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'*Humanae Vitae*,' Natural Law, and Catholic Moral Thought

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This paper will (1) present the context of "*Humanae Vitae*" and summarize its principal teachings regarding the natural moral law; (2) set forth the understanding of natural law common to those theologians (hereafter referred to as "revisionists") who reject the specific teachings of "*Humanae Vitae*"; (3) offer a critique of their conception of natural law; and (4) present and defend an understanding of natural law rooted in the thought of St. Thomas Aquinas, one shared, in large measure, by theologians who accept the specific teachings of "*Humanae Vitae*".

"*Humanae Vitae*" and Its Context

Pope Paul VI's 1968 encyclical, "*Humanae Vitae*", did not emerge from a void. In fact, it was eagerly anticipated. The Fathers of Vatican Council II had observed, in a famous footnote to the chapter concerned with the dignity of marriage and the family in "*Gaudium et Spes*", that, "by order of the Holy Father, certain questions requiring further and more careful investigation have been given over to a commission for the study of population, the family, and births, *in order that the Holy Father may pass judgment when its task is completed*"¹ (emphasis added).

Since the views of this commission had been made public in 1967 and since Pope Paul saw it necessary to reject some of these views, it will be useful, before looking at the teaching found in "*Humanae Vitae*", to note briefly what some of these views were. As we shall see, key claims made by the majority members of this commission are central to the notion of natural law advocated by revisionist theologians.

My concern here is with two claims made by the authors of the so-called "majority reports" of the commission. In one of these reports, called *Documentum Syntheticum de Moralitate Regulationis Nativitatum* in Latin, the majority had this to say:

To take his or another's life is a sin not because life is under the exclusive dominion of God but because it is contrary to right reason *unless there is question of a good of a higher order*. It is licit to sacrifice a life for the good of the community. It is licit to take a life in capital punishment for the sake of the community² (emphasis added).

I call attention to this passage because the principle implicit in it, namely, that one can rightly destroy human life (or other human goods) provided one does so for the sake of a greater good, is one that, as we shall see, looms large in the conception of natural law advanced by revisionist theologians. I call this the "Caiaphas" principle, although today it is more commonly referred to as the "preference principle" or the "principle of proportionate good".

In a second passage from the same document, the authors argue that a married couple may rightly contracept individual conjugal acts so long as these contracepted marital acts are ordered to the expression of marital love, a love culminating in fertility responsibly accepted. The authors say:

When man intervenes with the procreative purpose of individual acts by contracepting, he does this with the intention of regulating and not excluding fertility. Then he unites the material finality toward fecundity which exists in intercourse with the formal finality of the person and renders the entire process human Conjugal acts which by intention are infertile³ or which are rendered infertile [by use of artificial contraceptives] are ordered to the expression of the union of love; that love, however, reaches its culmination in fertility responsibly accepted. For that reason other acts of union are in a sense incomplete and they receive their full moral quality with ordination toward the fertile act Infertile conjugal acts constitute a totality with fertile acts and have a single moral specification, namely, the fostering of love responsibly toward generous fecundity.⁴

This passage presents an understanding of the "totality" of human acts that is, as shall be seen, quite central to revisionist theologians' understanding of natural law. According to the argument given here, there is a "material privation" (or what later will be termed "nonmoral," "pre-moral," or "ontic" evil) in contraceptive activity. However, the contraceptive intervention is only a partial aspect of a whole series of contracepted conjugal acts, and this entire ensemble "receives its moral specification from the other finality, which is good in itself [namely, the marital union] and from the fertility of the whole conjugal life".⁵ Or, to put it another way, according to this argument, married couples who practice contraception are not choosing to exclude children selfishly from their marriage (or expressing, through their actions, what the authors elsewhere characterize pejoratively as a "contraceptive mentality").⁶ Rather, *what* they are doing — the moral "object" of their act — is to foster "love responsibly toward a generous fecundity." But this is something good, not bad.

These views formed part of the context surrounding the publication of "Humanae Vitae". Pope Paul's responsibility was to pass judgment on the work of the commission, i.e., to determine whether or not the recom-

mendations of its majority were compatible with natural law precepts and Church teaching. His purpose in writing the encyclical was to examine in a fresh and deeper way the moral principles, rooted in natural law as illumined by divine revelation, central to the Church's teaching on marriage.⁷ In unity with his predecessors⁸ and, indeed, with Vatican Council II,⁹ he affirmed the competence of the Church's magisterium, divinely authorized to speak in Christ's name, to give an authentic interpretation of natural law, which is an expression of God's will and whose fulfillment is necessary for salvation.¹⁰

Pope Paul, again in union with his predecessors¹¹ and, indeed, the entire Catholic tradition,¹² judged that the precepts of natural law demand that every marital act must be open to the transmission of human life.¹³ By this, he meant that universally binding precepts of natural law absolutely forbid human persons to engage in any act, whether done in anticipation of the marital act, in its accomplishment, or in the development of its natural consequences, that proposes, "either as an end or as a means, to render procreation impossible".¹⁴ Pope Paul thus taught that contraception and contraceptive sterilization are always objectively morally bad actions, contrary to natural law precepts or norms. He also taught, again in unity with his predecessors and Vatican Council II,¹⁵ that "directly willed and procured abortion" is another sort of human act that is always immoral and opposed to universally binding precepts of natural law.¹⁶

In his encyclical, Pope Paul alluded to the argument advanced in the "majority" reports that individual marital acts can rightly be contracepted so long as they are part of a "totality" ordered to the expression of marital love and a generous fecundity. He firmly rejected this argument, along with the view that one could justify deliberately contracepted marital acts by appeal to the "lesser evil". While recognizing that it is sometimes permissible to tolerate a lesser evil in order to avoid a greater one or to promote a greater good, he insisted that "it is never licit, even for the gravest of reasons, to do evil so that good may come about", and cited St. Paul (Rom 3.8) to illustrate this teaching.¹⁷ He judged that it is never right and consequently is contrary to precepts of natural law "to make into the object of a positive act of the will something which is intrinsically disordered and hence unworthy of the human person, even when the intention is to safeguard or promote individual, family, or social well-being."¹⁸

Clearly, in the mind of Pope Paul VI — and, indeed, in the mind of his predecessors and Vatican Council II¹⁹ — natural law includes among its universally binding precepts specific norms proscribing as absolutely immoral specifiable kinds of human actions which can be described without using morally evaluative terms, and that among such actions are contraception, contraceptive sterilization, and direct abortion. In his judgment, such actions are intrinsically disordered or evil, and the free choice to engage in them is always morally wrong and contrary to universally binding natural law precepts or norms.

As everyone knows, the specific teachings of "Humanae Vitae" on the absolute immorality of contraception, contraceptive sterilization, and abortion are rejected by many, including influential Catholic moral theologians, while they are accepted by many others. It seems clear, therefore, that theologians who reject specific teachings of "Humanae Vitae" and those who accept them, entertain differing understandings of natural law and its universally binding precepts. When the encyclical was issued, it was criticized immediately by some revisionists as reflecting a "physicalistic" or "biologistic" conception of natural law, one that erects physiological structures as morally normative.²⁰ Yet this objection to the encyclical does not go to the heart of the matter. At the heart of the matter, as we shall see, is the claim, made by all revisionist theologians, that natural law does not and cannot include specific, concrete, behavioral norms, universally binding, which proscribe specifiable kinds of human acts describable in morally nonevaluative language, such as norms proscribing contraception, direct abortion, adultery, etc.

Theologians who assent to the specific teachings of "Humanae Vitae" reject the claim of the revisionists. The crucial question concerns the truth of this claim and its corresponding understanding of natural law. I shall now turn to an examination of the thought of revisionist theologians in order to set forth their understanding of natural law and its precepts.

2. The Revisionist Understanding of Natural Law

Although revisionist theologians (Böckle, Curran, Fuchs, Häring, Janssens, McCormick, Scholz, Schüller, and others) sometimes differ among themselves on particular points, their basic understanding of natural law and its precepts or norms is the same. They commonly hold, to begin with, that two basically different kinds of norms or precepts belong to natural law, namely, formal norms and material norms.

According to these theologians, formal norms can in turn be divided into two broad categories. Formal norms of the first and more important kind affirm what our dispositions ought to be. "We call them formal," writes one of these theologians, Louis Janssens, "because our inner attitude or disposition is the formal, animating element of our conduct".²¹ These formal norms express the qualities, attitudes, and dispositions that ought to characterize the morally good person. They are not concerned with human acts but rather with the *being* of the human person as a moral being. They deal with what is morally good or morally bad. These norms use virtue language and designate the morally good attitudes absolutely essential for the moral life.²² Examples of such norms are those calling us to be loving, just, chaste, courageous, honest, etc. In a sense they are, as Josef Fuchs puts it, "exhortations rather than norms in the strict sense".²³ Such norms, Janssens says, "constitute the absolute element of morals. For instance, it will always remain true that always and in all circumstances we must be just, etc."²⁴ These formal norms are thus moral

absolutes, admitting of no exceptions. While these norms direct us to be morally good persons, they are not concerned with the concrete content of our actions, nor do they enable us to determine which actions we ought or ought not to do.²⁵

A second type of formal norms is concerned with human acts and not with the moral dispositions or attitudes of the person. These norms make use of morally evaluative language in describing actions that we ought not to do, that is, they employ terms "which refer to the material content of an action but at the same time formulate a moral judgment" on the action.²⁶ For example, "murder" is a morally qualifying term affirming that a killing (a descriptive term) is unjust and therefore morally wrong. Norms of this kind — "It is wrong to murder, to have intercourse with the wrong person, to take another's property unjustly," etc. — are a second type of formal norms. Like the first type, these too are absolute and admit of no exceptions. Yet they are tautological in nature and do not provide us with any guidance in determining what specific kinds of killings are unjust or murderous, what specific kinds of sexual relations are with the wrong person, etc. As the revisionists say, these tautological formal norms are "paranetic," not instructive. They serve to remind us of what we already know and exhort us to avoid morally wrong actions and engage in morally right ones.²⁷ These norms are self-evidently true and are universally accepted by all who understand the meaning of the terms employed in them.

