player in the divine drama of history and eternity, who might be redeemed for friendship with God by God become man. But Christianity has not offered, nor has philosophy provided, any reason to doubt Plato's more fundamental point, that moral obligation, while real enough...is not the framework or finally authoritative category of 'moral' thought. The requirements of practical reasonableness (which generate our obligations) have a 'point' beyond themselves. That point is the *game* of co-operating with God. Being play, that co-operation has no point beyond itself, unless we wish to say that God is such a further 'point'»²⁸.

But, Finnis cautions, we cannot see God as a «further point» in the sense of being a beneficiary of our action, for again, God creates out of no need. God's creation, including his creation of us, must be seen as itself a kind of play, «a free, but patterned expression of life and activity, meaningful but with no further point»²⁹.

Put in more traditional language, God creates for the sake of his glory. In Germain Grisez's summary exposition,

«... the purpose of the whole of creation is divine goodness, considered insofar as it can be expressed in creation. Our fulfillment is to be like God, to manifest his goodness in our being and actions. We are called to live for

²⁶ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 406., referring to PLATO, *Laws*, 644e.

²⁷ *Ibid.*, p. 408, referring to PLATO, *Laws*, 803b.

²⁸ *Ibid.*, p. 409.

²⁹ *Ibidem.*

God's glory, not merely our own happiness. This is not because God is using us, but because our happiness is only part of that larger expression of God's goodness which is the whole of creation». ³⁰

It is worth noting the convergence of the various themes of this paper. God's creation is, like all play, freely expressive, in this case, of his supreme divine goodness; this is central to the notion of creation as manifesting God's glory. Like all play, that creation has its own internal norms of excellence of performance (for there are no external norms to which God in his play could be subject); and, like play considered as a good, *our* realizing those norms in our own «performance» – in our free choices and actions – is constitutive of our own human fulfillment while also being our own cooperation in the fulfillment of God's creative plan – again, the expression and communication of his glory.

This bears upon Finnis's treatment of the fourth of the goods, religion, that he addresses in the final pages of *NLNR*. Religion involves not merely knowledge of God, but a form of harmony with God in which there is a shared will. The harmony is that of friendship, as has been seen, but here the form of friendship is clearly one that passes freely back and forth between the boundaries of the «paradigmatic case», in which each seeks the good of the other, and friendship of play, in which the common good of the friends is that there should be a good «play of the game».

IV. IMPLICATIONS OF FINNIS'S ACCOUNT

What to make of all this? I believe that the account in Chapter XIII, drawing on Plato's portrayal of man the divine plaything but going beyond that, is itself of intrinsic interest; it appears to me to succeed in making clear that there *is* a «further point» of morality, namely, the good play of the Divine game, that deepens our understanding of moral obligation and the reasonableness of self-sacrifice. In this final section, I wish to draw attention to two additional implications of this account.

³⁰ GRISEZ, G., *The Way of the Lord Jesus: Christian Moral Principles*, Franciscan Press, 1983, p. 460; for a helpful articulation of the difference between God's intrinsic and extrinsic glory, and argument that only God's intrinsic glory can be God's ultimate end (*finis operantis*) of creation, see DONNELLY, J., «St. Thomas and the Ultimate Purpose of Creation», *Theological Studies*, vol. 4, 1943, p. 53.

IV.1. *Nagel and the question of life's meaning*

As noted above, Thomas Nagel argues in «The Absurd» that there is a difficulty with our search for further justification for our actions, the sorts of justifications that, we think, would reveal our lives to be meaningful in some ultimate sense. Nagel does not deny that our actions find justifications, indeed terminal justifications of the sort that reference to basic goods provides. However, he believes that there is a vantage point – a step back, from which we view our lives *sub specie aeternitatis* – from which our aims appear contingent and arbitrary: they appeal to us because, and merely because, of who we are: persons of this particular sort.

Faced with this, our inclination is to seek a broader standpoint, from within which we may situate our concerns as more ultimately meaningful; usually, says Nagel, what is sought is «a role or function in something larger than» oneself. But «a role in some larger enterprise cannot confer significance unless that enterprise is itself significant. And its significance must come back to what we can understand, or it will not even appear to give us what we are seeking»³¹. But then, once again, our ultimate justifications are coming to an end in something that is intelligible to us «merely» because of who we are: persons of this particular sort. We cannot escape a kind of relativity of what matters to us if it is still to matter *to us*, and Nagel explicitly singles out «the glory of God» as a meaning-giver that is still able to be called into question.

One might respond – Nagel himself suggests this – by holding that the standpoint from which Nagel's worries arise does not really exist, and I am sympathetic to this approach, and doubtful that Nagel's response to it is sound. The standpoint for critical reflection on human action and human goods is a human standpoint, not the view *sub specie aeternitatis*, an error that infects Nagel's earlier work in *The Possibility of Altruism* as well³². But here, I wish to take on Nagel's argument directly, with the resources provided by Finnis. For understanding the meaning of what one does – everything that one does – in terms of its playing a role in the divine game situates our actions in a way that it seems to meet the dual considerations that Nagel thinks cannot be jointly satisfied: the Platonic standpoint adopted by Finnis possesses the immanence

³¹ NAGEL, «The Absurd...», *op. cit.*, p. 16.

