

## ANTI-PROPORTIONALISM

Ethical theories can be roughly arranged along a spectrum, according to the extent to which they admit moral reasoning in the form of a calculus, such as Bentham proposed. On the "Right" end of this spectrum stands an important school of contemporary conservative Roman Catholic moral thought led by John Finnis and Germain Grisez<sup>i</sup> which rejects calculative methods, or even rougher comparisons of competing goods, except insofar as we are engaging in merely technical reasoning. While we may call the doctrines of this school either "the new natural law theory"<sup>ii</sup> or "the new rigorism," a more accurate expression for its position is "anti-proportionalism." But while anti-proportionalism includes a polemic against utilitarianism and all its cousins, it is also an affirmative contribution to the long-standing tradition which attempts to discover fundamental ethical principles with whose aid it is possible to resolve disputed questions of morals,

The anti-proportionalist movement is not exclusively Catholic, however. The views of the Methodist Paul Ramsey are in some respects similar to those of Finnis and Grisez, though not in the same way reducible to a master argument.<sup>iii</sup> Nor is this way of thinking the exclusive preserve of religious moralists. Phillipa Foot argues that "the concept of 'the best state of affairs' should disappear from moral theory, though not ... from all talk in moral contexts,"<sup>iv</sup> where such talk can be given definite meaning by appeal to some virtue. I shall argue below that the virtue of prudence yields an acceptable meaning for this expression, though not one that warrants the generalized overriding of inherited moral rules.

By "proportionalism" is meant the weighing and balancing of disparate goods in order to resolve moral questions, and in particular to warrant departures from inherited moral rules (or indeed to support adherence to them).<sup>v</sup> Proportionalism may be distinguished from

consequentialism (or utilitarianism minus hedonism), in that a proportionalist takes into account considerations other than consequences in the usual sense, such as that each of us shapes his character by his choices.

Finnis and Grisez<sup>vi</sup> reject proportionalism, not only as the sole or sovereign method of moral reasoning, but even as one method of prudential judgment among others; in fact, they regard it as meaningless, except as a way of rationalizing decisions made on other, and very likely questionable, grounds. In doing so, they evade an argument that many writers on ethics have found very powerful, one that has been formulated by Samuel Scheffler as follows: "Anyone who resists consequentialism seems committed to the claim that morality tells us to do less good than we are in a position to do, and to prevent less evil than we are in a position to prevent."<sup>vii</sup> For, they hold, there is no such thing as "less good" and "less evil" in the relevant senses of the words.

The resulting approach to moral issues has now been embodied in an impressive body of literature, including works of Thomistic scholarship,<sup>viii</sup> freestanding moral philosophy,<sup>ix</sup> legal and constitutional theory,<sup>x</sup> and moral theology (FC, MLA, WLJ). Finnis and Grisez have also discussed a range of special moral issues: these discussions center on such traditional Catholic concerns as sexual morals<sup>xi</sup> and medical ethics (A, LDLJ), but include also an argument rejecting nuclear deterrence on the grounds that it requires a morally impermissible intention to take innocent life (ND). Arguing against ("artificial") contraception has been a central preoccupation of Grisez at least, ranging from the early *Contraception and the Natural Law*<sup>xii</sup> written before the controversial encyclical *Humanae Vitae* (1968), through the recent collaborative effort *The Teaching of Humanae Vitae* and beyond.

Anti-proportionalism is of interest both to ethical theorists and to those interested in moral controversies within particular communities. Two different impulses -- not altogether in harmony -

- are at work in Finnis and Grisez's program. One impulse starts with a philosophical thesis, that values are incommensurable and sound proportionalist reasoning therefore impossible, and turns to the Christian (and especially to the Catholic) tradition, restrictively interpreted, to reinforce this conclusion.

The other impulse undertakes the defense of traditional Catholic moral teachings against external critics and internal dissidents (or "revisionists" as they are unfortunately called); and finds in philosophical anti-proportionalism a welcome ally. Finnis especially represents that side of anti-proportionalism whose primary appeal is to tradition. For treats what he calls the "high tradition" (MA 32, 34) as a moral authority, and goes so far as to accord a privileged intellectual position to the medieval Latin word *homicidium* (MA 37), in preference to the English word *homicide* and *murder*. Presumably the ground of this distinction is that medieval people embodied the "high tradition" in a way moderns do not.<sup>xiii</sup> I begin with Finnis and Grisez's master argument. After a theological interlude, I then consider, first, their use of that argument to protect traditional moral teachings against criticism; and, second, their use of that argument in deriving moral conclusions of their own.

