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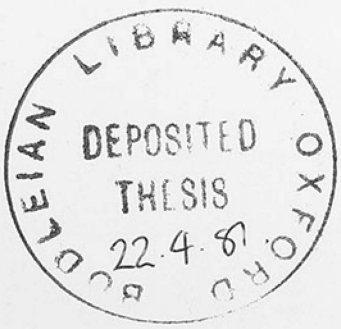
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DIRECT AND INDIRECT: A STUDY IN THE PRINCIPLE OF DOUBLE EFFECT IN ROMAN CATHOLIC MORAL THEOLOGY

LAURENCE J. McNAMARA C.M.

M. Litt. on D. Phil. thesis

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ABSTRACT

DIRECT AND INDIRECT: A STUDY IN THE PRINCIPLE OF DOUBLE EFFECT IN ROMAN CATHOLIC MORAL THEOLOGY

Laurence J. McNamara C.M.

Campion Hall

D.Phil.

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The thesis consists of an introduction, five chapters and a conclusion. It attempts to explore the content, scope and significance of the direct-indirect distinction as it has been used in Roman Catholic moral theology. The distinction is viewed in the context of the principle of double effect and against the background of thinking on the human act. The beginnings and evolution of the principle of double effect are the historical framework within which the notions "direct" and "indirect" are considered.

Beginning with Thomas Aquinas's analysis of killing in self-defence (S.T., II-II, q.64, a.7) our investigation explores the discussion of effects that are voluntary in their cause (voluntarium in causa) and their identification with effects that are indirectly voluntary (voluntarium indirectum). This process of assimilation occurred during the 16th and 17th Centuries. Throughout the thesis our primary interest and model is that of direct and indirect killing.

With the manuals of moral theology - after Alphonsus Liguori (d.1787) - the evaluation of indirect effects was discussed under the principle of double effect. This principle was located in the treatise on the human act, that had recently taken its place among the tracts studying issues in fundamental moral theology. In the fourth chapter the refinement of the direct-indirect distinction is explored through a study of periodical and monograph literature since 1850. Problems with double effect, direct and indirect are discussed by means of our study of such issues as abortion, craniotomy, ectopic pregnancy, hysterectomy together with obliteration bombing and other acts causing violent death.

Chapter 5 traces the thorough going reevaluation of the moral act, double effect and the direct-indirect distinction that has occurred since 1960. The conclusion of the thesis analyzes the influence of the historical context on our understanding of the human act and principle of double effect. This provides the basis of an evaluation of "direct" and "indirect."

ABSTRACT

DIRECT AND INDIRECT: A STUDY IN THE PRINCIPLE OF DOUBLE EFFECT IN ROMAN CATHOLIC MORAL THEOLOGY

The notions "direct" and "indirect" have played an important role in Roman Catholic moral theology. In this thesis the direct-indirect distinction, its scope and significance, are explored from an historical point of view. The terms "direct" and "indirect" have been used most frequently in moral theology in the context of the principle of double effect. This principle assists moralists and moral agents to determine their responsibility for the evil effects of good or indifferent acts. In its more common form the principle of double effect is formulated as follows:

> A person may lawfully perform an action from which two effects follow, one good and the other bad, if four conditions are fulfilled -
>
> (1) the act itself must be morally good or at least indifferent;
>
> (2) the agent must not positively will the bad effect but may merely permit it;
>
> (3) the good effect must flow from the action at least as immediately as the bad effect;
>
> (4) the good effect must be sufficiently desirable to compensate for the evil effect brought about by the act.

This principle has acted in Roman Catholic moral theology as a tool assisting practical decision-making. At the same time it has assumed a particular understanding of the human act. For these reasons the thesis discusses the direct-indirect distinction in the context of the historical evolution of the principle of double effect and against the larger background of the understanding of the moral act in each period of history. The five chapters that make up the body of the thesis fall into the same four divisions. After a short historical introduction a brief study of the human act introduces our consideration of the principle of double effect. The final section of each chapter discusses the direct-indirect distinction with particular reference to homicide.

The scope of the thesis has been limited to direct and indirect killing for a number of reasons. Aquinas's discussion of killing in self-defence is considered by some to be the first explicit articulation of the principle of double effect as we know it today. Although the principle came to be applied to a wide range of moral situations where acts had good and bad effects (e.g. cooperation, scandal, sexual pleasure) the most substantive discussions on "direct" and "indirect" are to be found around the many problems related to killing. Taking direct and indirect killing as our main model it will be easier to explore the content, scope and significance of the distinction in greater detail.

Chapter 1 of our thesis discusses the beginnings of the double effect doctrine with Thomas Aquinas (d.1274). The historical introduction to the chapter explores the moral tradition Aquinas inherited together with the teaching on homicide that influenced his own writings. Moral dilemmas and questions concerning acts with two effects have been present in Christian reflection since the time of

Christ. Particularly influential in the early medieval period was the penitential practice of the Western Church, the growing influence of canon law, the rediscovery of Aristotle's ethics and the increasing importance of theological method. Two thinkers - Peter Abelard and Peter Lombard - were significant for later medieval reflections. Thomas's treatment of homicide indicates his obvious dependence on the Scriptures and earlier theologians. Roman law teaching on killing was mediated to him through the canonical literature of the 12th Century.

Just as an understanding of Aquinas's background is vital if we are to assess his contribution to Western theology so too on the question of the human act his teaching is dependent on the issues discussed in the Schools. St.Thomas synthesized the objectivist and subjectivist interpretations of the moral act and developed his thought on freedom (its scope and limits), intrinsically evil acts, ignorance and circumstances. His own explicit analysis of the moral act occurs within a general teleological framework. Of particular importance for our thesis is his understanding of intentio, electio and finis.

The text, S.T., II-II, q.64, a.7 on killing in self-defence, introduces the third section of chapter 1. A number of 20th Century authors have argued whether this text constitutes the first exposition of the principle of double effect. To indicate the arguments for and against this thesis the thought of V.Alonso and J.Mangan are developed. This exposition provides us with sufficient material to evaluate the developments considered in the following chapters.

In the fourth section of Chapter 1 St.Thomas's teaching on the voluntarium indirectum and the voluntarium in causa is stated and his teaching on killing in self-defence is analyzed on a number of

points. At the end of the first chapter we are led to conclude that "direct" and "indirect" appear to be primarily descriptive or indicative in St.Thomas's writings.

Chapter 2 studies the evolution and clarification process that occurred in the new discipline of moral theology in the Roman Catholic Church. Three historical traditions are important for any appreciation of the thought on "direct" and "indirect" between 1500 and 1700. The thought of Aquinas, that of the Franciscan school of theology and finally the Nominalist doctrine coming from William of Ockham were all influential during the period under discussion. The 16th Century was notable for the revival of Thomistic studies particularly at the University of Salamanca in Spain. The following century was absorbed in a struggle between the Jansenists and the moral theologians of the Society of Jesus.

The study of the human act during these two centuries is important for a number of reasons. The reading of Aquinas was made with a Nominalist bias towards voluntarism. The growing importance of the tract on conscience forced moralists to explore in greater detail the causal and intentional structures of the moral act. This was done in the hope of clarifying moral responsibility for the evil effects of one's actions.

During the 16th and 17th Centuries two approaches to S.T., II-II, q.64, a.7 appeared to dominate. One argued that the death of the aggressor may only be an unintended side-effect or consequence of an act of self-defence. This was the position held by Cajetan. Lessius and others argued that St.Thomas's argumentation permitted the man defending his life to directly intended the assailant's death.

As this double interpretation has continued down to our own century the remainder of the section III is given over to a study of factors external to St.Thomas's text which indicate that the second line of understanding (namely that of Lessius and others) developed as a result of other preoccupations (e.g. with the question of flight from an aggressor, the injury to be suffered as a result of the aggression etc.).

As there were no developments during this period regarding the argumentation used by St.Thomas on killing in self-defence it is necessary to consider a number of moral issues discussed in terms of the concept voluntarium in causa. By tracing the discussion of cases such as abortion, scandal, cooperation and sexual pleasure it becomes evident that the notion voluntarium in causa was elided with the concept voluntarium indirectum. In the writings of Aquinas this latter term indicated the effects of an omission. The criteria St.Thomas used for assessing the morality of effects that are indirectly voluntary, namely an obligation to avoid such effects and the agent's capacity to do so, were now applied to indirectly willed evil effects of positive deeds. In time, the term voluntarium indirectum became the most commonly used expression in studies of foreseen unintended evil effects. During the 16th and 17th centuries the literature often confuses the descriptive and evaluative aspects of the voluntarium indirectum.

