

## CATHOLIC ETHICS: HAS THE NORM FOR RULE-MAKING CHANGED?

JOHN R. CONNERY, S.J.

*Loyola University of Chicago*

**T**HE ABOVE QUESTION is an inquiry into the norm underlying the traditional rules of Catholic ethics. Often referred to as "secondary rules," the latter are generally identified with the so-called Ten Commandments of the Old Testament (Exod 20:1-17), e.g., "Thou shalt not steal," "Thou shalt not commit adultery," etc. These rules have been interpreted and developed over the centuries through the combined efforts of the Fathers, theologians, and the official Church on the local and universal level. The rules of sexual morality, for instance, have been developed in reference to what Roman Catholics call the Sixth and Ninth Commandments, although numerous other passages from Scripture have played an important role in this development. Although these sources are accepted as "revelation," there is no doubt that the rules derived from them coincide with human experience and that reflection on this experience was an essential element in formulating them. In this respect, the experience not only of the Jews and Christians but also of neighboring cultures was influential.

When the question is raised about the norm for making rules, the concern seems to be about a "primary" rule or norm underlying all of these "secondary" rules, which will explain them. More concretely, the question would be: What makes an act morally good or morally bad? Or: Why are stealing, adultery, murder, etc. morally bad? One must be careful, however, when discussing this question not to assume that there was a chronological development of secondary rules from some basic primary rule or norm on which they depended. There is good evidence to show that the kind of inquiry we are speaking of was of much later vintage. In the Old Testament one finds little philosophizing about rules. To the Jews the rules were part of God's covenant with Israel; they were His law. No further explanation was needed. The early Christians inherited much of this attitude toward the rules. We even find among them a certain suspicion of philosophy and philosophizing. A coherent, rational explanation of the basis of Christian rules began to develop only at the end of the first millennium.

This study will attempt initially to explain a new norm for making rules, commonly known as proportionalism, which some theologians are advocating today, and show how it differs from the traditional norm. Since some of the advocates of the new norm claim that it has its roots in St. Thomas, the study will examine this claim to see whether it can be

verified. It will continue with an examination of the impact a change in the basic rule or norm of morality would have on secondary rules and on Church teaching regarding such rules. It will conclude with a critique of proportionalism.

#### NORMS OF MORALITY

Over the course of history many theories about primary rules, or what is often called the norm of morality, have been proposed and defended. The fundamental question comes to this: What makes an act morally good or bad? It is not possible or pertinent in this brief presentation to enumerate even in summary form all the responses that have been made to this question. Peter Knauer, S.J., who was the first in recent times to suggest a new approach to rule-making, reduces all these opinions to three categories.<sup>1</sup> They classify as morally good (1) that which leads man to his last end, (2) that which corresponds with human nature, and (3) that which is "simply good." This may be an oversimplification, but with a little explanation it will suffice for our purposes.

Those who identified moral good with that which leads man to his last end were never able to attract many followers, because it always seemed that a judgment that an act would lead man to his last end would depend on whether the act was already morally good. This presumes the existence of a prior norm of morality. The second opinion, which identified the morally good with that which corresponded with human nature, has been, and still is, more generally accepted. This norm has been proposed in different ways by different proponents, but all agree in making man's rational nature the basis of morality. Thomas Aquinas spoke of *recta ratio* as the norm, but this was also anchored in man's rational nature. Knauer objects that this norm does not distinguish adequately between physical and moral evil; in fact, it will really identify only physical or premoral evil.

#### PROPORTIONALISM.

The third norm of which Knauer speaks is the norm under discussion in this article. The statement that it is "the simply good" is somewhat cryptic as it stands; its meaning is a little more nuanced. There is no doubt that if one could perform an act that was "simply good" in all its aspects, it would be a morally good act; it is presumed, of course, that it would be a human act, arising from deliberate consent. Unfortunately, it may be practically impossible to place an act which is simply good, at least if one has to consider all the effects of one's act. As human beings,

<sup>1</sup> "The Hermeneutic Function of the Principle of Double Effect," in Charles E. Curran and Richard A. McCormick, S.J., eds., *Readings in Moral Theology* 1 (New York: Paulist, 1979) 1-3.

it is our unfortunate lot that our acts are generally mixtures of good and evil, and since this is the case, they will not be simply good. To Knauer it is sufficient for a morally good act that only the good be intended and that any evil connected with the act be beyond the intention of the agent. He maintains that the evil in an act will be beyond the intention of the agent if there is a proportion between the evil and the good to be achieved.<sup>2</sup> Thus, even if the evil is a means to a good end, it will not be intended if it is proportionate to this good. Others do not give the same importance to intention. While they rule out intending an evil end, they see no moral significance in intending an evil means. Schüller, for instance, argues that there is no moral difference between permitting evil and intending evil as a means.<sup>3</sup> As long as there is a proportionate good to be achieved, whether it is achieved through an evil means or with concomitant evil effects is of no moral significance. What is of moral significance is that the good be proportionate, since that is what makes the difference between a morally good and morally bad act.

Because of the emphasis put on proportion, this norm is often referred to as proportionalism.<sup>4</sup> Frequently it has been put in terms of a proportionate reason (good) justifying the use of some evil means. This is probably because it is in this area that the chief problem lies; it is here that it comes into conflict with the tradition. But if it is to be a general norm, it must cover other possible combinations of good and evil, e.g., where the evil is an effect rather than a means.<sup>5</sup> Briefly, it would have to

<sup>2</sup> Ibid. 5-6.

