

## Intelligibility, Practical Reason and the Common Good

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The new natural law theorists, such as Germain Grisez, John Finnis and Joseph M Boyle, argue that intentional human action is oriented towards a plurality of basic goods.<sup>1</sup> This focus on the role of the good in orienting action—and its subsequent implications for practical reason, politics and law—is a recurring and central theme of the natural law tradition. The basic goods, according to the new natural law theorists, render human action *intelligible*. The intelligibility of an action does not guarantee its reasonableness: that depends on whether the action is oriented towards the basic goods in a way that meets the requirements of practical rationality. However, an action that fails to be intelligible will fail to be reasonable, because it is not directed at any underlying good. The intelligibility of an action, on this view, is therefore a necessary, but not sufficient, condition for its reasonableness.

What, then, does it mean for an action to be intelligible or unintelligible? The new natural law theorists have relatively little to say about this question, beyond describing the role of the basic goods in guiding human action. The present chapter builds on this account to argue that actions are intelligible or unintelligible relative to a context of social practices. This understanding of intelligibility reveals an important connection between the basic goods and the common good. The common good, understood as the project of creating a society that offers a wide and generally accessible array of modes of human flourishing, not only facilitates pursuit of the basic goods, but makes the goods possible. It does this by creating a context within which judgments can be made about the intelligibility of intentional conduct.

### The Basic Goods

The basic goods, for the new natural law theorists, capture all the worthwhile ends of human action. There is broad agreement among contemporary natural law authors that the following values belong on the list of basic goods: life, knowledge, friendship,

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<sup>1</sup> See, for example, John Finnis, *Natural Law and Natural Rights* (OUP, 2<sup>nd</sup> ed, 2011); Germain Grisez, *The Way of the Lord Jesus: Christian Moral Principles* (Franciscan Press, 1983); Germain Grisez, Joseph M Boyle and John Finnis, *Nuclear Deterrence, Morality and Realism* (OUP, 1987); Germain Grisez, Joseph M Boyle and John Finnis, 'Practical Principles, Moral Truth and Ultimate Ends' (1987) 32 *American Journal of Jurisprudence* 99.

recreation, spirituality, aesthetic experience and practical reasonableness.<sup>2</sup> However, even this list is by no means uncontested. Other basic goods defended by some authors, but challenged by others, include pleasure,<sup>3</sup> physical and mental well-being,<sup>4</sup> creativity,<sup>5</sup> inner peace,<sup>6</sup> self-integration,<sup>7</sup> family<sup>8</sup> and excellence in work and play.<sup>9</sup> I have argued in detail elsewhere that there are nine basic forms of good for humans: *life, health, pleasure, friendship, play, appreciation, understanding, meaning* and *reasonableness*.<sup>10</sup> However, this list is just one possible way of classifying the normative aims that provide the structure for human behaviour.

Grisez and Finnis describe the basic goods as 'pre-moral'. It is useful to break this idea into two parts. In the first place, it can be understood as capturing the *pre-reflective* nature of the basic goods.<sup>11</sup> The basic goods provide the inescapable background context within which the capacity for moral reflection is exercised. In this respect, they differ from any substantive moral principles that one might formulate after reflecting upon the demands of practical rationality.

Grisez and Finnis's description of the basic goods as pre-moral also conveys something about their normative character. The basic goods do not, in and of themselves, reveal specific actions as morally right or wrong.<sup>12</sup> They are concerned not with the moral correctness of human actions, but rather with their *intelligibility*. An action that is not directed at one or more basic goods is not necessarily morally wrong, but rather irrational or incoherent. The converse is, of course, also true: an action that is directed

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<sup>2</sup> See, for example, Finnis (n 1) ch 3-4; Grisez (n 1) 121-5; Sophie Grace Chappell, *Understanding Human Goods* (Edinburgh University Press, 1998) 37-45; Gary Chartier, *Economic Justice and Natural Law* (CUP, 2009) 7-13; Alfonso Gómez-Lobo, *Morality and the Human Goods* (Georgetown University Press, 2002) ch 2; Mark C Murphy, *Natural Law and Practical Rationality* (CUP, 2001) ch 3.

<sup>3</sup> Support for the basic good of pleasure can be found in Chappell (n 2) 38; Chartier (n 2) 10 n 26. For a contrary view, see Murphy (n 2) 96-100.

<sup>4</sup> Chappell (n 2) 39. Other theorists treat physical and mental well-being as an aspect of the good of life. See, for example, Finnis (n 1) 86-7; Murphy (n 2) 101-5.

<sup>5</sup> Chartier (n 2) 7.