In Chapter 3 the thesis discusses a body of literature called the manuals of moral theology. The historical period covered by this chapter is 1700 to 1960. The most important moralist of the 18th century was Alphonsus Liguori. He offered a middle position between the moral rigorists on the one hand and the laxist casuistry of the

probabilists on the other. During the 19th Century Alphonsus's moral teaching entered France through the efforts of Thomas Gousset. At the same time a renewal of moral theology was taking place in Germany. One of the most influential manuals of the 19th Century was that of the French Jesuit, J.P.Gury. His work was outstanding for its balanced casuistry. The manuals studied in Chapter 3 follow in the steps of Gury.

The treatises on the human act in the manuals follow a similar pattern. What is significant for the principle of double effect is the place the tract on the human act occupies in the manuals studied. No longer is the treatise on conscience the first in books on moral theology. The human act occupies from now on the first place among the treatises on fundamental issues.

This shift of emphasis is significant since it was Gury who gave us the principle of double effect in the form quoted at the beginning of this abstract. The double effect principle came to be treated in the manuals as a general principle to be applied to moral dilemmas. Vermeersch's attempt at a comprehensively worded statement of the principle illustrates its standing in much manualist thinking.

Our study of direct and indirect killing in the manuals of moral theology touches on three issues:

(a) acts of suicide or those which expose the agent's life to danger;

(b) questions of mutilation;

(c) killing the unjust aggressor.

Later editions of the manuals indicate some of the problems moralists were faced with after 1850. In Chapter 4, which overlaps chronologically with Chapter 3, we discuss the refinement of the direct-

indirect distinction that occurred in the periodical literature between 1850 and 1960. In the historical introduction to Chapter 4 some of the criticisms of manualist moral doctrine are outlined as well as a number of factors that contributed to the renewal of late 19th Century moral thinking. Two developments are particularly significant: the publication of a large number of new theological periodicals and the appearance of the first works on medical ethics.

During the period covered by this chapter there were no significant developments regarding the human act or the principle of double effect. For that reason the substance of the chapter is given over to a detailed discussion of direct and indirect killing. Isues such as abortion and the morality of acceleratio partus, craniotomy, ectopic pregnancy and hysterectomy are considered first of all. Questions of violent death (e.g. the morality of obliteration bombing, suicide and acts exposing the agent's life to danger) are included in our discussion of direct and indirect killing.

The refinement process observed in the discussion of the above issues has given way to a thorough-going reevaluation of all aspects of fundamental moral theology since 1960. This is the subject matter of Chapter 5.

After briefly considering the teaching of Vatican II and the encyclical Humanae Vitae, the changes in perspective underlying contemporary moral teaching are noted. The implications of these changes are discussed in Section II on the human act and Section III on the principle of double effect. Three approaches to the human act are considered in some detail. First, the approach to the moral

act present in recent statements of the Magisterium is outlined. In the second place recent emphases on the moral agent, the relationship between acting subjects and the communitarian aspects of human activity are explored in the writings of C. Van der Poel, W.Van der Marck and Charles Curran. Thirdly, recent emphases on the total human situation in the moral evaluation of the human act are analyzed. Some moralists (e.g. G.Grisez) develop a natural law argumentation; J.Fuchs emphasizes the influence of norms on the moral evaluation of the human act; R.McCormick and a number of other moralists discuss the significance of a human act with due attention to empirical factors and questions of epistemology.

Recent writing has questioned the principle of double effect at some depth. To grasp the extent of these critical investigations it was necessary to consider recent inquiries into the place of conflict and compromise in the moral life. In addition, we consider the assessment of the double effect principle pursued by those who emphasize the total human act, the role of evil and moral norms, or the place of proportionate reason in practical decision making.

Against this background the detailed analysis of direct and indirect killing by contemporary moralists (e.g. Schüller, McCormick, Di Ianni, Scholz) is explored together with an associated issue, namely killing and letting die.

In concluding our thesis two objectives are proposed. First, we attempt to indicate the main conclusions that may be drawn from our study of the human act and the principle of double effect. Secondly, against the background of these conclusions it is possible to indicate the influence of the historical context on the direct-

indirect distinction. This enables us to outline the content, scope and significance of the terms "direct" and "indirect" as used in the thesis.

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ABBREVIATIONS

A.A.S.	Acta Apostolicae Sedis.
A.C.R.	Australasian Catholic Record
A.E.R.	American Ecclesiastical Record
A.H.D.L.M.A.	Archives d'histoire doctrinale et littéraire du moyen-âge
C.I.C.	Codex Iuris Canonici
D.S.	H. Denziger and A. Schönmetzer: Enchiridion Symbolorum Definitionum et Declarationum de rebus fidei et morum
D.E.T.M.	Dizionario enciclopedico di teologia morale
D.H.G.E.	Dictionnaire d'histoire et de géographie ecclésiastiques
Dict. Apol.	Dictionnaire apologétique de la foi catholique
Dict. de Spir.	Dictionnaire de spiritualité, ascétique et mystique
D.T.C.	Dictionnaire de théologie catholique
E.C.	Enciclopedia cattolica
E.R.	The Ecclesiastical Review (later the American Ecclesiastical Review)
E.T.L.	Ephemerides theologicae Lovanienses
H.P.R.	Homiletic and Pastoral Review
I.E.R.	The Irish Ecclesiastical Record
I.T.Q.	The Irish Theological Quarterly
L.Th.K.	Lexikon für Theologie und Kirche
N.C.E.	New Catholic Encyclopedia
"Notes", T.S.	"Notes on Moral Theology", Theological Studies
N.R.T.	Nouvelle revue théologique
O.D.C.C.	The Oxford Dictionary of the Christian Church
P.G.	Patrologia Graeca (ed.) J.P. Migne
P.L.	Patrologia Latina (ed.) J.P. Migne
Periodica	Periodica de re morali, canonica, liturgica
Proc. C.T.S.A.	Proceedings of the Catholic Theological Society of America
R.S.P.T.	Revue des sciences philosophiques et théologiques
R.S.R.	Recherches des sciences religieuses
R.T.A.M.	Recherches de théologie ancienne et médiévale
S.T.	Thomas Aquinas: Summa Theologica
T.D.	Theology Digest
T.S.	Theological Studies

INTRODUCTION

> "Special care should be given to the perfecting of moral theology. Its scientific presentation should draw more fully on the teaching of holy Scripture and should throw light upon the exalted vocation of the faithful in Christ and their obligation to bring forth fruit in charity for the life of the world." (1)

With these words the Second Vatican Council ratified and encouraged the work of renewal in Roman Catholic moral theology. The aim of this thesis is to contribute, in a small way, to contemporary renewal and research in a limited yet vital area of fundamental moral theology, namely the moral act.

When men reflect on their experience and actions they cannot but assume some understanding of what it means to act humanly and morally. Individual and social life would be impossible if we could not ascribe goodness and badness (right and wrong) to conduct as well as responsibility (or culpability) to a moral agent for what he had done or omitted to do.

It is not simplifying matters too much to claim that when we seriously reflect on human acts three important facts emerge. First, we ascribe good and evil, right and wrong, to acts and omissions. Secondly, each and every act reverberates in the world of people and things. Whether one calls such reverberations effects, consequences

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1. Optatum Totius, par.16 (Vatican Council II, (ed.) A.Flannery, O.P., p.720; The Documents of Vatican II, (ed.) W.M. Abbott, S.J., p.452).

or results is unimportant. Finally, all moral acts performed by a moral agent in some way "cooperate" with a given state of affairs in the world and are themselves influenced by surrounding circumstances.

What is clear from reflections such as these is the central and fundamentally important place the moral act has in human life. Detailed study of the human act is crucial to any "scientific presentation" of moral theology. Obviously, there is already an enormous quantity of literature analyzing the moral act in itself and in its various aspects. This fact alone has demanded that our investigations focus on a clearly determined aspect of the moral act.

The title of this thesis indicates a two-fold specification. The first delineates the literature to be considered. The writings of Roman Catholic moral theologians will be our primary concern. Moral theology evolved as a separate and independent discipline within theological science during the early part of the 16th Century. Its principal orientation was pastoral, namely the formation of qualified confessors who would exercise their ministry with precision in the post-Reformation Roman Catholic Church.

Before moral theology was recognised as a science in its own right ethical reflection had taken place within the general systematic theology of the schools. The Summa Theologica of Thomas Aquinas is an excellent example of a complete theological synthesis. The second part of the work concentrates on man's lived response to the God of revelation.

Our study will commence with the teaching of Aquinas - the summit of scholastic endeavour and an enduring influence ever since - but the

main body of the thesis will concentrate on the literature of Roman Catholic moral theology from the 16th Century to the present.