³² NAGEL, T., *The Possibility of Altruism*, Princeton University Press, 1979.

that makes our action intelligible, and a kind of final transcendence that puts our action beyond the domain of the arbitrary and contingent.

Nagel overlooks, it seems to me, the possibility of the ultimate reason for God's creative activity being an expression of his goodness, rather than an attempt to seek some extrinsic purpose. Granted the existence of a being of the sort Finnis argues God must be, then there can be no worry of an absence of *meaningfulness* of this being's freely chosen self-expressive activity, for the divine being is the condition of all possible meaning. Nagel makes a claim that is, I believe, ultimately fatal:

«Camus maintains in the Myth of Sisyphus that the absurd arises because the world fails to meet our demands for meaning. This suggests that the world might satisfy those demands if it were different. But now we can see that this is not the case. There does not appear to be any conceivable world (containing us) about which unshakable doubts could not arise. Consequently, the absurdity of our situation derives not from a collision between our expectations and the world, but from a collision within ourselves».³³

But this proves too much if its upshot is that God's life too must contain unshakable doubts. Were God to create in order to bring about some extrinsic state of affairs as his ultimate end, Nagel's objection would have purchase; however, as I have noted, this misconceives the nature of divine action which in no way emerges from lack or need. And there is no standpoint *sub specie aeternitatis* that stands *outside* the framework of the divine wisdom-goodness-intelligibility of that being from which it could call into question the meaning of its own freely chosen expressive activity.

So, there exists a transcendent source of action that is impervious to Nagelian doubt. Yet at the same time, the convergence of what action for such a being must be like with our own understanding of the good of play, and the possibility of our action being incorporated into that being's own play in a cooperative friendship of play means that its purposes are not *so* distant from ours that we cannot find further meaning, of the sort that eliminates worry about arbitrariness and contingency, in our own action by situating it in relation to that being's action.

³³ NAGEL, T., *The Possibility of Altruism*, Princeton University Press, 1979, p. 17.

IV.2. *The authority of law*

The second issue I wish to consider in light of Finnis's reflections at the end of *NLNR* is the well-worked question of the authority of law. Does law, as such, obligate us? Some have denied that it does; Joseph Raz, for example, holds that it is the coordination that law makes possible that obligates. How that coordination is brought about is of little matter: custom, persuasion, law – what matters for generating an obligation to Φ is that others' actions will be coordinated with one's own in Φ -ing³⁴.

Against this, Finnis has consistently argued that the fact that there is (a) law – e.g., against polluting a river, in his example – «does create sufficient moral reason...to comply; that is to say, the law is (morally as well as legally) authoritative»³⁵. Finnis argues for this on the following grounds.

First, the law «presents itself as a seamless web»³⁶. That is, it holds itself as authoritative and demanding compliance across an immensely wide range of persons, times, and acts. Its subjects are not permitted to pick and choose. Thus each subject of the law is equally situated in regard to the rest in relation to the law's demandingness; yet that equality, when law is well made, goes further: each is equally situated because the law, in making these equal demands, roughly benefits all equally, albeit in different ways, favoring some on one point, while burdening them on another. Thus, any individual, unhappy with his own legally created burdens in some particular case, «can reflect that he has been or at some time will be benefited by the burdens which the law will impose on others...»³⁷. So reasons of fairness are available to motivate compliance.

Further, law has «procedural» features that further make it salient to individuals seeking an answer to the question «what ought I to do?» Law offers «relatively prompt but also relatively clear and subtle solutions to coordination problems as they emerge and change»; within the confines of the Rule of Law, law's solutions to problems will be «relatively discriminating but

³⁴ RAZ, J., *The Authority of Law*, Clarendon Press, 1979. For a more recent criticism of Finnis drawing on Raz's work, *vid.*, CROWE, J., «Coercion and the Prima Facie Duty to Obey the Law», *Persona y Derecho*, vol. 81, 2019, p. 11.

³⁵ FINNIS, J., «Law as Coordination», *Philosophy of Law: Collected Essays Volume IV*, Oxford University Press, Oxford, p. 70.

³⁶ *Ibid.*, p. 71.

³⁷ *Ibid.*, p. 71.

non-discriminatory»³⁸; those who comply will not, in Hart's words, «go to the wall», but can count on «free-riders and other deviants» to be adequately addressed; and law is, in its origins, relatively immune from «the unfairnesses perpetuated by enthusiasts who demand conformity to their exhortations, propaganda, or customs, and would press these demands in ways ill-adapted to finding and acting on the truth»³⁹.