#### *4.1 A Master Argument*

Finnis and Grisez share two assumptions that for present purposes need not be defended or elaborated further. We human beings are free, but the goods that shape our choices are independent of our will. There are intelligible goods independent of human preference, though not of human beings. Moral judgments are to be justified in terms of these goods, rather than by a categorical imperative independent of persons or by arbitrary determinations of the will. (It does not matter whether "will" here is divine or human; and if human, individual or collective.) The issue that

remains, once we accept these assumptions, is how we should proceed when the requirements of two different goods, or of the same good in two different manifestations, appear to conflict.

Anti-proportionalism, while only one aspect of Finnis and Grisez's thought, nonetheless is what makes their thought distinctive within the broader natural law tradition. The two share a master argument that further expresses their distinctive contribution to ethics. This argument maintains that, since goods are incommensurable, proportionalist moral reasoning is impossible (and not just dangerous).

The exclusion of proportionalism is therefore to be taken strictly, as barring this style of moral reasoning in any context. As Finnis puts it,

Once a moralist accepts a proportionalist method, even as one methodological principle amongst others, he can produce arguments in favour of any solution which he already favours. All such arguments will be illegitimate, i.e., mere rationalizations. Moreover, to the extent that he seeks to deny his proportionalist method the exclusive status which it has in the classic utilitarian and other consequentialist systems, he can find no grounds for so restricting it which are not either (a) rationalizations or (b) grounds for excluding the proportionalist method altogether. (FE 95)

Or, as Grisez puts in a popular work, "proportionalists speak in measured, rational terms about greater goods and lesser evils, but in the final analysis their system, like the judgments it purports to justify, has no rational basis" (FC 71). For the attempt to weigh and balance competing goods is for Grisez inevitably a mask for an arbitrary decision or the promptings of appetite.

Finnis and Grisez conclude that, since every possible reason for rejecting stringent moral norms can be refuted with the help of their master argument, a morality that commands unconditional respect, in each and every act, for each and every basic human good, is for that the

only rationally available option. Merely technical (means-end) commensuration, however, they admit as legitimate (e.g., FE §IV.3).

Grisez at least uses the anti-proportionalist method to argue that, once the claims of Church authority are admitted even *prima facie*, no reason however strong suffices to override them, at least about moral issues (WLJ ch. 1, q. C).

For there is no way of arguing as follows: adherence to Church teaching is an important consideration for the moral theologian, but except in the case of infallible teachings the claims of such teachings can be overridden by other considerations. In practice Grisez admits that some magisterial pronouncements -- such as those pre-Vatican II papal statements hostile to religious toleration -- are "noninfallible" and thus open to development (WLJ 126), though on his account this development cannot involve proportionalist reasoning. For if proportionalist reasoning is impossible, neither the Pope and bishops, nor the Church collectively can engage in it any more than can private individuals or dissenting moral theologians.

Grisez understands his proportionalist opponents as asserting that the degree of consideration to be given a good is independent of the moral character of the agent, so that once a person undertakes to assess conflicting moral requirements in proportionalist terms, the correct answer inevitably follows. Hence, he argues, the proportionalist cannot satisfy two requirements that any moral method must meet: giving results, and making moral error possible. In Grisez's own words:

If the first condition is met and the morally wrong action could be chosen, then its morally acceptable alternative must be known. Otherwise one could not choose wrongly, for one chooses wrongly only when one knows which option one ought to choose and chooses a different option. But when the first condition is met, the second cannot be. The option

which promises the definitely superior proportion of good to bad cannot be known by a person who chooses an alternative which promises less. If the superior option were known as superior, its inferior alternative simply could not be chosen. (WLJ 132)

Moreover, he argues, if proportionalism were true, there would be no freedom of choice, since to see the greatest good would be to do it; in his own words,

All that proportionalists really say is that it would be wrong to choose precisely that which practical judgment (as they understand it) would exclude as a possibility for free choice, namely an alternative measurably inferior in terms of the relevant goods and bads. (WLJ chap. 6, q. F, § 7).<sup>xiv</sup>

There are some striking similarities between anti-proportionalism and the tradition of ethical skepticism represented by Hume and Nietzsche. Against proportionalists, Grisez holds that the relative claims of various goods, though not their status as goods, is determined only in choice. In his own words, "choice does determine which good henceforth will be considered greater and which evil lesser, because the good which one identifies in choosing becomes part of one's personal scale of value" (WLJ 157). Thus, apart from moral constraints, he is committed to Hume's maxim that it is not irrational to prefer the destruction of the entire universe to the scratching of one's little finger.

