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## Socialism for the Natural Lawyer

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# Socialism for the Natural Lawyer

## Abstract

Increased participation in public affairs by the U.S. Conference of Catholic Bishops during the highly contentious 2012 Presidential election has seemingly brought the traditions of Catholic social teaching and socialism into a high profile conflict. While it is clear that President Obama is not what most academics would consider a “socialist,” modern discourse still presents what I argue is a false dichotomy- one can be either endorse natural law (especially of the Catholic variety) or socialism, but not both.

While my goal in this article is to refute the alleged incompatibility, not to determine its historical roots, some speculation about its origin may be illuminating. Recent work on religious identity in the United States suggests that Americans largely identify Christianity with the right wing of the American culture war. Additional research is required to fully grasp where this perception comes from, but one can venture several guesses: the rise of the “Christian Right” in Republican Party politics of the late 1990s and early 2000s, the concept of “social justice” being lampooned by Right-wing talk show hosts, and decades of a Catholic Church that firmly opposed Cold War-era Soviet Communism. The contrast between left-wing and right-wing thought on *social* issues (same-sex marriage, abortion, etc.) is very well documented and widely discussed. Differences between leftists and natural lawyers on *economic* issues, however, are more often assumed than argued for. Perhaps this is a matter of “guilt by association,” with those arguing that leftist social policy is at odds with natural law simply assuming that the same must be the case with leftist economic policy as well. Thus, natural law, long tied to Christianity throughout its history, is gratuitously appropriated by right-wing political ideology.

Against this claim of incompatibility, I argue that one can rationally hold both socialism and natural law to be true. In his landmark *Natural Law and Natural Rights*, John Finnis offers what is arguably the twentieth century’s most complete theory of natural law. I will argue that the conception of socialism laid out by G.A. Cohen in his *Why Not Socialism?* is compatible with Finnis’s account of the human goods, and that natural lawyers can therefore reasonably endorse Cohen’s prescription for socialism.

## Cover Page Footnote

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Against this claim of incompatibility, I argue that one can rationally hold both socialism and natural law to be true. In his landmark *Natural Law and Natural Rights*, John Finnis offers what is arguably the twentieth century’s most complete theory of natural law. I will argue that the conception of socialism laid out by G.A. Cohen in his *Why Not Socialism?* is compatible with Finnis’s account of the human goods, and that natural lawyers can therefore reasonably endorse Cohen’s prescription for socialism.

Cohen’s account of socialism calls for a particular set of moral principles to be instantiated in our legal and economic systems. Finnis, in turn, acknowledges that some values can, without transgressing the natural law itself, be expressed over others in a given legal system. I will argue that Cohen’s support of values different from those of the capitalist is not in principle incompatible with natural law as presented by Finnis.

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<sup>1</sup> Kinnaman, David, *unChristian: What a New Generation Really Thinks*, Baker Publishing Group, Michigan, 2007, pp. 92-97

## I. Preliminaries

### *Why Finnis?*

Natural law has a long and varied history, spanning thousands of years and thousands of distinct thinkers. The decision to discuss Finnis's work here, rather than some other natural lawyer's, is based on several factors: modernity, orthodoxy, depth of analysis, and political neutrality.

First, Finnis is a *modern* example of a natural lawyer. As this paper is largely inspired by contemporary political realities, I feel it necessary to provide a treatment of a contemporary thinker. While few would argue against the contention that, say, Thomas Aquinas<sup>2</sup> is a paradigm example of a natural lawyer, he is not sufficiently modern for my purposes. That said, Finnis himself offers an argument for treating Aquinas as the paradigm:

[Aquinas synthesized] his patristic and early medieval predecessors and ... [fixed] the vocabulary and to some extent the doctrine of later scholastic and, therefore, early modern thought.<sup>3</sup>

Likewise, I assert that Finnis has synthesized the work of Aquinas and the natural lawyers of the late medieval period, setting natural law against the twentieth century backdrop of legal positivism. Finnis has thus produced a contemporary theory of natural law that is well suited to the treatment I will present here.