Because of its pastoral bias considerable attention has been given in Roman Catholic moral theology to normative ethics. This has contributed to the development of a body of received teaching regarding the moral life. Within this body of material the so-called principle of double effect has been widely used. It has been applied to a range of conflict situations involving both good and evil aspects.

Since the principle of double effect is both historically interesting and practically useful a detailed study of the principle will contribute greatly to our understanding of the moral act. There is a double benefit in this approach. First, the principle of double effect bridges the theoretical and practical dimensions of Roman Catholic moral theology. An investigation of the evolution and application of the double effect principle will give us a more comprehensive view of the moral act as studied in the discipline than would be possible should we limit our investigation to treatises on the moral act alone.

Secondly, the particular approach of this thesis keeps us in touch with the concerns expressed in much recent literature. Currently, almost every facet of moral theology is being scrutinized - the human act and double effect being no exception. Our study of the principle of double effect from an historical perspective will contribute to an evaluation of many of the recent developments in the understanding of the moral act.

The principle itself has been most commonly expressed in terms such as the following:

> A person may lawfully perform an action from which two effects follow, one good and the other bad, if four conditions are fulfilled -
>
> (1) "the act itself must be morally good or at least indifferent.
>
> (2) The agent may not positively will the bad effect but may merely permit it....
>
> (3) The good effect must flow from the action at least as immediately (in the order of causality, though not necessarily in the order of time) as the bad effect ...
>
> (4) The good effect must be sufficiently desirable to compensate for the allowing of the bad effect." (2)

James Gustafson, in his study Protestant and Roman Catholic Ethics, correctly observes that the principle of double effect clearly differentiates Roman Catholic moral teaching from "a crude calculation of consequences in an uncritical popular utilitarianism"[3] through its focus on the agent's intention. At the same time it distances itself from much contemporary "situation ethics" (e.g. J.Fletcher) through its concern for the material act and its consequences. To quote Gustafson again:

> "It is clear ... that the scope of actions to which the principle of double effect can be properly applied is restricted. The restrictions are set by four judgements: about whether the act is intrinsically evil, which implies a clear principle of determining that; about the sincerity of the agent's intention, which is an evaluation judgment with empirical dimensions; about the chain of causality, which is an empirical judgment that makes a moral difference; and about the proportionality of the reason which involves three other judgments that fuse evaluative and empirical factors - 'a value at least equal to that sacrificed is at stake', 'there is no less harmful way of protecting the value here and now', and the way it is now protected 'will not undermine it in the long run'." (4)

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2. F.J.Connell: "Double Effect, Principle of", N.C.E., IV, p.1021.

3. J.M.Gustafson: Protestant and Roman Catholic Ethics, p.54.

4. J.Gustafson: op.cit., pp.54-55.

Many of the acts we perform have both good and evil aspects (results, effects, consequences). Often only the good is intended. Yet because of the presence of evil in an otherwise unexceptionable act the question of the agent's responsibility for any concomitant evil can not be avoided. The principle of double effect, therefore, assists us in discerning the agent's responsibility for the unintended, yet foreseen, evil effect of an unobjectionable course of action. Traditionally, Roman Catholic moral reflection has designated such evil effects as "indirectly" intended. The good effect, however, is "directly" intended.

Since the time of Aquinas "direct" and "indirect" have been applied to moral acts. In spite of long use it is by no means clear that the two terms have been understood in a univocal fashion. Ambiguity arises from at least two sources. First, in speaking of directly and indirectly willed effects there is an assumption that "direct" and "indirect" apply in the same way when ascribed to the effects of a positive deed on the one hand and to the consequences of an omission on the other. A number of the early moralists of the 16th century introduced this assumption into the moral literature. We shall refer to this as the ambiguity of attribution. Secondly, confusion exists at times regarding the nature of the reality to which "direct" and "indirect" are applied. At times "direct" and "indirect" are made to refer to the causal relationships within the moral act. For example, in the act of self-defence against an unjust aggressor the saving of my life is the per se, directly intended effect of my use of force. That the aggressor should lost his life is a per accidens effect, only indirectly willed. At other times the direct-indirect distinction designates the orientation or direction of the will in the actual

performance of the action. So in the situation of self-defence I actually will and intend (in intentione) to preserve my life. This is "directly" willed. Although the assailant's death is seen as a possible outcome of my use of force in self-defence I do not directly will and intend his death. His death is indirectly willed (praeter intentionem). Finally, the terms "direct" and "indirect" have been given a strictly moral connotation. Direct abortion, direct killing of oneself are considered to be immoral courses of action. On the other hand, certain cases of indirect abortion and indirect self-killing may be quite moral. Whether moral directness or indirectness closely relates to the causal or intentional structure of human acts or whether it is an unlawful extension of the direct-indirect distinction will remain to be seen later in this thesis.

Our research in the following chapters indicates

(a) that some of the confusion arising from the direct-indirect distinction derives from an undiscriminating use of the terms - at least in the tradition;

(b) that direct and indirect are shorthand terms expressing judgments made on other grounds;

(c) that historically "direct" and "indirect" have been applied more generally and less clearly than the more recent manualist literature would admit.

It is my intention in this thesis to examine the direct-indirect distinction, particularly as it has been used in the principle of double effect. The principle itself evolved gradually in Roman Catholic moral reflection. Eventually it came to be concerned with four areas of the moral life - homicide, scandal, cooperation and sexual pleasure. Some scholars argue that the principle of double effect was first

articulated in Thomas Aquinas's analysis of killing in self-defence.[5] Others contend that it only developed many centuries later. It is against the background of this historical issue that our study of the direct-indirect distinction will be pursued.

Two comments concerning the method to be employed in this thesis are appropriate here. Because of the extensive historical span of this investigation it has not been possible to study all the relevant literature in each period. In spite of this every effort has been made to study the more important texts and authors. This will permit us to keep in sharp focus the understanding and application of "direct" and "indirect" at each stage in the "life" of the principle of double effect.

For the sake of clarity, and without doing injustice to the facts, I have decided to concentrate on the issue of direct and indirect killing. This limitation assumes that "direct" and "indirect" were applied in a similar way in the other areas of concern for the principle of double effect, namely scandal, cooperation and sexual pleasure. Should direct and indirect be used differently in any of these areas of moral living reference will be made to the fact in the appropriate place. Absence of comment should be taken to indicate that there is no substantial divergence in usage from that of direct and indirect killing.

The chapters of this thesis follow the same general format. This will enable our study to move in stages from the more general to the more specific. An historical introduction (I) will introduce each chapter giving sufficient background to situate the moral thinking of the sections that follow. In each period an analysis of the human act (II) will introduce a study of the principle of double effect (III).

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5. Cf. S.T., II-II, q.64, a.7.

It is against this bacground that the direct-indirect distinction will be considered (IV).

The single thread uniting the five chapters of this thesis is the principle of double effect itself. A study of the historical evolution of the principle will throw light on the prevailing understanding of the moral act at each stage in its development as well as on the range and complexity of problems that moralists have pondered on down the centuries. Whether or not the principle of double effect proved to be a pliant tool in their hands will become clearer as our study considers the single issue of homicide.

The thesis introduces us to the origins of the double effect principle through a discussion of Aquinas on killing in self-defence (Chapter 1). The second chapter traces the evolution of the principle and the work of clarification that occurred during the 16th and 17th centuries. In the following chapter (Chapter 3) the manuals of moral theology will be seen to have applied the principle of double effect in a fairly standard fashion as their deductive natural law methodology demanded. Chapter 4 introduces us to the debates which effectively refined the principle during the latter half of the 19th and early part of the 20th centuries. Refinement has steadily given way to a thorough-going reevaluation which has dominated much of the moral literature in the Roman Catholic Church since 1960 (Chapter 5).

In concluding our work two tasks will be attempted. The first will consist in expounding a number of conclusions arrived at as a result of our study of the human act and the principle of double effect. As no previous study has investigated the human act and double effect in the comprehensive manner of this thesis it is hoped

that our conclusions will contribute to the present reevaluation of fundamental issues in Roman Catholic moral theology. In the second place we will attempt to explain some of the more important factors governing the use of the direct-indirect distinction in the tradition. This will enable us to explore the content, scope and significance of "direct" and "indirect".

Chapter 1

AQUINAS: THE BEGINNINGS OF THE PROBLEM

I HISTORICAL BACKGROUND

This thesis begins with a study of the thought of St. Thomas Aquinas (1225-1274)[1] on the morality of killing in self-defence. It is generally agreed that in the Summa Theologica, II-II, q.64, a.7 we have the beginnings of what is now called the principle of double effect (P.D.E. henceforth). Whether Aquinas can be considered the first to formulate the principle will concern us later. The question is disputed by moralists.