We can also discern positivist influence on Grisez in his understanding of the Galileo affair. He understands the conflict between science and Church authority in terms of a strongly drawn contrast between empirical issues on the one hand and those of theology and morality on the other (WLJ 10, 899-900). Since Galileo was a scientist, he had persuasive reasons to prefer his own conclusions to the official teaching of the Church of his day, but contemporary critics of official Church morality cannot have such reasons. Unfortunately for Grisez, Galileo's theories were shaped

by an understanding of what the world was like and what an adequate scientific theory consequently must be like, which did not derive entirely from observation or experiment.<sup>xv</sup>

In any case, Grisez has created a false dilemma here. On the one hand, the character of the person doing it affects moral reasoning. A selfish person will systematically neglect to see the claims of other people, an ungrateful person the claims of gratitude. On the other hand, to reduce our evaluation of a moral judgment to a judgment of the character of the person making it is to invite a sort of pharasaism against which the New Testament preaches more vigorously than it does against any form of sexual irregularity. Virtue ethics has an indispensable contribution to make to our understanding of the resolution of moral problems, but so does our understanding of the state of affairs external to the agent.

A more adequate view holds that goods impose a vague and unspecified hierarchy of claims on us before choice, and by that our choices we give this hierarchy a clearer structure. Defects in temperament or moral education for which the agent is not to blame may lead to good faith moral error, which we can understand as a failure of perception. But habitual wrongdoing, understood at least initially by the agent as such, can also warp his moral capacities; this is traditionally called the darkening of conscience. Choice between good and evil is possible, because either past decisions of the agent or conditions of human life for which the agent is not, as a discrete individual, to blame ("original sin") have muddled our understanding of the order of goods. (How human beings not so afflicted could choose wrongly seems to me a mystery; perhaps anti-proportionalism would be true within the gates of Eden.) But reasoned decision is possible because careful reflection, given a generally virtuous disposition (and, a theologian would say, God's grace), will illuminate the moral situation and enable us to appreciate the proper hierarchy of goods. It is not possible, on this view, to give a general answer to the question whether a person ought to undertake a proportionalist

judgment, or to act on it once he has made it. Much depends on the danger of misperception, either on the agent's part or on the part of other people influenced by him.

Such an account avoids Grisez's difficulties with the notion of blameless moral error (WLJ 91). Failures of perception are not necessarily blameless; at least in the present world, the failure to give any importance whatever to the interests of whole classes of people is unlikely to be so. But when a multitude of considerations are at stake, it is easy to see how an intelligent person, in good faith, could get the answer wrong. Nor need we suppose the least laxity in any department of morality necessarily threatens the whole system.

In short, an adequate account of moral judgment must include both the contribution (and hence also the responsibility) of the agent and the sense of external constraint under which agents labor. Such an account will lead us to recognize the lumpy, grainy, texture of value, in contrast with the smooth, homogeneous texture supposed by consequentialists and the rocky, unyielding texture supposed by their militant opponents. Moralists need to learn to respect the differing qualities of the moral terrain, as agriculturists need to learn to respect the differing qualities of the soil, some parts of which are in greater need than others of what Wendell Berry calls "kindly use."

#### *4.2 An Appeal to Heaven*

I now consider an argument of a rather different character, one directed only to theists. Finnis appeals to the belief that God governs the world by His providence in defense of the existence of moral absolutes. As Finnis has put it,

Divine providence involves permission of evil (of any and every kind) only so that out of it God may draw a somehow greater good. So that if the supreme or decisive moral responsibility is to pursue a state of affairs embodying greater good, the moral norm in every problem-situation would be, quite simply, try anything. That is, Do anything you feel

like! For if you accomplish what you attempt, you can be certain that what you chose tended toward overall long-run net good (since God's providence permitted), whereas if you fail in your attempt, you can be certain that your failure tended toward overall net good since God's providence excluded the success of your effort. (MA 15-16)

But this argument threatens to destroy all forms of religiously motivated morality. Any morality must suppose that it is better that human beings should observe its requirements than that they should breach them. And if "all manner of things will be well" whatever I do -- if even my damnation, if that is the result of my action, is good because it contributes to the glory of God -- then radically antinomian conclusions follow. If, on the other hand, we call upon Providence to make the consequences of adhering to a moral rule come out right, despite appearances to the contrary, "the motivational sinews of consequentialism are left intact, and are qualified only extrinsically."<sup>xvi</sup>

#### *4.3 Getting Down to Cases (1)*

It is now time to consider the way Finnis and Grisez handle concrete moral issues. I begin with their critique of the arguments made by critics of traditional moral absolutes, since their theory was first forged in concrete moral controversy of this sort.