<sup>3</sup> "The Double Effect in Catholic Thought: A Reevaluation," in Richard A. McCormick and Paul Ramsey, *Doing Evil to Achieve Good* (Chicago: Loyola University, 1978) 165-92.

<sup>4</sup> In a previous article I identified proportionalism with consequentialism (see *TS* 34 [1973] 396-414). Richard A. McCormick, S.J., criticized this identification in his "Notes on Moral Theology" (*TS* 36 [1975] 93-99). Although from the standpoint of traditional morality, proportionalism and consequentialism present the same problem, denying the possibility of an independent morality deriving from the object of the act, it may be more accurate to say that proportionalism involves an assessment of all the good and evil in an act rather than just the consequences. Even when proportionalists speak of an act getting its morality from the *finis* or end (the intended consequence), they still call for a proportion between the means and end, and, presumably, other unintended consequences. Bruno Schüller has written a more extended critique of the above article in "Neuere Beiträge zum Thema 'Begründung sittlicher Normen,'" in *Theologische Berichte* 4 (Einsiedeln: Benziger, 1974) 164-80.

<sup>5</sup> One gets the impression that those who follow proportionalism often short-cut the process of making a moral judgment of an act. They apply the proportionate-reason criterion only to the intended effect, the end of the act. If the intended good outweighs the evil means, they judge the act morally good. Little or no attention is given to other effects of the act. It is difficult to see how a system that makes the moral judgment depend on a balance of the good and evil in an act can overlook any good or evil that might in any way be connected with it. Such failure runs the risk of making a false moral judgment. In a system, however, in which the moral judgment is closely bound to the intention, unintended effects play a less important role.

assess all the evil in an act, including the effects, and the proportionate reason would refer to all the good expected from a particular act. The moral judgment would depend on the balance. Prior to this balancing, the evil in the act would be premoral or ontic, as it is sometimes called. Similarly, the good in the act would be premoral or ontic. The act would be morally good if the ontic good outweighed the ontic evil, morally evil if the ontic evil outbalanced the ontic good.

When the question is asked about changing the norm for rule-making, the meaning in the present context seems to be whether we are moving from a norm which related the moral goodness of an act to its conformity with man's rational nature to one which relates it to a proportionate reason, or a balance of good over evil. A clearer picture of the meaning of this change can perhaps be obtained from a consideration of the elements of the human act. Traditionally, these elements have been classified as the object, end, and circumstances of the act. If one followed the traditional norm, one would conclude that if all these elements were in accord with the demands of right reason, or man's rational nature, the act was morally good. If any of these elements was contrary to right reason, the act was morally bad. This was all epitomized in the axiom *bonum ex integra causa, malum ex quolibet defectu*.<sup>6</sup> Thus a bad end or intention could vitiate an act that might be good *ex objecto*. Similarly, an act could be morally bad *ex objecto* in spite of a good end or intention. The latter was frequently expressed in another axiom: the end does not justify the means (Rom 3:8). Ordinarily the comparison was made with secondary rules rather than with the basic norm of morality. Thus, if what you were doing was stealing (object), it would be wrong in spite of a good intention. It should also be mentioned that if the circumstance in question was an unintended effect, while it might vitiate the morality of the whole act if it were bad, it would not necessarily do so. More about this later.

If the basic rule were changed, the morality of an act would not be determined by comparing its various elements with the demands of man's rational nature. At most, this would tell you whether there was some premoral or ontic evil in any of the elements of the act. To make a moral judgment of the act, one would have to weigh all the good in the act against all the evil to see where the balance lay. Such weighing would include unintended good and evil effects, at least if they were foreseen. Ultimately, an act would be judged morally bad only if the bad outweighed the good. One could not say, according to this approach, that an act would be bad *ex quolibet defectu*; it would be morally bad only if the evil it contained outweighed the good it was expected to accomplish.

What this is saying is that a moral assessment cannot be made of any isolated aspect of the human act. It can be made only of the whole act on

<sup>6</sup> *Summa theologiae* 1-2, q. 18, a. 4, ad 3.

the basis of the balance of good and evil in its combined elements. There is indeed an underlying assumption that evil may never be intended as the end of the act; the intention must be directed at a good end. Granted that the intention is directed ultimately at the good in the act, the latter will be morally evil only if the good intended is not sufficient to offset the evil.

It should be obvious that the key to this kind of moral assessment is the proportionate reason; the good to be achieved must be proportionate to the evil involved. Knauer admits that it is impossible to do this kind of quantitative weighing when one is dealing with qualitatively different values.<sup>7</sup> It is like comparing apples and oranges. His position is that the reason for an act will not be proportionate if there is a contradiction between the act and the reason, or if in the last analysis what one does to achieve one's goal is self-defeating. He gives the example of traffic limitations. Generally, speed regulations should be such as to facilitate traffic and prevent loss of life. But how does one weigh the value of life against the value of faster traffic? He seems to argue that you can make an evaluation only if you can reduce the issue to one factor, the loss of life. Slower traffic might reduce the loss of life from traffic accidents but might increase the loss of life from other causes, e.g., people would not be able to get to an emergency room on time. The best limit would be that which resulted in the lowest overall loss of life. Traffic regulations that are too severe in limiting traffic would actually be self-defeating.

