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NOTES ON MORAL THEOLOGY: 1984

The four areas of contemporary ethical debate that we have chosen to cover in this new collaborative form of the "Notes on Moral Theology" have all been marked by innovation and controversy during the past year. They have been major foci of concern for the U.S. Catholic Church, both for its hierarchical leadership and for prominent groups of lay professionals and activists. But what has been distinctive in the year past is the contention, welcomed by some and disputed by others, that the issues in question should be seen as a unity, as aspects of an ethic of respect for life. Ethical reflection and practical decision both struggle over time to acknowledge the unity of our moral lives in society and the diversity of our ways of thinking about the various challenges and difficulties we encounter. This seems to be a time when people are anxious to point to parallels and to use arguments for consistency in different domains. The most prominent example of such an effort in 1984 has been Cardinal Joseph Bernardin's proposal for a consistent ethic of respect for life, a respect to be manifested in the way we approach fundamental issues of moral theory and in the policies that should direct the protection of human life in its earliest development, the preservation of peace and freedom against the threat of nuclear holocaust, and the maintenance of life and dignity in the operations of the economy. We trust that what follows will illustrate both the unity to which Christian vision aspires and the rich diversity that shapes moral theology in our day.

MORAL NORMS: AN UPDATE

Among the more interesting moral-theological phenomena of the recent past were the two speeches (the Gannon Lecture at Fordham, Dec. 6, 1983, and the William Wade Lecture, St. Louis University, March 11, 1984) delivered by Joseph Cardinal Bernardin.[1] In the course of these lectures Bernardin touched on many of the issues raised in this edition of the "Notes." Bernardin's concern throughout the lectures is a consistent ethic of life, one that recognizes threats to life (abortion, nuclear arms, euthanasia, capital punishment, poverty, hunger) as distinct, but sees opposition to them as having a common foundation. Bernardin elaborates this inner connection at the level of both attitude (respect for life) and principle (no direct taking of innocent human life).

[1] The two speeches were published in brochure form under the title *The Seamless Garment* by the *National Catholic Reporter*; cf. also *Origins* 13 (1983–84) 491–94; 14 (1984–85) 705, 707–9.

I am particularly interested here in the methodological implications of Bernardin's statement of traditional Catholic teaching. The cardinal noted that in the *The Challenge of Peace* there is found "the traditional Catholic teaching that there should always be a *presumption* against taking human life, but in a limited world marked by the effects of sin there are some narrowly defined *exceptions* where life can be taken." Bernardin notes that in our time the presumption against taking life has been strengthened. He gives two examples. First, Pius XII reduced the traditional threefold justification for going to war (defense, recovery of property, punishment) to the single "reason of defending the innocent and protecting those values required for decent human existence." Second, where capital punishment is concerned, several popes and the American bishops have argued against the exercise of the state's right. "The argument has been that more humane methods of defending the society exist and should be used."

Several things are interesting here. First, Bernardin refers to the "presumption against taking human life" as "the traditional Catholic teaching." This presumption takes concrete form in the rule "no direct killing of the innocent." I would suggest that the presumption against killing is the substance (or principle) of Catholic teaching, the rule being a kind of formulation-application. By that I mean that the rule has developed as a result of our wrestling with concrete cases of conflict where we attempt to provide for exceptions but at the same time to control them. Such concrete rules, being data-related, are somewhat more malleable than the substance and will not always share the same force or universality as the substance, as Daniel Callahan has correctly observed.[2]

Second, it is to be noted that the concrete rule was arrived at by a process of restrictive interpretation (teleologically). Bernardin makes this very clear when he states the values that overcame the presumption: "defending the innocent and protecting those values required for decent human existence" (war), "defending the society" (capital punishment). If these values were not at stake, the presumption against taking life would turn into an absolute rule against any intentional killing. Obviously, there is a weighing going on here, and of the kind that certain "incommensurablists" (e.g., Finnis, Grisez) could not allow.

If there is any doubt about this, a recent study by John R. Connery, S.J., hardly a closet proportionalist, will confirm the point.[3] Connery is

[2] Daniel Callahan, "The Sanctity of Life," in *Updating Life and Death*, ed. Donald R. Cutler (Boston: Beacon, 1968) 181–223.

