


**Component 3: Religion and Ethics**  
**Theme 2: Deontological Ethics**  
**Booklet 2**

**Knowledge and understanding of religion and belief**

<b>D</b>	<p><b>John Finnis' development of Natural Law:</b>          Development of the <b>seven basic human goods</b> (life, knowledge, friendship, play, aesthetic experience, practical reasonableness and religion);          distinction between theoretical / practical reason;  <b>Nine Requirements of Practical Reason</b> (view life as a whole, prioritise certain goods over others, basic goods apply equally to all, do not become obsessed with a particular project, use effort to improve, plan your actions to do the most good, never harm a basic good, foster common good in the community and act in your own conscience and authority);          the common good and the need for authority.</p>	 
<b>E</b>	<p><b>Bernard Hoose's Proportionalism:</b>          As a hybrid of Natural Law, a deontological / teleological ethic;          Hoose's proportionalist maxim ('it is never right to go against a principle unless there is a proportionate reason which would justify it');          distinction between an evil moral act (an immoral act) and a pre-moral/ontic evil act (a bad act that in itself is not immoral);          distinction between a right act (an act that follows the moral rule) and a good act (an act that is not a right act, but creates the lesser of two evils);          Proportionality based on agape.</p>	
<b>F</b>	<p><b>Finnis' Natural Law and Hoose's Proportionalism: application of the theory:</b>          The application of Finnis' Natural Law and Hoose's Proportionalism to both of the issues listed below:          1. Immigration          2. capital punishment.</p>	 

**Issues for analysis and evaluation will be drawn from any aspect of the content above, such as:**

- Whether Finnis' Natural Law is acceptable in contemporary society.
- The extent to which Hoose's Proportionalism promotes immoral behaviour.
- Whether Finnis and/or Hoose provide a basis for moral decision making for believers and/or non-believers.
- The strengths and weaknesses of Finnis' Natural Law and/or Hoose's Proportionalism.
- The effectiveness of Finnis' Natural Law and/or Hoose's Proportionalism in dealing with ethical issues.
- The extent to which Finnis' Natural Law is a better ethic than Hoose's Proportionalism or vice versa

## D. John Finnis' Development of Natural Law

- I. Development of the **seven basic human goods** (life, knowledge, friendship, play, aesthetic experience, practical reasonableness and religion);
- II. Distinction between **theoretical / practical reason**;
- III. **Nine Requirements of Practical Reason** (view life as a whole, prioritise certain goods over others, basic goods apply equally to all, do not become obsessed with a particular project, use effort to improve, plan your actions to do the most good, never harm a basic good, foster common good in the community and act in your own conscience and authority);
- IV. The **common good and the need for authority**.

### Introduction

Finnis (b.1940) is an Australian legal scholar who grew up in Adelaide, before getting a Rhodes scholarship to Oxford. He is a practicing Catholic currently Professor of Law at Oxford University.

Finnis published *Natural Law and Natural Rights* in 1980, and the book is considered a seminal restatement of the Natural Law doctrine. For Finnis, as for Aquinas, law and morality are closely related. Aquinas claimed Natural Law was an aspect of God's eternal law, accessed through human, God given, rationality i.e. humans can reason that the purpose of life is to re-establish a right relationship with God ...

### 1. Why did Finnis develop an ethical theory?

**The Problem** By the 20<sup>th</sup> century, as a result of David Hume and Jeremy Bentham's withering attacks, Natural Law as an ethical theory suffered and came to be seen as a poor relation to other ethical theories. It was seen to derive largely from religion, which also took some heavy hits from natural science in this period (Darwin, Russell, Huxley etc.).

### Finnis' Solution

Like Aristotle before him Finnis asks: "*What constitutes a worthwhile and a valuable life?*" Finnis knew that he couldn't get over Hume's problem (is/ought - you can't derive values from facts) so instead Finnis tried to demonstrate that there are **universal basic values that are necessary for us to live worthwhile lives**.

He regards these as **~Basic Goods~ inherent in human nature**. Finnis maintains that every person on the planet recognises the value of these "Basic Goods", although they may prioritise them differently, depending on cultural background and goals for life. They cannot be derived from God's law, or logic or the inclinations of the human brain.

Finnis agrees with Hume that it is not possible to infer values from facts. However, he denies that Aquinas and Aristotle are guilty of this error. In Finnis' restatement of Natural Law, Aquinas' first principles of Natural Law specifying basic forms of good and evil are self-evident and indemonstrable. Finnis asserts that these "goods" may be grasped by practical reasoning (which describes how to act) and without the use of theoretical reasoning (which describes what is true) and by anyone old enough to reason.

## 2. How does Finnis attempt to solve the problems facing Natural Law?

### I. Development of the seven basic human goods (life, knowledge, friendship, play, aesthetic experience, practical reasonableness and religion);

Finnis is quick to point out that his “goods” or “values” are not “basic human urges”. People desire them because they are **intrinsically good**; they do not become good because people desire them (otherwise an advertising jingle would be better than Beethoven, if both were presented to a roomful of advertising executives).

Finnis rejects arguments that ideals like liberty, opportunity, wealth and self-respect are “primary goods”. Instead, he views them as “instrumental” or intermediate ends that help to make the basic values achievable.

For Finnis the central object of his theory is a set of seven fundamental ‘goods’ for humankind. Like Aquinas’ Primary Precepts (educate; live in society etc.) Finnis’ ‘goods’ describe the things that human beings value. These goods are:

1. **Life**: covers various aspects of life from bodily health to procreation
2. **Knowledge** (for its own sake): means being well informed
3. **Friendship** and Sociability: the common good
4. **Play** (for its own sake), skilled performance, recreation, enjoyment and fun
5. **Aesthetic Experience**: the appreciation of beauty and art
6. **Practical Reasonableness**, i.e. the ability to use your intelligence and reason correctly about what is best for your-self and to act on those decisions.
7. **Religion** i.e. a connection with, and participation with, the orders that transcend individual humanity

These basic goods are **universal** (for all times, peoples and cultures) and establish the bedrock for ethical action. Once we recognize those things that are fundamentally and inherently good then we’re obliged to take them seriously and work from them. Other motivations for action, such as the pursuit of pleasure or material gain, are misguided and motivated by human inclination rather than practical reason.

Like Aquinas, Finnis argues that these “goods” should be valued for their own sake and not merely for some other good they bring about. They are both the motivation and the goal of any action. For Finnis, these Seven Basic Goods are “self-evidently” good. For Finnis’ this “self-evidence” has certain features:

- a. The goods cannot be reduced into a more basic value.
- b. They are indemonstrable - their existence is presupposed in any attempt to demonstrate them. Finnis actually wants to create a circular reference here, and that is largely his point. This particularly applies to knowledge: one can neither deny nor endorse the “value” of knowledge without using knowledge. The denial of knowledge thus involves self-contradiction.
- c. They cannot be verified by looking at them “they are obviously valid to those who have experience of theoretical judgment, that is, anyone with experience of inquiry, even a child”.
- d. It is possible to deny them, but denial is “straightforwardly unreasonable”. For Finnis, evil involves the denial of basic goods, perhaps by an attack on one or more, the total absence of one or more, or indifference to one or more: “*evil is live backwards*” is in opposition to life and liveliness.

To defeat Hume’s “ought/is” dilemma Finnis does not prove that these seven are the best from observing human practices, but relies on “self-evidence”. He is also keen to prove that his basic values can’t be reduced to a basic notion of “pleasure” Friendship, for example, may not always bring pleasure, but it remains a good in itself.

**3. Create a mnemonic to remember the basic goods**

Good	Mnemonic

**4. How did Finnis think we know what the goods are and what features do they have?**

**The Reality of the Basic Goods**

How do we know that these are the basic human goods? Finnis argues that **they are self-evident and obvious**. They’re not obvious because they’re somehow innate (inscribed on the mind at birth), nor are they obvious because we feel certain about them, nor are they obvious because we observe them in the world around us, **but they’re obvious because we presuppose them in everything we think and do**.

For example, take *the Basic Good of Knowledge*: babies aren’t born with the importance of knowledge already planted in their minds, but once a child starts to find things out, they presuppose that it’s better to have knowledge than be ignorant. For Finnis, the statement ‘these are the seven basic goods’ is just as true as any mathematical statement. These ‘goods’ are self-evident and according to Finnis exist independently of human thought, and so we can put them in ‘reality’ in the same sense that mathematics lives in reality. The basic goods, of course, do not have physical form.

**II. Theoretical and Practical Reasoning**

There is an important distinction between theoretical and practical reason: in theoretical reason, if two statements contradict then at least one of them must be false. In practical reason, there can be two contradictory acts that are *both* morally correct choices. It is up to a human’s free will to choose which act they will adopt.

An important aspect of Finnis’ argument concerns the use of human intelligence. When people try to work out “*what is the case*” they use **theoretical reasoning** to derive conclusions from observed facts. By contrast, when people consider “*what is the good to be pursued?*” they engage in **practical reasoning**, a different type of intelligence that allows us to work out what is right and wrong.