He also gives the example of the student who wants to learn the greatest possible amount in the shortest time. The more time he spends at study, the more he learns. But if he goes beyond a certain limit, he will undermine his health and have to give up study altogether. What he actually does by his actions is defeat his whole purpose. So Knauer argues that one's acts will not be proportionate if ultimately they are self-defeating or contradictory to his goal.

#### PROPORTIONALISM IN ST. THOMAS

Some of the proponents of proportionalism maintain that this is basically a Thomistic approach. If this is true, adopting it will not involve changing the traditional approach but recovering it. The most serious study on this point was made by Louis Janssens.<sup>8</sup> He develops his argument from Thomas' concept of the rational will as the basis of human acts. The will aims at good, which it pursues as an end. But not every good the will aims at will be a moral good. To be a moral good, it must correspond to reason. If it does not, it may still be a good in reference to

<sup>7</sup> "The Hermeneutic Function" 11-12.

<sup>8</sup> "Ontic Good and Evil," *Readings in Moral Theology* 1, 44-59.

some lesser appetite, but it will be morally vitiated because it is contrary to man's rational nature.

Janssens admits that according to Thomas there is an exterior aspect to the moral act as well as the will aspect, but he argues that in Thomas they are one act, and a moral judgment of the exterior act cannot be made apart from the interior act, and hence from the will of the agent. He gives the example of killing. If one viewed just the exterior act, one could not make a judgment on the morality of the act. The same exterior act, killing, may be moral or immoral according to the intention of the agent. If it is an expression of a will for justice, it is a good act. If it is an expression of anger, it is a bad act. Janssens then takes up a difficulty, what seems to be a contradiction in Thomas. In one place he says that the goodness or badness of an act is determined by the end, the object of the inner act of the will. In another he asserts that the morality of the external act depends on whether or not it is in keeping with reason. Is he not saying that the morality of the exterior act can be evaluated by itself and apart from the end of the inner act of the will? Janssens feels that this problem is solved by the distinction Thomas makes between the formal and material element in the moral act. The inner act of the will is the formal element in determining morality, since it is through the will that the exterior act becomes moral. So the moral species of the act depends formally on the end (of the inner act of the will) and only materially on the object of the exterior act. Janssens feels that this substantiates his understanding of Thomas, i.e., that it is the will of the end that is decisive in determining morality.

Janssens finds confirmation of this interpretation in several passages of the *Summa theologiae*, but his chief support comes from Thomas' article on self-defense. In that article Thomas says clearly that moral acts acquire their species from what is intended. His argument then is that since the intention in using violence against an unjust aggressor is self-defense, it is permissible even though injury or even the death of the aggressor might result. These would be *praeter intentionem*. According to Janssens, this treatment of self-defense shows that in Thomas it is the intention that determines the morality of the act. In support of this position he keeps quoting St. Thomas' statement: "finis dat speciem in moralibus."

In the article Thomas sets down another requirement for the liceity of self-defense which seems to support the proportionalist position. It is the requirement that the means (the violence) be proportioned to the *finis* of the act. If the violence used goes beyond the needs of self-defense, the act is wrong. St. Thomas does not say so explicitly, but the reason for this requirement seems to be related to the intention. The use of more violence than necessary would imply an intention beyond that of self-

defense, e.g., vengeance or anger. The injury or killing would hardly remain *praeter intentionem* under these circumstances. To the proportionalist the requirement of a proportion between the means and the end seems to put Thomas in their camp.

According to Janssens, then, in St. Thomas it is the end that is the key to the morality of the human act. All that is required of the means is that it be proportioned to the end. If this is the correct interpretation, it seems to follow that Thomas was a proportionalist. Is this an accurate interpretation of Thomas' analysis of the moral act? I think there is serious reason to question it. There is no doubt that Thomas says an act can be human or moral only in so far as it proceeds from man's rational will.<sup>9</sup> It seems quite clear that a human act by definition must be the product of the will. Nor can one doubt that the end of the act (the object of the will) will give it a moral species.<sup>10</sup> But if one studies the treatise on the goodness and badness of human acts in Thomas, he will find that ordinarily there is more to the human act than just the act of the will; there is the exterior aspect of the act. Although this is all one act, if one is going to analyze its morality, one must consider the whole act, must consider the object and circumstances as well as the end. And Thomas says explicitly that an act receives its moral species from the object and circumstances as well as the end.<sup>11</sup> Therefore, when he says that the human act receives its moral species from its end, this is not to be understood in an exclusive sense. He is not denying that it can acquire its moral species from other sources.<sup>12</sup>

Actually, Thomas tells us that a moral act can have two moral species: one from the object, one from the end. He gives the well-known example of the man who steals to get money to commit adultery. His act includes two moral species, stealing and adultery, one from the object, the other from the end. It is true that Thomas considers him more an adulterer than a thief; in Thomas' language, he is formally an adulterer, materially a thief.<sup>13</sup> But this does not mean that he is not really a thief or that his only sin is adultery. His act contains a double malice, although the more basic problem is the sexual failure.

A proportionalist might argue that the above does not prove that

<sup>9</sup> *Summa theologiae* 1-2, q. 1, a. 1.

<sup>10</sup> 1-2, q. 1, a. 3.

<sup>11</sup> *Ibid.*

<sup>12</sup> Thomas' special concern about the moral influence of the end of the act comes from the fact that it seems to be extrinsic to the act. One might want to argue that anything extrinsic to the act should not influence its morality. Thomas simply insists that the end is not totally outside the act. Far from excluding other aspects of the act as sources of morality, he is merely arguing that the end must also be included (1-2, q. 1, a. 3, ad 1).