[3] John R. Connery, S.J., "A Seamless Garment in a Sinful World," *America* 151 (1984) 5–8.

at pains to establish in what sense Bernardin's "seamless garment" is truly seamless. A consistent ethic of life does not demand that we forgo all killing. Where self-defense (private or in war) is concerned, Connery sees the aggression as an instance of the presence of sin in the world. How do we cope with sin in these conflict situations? "If taking a life is the only effective means of doing this, however regrettable it may be, it will be acceptable." Connery repeatedly states the unacceptable alternatives: "The alternative would ordinarily be victory for sin and its gradual spread with increasing loss of life." Or again, forbidding self-defense or defense of one's dear ones in the name of a consistent ethic would "make sin automatically victorious. This kind of consistency would constitute a threat to innocent human lives." Briefly, Connery is comparing and weighing alternative outcomes.

Where capital punishment is concerned, Connery argues that the issue is not correctly framed as respecting the life of the criminal or not respecting it. "It is more a choice between the life of the criminal and the lives of possible future victims." Connery grants that there may be other forms of punishment "just as protective of human life." But the protection of human life and public order is the key issue.[4] Connery shows himself a thoroughgoing teleologist in establishing the exceptions to life-taking, but a teleologist with a twist, so to speak. And that twist is sin. Self-defense and capital punishment are "not just taking human life. They are a response to sin and by definition the only way of coping with sin and its effects. Without such a response, sin would triumph, and even worse it would spread." What does it mean to say that "sin would spread"? Presumably Connery refers to a multiplication of human violations, infractions, loss of life, etc.

But I am interested in the twist. Connery's analysis would yield the following generalization: the disvalues caused by our conduct are justifiable if they are the only way of coping with sin and its effects. Since Connery has made it clear that loss of life "totally disproportionate to the expected benefits of an act" is unacceptable, then "the only way of coping with sin and its effects" must refer to disvalues that are in a proportionate relationship to the benefits of the act. Janssens, Schüller, Knauer, Fuchs, Scholz, Böckle, Vidal, Curran, Chiavacci, and a host of others would applaud Connery here. But they might also wonder why he continues to oppose a proportionalist method of exception-making when he so obviously uses it where life-taking is concerned. Whatever the case,

[4] John Finnis attempts to avoid this issue and ends up with a retributive notion of punishment. One must ask whether such a notion makes any Christian sense. Cf. *Fundamentals of Ethics* (Washington, D.C.: Georgetown Univ., 1983).

Connery is there. So is Cardinal Bernardin. And so is Catholic tradition, at least in many areas.[5]

Another interesting dimension of the Bernardin papers is the inner connection among life issues at the level of principle. Where war and abortion are concerned, Bernardin states that the connection "is based on the principle which prohibits the directly intended taking of innocent human life." This principle, Bernardin states, is "at the heart of Catholic teaching on abortion." It also "yields the most stringent, binding and radical conclusion of the pastoral letter [*The Challenge of Peace*]: that directly intended attack on civilian centers is always wrong." Bernardin insists that this principle cannot be successfully sustained on one count and simultaneously eroded elsewhere. "I contend the viability of the principle depends upon the consistency of its application."

That consistency may be more difficult to achieve where abortion is concerned than Bernardin allows us to suspect. Why? For the simple reason that both the meaning and the relevance of the notion of "direct" are not clear. First, the meaning. Traditional interpretations of the notion applied it to all cases of pregnancy-interruption except those where the interruption occurred as a result of a therapeutic procedure with a different description and purpose (e.g., cancerous uterus, ectopic pregnancy). The result of such an understanding was the prohibition of abortion even where the only alternative was the death of both fetus and mother.[6]

Germain Grisez has argued that this is too narrow an understanding.[7]

[5] Thus John Gallagher, C.S.B., points out that "approved Roman Catholic moralists of the past have often used proportionalist arguments to solve many kinds of cases." Cf. "The Principles of Totality: Man's Stewardship of His Body," in *Moral Theology Today: Certitudes and Doubts* (St. Louis: Pope John XXIII Center, 1984) 217–42, at 237.

[6] Thus the *Declaration on Procured Abortion* of the Sacred Congregation for the Doctrine of the Faith states: "It may be a question of health, sometimes of life or death, for the mother.... We proclaim only that none of these reasons can ever objectively confer the right to dispose of another's life, even when that life is only beginning." Cf. *TS* 36 (1975) 126. How this statement is compatible with the thesis of M. Zalba, S.J. ("El aborto terapeútico 'aborto indirecto,' " *Estudios eclesiásticos* 52 [1977] 9–38), I do not know. Edward J. Bayer was presumably referring to this article (*America* 191 [1984] 284) as being written "just three years ago" when he wrote: "In the past ten years, moralists obviously identified with the magisterium, and in no way with the proportionalist approach much in vogue, have argued that expulsion of the nonviable fetus to save the life of the mother is not direct killing and can be justified in many critical cases." He attributes the article to "one of the most prominent full-time consultors of the Sacred Congregation for the Doctrine of the Faith." That Zalba's understanding of indirectness is a minority view is clear from the many authors he cites who use different appeals to justify abortion in these cases.