**5. Theoretical reasoning is . . .**

**6. Practical reasoning is . . .**

### III. Nine Principles of Practical reasonableness

The importance of practical reasonableness for Finnis lies in the fact that all basic goods are worth pursuing. People exercise practical reason when making moral decisions in seeking out these goods. Finnis thinks practical reasonableness avoids extreme injustice and provides a model for basic rights. Finnis proposes nine, interrelated principles (or requirements), of practical reason. They help to create the optimum conditions in which to achieve the seven basic good i.e. in order to make right moral decisions in your life you act rationally in accordance with the nine requirements, that them helps you successfully achieve the basic goods.

1. You should view your life as a whole, and not live moment to moment, based on achieving the basic goods.
2. You naturally have to prioritise certain goods over others (e.g. a student would prioritise knowledge over fun!), but you should always do so with good reason. You should never arbitrarily discount one of the basic goods.
3. Basic goods apply equally to all people. You can be self-interested to the extent that you are in the best position to look after yourself, but you should always take into account the good of others. A person must commit to all of these basic goods, none can be left out.
4. You should make sure that you do not become obsessed with a particular project, and keep the perspective that the project is a participation of a basic good. A person should not show arbitrary preference among people. In other words: do unto others as you would have them do unto you.
5. Use effort to improve – you should actually do projects and make an effort to improve – don't just sit around and repeat old habits
6. Plan your actions to do the most good and avoid evil - try to be efficient in our moral choices {e.g. reasonable to save the old woman from the burning house and not her budgie}
7. Never harm a basic good - In every moral act, all the basic values must be remembered. For example, you should not kill even if it will indirectly save more lives later.
8. We must foster the common good of the community, not just for you as an individual.
9. You should act according to your own conscience and practical reason, not the authority of someone else.

#### 7. Cover up the list and summarise each Requirement in less than five words.

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## **Making Decisions using the Seven Goods and the Nine Principles**

The seven goods and the nine principles apply equally to everyone. To make specific decisions in your life, you think reasonably, in accordance with the nine requirements, and decide how you will participate in the basic goods.

The seven goods are all equally fundamental, and do not exist in a hierarchy. Therefore, although some acts are wrong - because they do not participate in a basic good - there is no single correct act. In this way, the seven goods and the nine requirements specify the overarching structure and goals, but do *not* determine the minutiae of day-to-day life, or even big decisions like the choice of career.

This is an important distinction between theoretical and practical reason: in theoretical reason, if two statements contradict then at least one of them must be false. In practical reason, there can be two contradictory acts that are both morally correct choices. It is up to human's free will to choose which act they will adopt.

There is plenty of scope for discretion in Finnis' version of Natural Law. If you are deciding what to do with you day, you could choose to listen to music, or go to college, or to go to a party, to volunteer to help a charity. These are all, in principle, valid choices i.e. they all support one of the basic goods.

However, some choices are wrong, e.g. murdering someone, or spending all day in an empty room doing nothing, but there are many equally correct choices.

### **IV. The Common Good and authority**

Finnis proposes a "First Moral Principle": the idea that we act for the good of the community as a whole and not just as an individual. Humans naturally need to live in groups. This is both required expressly by the basic good of Friendship/Sociability, and implicitly by all the other goods, because we are most productive when we are working together. Hence, one of the nine requirements of practical reason is to 'contribute to the common good.' The common good is the situation where each member of the community can effectively pursue the basic goods for themselves. Like one of the basic goods, the common good is never *achieved*, it is only *participated in*.

Finnis argues the importance of the seven basic goods leads us to the idea of the common good. That is, we are able to see there are certain conditions that are needed to enable all members of the community to attain reasonable objectives for themselves. Similarly, we may like Finnis' seven basic principles, but decide that we can't be bothered extending the benefit of the basic goods to others. But Finnis responds by stating that unless "goods" are extended to others there will be no social rules, let alone civil society. If each person thinks he has a right to life, knowledge, play etc. but that others don't, or the individual in question doesn't care, there will be no harmony and no social cohesion.

Finnis argues that friendship/sociability *is* an objective good because it leads to concern for others, and leads us beyond an exclusive concern with ourselves. Finnis also argues that "practical reasonableness" {another basic value} requires a person to have regard to the "common good" when determining their actions.

## **Authority**

To best achieve the common good, certain acts need to be performed by the *whole* community rather than specific people. Examples are respect for the rules of games, collaboration within knowledge, spirituality within the community, or respect for each other's lives and safety. Such community-wide actions require coordination, and coordination requires authority {not necessarily coercive authority}. Such coordinating authorities include churches, team captains, university heads of department, and governments. One of the basic goods is practical reasonableness. It is necessary that every member of a society be able to make decisions *for them-selves*. Authority figures therefore need to compromise between coordinating society effectively, and granting people the ability to pursue their own ends in the manner they choose.

**8. If you decided to follow Finnis' Natural Law how would you make a moral decision?**

**9. What is the common good?**

**10. What do authority figures need to do according to Finnis?**

## 2 F Application of Finnis' Natural Law - Immigration and Capital Punishment

### A. Immigration:

Definition: The action of coming to live permanently in a foreign country.

Finnis' Natural Law Theory can be seen to send mixed messages about immigration. This is because the seven basic goods and nine requirements of practical reason do not give specific ethical guidance. Therefore, some of the seven basic goods and nine requirements of practical reason seem to support immigration and some seem to oppose it:

#### The basic goods and requirements of practical reason that support immigration:

##### Basic Goods

- Friendship and Sociability: the basic good friendship can be seen to support immigration because we should extend the hand of friendship to all – including immigrants
- Aesthetic Experience – it could be argued that immigration supports this basic good because immigration opens up a society to a wider variety of cultural aesthetic influences, such as art or poetry.
- Religion – It could be argued that immigration opens up different avenues to answer the ultimate questions that transcend humanity. As immigrants may bring with them different answers to such questions e.g. a Buddhist, Muslim, Hindu perspective etc.



##### Requirements of Practical Reason

- Basic goods apply equally to all people. You can be self-interested to the extent that you are in the best position to look after yourself, but you should always take into account the good of others i.e. you must not neglect others. Therefore, we should not neglect the needs of immigrants
- Aim to do good and avoid evil, by actions that fulfil the basic goods. It could be argued that helping immigrants, particularly from war torn areas, is doing 'good' and to neglect them is evil.
- You should foster the common good of the community, not just for you as an individual. If we consider the world of a community then we must help others by allowing immigration.
- You should act according to your conscience and practical reason, not the authority of someone else. It could be argued that helping people by allowing immigration is the right thing to do and our consciences would support that.

#### The basic goods and requirements of practical reason that against immigration:

##### Basic Goods

- Friendship and Sociability – on a basic level it means at least been sociable, but ultimately acting in the interests of one's friends. This point could limit friendship to a close knit group of friends. Therefore, this basic good does not include people we do not know – like immigrants.
- Aesthetic Experience – means an appreciation of beauty and art. Allowing immigration could erode a cultural identity and thus a cultures idea on aesthetics (such as art could be lost).



## Requirements of Practical Reason

- You should foster the common good of the community, not just for you as an individual. It could be argued that mass immigration disrupts a particular society. Therefore, the only way to foster the common good for a community is to reject immigration all together or opt for controlled immigration.

## Other

- Also as we have seen if a law in society is to reject immigration (a little like with the Trump administration in the USA) then we should accept that because following the law is the best way to achieve the common basic goods.
- Perhaps the best way to understand Finnis' Natural Law theories view on immigration is to look at recent articles about immigration written by Finnis. He argues that controlled immigration is a good thing because the benefits to a community outweigh the problems e.g. it helps people within that community achieve the basic goods. However, mass immigration would have the opposite effect because of the disruption to a community this would cause e.g. a break down in local services such as health care, education and welfare and/or law and order. This would stop a community been able to achieve the basic goods.

## Capital Punishment:

**Definition:** The legally authorised killing of someone as punishment for a crime.

- Again Finnis' Natural Law Theory can be seen to send mixed messages about capital punishment. This is because the seven basic goods and nine requirements of practical reason do not give specific ethical guidance. Therefore, some of the seven basic goods and nine requirements of practical reason seem to support capital punishment and some seem to oppose it:

### The basic goods and requirements of practical reason that support capital punishment:

#### Basic Goods

- Friendship and Sociability – on a basic level it means at least been sociable, but ultimately acting in the interests of one's friends. If one of our friends is either directly affected by a killing or is a potential target of killer; then it could be argued that it is in the interests of our friend to support capital punishment for the killer.
- Practical Reasonableness – using one's intelligence to solve moral problems. Is it not an obvious externally fact that a murderer, by taking someone else life, forfeits their own? Therefore, supporting capital punishment.

#### Requirements of Practical Reason

- Basic goods apply equally to all people. You can be self-interested to the extent that you are in the best position to look after yourself, but you should always take into account the good of others. Therefore, for the good of others, on the whole, should not a community support capital punishment – thus removing the continued threat posed, by say, a murderer.
- You should foster the common good of the community, not just for you as an individual. Is not the common good of a community fostered by removing those members of a society that do not, in an extreme way, support the basic goods e.g. capital punishment for murderers and rapists etc.



### The basic goods and requirements of practical reason that oppose capital punishment:

#### Basic Goods

- Life – covers various aspects of life from bodily health. This basic good supports to the concept and importance of life. For obvious reasons capital punishment would go against this basic good.
- Practical Reasonableness – using one's intelligence to solve moral problems. Does our practical reasonableness point us in the direction that capital punishment is wrong. Is it not obvious from observation that killing, in any form, is wrong.