Finnis is guilty of a rhetorical and methodological error, which may have adverse effects even on the substance of his conclusions. He starts with a controversial sexual example (remarriage following divorce [MA 7]), and thereafter heavily emphasizes contraception. If he had begun instead with rape or torture, his case would be more persuasive, but one might also expect different concrete results, say a lesser stringency about sexual morals and a greater stringency about killing (for example, about capital punishment).

An example of Finnis's methodological difficulties is his use of the ancient art of casuistry to defend moral absolutes is his support for an absolute prohibition on artificial contraception, but one understood as permitting Natural Family Planning. He maintains,

The system of identifying fertile times and avoiding intercourse at those times can ... be followed by couples who form no intention to impede the coming-to-be of a new child, and who in following that system of avoiding intercourse intend only to avoid the bad side effects which having a baby may bring about. (MA 86).

But that such couples avoid offspring by abstaining from intercourse does not resolve the question of their intentions. For they take active measures (discovering the woman's fertile period, for example) to achieve their goal, i.e., to enjoy the other goods involved in sexual intercourse without producing offspring. (Paul VI himself speaks of Natural Family Planning as a way of "controlling birth," i.e., of preventing births at inappropriate times, and urges scientists to determine "a sufficiently secure basis for the chaste limitation of offspring."<sup>xvii</sup> And one can manifest an impermissible intention by inaction, e.g., by failing to provide a prisoner with food.

The central difficulty for Finnis's argument has to do with the concept of intention. The root question is to what extent differences of intention can be cashed in terms of overt action, and to what extent very different intentions can be expressed in to what to all appearances is the same act (to use another example, in giving a person dying in great pain a substantial dose of morphine). Finnis both displays and conceals the central difficulty in this concept when he writes:

Aquinas puts the point starkly when he says that a conjugal act of intercourse and an act of adultery are *acts* of different types even though the behavior, the physical and psychosomatic activity, may be identical. And he does not mean to make the logical, empty point that the two types of act are morally right and morally wrong. Rather, he is saying that

the reason that there can be this profound moral difference is precisely that, despite their physical identity, they are different types of human act: the wills of the parties relate to the human goods at stake in intercourse quite differently. (MA 38)<sup>xviii</sup>

But there is no reason to suppose that all married, all unmarried, or all adulterous, lovers relate their wills to the goods involved in sexual intercourse in the same way.

Finnis is aware of the complexities involved in applying notions such as intention. He has for example written:

Too generalized or rule-governed an application of the notion of "double effect" would offend against the Aristotelian, common law, Wittgensteinian wisdom that here "we do not know how to draw the boundaries of the concept" -- of intention, of respect for the good of life, and of action as distinct from consequences -- "except for a special purpose." (RWA 143-4)<sup>xix</sup>

But he appeals to the judgments of "those whom Aristotle bluntly calls the wise" to resolve difficult cases for the application of these concepts (RWA 144). And he never explains how it is possible for the wise to do so, without some implicit proportionalist judgments concerning the relative importance of the goods and evils at stake in each choice.

The closest thing to an answer to this difficulty is to be found in the following passage:

To judge one's option right, one must consider all morally relevant circumstances -- *bonum ex integra causa*. But one can judge an agent's action wrong as soon as one identifies a morally significant defect in one's motivation, or an inappropriateness in relation either to the circumstances or the means involved in that option -- *malum ex quocumque defectu*. (MA 16-17)

«USNX»But it is not to be taken for granted that, in every problem situation, a solution free from every "defect" is possible. And, if not, the principle of the lesser evil will be an inescapable feature of our processes of moral reasoning, despite Finnis and Grisez's objections.

#### 4.4 Getting Down to Cases (2)

Similar problems arise when Finnis and Grisez attempt to defend moral judgments in their own right. Grisez formulates the core anti-proportionalist moral principle (or in his own language, "mode of responsibility") as follows: "One should not be moved by a stronger desire for some instance of an intelligible good to act by choosing to destroy, damage, or impede some other instance of an intelligible good" (WLJ 216). I shall call this mode of responsibility *the principle of respect for human goods*. In defense of the principle of respect for human goods, Finnis and Grisez reasons as follows: proportionalist reasoning is always fallacious, so that there can be no possible warrant for rejecting the claim of any intelligible good in any situation.