Many revisionist theologians, it should be noted, hold that the terms "good" and "bad" are properly used as predicates in morality only when one is speaking of the *being* of the person as a moral being. The person is morally good or morally bad, and formal norms of the first type direct the human person to develop and acquire those dispositions and attitudes that constitute him as a morally good being. According to these theologians, the proper terms to use in referring to human action are "right" and "wrong", not "good" and "bad".²⁸ Indeed, for revisionist theologians, a human person can be morally good, by reason of his fundamental option or exercise of basic freedom, and nonetheless freely choose to do actions he knows to be objectively wrong, even seriously so.²⁹ But how do we know which actions are morally right and which are morally wrong? In other words, how do we come to know the material norms (sometimes called concrete behavioral norms) which specify kinds of actions as morally right or morally wrong, and what is the nature of these natural law precepts or norms?

Norms Describe Kinds of Actions

Material norms describe in nonmorally evaluative language the kinds of actions we ought or ought not to do. Examples are: one ought not to kill the innocent; one ought not to lie; one ought to keep promises. According to revisionist theologians, these norms are known inductively by the

collaborative exercise of human intelligence by persons living together in society and reflecting upon common human experiences.³⁰ These norms, therefore, are affected by the historicity of human existence. They are by no means merely subjective evaluations made by isolated individuals, for human persons are by nature social beings who come to know the truth, including moral truth, only in fellowship with others. As Josef Fuchs puts it, "There is a human orientation in moral questions only in terms of a group, a community, a society, conceived as a whole."³¹ This does not, however, mean that the material norms of natural law are vitiated by a radical cultural relativism. There is a transcultural standard which overcomes such relativism, namely, "a steadily advancing 'humanization'".³² What this means is that material norms are formulated by human persons, reflecting deeply on shared experiences within communities, in an effort to determine what kinds of human actions contribute to or militate against the self-realization and fulfillment of human persons and societies.³³

Material norms of natural law, developed to the "truth" of the actions they proscribe or prescribe as related to the "whole concrete reality of man" and of the particular, historical society in which he lives.³⁴ But such norms are not absolute in the sense that they are universally true propositions about what human persons ought or ought not to do, about which actions are "right" and which are "wrong." In fact, "A strict behavioral norm, stated as a universal, contains unexpressed conditions and qualifications which as such limit its universality."³⁵ None of these norms, in other words, is absolute; all of them admit of exceptions. Since they are known by a process of shared human reflections on human experience in differing historical and cultural situations, it follows that there are elements in this process that make it impossible for us to articulate an absolutely irreversible determination of a concrete norm of natural law. A major factor is the fact that human experience is an on-going, open-ended reality. As a result, "We can never," as one revisionist theologian says, "exclude the possibility that future experience, hitherto unimagined, might put a moral problem into a new frame of reference which would call for a revision of a norm that, when formulated, could not have taken such new experience into account".³⁶ Consequently, these natural law norms are only "valid for the most part".³⁷ Some describe actions that, for all practical purposes, ought never to be chosen freely by morally good persons (for instance, one ought never to rape a retarded child)³⁸, and such norms can be regarded as "virtually exceptionless" or as "practical absolutes".³⁹ Nonetheless, all material norms of natural law must be considered, in principle, as open to exceptions and as revisable in the light of ongoing human experience.

Material norms, while not absolute, are meant to instruct us about the rightness or wrongness of human acts, that is, how these acts bear upon human goods and values. It thus follows that in formulating such norms, all the human values and disvalues in the total situation must be taken into account. Revisionist theologians maintain that these human values or

goods and disvalues or evils are not, of themselves, moral in nature. Rather, they constitute what these theologians call "pre-moral", "nonmoral", or "ontic" goods and evils in distinction from moral good and evil, which consists essentially in the goodness or wickedness of the person as a moral being.⁴⁰ Thus life, health, knowledge, beauty, friendship, etc. are "nonmoral" goods and their deprivations are "nonmoral" evils. The critical question is how we are to determine, in developing material norms of natural law and, indeed, in judging which acts are exceptions to these norms, which acts are morally right and which are morally wrong, that is, which acts promote and enhance these nonmoral goods and values and which do not.

Recall now the moral principle presented in the "Documentum Syntheticum" of the majority party of the papal commission on birth regulation, namely, that it is against right reason to take the life (=nonmoral good) of an innocent person "unless there is question of a good of higher order".⁴¹ Recall, too, that in the same report the majority argued that a moral judgment about contraception could only be made in terms of the purpose of contracepted marital acts and the whole of the married life. The claim was made that if a couple deliberately contracepts individual conjugal acts in order to express marital union and orders these acts responsibly toward generous fecundity, one could rightly say that what this couple was doing — the "object" of their moral act — was "fostering love responsibly toward generous fecundity," even though this entailed the "material privation" (=nonmoral evil) of individual acts of their openness to human life.⁴² Josef Fuchs, it should be noted, was one of the authors of this report. The reasoning set forth in it foreshadowed the thought of revisionist theologians with regard to the basic norm or principle that ought to govern the development of material norms of natural law and the discernment of human acts constituting "exceptions" to them.

Operative Principle

As refined by revisionist theologians, the principle operative in "Documentum Syntheticum" has become known as the "preference principle" or "principle of proportionate reason." Schüller puts it this way:

Any ethical norm whatsoever regarding our dealings and omissions in relation to other men . . . can be only a particular application of that more universal norm, "The greater good is to be preferred".⁴³

According to this principle it is morally right to intend a nonmoral evil, such as the death of an innocent person, if this is required by a "proportionately related good". Thus, as McCormick says,

where a higher good is at stake and the only means to protect it is to choose to do a nonmoral evil, then the will remains properly disposed to the values constitutive of human good This is to say that the intentionality is good even when the person, reluctantly and regretfully to be sure, intends the nonmoral evil if a truly

proportionate reason (=good) for such a choice is present.⁴⁴

Revisionists maintain that this principle does not mean that a good end can justify the means if the means in question is admitted to be morally evil. But they hold that the intention and realization of a (nonmoral) good can possibly justify the doing of any nonmoral evil.⁴⁵ The intending and doing of this evil cannot be morally evaluated by itself, because "an action cannot be judged morally in its materiality (killing, wounding, going to the moon) without reference to the intention of the agent; without this, we are not dealing with a human action, and only of a human action may one say in a true sense whether it is morally good or bad".⁴⁶

Material norms developed in the light of this principle are, as we have seen, valid for the most part. That is, they are, in general, good norms to follow in choosing what to do (e.g., we ought not to lie, to break promises, to kill innocent persons, to have sexual relations with some one other than our spouses). But no norms formulated in this way are absolute. Any norm formulated before the choice to be made has a certain generality. Confronted with the actual situation, unforeseen factors may be found which require an exception to a previously assumed norm.⁴⁷ Thus, although revisionist theologians say that some material norms can be assumed to be adequately formulated and thus virtually exceptionless or practically absolute, they deny that any norm can be assumed to be fully adequate. They hold that it is always possible, at least in theory, for an act contrary to such a norm to be justified in terms of a proportionately related good. They also stress that cultures themselves gradually change and that human nature, too, is historically conditioned and subject to change.⁴⁸

It thus follows that every material norm is subject to an exception clause: it is wrong to kill innocent persons, to lie, to have sexual relations with a person not one's spouse, etc., except when doing so is required in order to achieve a proportionately greater good. Thus some acts of direct abortion, mercy killing, contraception, etc. can be morally right acts, provided they are done for the sake of a proportionate good.⁴⁹ Moreover, when such acts are justified by a proportionately related good, the proper way to describe them is not to call them acts of contraception, contraceptive sterilization, or killing of an innocent person, but rather to describe them as, in the case of justified contraception by married couples, "fostering love responsibly toward generous fecundity" or, in the case of contraceptive sterilization, as "a marriage-stabilizing" act,⁵⁰ or, in the case of an abortion to prevent the mother from suffering grave psychic harm, a "life and health preserving act"⁵¹ insofar as these are the proportionate goods justifying the acts in question.

Finally, revisionist theologians say that their understanding of the material norms of natural law and of the principle of proportionate reason is rooted in the Catholic tradition. They appeal, first of all, to the natural law thought of St. Thomas Aquinas. Aquinas, they say, recognized that the material norms of the natural law are valid only for the most part, that

is, that these norms are, in general, valid and useful. However, in rare and particular cases they may not be appropriate and actions contrary to them may be morally right.⁵² Moreover, they maintain, for Aquinas even the precepts of the second table of the Decalogue are absolutely indispensable only when they are regarded "formally," that is, as forbidding actions that are already known to be morally wicked, e.g., unjust killings, unwarranted thefts, etc. If these precepts are considered "materially", that is, as material norms proscribing killing, lying, taking what belongs to another, they are not absolutely universal in scope, but admit of exceptions.⁵³ In addition, they argue, Aquinas himself regarded the end for the sake of which an action is done as its "formal" element, the one specifying the act done as a moral act.⁵⁴

They appeal, secondly, to the teaching of Vatican Council II, which insisted⁵⁵ that some moral problems facing humankind are exceedingly complex, that their resolution can be found only by the collaborative effort of persons of good will working together, and that quite often, the answers to them can only be tentative and inconclusive.⁵⁶

Thus the revisionist understanding of natural law. I next offer a critique of this understanding.