Second, in synthesizing the work of past natural lawyers, Finnis has remained an *orthodox* example of a natural lawyer. Though he has clearly added to this area of legal philosophy, being widely read and studied in undergraduate and graduate programs across the planet, he has remained firmly within the natural law tradition. To put it simply, hardly anyone would argue that he is not a natural lawyer—on the contrary, the modern conception of a natural lawyer is quite closely linked to his work.

Third, I have selected Finnis for the *depth* of his analysis. As an analytic philosopher (rather than, say, a novelist), Finnis has gone to great lengths to fix vocabulary in this area, as well as to delve into both the structure and content of natural law and its relationship to practical reason and to political and legal institutions. More than simply a literary figure, Finnis has explored the topic in incredible depth, and has thus provided a body of work worthy of philosophical analysis.

Finally, Finnis's *Natural Law and Natural Rights* contains a passage that emphasizes the *political neutrality* of his theory:

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<sup>2</sup> John Finnis, *Natural Law and Natural Rights*, 1980 Oxford University Press, Oxford, 1980, p. 28, "We may refer again to Thomas Aquinas—as always, not because there is any presumption that whatever he asserts is true, but simply because he is unquestionably a paradigm 'natural law theorist' and dominates the period 'from the church fathers down to Kant.'"

<sup>3</sup> *Ibid.*

The book does not enter into discussions about whether natural law doctrines have exerted a conservative or radical influence on Western politics... none of these discussions has any real bearing on the questions whether there is a natural law, and if so, what its content is...

Thus, Finnis, while being a well known modern, orthodox, serious thinker about natural law, does not discuss the details of what sorts of political and legal structures are demanded by natural law. This leaves open the possibility that multiple legal and political systems may equally remain in line with natural law. This fact, as I will show in later sections, is crucial to my theory.

### *Why Cohen?*

There have been myriad ideologies and real-world governments that claim the moniker “socialism.” Indeed, leftists of many stripes that might all reasonably be called “socialist” have killed one another over their ideological differences. This heterogeneity has inevitably led to much confusion over the nature of socialism as an ideology.

Section 2425 of the Catechism of the Catholic Church minces no words:

The Church has rejected the totalitarian and atheistic ideologies associated in modern times with “communism” or “socialism.”

This alone may be enough for some to reject my argument out of hand, based on the Church’s long history and association with natural law. Yet what are we to make of ideologies that fall under the category of “socialism” but are neither totalitarian nor atheistic? If we are to examine whether any socialist may rightly claim also to be a natural lawyer, or vice versa, we must find a theory that does not treat atheism and totalitarianism as inherent or necessary, as they are clearly incongruous with orthodox versions of contemporary natural law.

Cohen’s *Why Not Socialism?* presents a theory ripe for the project I am undertaking. By focusing his discussion on abstract moral principles, Cohen leaves the particular details of the political and legal arrangements that will bring about the promotion of those principles open to discussion. This allows for the Khmer Rouge to endorse Cohen’s principles of community and socialist equality of opportunity in the abstract, as could a more benign organization like the Christian Social Party of Switzerland. The Pol Pots of the world may see fit to (in an evil, not to mention counterproductive, way) enforce these ideas through totalitarianism, the Christian Socialists through electoral processes and sensible policy reforms. One is out-and-out incompatible with an orthodox, contemporary theory of natural law. The other, I contend, is not.

### *Compatible Projects: State-Centered vs. Person-Centered*

I argue that there are two ways in which the theories offered by Cohen and Finnis must mesh in order for my theory to hold true. First, they must undertake compatible *philosophical projects*. Second, the *content* of their prescribed moral systems, as they fit into the overall project, must be compatible. Most of this paper will focus on the “content” question, though I will briefly treat the “project” portion early on.

A political or legal theory can be based on either the well-being of the individual, the well-being of the state, or some combination of both. Most theories contain elements of both, but focus mainly on one or the other. Fuller, for example, provides a framework for a legal system that focuses on the internal consistency of the system itself. Hobbes, similarly, provides a theory that seeks to prevent civil war in order to protect the integrity of the state.