<sup>13</sup> 1-2, q. 18, a. 6.

Thomas was not a proportionalist. All it shows is that adultery is not a proportionate reason for stealing—which a proportionalist would admit. A proportionalist would have no problem with the immorality of the adultery, since it involved the intention of an evil end. So the proportionalist could admit a double malice in an act, one of which might be *ex objecto* in a sense, without abandoning his position.

But there is a difference between Thomas' analysis and that of a proportionalist. While both admit a double malice in an act, the proportionalist relates it all to the end of the act; the stealing is wrong because of the absence of a proportionate reason. Thomas would not agree. He asks specifically whether the goodness or badness of the exterior act depends on the goodness of the will.<sup>14</sup> In his response he presents with approval the Augustinian thesis that there are some things which cannot be justified by any good end or good will. He goes on to explain that moral evil in the external act can come from two sources: from the matter of the act (object and circumstances) or from the end. That which comes from the ordering of an act to the end depends on the will, but that which comes from the matter or circumstances comes from reason, and on this the goodness of the will depends. He then goes on to say that the badness of an act can come from any one defect, but that its goodness depends on the goodness of all its elements. So, for the goodness of the external act, a will which is good only by reason of the intention of the end is not sufficient. The external act can be bad either by reason of the intention or by reason of what is willed. According to Thomas, therefore, an act can be bad apart from a good intention, i.e., a proportionate reason. The stealing in the above example, then, is wrong apart from the intention.

In the preceding article Thomas touches on the same issue.<sup>15</sup> He asks whether the goodness or badness of an act is found primarily in the will. His answer is that moral good and evil are found primarily in the will. He then explains that goodness or badness can be found in the exterior act in two ways: by reason of the matter or circumstances, e.g., almsgiving, or by reason of the intention (end), e.g., almsgiving out of vainglory. The goodness or badness which the exterior act has by reason of its end is in the will first and redounds to the exterior act. That which it has by reason of the matter or circumstances does not come from the will but from its conformity with reason.

All of the above seems to make it clear that in Thomas there is moral goodness and badness in actions apart from the will or intention of the end. It is a simplification, then, to say that according to Thomas it is only the end that specifies the moral act. This is only part of the story. The

<sup>14</sup> 1-2, q. 20, a. 2.

<sup>15</sup> 1-2, q. 20, a. 1.



moral act can be specified by its object and circumstances as well, and these specifications are independent of the intention of the end. He does not deny, of course, that some acts may be morally bad by reason of the intended end, but in his general analysis of the morality of human acts he asserts clearly that some acts have an objective morality that is independent of the end of the act.

We have already pointed out that Janssens finds confirmation of his interpretation of Thomas in the latter's article on self-defense.<sup>16</sup> The same is true of Knauer. There seems to be no question that Thomas' basic justification of killing in self-defense comes from the intention. It is definite also that he calls for a proportion between the violence used and the needs of self-defense. So one must ask: Does this make his explanation of the morality of self-defense proportionalistic? In saying that it is the intention that determines the moral species of the act of self-defense, Thomas seems to be arguing along proportionalistic lines. It is less clear, though, that the other side of this statement, that what is *praeter intentionem* does not affect the morality of the act, reflects proportionalism. This should become more apparent as the discussion goes on.

Furthermore, there is some difference between the Thomistic requirement of proportion in self-defense and that of the proportionalist. Thomas calls for proportionate means, the proportionalist speaks more of a proportionate reason (end). Knauer makes the claim that these requirements mean the same thing. Whatever one may think of this claim, Thomas' interest in proportion is related to the means, and his concern is that excessive violence would be aimed at the death of the assailant rather than self-defense. This would invalidate his original justification, since the killing would no longer be *praeter intentionem*. The proportionalist is more concerned with the original justification of self-defense. Is it a proportionate reason for killing? Thomas is satisfied with the simple explanation that it is natural for a person to defend himself.<sup>17</sup> The proportionalist would look for some kind of proportion between the good and evil in the act of self-defense—between what is saved or defended and the damage done. For Thomas, such a comparison is unnecessary. The damage done is acceptable to him not because it is a lesser evil or because there is a proportionate reason for it. It is acceptable because it

<sup>16</sup> 2-2, q. 64, a. 7.

<sup>17</sup> That Thomas does not regard it merely as a matter of proportion seems to follow also from the way he responds to an objection about fornication or adultery. The objection is that if killing is allowed in self-defense, these acts should also be allowed, since they are less evil than killing. Thomas responds that even so they are not permitted, because they are not defensive acts. Actually, they are closer to surrender than self-defense. As such, they would encourage aggression rather than discourage it. It is true, of course, that the victim may save her life, but one might have to conclude that to Thomas it is not the saving of life as such that justifies what is done, but the prevention of aggression.