[7] Germain Grisez, *Abortion: The Myths, the Realities and the Arguments* (New York: Corpus, 1970).

If the very same act (abortion) is indivisible in its behavioral process (the saving effect does not require a subsequent act), then he regards the abortion (even a craniotomy in earlier days) as indirect and justified. The upshot of this is that the principle that Bernardin sees "at the heart of Catholic teaching on abortion" is not clear in one of its most relevant and urgent terms; for Grisez's understanding is certainly not that of popes and theologians who appealed to the rule.

Second, there is the relevance of the notion of "direct." When the Belgian bishops were discussing this matter, they adverted to the direct-indirect distinction but finally concluded: "The moral principle which ought to govern the intervention can be formulated as follows: since two lives are at stake, one will, while doing everything possible to save both, attempt to save one rather than allow two to perish."[8] If that is the relevant principle—and I believe it is—then it is clear that the direct-indirect distinction is not functioning here—indeed, is redundant. What is functioning, in both Grisez's move and that of the Belgian hierarchy, is the common-sense assessment that we need not stand by and lose two lives (the fetus is doomed anyway) when by intervention one (the mother) can be saved. That constitutes the intervention as the only proportionate response in these tragic circumstances, whether it is direct or not. Now if this is indeed the case, what becomes of Bernardin's insistence that "the viability of the principle depends upon the consistency of its application"? This again suggests the wisdom of distinguishing carefully between a truly general principle and a teleologically honed rule. This is not to question in any way the importance of Bernardin's seamless garment. Indeed, I believe he has fastened on a perspective that is utterly essential. It is rather to note the differences we encounter when we attempt to approach two different life problems with the same concrete rule.

In summary, "no *direct* taking of *innocent* human life" seems to be a concrete rule teleologically narrowed to its present form rather than a principle. If such rules are viewed as absolutely final and all-encompassing, both their origin and their nature are obscured. Furthermore, we run several risks in the process. First, we risk missing the teleological character of exception-making. Second, in the process of such oversight, we lose the dynamic of the movement away from taking more life. In other words, we risk hardening and perpetuating our allowances (exceptions to the presumption against taking life) when in changing times they are no longer justifiable. Thus, overemphasis on the absoluteness of the rule "no *direct* taking of *innocent* life" might comfort people in their very

[8] "Déclaration des évêques belges sur l'avortement," *Documentation catholique* 70 (1973) 432–38.

aggressive notions of war and their sometimes vindictive sentiments about capital punishment. That these can work against a healthy ethic of life seems clear. In this sense I would suggest that a consistent ethic of life calls for a clear recognition of the difference between a principle and a more or less useful rule which is its formulation-application.

Several recent articles continue the discussion of moral norms. The first is that of Lisa Cahill.[9] Cahill makes clear exactly what so-called proportionalists are saying and what they are not. First, she distinguishes four types of moral norms: (1) *formal* ("be honest," "be just"); (2) *analytical* or *tautological* ("do not commit murder," "do not be cruel"); (3) *circumstances included* ("do not kill to gain an inheritance," "do not mutilate a child for sadistic pleasure"); (4) *physical act abstracted from circumstances* ("do not masturbate," "do not use artificial contraception"). The first three types are absolute. Where the last type is concerned, Cahill notes that it describes merely a premoral or ontic evil. "It always counts as a negative factor in a total moral evaluation. But taken by itself, it is not morally *decisive*." It can at times be justified. Cahill is at pains to show that what is at stake is not the prima-facie obligation to avoid such evils but their occasional justifiability.

Cahill responds to several objections often aimed at proportionalism. She argues that it does not involve a claim that a good end justifies a morally evil means. Indeed, the distinction between moral and premoral evil "appears sometimes to be lost on the proportionalists' critics." Nor are the revisionists utilitarians or consequentialists as these terms are understood in philosophical circles. Their *summum bonum* is not a quantifiable temporal good, but sharing in the life of God in community with other persons. Furthermore, proportionalism "does not include a 'no limits' mentality to the effect that *anything* can be justified if more good will result either immediately or in the long run." To the objection that this theory makes evaluation and decision-making too difficult for a healthy moral life (Connery), Cahill notes: "Moral simplicity is not necessarily the equivalent of moral objectivity." Moreover, the proponents of this *Denkform* do not *begin* with exceptional instances. In this sense "traditional values" are by no means brought into question.