Cohen and Finnis, on the other hand, are focused on the well-being of individual human beings existing in (or under) political and legal regimes. The content of the principles that guide these systems will be discussed in the rest of this paper. To try to show the compatibility of two thinkers that have taken on completely different projects would likely prove quite unremarkable, as the two would not occasion many opportunities for outright contradiction with one another, or impossible, as there would be no single standard by which to judge their compatibility.

### *Methodological Similarity: How to View Cohen’s Legal Theory*

My purpose in this paper is to show that natural lawyers, in general, may reasonably accept socialism, as Cohen describes it in *Why Not Socialism?* It may seem peculiar that I have chosen *one* book out of a large canon of work done by Cohen that supports socialism. The reason for my selection is that Cohen there presents a view of political systems and the law that I believe is quite in line with the view that Finnis, as well as other natural lawyers, hold.

To illustrate this point: in one section in *Why Not Socialism?* Cohen explains that his schema goes against the oft-cited “socialist” goal of equality in both income *and* hours worked. Cohen responds with an interesting claim that seems to tie him to a common natural law view of morality and particular social arrangements:

What I call “socialist equality of opportunity” is, as expounded here, a principle... but I have not said what modes of organization would, and would not, satisfy it in general... No defensible fundamental principle of equality or, indeed, of community, taken by itself, warrants such a system, which may nevertheless be amply justified as an appropriate “second best” in light of the constraints of a particular place and time...<sup>4</sup>

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<sup>4</sup> G.A. Cohen, *Why Not Socialism?*, Princeton University Press, Princeton, 2009, pp. 22-24

That Cohen is arguing against the “equal hours, equal wage” variety of socialism is not of importance to my argument. What matters is Cohen’s clear reliance on *principles* to dictate social arrangements. This differs from a view that espouses a *particular* political or economic policy- these sorts of views either ignore, or claim to have already accounted for, the unique place and time that the law is meant to apply to. Just as Finnis hopes that laws will adhere to the basic values and practical principles (which I will discuss in a later section), Cohen would like to see an adherence to the set of principles that he has proposed. Thus, Cohen and Finnis provide views of the relationship between moral principles and legal or political systems that are sufficiently similar to provide a basis for the rest of my argument.

If we look closely at the arguments in Cohen and Finnis, we see that political and legal systems overlap in many ways. The first reason is that the former is largely a product of the latter (secondary *laws* [e.g., who can be President, how officials are chosen, etc.], after all, define the *political* system). Second, both thinkers have taken up the project of describing the principles that *ought*, morally, to guide human action. They reach similar conclusions- value judgments about human actions should be based on adherence to some set of moral principles. For Finnis, the basic values transcend positive law and extend into politics and personal interaction. Cohen likewise believes that his values (particularly community)<sup>5</sup> can be instantiated at the political, legal, and interpersonal levels.

Importantly, they could have done otherwise. Either could have chosen a different, (perhaps positivist?) project, ignoring the moral rightness and wrongness of human behavior at the political or legal level. Alternatively, they could have come to different conclusions about the important features of legal systems: internal consistency (like Fuller), or integrity over time (like Dworkin), for example. But each has chosen to give an account of the relationship between such a system and human behavior, and both have couched the discussion in terms of the instantiation of particular moral principles.

None of this is meant to imply that Cohen *is* a natural lawyer. But the focus of his theory matches that of a natural lawyer in the relevant way: abstract moral principles are more or less put into practice by legal and political systems. A good (or at least, preferable) system will instantiate some selected principles.

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<sup>5</sup> Admittedly, Cohen is less clear about how equality of opportunity ought to be practiced by an individual from day-to-day.

## II. The Specifics

### *Cohen: Equality of Opportunity*

Cohen identifies two principles that would characterize a socialist economic system: “socialist equality of opportunity”, and “community”. My argument will hinge on the successful integration of these principles into the conception of the basic human values outlined by Finnis.