is *praeter intentionem*; it has no moral bearing on the act.<sup>18</sup>

Even if one could give a proportionalist interpretation to Thomas' treatment of self-defense, in view of his general analysis of the moral act there is no basis for universalizing this explanation. This is clear even in his treatment of other kinds of killing. It is clear, for instance, that he considers taking the life of an innocent person wrong *ex objecto*.<sup>19</sup> "Nullo modo" is his response to the question regarding its permissibility. There is no implication at all that it would be permissible for a proportionate reason. Explicit confirmation of this may be found in his treatise on baptism.<sup>20</sup> He is dealing with the question of doing a caesarean section on a dying mother to baptize the fetus. It was argued that this should be permissible even though it meant the death of the mother because the eternal life of the fetus was more important than the temporal life of the mother. This seems a clear case where a proportionalist would admit a proportionate reason for causing the death of the mother, even if it had to be considered a means to an end. But Thomas refuses to allow it. Quoting St. Paul (Rom 3:8) that one may not do evil that good may result, he says simply that one may not kill the mother to baptize the child. He does not deny that the eternal welfare of the child is more important than the physical welfare of the mother, but simply does not consider it a decisive factor. The decisive factor is that taking innocent human life is wrong apart from whatever reason one might have for doing it.

Proportionate reason does not even seem to play a part in St. Thomas' treatment of killing which is *praeter intentionem* (accidental killing).<sup>21</sup> In other words, he does not make any demand that it be balanced by a proportionate good. In q. 64, a. 8, he takes the position that one will not be responsible for such killing if what he is doing is licit and there is no

<sup>18</sup> Thomas says nothing about any requirements of proportion between what is defended and the damage done. Later authors will discuss this issue. But there is no requirement that there be a life-for-life proportion. In other words, there is no requirement that the life of the person attacked be at stake to justify taking the life of the aggressor. All that is required is that it be some important value, even though less than life itself. These authors argue that if self-defense is permissible only when one's life is at stake, one is at a serious disadvantage when other goods are attacked. The subsequent loss of life to the aggressor results primarily from his own actions. If he wants to save his life, he can always stop the aggression. It is not quite accurate to say that he loses his right to life in these circumstances. He never had a right to life that would give him a right to attack others or protect him in such an attack. His right to life gives him a right to pursue his life by just means and protect himself against unjust attack. It is not a right to attack others unjustly. The obligation to respect his life is his own, not that of his victim. Similarly; the failure to respect life, his own as well as that of his victim, is his own.

<sup>19</sup> 2-2, q. 64, a. 6.

<sup>20</sup> 3, q. 68, a. 11, ad 3.

<sup>21</sup> 2-2, q. 64, a. 8.

neglect, that is, if the killing is not the result of neglect. Initially, the principle he was using called for some kind of necessity, but before the time of Thomas it was softened to a requirement of liceity.<sup>22</sup> As long as the act was licit, one would not be responsible for any death resulting from it, presuming, of course, that it was *praeter intentionem*. It would be clearly wrong to intend such a death.

This is not the place to develop it, but I think a strong case can be made to show that the principle of double effect as formulated in the nineteenth century was more dependent on this article in St. Thomas than on the article on self-defense. What is missing in the article is any mention of proportionate reason. Thomas makes no demand for a proportionate reason to justify accidental killing. All that is required, apart from the demand that the killing be *praeter intentionem*, is that the act from which the killing results be licit and that there be no neglect. The liceity of the act from which the evil effect results is, of course, an important condition of the principle of double effect. The proportionate-reason requirement was added by J. P. Gury, S.J., when he formulated the principle in the nineteenth century.<sup>23</sup> There is good reason to believe, however, that this requirement was added not to balance the evil effect but rather to guarantee that it would remain *praeter intentionem*. As already seen, this condition was a requirement in Thomas and was basic to his justification of accidental killing. The requirement of proportionate reason, then, did not call for a careful comparison of values. All that was required, as Knauer rightly says, was that the proportionate reason be serious. This was enough to make sure that the intention would be directed at it rather than at the evil effect. The concern in accidental killing, therefore, is not primarily a balance of good over evil; it is rather the intention of the agent.

Putting everything together, it is hard to detect any convincing evidence of proportionalism in Thomas. It can hardly be argued, therefore, that those who are proposing this norm today are really recovering a Thomistic methodology. In stating that Thomas was not a proportionalist, however, I am not implying that he held that all moral evil is in the object, or that an act cannot receive its moral species from the end. What is meant is that he held that acts can receive their moral species from their objects and that therefore some acts can be morally bad *ex objecto* (since they can become morally bad *ex quolibet defectu*). This means that they are morally bad apart from the reason behind them. Not all objective evil, then, is ontic or premoral. While every act must come from the will, it can be morally wrong by reason of its object and apart from an ultimate good intention.

<sup>22</sup> The principle was stated in the Council of Worms (868) c. 29 (Mansi, 15, 874).

<sup>23</sup> *Compendium theologiae moralis* 1 (9th ed.; Paris, 1857) n. 9. Gury is not the first to mention proportionate reason, but he is the first to formulate the principle of double effect.

In answer, therefore, to the question whether the norm for rule-making has changed, we would have to say that a number of present-day theologians have adopted a new rule, proportionalism. This rule is often stated as follows: an act will be morally bad (1) if it has an evil end or (2) if it causes evil without a proportionate reason (or if it causes more evil than good, or if it causes more evil than it should). Apart from these two instances, any evil in an act will be only ontic or premoral; it will not be moral evil. As is clear, this approach differs from the traditional approach according to which an act can be morally evil *ex objecto*, that is, apart from the reason behind it.