In light of these two reasons, the law «gives everyone a moral reason to collaborate with the law's coordination solutions, that is, moral reason to regard the law as (morally) authoritative». That interest is both in the regular upholding of the law itself, and in there being «and continuing to be...a fair method of relating benefits to burdens and persons to persons, over an immensely wide, complex, and lasting though shifting set of persons and transactions – a method which nothing other than law plausibly offers»⁴⁰.

Here, we should recall the opening sentence of *Natural Law and Natural Rights*: «There are human goods that can be secured only through the institutions of human law, and requirements of practical reasonableness that only those institutions can satisfy»⁴¹. Law meets a set of practical necessities that otherwise *will not be met*; and this undergirds the law's reasonable claims to authority. Accordingly, the human creation of law should be considered one of the foundational achievements of civilization; as Finnis says of H.L.A. Hart, Hart's work should prompt further development of considerations of justice and the common good «which include the general principles of legality and law common to *civilized* peoples...»⁴².

So, let me close this essay with some thoughts on the question of how this discussion about civilization, law, and law's authority overlaps with the paper's discussion of play and more specifically the «theology of play» found in Chapter XIII of NLNR. We have seen Finnis criticize Rawls's understanding of the point or shared end of institutions such as the family or the state as «the successful *carrying out* of just institutions». Finnis held that this assimilated the

³⁸ FINNIS, J., «Law as Coordination», *Philosophy of Law: Collected Essays Volume IV*, Oxford University Press, p. 71.

³⁹ HART, H.L.A., *The Concept of Law* [1961], The Clarendon Press, Oxford, 2nd ed., 1994, p. 198; FINNIS, «Law as Coordination», *op. cit.*, p. 71.

⁴⁰ *Ibid.*, pp. 71-72.

⁴¹ FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 3.

⁴² FINNIS, J., «On Hart's Ways: Law as Reason and as Fact», *Philosophy of Law: Collected Essays Volume IV*, *op. cit.*, p. 256.

work of, *e.g.*, the law «too closely to games in which ‘a good play of the game’ *is* the shared final end». For well-ordered institutions, the final end is human flourishing.

That is certainly true. But asserting this does not imply a denial that *a* point or shared end of such institutions is their shared «carrying out» by individuals who inhabit those institutions. The creation of the law – through, in large part, the drafting of enactments, but also through custom and judgments – when done well, can and should be seen as analogous to God’s creation⁴³. Unlike that creation, the law cannot be seen as purely expressive of its creators’ own goodness; and its creators’ purposiveness – their intention to realize certain states of affairs (yet ongoing and dynamic states of affairs!) is central to the nature of their real *work*. Yet that work, like all worthwhile work, can be undertaken also in a spirit of play, a spirit of excellence in performance for its own sake.

And like the divine creative play, the play of lawmaking leaves persons with *a world* – a legal world – which they inhabit in large part by internalizing the reasons for action offered them within that world⁴⁴. As in our response to divine creation, human persons fortunate enough to inhabit such a world can:

- Act for the sake of a kind of friendship with those who made the laws, and with those (others) for whom the law is made, a friendship Finnis characterizes as political friendship (*philia politike*)⁴⁵;
- Act thusly only if motivated by the «golden cord» of reason, and not merely their animadversion to penalty or sanction; and
- Thereby *play* their part in the *game* of a legally created or constituted world – a civilization – in addition to the serious work of seeking its obviously essential further ends of justice and peace.

⁴³ For a discussion of the creation of law through legislation when done well, *vid.*, WEBBER, G., *et al.*, *Legislated Rights: Securing Human Rights Through Legislation*, Cambridge University Press, 2018.

⁴⁴ *Vid.*, for example, Finnis’ discussion on pp. 282-3 on *Natural Law and Natural Rights* of the way in which the legislative draftsman «sees the desired future social order from a professionally structured viewpoint, as a stylized and manageable drama», with characters, situations, costumes, and relationships, all of which must be specified in legislative imagination and action. The creation of the law is thus, I would argue, an instance of what JRR Tolkien called «sub-creation», which Tolkien perhaps too closely associated with literary creation. *Vid.*, TOLKIEN, J.R.R., «On Fairy-stories», *Tree and Leaf*, Harpercollins, 2001.

⁴⁵ FINNIS, J., «Law’s Authority and Social Theory’s Predicament», *Philosophy of Law: Collected Essays Volume IV*, *op. cit.*, p. 50.

And this too can be seen as a source of the authority of law. It is *not* the deepest source of that authority; indeed, the order is rather reversed from Finnis's exposition in Chapter XIII of *NLNR* which puts the good play of the game of God's creation at the heart of moral obligation. Here, the ends of the law generate the moral obligation to obey in the deepest sense; and participation in the play of the law supervenes as a less essential, but still real, answer to the question Why does law have authority?

Yet there is one further possible step, for in playing one's part in the creating or inhabiting of law:

- One thereby *also* contributes to the playing of the divine game within which the creating and inhabiting of the law are «moves»; one thereby builds up the Kingdom of God.

Thus, we return to the most fundamental ground of obligation.

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