Hence, Grisez reasons, artificial contraception is always wrong, since it involves a direct attack on the basic good of reproduction (or on the good of life in its procreative aspect). In what may be fairly regarded as a manifesto of the anti-proportionalist school, *The Teaching of Humanae Vitae*, Grisez and Finnis join Joseph Boyle and William May in arguing that "contraception should be regarded as homicide is regarded," citing as authority a provision of Catholic canon law no longer in effect (THV 37). Many people will regard this result as so absurd as to warrant the rejection of any moral theory from which it is drawn. For, if artificial contraception is morally speaking a form of homicide, it is hard to see why there is so much difficulty about legalized abortion, since very few people believe that contraception should be a crime (for Grisez's view, see A 438).

Grisez could argue that contraception, like suicide, though morally speaking homicidal, does not involve injustice. (Compare LDLJ.) But our reason for rejecting the claim that contraception involves injustice is also a reason for rejecting the claim that contraception is a form of homicide, or to be regarded as such. It is that we cannot specify *who* is being unjustly treated when a couple practices contraception, unless we are prepared to say that there are souls in Heaven waiting to be conceived, who may be wronged even by a decision to abstain from intercourse. This may not be a decisive objection for Finnis for, as we shall see below, he separates the order of justice from the good of individual persons.

Likewise, suicide is always wrong on anti-proportionalist premises. For it involves a direct attack on the basic good of life. Somewhat surprisingly, however, the new rigorists admit the legitimacy of killing in self-defense, including the somewhat controversial case of abortion to save the pregnant woman's life. (Grisez acknowledges some tension with official Catholic teaching authority at this point [A 345-6].) As Grisez puts it,

The justification is simply that the very same act, indivisible as to its behavioral process, has both the good effect of protecting human life and the bad effect of destroying it. The fact that the good effect is subsequent in time and in physical process to the evil one is irrelevant, because the entire process is indivisible by human choice and hence all aspects are equally present to the agent as he makes his choice. (A 340)

In other words, it is possible in such cases to choose the preservation of the woman's life, while accepting the child's death as a regretted side effect, even when what is at issue is the crushing of the child's head. But this very compact reading of the agent's intentions, for the purposes of the principle of double effect, supposes a background judgment that leniency on this issue does not threaten the general principle of respect for life (as would for example approving decapitation as a

remedy for headache). In short, principles like that of double effect are helps to prudence rather than substitutes for it, and proportionalist reasoning is involved in the construction of intention and not in the requirement of proportionate reason alone.

Finnis and Grisez differ in their application of the neo-rigorist to capital punishment. Such punishment takes the death of an individual as an end in a way (individual or collective) self-defense and possibly even abortion do not: even on the wildest science-fiction hypotheticals, if the convicted criminal survives, the execution has failed. Nonetheless, Finnis defends the death penalty on the grounds that "the defining and essential ... point of punishing is to restore an order of fairness which was disrupted by the criminal's criminal act" (FE 118).<sup>xx</sup> The missing premise here is that the "order of fairness" outweighs this criminal's life in the scales of moral reasoning -- a contention that looks proportionalist to me. Hence Grisez seems to have the better of the argument when he expresses the hope that Christian doctrine will develop in such a way as to exclude the death penalty (WLJ ch. 8, q. H, § 10).

It seems that Finnis and Grisez would be pacifists if they were consistent, on the grounds that all killing in war intentionally destroys human life. Enemy soldiers as such are surely not criminals, nor are their deaths a requirement of justice of the sort Finnis invokes. The background prudential judgments that prevent many people from reaching this conclusion are not necessarily wrong, but it is hard to see how Finnis and Grisez are entitled to make them.

In any case, applying Grisez and Finnis's principle of respect for human goods requires proportionalist judgments. Consider for example the prolongation of human life. The more invasive or expensive a therapy is, the easier it is to justify its omission; the less invasive or expensive it is the harder it is to do so. For example, the conclusion that we are not engaging in mercy-killing, but only using good medical judgment, if we decide to omit invasive and expensive

treatment of a patient suffering from Down's Syndrome, or to give a dying patient normally unacceptable doses of pain-relievers, involves a background of proportionalist reasoning.

Again: reproduction is a basic good. Suppose that a fertile man with a barren wife finds himself attracted to a fertile woman. If he reins in his sexual desires because he wants to remain faithful to his wife, it would seem that he is at least "impeding," if not exactly "damaging" or "destroying," the basic good of reproduction. Only a sense of the overriding value of marital fidelity could lead us to say that one is not exactly choosing, in such a case, to impede that good. But this way of reasoning has an inescapable proportionalist element. To be sure, this particular problem could be evaded by deleting the word *impede* from the principle of respect for human goods, with the result that the principle would permit at least temporary sterilization.