The proportionalist also rejects the distinction between "direct" and "indirect" that has been traditional in Catholic ethics. The distinction is between intending some moral evil as a means or an end and permitting it. To the proportionalists this distinction has no moral significance unless one is thinking of intending evil as an end. As long as one has a proportionate reason, it is just as permissible to intend evil as a means as it is to permit it. In the tradition it was just as wrong to intend evil as a means as it was to intend it as an end. I will have more to say about this later.

#### IMPACT ON SECONDARY RULES AND CHURCH TEACHING

More important perhaps than the original question about a change in the basic norm of morality is the question regarding the impact such a change would have on secondary rules. How would it affect such rules: "Thou shalt not steal," "Thou shalt not commit adultery," etc.? Perhaps the key change would be in the concept of the rules themselves. Traditionally, the understanding has been that these rules, as they are interpreted, deal with moral evil. A change in the basic norm would change this understanding. The rules would no longer deal with moral evil as such, but only with ontic or premoral evil. Such things as adultery, stealing, killing an innocent person are in themselves only ontic evil, so a rule prohibiting them can only be dealing with ontic evil. One violating these rules, then, would be causing only ontic evil. He would be guilty of moral evil only if he violated them without a proportionate reason. Every rule, therefore, would have to carry an implicit rider "unless there is a proportionate reason," and this rider would add the moral dimension to the rule.

For the proportionalist, then, secondary norms as they stand do not deal with moral evil. To give them moral force, one would have to rule out all possible proportionate reasons, and to do this, one would have to be able to foresee all possible combinations of object, circumstances, and effects both intended and unintended.<sup>24</sup> Since this is an impossibility, a

<sup>24</sup> Josef Fuchs, S.J., "The Absoluteness of Moral Terms," *Readings in Moral Theology* 1, 116-32.

secondary norm proscribing such acts as adultery, stealing, etc. as immoral is also an impossibility. Proportionalists hold that this is true even of Church moral teaching, especially since it is generally not infallible. Even the special guidance of the Holy Spirit will not give the Church the omniscient perspective necessary to set up unconditioned norms.

In fairness to the proportionalists, however, it must be admitted that they are speaking here on the level of theory. They are willing to admit that in practice norms do deal with moral evil. The fact that the human mind cannot foresee all possible combinations of object, end, etc. in which a norm might apply does not mean that it cannot foresee any such combinations. The human mind is not without all foresight. And where Church teaching is concerned, the guidance of the Holy Spirit may well give it more than ordinary foresight. Therefore, when the Church teaches that something is morally wrong, even a proportionalist would have to admit that it would apply to foreseeable circumstances. Actually, in the past, when controversy has arisen over the application of a particular norm, the Church has not hesitated to teach that the norm would apply in particular circumstances, e.g., abortion to save the life of the mother.

Consequently, a change in the norm of morality to proportionalism would demand that a conditional clause be an implicit part of every secondary rule dealing with evil.<sup>25</sup> A proportionate reason would allow one to violate the rule. Or perhaps it is preferable to say that a proportionate reason would exempt an act from the rule or law. All this sounds much more liberal than current thinking (according to the present norm) seems to allow; current thinking does not admit exceptions in certain rules. Whether it will really be more permissive will depend on what one considers a proportionate reason. One could be a proportionalist, for

<sup>25</sup> Proportionalists maintain that present norms are the product of a proportionalist refinement (see McCormick, "Notes on Moral Theology," *TS* 36 [1975] 98). They give the example of killing. Self-defense was considered a proportionate reason for killing, and so the latter was justified. Similarly, killing combatants in a just war and capital punishment were considered morally good because of a proportionate reason. Direct killing of an innocent person was considered morally bad because there was no proportionate reason to justify it. They argue that if we wish to be consistent, we must admit that a proportionate reason would at least theoretically justify such killing. In other words, if the norm is a proportionate reason, every secondary norm must yield to it.—It is quite true that in Thomas the moral judgment regarding killing depended on the intention of the agent, but as shown there is no clear evidence that any weighing of good and evil was basic to the judgment. And such acts as adultery, stealing, etc. were judged morally wrong apart from the intention of the agent. So there was no room for any kind of comparative assessment. To postulate some prior comparative assessment on which the moral judgment of adultery etc. depended is to assume what must be proved. Such a comparison is not necessary to show that something is contrary to *recta ratio*. And once the moral judgment is made, there is no place for such an assessment. A comparative assessment is possible only if one is dealing with ontic or premoral evil.

instance, and still deny that a proportionate reason existed, e.g., for adultery, taking innocent human life, etc. In that case, although the rule in theory would still yield to a proportionate reason, in practice it would stand as it is and a violation would constitute moral evil, since there is no proportionate reason. So a change in the norm for rule-making would not necessarily bring about a practical change in the rules themselves. At most, such a change would provide a theoretical allowance for exceptions. One might be able to fantasize or conjure up cases where a proportionate reason might exist, but the rules would still bind in the ordinary case, and this could include cases where observance would cause considerable hardship. The practical problem with proportionalism is that some might want to make every difficult case an exception. But this would hardly be condoned by conscientious followers of proportionalism. I do not think they would subscribe to the principle that a rule obliges only when it is easy to observe it. On the other hand, the greater the difficulty, the more the pressure to find in the difficulty itself a proportionate reason.

Even if the Church were to adopt proportionalism as its basic norm, it would not necessarily change the secondary rules it teaches and has taught in the past. It might continue to condemn without exception adultery, abortion, etc. What would change is that instead of claiming that these acts are morally wrong in themselves, it would simply say that they are morally wrong because there is no proportionate reason to justify them. It could do this even though it held the theoretical position that a proportionate reason would justify them. It would be a mistake, therefore, to presume that a change in ecclesiastical metaethics would lead to a change in Church rules.

