



**Topic:** Natural law

**Option:**

**Essential Richer Reading** – you must read this for your lessons ☐

**Recommended Richer Reading** – advised as it would enhance your understanding further ☐

**Further Richer Reading** – widening your knowledge beyond A-levels ☒

**Richer Reading title:** John Finnis and Natural Moral Law

**Type:** Article from the Religious Studies Review (April 2018)

**Reading intention:** (*importance of the text, what students will gain from it*)

- Importance as it looks at modern application of Natural law and the adaption of it beyond 13<sup>th</sup> century context
- Gain a deeper insight and understanding into Natural Law comparatively to John Finnis' modern Natural Law

**Core content to take away:**

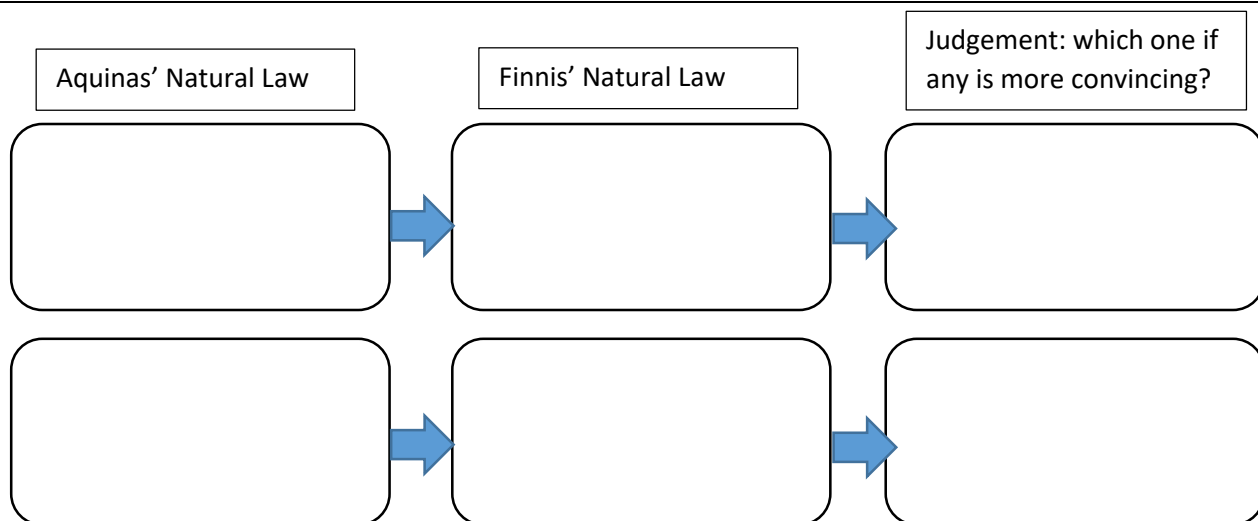
- Finnis' views on Natural Law in a 20<sup>th</sup>/21<sup>st</sup> Century context

**Exam help:**

- Additional scholar to use to build on Aquinas' AO1 content
- Will allow you to develop your skills in comparison of theories looking at "topical subtleties" which will get you higher marks in AO2

**Task for this reading:**

- Create a comparison diagram as shown below in your books or on a word document
- As you read through the document, fill in the diagram that you have created.
- Add as many rows as you can to compare elements of Aquinas' Natural Law and Finnis' Natural Law





# John Finnis and natural moral law

In the last issue of RS REVIEW (Vol. 14, No. 2, pp. 22–25) we looked at Aquinas's teaching on natural moral law. Here, **Jon Mayled** considers twentieth-century developments, focusing on the work of John Finnis

All boards:  
ethics options

John Finnis (1940–) is an Australian legal scholar. He received a Rhodes scholarship to Oxford. He is Biolchini family professor of law at Notre Dame Law School and permanent senior distinguished research fellow at the Notre Dame Center for Ethics and Culture in the USA. He is also professor emeritus at Oxford. His book *Natural Law and Natural Rights* (first published in 1980) is viewed as a seminal restatement of the natural law doctrine. Finnis is a practising Roman Catholic and much of this work concerns the relationship between natural law and Christian values. His ideas have become known as **new natural law theory**.

Finnis's emphasis is that all people have the ability to understand basic moral obligations. As with Aquinas, he says that these obligations apply to everyone regardless of their nationality, beliefs or culture. He uses anthropology to establish this truth.