<sup>6</sup> Murphy (n 2) 118-26; Chartier (n 2) 7.

<sup>7</sup> Grisez (n 1) 123-4; Christopher Tollefsen, 'Lying: The Integrity Approach' (2007) 52 *American Journal of Jurisprudence* 273. For a contrary view, see Gary Chartier, 'Self-Integration as a Basic Good' (2007) 52 *American Journal of Jurisprudence* 293.

<sup>8</sup> Gomez-Lobo (n 2) 13-14.

<sup>9</sup> Murphy (n 2) 111-14.

<sup>10</sup> Jonathan Crowe, *Natural Law and the Nature of Law* (CUP, 2019) ch 2.

<sup>11</sup> For further discussion, see Jonathan Crowe, 'Pre-Reflective Law' in Maksymilian Del Mar (ed), *New Waves in Philosophy of Law* (Palgrave Macmillan, 2011).

<sup>12</sup> For useful discussion of this point, see Robert P George, 'Recent Criticism of Natural Law Theory' (1988) 55 *University of Chicago Law Review* 1371.

at one or more basic goods is not, by that fact, morally permissible. Wrongful actions may nonetheless be intelligible; they may, for example, pursue a worthwhile and recognisable human end by illegitimate means.

The basic goods play a central role in the substantive theories of practical rationality presented by Grisez, Finnis and other natural law authors. A complete theory of practical rationality, however, must supplement the basic goods with an account of the principles that explain why particular courses of action are morally permissible or prohibited. It is these principles that Finnis describes as the 'requirements of practical reasonableness';<sup>13</sup> other authors prefer to call them 'modes of responsibility' or aspects of the good of 'excellence in agency'.<sup>14</sup> These principles tell us what it means to engage *non-defectively* with the basic goods.

I have argued elsewhere that the basic goods give rise to two fundamental kinds of normative reasons: reasons to participate in the goods and reasons not to harm others in their participation in the goods.<sup>15</sup> This is broadly in line with the picture of practical rationality advanced by the new natural law theorists, although my account of the content of these reasons differs from theirs in important respects. For example, one of the core tenets of practical reasonableness, according to Finnis, is that we must remain open to the basic goods in every intentional action. He concludes from this that we must never act so as to deliberately impede any instance of a basic good.<sup>16</sup> I argue, by contrast, for the weaker claim that we have presumptive reason never to intentionally impede a person's pursuit of the goods.<sup>17</sup> On either view, however, the basic goods play a central role in practical rationality.

### **Intelligibility and Context**

My aim in this chapter is to further explain the sense in which the basic goods render human action intelligible. The central point I want to make here is that intelligibility is at least partially dependent on context. An utterance or action is rendered intelligible by a context that enables us to make sense of the intention or purpose behind it. We must share enough of the agent's interpretive context to enable us to understand (or at least conjecture) *why* she is acting as she does.

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<sup>13</sup> Finnis (n 1) ch 5.

<sup>14</sup> See, for example, Grisez (n 1) ch 8; Murphy (n 2) 114-18.

<sup>15</sup> Crowe (n 10) ch 3.

<sup>16</sup> See, for example, Finnis (n 1) 118-25.

<sup>17</sup> Crowe (n 10) ch 3.

A theory of the basic goods rests on the premise that there is a pre-moral context for action that is shared by all humans. In other work, I have fleshed out this picture in the following way.<sup>18</sup> Humans are characteristically inclined to pursue and value certain kinds of objectives in their lives. These inclinations give rise, over time, to social norms and institutions. The fact that the inclinations are common to all humans means there is, in principle, sufficient commonality in human institutions and practices across cultural contexts to identify intelligibility conditions shared by all.

The notion that humans take for granted certain intelligibility conditions when interpreting their own motivations and those of other people does not entail that everyone has some sort of direct access to a realm where these conditions are revealed. Rather, everyone arrives at an understanding of the basic goods by interpreting social practices in their own community. A theory of the basic goods, then, is at least as much an interpretive theory of social practices as it is an ontological account of human nature. We can test any putative list of basic goods by assessing whether it coheres with a plausible hermeneutics of social life.

The idea that the basic goods provide the pre-moral context for practical deliberation, understood in this way, has significant common ground with the theory of social practices offered by Alasdair MacIntyre. MacIntyre famously explains his concept of a practice in the following terms:

By a 'practice' I am going to mean any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realised in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, *and human conceptions of the ends and goods involved*, are systematically extended.<sup>19</sup>

This definition of a practice is susceptible of both relativist and universalist interpretations. A relativist interpretation of the passage would hold that human practices and the goods associated with them are wholly a product of evolved social institutions. A universalist interpretation would hold that, although human practices and goods can and do differ between social contexts, they have common elements attributable to facts about human nature. This second interpretation is consistent with the account of the basic goods offered here.