Before launching into a detailed study of the issues that will dominate the body of this work it will be helpful to locate the writings of Thomas and the question of homicide within our historical framework.

1. Aquinas and the Moral Tradition[2]

The teachings of Jesus as recorded in the Gospels and the other

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1. Cf. A. Kenny: Aquinas.
   J.A. Weisheipl: Friar Thomas d'Aquino. His Life, Thought and Work.

2. Cf. G. Angelini and A. Valsecchi: Disegno storico della teologia morale.
   V. Bourke: "Patristic and Early Medieval Ethics", History of Ethics, I, pp.69-94.
   C. Caffarra: "Storia (della teologia morale)", D.E.T.M., pp.997-1012.
   P. Delhave : "La morale des Pères", Seminarium, 23 (1971) 623-638.
   E. Dublanchy: "Morale (theologie)", D.T.C., X.2, cols.-435-2441.
   Th . Deman O.P.: Aux origines de la théologie morale."
   C.E. Luthardt: History of Christian Ethics. I. History of Christian Ethics before the Reformation.

New Testament writings created the main direction for Christian living. Early writings in the Church attest to other influences: Jewish wisdom and the exhortations of the Holiness Code[3] were fused with a Christ-centred way of life. The elaboration of "the Way" was assisted by the absorption of elements of Greek philosophy and anthropology (e.g. those of Stoicism and Platonism).[4]

E. Dublanchy perceives two emphases in the moral reflection of the Church, particularly in the West, up until the Middle Ages.[5] First, moral teaching in the early centuries of the Christian era was addressed to the faithful as a whole or to particular groups within the Church community. Such teachings fulfilled an instructive or catechetical purpose. Mixed in at times we find apologetical arguments and exhortations to virtue or perfection.[6] With Augustine

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Footnote 2 (continued).
Cf. F.X. Murphy: "The Background to a History of Patristic Moral Thought", Studia Moralia, 1 (1963) 49-85
: "History of Moral Theology (to 700)", N.C.E., IX, pp.1117 - 1119.
E. Osborn: Ethical Patterns in Early Christian Thought.
J. Rohmer: La finalité morale chez les theologiens de St. Augustine a Duns Scotus.
L. Vereecke: "Moral Theology, History of (700 to Vatican Council I) N.C.E., IX, pp.1119-1122.

3. Cf. Lev. 17-26; Deut. 12-26.

4. Cf. F.X. Murphy: Studia Moralia, I (1963) 53-54.

5. Cf. E. Dublanchy: D.T.C., X.2, Cols. 2435-2438.

6. E.g. Pegagogus and Stromata of Clement of Alexandria; De officiis ministrorum of Ambrose: the Moralium libri XXXV and the homilies of Gregory the Great.

and a number of other Fathers we have the second aspect of patristic moral teaching, namely speculative theological works. In the writings of St. Thomas there is ample evidence of his dependence on the theological efforts of Augustine,[7] Ambrose[8], Gregory of Nyssa,[9] the pseudo-Areopagite,[10] Gregory the Great,[11] Isidore of Seville,[12] and John Damascene[13]. It was Augustine, too, who

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7. Aspects of Augustine's thought that concern this thesis are:
   (a) Augustine saw sin as the evil which the human will desires in an evil and disordered manner - De libero arbitrio, I, 1f. (P.L. XXXII, 1221f.). Cf. S.T., I-II, q.79, a. 1 and 2; q.80, 2;
   (b) On the intrinsic malice of lying (P.L., XL, 243; 539f.). Cf. S.T. II-II, q.110.
   (c) Thomas also cites Augustine on the question of war (S.T., II-II, q.40, a.1), on the malice of suicide (S.T., II-II, q.64, a.5).

8. Cf. E. Dublanchy: op.cit., cols. 2436f.

9. On questions concerning the human act: what is performed under the influence of fear is more voluntary than involuntary (cf. S.T., I-II, q.6, a.6); ignorance makes for involuntary acts (cf. S.T., I-II, q.7, a.2). Aquinas absorbed the notion of consilium (S.T., I-II, q.14. a.2) and imperium (S.T., I-II, q.17, a.1,7,8) from the writingsof Gregory.

10. Cf. E. Dublanchy: op.cit., col. 2437.

11. On the virtues and their relation to prudence (S.T. I-II, q.58, a.4), the four cardinal virtues (S.T. I-II, q.61, a.2; II-II , q.47, a.4).

12. On the question of law (S.T. I-II, q.110, a.2,3) as well as natural law (S.T. II-II , q.94, a.4,5) and human law (S.T. I-II, q.95, a.1,3,4).

13. On the notions of the voluntarium (S.T., I-II, q.6, a.1,2,5,7,8), consent (S.T., I-II, q.15, a.1,2,3), electis, imperium and usus (S.T., I-II, q.16, a.4; q.17, a.3,6).

gave the decalogue prominence in the catechetical and theological literature of the Church.[14]

The ethical thought of the Western Church appears practical and sober emphasizing as it did willing and acting as distinct from the Eastern Church's bias towards knowledge and contemplation. In the West, also, emphasis on the grace of redemption made Christians aware of how their way of life differed from paganism. The Church's role as mediating the redemptive mystery of Christ contributed in no small way to making objective and ecclesiastical elements important in the determining and living out of the Christian vocation.[15]

It is against this background that one must appreciate a number of moral issues that involve acts with good and bad effects. Questions of scandal and cooperation are implicit in such issues as emperor worship, cultic foods and army service.[16] A Christian's attitude to the world, to the body and to sexuality were discussed in the literature on marriage, virginity and the ascetical life and in particular regarding attendance at the theatre or games.[17] Issues such as martyrdom, suicide, castration (injuries to oneself) and questions about war and army service, participation in gladiatorial games or the circus as well as abortion and infanticide (injuries to others) were considered by the Church Fathers in their writings.[18]

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14. Cf. E. Dublanchy: "Decalogue", D.T.C., IV, cols. 164-176.

15. Cf. C.E. Luthardt: op.cit., p. 179.

16. Cf. R. Minnerath: Les chrétiens et le monde, pp.199-219; G. Fritz: "Service militaire", D.T.C., XIV.2, cols. 1972-1981.

17. Cf. J.T. Noonan Jr.: Contraception, pp. 23-175.

18. Cf. R. Minnerath: op.cit., pp. 180-198.

On the whole moral writings were fragmentary. It is not until the thirteenth century that we find a theological synthesis in moral matters.[19]

From about the year 700 A.D. until the beginning of the 12th century not a single work of moral theology appeared.

> It was considered enough, especially in Benedictine cloisters, to reread the Fathers, to make extracts from their selected writings according to a practical point of view, as did, for example, Rabanus Maurus (d. 859). To reconstruct the moral theology of the period one has to have recourse to the decrees of the popes, the councils and bishops, made in the effort to remedy abuses and thereby raise the moral level of the Christian people. (20)

The practice of sacramental penance in the West, especially the spread of individual confession, gave rise to the libri poenitentiales.[21] These became the confessor's tool-of-trade giving him lists of sins with appropriate penances. An objectivist approach to the moral life appears to have dominated pastoral practice up until the 13th century.

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19. Cf. E. Dublanchy: "Morale (théologie)", D.T.C., X.2, cols. 2437-2438.

20. L. Vereecke: op.cit., p.1119. See also Dublanchy, Rohmer and Luthardt. For more detailed studies of the period:
H. Maisonneuve: La morale chrétienne d'après les Conciles des X^e et XI^e siecles.
F. Vandenbroucke O.S.B.: Pour l'histoire de la théologie morale. La morale monastique du XI^e au XVI^e siècle.

21. The libri poenitentiales originated in the Celtic Church and became well established in Ireland during the 6th century. Irish monks travelling in Europe brought them to the mainland with the practice of individual confession. Originally private works they were much criticized by the Carolingian reformers. After the penitential of Alan of Lille (d.1203) works in this genre developed from being "tariff books" (i.e. listing appropriate penances for specific sins) into general guides for the use of confessors.
Cf. L. Bieler: "Penitentials", N.C.E., XI, pp. 86-87.
G. Le Bras: "Penitentiels", D.T.C., XII.1, cols. 1160-1179.
J.L. McNeill and H.M. Gamer: Medieval Handbooks of Penance.

P. Michaud-Quantin: Sommes de casiustique et manuels de confession au moyen âge. (XII-XVI siecles).
A. Valsecchi: "I libri penitenziali e la morale cristiana. Alcuni studi recenti," Scuola Cattolica, 94 (1966) 260*-268*.
For the background penitential practice of the period see
E. Armann: "Pénitence-Sacrament", D.T.C., XII.1, cols.845-948.
B. Poschmann: Penance and the Anointing of the Sick.