Cahill concludes by noting that the "key difference is that the focus of discussion in the proportionalist approach shifts from the act in itself ... to the act in relation to proportionate or disproportionate circumstances (object, intent and circumstances considered together)."[10] This need not, she insists, involve subjectivist and individualist decision-making, a constant objection made by more traditional theologians.

[9] Lisa Sowle Cahill, "Contemporary Challenges to Exceptionless Moral Norms," in *Moral Theology Today* (n. 5 above) 121–35.

[10] "Contemporary Challenges" 133.

Cahill's essay is both accurate and realistic. The former quality is not infrequently sacrificed to polemics in these discussions, as these "Notes" have testified over the years.[11] Realism is seen in Cahill's insistence that it makes no sense to say that a negative factor such as killing must be "circumstanced" before its moral quality is clear, whereas the same is not true of a merely physically described act such as masturbation. Thus, in *Persona humana* we read of masturbation: "Whatever the motives for acting in this way, deliberate use of the sexual faculty outside normal conjugal relations essentially contradicts the finality of the faculty."[12] Theologians of this persuasion think an action is morally definable "merely by consideration of the object of the act, e.g., in solitary sexual acts."[13] Such a notion of the object of the act is obviously narrowly physicalist. She is also realistic in admitting that certain terms in this discussion need greater nuancing.

Another very useful study is that of Edward Vacek, S.J., delivered to the 46th annual convention of the Jesuit Philosophical Association.[14] Vacek not only summarizes key points in the debate but contributes to them from a phenomenological perspective. He first lists four levels of moral experience: concrete moral judgments, the experience of making moral judgments, the image of human existence and of creation, a sense of the moral order or ultimate grounding. A moral theory must "ring true" to all of these levels of experience, and Vacek argues that the proportionalist approach does precisely that.

His essay takes the form of a comparison between the proportionalist approach and that of (especially) Germain Grisez and Joseph Boyle on the aforementioned four levels of moral experience. Specifically, it develops as a response to and refutation of objections commonly leveled at proportionalism. For instance, the accusation of relativism is frequently aimed at the proportionalist method. If this means "arbitrary" or "merely subjective," Vacek contends that the charge is false. If, however, "that term [relativism] is taken to mean that the subject and its intentions plus the circumstances and all other objectively given facts are interrelated with one another and relevant to the morality of a decision," then the approach is relativistic. But in this sense the term means "fidelity to reality."

[11] The most recent example is John Finnis (n. 4 above).

[12] *The Pope Speaks* 21 (1976) 60–73.

[13] John R. Connery, S.J., "The Teleology of Proportionate Reason," *TS* 44 (1983) 489–96.

[14] Edward Vacek, S.J., "Proportionalism: One View of the Debate," which will be published in *TS*'s June issue. The privately printed proceedings of the convention also include Stephen Rowntree, S.J., "Proportionalism and Absolute Prohibitions: An Argument for Reconciliation," not available to me at the time of writing.

There are several emphases in Vacek's study that I want to highlight here. First, he notes that proportionalism "is not, or at least need not be identified with the sort of reasoning that goes on in consequentialism." He notes that some consequentialists (e.g., Joseph Fletcher) concentrate on immediate results. Furthermore, proportionalism emphasizes not only future benefits but the past and the present (e.g., the value of the act one is performing). "Present covenantal relations of marriage, friendship, society or nation are worth our time and energy, love and devotion regardless of any good that comes from them."

Vacek argues convincingly that a narrow focus on consequences in consequentialist theories overlooks the fact that proportionalism is a theory of proportionate *reason* and that reason grasps "natures and unities of acts." Moreover, proportionalism, in contrast to consequentialism, recognizes that the manner in which consequences occur can affect the moral meaning of the act. Finally, proportionalism need not follow the logic of those forms of consequentialism that claim we must always maximize goods or minimize evils.

Vacek's points are well made and well illustrated. It is unfortunate that they had to be made. But those unsympathetic with the analytical moves being made by many contemporary Catholic theologians have repeatedly—and, I believe, uncritically—attempted to force those moves under a very sprawling umbrella ("consequentialism") that shades out nuances and differences and almost suggests guilt by association.