#### Requirements of Practical Reason

- You should never commit an act that directly harms a basic good, even if it will indirectly benefit a different basic good. For example, you should not kill even if it will indirectly save more lives later. Therefore, capital punishment should never be carried out because capital punishment would harm the basic good of 'life'.
- You should act according to your conscience. It could be argued that our conscience tells us that killing is always wrong and therefore capital punishment is never acceptable.

## Other

- Also as we have seen if a law in society is to support or reject capital punishment then we should accept that because following the law is the best way to achieve the common basic goods.
- Perhaps the best way to understand Finnis' Natural Law theories view on capital punishment is to consider Finnis' view on the law. Finnis argues that if you accept a legal system, then you have a legal obligation to obey every law. The argument runs like this:
  1. I ought to pursue the basic goods
  2. Society needs to coordinate in order to best achieve the basic goods
  3. The law is an effective way of coordinating society this way
  4. Therefore, I ought to obey the law.
- Therefore you have both a legal and moral obligation to respect and obey the law. The law is therefore justified to put in place sanctions for those that disobey the law. If that includes capital punishment, then we should accept it.

Aspect of Finnis' Theory	Why would it not support immigration?	Why would it support immigration
<p><b>1. Life:</b> The preservation of life, leading a healthy life, the right to a good quality of life.</p>		
<p><b>2. Knowledge:</b> To understand the world around us, helping us to develop as humans.</p>		
<p><b>3. Friendship/Sociability:</b> Our relationships, from one-on-one to a global scale, acting for others.</p>		
<p><b>4. Play:</b> The enjoyment in things, deriving pleasure from activities</p>		
<p><b>5. Aesthetic experience:</b> Appreciating beauty in what we see <i>and</i> what we create.</p>		
<p><b>6. Practical reasonableness:</b> Deciding how to act morally based on our knowledge and experience.</p>		
<p><b>7. Religion:</b> More than just religious affiliation; Ultimate questions and striving for meaning.</p>		
<p><b>1. Have a rational coherent plan of life</b> View your life as a whole, and not live moment to moment</p>		
<p><b>2. No arbitrary preferences between values</b> Cannot aspire to just one good or devalue a good for other people.</p>		
<p><b>3. No arbitrary preferences between people</b> Basic goods apply equally to all people. Can be self-interested to the extent that you are in the best position to look after yourself, but you should always take into account the good of others</p>		
<p><b>4. Detachment</b> Do not become obsessed with a particular project. Remember</p>		

that the project is ONLY a participation of a basic good.		
<b>5. Commitment-</b> Do projects and make an effort to improve – don't just sit around or repeat old habits		
<b>6. Efficiency within reason-</b> Calculate and plan your actions so that they are the most efficient (in a utilitarian sense) and do the most good.		
<b>7. Respect for every basic value-</b> Never commit an act that directly harms a basic good, even if it will indirectly benefit a different basic good.		
<b>8. Respect for community and common good</b> Foster the common good of the community. Not individualistic self-fulfilment		
<b>9. Following conscience and practical reason-</b> Act according to <i>your</i> conscience and practical reason, not the authority of someone else.		
<b>The Common Good</b>		

2 F Application of Finnis'  
Natural Law to Capital  
Punishment

## Bernard Hoose's Proportionalism: An American philosopher and theologian born in 1945

- I. As a hybrid of Natural Law, a deontological / teleological ethic;
- II. Hoose's proportionalist maxim ('it is never right to go against a principle unless there is a proportionate reason which would justify it')
- III. Distinction between an evil moral act (an immoral act) and a pre-moral/ontic evil act (a bad act that in itself is not immoral);
- IV. Distinction between a right act (an act that follows the moral rule) and a good act (an act that is not a right act, but creates the lesser of two evils);
- V. Proportionality based on agape.

### Background to Proportionalism

- Proportionalism originated among Catholic scholars in Europe and America in the 1960's.
- There was increasing concern among some theologians that ethics, in the Catholic tradition, was too deontologically rigid.
- For example, Richard McCormick (1922–2000), a Jesuit priest and moral theologian, suggested that Catholic moral theology had: '**... disowned an excessively casuistic approach to the moral life.**'
- One influential supporter and commentator of proportionalism is Bernard Hoose (1945 - ). Hoose summarised the proportionalist position in his 1987 book: 'Proportionalism: The American Debate and Its European Roots.'
- Proportionalism has been condemned by the Catholic Church. For example, Pope John Paul II (1920-2005) in his encyclical 'Veritatis Splendor' (The Splendour of Truth) stated proportionalism is wrong on the grounds that it denies that any action can in and of itself be intrinsically evil.



### Proportionalism: Historical Background:

- Though proportionalism was formalised in the 1960's, the proportionalist approach is to some extent visible in the writings of St. Thomas Aquinas' (1225-1274).
- For example, Aquinas considered the question of whether it would be permissible for a starving man to break the secondary precept of stealing, in order to save his life. He concluded it was lawful: "If the need be so manifest and urgent, that it is evident that the present need must be remedied by whatever means be at hand (for instance when a person is in some imminent danger, and there is no other possible remedy), then it is lawful for a man to succor his own need by means of another's property, by taking it either openly or secretly: nor is this properly speaking theft or robbery."
- Therefore, Aquinas concluded, where a person is starving to death, then, it would be moral to steal from another. However, Aquinas did not accept this for every moral situation. For example, when it comes to the issue of telling a lie to save someone from death, Aquinas argues that this is not lawful!!
- However, modern proportionalists would generally argue that if it is acceptable to steal in order to save yourself from starvation, then it makes little sense to prohibit lying in order to save someone's life.
- Commenting on this, Hoose suggests that: '**What the proportionalists have done is point out the inconsistency and invalidity of such thinking.**'



**As a hybrid of Natural Law, a deontological / teleological ethic;**

Proportionalism responds to natural law by working within its framework, but without insisting on a fixed, inflexible and absolutist interpretation if a greater good is served by laying it aside.

**1. Explain the origins of proportionalism, including Aquinas.**

**2. Hybrid means . . .**

**3. Deontological means . . .**

**4. Teleological means . . .**

**5. A maxim is a . . .**

**6. Proportionate means . . .**



## Proportionalist: How It Works

### Part 1: The Deontological Rule Stands:



- Proportionalism holds that there are certain moral rules (such as those derived from Natural Law) that it can never be right to go against; unless there is a proportionate reason which would justify it i.e. the secondary precept that abortion is wrong should always be followed because it breaks the primary precept of reproduction; unless there is a proportionate reason to abort the foetus.
- Therefore, deontological moral laws derived from Natural Law do provide firm moral guidelines which should never be ignored, unless it is absolutely clear that, in the particular unique situation, this is justified by a proportionate reason.
- The above was supported by Hoose when he stated the main proportionalist maxim is: **'it is never right to go against a principle unless there is a proportionate reason which would justify it'**.
- In other words, where proportionate reasons exist, it would be right to ignore the rule in that situation i.e. a bad action can be done if there is a larger reason why it should be carried out.

### Part 2: Proportionate Reason

- The proportionate reason should be based on the unique individual situation of the moral agent; including the intention of the moral agent affected in that unique moral situation i.e. the intention of a woman considering having an abortion.
- However, this situation/intention must be sufficiently unusual and of sufficient magnitude to provide a reason which would overturn what would otherwise be a firm rule based on the precepts of Natural Law e.g. abortion is wrong unless there is an unusual and serious teleological reason to justify the abortion. For example, the pregnancy is ectopic and the mother and foetus will die unless the foetus is aborted; thus, saving the mother.
- Therefore, in order to decide whether an act is moral or immoral, the intention of the moral agent has to be considered. If you ignore the intention of the moral agent, then you can only determine what, has variously, been called the 'ontic', or 'pre-moral', or 'physical' rightness or wrongness of the act, and not its morality.

Therefore, in terms of good/evil acts:

- **Pre-moral/ontic/physical acts:** are right physical acts (such as getting an education) or wrong physical acts (such as having an abortion) but that in themselves are not necessarily moral and immoral acts. This because the situation/intention has not been considered; only the physical action has been considered. The justification proportionalists, like Hoose, give for this is that many actions are neither good or bad in themselves, it is only the intention that gives them their morality e.g. if an abortion surgeon makes an incision in human flesh, for example, you do not immediately say, 'That cut is morally good', or 'That cut is morally bad'. It instead depends on the surgeon's intention in doing the cut. In fact, proportionalists like Hoose argue there cannot be any acts that are intrinsically evil (evil in themselves). The physical act of abortion, for example, is not intrinsically evil, we can only find out whether abortion is morally right or wrong by looking at the situation/intention of the moral agent.



- **Moral and Immoral Acts:** The morality of a situation can only be known when a consideration of the full situation/intention of the moral agent is considered. If a pre-moral/ontic/physical act was carried out with a bad intention then it becomes an immoral act.

### Part 3: Value and Disvalue

- Therefore, when considering the morality of a particular situation a proportionalist considers, what is called, the proportion of **value** to **disvalue** in the potential action to be carried out. What this means:
  - **Value:** All the reasons why the action to be carried out, in terms of its own unique moral situation, may be justified – including positive intentions and precepts upheld etc.
  - **Disvalue:** All the reasons why the action to be carried out, in terms of its own unique moral situation, may not be justified – including negative intentions and precepts broken etc.
- If the value outweighs the disvalue then a particular act, in context of its own unique situation, would be justified by the proportionalist. And visa-versa if the disvalue outweighed the value.