He defines natural law as requiring:

“a set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realised, and which are in one way or another used by everyone who considers what to do, however unsound his conclusions.”

*Natural Law and Natural Rights*

His focus is on goods and that these are in fact good. People can then understand what they morally ought and ought not to do.

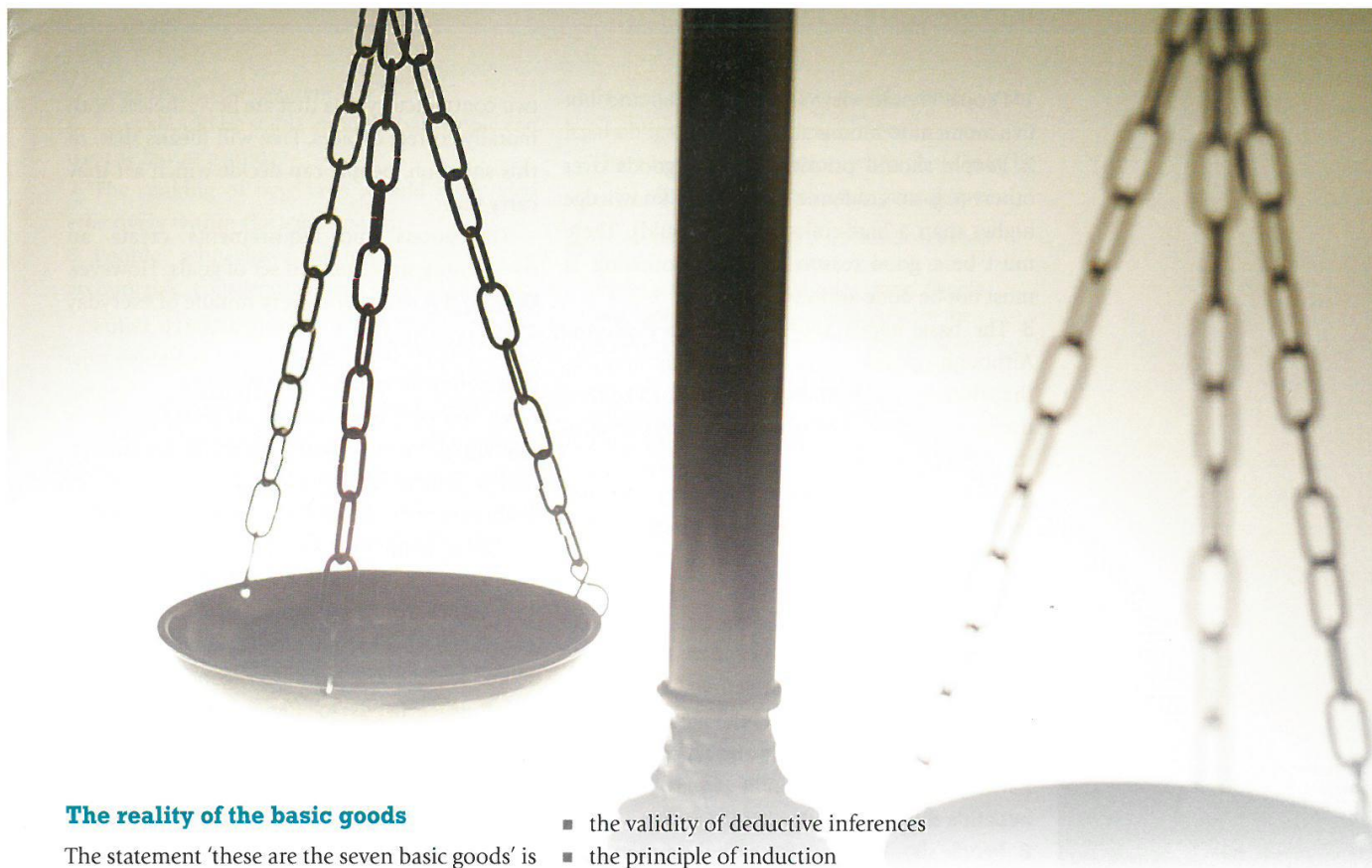
## The seven basic goods

The seven basic goods are:

- life
- knowledge (for its own sake)
- friendship and sociability
- play (for its own sake)
- aesthetic experience
- practical reason — i.e. the ability to reason correctly about what is best for yourself, and to act on those decisions
- religion — i.e. a connection with, and participation with, the orders that transcend individual humanity

The basic goods are an explanation of why people do things. Any activity which is worthwhile is worth doing because it participates in one or more basic goods.