Another issue tackled head on by Vacek is the Grisez-Boyle contention that the values of various outcomes are "simply incommensurable." Vacek offers four points in response to this. First, the objection supposes that the human mind is a computer which can handle only data that can be reduced to multiples of some common denominator. Without such reduction, there can be no comparisons. Vacek suggests that the human mind functions more complexly than that in making comparisons.

Second, we make such comparisons all the time. Loving a friend is objectively more valuable than tasting a peach, "even if the former is fraught with pain and the latter consistently gives pleasure." To miss this is to be value-blind.

Third, Vacek argues that value, like being or intelligibility, is not a quantifiable standard but "does nonetheless allow for comparisons." Otherwise it would not be possible to assert that human beings are more valuable than stones. The fourth condition of the double-effect principle demands comparisons.[15]

[15] Readers will have to judge whether Joseph Boyle's explanation of proportionate reason (as the fourth condition of the double effect) is satisfactory; I believe it is not. Cf. *Moral Theology Today* 318–19.

Finally, Grisez-Boyle argue that when proportionalists examine alternatives, they "must do so in the light of prior commitments" and therefore they are subjectivist. Vacek responds: "What they fail to make clear is why 'my commitments' must be subjectivist."

Now enter Joseph M. Boyle, Jr., associate professor of philosophy at the Center for Thomistic Studies of the University of Houston. He treats proportionalism from the point of view of the double effect.[16] Specifically, he sets out to show the differences in the two approaches. Boyle concludes, on the one hand, that double effect "exists to protect central truths of Christian morality." Proportionalism, however, does not "comport well with the fundamentals of Christian morality." This rather astonishing verdict is specified by the assertion that proportionalism is not compatible with a "morality that focuses on the human heart—on what we make of ourselves by our free choices." And, of course, Christian morality is primarily a matter of the heart. The kingdom is realized, Boyle continues, not above all by successful projects but by making ourselves good persons.[17]

To establish his point, Boyle must show that the difference between intending and merely permitting certain disvalues or evils constitutes the difference between good and bad persons. Here is the way he puts it:

> In freely choosing to do something a person determines himself or herself to be a certain kind of person. For example, those who choose, however reluctantly, to end the life of an unborn baby by abortion make themselves killers, set themselves against life. But when the evil one brings about is a side effect only, one's self is not defined by the bringing about of the evil. For in this case one does not act for the sake of the evil but despite it; one does not set one's heart on it as one does when one resolves to do it in order to realize some ulterior state of affairs. Thus, in the case of indirect abortion, the child's death is not anything one seeks to realize but is reluctantly accepted and would be avoided if possible.[18]

What is to be said of this? It could be reduced to the following syllogism: One who sets one's heart on evil (abortion) sets himself against life. But where one directly intends an abortion, one sets one's heart on evil. Therefore one who directly intends abortion sets oneself against life. Aside from the loose terminology ("set oneself against life," "set one's heart on evil"), it must be said that this involves a straightforward *petitio principii*. It asserts what is to be proven: that there is a fundamentally

[16] Joseph M. Boyle, Jr., "The Principle of Double Effect: Good Actions Entangled in Evil," *Moral Theology Today* 243–60.

[17] Overemphasis of this point has the effect of collapsing beneficence into benevolence, clearly a rather unchristian "project." One of the standard objections to the double-effect analysis is that it is not seriously concerned with outcomes (effects on one's neighbor, so to speak), but too exclusively with keeping the hands clean.

[18] "The Principle of Double Effect" 251.

different moral attitude involved when abortion is directly intended and where it is only permitted though fully foreseen.

Furthermore, how does one establish that those who choose to end the life of an unborn baby by abortion always "set themselves against life"? If abortion is the only life-saving, life-serving option available (as in the classical case: allow both to die vs. save the one [mother] that can be saved), one would think that the intervention is just the opposite of "setting oneself against life." Certainly this is what the Belgian bishops implied when they said that "the moral principle which ought to govern the intervention can be formulated as follows: since two lives are at stake, one will, while doing everything possible to save both, attempt to save one rather than allow two to perish."