Cohen asserts that egalitarian schemas that promote equality of opportunity are essentially concerned with “unchosen” *obstacles* to opportunity. By unchosen, I mean to say that a person’s disadvantage did not come about through a choice made by that person. In many cases, unchosen obstacles that disadvantage some people do not disadvantage other people, or at least do not disadvantage everyone to the same degree. An egalitarian regime will attempt to remove or limit one or more of these obstacles. Cohen outlines three distinct, but interrelated, forms of equality of opportunity, ultimately endorsing the third form, socialist equality of opportunity.<sup>6</sup>

*Bourgeois* equality of opportunity, which characterized public policy in the liberal age, attempts to eliminate inequality, both formal and informal, that is based on socially constructed attributes.<sup>7</sup> Cohen himself does not give concrete examples of bourgeois equality of opportunity, but one can imagine that the Civil Rights Act of 1964 would fit Cohen’s definition: the state corrected for formal and informal prejudice, as we see in Title II, Sec. 201, a:

(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.<sup>8</sup>

The second type, *left-liberal* equality of opportunity, goes a step further. While *bourgeois* equality of opportunity is concerned only with social status, this second type is concerned with circumstantial, but equally unchosen, disadvantages. Cohen suggests that head-start education for low-income children is an example of such policy- a child does not choose to be born into poverty, but is nonetheless disadvantaged when such a situation obtains. A head-start program attempts to correct the inequality that poverty causes with regard to education.<sup>9</sup>

The final form of equality of opportunity, and the form that Cohen endorses, is called *socialist equality of opportunity*. While the left-liberal response to inequality steps in the right direction by correcting for an additional social ill that the bourgeois response does not, it fails to address *inborn* (but clearly still unchosen) disadvantages. Socialist equality of opportunity seeks to

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<sup>6</sup> Cohen (2009) p. 14

<sup>7</sup> Cohen (2009) p. 15

<sup>8</sup> 42 USC Chapter 21 – Civil Rights, Title II, Sec. 201a

<sup>9</sup> Cohen (2009) pp. 16-17



remove these inborn obstacles to equality. If this form of equality of opportunity obtains *fully*, Cohen argues, the result will be a society in which income inequality exists only as a result of varying *preferences* among people.<sup>10</sup> As I will cover in the next section, Cohen holds that inequality, even of this kind, must be tempered by a promotion of “community,” as he calls it. Nonetheless, Cohen argues that in an ideal set of circumstances where socialist equality of opportunity obtains, the satisfaction of the desires of each person will lead to a comparable aggregate enjoyment of life.<sup>11</sup>

### *Cohen: Community*

*As for those whose parents and grand-parents before them had been so fortunate as to keep their seats on the top, the conviction they cherished of the essential difference between their sort of humanity and the common article was absolute. The effect of such a delusion in moderating fellow feeling for the sufferings of the mass of men into a distant and philosophical compassion is obvious.*  
– Edward Bellamy, *Looking Backward*

This quote from Bellamy describes one of the many negative outcomes caused by industrial capitalism in the late 19th century- major inequalities of wealth had damaged society by eroding the ability of the wealthy and the poor to relate to one another. This “fellow-feeling” that Bellamy references is an integral part of Cohen’s conception of community. He defines the term:

...the requirement of community that is essential here is that people care about, and, where necessary and possible, care for, one another, and, too, care that they care about one another.<sup>12</sup>

There are two “modes” of community discussed in *Why Not Socialism?* For Cohen, equality and community are inextricably linked. If, Cohen supposes, you make and keep ten times the amount of money that I make, we will never enjoy full community. The first mode of community is concerned with the inability of people to relate to one another when living under an economic system that generates inequality. If, under a regime that fully satisfies the principle of socialist equality of opportunity, the resulting distribution of wealth is such that one person is far richer than another, the lack of community generated may justify a further redistribution of wealth.<sup>13</sup>

The second, and more philosophically interesting, mode of community is called *communal reciprocity*. Cohen contrasts this with market reciprocity:

Communal reciprocity is the antimarket principle according to which I serve you not because of what I can get in return by doing so but because you need or want my service, and you, for the

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<sup>10</sup> Cohen (2009) pp. 17-18

<sup>11</sup> Cohen (2009) p. 19

<sup>12</sup> Cohen (2009) pp. 34-35

<sup>13</sup> Cohen (2009) pp. 35-37

same reason, serve me... the market motivates productive contribution not on the basis of commitment to one's fellow human beings... but on the basis of cash reward.<sup>14</sup>

Viewing human beings as mere sources of enrichment, or as threats to one's own success, are "horrible ways of seeing other people," according to Cohen.<sup>15</sup> Thus the ideal is the creation of a system where these basest of human emotions are abandoned as tools to prosperity, in favor of those traits we find more admirable- using generosity, rather than greed, to drive production.

### *Finnis: The Seven Basic Values*

Finnis presents a supremely simple, though controversial, account of the seven basic forms of human good: *Life, Knowledge, Play, Aesthetic Experience, Sociability (Friendship), Practical Reasonableness, and Religion*. Finnis purports this to be an exhaustive list of those things that are intrinsically good for human beings. None, he argues, can be reduced to another. Any proposed additions to this list amount to nothing more than modes of pursuing the basic values, and there is no hierarchy among them- none is intrinsically more valuable than another.<sup>16</sup>

Finnis argues that these values are *self-evidently* good for human beings- if one honestly looks at the relevant human possibilities, one can grasp *without reasoning from any other judgment*, that the realization of those possibilities is good and desirable. No further justification for this understanding, he goes on, is required or possible.<sup>17</sup> Each value has many different aspects that can be promoted, discouraged, or ignored by an individual's decision-making. For example, for one to value learning by reading academic journals is to value one aspect of the value of knowledge.

The seven basic values are said to correspond to what Finnis calls "basic practical principles." For example, "friendship" corresponds to the practical principle, "friendship is good and to be pursued." Likewise, "life is good and to be pursued" is a practical principle which corresponds to "life" as a basic value, and so on. Basic practical principles "serve to orient one's practical reasoning, and can be instantiated (rather than 'applied') in indefinitely many, more specific, practical principles and premises."<sup>18</sup>

The most important role for these principles, for legal and political philosophy, is that they are said to justify the exercise of authority in community. Finnis contends that these principles explain the obligatory force of positive laws, and justify one's regarding defective laws as defective.<sup>19</sup> I will try to show that Cohen's theory fits into the schema of values and practical principles presented in Finnis's work. In other words, the use of authority to enforce a socialist

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<sup>14</sup> Cohen (2009) p. 39

<sup>15</sup> Cohen (2009) p. 40

<sup>16</sup> Finnis (1980) pp. 85 - 93

<sup>17</sup> Finnis (1980) p. 73

<sup>18</sup> Finnis (1980) p. 63

<sup>19</sup> Finnis (1980) pp. 23-24

schema (specifically, Cohen's version), can reasonably be considered justified by Finnis's set of values and practical principles.

### *How Natural Lawyers Should View Cohen's Arguments*

Now that I have gone through the relevant basic aspects of each theory, I will argue that Cohen's conceptions of socialist equality of opportunity and community are essentially tied up with Finnis's basic values of "life" and "sociability," respectively.

For Finnis, the basic values and practical principles are instantiated any number of ways. *Life*, for example, as Finnis explains it, is essentially concerned with self-determination and freedom.<sup>20</sup> Thus, some ardent capitalist natural lawyer might reasonably describe a free-market system as instantiating the value of life over some or all of the other values, qua the "freedom" aspect of capitalism.

Cohen gives a similar argument to this effect. Addressing the possibility that one model of a socialist economy might prove less *efficient* than a capitalist model, he says:

... efficiency is, after all, only one value, and it would show a lack of balance to insist that even small deficits in that value should be eliminated at whatever cost to the values of equality and community... Why should we make *no* sacrifice of [efficiency] for the sake of [equality of opportunity and community]?