3. Critique of Revisionist Natural Law Theory

The revisionist understanding of natural law is seriously erroneous. My criticisms of it will be directed to the following elements in this theory: (A) its claim that no specific natural law precepts ("material norms" for revisionists) can be universally true because (i) unforeseen factors may require exceptions to previously assumed norms, (ii) such norms are historically and culturally conditioned; and (iii) human nature itself is subject to change; (B) the preference principle or principle of proportionate good; and (C) its use of sources such as St. Thomas Aquinas and Vatican Council II. In concluding this section, I will also (D) argue that revisionist theologians seriously misconstrue the nature of morality and the relationship between human acts and salvation.

A. A central claim of revisionist theologians, as we have seen, is that "We can never exclude the possibility that future experience, hitherto unimagined, might put a moral problem into a new frame of reference which would call for a revision of a norm that, when formulated, could not have taken such new experience into account".⁵⁷ This claim is supported, revisionists say, by the culturally and historically conditioned manner by which such norms are formulated⁵⁸ and by the fact that human nature itself changes radically.⁵⁹

(i). The argument that the ongoing, open-ended character of experience precludes permanently true specific moral norms is perhaps true with respect to some norms. But the argument assumes that an action can be morally evaluated only as a totality which includes all the circumstances and ends considered in relationship to all the nonmoral (but morally

relevant) goods and bads involved in that totality, for the purpose of identifying the behavior which will further man's self-realization and self-development⁶⁰ or which will not contradict or negate its own good purpose.⁶¹ But this assumption does not stand up. It is, of course, in general true that the morality of a specific human act can be determined only by taking into account its object, end, and circumstances, for all must be good if the act as a whole is to be morally good.⁶² But it is not true that we cannot make a final, conclusive judgment about the wickedness of a specific human act without taking all three of these factors into consideration. For we know that if any of these elements is bad, the entire act is vitiated. A key truth in natural law thought is the one attributed to Pseudo-Dionysius, expressed summarily as *bonum ex integra causa, malum ex quocumque defectu*. As St. Thomas put the matter:

Since it is of the very essence of the good that it be fullness of being, if there is something lacking to anything pertaining to its fullness of being, that being cannot be called good unreservedly but only relatively, to the extent that it is a being Thus we must say that every action possesses goodness to the extent that it has being; but to the extent that there is lacking to it anything of the fullness of being that ought to be present in human action, to that extent the action lacks goodness and is thus said to be bad.⁶³

Consequently, human acts already specified as morally wicked because they are evil by reason of their objects, that is, by reason of the "due matter" upon which the human will must bear⁶⁴ remain morally wicked despite variable historical and cultural factors precisely because their basic moral quality is identical with their constitution as human acts. Hence they, and the norms bearing on them, are not open to a difficult evaluation. If a relevant natural law precept proscribes a kind of action known to be morally evil by reason of the "due matter" upon which the human will must bear, no new existential situation can make that kind of action to be of a different kind.

(ii). Revisionist theologians seek to avoid a radical cultural and historical relativism by appealing to the transcultural standard of "a steadily advancing 'humanization'" or the self-realization of persons and of the communities in which they live.⁶⁵ Nonetheless, this vague standard, as Germain Grisez has noted, lacks the content "needed to determine what should and what should not count as morally determinative when one fills the formal concept of human self-realization with the whole concrete reality of persons in society and their world".⁶⁶ It is, of course, true that man is a historical being and that morality is, to some extent, relative to contingent social reality. For example, societies like individuals make choices that both generate and limit moral responsibilities, new options become available as societies develop, better factual judgments often lead to new insight into moral obligations, moral insight is often blocked by cultural biases and released by changed conditions, etc.⁶⁷ But from this it does not follow that all specific moral norms are relative to contingent social reality.

(iii). The claim is made that specific moral norms must be based on concrete human nature and this nature (as opposed to “transcendent” human nature) is subject to far-reaching change and therefore no specific moral norms based on it can be universally and irreversibly true.⁶⁸ Those making this claim, however, do not explain what “concrete” human nature, as opposed to “transcendent” human nature, is. They in no way explain how basic goods of human persons might cease to be good for them or how their claim about change in human nature coheres with the unity of the human race. They fail to show how this claim can be reconciled with the truths, proclaimed by the Church, that “all human beings . . . have the same nature and the same origin”,⁶⁹ a common nature,⁷⁰ and all have the “same calling and destiny” and so, fundamentally equal both in nature and in supernatural calling,⁷¹ can be citizens of the one People of God regardless of race or place or time.⁷² In addition, the same sorts of goods (life, knowledge of the truth, personal integrity, friendship, harmony with God, etc.) are perfective of all human persons of all times and cultures and races. As a consequence, it does not follow, from the fact that human persons are historical and cultural beings, that all specific moral norms are so conditioned historically and culturally that they must be open to revision and exception in the light of changing historical and cultural realities.

B. Revisionist theologians, as we have seen, contend that the basic principle for developing specific moral norms (=material norms) and for determining which human actions are permissible exceptions to them is the preference principle or principle of proportionate good. This proposal has been subjected to devastating criticism by many, in particular, Germain Grisez, Joseph Boyle, John Finnis, John Connery, Servais Pinckaers, and Bartholomew Kiely.⁷³ According to this principle, moral judgments should be made by a comparative evaluation of the (nonmoral) goods and evils promised by the various alternatives of choice. The alternative promising the greater balance of nonmoral good over evil is the alternative that ought to be chosen; it is, in other words, the morally right action or sort of action.

This proposal has some plausibility. The proposal — namely, to choose that alternative which promises the greater proportion of good over evil — seems self-evident, for the alternative seems to be that we ought to choose the alternative promising the greater proportion of evil over good, and this is absurd. Indeed, one of the leading revisionists, Richard McCormick, has stressed the apparent self-evidence of this norm. He puts it negatively to show how it is used in “conflict” situations, that is, situations in which both good and evil inevitably result, and are foreseen to result, from the action we choose to do. “The rule of Christian reason,” McCormick says, “if we are to be governed by the *ordo honorum*, is to choose the lesser evil. This general statement, it would seem, is beyond debate, for the only alternative is that in conflict situations we should choose the greater evil, which is patently absurd”.⁷⁴

Proportionalism 'Incoherent, Unworkable'

Despite this initial plausibility, however, proportionalism as a method for making moral judgments is unworkable and incoherent. The claim that it is self-evident does not stand up under scrutiny. Its plausibility rests on the ambiguity of the word "good". The morally upright person surely seeks to do the greater good, in the sense of what is morally good. Yet the revisionists claim that it is possible to determine, prior to choice, which among diverse alternatives is morally good by balancing or measuring or commensurating the nonmoral goods and evils that one's freely chosen acts will cause. The problem here, as Finnis, Boyle, and Grisez above all have shown,⁷⁵ is that there is no unambiguous or homogeneous measure according to which the goods in question (goods such as human life itself, health, knowledge, beauty, friendship, etc.) can be compared. Although none is the absolute good, in the sense of the highest good or *Summum Bonum*, each is truly a priceless good of human persons and as such, a good to be prized, not priced — a good participating in the incalculable goodness of the human person. To attempt to measure them off against each other, to commensurate them, is like trying to compare the number 84 with the length of my arm. One simply cannot do so. One could if they were reducible to some common denominator, as one can compare the number 84 with the length of my arm if one compares them in terms of a common denominator such as centimeters, a scale adopted not by discovering a truth but sheerly by an arbitrary act of the will. But the goods involved in moral choices cannot be reduced to a common denominator. They are simply different and incomparable goods of human persons. Thus the presupposition upon which this revisionist "principle" relies is false. One cannot determine, in a nonarbitrary way, which human goods are "greater" and which "less". They are all incomparably good, irreducible aspects or dimensions of human flourishing and well-being.⁷⁶ And the same is true of instances of the diverse goods.

Very few revisionists have even attempted to answer this criticism. One is McCormick. While most revisionists continue to claim that in making moral judgments we must "commensurate" the goods and evils at stake in the available alternatives, McCormick has been forced by this criticism to admit that it is, in the strict sense, impossible to commensurate goods of different categories "against" each other. Yet he now says that "while the basic goods are not commensurable (one against the other), they are clearly associated" or interrelated. Moreover, he continues, by considering these goods in their interrelationship, one can judge that the deliberate choice to destroy one good in present circumstances will not lead to an undermining of that good and that its destruction or impeding here and now is necessary in order to foster the flourishing of related goods, including the good one chooses freely to destroy.⁷⁷

This response is simply not adequate. It comes down to saying that although there is no nonarbitrary way to commensurate the goods, we

nonetheless succeed in doing so by associating them. McCormick himself admits as much, for he speaks of assessing the greater good as a "prudent bet" and of commensurating "in fear and trembling" and doing so by adopting a hierarchy.⁷⁸

What he is, in fact, doing by saying this is admitting that we commensurate the goods by choosing or stating our preferences. But the problem this revisionist principle was advanced to solve was that of determining, prior to choice, which possibilities are morally good and which are morally bad. Now McCormick tells us that to commensurate the goods, we must choose a hierarchy among them. This simply will not do, nor does it respond to the criticism that the goods in question are simply not commensurable in the way the revisionist "principle" requires them to be.⁷⁹

Position Requires Re-description

Moreover, this position requires us to redescribe our actions in terms of their anticipated results. Note that revisionists describe a series of contracepted marital acts as "fostering love responsibly toward a generous fecundity" and contraceptive sterilization as a "marriage-stabilizing" or "family-stabilizing" act. That is like describing the act of a prostitute who engages in her trade in order to support herself and her children as an act of "earning a living". It conceals, rather than reveals, what the person is doing.