From a more positive perspective, Bruno Schüller, S.J., has argued that the identical moral attitudes of disapproval are revealed in life-saving abortions whether the effect is permitted or intended as a means: "I would not carry it out if it were possible to achieve the good effect without causing the bad one." This is just about identical with Boyle's "reluctantly accepted and would be avoided if possible." As Schüller words it, "Intending a nonmoral evil as a mere means and permitting a nonmoral evil, *considered as attitudes of will*, differ in degree, not in kind."[19] Put differently, Boyle seems to me to have overlooked the possibility that something can be chosen *in se sed non propter se*. When it is and there is a truly proportionate reason, how does one possibly establish the conclusion that one "sets oneself against life"? One sets oneself against life when one chooses an abortion *propter se*, or, if not *propter se*, then without a truly justifying reason. In either case we may justifiably infer something resembling an attitude of approval, or Boyle's "setting oneself against life."

Here let me return to Vacek's study. He notes that if the term "direct" means deliberate, then we often act directly against certain basic goods. If it means that a "disvalue is desired for itself or is at least a welcome concomitant, then all agree one should never act directly for such a goal." Wanting or not wanting the disvalue is the key category for Vacek, whether the evil effect precedes, accompanies, or follows other effects, that is, whether it is directly intended or merely permitted in the traditional sense. When I want or welcome the disvalue, then I reveal a disordered heart. "When we perform an act that has consequences which we otherwise do not want, we identify ourselves with those consequences differently than when we desire those consequences. In that sense we do

[19] Bruno Schüller, S.J. "The Double Effect in Catholic Thought," in R. A. McCormick, S.J., and Paul Ramsey, eds., *Doing Evil To Achieve Good* (Chicago: Loyola Univ., 1978) 165–91, at 190–91.

not align our heart in favor of their negative value."[20] This is all but identical with Schüller's analysis, though Vacek comes at the matter phenomenologically. By that I mean that he probes our consciousness of the disvalues conjoined to our actions. There is a different consciousness, and hence a different personal posture ("aligning of the heart"), when the disvalue is welcomed or wanted. When it is not welcomed or wanted—whether merely permitted or intended as a means—the heart remains ordered. In Boyle's language, one does not turn against a basic good or set one's heart against it. What Vacek has done—and successfully, I believe—amounts to a rejection of a narrow notion of intentionality that sees intending and permitting as involving radically different personal postures toward evil in all cases. As he concludes, "Although there are gradations of personal identification between intended and merely accepted consequences, still we experience both as part of the whole act."[21]

Further confirmatory evidence that Boyle's analysis will not survive careful scrutiny is St. Thomas' assertion that one could kill for justice' sake, as in capital punishment. Nothing is said about indirectness in that text.[22] Furthermore, many scholastic theologians argued that one could *directly* kill an aggressor in war, and others argued that *direct* (as a means) killing in self-defense was justifiable. Nearly everyone would argue that we may directly deceive a potential assailant if this is the only way of frustrating his purposes, just as nearly everyone would argue that direct mutilation is justifiable to save a patient's life or to transplant an organ. It is not the direct doing of disvalues that makes us bad persons, as Boyle must argue.

What Boyle misses is that the reason for which these actions are done constitutes the object (in a broad sense) of the act, the very whatness of the action, as Joseph Fuchs has frequently observed. Earlier "Notes" cited Maritain in support of this point.[23] It is not as if we do something morally evil to produce a good state of affairs. The act must be properly

[20] "Proportionalism" 67.

[21] Ibid. 69.

[22] *Quaestiones quodlibetales* 9, q. 7, a. 15.

[23] "The moral law must never be given up, we must fasten on to it all the more as the social or political environment becomes more perverted or criminal. But the moral nature or specification, the moral *object* of the same physical acts, changes when the situation to which they pertain becomes so different that the inner relation of the will to the thing done becomes itself typically different. In our civilized societies it is not murder, it is a meritorious deed for a fighting man to kill an enemy soldier in a just war. In utterly barbarized societies like a concentration camp, or even in quite particular conditions like those of clandestine resistance in an occupied country, many things which were, as to their moral nature, objectively fraud or murder or perfidy in ordinary civilized life cease, now, to come under the same definition and become, as to their moral nature, objectively permissible or ethical things" (*Man and the State* [Chicago: Univ. of Chicago, 1952] 73).

evaluated with all morally relevant circumstances (cf. Thomas' "circumstantia ... principalis conditio objecti"[24]) before its moral quality is decided. Thus, many theologians see masturbation in *in vitro* fertilization procedures as a different human act from self-pleasuring masturbation.[25]

Boyle's final attempt to show the chasm between the double-effect and the proportionalist approaches is by an example. "The difference is more like the difference between contraception and NFP, which Pope John Paul II says is 'wider and deeper than is usually thought,' and in the final analysis involves two irreconcilable concepts of the human person."[26] Boyle sees the difference in the different choices involved.