Here, Cohen seems to express the sentiment that Finnis expresses when the latter explains that there is no hierarchy among the basic values. It's true that any given system will inevitably instantiate some values more than others. But we cannot therefore regard a system as ideal on the basis that one value is maximized, when it is maximized to the detriment of other, equally (by definition, according to Finnis) important values. In other words, there is no reason to reject socialism on the basis that it instantiates other basic values over some particular aspect of the value of life.

What must be shown is that when a socialist desires a government that instantiates the value of community as outlined by Cohen, he is hoping for that government to promote something that falls within Finnis's definition of Sociability. Interestingly, Finnis actually calls this value "*Sociability (friendship)*," explaining that friendship is a highly developed form of sociability:

... there is the value of that sociability which in its weakest form is realized by a minimum of peace and harmony amongst men, and which ranges through the forms of human community to its strongest form in the flowering of full friendship.<sup>21</sup>

Finnis then draws the line between low-level sociability and true friendship:

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<sup>20</sup> Finnis (1980) p. 86

<sup>21</sup> Finnis (1980) p. 88

Some of the collaboration between one person and another is no more than instrumental to the realization by each of his own individual purposes. But friendship involves acting for the sake of one's friend's purposes, one's friend's well-being.<sup>22</sup>

Thus my task, showing that one should treat the socialist conception of community as part of sociability as outlined by Finnis, is simplified. Finnis has claimed that each possible value we might propose is ultimately reducible to one of his basic values. So we are left to ask—where would the socialist conception of community fall? The answer, I think, is clear: Sociability. Socialist equality of opportunity requires exactly the view of other human beings that one would expect in Finnis's conception of the "friendship" relationship.

It is impossible to show, of course, that Cohen and Finnis had precisely the same idea in mind when they spoke of community and sociability, respectively. However, the broad umbrella that Finnis grants to the term "sociability" effectively allows us to say that Cohen is arguing that an aspect of this very value be promoted in legal and political systems. Likewise, the broad umbrella that Finnis grants to the term "life" effectively allows us to say that Cohen's conception of "socialist equality of opportunity" falls into this framework. As Finnis sees no hierarchy among the basic values, we may conclude that Cohen's desire to promote these values over others is not, in and of itself, a reason for the natural lawyer to reject Cohenian socialism.

Further, we can view Cohen's argument in Finnis's terms: Capitalist systems attempt to promote one value, life, at the expense of another value, sociability. In practice, Cohen argues, capitalism fails to promote the value of life at a level higher than a socialist system would.

### **III. Further Arguments**

While I believe that I have shown that the two theories can be endorsed side by side, I will present several arguments in this section that further suggest that the two particular thinkers in question, Finnis and Cohen, would share a number of relevant positions with regard to the ideal economic and political arrangements. This section is also meant to head off a number of predictable responses to my theory.

#### *Finnis on Community and Capitalism*

In section VI.5 '*Communism*' and '*Subsidiarity*' of *Natural Law and Natural Rights*, Finnis attacks Plato's conception of communism as outlined in the *Republic*, based almost entirely on the system's conflict with the value of sociability (more specifically, friendship). One may

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<sup>22</sup> Ibid.

suppose that if there is a rejection of Cohen's view contained in *NL&NR*, it is to be found there. However, Finnis's critiques, based in Aristotle's *Politics*, largely do not touch on Cohen's points, but do offer some insight into a possible response by Finnis.

Finnis's second critique in this section is the most relevant to our present aims. Here he asserts that, given an elimination of private property in favor of a wholly communal regime, one has no material goods to give or to share with one's friends. Because this sharing of material belongings is part of what constitutes friendship, true friendship is diluted, if not impossible.<sup>23</sup> This argument does not attack Cohen's proposed regime, which would not make all property wholly communal, and would not give an equal share of communal resources to all, but would rather, he suggests, base remuneration on hours worked. Further, this can be seen as an argument against the inherent inequality of a market system- the desperately poor likewise are unable to share their resources, though not as a matter of their lack of possession of private property rights in a communal resource, but as a matter of marginal utility. It must surely be admitted that a person who cannot share her resources in a market system because of her own poverty is in at least as bad a situation as a person who cannot share her (presumably ample) resources in a communal regime. Both are unable to make the commitments Finnis thinks are required for friendship, but one, at the very least, has access to food, clothing, and shelter.