Other positive qualities, such as freedom or humility, are merely methods by which we can achieve one or more of the basic goods. Other motivations for action, such as the pursuit of pleasure or material gain, are motivated by human inclination rather than practical reason and therefore are misguided.



### The reality of the basic goods

The statement 'these are the seven basic goods' is just as true as the statement 'there are infinitely many primes'. The basic goods exist independent of human thought, and so we can put them in 'reality' in the same sense that maths lives in reality. The basic goods do not have physical form.

Finnis does allow for flexibility in the ways these basic goods are pursued, and like Aquinas he recognises that people do not always use their reason well.

Finnis expects a certain level of disagreement about some difficult moral questions. He regards natural law as not some kind of computer program but a way in which decisions are made about moral issues in life, taking into account assumptions about what people need in order to live their lives well and to flourish. He believes the goods are self-evident but do not in themselves give any moral rules. Rather, moral rules are derived from the application of practical reasonableness.

He argues that people can distinguish between *theoretical reason*, which describes what is true, and *practical reason*, which describes how to act.

Theoretical reason has many principles that cannot be proved:

- the validity of deductive inferences
- the principle of induction
- the assumption that experience corresponds to reality
- the preference for a simple explanation over a complex one

These principles are not derived from logic, and can be denied. However, denying them makes it impossible to pursue knowledge. The same applies to the basic goods. Without them people cannot make decisions about what is best for their lives. It is obvious that they are basic, and therefore are self-evident.

It is obvious that not everyone is automatically aware of all the principles of theoretical rationality. However, the principles are known to every educated, mature person. In the same way, Finnis does accept that there are people who do not respect the basic goods. They are simply wrong.

### Practical reason

Practical reason is one of the seven basic goods. People participate in this good by making rational decisions that will then maximise their participation in the other goods. To participate in practical reason, people need to fulfil nine requirements. Like the basic goods, these are viewed as self-evident:

**FINNIS'S EMPHASIS IS THAT ALL PEOPLE HAVE THE ABILITY TO UNDERSTAND BASIC MORAL OBLIGATIONS.**



ONCE A LEGAL  
SYSTEM IS  
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1 People should view life as a whole, and not live moment to moment.

2 People should prioritise certain goods over others (e.g. an academic might place knowledge higher than a blue-collar worker would). There must be a good reason for any prioritising. It must not be done arbitrarily.

3 The basic goods apply equally to everyone. Although people can be self-interested in that they are in the best position to look after themselves, they must always take into account the good of others.

4 People should ensure that they do not become obsessed with a particular project. They must have the perspective that the project is a participation of a basic good.

5 People should undertake projects and make an effort to improve.

6 People should plan their actions so that they are the most efficient and do the most good.

7 People must not commit any act that directly harms a basic good, even if it may indirectly benefit a different good.

8 People should always foster the common good of the community.

9 People should act according to their own conscience and practical reason, and not under the authority of anyone else.

It can be seen that Finnis's theory also follows the golden rule: 'Do to others what you would have them do to you.'

### Decision-making

The goods and requirements apply equally to everyone. When making specific decisions people should think reasonably in accordance with the requirements and decide how their actions participate in the basic goods.

This view of natural law gives considerable room for choice. Most daily activities, such as listening to music or meeting friends, are clearly valid. On the other hand, some choices, such as murder or theft, are wrong.

The seven goods do not exist in a hierarchy. So, although some acts are wrong, there is no single correct act. This makes an important distinction between theoretical and practical reason. Theoretical reason says that if two statements contradict then at least one of them must be false. However, in practical reason, there can be

two contradictory acts that are nevertheless both morally correct choices. Free will means that, in this situation, people can decide which act they carry out.

The goods and requirements create an overarching structure and set of goals. However, they do not determine every minute of everyday life.

### The common good and authority

Most humans need to live in groups. This is necessary for the basic good of sociability, and is implicit in the other six as seen in the requirement to 'foster the common good'. This common good enables each member of the community to pursue the goods for themselves. It is important to remember that the common good is never achieved, it is just participated in.