A second important influence in the period we are considering is to be found in the Decretum of Gratian (c. 1140 A.D.) and in the work of canon lawyers in both the civil and religious spheres.[22] Canonists gave increasing attention to moral issues as time went on.[23] Following the fourth Lateran Council (1215) canonists actively sought to develop a theology of penance.[24] The summae used till then by confessors were edited, the Summa de poenitentia of Raymond of Penafort (d.1275) being the most famous.[25]

The third contributor to the development of medieval moral reflection resulted from the rediscovery of Aristotle's Nicomachean Ethics. It was the custom at that time in the schools to study human behaviour as part of the philosophy course. Theology attended solely to questions about God. Alan of Lille (c.1160) appears to have been the first to speak of theologia moralis and so bridge the academic disciplines of theology and philosophy in the early medieval period.

In the period prior to the High Middle Ages two thinkers of considerable importance are to be found. Peter Abelard (1079-1142)[26]

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22. Cf. AA.VV.: "Canon Law, History of", N.C.E., III, pp.34-50.
J.M. Buckley: "Canon Law", N.C.E., III, pp.29-34.
C.H. Lefebvre: "Canon Law, Influence of Roman Law on" N.C.E., III, pp.50-53.

23. E.g. laws and contracts, offences and sins, marriage..

24. Cf. D.S. nn. 812-814 for the decree of Lateran Council IV on yearly confession. See also N. Halligan: "Confession, frequency of" N.C.E., IV, pp.132-133; E. Amann: op.cit., cols.895-903.

25. The summa was a dictionary of casuistry arranged alphabetically. The confessionalia were more a practical vademecum for the confessor. Cf. L. Vereecke: op.cit., p.1121; P. Glorieux: "Sommes théologiques", D.T.C., XIV.2, cols.2341-2364.

26. Cf. "Abelard", O.D.C.C., pp.3-4.
D.E. Luscombe: The School of Peter Abelard. The Influence of Abelard's Thought in the Early Scholastic Period. : Peter Abelard's Ethic.
E. Portalie S.J.: "Abélard", D.T.C., I.1, cols.36-55.
S.R. Smith: "Abelard, Peter", N.C.E., I, pp.15-17.
E. Vacandard: "Abélard", D.H.G.E., I, cols.71-91.
M. Viller: "Abélard", Dict. de Spir., I, cols.63-65.

attempted a synthesis of moral reflection, giving pride of place to intention in the moral evaluation of the human act. It would appear that his stand was in opposition to the almost totally objectivist emphasis of the moral teaching of his day.[27]

The Libri quatuor Sententiarum of Peter Lombard (c.1100-1160) became effectively the theological textbook of the Western Church for almost four centuries. It was not displaced as a standard work until the latter half of the 16th century and then by the Summa of St. Thomas. It is worth noting that the Master of the Sentences dealt with moral matters only within the context of dogmatic or scriptural problems.[28]

Throughout Europe academic formation in theology from the 12th century onwards concentrated on the Scriptures and the Sentences of Lombard. After a period as cursor biblicus or baccalarius biblicus[29] the student prepared himself to lecture on the Sentences. At this stage he was known as a baccalarius Sententiarum or Sententiarius.[30]

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27. The influence of Abelard's Sic et Non on theology and Canon Law was considerable. The work attempted to explain and harmonize discrepancies among difficult authorities and so gave an impulse to the dialectical method of doing theology in the 13th century. (Cf. D. Knowles: The Evolution of Medieval Thought, p.126). This method was also used by Gratian in drawing up a summa of the canonical tradition. (cf. L.E. Boyle: "Canon Law, History of", N.C.E., III, p.41). See also D.E. Luscombe: The School of Peter Abelard, pp.214-223.

28. Cf. "Peter Lombard", O.D.C.C., p.1073.
J. De Ghellinck: "Pierre Lombard", D.T.C., XII.2, cols.1941-2019.
A. Piolanti: "Pietro Lombardo", E.C., IX, cols.1438-1440.

29. Cf. J.A. Weisheipl O.P.: op.cit., p.45; P. Glorieux: "L'Enseignement au Moyen Age: Techniques et methodes en usage à la Faculté de Théologie de Paris aux XIII^{e} siècle", A.H.D.L.M.A., 43 (1968) 65-186.

30. Cf. J.A. Weisheipl O.P.: op.cit., p.70.

Ultimately he became a Magister in sacra pagina with the formal task of lecturing on the Scriptures.[31] The concerns and format of medieval theological education impressed themselves on the writings of St. Thomas, St. Bonaventure and a great number of their contemporaries and followers.

The university theologian or the scholar in his religious order received a much more thorough academic formation than the ordinary pastoral clergyman - be he Secular or Religious. Apparently the latter received only limited vocational training.[32] As confessors the pastoral clergy were required, as a minimum, to be able to read the penitential handbook or the summa confessorum.

> Through summae of penitential practice...., the decrees of popes and councils and the doctrines developed by canonists on all aspects of domestic, social, and economic life were made available to priests often far removed from scholastic circles.... All these (texts) contributed in no small way to the spread of a knowledge of the universal law of the Church and to its universal observance. (33)

It is against this historical background that we must judge the contribution made by Thomas Aquinas to 13th century speculative theology. Before, however, passing on to a study of his thought on the human act and killing in self-defence it will be helpful here, given our continuing interest in this thesis in direct and indirect killing, to outline briefly those elements of the received teaching on homicide that St. Thomas absorbed into his own thinking and writings.

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31. Cf. J.A. Weisheipl O.P.: op.cit., pp.110-111.

32. There appears to be little concrete evidence as to the type of formation secular clergy received during the medieval (and Renaissance) periods. Cf. G.R. Potter: "Education in the Fourteenth and Fifteenth Centuries", The Cambridge Medieval History, VIII, p.698.

33. L.E. Boyle: "Canon Law, History of", N.C.E., III, p.45.

2. Homicide in Western Thought

St. Thomas's thinking on homicide is indebted to three historical traditions: the philosophical reflections of Aristotle on voluntary, involuntary and non-voluntary actions, the teaching of Roman law as handed down by 12th and 13th century canonists and most important of all, the message of the Scriptures. We shall look briefly at each of these influences and will close our study with an analysis of the homicide question as it was discussed at the time of Aquinas.

A large part of Athenian homicide law does not reveal to us today the motives underlying the legislation. However, it is clear that the persons who framed the laws dealing with homicide thought it right to take into account the intention of the killer. One of the most fundamental distinctions in the whole system is that between intentional and unintentional homicide.[34] This distinction has nothing to do with vengeance for the dead man, nor has it anything to do with cleansing from pollution. In fifth and fourth century B.C. Greece the killer was viewed as a person with unclean hands. He had incurred pollution (μίασμα, μιαρια) by his act. This affected all with whom he came in contact and the whole state in which the crime was committed. To cleanse or purify the state was a duty of the family of the killed person.[35]

The family presented their charge to a pre-trial hearing before the Basileus who allocated the case to a particular court. In Athens there were five courts which dealt specifically with cases

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34. Cf. D.M. MacDowell: Athenian Homicide Law in the Age of the Orators, p.147.

35. Cf. D. MacDowell: op.cit., p.3.

of homicide.[36] It was in the context of a particular court that pleas were made for the defence. Three concern us particularly; those where the accused person

(a) argued that he had not killed at all;

(b) that he actually killed but had done so lawfully;

(c) that he did kill but was excused on the grounds of ignorance or accident.[37]

There is considerable evidence that Greek society distinguished intentional and unintentional homicide[38] but there is little data to help us understand the principles by which intentional homicide and unintentional homicide might be distinguished.

Aristotle in developing his thought on voluntary (ἑκούσιος) and involuntary (ἀκούσιος) actions admits the legitimacy of the legal distinction between φόνος ἑκούσιος and φόνος ἀκούσιος. He notes, however, that "they are not precisely accurate but approximate to the truth in a way."[39] The philosopher develops his thought on

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36. At the Areopagos cases of unintentional killings were heard. These included poisoning, arson and intentional wounding. (cf. Lysias, 1,30; Demosthenes, XXIII, 22; Athenaion Politeia, LVII,3; Magna Moralia, 1188b. 25-39). The Palladion heard charges of unintentional killing, βουλεύσις to commit homicide, the killing of slaves and foreigners (cf. Demosthenes, XXIII, 71; Athenaion Politeia, LVII, 3). Where the defendant admitted the homicide but claimed he was excused in law the case was heard at the Delphinion (cf. Demosthenes, XXIII, 74; 53; 60.Pollux, Onomasticón , VIII, 119; Aristotle, Politics, 1300 D.27). The court of Phreatto dealt with a very specific class of defendants(viz. those who, exiled for unintentional homicide, are accused of committing another intentional homicide). At the Prytaneion cases where the killer was unknown or death was caused by some inanimate object were heard. (Cf. D. MacDowell: op.cit., pp.39-89).