### Part 4: Examples:

- Both examples, below, are examples of the ‘pre-moral’/’ontic’ physical act of abortion. Proportionalists would argue what makes abortion a moral or an immoral act, in each example, is the calculation of value against disvalue.
- Though abortion is being used in the example below all other ‘pre-moral’/’ontic’ physical acts can be assessed in the same way.

#### Example 1:

- **Situation:** A woman has become pregnant within marriage. She wishes to terminate the pregnancy because she believes that having a child will interrupt her career pattern.
- **Value:** Uninterrupted progress of her career
- **Disvalue:** The intention of the agent would be the destruction of an innocent foetus for selfish gain, which goes against two of the primary precepts: the preservation of life and reproduction.
- **Conclusion:** the disvalue of the abortion exceeds its value of it because the non-moral intention of the agent outweighs any value. Therefore, to have an abortion for an uninterrupted career pattern is not justifiable on proportionalist grounds. The Natural Law deontological rule, on abortion, stands.



#### Example 2:

- **Situation:** A woman has a pregnancy that endangers her life. She wishes to terminate the pregnancy because otherwise, two people will die – herself and the foetus.
- **Value:** the intention of the agent is to support the precept of preserve her life. This could also include her continued existence to support (and thus preserve) the rest of her family. Moreover, it is possible she might be able to conceive in the future without danger of death.
- **Disvalue** would be the destruction of an innocent foetus.
- **Conclusion:** the value of the abortion exceeds its disvalue. Therefore, in this situation, to preserve her life by aborting the foetus is justifiable. Therefore, the Natural Law deontological rule, on abortion, does not stand. Although there is an acceptance among proportionalists that this can be seen as justifying a wrong act, the intention/outcome of the wrong act is deemed to outweigh the wrong act and is thus moral.

## Proportionalism: Additional Important Points

### 1. A deontological / teleological ethic

- Given the above theory it is clear to see that proportionalism is a hybrid of deontological and teleological ideas:
  - Deontological: The moral rule, derived from the precepts of Natural Law, should always be followed, unless there is a proportionate reason not to.
  - Teleological: the deontological rule can be broken if there is proportionate reasons, including a consideration of the intention, outcome, to do so.

### 2. Right / Good Act

- Proportionalists, like Hoose, make the distinction between right acts and good acts.
- A right act: an action that follows the moral deontological rules found in ethics like Natural Law e.g. the secondary precept of 'abortion is wrong'.
- A good act: an action that breaks a right act (see above) however proportionally creates more good than evil (or the lesser of two evils)

### 3. Comparison with Situation Ethics

- Some commentators have criticised Proportionalism as just another form of Fletcher's Situation Ethics.
- In some ways this could be seen as true. This is because, as we have seen, it does take a teleological view in the same way Situation Ethics does. Moreover, a proportionalist when considering the situation/intention can consider the agape consequences of the pre-moral/ontic physical action, as part of the value/disvalue of the unique moral situation.
- However, there is a strong distinction between Situation Ethics and Proportionalism. Situation Ethics has the monist approach i.e. it will only consider agape for its value to disvalue calculation. Whereas Proportionalism will consider a wide variety of factors when considering the value and disvalue of a certain oral action.



**Read the information and answer the questions from memory, then check your answers.**

**7. What is the proportionalist maxim?**

**8. What is the proportional reason?**

**9. What is an pre-moral/ ontic act?**

**10. What is an immoral act?**

**11. Explain Hoose's concept of Value and Disvalue with an example.**

**12. According to Hoose, what is a right act and what is meant by a good act?**

## From Vardy and Grosch – The Puzzle of Ethics

It allows for **ontic goods**- qualities such as dignity, integrity and justice- which are in themselves **non-moral**, but are desirable to take into account when making a moral decision.

Aquinas' teaching allows for some degree of proportionalism. For example he allowed that if someone was starving it would be acceptable to steal rather than let them die of hunger. However, a proportionalist may argue that natural law fails to recognise the holistic nature of human beings because it makes a distinction between body and soul, rather than recognising that humans are a psychophysical unity that combines reason and nature.

A proportionalist may argue that the best we can aim for is a theology of compromise that recognises that, since we live in a fallen world (affected by original sin) the best that human beings can strive towards is a moral compromise not moral perfection. Proportionalism may be seen to be more compassionate than a strict application of natural law in so far as it allows an individual's circumstances to be taken into account. It does not permit human suffering simply in the cause of upholding natural law but acknowledges that some non-moral evils have to be permitted to bring about a greater good. What is most important is to bring about a proportionate amount of good and evil.

The position of Proportionalism is well put in John Macquarrie's A New Dictionary of Christian Ethics

*'Perhaps the most divisive debate in contemporary Catholic moral theology concerns the existence and grounding of universally binding moral norms. The Scholastic moral theology of the manuals held that certain acts were intrinsically evil on the basis of the act itself, independent of the intention, circumstances and consequences. Revisionists maintain that the evil in acts such as contraception or even direct killing is not moral evil but pre-moral evil which can be justified for a proportionate reason.'*

### **13. How did Aquinas' theory allow some proportionalism?**

### **14. Why is proportionalism seen as more compassionate than Natural Law?**

**The distinction between pre-moral and moral evil is central to the proportionalist position.**

Bernard Hoose, the leading British advocate (supporter), in his book Proportionalism says that:

*An evil like pain, death or mutilation is, in itself, pre-moral or non-moral, and should never be described as 'moral'. It is the act as a whole which is either right or wrong, and it is the person, or the person in his or her acting, who is morally good or morally bad.*

A distinction has to be made between acts which are good and acts which are right – and this distinction, proportionalists maintain, is often not made. A person may have a good intention but may be able to achieve that intention only through an act which is considered to be, in itself, evil. The proportionalists hold that it is possible for an act, in itself to be wrong, whilst based on the actual situation in which the action is done the action may be morally right.

A separation is being made distinguishing the different intentions of a human being who acts:

*Part of the issue here is whether psychological intention is to be distinguished from moral intention. Surely a doctor who amputates a limb to save a person's life has to remove the limb. But does he or she morally intend the evil in the amputation? Phillip Keane*

Proportionalists seek the right thing to do in the particular circumstances. Unlike advocates of situation ethics, they affirm that there are non-moral goods and evils, but they maintain that the circumstances need to be taken into account in deciding whether a non-moral evil is also a moral evil. Killing, theft or contraception (if one is a Catholic) may be morally good in certain circumstances. As Bernard Hoose puts it:

*If what is morally good is what is morally right and what is morally bad is what is morally wrong, we shall have to revise an awful lot of our thinking in moral matters. Some of the people who burned heretics were probably morally good in such actions. Are we to assume, therefore, that the burning of heretics was morally right? Must rich benefactors seeking admiration stop giving money to the poor? Surely they should change their attitude, but continue to give their money.*

**15. What is the distinction between an evil moral act (an immoral act) and a pre-moral/ontic evil act (a bad act that in itself is not immoral)?**

**16. What is the distinction between a right act (an act that follows the moral rule) and a good act (an act that is not a right act, but creates the lesser of two evils)?**

## **I. Proportionality based on agape.**

Those who support situation ethics and proportionalism both maintain that love or agape is the only criterion for moral goodness or badness. However proportionalists refuse to accept the view of situation ethicists that love can make a wrong action right. As Hoose puts it:

*An action born of love can be wrong, while an action not resulting from love can be right.*

### **17. What is agape? How does it link to Proportionalism?**

### **18. Research the situationalist attitude to ethics.**

## Proportionalism: application to theory

### 1. Capital Punishment:

- Contemporary Catholic theology is against the use of capital punishment. For example, in 2015 Pope Francis stated: **“Today the death penalty is inadmissible, no matter how serious the crime committed.”** (Although historically this has not always been the stance of the Catholic Church).
- Aquinas’ Natural Law can also be seen as against the death penalty because it goes against the primary precept of ‘preservation of life’ (however it does have to be noted this is by no means a universal view – with some arguing capital punishment supports the primary precept of ‘preservation of life’ or ‘an ordered society’ by ending a threat to life by, for example, lawfully killing a murderer).
- Therefore, in terms of a proportionalism, the first duty would be to follow the deontological rule regarding capital punishment e.g. the pre-moral or ontic act of capital punishment is wrong.
- However, for the morality of capital punishment to be decided, by the proportionalist, each unique case of capital punishment would have to be considered: including the intention of the capital punishment.
- For example:
- **Situation:** a woman has admitted murdering 30 people for no other reason than it gave her pleasure. Moreover, whilst in prison she had killed 3 more people including 2 innocent prison guards.
- **Value:** The intention of this capital punishment is to stop the prisoner committing more murders; thus, upholding the preservation of life. Moreover, it could be argued that by stopping the prisoner killing other innocent prison guards, they are opening up the potential of other prison guards reproducing (instead of been killed), therefore supporting the primary precept of reproduction.
- **Disvalue:** Breaking the primary precept of ‘preservation of life’ by lawfully killing the prisoner.
- **Conclusion:** the value of carrying out the capital punishment outweighs the disvalue. Therefore, in this unique situation the capital punishment could be justified. Therefore, in this particular case of capital punishment, the act would be deemed moral by proportionalists despite the pre-moral/ontic act been wrong.