Friendship is also an important human good. Like human lives, friendships are unique and irreplaceable, so that it is not sufficient to say that someone in a difficult situation can always make a new friend. But friends, being imperfect, sometimes injure or corrupt one another.<sup>xxi</sup> It is not sufficient to dismiss a dangerous friend as no friend at all, or to rely on "love's knowledge"<sup>xxii</sup> to avoid the possibilities of exploitation and degradation inherent in human relationships. A person may decide to break with a friend whose influence he finds corrupting, and a parent may for the same reason interfere with a child's associations. Such decisions are always painful, but cannot be excluded by a prohibition against ever acting directly against the good of friendship. Nor can the system of Finnis and Grisez deal with the conflicts of loyalty to friends or groups of friends (including national communities) which for many people are the most important source of moral anguish, and which in the nature of the case cannot be resolved in absolutist terms.

Grisez concedes that virtuous people sometimes make what look like proportionalist judgments: for example a woman subjected to sexual harassment might reason: "Certainly it was

bad to be let go, but it would have been a lot worse to behave like a prostitute in order to keep working there " (FC 64). But he is forced to argue that such proportionalism is somehow spurious.

Politics too makes proportionalist judgment indispensable, even for those with strong deontological convictions. Suppose we are citizens of the West like Finnis and Grisez who conclude, at the height of the Cold War, that nuclear deterrence is an immoral strategy (ND). If, as seems likely, we see no hope of getting our moral judgments accepted as a basis for public policy, we still have to make prudential decisions about conventional warfare and such things as "Star Wars." And while political issues present some technical aspects, they also involve decisions (E.g., about risk assessment), which cannot be understood either in merely technical terms or by appeal to the unconditional requirements of human goods.

In arguing for their principle of respect for human goods, both Finnis and Grisez invoke atrocities defended on proportionalist grounds. Although they hold that proportionalism is meaningless, they still have a pretty good idea of the sorts of behavior it will be used to justify: "the Allied terror bombing belatedly condemned by Vatican II, ever more widespread resort to abortions of convenience, and the killing of defective children" (BE 9) as well as the nuclear holocaust that has not, yet at least, taken place (A 346).

Even if we grant that proportionalism is the culprit in these cases, this argument proves self-destructive. For on Finnis and Grisez's showing, proportionalism cannot logically imply approval of such behavior. And if causal relationships are the issue, then the evil done on proportionalist grounds needs to be balanced against the good so done -- for example the abandonment of religiously grounded prohibitions on anesthesia during childbirth. Finnis and Grisez might argue that any principle even invoked to defend terror bombing or elective abortions is discredited by that fact alone, but all principles can be, and sometimes are, misapplied. And their argument implies

that we can never rationally strike a balance between the advantages and disadvantages of accepting a moral principle.

The new rigorists are Catholic moral theologians as well as philosophers. And both Finnis (BE) and Grisez (THV 7-32)<sup>xxiii</sup> are on record as calling for solemn ecclesiastical condemnation, of a sort not customarily invoked in moral matters, of views advocated on proportionalist grounds. Before taking such advice, the Pope and the bishops are surely required to weigh, not only the truth of the matter, but also the effect of such condemnations on the well being of the Church. Since popes and bishops are -- like it or not -- political as well as spiritual figures, any other course would be irresponsible.

Again, all moralities distinguish between more and less serious offenses. For Finnis and Grisez, this distinction takes the form of a distinction between mortal and venial sin. To be more precise, it is the distinction between light and grave matter: the "subjective" requirements of mortal sin -- sufficient reflection and full consent -- are not presently at issue. I here consider Grisez's detailed discussion in *The Way of the Lord Jesus*.

Grisez would make life easier for himself if he subordinated the concept of light matter to that of sufficient reflection and full consent, and held that minor sins, though they could conceivably involve a deliberate rejection of God, are relatively unlikely to do so. He attributes such a view to the theorists of "fundamental option." On this approach, grave matter is the sort of thing, which is likely to be an occasion for making or reversing one's fundamental option. Actions not likely to affect one's basic orientation toward or against God are light matter. (WLJ 385).<sup>xxiv</sup> Such a view would fit better with his theoretical outlook than the one he adopts, since it reduces his need to distinguish between graver and lighter offenses in terms of the external damage they do. (Recall here the otherwise unintelligible contention that contraception is tantamount to homicide.)

But even on such a view he would need to explain why, on anti-proportionalist premises, genocide involves greater damage to the good than does adultery or missing Sunday mass (and thus is more likely to be a mortal sin).