It is difficult to dialogue with Boyle here because he does not spell out these different choices. One thing seems overwhelmingly clear: in both methods the basic choice is not to have a child at this time. That choice may be justified or not, but it is the very purpose of the intervention. Boyle sees such a statement as allowing the real differences in choices to be "overridden by considerations based on the similarity of results." But what are these differences and how are they morally decisive? Until he explains them more persuasively than he has, I am forced to agree with him that the differences in moral outlook represented by double effect and proportionalism, as he reads them, are indeed and precisely about as pronounced as the difference between NFP and contraception.[27]

One of the arguments constantly made (Grisez, Finnis, Boyle) against the notion and function of proportionate reason is that the values and/or disvalues in question are incommensurable. Here enter Josef Cardinal Ratzinger. He states:

[24] 1-2, q. 18, a. 10c.

[25] This is not the same as John Connery's statement that "they [teleologists] place the emphasis on the *finis operantis* to the disadvantage of the *finis operis*" (*Moral Theology Today* 208-9). Rather, before the *finis operis* (if we must continue to use such old wineskins—and I think we should not) is determined, more must be taken into account than some traditional understandings would allow. That is why Fuchs and others prefer to refer to the "object in a broad sense." Similarly, when treating of proportionate reason, Boyle writes: "But this consideration is brought into play only after the other conditions by which we have clarified the essential moral nature of the act in question ..." (*Moral Theology Today* 257). How can one clarify "the essential moral nature of the act" without attending to all of its morally relevant components? The reason giving rise to the act—whether the killing be self-defense, defense against an aggressor in war, or revenge against a business partner—clarifies "the essential moral nature of the act." On this point cf. William VanderMarck, "Moral Theologian: Pastor or Scholar?" *Chicago Studies* 23 (1984) 141-54.

[26] *Moral Theology Today* 256.

[27] Bernard Lonergan, S.J., recently noted of birth control: "The traditional views [on contraception] to my mind are based on Aristotelian biology and later stuff which is all wrong. They haven't got the facts straight. A conception is not intended by every act of insemination" (*Catholic New Times*, Oct. 14, 1984, 15).

The attempt to assess the proportion of the good and bad likely to proceed from a proposed action is really a commonsense judgment we all make rather routinely. Even the principle of totality and the whole tradition of examining the circumstances of an act imply a notion of proportionality, and, I think, with some effect.[28]

Ratzinger's problem is not with incommensurability. It is with the exclusivity of the method.

When proportionalism is used exclusively, it "rests upon a presupposition which we cannot accept." What is that presupposition? The hypothesis of a purely physical act. When masturbation or contraception (Ratzinger's examples) are called "ontic or premoral acts, that is to say, without necessary involvement of the spiritual dimension of the agent," we have a false supposition. "It is precisely because of the personal involvement, with its personal goals and its personal effects, that masturbation and contraception cannot be seen as devoid of moral content in and of themselves."[29]

Two points. First, I have no idea what Ratzinger means by "exclusive" use of proportionalism. No one holds that proportionalism is "the *only* helpful tool at our disposal to arrive at a moral judgment." Many, if not all, moral judgments are arrived at without having to have explicit recourse to such a method—though I agree with Janssens when he says that every human choice, as limited, represents a sacrifice, and in this sense the resolution of a conflict. We simply do not advert to that structure very often because our daily choices are by and large structured by vocational commitment, employment, habit, professional role, etc.

Second, and with all due respect, I must observe that Ratzinger has confused the state of the question when he refers to, e.g., masturbation as "a purely physical act" and "*only* physical or ontic or premoral acts" that are "devoid of moral content in and of themselves." There is no such thing as a purely physical or premoral *act*. There are elements within an act which, viewed in themselves and abstractly, are disvalues, but whose ultimate moral character within the act awaits specification. St. Thomas certainly held this view.[30] Lisa Cahill makes this point utterly clear. Briefly, no one hypothesizes "a purely physical act," as Ratzinger seems to think. And no one holds masturbation and contraception to be "devoid of moral content in and of themselves." They are disvalues. As Cahill words it (summarizing what Schüller, Janssens, Fuchs, and many others have repeatedly stated): "Now this is not to say that a 'premoral evil' is morally neutral. To the contrary, it is regarded as something generally not fulfilling for human nature, and indeed harmful to it. It always counts

[28] Joseph Ratzinger, "Epilogue," *Moral Theology Today* 337–46, at 342–43.