Thus, we have some *prima facie* evidence that Finnis would oppose some market outcomes on the basis of community as a human value.

### *The Common Good and Subsidiarity*

Essential to Finnis's conception of distributive justice is the *common good*, a term taken from medieval political thought. Finnis reminds us:

... the common good is fundamentally the good of individuals (an aspect of whose good is friendship in community)... Talk about benefiting 'the community' is no more than a shorthand (not without dangers) for benefiting the members of that community. And here we must further recall that the fundamental task of practical reasonableness is self-constitution or self-possession...<sup>24</sup>

This reduction of the common good to an amalgam of individual goods motivates Finnis to later conclude that the principle of subsidiarity (the principle that the lowest possible level of organization should handle coordination problems) is itself a principle of justice. He says a bit more on the principle:

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<sup>23</sup> Finnis (1980) pp. 144-145

<sup>24</sup> Finnis (1980) p. 168

It is therefore a fundamental aspect of general justice that common enterprises should be regarded, and practically conducted, not as ends in themselves but as means of assistance, as ways of helping individuals to ‘help themselves’ or, more precisely, to constitute themselves.<sup>25</sup>

Were a regime to instantiate Cohen’s principle of community *without* his call for radical equality of opportunity, it is possible that the regime would violate the principle of subsidiarity, as the value of friendship would be privileged far more than, and to the detriment of, the value of life (qua self determination). However, the combination of Cohen’s two principles, as Cohen argues for them, seeks to maximally promote self-determination. The competition inherent in a market economy requires that some seek to limit the means to self-determination of others, where Cohen’s ideal system would, through communal reciprocity, yield outcomes based on generosity and mutual respect.

Thus, I argue that Cohen would not necessarily disagree with Finnis’s claim above in any substantive way. In contrast with some libertarian schools of thought which hold private property rights (often rights held over one’s own body) as the basis for a system of moral principles, leftist conceptions of property generally stress some moral principle (like the value of human flourishing, for example) and build a system of property distribution or rights that maximally conduces to that value. Cohen is clearly aligned with this view, as I have suggested above (see: Methodological Similarity). The economic system Cohen proposes is merely his attempt to maximize the values of community and equality in a way that he believes is reasonable.

The ability of one to “help themselves” is undeniably hampered by inequalities of opportunity, whether that inequality is based on social constructs, social status, or inborn disadvantages. These are the very obstacles that Cohen seeks to eliminate through his proposed system. Cohen should not be interpreted as voicing a position that opposes subsidiarity. Indeed, he may wholeheartedly endorse such a principle. Yes, he seeks to achieve goals of a high complexity and on a large scale. It is not unreasonable, then, to conclude that the highest levels of government would *necessarily* have to be involved in order to coordinate some aspects of the economic system.

### *More on Methodology and Community*

Finnis’s discussion of common property and common enterprise brings his theory remarkably in line with that of Cohen. Finnis defends private ownership on two grounds. The most interesting to our current endeavor is the second, which “rests on a ‘rule’ of human experience: “[resources] are more productively exploited and more carefully maintained by private enterprise...”<sup>26</sup>

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<sup>25</sup> Finnis (1980) p. 169

<sup>26</sup> Finnis (1980) p. 170

Finnis is suggesting that private ownership is the regime *most conducive* to the common good, and thus is a requirement of justice. This move is based on an *empirical* judgment, namely, the judgment that private property has, in the past, conduced most highly to human self-determination. Cohen cannot reasonably respond by saying that socialism has, in fact, produced better outcomes. Rather, he is a known critic of the Soviet systems, which stand as a difficult historical counterexample for socialism to overcome.