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<sup>18</sup> Ibid ch 1.

<sup>19</sup> Alasdair MacIntyre, *After Virtue* (University of Notre Dame Press, 3<sup>rd</sup> ed, 2007) 187.

A theory of the basic goods, then, can be understood as an attempt to analyse the social practices and goods found in various communities with a view to uncovering the common elements attributable to our shared human inclinations. Each person can therefore test the theory for themselves by asking, first, whether it affords a plausible hermeneutic account of the practices found in their specific social and cultural setting and, second, whether it offers a plausible general taxonomy of the underlying forms of good pursued through those practices. This hermeneutic reflection can be supplemented through imaginative engagement with the person's own experiences of intentional action and practical choice.

The debate between relativism and universalism in this context has important implications for the notion of the common good. The notion of the common good can be understood in *thick or thin* senses.<sup>20</sup> A thick notion understands the common good as facilitating the pursuit of shared values by members of the community, while a thin notion views the common good in terms of a set of formal rights and duties. An account of the common good can also be either *narrow or wide*.<sup>21</sup> A narrow conception sees the common good as limited to individual communities, while a wide conception extends the common good to encompass the whole of humanity. A relativist approach to practices and goods suggests either a thin conception of the common good focusing on formal rights or a thick and narrow conception restricted to individual communities. A universalist account of the basic goods, by contrast, provides the foundation for a cosmopolitan understanding of the common good based on shared human values. This thick and wide conception is only tenable if the basic goods (or some subset thereof) are genuinely common to all humans.

Some of MacIntyre's language in *After Virtue* seems to suggest that he understands the notion of a practice in a relativist sense. For example, he argues that practices and goods arise in the context of a 'living tradition', which represents 'an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition'.<sup>22</sup> Traditions will wither and die if the relevant forms of good cease to be recognised and pursued.<sup>23</sup> This seems to indicate that human goods are contingent on their social setting. Indeed, MacIntyre comments later that 'the subject matters of moral philosophy [...] are nowhere to be found except as embodied in the historical lives of particular social groups'.<sup>24</sup>

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<sup>20</sup> Crowe (n 10) ch 4.

<sup>21</sup> Ibid.

<sup>22</sup> MacIntyre (n 19) 222.

<sup>23</sup> Ibid 222-3.

<sup>24</sup> Ibid 265.

MacIntyre's later works, however, are more hospitable to the notion that practices occur within a universal context of human nature.<sup>25</sup> The development of practices and traditions, he says in *Dependent Human Animals*, 'has as its starting point our initial animal condition',<sup>26</sup> meaning that facts about human biology are relevant to moral enquiry. He goes on to note that:

What it means for human beings to flourish does of course vary from context to context, but in every context it is as one exercises in a relevant way the capacities of an independent practical reasoner that her or his potentialities for flourishing *in a specifically human way* are developed.<sup>27</sup>

The account of basic goods outlined in this chapter can be understood as an attempt to explore what it means to flourish *in a specifically human way*, without denying that the forms human flourishing takes will be partially dependent on the practices and traditions of individual communities.

## **The Common Good**

I suggested above that theories of the common good can be thick or thin, as well as narrow or wide. What, then, is the common good and where does its value come from? Mark Murphy helpfully identifies and evaluates three possible conceptions of the common good: the *instrumental* view, the *distinctive* view and the *aggregative* view.<sup>28</sup> The instrumentalist conception treats the common good as comprising those conditions that are necessary or helpful for members of the community to pursue their own worthwhile ends. This tends to yield a thin view of the common good focused on formal rights and duties. Finnis is perhaps the leading proponent of an instrumental view of the common good.<sup>29</sup> The common good, according to Finnis, is best conceived as a collection of 'material and other conditions that tend to favour the realisation, by each individual in the community, of his or her personal development'.<sup>30</sup> This understanding of the common good 'neither asserts nor entails that the members of a community must all have the same values or objectives'.<sup>31</sup>

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<sup>25</sup> For useful discussion, see Jean Porter, 'Tradition in the Recent Work of Alasdair MacIntyre' in Mark C Murphy (ed), *Alasdair MacIntyre* (CUP, 2003).

<sup>26</sup> Alasdair MacIntyre, *Dependent Rational Animals* (Open Court, 1999) x.