It might be well to make the point here that the question of changing the norm for rule-making is not the same as allowing for exceptions to rules. There is a history of exception-making in the Church that goes back to Aquinas. One did not have to wait for proportionalism to provide for exceptions. Thomas himself advised that the more remote a rule might be from first principles, the greater the likelihood of exceptions.<sup>26</sup> He gives the familiar example of the duty to return a deposit. Ordinarily this is what one must do. There may be circumstances, however, in which this would not be a duty, and might even be morally wrong, e.g., to return a sword to someone who had suicidal or homicidal intentions. And the more detailed the rule, the greater the likelihood of exceptions, e.g., if the rule prescribed not only the return of the deposit but also a detailed procedure for doing so.

Thomas does not say that all rules will allow for exceptions. We have already seen how absolute was his condemnation of the killing of an

<sup>26</sup> 1-2, q. 94, a. 4.

innocent person. It may be enlightening to see how he deals with a possible exception to the precept against fornication.<sup>27</sup> The exception has to do with a man who will guarantee the education of the child that might result from his nonobservance of the law. Thomas' response is that rules are formulated on the basis of what ordinarily happens, not on the basis of a rare possibility. Presumably, then, it would oblige even in this case. But even if one wanted to maintain that Thomas would allow fornication where such a guarantee existed, it would not be on the basis of a proportionate reason. It would have to be because such an act would not be evil, since it would not be *contra bonum proles*. It would not be a violation of the rule, and hence would not need a proportionate reason. Today, of course, one wonders how the good of the child could be provided for adequately outside of a marriage commitment. One also wonders whether it is only the good of the offspring that is at stake in fornication.

#### CRITIQUE OF PROPORTIONALISM

To recapitulate in terms of means and end, it must be said that to the proportionalist a means has no independent morality of its own; its morality comes from its relation to the end of the act. Traditionally, an ethics of means has been strongly asserted. Traditionalists would certainly agree that there are means which receive their morality from the end of the act, e.g., violence, mutilations, etc. But this is not true of all means. Some means have a morality of their own and a good end will not justify them. All this has been summarized in the axiom "The end does not justify the means." Proportionalists will deny that their method is a violation of this axiom. They argue that the axiom has always applied to an immoral means and that they still hold it true in this sense.<sup>28</sup> I do not think this defense can be questioned, at least theoretically. In practice, however, the proportionalist deprives the axiom of real meaning. If there is no independent morality of means, that is, if the morality of the means always depends on the end, the axiom loses any meaning or force it might have had. The proportionalist has to admit that the end really justifies the means. If one were to give the axiom a proportionalist meaning, it would have to be expanded to read: the end does not justify a means which is immoral by reason of the end. In this sense it becomes a circular statement. A proportionalist may certainly continue to use such an axiom, but it serves no useful purpose. Many proportionalists today seem willing simply to say that it is permissible to do evil to achieve a good purpose.

<sup>27</sup> 2-2, q. 154, a. 2.

<sup>28</sup> Fuchs, in *Readings in Moral Theology* 1, 116-32.

*Intending Evil*

Although proportionalists allow one to intend evil as a means, they do not allow one to intend it as an end. One wonders whether this is a consistent position. Presumably, the reason one is allowed to intend evil as a means is that the evil is only ontic and a proportionate good may be achieved. But if this is true, one wonders why it would not be allowed to intend evil as an end as long as it was related to some proportionate good end (also intended). If the proportion between good and evil is the essential criterion of moral good and evil, why is it wrong to intend evil as an end in a situation in which it is balanced by a proportionate good? In itself, the evil end constitutes no more than ontic or premoral evil, just as the means. Or if it is wrong to intend evil in such a situation, why is it permissible to intend it as a means as long as it is balanced by some good end? In other words, if it is the proportion that is the primary criterion, why will it not justify the intention of evil as an end as well as the intention of evil as a means?

It seems, then, that in proportionalism the traditional distinction between intending and permitting loses any significance it might have had. As long as the evil in an act is balanced by the good, it does not matter whether it is permitted or intended, whether it is intended as a means or an end. So the proportionalist does not have to have special concern for evil which is intended. But freedom from the distinction between permitting and intending may not be an unmixed blessing. While the proportionalist may be less bound by intended evil, he will be more bound by permitted evil. Any evil in the act will have to be weighed. Permitted evil will weigh into his moral judgment just as much as intended evil, and the fact that it is not intended will not be pertinent. He must face the problem, then, of assessing all the evil connected with a particular act, as well as all the good. We will pursue this difficulty later.

*Ontic Evil*

A more basic objection to proportionalism aims at the "demoralization" of all the good and evil that is found in human acts. In proportionalism such good and evil in themselves can only be ontic or premoral. A judgment of moral good or moral evil can be arrived at only by balancing this ontic good and evil. So it is not enough to judge that what one does goes against right reason to conclude that it is immoral. Before a moral judgment can be made, one must go a step further and compare it with the good to be sought as well as other goods and evils connected with it. The tradition has been that such things as adultery, killing an innocent person, stealing, etc. could be judged morally evil in themselves. They



were contrary to right reason and could be judged morally wrong apart from a consideration of the reason behind them and/or the other goods or evils connected with them in a particular act. One could generally presume that such acts would produce more evil than good, but the moral judgment did not depend on this factor and one did not have to wait for an assessment of all the good and evil connected with the act to make it. On the same basis a rule could be formulated prohibiting such acts, and the understanding was that this rule dealt with moral evil. Proportion-alism denies a moral dimension to such judgments and the rules derived from them and for a moral judgment requires a comparative assessment of all the good and evil in a particular act. This calls for such a radical revision of one's whole moral outlook that one is forced to question the validity of the system which demands it.