Finally, as Bartholomew Kiely has noted,⁸¹ this revisionist principle fails to consider seriously the reflexive or immanent consequences of human acts as self-determining choices. We make ourselves to be the persons we are because of the actions we choose to do. In choosing to do evil, even for the sake of a "greater good", we make ourselves to be evildoers. A clearheaded utilitarian consequentialist, incidentally, Gregory S. Kavka, recognizes this problem. He believes that it is morally right, indeed necessary, to maintain a nuclear deterrent whose credibility entails the willingness, however reluctant, to kill millions of innocent persons. Yet he thinks that this involves a "paradox"; it is morally right "for a rational and morally good agent to corrupt himself" deliberately by willing, albeit conditionally, a terrible evil, the death of innocent persons.⁸² Revisionist theologians, no doubt because they sharply distinguish between free choice and what they term one's fundamental option, do not even see this problem.

C. Revisionist theologians also misinterpret St. Thomas and Vatican Council II. Repeatedly referring to the texts in which Aquinas says that the more remote precepts of the natural law are valid "for the most part", but, on rare occasions are deficient,⁸³ revisionists claim that he regarded all specific moral norms as open to exceptions. Yet St. Thomas makes it abundantly clear that in his judgment many specific natural law precepts are absolute and that certain specifiable human actions are always contrary to them. Among the sorts of human acts that are always morally

wicked are stealing,⁸⁴ lying,⁸⁵ fornicating,⁸⁶ adultery,⁸⁷ and the killing of innocent persons.⁸⁸ By adultery, too, he (along with his predecessors) meant sexual union between two persons, at least one of whom is married to another; he did *not* mean, as some revisionists do, sexual union with the wrong person. Thus, when St. Thomas confronted the opinion of Aristotle's Anonymous Commentator that adultery (intercourse with a tyrant's wife) is permissible when done to save a nation from tyranny, he curtly noted: "*ille Commentator in hoc non est sustinendus; pro nulla enim utilitate debet aliquis adulterium committere*".⁸⁹

Revisionist theologians likewise contend that Aquinas's position on the nondispensability of the precepts of the Decalogue simply means that actions already morally evaluated (e.g., murder or unjust killing) are prohibited by formal norms, not "material" norms or specific moral norms.⁹⁰ Yet St. Thomas's own treatment of this issue shows clearly that, in their most precise and true meaning, the precepts of the Decalogue specify acts by reference to the agent's proximate intention — the moral object the agent chooses — acts subject to no exceptions even by divine will. The moral object of the acts identified by these precepts is specified descriptively as "taking what belongs to another", "killing the innocent", "coition with someone who is not one's own" and not in morally evaluative terms.⁹¹ Aquinas makes it clear, for instance, that when Abraham was willing to sacrifice Isaac because of God's command, Abraham's human act can not be rightly said to be the killing of an innocent person, but rather a carrying out of God's just judgment on a sinner. God's command changed the situation, not by dissolving the obligation of a norm (voluntarism) but by creating conditions in which the object of Abraham's chosen act is different. In short, Abraham did not choose to kill an innocent person; rather, he chose to execute God's just judgment.

Similarly, revisionists say that Aquinas regarded the end as the formal element specifying human acts and that, consequently, he held that an action really willed and done coherently for the sake of a good end must be morally right.⁹² In reply, it must be noted that St. Thomas made it abundantly clear that the end specifying the human act includes not only the agent's ultimate purpose or purposes but also the precise object of the agent's will, that is, the proximate object of his will. Thus an act cannot be morally right unless both the ultimate end(s) and the chosen means (proximate end or object) are in accord with right reason. Some acts, specified by the objects of choice or proximate ends of action (e.g., killing the innocent, intercourse with someone who is not "one's own"), can never be in accord with the natural law precepts.⁹³

Assertions of Revisionist Theologians

As we have seen, revisionist theologians assert that Vatican Council II supports their claim that no specific moral norms can be universally true. To support this claim they refer to passages in which the Council Fathers

speak of the complexity of moral issues, the fact that the gospel does not provide us with answers to all problems, the need to collaborate with people of good will in finding solutions to pressing issues of our day, and so forth.⁹⁴ But in appealing to Vatican Council II, revisionists are selective and ignore passages impossible to reconcile with their theory. Thus, for instance, they pass by in silence the text from "Gaudium et Spes" in which the Council Fathers, after reminding men of "their permanent binding force of universal natural law and its all-embracing principles," teach that "actions which deliberately conflict with these same principles . . . are criminal",⁹⁵ and then declare that "every act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and man, and merits firm and unequivocal condemnation".⁹⁶ They likewise ignore the teaching of "Gaudium et Spes" that "all offenses against life itself, such as murder, genocide, abortion, euthanasia, and willful self-destruction . . . are criminal; they poison civilization, and they debase the perpetrators more than the victims and militate against the honor of the creator".⁹⁷ Although some actions condemned absolutely in this passage are described in morally evaluative terms (e.g., murder), and would thus fall under the tautological formal norms recognized by revisionists, others are described in morally neutral terms (e.g., abortion, willful self-destruction, euthanasia). In short, Vatican Council II clearly taught that the natural law embraces specific moral norms which are absolutely binding, transcending historical and cultural situations and rooted in constitutive elements of human nature and human persons.⁹⁸

D. My final criticism of revisionist natural law theory is that it seriously misconstrues the nature of morality and the relationship between our everyday choices and salvation. An indication of the problem in revisionist thought on this matter is provided by the fact that many, as we have seen, insist that the terms "good" and "evil" properly refer only to the human person as moral subject, whereas the proper predicates to use in referring to the morality of human acts are "right" and "wrong". According to revisionists, formal norms, which are absolute, are primarily concerned with the being of the human person as a moral agent, and such norms exhort the person to acquire those dispositions and qualities characterizing the being of an upright moral person. Material norms, on the other hand, are about human acts — they are judgements, valid for the most part, that some sorts of acts are "right" and others "wrong". In addition, revisionists maintain that a person freely choose to do a "nonmoral" evil for the sake of a proportionately greater "nonmoral" good.

But, as noted already, revisionists fail to consider seriously the reflexive or immanent character of human acts and the intimate relationship between free human choices and the being of the acting person. At the core of a human act is a free, self-determining choice that abides within the person until a contradictory choice is made. In and through the actions we freely choose to do, we give to ourselves a moral identity. When, for

example, I choose to lie to my wife, perhaps about a minor matter and perhaps because I hope by doing so to preserve the “greater” good of family harmony, I make myself to be a liar, and I remain a liar until, by another free choice, I become a repentant one. As Grisez, Kiely, Pinckaers and others have shown, revisionist theologians reduce morality to its effectiveness in bringing about benefits and avoiding harms, ignoring the personal and interpersonal meaning that human acts, as self-determining, have on the being of the acting person.⁹⁹

The revisionists’ failure to take seriously the meaning of human acts as self-determining choices is due, in large measure, to the acceptance by most of them of a theory of fundamental option or basic freedom that changes the locus of self-determination. They relocate self-determination from the free choices we make every day, including such fundamental choices as getting married or entering the priesthood, to an alleged exercise of fundamental option or basic freedom at the core of our being in which, supposedly, we take a stance “for” or “against” God and basic human values. They even claim that one can freely choose to do something one knows to be seriously wrong and nonetheless remain in God’s friendship;¹⁰⁰ for instance, a married man may freely choose to commit adultery, even without a “proportionate” reason, and still remain fundamentally a morally good person. In short, for revisionists the everyday actions we choose to do in exercising our “categorical” freedom “horizontally” in our everyday relationships are of a fundamentally different character from the option we make, seemingly without even being consciously aware of doing so, deep within our being in our “transcendental” relationship with God.

They maintain that our relationship with God, established by the exercise of our fundamental option, is directly related to salvation. Our everyday, “categorical” choices are, of course, also related to salvation. Yet, in revisionist thought, they are so only indirectly, insofar as our many acts of free choice must be integrated with our fundamental option and bring it to maturity.¹⁰¹ But this is to consign the salvific to the transcendental and to ignore the saving significance of innerworldly and temporal actions.

Vatican Council II Affirmations

However, as the Fathers of Vatican Council II affirmed, Christians will find perfected in heaven the very good fruits of human nature and work which they nurture here on earth.¹⁰² Thus revisionist natural law theory leads to a reductionist spirituality at odds with the New Testament’s teaching that redemption includes all human goods and the cosmos itself (see Rom 8.21; 1 Cor 3.22-23; Eph 1.10) and the teaching of the Church to appropriate the whole universe into a new creation, beginning here and now on earth and finding its fulfillment on the last day.¹⁰³

For the reasons set forth in this section, revisionist natural law theory

must be judged seriously erroneous.