<sup>27</sup> *Ibid* 77 (emphasis added).

<sup>28</sup> Mark C Murphy, *Natural Law in Jurisprudence and Politics* (CUP, 2006) ch 3. For further discussion, see Crowe (n 10) ch 4.

<sup>29</sup> Finnis (n 1) 154-6. See also John Finnis, 'Is Natural Law Compatible with Limited Government?' in Robert P George (ed), *Natural Law, Liberalism and Morality* (OUP, 1996).

<sup>30</sup> Finnis (n 1) 154.

<sup>31</sup> *Ibid* 156.

The distinctive conception, by contrast, conceives the common good as a state of affairs with intrinsic worth for the community as a whole, independent from the individual goods of members of that community. It captures the idea that there is inherent value in participating in the basic goods in common with others and that this value cannot be reduced to either a set of material conditions or the aggregation of the basic goods as they figure in individual lives.<sup>32</sup> The distinctive conception therefore yields a thick conception of the common good, since it identifies the common good with participation in a specific form of value.

Finally, the aggregative conception presents the common good as consisting in the realisation of some set of individual intrinsic goods belonging to individuals. This is Murphy's preferred conception.<sup>33</sup> The aggregative conception, as presented by Murphy, focuses on the connection between the duty to promote the common good and the reason each person has to pursue and value the basic goods in her life and the lives of others. It therefore adopts a thick view of the common good: the common good is nothing more than the aggregation of the particular set of goods that enable the community members to flourish.

Murphy, as we have seen, presents the three conceptions of the common good identified above as alternatives. He argues against the instrumental and distinctive conceptions and in favour of an aggregative view. It seems to me, however, that a more fruitful analysis of the common good would regard the instrumental, distinctive and aggregative notions, not as competing conceptions, but as different dimensions of the common good as a whole.<sup>34</sup> There is no inconsistency—and much explanatory and normative power—in a theory of the common good that regards each view as capturing something important about the notion.

One dimension of the common good—captured by the instrumental account—is the set of rights and duties that provide the framework for harmonious social life. These rights and duties provide clarity and stability in social relations and thereby create space for each individual member of the community to pursue the basic goods in her life. A second dimension of the common good—captured by the distinctive conception—relates to the role of friendship or social connectedness in a fulfilling life. Friendship or social connectedness, encompassing both close personal relationships and more extended

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<sup>32</sup> For discussion and defence of the distinctive conception, see Louis Dupré, 'The Common Good and the Open Society' (1993) 55 *Review of Politics* 687; Ralph MacInerney, 'The Primacy of the Common Good' in *Art and Prudence: Studies in the Thought of Jacques Maritain* (University of Notre Dame Press, 1988).

<sup>33</sup> Murphy (n 28) ch 3.

<sup>34</sup> See also Crowe (n 10) ch 4.

forms of community, is a basic form of good.<sup>35</sup> A person who participates in the common good by valuing other people's projects alongside her own thereby participates in the good of friendship. Social connectedness of this sort is integral to an integrated and flourishing life. This distinctive aspect of the common good cannot be reduced to a purely instrumental perspective.

A third dimension of the common good—captured by the aggregative view—concerns the existence of normative reasons to support others in their pursuit of the basic goods. The distinctive view suggests that we have reason to promote the common good because it is good for us to be socially connected. However, we also have reason to promote the common good because we have reason to support participation in the goods by other members of the community. The project of supporting others in their pursuit of the basic goods is valuable and worthwhile independently of the fulfilment we might personally derive from it. This other-oriented dimension of the common good captures something important about political communities that supplements the instrumental and distinctive perspectives.

### **Practical Reason and Community**

I argued earlier in this chapter that the intelligibility provided by the basic goods is intelligibility relative to a social context. This conception of intelligibility gives us additional reason to affirm the indispensability of the distinctive aspect of the common good. It is only by way of hermeneutic engagement with one or more social contexts that we can identify universal modes of human flourishing. The basic goods are therefore necessarily socially embodied. This is true in both epistemological and ontological senses. It is by observing different communities that we form knowledge about what values and principles are universal. More fundamentally, it is the fact that the basic goods provide guidance for humans in a range of social settings that make them basic goods in the first place. The basic goods are those objectives that are intrinsically good for humans, given both the nature that we have and the diverse social predicaments in which we find ourselves.