## **Apply Hoose's Proportionalism to issues of capital punishment. (20)**

Bernard Hoose's Proportionalism is a hybrid of Natural Law, which also adopts the principle of Agape from Fletcher's Situation Ethics. Although it is a deontological ethic, which recognises Aquinas' Five Primary Precepts of Natural Law, it does also recognise that at times, there may be a proportionate reason to go against these moral principles, particularly if the end result would be agape. For this reason, Proportionalism is also seen to be a teleological ethical theory as it looks at the end outcome of an action.

Hoose's proportionalist maxim 'it is never right to go against a principle unless there is a proportionate reason which would justify it' could be said to be a useful when considering issues surrounding capital punishment. Whereas Natural Law would almost certainly forbid Capital punishment as a direct violation of the primary precept to preserve life, a proportionalist may argue that there may, at times, to be a proportionate reason to allow capital punishment and to therefore break a precept of natural law. Hoose distinguishes between evil moral act (acts which are always wrong, such as murder in cold blood, for example) and pre-moral/ontic evil acts (a bad act that in itself is not immoral). Taking these teachings into account, it could be argued that Proportionalism should not allow the death penalty, as it directly violates the Primary Precept of preserving life. The death penalty is killing another person, which could be claimed to be an evil moral act. Hoose did recognise that some acts are always wrong. In this sense, he differs from Fletcher. "An action born of love can be wrong, while an action not resulting from love can be right." One might argue that there is never a proportionate reason to put someone to death.

However, following the same teachings, it may be argued that at times, there is a proportionate reason to put someone to death, even though it breaks a moral rule. For example, would it be immoral to sentence a serial killer to death? The proportionate reason may be that in doing so, society is being protected from further evil. Society is also learning that such acts receive a severe punishment, which in return fits in with another principle of Natural Law, which is learning. Perhaps in this instance, capital punishment is not an evil moral act, but an ontic evil act.

Similarly, Hoose also makes a distinction between a right act (an act that follows the moral principles of Natural Law, such as keeping a foetus even if it is unwanted) and a good act (an act that is not a right act, but creates the lesser of two evils, such as promoting justice). This may also be applicable to capital punishment. One could never argue that capital punishment is a right act, since it violates several principles of Natural Law. It means taking someone's life, therefore taking their ability to learn, to reproduce and to worship God. However, at times, capital punishment could be seen as a good act, since it creates the lesser of two evils. A Proportionalist would need to weigh up which is the lesser of evils. If we allow a murderer to live, we may send a message to society that murder is tolerated. If we allow capital punishment, we might not even need to use it, but it could act as a deterrent in the same way that nuclear weapons are used as a deterrent against nuclear war. We might also enable victims and their families to feel that justice is being done. Perhaps, in some situations, capital punishment may be a right act.

When applying Proportionalism to capital punishment, the proportionate reason to allow capital punishment should be linked to agape. What is the most loving thing to do in each situation? A Proportionalist must look at the act as a whole, and also to consider the long term consequences. In some countries which practise capital punishment, it could never be seen to be carried out due to agape. Many countries that carry out capital punishment do so for fairly minor crimes. Amnesty International's research and campaigns show that in countries such as China, trials are carried out unfairly, without the right to legal representation. China do not disclose the official number of executions since many are carried out secretly. Amnesty believes that at least 10,000 people in China

are executed secretly each year. Amnesty International has also demonstrated that in China, people are kept on death row for years, never knowing when they will be put to death. This is inhumane, and could never be seen as agape. There could never be a proportionate reason to practise capital punishment in this way.

However, in countries such as the United States (several states practise capital punishment), it could be argued that trials are fair. The sentences are given based on clear evidence. A person has opportunities to appeal their sentence. We may argue that when this is the case, it may be loving to carry out capital punishment, particularly if it benefits society and contributes to the safety and well-being of society.

Overall, it is clear that Proportionalism does not offer a definitive response to the issue of capital punishment. In each individual situation, it must be considered whether there is a proportionate reason to carry out capital punishment. Would the end outcome be the most loving thing to do for all? In some situations, the answer may be yes, whereas in others, the answer may be no.

19. Evaluate this AO1 answer

## 2. Immigration

- Catholic theology has always been supportive of immigration. For example, in 2017 Pope Francis stated for Catholics: **“every stranger who knocks at our door is an opportunity for an encounter with Jesus Christ, who identifies with the welcomed and rejected strangers of every age.”**
- Aquinas’ Natural Law can also be seen to support immigration because it supports the primary precept of ‘preservation of life’ (however it does have to be noted this is by no means a universal view – with some arguing that mass immigration may break the primary precept of an ‘ordered society’ by breaking down a society as it is unable to cope with the mass influx of people).
- Therefore, in terms of a proportionalism, the first duty would be to follow the deontological rule regarding immigration e.g. the pre-moral or ontic act of capital punishment is right.
- However, for the morality of immigration to be decided, by the proportionalist, each unique case of immigration would have to be considered: including the intention of the immigration.
- For example:
- **Situation:** a man has to decide whether to help an immigrant. The man is relatively wealthy but the immigrant has arrived from Ethiopia, with the hope of escaping extreme poverty and famine.
- **Value:** The intention of helping the immigrant is to protect their life; thus, upholding the preservation of life. Moreover, it could be argued that by supporting the immigrant they have a greater chance of reproducing (rather than dying of poverty, disease or famine), therefore supporting the primary precept of reproduction. Furthermore, the immigrant has a greater chance of being educated and therefore fulfilling the primary precept of education. Plus, it is the most loving (agape) thing to do.
- **Disvalue:** Potential effects upon order in society, especially if lots of immigrants follow the original immigrant into that society. Thus, breaking the primary precept of ordered society
- **Conclusion:** the value of carrying out the immigration outweighs the disvalue. Therefore, in this unique situation the helping of an immigrant is morally justified. Therefore, in this particular case of immigration, the act would be deemed moral by proportionalists, supporting the pre-moral/ontic act judgement.



## **AO2 – Evaluation of Finnis**

- **Whether Finnis' Natural Law is acceptable in contemporary society.**
- The extent to which Hoose's Proportionalism promotes immoral behaviour.
- **Whether Finnis and/or Hoose provide a basis for moral decision making for believers and/or non-believers.**
- **The strengths and weaknesses of Finnis' Natural Law** and/or Hoose's Proportionalism.
- The effectiveness of Finnis' Natural Law and/or Hoose's Proportionalism in dealing with ethical issues.
- The extent to which Finnis' Natural Law is a better ethic than Hoose's Proportionalism or vice versa

**21. Do you think Finnis' Natural Law theory is acceptable? A good basis for moral decisions? Strong? Better than Hoose?**

**Yes**

**No**

## Weaknesses

1. Finnis aims to deal with the Hume problem, and although he tries mightily, some think he failed. There is simply no way of knowing that all rational people automatically accept his basic values. If not all people accept them, then we are back to inferring values from facts.
2. Finnis is also confronted by the problem of moral relativism, something not considered by Hume but blindingly obvious to anyone who lives in a multicultural community. In order to produce seven values common to all cultures, he has to define them so broadly that they become meaningless. {e.g. "Knowledge" in Islamic fundamentalism may boil down to word-perfect recitation of the Koran}
3. It can be seen as a weak ethic because it is based on fallible human reason rather than the Divine Command of God.
4. Finnis chooses 7 objective values but why those seven, and why seven only? Are there other values that could be added?
5. Finnis presents himself as a secular natural lawyer, and only "slips the religion in" towards the end of his work. He argues that if you accept his arguments in Natural Law and Natural Rights, you are also likely to accept the existence of an "uncaused cause" i.e. God.
6. Do the elements of practical reasonableness help guide us with difficult moral dilemmas {abortion, euthanasia}? Finnis' Catholicism rears its head when he states that because abortion and euthanasia both involve damage to a basic good, they should not be legalised, regardless of any good consequences their legalisation may have.
7. Finnis is aware that this argument could easily be mistaken for utilitarianism as it looks like the "common good" is just another name for Bentham's "the greatest good for the greatest number". But Finnis is quick to point out that in utilitarian theory, the individual is not intrinsically important in the Hedonic Calculus that determines the moral worth of an act or rule.
8. The Seven Basic Goods are not necessarily linked to morality – they are ethically neutral.
9. Unlike Aquinas' version it is not a clear ethic, and appears to be something to aspire to rather than a set of moral commands.
10. Finnis claims the Seven Basic Goods are independent of human thought, universal and unchanging. However in a post-modern and relativistic world, morality is more likely to be viewed as fluid, and unique to each moral agent and/or situation.

## Strengths

1. According to Robert Bowie, Finnis' reworking of Natural Law seems "a more measured interpretation on Natural Law (than Aquinas)". This means . . .
2. Finnis writes from a Catholic perspective but his theory could be acceptable to atheists. His theory does not rely on the existence of God but relies on human (not divine) reasoning. It provides an universally acceptable idea of what is 'good' rather than just a religious one. This is a convincing strength because . . .
3. Finnis is not focused on a single way of measuring morality (unlike Utilitarianism for example) and as such his reworking is flexible. Flexibility is useful in ethical theories because . . .
4. The Seven Basic Goods are adapted to contemporary society and the Nine Principles of practical reasonableness can be grasped by anyone and address important concerns of human beings. They are attractive/make sense to the modern mind and are easily understood. For example, . . .
5. Finnis' Natural Law focuses on community rather than just individual morality. This is a strength because . . .