Cohen could, however, reply by saying that this empirical judgment made by Finnis is subject to alteration. If it can be shown that some regime is better equipped to yield human flourishing, then we should opt for that regime. Cohen acknowledges, in section IV, “*Is the Ideal Feasible?*” the central problem for socialists:

...while we know how to make an economic system work on the basis of the development, and, indeed, the hypertrophy, of selfishness, we do not know how to make it work by developing and exploiting human generosity.<sup>27</sup>

Luckily for my theory, Cohen leaves the issue of *which* economic schemas will best conduce to community and equality of opportunity, open. But Finnis himself seems open to regimes of property and enterprise that are *not* in line with the normal capitalist conception, based on one, almost Cohenian, condition:

Of course, *if* the active members of the community were more detached from considerations of private advantage, from love of ‘their own’, etc., then common ownership and enterprise *would* be more productive of benefits for all.<sup>28</sup>

It is difficult to imagine an argument that would conclude that this statement is not in line with Cohen’s view. In Cohen’s regime of communal reciprocity “I produce in a spirit of commitment to my fellow human beings,”<sup>29</sup> while “the market posture is greedy and fearful in that one’s opposite-number marketers are predominantly seen as possible sources of enrichment, and as threats to one’s success.”<sup>30</sup> In other words, the market system is not concerned enough with the value of community. Finnis, likewise acknowledges that alternative forms of property and enterprise could be acceptable, so long as the value of sociability is promoted to a high degree.

#### IV. Conclusions

In a review of *Why Not Socialism?* written for the Mises Review<sup>31</sup>, David Gordon asserts that Cohen, at one section in his book, “...takes us to the heart of the difference between a libertarian, natural rights view and socialism.” While Jackson may have meant to leave open the possibility

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<sup>27</sup> Cohen (2009) p. 58

<sup>28</sup> Finnis (1980) p. 170

<sup>29</sup> Cohen (2009) p. 41

<sup>30</sup> Cohen (2009) p. 40

<sup>31</sup> David Gordon, ‘Why Not Socialism?’, *The Mises Review*, March, 2009, Volume 15, Number 3

that non-libertarians can consistently believe in a theory of natural law, he seems to disqualify socialists from holding a natural rights view. I suggest that this co-opting of the term “natural rights” by anti-socialists is unjustified. The theory of natural law has a long history of encompassing views that would flatly oppose the type of libertarianism (in the vein of the Austrian school of economics) espoused by writers like Jackson.<sup>32</sup> More importantly, it is entirely consistent for a natural lawyer to hold Cohen’s view.

In endorsing Cohen’s position, the natural lawyer is merely saying that an economic system ought to seek to instantiate the values of sociability and life through promoting socialist equality of opportunity and community- however practical reason dictates they should be instantiated. Cohen’s lack of a concrete policy prescription allows the natural lawyer to assent to Cohen’s arguments, at least on the condition that the principles in question be put into practice only after assessing what practical reason would prescribe, given the circumstances at hand.

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<sup>32</sup> Two prominent examples: Finnis borrows much of his account of property from Aquinas, the source of much of Catholic moral theology, who severely restricts property rights on the basis of charity: “... the natural law requires that superfluous things in one’s possession be used for the sustenance of the poor.” Thomas Aquinas, *Summa Theologica*, II-II, Question 66, Art. 7; John Locke restricted property rights when the waste of some resource would harm others. Copleston notes: “... he did not say that any man is entitled to amass property without limit to the detriment of others. He himself raises the objection that if gathering the fruits of the earth confers a right to them, anyone may amass as much as he likes, and he answers, ‘Not so. The same law of nature that doth by this means give us property does also bound that property too.’ The fruits of the earth are given for use and enjoyment; and ‘as much as anyone can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this is more than his share and belongs to others’.” Frederick Copleston, *A History of Philosophy: Volume 5, Modern Philosophy: The British Philosophers Part I Hobbes to Paley*, Doubleday, New York, 1964