The basic goods supply us with normative reasons. It is natural to think of normative reasons as directing our actions or telling us what we ought to do. Reasons do, indeed, frequently operate in this way: they direct or constrain our actions by revealing the fitting response to a particular situation. However, strictly speaking, it is only decisive reasons that play this kind of role. Most normative reasons we encounter in our lives are pro tanto reasons: they do not tell us what to do, but merely provide us with

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<sup>35</sup> See *ibid* ch 2.



considerations that count for or against a particular course of action.<sup>36</sup> We must then weigh these reasons against each other in deciding how to act. This process may ultimately yield decisive reasons that tell us what to do. However, there are many situations—even highly morally significant ones—where the balance of normative reasons leaves our ultimate actions underdetermined.

Normative reasons, then, do not simply direct our behaviour. It seems more accurate to describe them as playing a dual role in practical deliberation: they supply a *baseline* for action by ruling out certain impermissible options; and they serve as a *framework* by identifying considerations that agents must take into account. This account of normative reasons helps to explain their role not only in the lives of individual actors, but also in the lives of communities. The issues of how people should act in a community setting and how communities should best be organised arise against the background context of normative reasons more generally.

Political philosophy, in other words, takes place against the backdrop of practical reason; the role of practical reason in this context is, first, to provide baseline constraints on the scope of permissible political action and institutional design and, second, to highlight basic values and reasons that must be taken into account. The requirements of practical reason, in turn, are the product of hermeneutic engagement with the social contexts with which we are familiar. The basic goods, in this sense, set constraints upon the common good, but they are themselves a product of our best interpretation of our social environment. There is therefore a dialectical interplay in political philosophy between the basic goods and the common good, where each is at least partially constitutive of the other.

The dual role of practical reason means that a community in working out its governance arrangements is always looking both within and beyond itself. It looks within itself to identify the basic goods and requirements of practical reason, but beyond itself to ascertain whether these goods and requirements are truly common to humanity. This combination of endogenous and exogenous processes also shapes the common good. The common good represents a state of affairs that is good for all members of a community: it embodies a community structure that enables all members to lead flourishing lives by participating in the basic goods. The common good, as we have seen, is in one sense constrained by the basic goods, since they supply the reasons that we have to order our communities in certain ways and not others. There is another sense, however, in which the common good not only facilitates pursuit of the basic goods, but makes the goods themselves possible. This is because the goods are the intelligibility

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<sup>36</sup> For further discussion, see *ibid* ch 3.

conditions of intentional action and intelligibility, as we have seen, involves interpreting the practices we adopt as a community.

It follows from this that social institutions can either help or hinder the process of instituting and sustaining the basic goods that are common to all humans. They might help this process if they allow humans to engage freely in a range of meaningful behaviours, thereby creating practices that are conducive to their flourishing. They might hinder this process if they put in place hierarchies and power structures that hinder some or all members of the community from engaging in moral self-expression. An environment of the latter kind will hinder the quest for human self-understanding by distorting our hermeneutic engagement with the basic goods and replacing it with localised social norms and prejudices.

The question of what kinds of social conditions are most conducive to creating and sustaining basic goods is a complex one. I have suggested elsewhere that a community characterised by robust and general respect for negative freedom, balanced against a limited but more weighty set of positive rights to assistance in securing certain fundamental goods such as housing, education and health care, is most likely to fulfil this role.<sup>37</sup> However, the question goes beyond the basic political structure of the community to encompass a range of more complex social and cultural factors. MacIntyre's critique of what he calls 'modern systematic politics' in *After Virtue* can be understood as an attempt to understand how a particular kind of political culture can distort our grasp of basic forms of value.<sup>38</sup>

My final point for present purposes, however, is that the role of the common good in sustaining the basic goods represents a sense in which the common good cannot be reduced to a merely *instrumental* conception—as comprising those conditions that are necessary or helpful for members of the community to pursue their own worthwhile ends—or an *aggregative* conception—as consisting in the realisation of some set of intrinsic goods belonging to individuals. These two conceptions of the common good, while useful, are incomplete, because they cannot account for the role the common good plays in bringing the basic goods about.

A full understanding of the common good, then, requires reference to the *distinctive* dimension of the concept, which conceives the common good as a state of affairs with intrinsic worth for the community as a whole. The distinctive conception, as I described in previously, captures the idea that there is inherent value in participating in the basic

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<sup>37</sup> Ibid ch 5.

<sup>38</sup> MacIntyre (n 19) 255.

goods in common with others and that this value cannot be reduced to either a set of material conditions or the aggregation of the basic goods as they figure in individual lives. However, we can go further and say that the common good consists at least partly in providing the intelligibility conditions for human action, thereby making it possible for there to be basic goods in the first place. A certain kind of community environment may well be conducive to full participation in the basic goods, but it is also a precondition for having basic goods at all.