[29] "Epilogue" 343.

[30] Cf. n. 22 above.

as a negative factor in a total moral evaluation. But taken by itself, it is not morally decisive."[31]

In summary, Ratzinger's only reservation about proportionalism is constructed on a serious misunderstanding of what is being said.

This brief overview of some recent exchanges on moral norms should not end without explicit reference to two points. First, the interpretation we give to moral norms and the analyses we offer to support them are often transparent of our idea of God. This point was recently developed in splendid fashion by Joseph Fuchs, S.J.[32] He contends that excessively anthropocentric notions of God often stand behind the arguments and conclusions of certain theologians. Let Carlo Caffara be an example of the several mentioned by Fuchs. Caffara attempts to provide theological backing to the *Hauptthese* of *Humanae vitae*. The human person, he argues, cannot be a direct product of the biological procreative act, but must originate in God's creative intervention. Thus, in the procreative act God and the parents are co-operative. This co-operation supposes that the partners are open to procreation. From this perspective contraceptive intervention contravenes the rights of God. Those who intervene in this way into God's active presence in the procreative act understand procreation as a merely human undertaking and prevent God "from being God."[33]

Behind this analysis Fuchs sees a concept of God as directly and immediately involved in human causality, a king of creationism. According to this understanding of God, conflicts can indeed arise between the two causes at work (God, parents). But Fuchs argues that this notion of God's creative activity is inadequate. Instead, he suggests the analysis originally proposed by Rahner and now widely accepted. God, the transcendental ground of all created reality, is causally active only through created secondary causes. He is not causally active in the way Caffara's analysis supposes. Fuchs's study is an implicit invitation to all of us to probe our analyses in other areas to see whether the concept of God implicit in them is acceptable—specifically, whether it is too anthropocentric.

Second, this section should end where it began, with Cardinal Bernardin's "seamless garment." The garment will remain seamless, as it should,

[31] *Moral Theology Today* 124.

[32] Josef Fuchs, S.J., "Das Gottesbild und die Moral innerweltlichen Handelns," *Stimmen der Zeit* 202 (1984) 363–82.

[33] A similar perspective is found in the following statement: "The very physiological structure that God has given the act speaks of the lifelong conjugal love unique to the couple and of their openness to *any new life God may wish to create* out of this most intimate expression of their love" (Pope John XXIII Medical-Moral Research and Education Center, "Should Catholic Health Facilities Provide In Vitro Fertilization?" *Health Progress* 65, no. 8 [Sept. 1984] 58 and 82); emphasis added.

only if our remedies go as deep as the causes: to the human heart. Here one must agree with what Harvard's Ralph Potter wrote 15 years ago: "Only the example of sincere regard for others can rekindle the conviction that all life is sacred and bound together in mystery so that the death of the least diminishes each."[34]

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THE "SEAMLESS GARMENT": LIFE IN ITS BEGINNINGS

Abortion

The pressure of an election year has created for the recent moral literature on abortion a double shift in context. One movement has been from the discourse of scholarly journals to the transmission and interpretation of political and episcopal statements by daily news media, the religious press, and semipopular journals of political and social commentary. This shift has no doubt to do with the fact that an object of the discussion of abortion in 1984 was to communicate and persuade quickly. If not openly polemical, recent contributions have been pragmatic, activist, and exhortative.

A second and related movement has been away from discussion of the ethics of abortion decisions to discussion of how public policy regarding abortion should be handled. Formulation of norms and exceptions regarding abortion has given way to argument about coherent and incoherent ways of relating such norms to political discourse, and to political and legal realities. Those Catholic candidates for office who have declined to take a position in favor of a reversal or constriction of the 1973 Supreme Court decisions permitting elective abortion have not, by and large, stated firmly that they are committed to the availability of abortion. Instead, they express hesitancy to use public office as an avenue of interference in the abortion choices of others. Attention has shifted away from the intrinsic merits of the cases for and against abortion to the implications of holding broadly formulated norms ("Abortion is a moral evil") for involvement in politics—whether as candidate, voter, or religious teacher. Thus the literature is often a better example of ethics as practice than as theory. It represents a direct and deliberate attempt to change not just the understanding and evaluation of moral issues but, more immediately, the political and legal realities which facilitate or inhibit specific moral decisions.

Certainly the centerpiece of the Catholic debate has been the inclusion of abortion in the "seamless garment" metaphor of Cardinal Joseph

[34] Ralph Potter, "The Abortion Debate," in *Updating Life and Death* 85-134, at 130.