4. An Alternate Understanding of Natural Law

Theologians who assent to the specific teaching of "Humanae Vitae" obviously understand natural law quite differently than do revisionist theologians. Although there are important differences among these theologians, they commonly seek to base their thought on the natural law teaching found in St. Thomas Aquinas, whose work, so inherently worthwhile and so warmly commended by the Church's magisterium, including the Fathers of Vatican Council II,¹⁰⁴ they try to develop. It therefore seems fitting to begin this section with a brief account of the "structure" of natural law as found in the thought of the Common Doctor.

According to Thomas, the rule for moral goodness is right reason. The goodness of the will's acts depends on the goodness of its term or object. Since the will is an intellectual appetite, inclining toward objects presented to it by reason, "the goodness of the will depends on reason".¹⁰⁵ Practical reason, moreover, has its own first principles; these are the primary precepts of natural law,¹⁰⁶ which is the rational creature's unique way of participating in God's eternal law. This eternal law is communicated to human persons through their natural inclinations and their reason, for rational creatures participate in the eternal law not simply by being ruled and measured by it, but also by actively ruling and measuring their own actions in accord with its truth.¹⁰⁷ They do so by coming to know the truths of eternal law and expressing these as "*propositiones*" of practical reason. There is, moreover, an ordered progression in this active participation in the truths of eternal law, for natural law consists of an ordered series of "precepts" or propositions of practical reason.

The first set in this ordered series consists of "those common and first principles"¹⁰⁸ inscribed in reason as self-evidently true propositions.¹⁰⁹ Among such common and first principles is that "good is to be done and pursued and evil avoided" and all those precepts based on this ordination of reason.¹¹⁰ Therefore, "since good has the meaning of an end . . . it follows that reason naturally apprehends as good all those things to which man has a natural inclination and consequently to be pursued in action, and their contraries as evils to be avoided".¹¹¹ Thomas lists some of these natural inclinations and the human goods to which they orient us and which reason naturally grasps as goods to be pursued and done: the inclinations to preserve one's life, to bear and raise children, to live in fellowship with others, to discover the truth about God. The list is illustrative, not taxative, something Thomas makes clear by such expressions as "and others of this kind".¹¹² His point is that the goods to which we are directed by natural inclinations are grasped by practical reason as fitting objects of the will. They are goods perfective of human persons and human persons are meant to flourish in them. Thus, among the "first and common principles" of natural law are the precepts that

human life itself, its handing on and education, knowledge of truth about God, life in company with others and “other goods of this kind” are to be pursued and their opposites avoided. The human person, through his will and freely chosen human acts, must respect these goods, for they are the “ends” to which we are ordered. In fact, it is through the moral virtues that we are well disposed to these goods or “ends”.¹¹³

Precepts Included

Thomas also includes, among the primary precepts of natural law, such precepts as “do evil to no one”¹¹⁴ and “you are to love your God and you are to love your neighbor”.¹¹⁵ One loves one’s neighbor, moreover, by willing that one’s neighbor flourish in the goods of human existence already mentioned. Such nondemonstrable and *per se nota* principles belong, Thomas insists, to the “first level” of natural law.¹¹⁶

The second “gradus” or set of natural law precepts are those “that the natural reason of every man immediately and of itself (*per se*) judges must be done or not done”.¹¹⁷ Such precepts are proximate conclusions from the first nondemonstrable precepts of natural law.¹¹⁸ They can be understood as true, “immediately, with a modicum of reflection”.¹¹⁹ They are “more determinate” than the primary precepts of natural law, since they specify sorts of actions that human persons ought do or not do, but they can, Thomas believes, be grasped easily by the intelligence of the most ordinary individual.¹²⁰ Such precepts belong absolutely to natural law.¹²¹ It is true that these precepts can become perverted at times because of sin and bad habits, and it is for this reason that they are in need of a further “edition,” namely, through God’s divinely revealed law,¹²² for these are the precepts found in the Decalogue.

The third “gradus” or set of natural law precepts is made up of those truths about human action that are known only “by a more subtle consideration of reason”.¹²³ They are like conclusions derived from the second set of precepts,¹²⁴ and they are known only to the “wise,” that is, those in whom the virtue of prudence is perfected. To know these precepts, “much consideration of diverse circumstances” is required, and diligently to consider these is something that pertains to the wise, who are to instruct those not perfected in virtue.¹²⁵

This is the “structure” of natural law found in Aquinas. Note that the second “gradus” or set of natural law precepts includes, for Thomas, the precepts of the Decalogue, which includes such specific moral norms as those proscribing killing, adultery, and theft, and Thomas regarded these specific norms as absolutely binding, so much so that not even God can grant dispensations from them.¹²⁶ Properly to understand his mind on this matter, however, we need first to distinguish, with him, between human acts considered in their “natural” or “physical” species and human acts considered in their moral species. Aquinas and theologians who assent to “*Humanae Vitae*” clearly distinguish between these two ways of

considering human acts. Killing an innocent person, executing a criminal, and killing an assailant in an act of self-defense all are, in their natural or physical species, acts of killing.¹²⁷ But for Thomas, they differ in their moral species insofar as only the killing of an innocent person is morally wicked or evil *secundum se*,¹²⁸ whereas the killing involved in executing a criminal and defending oneself from an unprovoked attack by a measured use of force are morally good actions, properly described from a moral perspective not as acts of killing, but as acts of justice and of legitimate self-defense.¹²⁹

The basis for this distinction is that human acts, as human and moral, receive their "forms" from human intelligence, which places them in their moral species by discerning their "ends," "objects," and "circumstances". As we have seen in the critique of revisionist natural law, Aquinas insists that all these factors must be judged good or in accord with natural law if the whole human act is to be morally good. The end for the sake of which an action is done is for him a primary, indeed, *the* primary source of that act's moral species, because it is only for the sake of an end that a human person, as an intelligent being, acts to begin with.¹³⁰ It is, indeed, the "*forma magis universalis*" of the whole human act in the sense that a genus is said to be a "*forma magis universalis*" with respect to its species.¹³¹ But in addition, the "object" of the external act chosen and commanded by the will is also a primary source of the moral species of the whole human act, precisely because this object is the object of a will act, the act of choice. It is the "proximate end" that the acting person intends. It is not the "*materia ex qua*" the external act is composed (the "natural" or "physical" species of the act). Rather, it is the "*materia circa quam*" the external act is concerned, and as such "has, as it were, the meaning of a form insofar as it confers species" upon the act.¹³² It is, one could say, the intelligible proposal adopted by choice and executed externally (e.g., to defend oneself, to execute a criminal, to kill an innocent person). Like the end for whose sake this object is chosen, it too must be judged good if the whole human act is to be in the moral species of a "good" moral act.

Position on Precepts

With this distinction in mind, St. Thomas's position on the precepts of the Decalogue is lucidly clear. He holds that these precepts of natural law, known to be true "immediately, with a modicum of consideration," in the light of the first and common principles of natural law, are absolute. They proscribe absolutely the killing of the innocent, adultery, theft, and so forth, because all these kinds of acts are contrary to specific natural law precepts. He teaches that apparent "exceptions" to these norms are in reality different kinds of human acts, specified by different moral objects. Thus, Abraham did not consent to kill an innocent human being when he was willing to obey God's command to sacrifice his son, Isaac. Rather, he consented to carry out the just command of God.¹³³

But why is it always morally wicked and contrary to natural law precepts to kill innocent persons, to commit adultery, to steal, or to contracept? The basic reason is that the truth of these specific moral norms of natural law is grounded in its "first and common principles". Recall that for Thomas, the twofold law of love of God and neighbor is the principle upon which the precepts of the Decalogue are founded. What this means is that a basic requirement of natural law is that human persons, in and through the acts they freely choose to do, ought to manifest love for God and neighbor. If we love God, we ought to accept from Him His good gifts, the goods perfective of human persons, such goods as life, including bodily integrity and health, knowledge of the truth and appreciation of beauty, personal integrity and authenticity, harmony with others. And if we love our neighbor, we ought to will that these goods of human existence flourish in them and we ought not will that these goods not be in them.

The Fathers of Vatican Council II, it should be noted, suggested a basic normativer principle of natural law similar to that proposed by St. Thomas when he affirmed that love of God and love of neighbor are among the "first and common principles of natural law". After noting that human activity is of crucial significance not only for its results, but also and even more importantly because it develops human persons and gives to them, by reason of its self-determining and free character, their identity as moral beings, the Fathers of Vatican Council II declared: "Hence, the norm of human action is this, that in accord with the divine plan and will, it should harmonize with the genuine good of the human race, and allow men as individuals and as members of society to pursue their total vocation and fulfill it".¹³⁴ To put this another way, according to natural law we ought, in our choices, to revere and respect the goods of human existence, the goods to which we are directed by the primary principles of practical reason. Our hearts are to be open to these goods perfective of human persons. These goods are no abstractions, existing "out there"; rather, they are perfections of human persons, aspects of their full-being, of their dignity as human persons. Freely to choose to set them aside is to be willing to do evil. Human persons, made in the image of the holy and triune God, are to be, like Him, absolutely innocent of evil. God wills properly and *per se*, that is, as end or means, only what is good. He permits evil, but does not choose or do evil.¹³⁵ Like Him, we His children ought never choose or do evil.