37. Cf. D. Daube: Roman Law. p.147.

38. Cf. Demosthenes: XXIII, 23-85; XLIII, 57; Aristotle: Politics 1300b24-32 Athenaion Politeia: LVII,3; Plato: Laws, IX, 861B.

39. Aristotle: Eudemian Ethics, 1227 a 1.

voluntary and involuntary actions in the third book of the Nicomachean Ethics.[40] Voluntariness is the essence of moral conduct. It may be excluded by ignorance or compulsion. Ignorance may affect the person one is attacking (e.g. you do not know he is your father), the instrument one is wielding (e.g. you believe the spear has a button on it), the effect of what one is doing (e.g. you mean to prick but it comes out as a grievous injury) or indeed the whole action (e.g. the catapult you are demonstrating goes off).[41] Necessity or compulsion present intermediate cases. If a man jettisons cargo in a storm to save the ship or an individual commits a crime to save his family from a tyrant's threats, then, says Aristotle, his actions are "mixed" but closer to the voluntary.[42]

In discussing man's responsibility for unintended actions arising from ignorance Aristotle distinguishes between

(a) atychema, ἀτύχημα accident, where the harm occurs paralogos, (παράλογος) unexpectedly, and

(b) hamartema (ἁμάρτημα) where the harm does not occur paralogos; one intends it but there is no kakia, (κακία)

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40. Cf. D. Daube: op.cit., pp.133-151. In discussing Aristotle the author is reacting against Kübler who argued in a 1900 article that the Roman law dolus, culpa, casus were borrowed directly from Greece.
See also W.F.R. Hardie: Aristotle's Ethical Theory pp.152-159; A. Kenny: "The History of Intention in Ethics", The Anatomy of the Soul, pp.132-135; ibid.: Aristotle's Theory of the Will.

41. Cf. D. Daube: op.cit., pp.140-141; references in p.141 note 1.

42. Cf. Aristotle: Nic. Ethics, 1110a.4. Kenny notes that the mixed actions though reluctant, seem clearly intentional. Here the English word "voluntary" is as ambiguous as its Greek equivalent. "In one sense, the voluntary seems a wider category than the intentional, including acts which are controllable with an effort but are not done on purpose, such as sneezing, yawning, laughing or brooding. In another sense not all intentional actions are voluntary: the cashier hands over the cash to the bank-raider intentionally but not voluntarily". A. Kenny: The Anatomy of the Soul, p.133.

badness, on the part of the agent.[43]

These acts are clearly distinguishable from the deed perpetrated knowingly (adikema) (ἀδίκημα).[44]

Choice (προαίρεσις) as the "deliberative volition of things in our power", means that I want something, not as an end in itself, but as the upshot of judgment based on deliberation.[45] Choice is the necessary condition for virtuous action, it is that which makes the virtuous man.

The Greek law on homicide was primarily concerned with retribution. It is within this context that the notions of intent, negligence and accident are to be understood. Roman law, on the other hand, uses the same concepts in the context of civil law which is primarily concerned with compensation.[46] It would appear that very early in Roman history the blood-feud disappeared and the state assumed some part in proceedings for murder.[47] Lack of clarity regarding

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43. Cf. D. Daube: op.cit., p.141.

44. Cf. D. Daube: op.cit., p.142.

45. Cf. Aristotle: Nic. Ethics, 1113a, 11. Cf. A. Kenny: The Anatomy of the Soul, p.134.

46. Cf. D. Daube: op.cit., p.151.

47. The XII Tables (IX,4), the earliest Roman legislation (c. 450 B.C.), was much less developed in the area of criminal law than it was in the area of civil law. Apart from the specific provisions for murder (parricidium) and treason (perduellio) the Romans simply recognized the power (coercitio) of magistrates to punish those who might impede their functions. (Cf. J.A.C. Thomas: "Roman Law, History of", N.C.E., XII, p. 587).

terminology creates difficulties for any study of early Roman law on murder or homicide. There is no Latin equivalent for the English term "murder". The term parricidium[48] lost its earlier meaning and took on the more general meaning of homicide. Apart from the crime of murder and crimes dealing with acts that endanger life there is little other criminal legislation to be found during the period of the Republic.[49]

As the Empire extended the importance of law increased. The classical period of Roman jurisprudence is to be found between 120 A.D. and 235 A.D.[50] It was not, however, until the 6th century A.D. that Roman law was fully codified under Justinian.[51]

Roman homicide legislation developed in detail and precision during the Empire. A rescript of Hadrian (117-138 A.D.) permitted acquittal for unintended homicide. The murderer was defined as one who wounds with intent to kill. The use of an instrument such as a sword was considered as signifying intent.[52] Purely accidental killing was not punished[53] nor was that performed by a child or an insane person.[54]

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48. Parricidium originally signified the killing of a father or an ascendant (D. 48.9.9.2) and sometimes the killing of a near relation (cf. lex Pompeia de parricidio, D.48.9, which defined the degrees of relationship where killing of a relative would be considered murder). Jolowicz suggests that parricidium originally denoted blood-feud and came to designate such killing as would previously have justified the feud. Cf. H.F. Jolowicz: Historical Introduction to the Study of Roman Law, p.328.

49. Cf. H. Jolowicz: op.cit., p.329.

50. Cf. J.A.C. Thomas: op.cit., pp.587-590.

51. Cf. J.Gaudemet : "Roman Law, History of", N.C.E., XII, pp.590-595 The Codified Roman Law, the Codex Juris Civilis is composed of the Institutiones, Digesta, Codex Justinianis and the Novellae. The question of Christian influence on Roman law enters in at this point. See J. Gaudemet: "Roman Law, Christian Influence on", N.C.E., XII, pp.583-584.

52. Cf. A. Bride : "Homicide", Dictionnaire de Droit Canonique V, cols. 1168-1169.

53. Cf. Digesta 48.8.1.3

54. Cf. A. Stankiewicz: "Questiones de homicidio in iure poenali romano",

The Old Testament prohibition of murder is to be found in the decalogue.[55] The term raṣaḥ used in the commandment "thou shalt not kill" appears only forty-six times in the O.T.[56] Scholars maintain that the word used for killing was first applied to any slaying that called forth blood vengeance.[57] but later, and well before the 8th century B.C., the verb came to designate violent acts against a person arising from personal feelings of hatred or malice. One commentator maintains that the commandment in its present form "forbids an act of violence and rejects the right of a person to take the law into his own hands out of a feeling of personal injury."[58]

The law of the code of the covenant distinguished between killing "by hunting", with malice, and killing "when God delivers into one's hands."[59] The refinements in Deut. 19: 1-13 and Num. 35: 16-34 distinguish only between wilful and casual killing. Wilful killing is murder whatever the occasion or the means used. Guilt is to be determined on the basis of known enmity between the killer and the slain man; known enmity establishes a presumption of guilt.[60]

54.(continued). Apollinaris, 49 (1976) 218-234.

55. Exod. 20:13; Deut. 5:17.

56. The other words used more frequently for killing are hrg (165 times) and hmyt (201 times). In the N.T. ἀποκτείνω is used for these two Hebrew verbs. (Cf. The New International Dictionary of New Testament Theology, I, pp.429-430).

57. Cf. J.J. Stamm and H.G. Raventlow. To protect innocent blood, cities of refuge were constituted to protect the person who killed unintentionally (Deut. 19:1-13; Num. 35:9-15). See A. Phillips: Ancient Israel's Criminal Law. A New Approach to the Decalogue, pp.99-109; C.M. Carmichael: The Laws of Deuteronomy, pp.110-113.

58. B.A. Childs: Exodus. A Commentary, p.421. G. Von Rad substantially agrees in his Deuteronomy, pp.58-59. For more detailed treatment of the commandment on killing see A. Phillips: op.cit., pp.83-99; M. Weinfeld: Deuteronomy and the Deuteronomic School, pp.239-243. M. Greenberg: "Crimes and Punishments", The Interpreter's Dictionary of the Bible, I, pp.738-739.

59. Exod. 21: 12-14.

60. Cf. J.L. McKenzie: "Murder", Dictionary of the Bible, p.592.

The Book of Deuteronomy extends the law of murder to death caused by another's omission. Deut. 22: 8 stipulates that new houses must be built with a parapet surrounding the roof. If someone should fall off and be killed blood guilt would fall on the house.[61] Generally, it can be concluded from the Old Testament that murder was viewed as a great crime: the shedding of blood called out for vengeance,[62] for murder was the killing of an innocent man who had done nothing worthy of death.