**22. 'Do the strengths outweigh the weaknesses of Finnis' Natural Law' Evaluate this view**  
**Introduction**

<b>Strengths</b>	<b>Weaknesses</b>

**Conclusion**



**23. 'Finnis only provides a basis for moral decision making for believers.' Evaluate this view**

<b>Only provides a basis for moral decision making for believers</b>	<b>Provides a basis for moral decision making for believers and non-believers</b>

**Conclusion**

**24. 'Finnis' Natural Law is acceptable in contemporary society.' Evaluate this view.**

<b>Finnis' Natural Law is acceptable in contemporary society</b>	<b>Finnis' Natural Law is not acceptable in contemporary society</b>

**Conclusion**

## AO2 Evaluating Bernard Hoose's Proportionalism

- *Whether Finnis' Natural Law is acceptable in contemporary society.*
- **The extent to which Hoose's Proportionalism promotes immoral behaviour.**
- **Whether Finnis and/or Hoose provide a basis for moral decision making for believers and/or non-believers.**
- **The strengths and weaknesses of Finnis' Natural Law and/or Hoose's Proportionalism.**
- **The effectiveness of Finnis' Natural Law and/or Hoose's Proportionalism in dealing with ethical issues.**
- **The extent to which Finnis' Natural Law is a better ethic than Hoose's Proportionalism or vice versa**



25. Do you think Hoose's theory is effective? Promotes morality? Strong?

Yes

No

## Strengths

1. Proportionalism recognises that natural law must be allowed to change and that it is almost impossible to identify laws that are eternally valid without adaptation. This means that . . .
2. Proportionalism is more compassionate than the strict observance of absolutist Natural Law. This is because . . .
3. It allows individual circumstances to be taken into account. For example . . .
4. Proportionalism has been used for a long time in Catholic moral thinking in the issue of Just War.
5. Aquinas did allow exceptions to the secondary precepts which are the basis for moral rules in the Catholic tradition, so it may be argued that proportionalism is closer to mainstream Catholic tradition than the more conservative and restrictive view supported by this Church's Magisterium at the present time.

## Weaknesses

1. Proportionalism allows humans too much freedom to decide what is proportionately good. This is a problem because . . .
2. It does not provide a method to assess proportionality – Bernard Hoose maintains that the judgement about the morality of an action is made taking the consequences into account but without a formal method of calculation – this becomes similar to a form of intuitionism and is therefore very individualistic. It relies on the individual to weigh up the situation – the intrinsic evil of lying, theft etc. and balance this against the consequences.
3. Proportionalism may be thought of as a consequentialist theory in a different form, since it takes into account the outcome of an action rather than its intrinsic worth. For example, . . .
4. It permits the rejection of authoritarian moral codes such as those laid down by the Roman Catholic Church, such as . . .
5. Proportionalism was condemned by the Vatican in the document 'Veritatis Spondor' on October 1993 (except in Just War teachings)

26. The weaknesses of Hoose's Proportionalism outweigh the strengths.' Evaluate this view.

Hoose's Proportionalism is a weak theory	Hoose's Proportionalism is not a weak theory

**Conclusion**

27. 'Hoose's Proportionalism promotes immoral behaviour.' Evaluate this view.

Hoose's Proportionalism promotes immoral behaviour	Hoose's Proportionalism does not promote immoral behaviour

**Conclusion**

28. 'Hoose provides a basis for moral decision making for believers and non-believers.' Evaluate this view.

<b>Hoose's Proportionalism provides a basis for moral decision making for believers and non-believers</b>	<b>Hoose's Proportionalism does not provides a basis for moral decision making for believers and non-believers</b>

**Conclusion**



**29. The extent to which Finnis' Natural Law is a better ethic than Hoose's Proportionalism or vice versa**

<b>Evaluation of Finnis</b>	
<b>Finnis is better because</b>	<b>However, there are problems with Finnis' theory</b>
<b>Evaluation of Hoose</b>	
<b>Hoose is better because . . .</b>	<b>However, there are problems with Hoose . . .</b>

## **D: John Finnis' Development of Natural Law**

### **Issue 1: Whether Finnis' Natural Law is acceptable in contemporary society AO2 Lines of argument**

- Many people feel that there must be a 'higher law' that can be appealed to – that human law is not the final authority. Finnis' Natural Moral Law approach supports this (and fights against a legal 'positivist' view that law is merely the creation of powerful people).
- Finnis' Natural Law does clearly prevent us from performing morally wrong actions because it does set out some acts that are always bad. This gives us clear guidance.
- Finnis' basic goods are largely positive and encouraging of individuals to make something of their lives rather than to sit back and mindlessly follow restrictive preventative rules. Rather than a list of 'don'ts' Finnis encourages action, purpose and enjoyment of life. This is attractive for a modern, productive society.
- Finnis says we must never go against a basic good. However, there are some very complex situations that people face – perhaps a utilitarian viewpoint is more reasonable (something that Finnis would reject).
- How can we know that the basic goods are 'basic' and not merely instrumental? After all, Finnis says that knowledge is a basic good, but perhaps he only knows this from having benefitted instrumentally from his knowledge!
- Even though Finnis defines religion in an open way (reflection on the ordering of the cosmos), it seems that one has to believe in some kind of God to embrace this theory. If so, this would not appeal to an increasing segment of our society who reject all religion would find no reason to relate to it and thus no desire to trust and then follow its principles.

#### **Key questions that may arise could be:**

1. Do we face problems in contemporary society to which the basic goods do not apply?
2. What kind of things do we value in contemporary society?
3. Is the list of basic goods complete or are there more?
4. Many people in modern life do not believe in God, can they still use the theory?
5. Would modern society have an argument for prioritising some goods over others?

**Possible conclusions to some arguments put forward could be:** 1. Finnis' Natural Law is very acceptable to society because society values play, friendship and aesthetic experience as well as the more traditional values of life and knowledge. This is very much in line with the universal declaration of human rights. 2. Finnis' Natural Law is unacceptable to contemporary society for the simple reason that one of the basic goods is religion. New Atheism rejects the need for religion in society and argues that it is dangerous. 3. There are features of Finnis' Natural Law that might be acceptable, but it may need moderation. There will always be extreme circumstances whereby a value should be prioritised over others in order to preserve a person's well-being.

## **D: John Finnis' Development of Natural Law**

### **Issue 2: Whether Finnis provides a basis for moral decision making for believers and/or non-believers**

#### **AO2 Lines of argument**

- Finnis' natural law is steeped in history and can be dated back to Aristotle through Aquinas. This gives it a firm basis for moral decision making because it has stood the test of time.
- Whilst Finnis' Natural law does have reference to religion and God within it, and so would be attractive to religious believers, everything else within it can be said to be universally desirable by human beings whether they are religious or not. E.g. play, friendship, beauty and understanding.
- Practical reason can be proven to have benefits to one's own physical and emotional health – as well as to society. This aspect of his theory could appeal in a secular world that values empiricism.
- Finnis does make the claim that the need for religion is self-evident, yet this is an assumption which non-believers might object to since it is based on faith rather than evidence. Non-believers may point out that they feel no need at all to seek God.
- Finnis' theory relies upon too many principles that cannot be proven and so a nonbeliever might mistrust them. For example, that the 'basic goods' are basic or given or that a simple explanation is always preferable to a complex one. Philosophically these assumptions are questionable.
- Finnis' Natural law takes us down a road which is inconsistent with what many, religious or non-religious alike, might now feel is unacceptable and inconsistent with morality. For example, Finnis objects to same gender coupling and reserves marriage only for a man and a woman.

#### **Key questions that may arise could be:**

1. What do believers require to make moral decisions?
2. How does decision making differ between believers and non-believers?
3. Do both groups have anything in common, as is suggested by the notion of 'basic goods'?
4. What makes a decision moral?
5. Is the universe 'ordered' as Finnis thinks it is?

**Possible conclusions to some arguments put forward could be:** 1. Finnis' approach does not provide a good enough basis for moral decision making for believers because there is a lack of emphasis upon the religious aspect of life (scripture and God's authority) that is fundamental for a believer. 2. Finnis' approach is suitable for all because it appeals to something both groups have in common and that is the authority of practical reason. It emphasises common values and allows the individual to reason about how best to put them in place. 3. Finnis' approach strikes a balance for believers between individual faith and scriptural guidelines. Finnis encourages individuality but with the clear restrictions of the basic goods that can be supported by the values in scripture without relying solely upon it.