References

1. Vatican Council II, "Gaudium et Spes", n. 51, note 14.
2. *Documentum Syntheticum de Moralitate Regulationis Nativitatum*, in *The Birth-Control Debate*, ed. Robert Hoyt (Kansas City, Mo: *National Catholic Reporter*, 1969), p. 69.
3. By "conjugal acts which by intention are infertile" the authors of this document mean marital acts chosen during the wife's infertile period, or the regulation of birth by periodic abstinence. Revisionist theologians claim that there is no moral difference between

"artificial" contraception and "natural" contraception or regulation of conception by periodic abstinence. See, for instance, Anthony Kosnik et al., *Human Sexuality: New Directions in American Catholic Thought* (New York: Paulist Press, 1977), pp. 114, 293, 295. For a critique of this way of understanding regulation of conception by periodic abstinence, see Ronald Lawler, OFM Cap., Joseph M. Boyle, Jr., and William E. May, *Catholic Sexual Ethics: A Summary, Explanation, and Defense* (Huntington, IN: Our Sunday Visitor Press, 1985), pp. 167-170; Germain Grisez, Joseph M. Boyle, Jr., John M. Finnis, and William E. May, "'Every Marital Act Ought to Be Open to New Life': Toward a Clearer Understanding," *Thomist* 52 (1988) pp. 365-426, especially pp. 399-408.

4. *Documentum Syntheticum* . . . , in Hoyt, *The Birth-Control Debate*, p. 72.

5. *Ibid.*, p. 75.

6. On this see another report by the "majority" on the papal commission, entitled *Schema Documenti de Responsabili Paternitate*, in Hoyt, *The Birth-Control Debate*, pp. 88-90.

7. "Humanae Vitae", n. 4: "Cuius certe generis questionibus ab Ecclesiae Magisterio novam eamque altiore considerationem postulabant circa principia moralis doctrinae de matrimonio, quae in lege naturali, divina Revelatione illustrata, nititur."

8. In note # 11 to n. 11 of "Humanae Vitae", Pope Paul VI refers to the teaching of the following of his predecessors on this matter: Pius IX, "Qui Pluribus", in *Pii IX PM Acta*, I, 9-10; St. Pius X, "Singulari Quadam", AAS 4 (1912) 658; Pius XI, "Casti Connubii", AAS 22 (1930) 579-581; Pius XII, Allocution "Magnificate Dominum" to the Episcopate of the Catholic World, AAS 46 (1954) 671-672; John XXIII, "Mater et Magistra", AAS 53 (1961) 457.

9. See Vatican Council II, "Dignitatis Humanae", n. 14; "Gaudium et Spes", n. 51.

10. "Humanae Vitae", n. 4. Note that in this text Paul VI affirms that "naturalis quoque lex voluntatem Dei declarat, cuius utique fidelis observatio ad aeternam salutem est hominibus necessaria."

11. In note # 12 of "Humanae Vitae", n. 11, Pope Paul VI refers to the teaching of Pius XI, "Casti Connubii", AAS 22 (1930) 560, and Pius XII, "Address to Italian Union of Midwives," AAS 45 (1951) 843.

12. Here a passage from John Noonan's massive history of the issue of contraception, *Contraception: A History of Its Treatment by Catholic Theologians and Canonists* (Cambridge, MA: Harvard University Press, 1965), p. 6, is pertinent: "the propositions constituting a condemnation of contraception are . . . recurrent. Since the first clear mention of contraception by a Christian theologian . . . of the third century . . . the articulated judgment has been the same. In the world of the late Empire known to St. Jerome and St. Augustine, in the Ostragothic Arles of Bishop Caesarius and the Suevian Braga of Bishop Martin, in the Paris of St. Albert and St. Thomas, in the Renaissance Rome of Sixtus V and the Renaissance Milan of Charles Borromeo, in the Naples of St. Alphonsus Liguori and the Liege of Charles Billuart, in the Philadelphia of Bishop Kenrick, and in the Bombay of Cardinal Gracias, the teachers of the Church have taught without hesitation or variation that certain acts preventing conception are gravely sinful"

13. "Humanae Vitae", n. 11: "quilibet matrimonii usus ad vitam humanam procreandam per se destinatus permaneat."

14. *Ibid.*, n. 14: "Item . . . respuendus est actus qui, cum coniugale commercium vel praevideatur vel efficitur vel ad suos naturales exitus ducit, id tamquam finem obtinendum aut viam adhibendam intendat, ut procreatio impediatur."

15. In note #14 of "Humanae Vitae" Pope Paul refers to the following of his predecessors and Vatican Council II as condemning absolutely directly procured abortion: *Catechismus Romanus Concilii Tridentini*, Part II, Chapter VIII; Pius XI, "Casti Connubii", AAS 22 (1930) 562-564; Pius XII, "Discorsi e Radiomessaggi" 6 (1944) 191-192, AAS 43 (1951) 842-843, 857-859; John XXIII, *Pacem in Terris*, AAS 45 (1963) 259-260; Vatican Council II, *Gaudium et Spes*, n. 51.

16. "Humanae Vitae", n. 14: "Quareprimariis hisce principiis humanae et christianae

doctrinae de matrimonio nixi, iterum debemus edicere, omnino respuendam esse, ut legitimum modum numeri liberorum temperandi, directam generationis iam coeptae interruptionem, ac praesertim abortum directum, quamvis curationis causae factum.”

17. *Ibid.*, n. 14.

18. *Ibid.*: “Neque vero, ad eos coniugales actus comprobandos ex industria fecunditate privatos, haec argumenta ut valida efferre licit: nempe, id malum eligendum esse, quod minus grave videretur insuper eisdem actus in unum quoddam coalescere cum actibus fecundis iam autem positus vel postea ponendis, atque adeo horum unam atque parem moralem bonitatem participare. Verum enimvero, si malum morale tolerare, quod minus grave sit, interdum licet, ut aliquod maius vitetur malum vel aliquod praestantius bonum promoveatur, numquam tamen licit, ne ob gravissimas quidem causas, facere mala ut evitant bona (cf. Rom 3.8), videlicet in id voluntatem conferre, quod ex propria natura moralem ordinem transgrediatur, atque idcirco homine indignum sit iudicandum, quamvis eo consilio fiat, ut singulorum hominum, domesticorum convictuum, aut humanae societatis bona defendantur vel provehantur.”

19. See notes 8, 11, 15 above. Also see Vatican Council II, “Gaudium et Spes”, n. 27.

20. See, for instance, Charles Curran, “Moral Theology in Light of Humanae Vitae”, in his *Transition and Tradition in Moral Theology* (Notre Dame, IN: University of Notre Dame Press, 1977), pp. 29-58, at 30-32; Louis Janssens, “Considerations on Humanae Vitae”, *Louvain Studies* 2 (1969) 231-253, at 247-250.

21. Janssens, Louis, “Norms and Priorities in a Love Ethics,” *Louvain Studies* 6 (1977) 207.

22. *Ibid.* See also Richard Gula, *What Are They Saying About Moral Norms?* (New York: Paulist Press, 1982), pp. 55-56; Timothy O’Connell, *Principles for Catholic Morality* (New York: Seabury, 1978), pp. 158-159.

23. Fuchs, Josef, *Christian Ethics in a Secular Arena* (Washington: Georgetown University Press, 1984), p. 72.

24. Janssens, “Norms and Priorities. . .,” 208.

25. *Ibid.*

26. *Ibid.*, 216. See also Gula, *What Are They Saying About Moral Norms?*, p. 57.

27. McCormick, Richard A., *Notes on Moral Theology 1965-1980* (Lanham, MD: University Press of America, 1981), pp. 578-579.

28. A typical illustration of the way revisionist theologians distinguish between “good” and “bad” as predicates proper to persons as moral beings and “right” and “wrong” as predicates proper to human actions is provided by Janssens, “Norms and Priorities . . .,” 209: “moral goodness and moral badness are finally determined by the goodness or badness of our disposition or attitude . . . [but] whether or not our actions are objectively suited to actualize our good dispositions is . . . a matter of knowledge and judgment . . . of rightness and wrongness. That is why we say that an action is morally right, whereas we qualify as morally wrong an action which is inappropriate for that purpose.”

29. In his *Human Values and Christian Morality* (Dublin: Gill and Macmillan, 1970), pp. 92-112 Josef Fuchs develops this point quite extensively in presenting his understanding of “basic freedom” or “fundamental option” as distinct from everyday free choices. An excellent critique of this aspect of revisionist thinking is given by Joseph M. Boyle, Jr., “Freedom, the Human Person, and Human Action,” in *Principles of Catholic Moral Life*, ed. William E. May (Chicago: Franciscan Herald Press, 1980), pp. 237-268.

30. This is precisely the way Francis Sullivan, a systematic theologian in agreement with revisionist moral theologians, summarizes the thought of such authors as Charles Curran, Franz Böckle, Josef Fuchs, Bruno Schüller, Bernard Haring and others in his book, *Magisterium: Teaching Authority in the Catholic Church* (New York: Paulist Press, 1983), pp. 150-151.

31. Fuchs, Josef, “The Absoluteness of Behavioral Moral Norms,” in his *Personal Responsibility and Christian Morality* (Washington, D.C.: Georgetown University Press, 1983), p. 145. This very influential essay originally appeared in *Gregorianum* 52 (1971) under the title “The Absoluteness of Moral Terms”. All citations from this essay will be

taken from *Personal Responsibility*.