In the New Testament the commandment proscribing murder is mentioned a number of times.[63] Jesus expanded the scope of the commandment. Anger and insults are crimes as murder is because they strike at the dignity of the person attacked.[64] 1 John sees murder originating with the evil one.[65] The man who hates is in fact a murderer.[66] This crime is present among the pagans[67] since it proceeds from the flesh.[68] The early Church saw evil intentions that culminated in murder as arising from false teaching[69] or as being an aspect of the last days.[70] Such crimes will exclude men from

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61. Cf. A. Phillips: op.cit., p.94.

62. Cf. J.L.McKenzie: "Avenger", op.cit., p.70. The prophets mention murder among the crimes of Israel; (Isa. 1:21; Jer. 7:9; Hos. 4:2).

63. Cf. Matt. 5:21; Mark 10:19; Rom. 13:9; Jas. 2:11.

64. Matt. 5:21-22; Cf. E. Schweizer: The Good News according to Matthew, pp.117-119.

65. 1 John 2:13f. 5:18.

66. 1 John 3:14-15.

67. Cf. Rom. 1:29.

68. Cf. Gal. 5:19-21.

69. Cf. 1 Tim. 6:5.

70. Cf. 2 Tim. 3:1-5.

salvation.[71] They are contrary to Christian love.[72]

In the early discipline of the Church homicide was one of the capital sins subject to public penance.[73] Canon 21 of the Council of Ancyra (314 A.D.) reduced from life to ten years the period of penance for the sin of abortion. Canon 4 of the Council of Elvira (c. 305 A.D.) excommunicated for seven years a woman who punished her servant in anger so that the servant died within three days. If the death was only accidental penance lasted five years.[74] Later councils cited the legislation of Ancyra and Elvira on questions of homicide.[75] What is notable during the ninth and subsequent centuries is the use of legislation to condemn the murder of clerics. This would appear to have been a means of self-defence for the Church in troubled times.[76]

It is at this point that we must now turn to the immediate predecessors and contemporaries of the great scholastic thinkers. This will enable us to pull together the two strands of tradition so far considered in isolation, namely Scripture and Roman Law.

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71. Cf. Apoc. 21:8; 22:15.

72. Cf. Rom. 13:9-10. See K.H. Schelkle: Theology of the New Testament, III, pp.230-233.

73. Cf. A. Bride: op.cit., cols. 1169f.

74. Cf. Gratian: Decretum, dist. 50, c.43.

75. Cf. H. Maisonneuve: La morale chrétienne d'après les Conciles des X^{e} et XI^{e} siècles, pp.15-17.

76. Not only did such political considerations enter in to the Church's homicide legislation but there is evidence in canon 29 of the Second Lateran Council (1139) that new and particularly lethal weapons of war were proscribed because of the increased killing they brought to war. The condemnation of archers and crossbowmen was ineffective but indicated the Church's concern for life even in war.

As we have already noted the place of Scripture in the theological curriculum during the Middle Ages was a dominant one. On the question of killing in particular, it can be noticed that the contribution of the Bible to systematic studies decreased rapidly after the early part of the fourteenth century.[77] The primary reason would seem to be the theological effort, following Aquinas, to establish ethical norms on the basis of natural law. We thus find an increasing reliance on reason and Roman law after the 13th century.[78]

In their writings the great scholastic thinkers gave proper emphasis to the Scriptures on killing. In their commentaries on Genesis 1:26 they argued that the commandment: "thou shalt not kill" applied properly to man,[79] especially the innocent person.[80] In the parable of the weeds and the wheat[81] Alexander of Hales and Aquinas can be seen to argue against any justified killing of evil-doers.[82] Commentaries on Matt. 5:21, 39, 44-45; 26:52, argued that what was forbidden was personal revenge, not punishment or correction.[83] The basic issues then - as these few examples illustrate - for 13th century thinkers was not "whether killing is allowed, but when, and

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77. Cf. B. Smalley: "The Bible in Medieval Schools", The Cambridge History of the Bible, II, pp.204-209.

78. Cf. S.J. Sullivan O.F.M.: Killing in Defense of Private Property: The Development of a Roman Catholic Moral Teaching, Thirteenth to Eighteenth Centuries, p.2.

79. Cf. Alexander of Hales: Summa Theologica, IV, lib.3, para.2, inq.3, tr.2, sect.1, quaest. 2, tit. 15 memb.1. Thomas Aquinas, S.T., II-II, q.64, a.1; Bonaventure: Opera Omnia, XII, Sermo VI, pp.249-250 (Vives ed.).

80. Cf. Bonaventure: op.cit., pp.249-250.

81. Matt. 13:24-30.

82. Cf. Alexander: Summa Theologica, IV, lib.3, para.2, inq.3, tr.2, sect.1, quaest.2, tit. 5, memb.3. Aquinas: S.T., II-II, q.64, a.2.

83. Cf. Bonaventure: op.cit., Sermo VI, pp.249-250; also X, pp.374-375, (Vives ed.).

by whom, and of whom it is allowed".[84] The scholastics admitted that there can be legitimate taking of life; God himself does so and through law commands others to do the same. But no-one is to be killed out of a spirit of revenge. Such a decisive act as depriving someone of his life is to be carried out from a love of justice and to inflict beneficial punishment. Killing is a defensive measure deemed necessary for the sake of good people and of society as a whole.[85]

The increasing importance of canon law after the publication of Gratian's Decretum can be best observed in question 64 of the Secunda Secundae of St. Thomas's Summa. There Aquinas accepts and uses the distinction in law between public and private authority.[86] In speaking of public authority Gratian acknowledges that the Church and civil authority may punish evil-doers.[87] In the Decretales published in 1234[88] the principle of Roman law that one may repel

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84. S. Sullivan, op.cit., p.8.

85. Cf. S. Sullivan: op.cit., pp.8-9.

86. The understanding of "public authority" in the medieval period is intimately related to the legal system which provided a judicial process for the imposition of the death penalty. A criminal may be put to death by legitimate authority for a just cause, i.e. when the crime is contrary to divine or human law. The basis of this power in public authority is the prevention of harm to the innocent. The life of an individual may be taken for the common good. (Cf. S.T. II-II, q.64, a.3). See S. Sullivan: op.cit., pp.14-17.

87. Cf. Decretum, C.23, q.3, c.4. Cf. S. Sullivan: op.cit., pp.9-12 for an outline of the conflicting auctoritates used by the canonist.

88. The decretals (epistolae decretales, litterae decretales) are letters containing a papal ruling especially regarding canonical discipline (i.e. a papal rescript in response to an appeal). See C. Duggan: "Decretals (epistolae decretales, litterae decretales)", N.C.E., IV, pp.707-709. The collections of decretals provided a continuously revised corpus of law after the 12th century. Individual decretals were the main instrument for papal control over doctrinal, moral and administrative matters. See C. Duggan: "Decretals, Collections of", N.C.E., IV, pp.709-711. The decretals - of Gregory IX (1234), the Liber Sextus of Boniface VIII (1298), the Clementinae (1317), the Extravagantes Joannis XXII (1325), the Extravagantes communes (1500, 1503) - were gathered together with the Decretum of Gratian to form the Corpus Juris Canonici which was the basis of the Roman Church's canon law from 1580 until the Code of 1917. (Cf. L.E. Boyle: "Corpus Juris Canonici", N.C.E., IV, p.348).

force with force was invoked. Two of the decretals[89] state that all laws allow defensive action to repel injury, though one must employ due moderation and avoid revenge.[90]

Distinct from the issue of public authority and killing is that of killing by an individual. Here there is no question of post-factum punishment[91] but rather the issue of killing in self-defence.

St. Thomas in his treatment of killing in self-defence[92] invokes the Roman law teaching that it is lawful to repel force with force.[93] Up until the end of the 12th century death caused in self-defence was spoken of as causa se tuendi, non ulciscendi or causa necandi or animo occidendi or homicidium voluntate. This terminology derived from Roman law.[94]

Among the canonical writings prior to Aquinas four opinions on killing in self-defence were current:

(a) The Roman axiom permitted killing in self-defence ex necessitate

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89. Cf. Olim, De restitutione spoliatorum, X, 2, 13, 12.
Significasti, De homicidio, X, 5, 12, 18.
Both these texts came from Innocent III (1198-1216).

90. Cf. Corpus Juris Civilis, Digest 43, 16, 27. A number of questions left open by the canonists concerned 13th century theologians e.g. When may public authority kill? Who may be killed? Why is public authority given this power? In the discussion of such questions it is post-factum punishment (as distinct from self-defence) and the restriction of capital punishment to officials responsible for the enforcing of the law and the protection of citizens, that concerned theological reflection.