In fact Grisez undertakes to defend a tradition in which the distinction between grave and light matter is maintained "rigidly" rather than adapted to the vagaries of individual psychology and cultural formation. But in specifying what this is, he is reduced to appealing to the judgment of the Church, "which perhaps defies easy articulation" (WLJ 396), but which cannot on his premises be proportionalist. This judgment is surely not an example of the merely technical commensuration whose possibility and legitimacy the new rigorists admit.

#### *4.5 Conclusion*

Finnis and Grisez are right to warn us of the dangers of proportionalist reasoning in ethics. It can be, and frequently is, used to rationalize decisions made on other, often highly questionable grounds. But there are serious objections to attempting to do without proportionalist reasoning altogether.

If Finnis and Grisez were more consistent, they would depart from Catholic tradition as they understand it in at least three ways. They would accept absolute pacifism, since any killing involves an infringement on the basic good of life. They would adopt a fundamental option view of moral responsibility, since on their view there is no way of distinguishing graver from lesser offenses in terms of the gravity of the harm done). They would defend an anti-political (radical Reformation) view of the Christian community, since Christians on their view cannot make judgments of political prudence.

It is easy to draw from their theory further consequence contrary to Catholic tradition, e.g., that vows of celibacy, which imply a permanent renunciation of a person's procreative capacities, are morally wrong. Moreover, Finnis and Grisez's rhetoric of a church in crisis, which supports their calls for anathemas, is in sharp contrast with their professed willingness to accept bad consequences, in the hope that God will work things out eventually.

Even the appeal to tradition is questionable on anti-proportionalist grounds, unless one believes that God has revealed a complete system of casuistry. For unless human beings can learn from moral experience, there can be no such thing as the wisdom of the ages. While Grisez affirms the development of moral doctrines (WLJ ch. 36, q. G, §§ 1-5), he cannot admit that this development can take place by way of either greater insight into the effects of forms of human behavior (say slavery) or greater insight into the relationships among the goods sought in the forms of human life (say marriage). Neither will it be possible, on his premises, to fashion fresh moral doctrines to deal with urgent problems about which absolutes are not available, such as unemployment or the fouling of the environment.

In short, anti-proportionalists, by reason of their unwillingness to assume a hierarchy of values at least to some degree independent of choice, are unable to reach the sorts of judgments required by the tradition with which they are most closely associated, and which its arguments are designed to support (as well as by any other tradition of which I am aware). On the contrary, I conclude, proportionalist judgments are both necessary and possible, and for that reason sometimes legitimate.

But there is no reason to suppose that proportionalist judgments are always possible, let alone always legitimate, and considerable reason to suppose that they are sometimes barred. For they frequently baffle our understanding, and are frequently used to justify atrocities. We require

prudence (in the Aristotelian sense of virtue using its head) in order to know when to take a firm stand for a moral principle, and when to make a more accommodating situational judgment. But prudential judgment is difficult both to practice and to understand.<sup>xxv</sup>

## NOTES

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<sup>i</sup> I here take the risk of treating Finnis and Grisez, in view of their many collaborative efforts, as for the most part interchangeable. They have been assisted by a number of other writers, including Joseph Boyle and Robert George, in fashioning and defending their theory. I cite some of Boyle's contributions below; for George see his "Liberty Under the Moral Law," *The Heythrop Journal* 34 (1993): 175-82.

<sup>ii</sup> See Russell Hittiuger, *The New Natural Law Theory* (Notre Dame: University of Notre Dame Press, 1988), for a different critical account of this school (and more references).

<sup>iii</sup> See his contribution to his anthology edited with Richard A. McCormick, S.J., *Doing Evil to Achieve Good* (Chicago: Loyola University Press, 1978).

<sup>iv</sup> "Morality, Action, and Outcome," in Ted Honderich, ed., *Morality and Objectivity* (London: Routledge and Kegan Paul, 1985), ch. 2; quotation p. 36.

<sup>v</sup> Recent proportionalist writers include Charles Curran, *Tradition and Transition in Moral Theology* (Notre Dame: University of Notre Dame Press, 1985); Bernard Hoose, *Proportionalism* (Washington, D.C.: Georgetown University Press, 1987) and Richard A. McCormick, S.J., in *Doing Evil*.