32. *Ibid.*, p. 129.

33. On this see *ibid.*, pp. 126-127, where Fuchs says that "whatever leads to our unfolding, in the fullest and best sense of that word, is good." See also, representative revisionist thought on this matter, Cornelius van der Poel, *The Search for Human Values* (New York: Newman, 1971), p. 57: "The question . . . is what kind of human self-realization is taking place and what is the interpersonal impact of this action." See also William van der Marck, *Toward a Christian Ethic* (New York: Newman, 1967), pp. 41-80, where he develops the idea that the criterion for establishing material norms is the question whether human actions build up or tear down community. If actions help to build up community, they are morally right; if they tear it down, they are morally wrong.

34. Fuchs, *Personal Responsibility* . . . , p. 133.

35. *Ibid.*, p. 124

36. Sullivan, *Magisterium*, pp. 151-152. On this see also Fuchs, *Personal Responsibility* . . . , p. 140.

37. Fuchs, *Personal Responsibility* . . . , p. 142.

38. On this see Daniel Maguire, *Death by Choice* (New York: Doubleday, 1974), p. 99: "the principle (rule would be more exact), 'Do not rape a girl who is suffering from mental illness' imports an action that is so ghastly in its meaning and consequences that the principle would appear [emphasis added] to be absolute since no competing values could seem [emphasis added] to outweigh the harm such an action portends." Nonetheless, this "rule" is still, theoretically, open to exceptions. See also Janssens "Norms and Priorities . . .," 217.

39. Fuchs, *Personal Responsibility*. . . , pp. 140-142; Janssens, "Norms and Priorities. . .," pp. 217-218; Richard McCormick, in "Ambiguity in Moral Choice" as reprinted in *Doing Evil to Achieve Good* (Chicago: Loyola University Press, 1978), pp. 42-44.

40. "Premoral" is the term used by Fuchs; "nonmoral" is preferred by Schuller, McCormick, and others; "ontic" is employed by Janssens and others.

41. See above, note 2 and accompanying text.

42. See above, notes 4 and 5 and accompanying text.

43. Bruno Schüller, "What Ethical Principles Are Universally Valid?" *Theology Digest* 19 (March 1971) 24 ("Zur Problematik allgemeinen ethischer Grundsätze," *Theologie und Philosophie* 45 [1970] 4). McCormick's comment on Schuller here is of interest. McCormick writes: "Stated negatively, it [this principle] reads: put in a position where he will unavoidably cause evil, man must discover which is the worst evil and avoid it. Stated positively, this is its formulation: put before two concurring but mutually exclusive values, man should discover which must be preferred and act accordingly. These statements imply that a physical evil can be caused or permitted only if it is demanded by a proportionate good" (*Notes on Moral Theology 1965-1980*, p. 315).

44. McCormick, "Ambiguity in Moral Choice," in *Doing Evil to Achieve Good*, p. 39. See also the collection of essays by Peter Knauer, Louis Janssens, Bruno Schüller, Josef Fuchs, Franz Scholz, Walter Jeffko, Albert DiIanni, Richard McCormick, and Charles Curran published in *Readings in Moral Theology, No. 1: Moral Norms and Catholic Teaching*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist Press, 1979) for similar articulations of the "preference principle".

45. Fuchs, *Personal Responsibility*. . . , p. 138.

46. *Ibid.*, p. 137.

47. *Ibid.*, pp. 134-136. For an excellent critique, see Germain Grisez, "Moral Absolutes: A Critique of the View of Josef Fuchs, S. J.," *Anthropos* (now *Anthropotes*): *Rivista di Studi Sulla Persona e la Famiglia* 1 (1983), 183-184.

48. *Ibid.* On the changeability of human nature see *ibid.*, p. 126, where Fuchs refers to the study of E. Chiavacci, "La legge naturale ieri e oggi," in F. Festorazzi et al., *Nuove Prospettive di Morale Coniugale* (Grescia, 1969), p. 65 ff.

49. For justification of abortion for "proportionate" or "commensurate" reasons by

revisionists see Charles E. Curran, *New Perspectives in Moral Theology* (Notre Dame, IN: University of Notre Dame Press, 1974), pp. 190-191. Curran includes preventing "grave harm" to the "physical or psychological health" of the mother as a proportionate reason to justify killing the unborn. For mercy killing or euthanasia, see Daniel Maguire, *Death by Choice*.

50. Contraception is described as an act of "fostering love responsibly toward generous fecundity" in the *Documentum Syntheticum*, p. 72. It is described as a "marriage-saving" or "marriage-stabilizing" act by McCormick, "A Commentary on the Commentaries," in *Doing Evil to Achieve Good*, p. 241.

51. On this see Curran, *New Perspectives*, p. 191.

52. Revisionists such as Curran, Janssens, Fuchs, Maguire, and others repeatedly claim that St. Thomas denies that any material norms are absolute in the famous passage in *Summa Theologiae* 1-2, 94, 4 where he says: "lex naturae . . . quantum ad quadam propria [praecepta], quae sunt quasi conclusiones principiorum communium, est eadem apud omnes ut in pluribus . . . sed ut in paucioribus potest deficere" (cf. 1-2, 94, 5).

53. Several revisionist theologians have argued that St. Thomas, when teaching that the precepts of the Decalogue are absolutely indispensable, even by God (*Summa Theologiae*, 1-2, 100, 8) was considering these precepts only as formal or tautological norms (e.g., thou shalt not kill unjustly) and not as material norms forbidding actions described nonevaluative language. See John Milhaven, "Moral Absolutes in Thomas Aquinas," in *Absolutes in Moral Theology?*, ed. Charles E. Curran (Washington: Corpus, 1968), pp. 159-185; John Dedek, "Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas," *Thomist* 43 (1979) 385-413; Franz Scholz, "Durch ethische Grundsituationen aufgeworfene Normenproblemen," *Theologischpractische Quartalschrift* 123 (1975) 341-355 (English translation in *Readings in Moral Theology, No. 1: Norms and Catholic Teaching*).

54. This is the principal point that Janssens seeks to develop in his influential essay, "Ontic Evil and Moral Evil," *Louvain Studies* 4 (1972) 115-156.

55. "Gaudium et Spes", nn. 16, 33, 46.

56. Thus, for example, Sullivan appeals to the texts of Vatican Council II listed in the previous note to justify the revisionist approach to material norms in his work, *Magisterium*, p. 155.

57. *Ibid.*, pp. 151-152 (see above, note 36). See also Fuchs, *Personal Responsibility*. . . . p. 140.

58. Sullivan, *Magisterium*, pp. 151-152.

59. *Ibid.*, p. 152. Sullivan and others derive this notion of changing human nature primarily from Karl Rahner. See the latter's "Basic Observations on the Subject of the Changeable and Unchangeable Factors in the Church," *Theological Investigations* 14 (1976) 14-15. See also Fuchs, *Personal Responsibility*. . . . p. 126.

60. Fuchs, *Christian Ethics in a Secular Arena* (Washington: Georgetown University Press, 1984), p. 75; *Personal Responsibility*. . . . pp. 131, 139; McCormick, *Notes on Moral Theology 1965-1980*, pp. 710-711.

61. Janssens, "Ontic Evil and Moral Evil," p. 144.

62. St. Thomas, *Summa Theologiae*, 1-2, q. 18, entire question.

63. *Ibid.*, 18, 1: "quia de ratione boni est ipsa plenitudo essendi, si quidem alicui defuerit de debita essendi plenitudine, ne dicetur simpliciter bonum, sed secundum quid inquantum est ens Sic igitur dicendum quod omnis actio, inquantum habet aliquid de esse intantum habet de bonitate; inquantum vero deficit ei aliquid de plenitudine essendi quae debetur actioni humanae intantum deficit a bonitate, et sic dicitur mala."

64. *Ibid.*, 20, 1 and 2.

65. Fuchs, *Personal Responsibility*. . . . p. 129; cf. pp. 126-127 (see above, notes 32 and 33).

66. Grisez, "Moral Absolutes. . .," 172.

67. *Ibid.*, p. 170.