## **E: Bernard Hoose's Proportionalism**

### **Issue 2: The extent to which Hoose's proportionalism promotes immoral behaviour. AO2 Lines of argument**

- The Roman Catholic Church has felt that Proportionalism promotes immoral behaviour on the basis that it does not condemn any act as intrinsically bad (but as pre-moral or ontic evil).
- There is little guidance by Proportionalists as how to weigh up the value of an act in relation to its disvalue. This could be very subjective and therefore could make it easy to perform acts that others would deem to be immoral, with no concrete way to judge who is correct.
- Many Catholics believe that God has given the Magisterium the role of guiding people's moral choices (not just spiritual influence). Proportionalists deny this thus replace the authority of the church with godless Utilitarianism (according to the Magisterium!).
- According to Proportionalism an immoral act is one which carries brings more ontic evil into the world than it takes away. It promotes only those acts that are proportionally valuable and so does not promote immoral behaviour.
- Proportionalism and Hoose still advocate that people should, in general, follow deontological laws like Natural Law. This theory merely gives the opportunity for moral agents to make a choice between two bad options in an extreme situation.
- Hoose's Proportionalism shows more compassion than a strict adherence to Natural Law would allow. This is more in line with the kind of morality that Jesus advocated where law was for the benefit of humankind rather than the other way around.

### **Key questions that may arise could be:**

1. Aren't there some actions (like rape) that are wrong actions without exception?
2. Is a proportional decision one that is reached objectively or does it come down to personal preference?
3. Don't we sometimes need other people (like the Magisterium) to tell us how to act?
4. Does the occasional laying aside of principles make one unprincipled?
5. Is it ever acceptable to perform an action with bad motives.

**Possible conclusions to some arguments put forward could be:** 1. Hoose's Proportionalism does promote immoral behaviour by separating the act from the intention of the agent. If some acts are morally bad, as demonstrated through Natural Law, then they are bad regardless of the circumstance or intention. 2. Hoose's Proportionalism does not promote immoral behaviour, instead it prevents immoral behaviour. Rules support people in behaving well, but if following a rule causes more harm than good, Proportionalism allows a person to break that rule for the greater good. 3. This is a dangerous theory. On the one hand, it is not promoting immorality to insist on exceptions to principles; however, Hoose's theory could open the door for not challenging intentions but instead focusing on actions.

## **E: Bernard Hoose's Proportionalism**

### **Issue 3: Whether Hoose provides a basis for moral decision making for believers and/or non-believers**

#### **AO2 Lines of argument**

- Hoose provides a basis for moral decision making for believers by claiming that Proportionalism can be seen in the life of Jesus: Jesus advocated following law but, allowed exceptions in the extreme situations like hunger or to save the life of the woman accused of adultery.
- Hoose gives autonomy to the moral agent by allowing them to weigh up the value or disvalue of an act proportionally for themselves rather than being ruled mindlessly by laws. This would be attractive to anyone in the modern world whether believer or not.
- Hoose's Proportionalism respects Natural Law which would be attractive to believers who desire a traditional approach. It also takes into account a range of influencing factors such as intention, situation and outcome (as well as holding the law in high regard). This might be attractive to believers and non-believers alike because it appears to be more logical than simple obedience.
- Many religious believers would reject Proportionalism (e.g. Roman Catholics) on the basis that it does not allow for any act to be intrinsically right or wrong. The Bible seems to condemn some acts absolutely and Hoose seems to place human intellect above the need for obedience to God.
- Non-believers might reject Proportionalism on the basis that it still places too high a regard for law in its theory and such laws based on revelation from God (who does not exist) is irrelevant to them. If there were to accept any kind of deontological law, it would have to be based upon reason rather than any deity.
- Proportionalism seems like a weak fusion of Natural Law and Situation Ethics. The lack of commitment to a method or system that is clearly laid out (as by both Aquinas and Fletcher) is an inefficient compromise that combines the weaknesses of both theories rather than the strengths.

#### **Key questions that may arise could be:**

1. To what extent do we see Jesus setting a Proportionalist example in scripture?
2. Could an atheist make use of this theory and it still make sense?
3. What use could this theory be to people of other religions?
4. Could Proportionalism lead people to perform acts that the Bible condemns?
5. If you do not believe in any divine authority, can you use a deontological theory at all?

**Possible conclusions to some arguments put forward could be:** 1. Proportionalism involves reasoning around values and disvalues; therefore, it is a suitable basis for all human beings, whether they believe in God or not. 2. Hoose's theory would not be attractive to a religious believer because it places human reasoning above God, Her commands and God's ordained community (the Magisterium). 3. Hoose's theory would not be a suitable basis for an atheist because of its roots in Natural Law, a religious theory, and because of its deontological nature.

## **Bernard Hoose's Proportionalism**

### **Issue 4: The Strengths and Weaknesses of Hoose's Proportionalism AO2 Lines of argument**

- Hoose's Proportionalism gives clear authority to the law, emphasising that in ordinary situations these laws are inviolable and so moral behaviour is easy to govern and judge.
- It has a tradition and history behind it since St. Aquinas had attempted to recognise the need for flexibility but hadn't consistently achieved it. Hoose develops that which Aquinas had begun.
- Proportionalism combines the strengths of situation ethics (focus on love and unique situations) without promoting complete relativism – there are abiding principles (Natural Law). It is therefore a unique modern fusion of ideas for contemporary Catholics.
- By not condemning any one action as being intrinsically immoral, Hoose makes it theoretically possible for someone to perform any act, however heinous, if the circumstances were extreme enough. Many people would argue that child abuse or rape are always wrong no matter what the situation.
- Proportionalism is impractical for society. A society needs a rigid set of principles that are applied to all people in order for it to function properly. Anything less could result in anarchy where each individual can bend their interpretation of the severity of their situation to suit their own desires.
- Proportionalism is just not as clear as deontological Natural law on the one hand or a relativist approach like situation ethics on the other hand. It seems to be between these two without offering a clear method for determining whether or not an action is proportional.

#### **Key questions that may arise could be:**

1. What characteristics do people require in a 'strong' ethical theory? (e.g. fair / consistent / flexible, etc.)
2. What kinds of things would worry people about a 'weak' ethical theory? (e.g. impractical / vague etc.)
3. Does Proportionalism take the best ideas from both situation ethics and natural law?
4. Is it practical for everyone regardless of education or context to engage in proportional thinking/calculations?
5. Are absolute rules really absolute if we are allowed to break them?

#### **Possible conclusions to some arguments put forward could be:**

1. Hoose's proportionalism is a strong moral theory because it seems to be fair in the way it treats people, by recognising that it is much harder to obey a command not to kill if your own life is being threatened by an attacker.
2. Proportionalism is a weak moral theory because it claims to be deontological and value some rules as absolute, but in the next breath it allows exceptions.
3. Hoose's proportionalism has several important strengths as it is compassionate, reasonable and intends to promote good moral behaviour. But it has a powerful weakness in how unspecific 'exceptional circumstances' are meaning that almost anything could be considered exceptional.

**D: John Finnis' Development of Natural Law E: Bernard Hoose's Proportionalism F: Finnis' Natural Law and Hoose's Proportionalism: application of the theory Issue 5: The Effectiveness of Finnis' Natural Law in dealing with ethical issues [example used here is immigration]: AO2 Lines of argument**

- Finnis' natural law provides a clear support for those who are fighting for immigrants who will not otherwise have the basic goods. It can support this struggle by appealing to a higher law (against egoism and group bias) which cries out against inhumanity and works on behalf of those who need shelter and safety.
- The eighth principle of practical reason is that we should 'foster good in the community'; if we interpret 'community' broadly as the human race then there is a clear basis for working on behalf of immigration.
- However 'Community' can be interpreted narrowly as a family, tribe or nation and therefore this principle can be used in a clear way to resist some forms (or all forms!) of immigration.
- There is a conflict between the value of friendliness and being practically reasonable with resources, time and commitments. This can lead to conflicting interpretations of applying Finnis to immigration; therefore, it is not a helpful theory.
- A truly deontological theory would demand that we behave in an ethical way consistently; yet, as can be seen from conflicts in the above points (how to interpret 'community'), Finnis' Natural Law approach can lead to vastly different actions in terms of this issue.

**Key questions that may arise could be:**

1. Do we really need to appeal to a 'higher law' to combat group bias?
2. How should we interpret the word 'community' when Finnis says, 'Foster good in the community?'
3. Is Finnis' approach simply too 'general' to lead to any agreement on specific moral decisions?
4. What should we do if the basic good of the individual comes into direct conflict with the basic good of the society?
5. Does saying 'no' to open borders | refugees | immigrants | (etc.) | promote or detract from the basic goods/principles of practical reasonableness?

**Possible conclusions to some arguments put forward could be:**

1. Finnis' Natural law is effective when dealing with the problems of immigration because it looks at the big picture for everyone concerned as well as looking at the rights of the individual. It is a practical theory that can be applied to a society and enforced without confusion.
2. 2. Natural law is not effective when dealing with immigration because it is inevitable that the goods of some will conflict with the good of others and there is no way to decide between.
3. 3. Natural Law can offer guidance regarding the best way to approach immigration, but it is not wholly effective because the term 'community' can be interpreted either broadly or narrowly.