<sup>vi</sup> I cite their most important writings as follows: A = Grisez, *Abortion* (New York: Corpus, 1970); BE = Finnis, "Beyond the Encyclical," *The Tablet*, 8 Jan. 1994; FC = Grisez and Russell Shaw, *Fulfillment in Christ* (Notre Dame: University of Notre Dame Press, 1991); FE = Finnis, *Fundamentals of Ethics* (Washington, D.C.: Georgetown University Press, 1980); LDLJ = Grisez and Boyle, *Life and Death with Liberty and Justice* (Notre Dame: University of Notre Dame Press, 1979); MA = Finnis, *Moral Absolutes* (Washington, D.C.: Catholic University of America Press,

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1991); ND = Finnis, Boyle, and Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford: Clarendon, 1987); THV = John Ford, S.J. *et al.*, *The Teaching of Humanae Vitae*, (San Francisco: Ignatius, 1988); RWA = Finnis, "The Rights and Wrongs of Abortion," *Philosophy & Public Affairs* 2 (1973); WLJ = Grisez, *The Way of the Lord Jesus* vol. 1 (Chicago: Franciscan Herald Press, 1983).

<sup>vii</sup> In his collection *Consequentialism and its Critics* (Oxford: Oxford University Press, 1988), p. 1.

<sup>viii</sup> Grisez, "The First Principle of the Practical Reason," *Natural Law Forum* 10 (1965): 168-201.

Patrick Lee, "The Permanence of the Ten Commandments," *Theological Studies* 42 (September 1981): 422-43.

<sup>ix</sup> FE; Grisez, "Against Consequentialism," *American Journal of Jurisprudence* 23 (1978): 49-62;

Grisez and Russell Shaw, *Beyond the New Morality* (Notre Dame: University of Notre Dame Press, 1974; rev. ed., 1980).

<sup>x</sup> Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1982).

<sup>xi</sup> Ronald Lawler, O.F.M.Cap., Joseph Boyle, and William E. May, *Catholic Sexual Ethics* (Huntington, Ind.: Our Sunday Visitor Press, 1985).

<sup>xii</sup> Milwaukee: Bruce, 1964.

<sup>xiii</sup> Finnis neglects the fact that, in the high Middle Ages, during which the Catholic tradition is usually thought to be at its peak, canonists (including Popes) addressed the problem of crime prevention in markedly utilitarian (though not quite Benthamite) terms. See Robert M. Roher, "Preventing Crime in the High Middle Ages," in *Popes, Teachers, and Canon Law in the Middle Ages*, James Ross Sweeney and Stanley Chodorow eds. (Ithaca: Cornell University Press, 1989), ch. 12.

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<sup>xiv</sup> For a defense of the conception of human freedom this argument presupposes, see Boyle, Grisez, and Olaf Tollefsen, *Free Choice* (Notre Dame: University of Notre Dame Press, 1976).

<sup>xv</sup> Thomas Kuhn has written of "paradigms" here; more adequately, Imre Lakatos has written of "research programs." See Lakatos, "Falsification and the Methodology of Scientific Research Programmes," in *Criticism and the Growth of Knowledge*, ed. with Alan Musgrave (Cambridge: Cambridge University Press, 1972), pp. 90-196.

<sup>xvi</sup> Hittinger, *New*, p. 215 n. 93.

<sup>xvii</sup> Paul VI, *Humanae Vitae*, §§16, 24. Trans. in Claudia Carlen, I.H.M. ed., *The Papal Encyclicals, 1958-1981* (N.p.: Consortium, 1981), pp. 227, 230.

<sup>xviii</sup> The reference is to St. Thomas Aquinas, *Summa Theologiae* Ia IIae, q. 18, a. 5, ad 3.

<sup>xix</sup> This is a relatively early essay; Finnis's position may have stiffened since.

<sup>xx</sup> He is here responding to Grisez, "Towards a Consistent Natural Law Ethics of Killing," *American Journal of Jurisprudence* 10 (1970): 67-70.

<sup>xxi</sup> Aristotle (*Nicomachean Ethics* 1159a 35) writes of giving affection in proportion to merit. This formulation seems unduly Benthamite (not to say priggish), but it is preferable to the on-off approach that anti-proportionalism favors.

<sup>xxii</sup> Title of a book by Martha Nussbaum (Cambridge: Cambridge University Press, 1982).

<sup>xxiii</sup> "The traditional way for the Magisterium to deal with situations of this kind has been to face the issue squarely, to deal with it collegially, and to anathematize those who refuse the consensus which takes place concerning 'what we all believed and taught'" (THV 30-31).

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<sup>xxiv</sup> For an actual example of a fundamental option theory, see Bernard Häring, *Free and Faithful in Christ*, vol. 1 (New York: Seabury, 1978), pp. 211-5, 396-410.

<sup>xxv</sup> This chapter benefited from the comments of an anonymous reader.