68. See above, notes 48 and 59.

69. "Gaudium et Spes", n. 29; *Lumen Gentium*, n. 19.
70. "Lumen Gentium", n. 13.
71. "Gaudium et Spes", n. 29.
72. "Lumen Gentium", n. 13.
73. John R. Connery, "Catholic Ethics: Has the Norm for Rule-Making Changed?" *Theological Studies* 42 (1981) 232-250; Germain Grisez, "Against Consequentialism," *American Journal of Jurisprudence* 23 (1978) 21-72; Grisez, *The Way of the Lord Jesus*, Vol. 1, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983), pp. 141-172; John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 118-125; Finnis, *Fundamentals of Ethics* (Washington: Georgetown University Press, 1983), pp. 86-105; John Finnis, Joseph M. Boyle, Jr., and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford and New York: Oxford University Press, 1987), pp. 254-261; Servais Pinckaers, *Ce qu'on ne peut jamais faire: La question des actes intrinsequements mauvais. Histoire et discussion* (Fribourg: Editions Universitaires; Paris: Editions du Cerf, 1986); Bartholomew Kiely, "The Impracticality of Proportionalism," *Gregorianum* 66 (1985) pp. 655-686.
74. McCormick, "Ambiguity in Moral Choice," in *Doing Evil to Achieve Good*, p. 38.
75. See works cited in note 73.
76. In *Nuclear Deterrence, Morality, and Realism*, pp. 254-261, Finnis, Boyle, and Grisez show how the revisionist principle of proportionate good is incompatible with the reality of free choice. They note that this theory requires that "two conditions be met: (i) that a morally significant choice be made; and (ii) that the person making it be able to identify one option as offering unqualifiedly greater good or lesser evil. But these two conditions are incompatible, and in requiring that they be met simultaneously consequentialism [within which revisionist natural law theory fits] is incoherent" (p. 254). As they show, choice is possible only when there are two or more alternatives. But an alternative exists only when the good it promises is not available in other possibilities. Thus if condition (ii) is met, condition (i) cannot be and vice versa.
77. McCormick, "A Commentary on the Commentaries," in *Doing Evil to Achieve Good*, p. 227; see also pp. 251-253.
78. *Ibid.*
79. For a brilliant critique showing that McCormick's position leads to absurdities, see Finnis, *Fundamentals of Ethics*, pp. 99-105. McCormick, Finnis shows, argues that one acts wrongly in framing an innocent person to prevent a lynch mob from hanging a group of innocent persons not because one is willing to kill an innocent person and punish him for a crime he did not commit but rather because one is practicing "extortion" on the lynch mob by refusing to respect their freedom to change their minds — surely an absurd position.
80. On this matter see Eric D'Arcy, *Human Acts: An Essay on Their Moral Evaluation* (Oxford: Oxford University Press, 1963), pp. 18-25, where he shows that there is a propensity to redescribe actions in terms of their hoped-for or anticipated results and to do so in such a way that the nature of the act is concealed. This is precisely what revisionist theologians do in applying their principle of proportionality.
81. Kiely, "The Impracticality of Proportionalism," pp. 655-666.
82. Gregory S. Kavka, *Moral Paradoxes of Nuclear Deterrence* (Cambridge: Cambridge University Press, 1987), pp. 24-28.
83. St. Thomas, *Summa Theologiae*, 1-2, 94, 4 and 5. See above, note 52.
84. *Summa Theologiae*, 2-2, 66, 5 and 6.
85. *Ibid.*, 110, 3c and ad 4.
86. *Ibid.*, 154, 2.
87. *Ibid.*, 154, 8.
88. *Ibid.*, 64, 6.
89. *De Malo*, 15, 1, ad 5.
90. Milhaven, Dedek, and Scholz make this claim. See above, note 53.
91. Lee, Patrick, "The Permanence of the Ten Commandments: St. Thomas and His

Modern Commentators," *Theological Studies* 42 (1981) pp. 431-432; Theo Belmans, "Saint Thomas et la notion de 'moindre mal morale'," *Revue Thomiste* 83 (1983) pp. 53-54; Belmans, *Le sens objectif de l'agir humain* (Citta del Vaticana: Libreria Editrice Vaticana, 1980) pp. 62, 109-110, 117-119, 124, 162, 237.

92. This is the argument set forth by Janssens. See note 54 above.

93. See William E. May, "Aquinas and Janssens on the Moral Meaning of Human Acts," *Thomist* 48 (1984) pp. 592-594; Lee, "Permanence of the Ten Commandments," pp. 437-441; Belmans, "Saint Thomas et la notion de 'moindre mal morale,'" pp. 41-44. Of particular relevance here is a text from *In II Sent.*, d. 40, q. un., a. 2c and ad 2 and ad 3: "voluntas dupliciter considerari: vel secundum quod est intendens, prout in ultimum finem fertur; vel secundum quod est eligens, prout fertur in obiectum proximum, quod in finem ultimum fertur . . . Non autem bonitas voluntatis intendentis sufficit ad bonitatem actus; quia actus potest de se malus, qui nullo modo bene fieri potest. Si autem consideretur voluntas secundum quod est eligens, sic universaliter verum est quod a bonitate voluntatis dicitur actus bonus, et a malitia [voluntatis] malus . . . Secundum voluntatem dicitur actus exterior bonus vel malus; sed non secundum voluntatem intendentem solum, sed secundum voluntatem eligentem . . . ad bonitatem rei non solum exigitur bonitas finis ultimi quem respicit voluntas intendens, sed etiam bonitas finis proximi, quem respicit voluntas eligens." See also *Summa Theologiae* 1-2, 20, 2.

94. See above, note 56, with appeals to "Gaudium et Spes", nn. 16, 33, 46.

95. "Gaudium et Spes", n. 79.

96. *Ibid.*, n. 80.

97. *Ibid.*, n. 27.

98. *Ibid.*, nn. 27, 51, 79, 80; "Dignitatis Humanae", n. 14.

99. On this see Servais Pinckaers, "La question des actes intrinsequements mauvais et le proportionalisme," *Revue Thomiste* 82 (1982) 181-212; Grisez, *Christian Moral Principles*, pp. 154-155.

100. Fuchs, *Human Values and Christian Morality*, pp. 92-112, especially p. 96 ff.

101. *Ibid.* See also Fuchs, *Personal Responsibility*. . . , p. 122.

102. "Gaudium et Spes", n. 39.

103. "Apostolicam Actuositatem", n. 5.

104. See, for example, Vatican Council II, "Optatam Totius", n. 16.

105. *Summa Theologiae*, 1-2, 18, 3c; see also 1-2, 5, 2; 18, 8 and 9; *Summa Contra Gentes*, III, 9.

106. *Ibid.*, 1-2, 94, 2.

107. *Ibid.*, 1-2, 91, 2c and ad 3.

108. *Ibid.*, 1-2, 100, 1.

109. *Ibid.*, 1-2, 100, 8: "quorum non oportet editionem esse, nisi quod sunt scripta in ratione naturali quae per se nota"; cf. 100, 11.

110. *Ibid.*, 1-2, 94, 2.

111. *Ibid.*: "quia bonum habet rationem finis, malum autem rationem contrarii, inde est quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda."

112. *Ibid.*

113. *Ibid.*, 1-2, 58, 5: "ad hoc quod recte se habeat circa principia particularia agibilium, quae sunt fines, oportet quod perficiatur per aliquos habitus secundum quos fiat quodammodo homini connaturale recte iudicare de fine. Et hoc fit per virtutem moralem; virtuosus enim recte iudicat de fine virtutis."

114. *Ibid.*, 1-2, 95, 2.

115. *Ibid.*, 1-2, 100, 3, ad 1.

116. *Ibid.*, 1-2, 100, 11.

117. *Ibid.*, 1-2, 100, 1.

118. *Ibid.*, 1-2, 100, 3.

119. *Ibid.*, 1-2, 100, 1.

120. *Ibid.*, 1-2, 100, 11.

121. *Ibid.*, 1-2, 100, 1.

122. *Ibid.*, 1-2, 100, 11.

123. *Ibid.*, 1-2, 100, 1.

124. *Ibid.*, 1-2, 100, 3.

125. *Ibid.*, 1-2, 100, 1.

126. *Ibid.*, 1-2, 100, 8.

127. See, for instance, *Ibid.*, 1-2, q. 1, 3, ad 3; *In 2 Sent.*, d. 40, q. 1, a. 1, ad 4. The second text is quite instructive. It reads: "Concubitus est quidam actus imperatus a voluntate, mediante alia potentia; et ideo, per accidens convenit sibi esse in genere moris; unde potest dupliciter considerari, vel secundum genus naturae, et sic concubitus matrimonialis et fornicarius specie non differunt; unde et effectum naturalem eundem speciem habent; vel secundum quod pertinent ad genus moris, et sic effectus specie differentes habent, ut mereri vel demereri, vel aliquid huiusmodi, et sic in specie differunt."

128. *Summa Theologiae*, 2-2, 64, 6: "nullo modo licet occidere innocentem."

129. *Ibid.*, 2-2, 64, 2, on execution of criminals as an act of justice; 64, 7, on killing in self-defense. On these issues also see Lee, "Permanence of the Ten Commandments."

130. *Ibid.*, 1-2, 18, aa 1-3.

131. *Ibid.*, 1-2, 18, 7c and ad 3.

132. *Ibid.*, 18, 2, ad 2.

133. *Ibid.*, 1-2, 100, 8, ad 3: "Abraham, cum consentit occidere filium, non consentit in homicidium, quia debitum erat eum occidi per mandatum Dei, qui est Dominus vitae et mortis. Ipse enim est qui poenam mortis infligit omnibus hominibus, iustis et iniustis, pro peccato primi parentis; cuius sententiae si homo sit executor auctoritate divina, non erit homicida, sicut nec Deus." On this see Lee, "Permanence of the Ten Commandments." Here too should be noted what Thomas says in *De Malo*, q. 1, a. 3, ad 10. There St. Thomas, speaking of the justice of God in punishing evildoers, insists that what God directly wills is not an evil but the order of justice, has this to say: "non oportet quod bonum quod est causa mali per accidens sit bonum deficiens. Sic autem Deus est causa mali poenae; non enim in puniendo intendit malum eius quod punitur, sed ordinem iustitiae imprimere rebus, ad quod sequitur malum eius quod punitur, sicut ad formam ignis sequitur privatio formae aquae."

134. Vatican Council II, "Gaudium et Spes", n. 35.

135. On this see Council of Trent, Session VI, in DS, n. 1556; see also Lee, "Permanence of Ten Commandments," pp. 455-456 with text of St. Thomas cited there, and Grisez, *Christian Moral Principles*, 249 with accompanying notes.