### *Weighing Good and Evil*

The relativization of morality involved in proportionalism also imposes on the moral agent the extremely elusive task of weighing good and evil. Knauer, as pointed out earlier, calls attention to this problem and concedes the impossibility of weighing qualitatively different values. He suggests the possibility of reducing them to one factor and gives the example of traffic regulations. The criterion would be the number of deaths connected with a specific regulation. Certainly, there is a point where slower traffic would be self-defeating in this respect. Fewer deaths might occur from automobile accidents but the number might be less than the number of deaths caused by the delays the regulations caused. Admittedly, the latter number would be very difficult to calculate. But even if it were calculable, one wonders whether all the evil effects resulting from slower traffic could be reduced to this one category. What about the loss of revenue resulting from slower traffic? What about the loss of jobs? Some of these losses might be put in terms of resulting deaths, but surely not all of them. Realistically, one can seriously question whether the kind of reduction Knauer speaks of is a possibility.

Knauer also suggests the possibility of using long-term effectiveness as a criterion of proportionate reason. We have already cited the example of the student who studies day and night to learn as much as possible in the shortest time. Knauer argues rightly that this would be self-defeating, since eventually it would not achieve the desired good. He is speaking, of course, in terms of proportionate means rather than proportionate reason or end. One can agree with him that if an evil means is not productive of good, it is not permissible to continue to use it. But can one argue that because it may be self-defeating over the long haul, it is not permissible to use it here and now when it is still effective? For instance, is it wrong for a student to study all night for an examination because if he did this

every night he would undermine his health and not be able to study at all? Studying all night seems to be self-defeating only where the individual intends to make a practice of it. So one must at least make a distinction between a proportionate reason for a single act and one for a practice.

But even if a means were effective, and would continue to be effective in producing some good on a long-term basis, is this an adequate criterion of its morality, even from a proportionalist viewpoint? If one is a proportionalist, it seems that some comparison between the good and evil involved is still called for. Even if an evil means would effectively produce some good and continue to do so, it is possible that the good produced would not outweigh the evil. So one wonders whether Knauer's criterion really provides an escape from a comparison of values. As pointed out above, St. Thomas avoids this problem in his article on self-defense by focusing on the intention of the agent rather than a comparison of values. As long as the evil in the act is *praeter intentionem*, it does not affect the morality of the case. One does not have to weigh it against the good to be achieved to make a moral judgment about the legitimacy of self-defense.

The problem of weighing to which Knauer calls attention is accentuated when one considers the possibility of weighing a whole set of good and evil effects. What weight, for instance, does one give to evil effects that may be seen only as a remote possibility? What weight does one give to effects that may be a result of a concurrence of causes? Are all similar effects given the same weight whether they are certain or only a remote possibility, whether they are traceable to a particular act or the result of a concurrence of causes? If not, how does one estimate the different weights of such evil (and good) effects? On the surface, it seems to be a herculean task.

A proportionalist might argue that he is no worse off in this respect than a traditionalist applying the principle of double effect. The latter also has to consider proportionate reasons and must therefore weigh values. This may seem true, at least if one follows recent formulations of the principle. They call for a proportion between the good and bad effects of an act as a condition for its licit application. As already shown, however, the approach of the traditionalist to the proportionate reason differs from that of the proportionalist. The main concern of the traditionalist is that the evil in the act be *praeter intentionem*. The requirement that the good effect be *proportionate* to the evil effect is meant to guarantee the proper direction of the intention; it must be of some importance to provide this guarantee. But it is on the intention rather than the weighing of good and evil that the morality of the act depends. The weighing of values is of only secondary importance. In proportionalism, however, where the morality of the act depends basically on the proportion and therefore on the weighing, the weighing is of primary

significance. So the seeming similarity between proportionalism and the traditional approach to double effect is somewhat deceptive.

Certainly, even a proportionalist will not be responsible for unforeseen effects if they are not overlooked through neglect. His judgment of the morality of a particular act may not represent objective reality in this case, but he will not be responsible for what through no fault of his own he failed to see. But he must take account of all foreseen effects in making his calculus. He cannot fall back on the distinction between permitting and intending, since he cannot make a moral judgment unless he weighs all the effects. The traditionalist must also consider unintended effects, but he is freed from the kind of analysis the proportionalist must make, since the more basic question is not whether the evil effects outweigh the good effects but whether they are intended. One who follows the traditional approach does not have to do the kind of impossible weighing proportionalism seems to demand.

To conclude briefly, I feel that the proportionalist, by shifting the basis for moral judgment to a comparative standard, makes moral decision-making more difficult than is healthy for moral life. While it may seem to simplify the moral enterprise by eliminating the distinction between permitting and intending evil, it imposes on the moral person a kind of calculus that will make moral assessment largely inaccessible, if not impossible. For reasons such as these, I do not feel that a shift to proportionalism is in the best interests of a healthy moral life.