To achieve the common good the whole community needs to show respect for rules, collaborate with knowledge, and share in the spirituality of the community. These community actions require coordination, and this needs authority. Authorities might include churches, team captains and even governments. Nevertheless, people must be free to make decisions for themselves, and authority needs to reach a compromise between coordinating society and giving people choice.

### Natural law

Finnis believes that law is a morally necessary component of society. Some laws directly relate to basic goods (for example, the law against murder). However, many others are indirect and serve to create a stable society where people have the freedom they need to pursue the basic goods.

Provided that the legal system serves the basic goods and accords with practical reason, it is a morally 'good' legal system.

### Features of a legal system

The law must bring specificity, clarity and predictability into the interactions of individuals. Finnis adopts Lon Fuller's eight requirements of 'the inner morality of law':

- 1 Laws should be prospective, not retroactive.
- 2 Laws should be possible to comply with.
- 3 Laws should be promulgated.
- 4 Laws should be clear.

- 5 Laws should be coherent.
- 6 Laws should be stable enough that people can use the law as a guide.
- 7 The making of new laws should be guided effectively within the legal system.
- 8 People who have authority should be accountable, consistent and act in good faith

Fuller (1902–78) was a legal philosopher who defended a secular and procedural form of natural law theory.

### The moral force of law

Once a legal system is accepted, people have a legal obligation to obey every law. The legal system also should provide guidance for people:

- People ought to pursue the basic goods.
- Society needs to coordinate in order to best achieve the basic goods.
- The law is an effective way of coordinating society this way. Therefore, people ought to obey the law.

So, people have a *legal* obligation and a *moral* obligation to respect and obey the law.

The legal obligation is unchanging — the law has offences and sanctions, and no offence or sanction is legally worse than any other. On the other hand, the moral obligation has different weight according to the specific offence. If a legal obligation is in line with a moral obligation (for example, 'Do not murder'), then people also have a non-legal obligation to not perform that act for moral reasons.

In a utopian society, the law would only have sanctions that coordinated people.

### When law conflicts with morals

A classic view of natural law is found in the doctrine of *lex injusta non est lex*: 'morally wrong laws are not laws at all.'

Finnis says that this is not the primary concern of natural law. He regards the primary concern as discerning a system of common good, and considering whether a legal system can achieve that. However, he does consider the issue of *lex injusta non est lex*, saying that it is simply stating that a morally unjust law imposes legal obligation, but no moral obligation.

When a law is immoral or unjust, then premise 3 ('The law is an effective way of coordinating society this way. Therefore, I ought to obey the law.') can be disregarded and there is no moral

obligation to obey the law. People still have the legal obligation but the law is morally invalid.

There is another situation when there may be a moral obligation to obey an immoral law:

“An act is morally wrong, but is required by law. The law has moral force, therefore it is morally important that the law remains stable. People then have a moral obligation to perform the act in order not to undermine the legal system and officials also have a moral obligation to enforce this act. The moral obligation does not necessarily surpass the moral obligation that the act should not be carried out, but it is possible that it will. Therefore, in some circumstances it might be morally correct to obey the law, even if it is not morally valid.”

*Natural Law and Natural Rights*

### A strong list?

Some scholars have criticised Finnis's approach to natural law as it presumes that the basic goods are self-evident and ignores any idea of a common human nature. Joseph Koterski, S. J. wrote that there is no philosophy of human nature and therefore Finnis is not true to Aquinas. His theory is a sort of 'Christian Kantianism'.

However, Finnis's approach does avoid charges of the naturalistic fallacy. Finnis's list of basic human goods, which he admits is simply his version, is a strong list because of its anthropological support. The list has a sense of universality:

“All human societies show a concern for the value of human life...and in none is the killing of other human beings permitted without some fairly definite justifications.”

*Natural Law and Natural Rights*

Finnis states that natural law theory provides the groundwork for general moral rules to be formulated. His writings, together with those of Germain Grisez, have been highly influential in reviving the discussion of natural moral law.

**FINNIS STATES THAT NATURAL LAW THEORY PROVIDES THE GROUNDWORK FOR GENERAL MORAL RULES TO BE FORMULATED.**

### References

Finnis, J. (2011) *Natural Law and Natural Rights* (2nd edn), Oxford University Press.

**Jon Mayled is the author of many religious studies textbooks.**