**Issue 5: The Effectiveness of Hoose' Proportionalism in dealing with ethical issues [example used here is immigration]: AO2 Lines of argument**

- It is effective to engage in the process of weighing up whether an action brings more or less ontic evil into the world as this ensures that we are aware of the context of our actions.
- Proportionalism is effective against a dehumanizing absolutist approach to the law. Even if it necessary for there to be immigration laws, Proportionalism means that exceptions can be made.
- Hoose's proportionalism is effective in preventing a purely emotive response to a contentious issue. By categorising the need for immigration itself as an ontic or premoral evil, Hoose allows us to take a practical approach to weighing up the advantages and disadvantages before making a decision.
- Proportionalism is simply impractical as countries need absolutes to function. A circumstantial approach requires an enormous and costly amount of administration to weigh up each case separately.
- Proportionalism isn't actually a method in that it offers no clear set of principles to make a calculation of proportion. It is more of a 'mindset'; thus one could use it with conflicting results on any moral issue.
- Proportionalism can't be effective as it is too subjective. Different individuals will give different weight to the issues. Some may think the disvalue of the strain on the job market with more competition for work cannot outweigh the value for the country of having more a more diverse skill set available. Others will argue the opposite.

**Key questions that may arise could be:**

1. If thousands of people wish to flee a war zone, how to we weigh this proportionally against the strain on a society that could be asked to support them?
2. What kind of circumstances would be considered 'not exceptional' (and therefore NOT require proportional thinking)?
3. Are decisions about immigration based, essentially, on emotion?
4. What kind of 'value' could people bring to a society that they wish to move to (in other words, beyond purely utilitarian considerations of pain and pleasure)?
5. Which precepts or goods can support the idea of allowing 'no borders'
6. Does 'keeping people out' add 'disvalue' and a relative increase in ontic evil to a culture or are there times when doing so creates a 'value' and a relative decrease in ontic evil?

**Possible conclusions to some arguments put forward could be:**

1. Hoose's Proportionalism is extremely effective with immigration because it is the kind of system that we already employ. It is necessary for us to have some kinds of laws regarding immigration, simply to control the quantity of people that we can accommodate, yet there are some circumstances when we assess whether to breach these laws when someone's life is threatened if they remain in their country of origin.



2. Proportionalism is not effective in dealing with immigration because it could be argued that every single person is an exception and therefore it is impractical to apply Proportionalism. Either we need strict laws, or open borders so that we can treat people fairly.

3. Hoose is partially effective. It is compassionate certainly, but it is difficult to see where the line is to be drawn between a proportionate and disproportionate reason to move countries and it could still see some people in need being turned away.

## **Issue 5: The effectiveness of Finnis' Natural Law in dealing with ethical issues [example used here is Capital Punishment] AO2 Lines of argument**

- Finnis' Natural law is effective because it prevents inhumanity even to those who have committed serious crimes – the basic goods apply to all. A mob mentality may want capital punishment, but Finnis would have us pause and consider that all humans deserve basic goods.
- Finnis' approach is effective because it offers the clear perspective of 'the common good' – the majority are protected from harm by the minority. It might be in the interest of the common good to make use of capital punishment and Natural Law would seem to allow this.
- Finnis' Natural law could be considered effective because leaves room for debate and the use of the human mind in communal decision making (the principles of practical reason).
- Finnis' Natural Law is ineffective in dealing with capital punishment because it gives no clear guidance on whether or not it is acceptable, and we may interpret his basic goods and requirements of practical reason to come to any number of conclusions.
- If Finnis' approach is used to justify ceasing capital punishment, then this may be considered an ineffective response to those victims of crime who need closure. Some crimes are sufficiently damaging that it is unreasonable of Natural Law to protect the sanctity of life of the individual over and above the need for retribution on behalf of victims.
- It is ineffective in giving us any method of dealing with a criminal at all since the basic goods of friendliness and sociability mean that we should treat everyone in the way we would like to be treated ourselves.

### **Key questions that may arise could be:**

1. Does Finnis' approach prevent a 'mob mentality' to capital punishment?
2. Does 'common good' lead towards accepting or rejecting capital punishment? Or, is it too vague an idea?
3. What should we do when to uphold the basic good of one person (the prisoner) means violating the basic good of another (the victim's family who needs closure)?
4. Are the basic goods compatible with ANY kind of punishment?
5. Does Finnis' approach provide any clarity on this issue?

### **Possible conclusions to some arguments put forward could be:**

1. Finnis' Natural Law is effective when dealing with capital punishment because it avoids an overly emotional, instinctive reaction which might be expected when a crime has been committed and people feel violated (practical reason).

2. Finnis' approach is ineffective because it leads in the direction of viewing punishment in general as violating one's basic goods. This would lead to too soft an approach to those who have committed crimes.

3. Finnis' Natural Law approach is both clear and unclear on this issue. On the one hand, it points us away from capital punishment (basic goods apply to prisoners as well as everyone else). On the other hand, it encourages reasoning on this issue that could lead to a justification of capital punishment.

## **Issue 5: The effectiveness of Hoose's Proportionalism in dealing with ethical issues [example used here is Capital Punishment] AO2 Lines of argument**

- Proportionalism is effective because it recognises that no answer will ever be perfect (there is always ontic evil) but tries to create a solution where ontic evil is lessened.
- Hoose's Proportionalism is effective because rather than prescribing a complicated formula to this issue, it urges us to pay attention to the fact that often what is proportionate is very clear to us.
- Hoose's Proportionalism is effective because moves us to consider not only how capital punishment could bring pain or pleasure into the world but also for how it can produce values or disvalues – this is a broader perspective than Utilitarianism.
- Hoose's Proportionalism is not effective because it is irrational. Once a deontological system has decided that life is to be preserved or is sacred, it is illogical to then start producing exceptions to this rule. Either the theory is deontological, or it is not. There is no middle path.
- Hoose's approach is not effective because we would never really know if ontic evil is increased or reduced – we simply don't have that kind of knowledge!
- If we have a sense of clarity about a proportionate act without having to do a calculation, what is to prevent that clarity from being merely selfish interest? Proportionalism could be seen therefore as, essentially, Egoism!

### **Key questions that may arise could be:**

1. What values or disvalues are created for a society that permits capital punishment?
2. What could be considered exceptional circumstances - and therefore give a proportional reason for capital punishment to be allowed?
3. Who or what must be taken into consideration when making the proportional decision to allow capital punishment?
4. When considering punishment for a crime, is there ever a situation which would be considered 'not exceptional'?
5. Can one picture a situation where an act of capital punishment reduces the amount of ontic evil in the world compared to not committing an act of capital punishment?

**Possible conclusions to some arguments put forward could be:**

- Hoose's Proportionalism is effective when dealing with the issue of capital punishment because it begins with principles (such as the value life for those who have committed murder), but recognises that there could be exceptions where capital punishment is the better path to reduce ontic evil.
- Hoose is not effective in dealing with the issue of capital punishment because every situation is exceptional when it comes to crime and punishment. If this is the case Proportionalism loses its identity as a partially deontological theory and become completely teleological with no basis in absolute law.
- Hoose's approach is limited to personal morality and does not provide a solid legal or political basis for society. This is because it is inconceivable that everyone, together, would ever come to the same 'proportional' decision.

## **D: John Finnis' Development of Natural Law E: Bernard Hoose's Proportionalism Issue 6: The extent to which Finnis' Natural Law is a better ethic than Hoose's Proportionalism or vice versa AO2 Lines of argument**

- Finnis is more consistent in his application of deontological laws which means that all people are treated the same regardless of their cultural origin or their perceived crime. This protects people from prejudice and ensures justice for all.
- Hoose's proportionalism appears to value fixed laws but actually disregards them when it suits him. This is more complex and thus time consuming and costly to administrate and, thus, is less practical.
- Hoose does not place as much importance upon the good of society as Finnis does. He is more concerned with individuals and their circumstances. Sometimes it is necessary to consider the greater good or majority and Finnis ensures that the common good is always protected.
- Hoose recognises that Natural Law is limited if it doesn't recognise that some situations call for a different response. Since society is constantly throwing up different and varied dilemmas, Hoose gives us the chance to respond to them more appropriately instead of just applying a 'best fit' law that might not be adequate.
- Hoose recognises the need for Natural Law, yet also recognises that sometimes the blind application of Natural Law can result in more evil overall.
- Finnis does not give us a solution regarding what to do if an act brings about a conflict between basic goods, whereas Hoose allows us to take the least damaging option. In real life, outside the arm-chair, people sometimes have to do things that go against basic goods just to survive. Hoose takes this into account.

Key questions that may arise could be:

1. What are the features of a good or best ethical theory? (e.g. fairness / clarity / consistency)
2. How is Proportionalism different from Finnis' Natural Law approach?
3. Which of these theories is more 'deontological'? Which of them is more 'circumstantial'?
4. Do either of the theories give the individual more independence or more restrictions?
5. In a situation where there are only bad actions possible – would either of these theories help? (e.g. a family hiding from an axe murderer has a new-born baby who is sick and won't stop crying – what are the options? Can the theories help?) 1

**Possible conclusions to some arguments put forward could be:**

1. Finnis' Natural Law is a better ethic than Proportionalism because it keeps clear rules about what is acceptable whilst allowing the individual to make use of their own reasoning capacity to choose between different good options. It avoids the pit fall of the Proportionalism which finds itself weighing up each action according to circumstances that meet the vague criteria of being 'exceptional'.

2. Proportionalism is clearly a better ethic than Natural Law because it begins with Natural Law but allows more scope for compassion in situations that cannot be legislated for or even predicted.
3. Natural Law and Proportionalism are both equally valuable as ethical theories, because both value the principles of Natural Law and both allow for the use of individual reason. Even Finnis' approach could be seen to deal with exceptions through the principle of double effect.