91. For an individual to do so would be revenge. See Gratian: Decretum, C.23, q.3.

92. "secundum iura << vim vi repellere licet cum moderamine inculpatae tutelae>> " (S.T., II-II, q.64, a.7c). Also in the following article: "secundum iura, si aliquis det operam rei licitae debitam diligentiam adhibens, et ex hoc homicidium sequatur, non incurrit homicidii reatum.: (a.8c).

93. Cf. Corpus Juris Civilis, D.9, 2, 45, 4; 43, 16, 1, 27.

94. Cf. Corpus Juris Civilis, D. 9, 2, 45, 4; 48, 8, 1, 3.

causa defensionis non causa ultionis.

(b) Some canonists argued that the New Testament teaching proscribed all killing in self-defence.[95]

(c) Others distinguished killing repellere aggressorem, which is lawful, from other killing (repercutere, percutere, ferre) which is not permitted.

(d) The fourth group of canonists concentrated on the irregularity constituted by homicide.[96] Distinctions between lay people and clerics, between Christian and pagan were used in this context.[97]

The canonical literature of the period distinguished clearly between homicidium voluntate (i.e. premeditated homicide) and homicidium necessitate. Only necessitas inevitabilis makes for lawful killing in self-defence.[98] Unavoidable necessity was not viewed as excluding a voluntary act,[99] rather it emphasized the motive of the act.[100]

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95. Cf. Matt. 5:29; 26:52; Luke 6:27; Rom. 12:19. The influence of the Albigensian teaching may be present here. Cf. "Albigenses" O.D.C.C., p.31.

96. Aquinas recognizes this approach in S.T., II-II, q.64, a.8.

97. Cf. V. Alonso S.J.: El principio del doble efecto en los comentadores de santo Tomas de Aquino desde Cayetano hasta los Salmanticenses, pp.235-236.

98. Killing in the case of avoidable necessity was equivalent to homicidium voluntate among the canonists.

99. Homicidium necessitate was also designated homicidium non voluntate or non animo occidendi or non proposito occidendi.

100. Canonists spoke of the death caused non animo vindicandi, sed animo defendendi or ad tuitionem sui, non odio vel ardore vindictae or sui tuendi causa, licet tantum vim vi repellere; nam non licet ulcisci. See Summa Rufini, dist. 50; Henry of Segovia: Summa aurea, lib. V: de homicidio voluntario et casuali; Stephen of Tournai: Summa, dist. 50. Texts quoted by V. Alonso: op.cit., pp.236-238.

The decretists and decretalists, therefore, can be seen as using the terms voluntas, animus and propositum to designate the purpose of the act in the case of killing. At the time, killing anyone, even in self-defence, made the killer canonically irregular and the act a real homicide. This is distinct from an accidental homicide which is not willed.[101]

It was the early scholastic theologians who replaced the canonical voluntas, animus and propositum with the term intentio. Alan of Lille (d. 1202) wrote:

> Concedimus etiam quod vim vi repellere licet cum moderamine inculpatae tutelae, nec licet repellendo iniurias, hominem occidere ex deliberatione, si tamen intuitu se defendendi occiderit alium non intendendo eum occidere, non peccavit mortaliter. (102)

Alexander of Hales used the expression intentione conservationis propriae vitae.[103] Bonaventure also used the same terminology:

> Ad hoc dici potest, quod licet quidem vim vi repellere cum moderamine talis tutelae, quae culpari non possit, quae non sit ad inferendum, vel cumulandum malum, sed ad repulsam mali quod intendit infligere adversarius. (104)

This brief survey of the question of homicide will provide us with sufficient background to assess the thought of Thomas Aquinas on the issue of killing in self-defence. Before proceeding to that matter it will be necessary to consider the understanding St. Thomas had of the human act. It was this part of his writings that permitted him to develop still further the concept of "intention" that had

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101. Cf. V. Alonso: op.cit., p.240.

102. Contra haer, lib.2, c.22 (P.L., CCX, cols. 397-398).

103. Summa Theologica, pars. 3, q.34, membr. 2, a.2, I2, resolutio.

104. Opera omnia, V, De decem praecep., collatio 4 (pp.526-527), (Quaracchi ed.).

so recently entered the theological discussion on killing. As well as this Aquinas's explanation of human activity gave impetus to a more theological assessment of death-dealing acts as against the predominantly objectivist (and juridical) notion that was so central to canon law.

II. THE HUMAN ACT

In this section on the human act we will develop some of the historical insights so briefly outlined in the early part of the first section of this chapter, and prepare the way for the discussion on double effect that follows. To fulfil the objective of this section it will be necessary to discuss two points. As has been mentioned already it is only with the great scholastics of the 13th century that we get a theological synthesis of the moral act. Prior to that time discussion of the human act revolved around a number of interrelated issues. In our first point we will detail some of the more important issues as well as the thought of some of the leading contributors to the discussion. This approach will be helpful both because it prepares the way for the second half of this section on the thought of St. Thomas and because it brings to the surface a number of issues that will be discussed in later chapters of the thesis. The second half of this section will be given over to a brief exposition of Aquinas's own analysis of the human act. There we will find the genius of this great scholastic who synthesized so many elements from contemporary thinking into a unified picture of man and his activity.

1. Aspects of the Human Act

Two approaches to the human act appear to have dominated thinking for a number of centuries before the emergence of the great scholastics. For convenience they may be called objectivist and subjectivist positions. There is danger in the use of such generic classifications, but at this point the terms will suffice to express the basic orientation of a group of thinkers as well as their principal emphasis in the analysis of the human act.

The pastoral practice of confession in the Western Church appears to have contributed to an objectivist appreciation of the human act. This current of thought accentuated

> the importance of the object (finis operis) within the framework of the action, and it assume(d) the position that the object can be morally evaluated by itself (in se) without reference to the agent. (1)

Peter Lombard gave this approach theological respectability. In addition, it was the libri poenitentiales and the summae used by confessors that reinforced an objectivist concept of the moral act. The human act was viewed primarily as an external performance and was evaluated within the limited (and negative) perspective of sin.[2]

The subjectivist view of the human act is best illustrated by the writings of Anselm of Canterbury and Peter Abelard. Primacy is given to intention in the definition of moral acts: "What is morally good or bad is not the execution of a given action but the prior

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1. L. Janssens: "Ontic Evil and Moral Evil", Louvain Studies, 4(1972)115.

2. Cf. L. Janssens: Intention and Proportion, pp.20-22.

disposition of the agent's will."[3]

As we shall soon see St. Thomas accommodated both perspectives in his writings on the moral act. There is a real awareness throughout his writings of the auctoritates and received teaching of his era. This is well exemplified in St. Thomas's analysis of human action in S.T., I-II, qq.8-17. With the exception of the terms intentio and electio Aquinas appears to have included notions such as consilium, imperium, usus etc., out of deference to the theological positions of his day.[4] On this account a satisfactory understanding of St. Thomas's thought requires not only an appreciation of his thought, language and methodology but also the influences of history.[5]

The exercise of human freedom is a vital component of the moral act.[6] In the theological schools prior to the 13th century freedom was recognized as a perfection in man as well as the power to do good or evil. Anselm of Canterbury saw the perfection of freedom as existing preeminently in God and his saints. This view dominated the thinking of the 12th century. The saints in the beatific vision remain free because they adhere to the Good without constraint.

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3. V.J. Bourke: History of Ethics I, p.89; cf. A. Kenny: "The History of Intention in Ethics", The Anatomy of the Soul. pp.136f.

4. Cf. L. Janssens: op.cit., p.48, who argues that "Thomas incorporates eight different structural elements found in the traditions even though his own theory only requires two." (i.e. intentio and electio).

5. For a detailed analysis of these factors see M.- D. Chenu O.P.: Toward Understanding St. Thomas.

6. Cf. O. Lottin: "Libre arbitre et liberté depuis saint Anselme jusqu'à la fin du XIII^{e} siècle," Psychologie et Morale aux XII^{e} et XIII^{e} siècles, I, pp.9-389. This article is summarized in Morale Fondamentale, pp.96-100.

During the following century thinkers questioned the basis of this freedom. Philip the Chancellor (c.1232), under the influence of Aristotle, attributed freedom to man's practical reason. Aquinas followed Philip on this matter.[7] Related to this we find Aquinas viewing the human will as a passive power. In his earlier writings[8] he claimed there is a necessary link between practical reason and the act of choice. In fact, the practical intellect is the final cause of the will. The will only acts in view of an end presented to it by the practical reason. In some of his later writings[9] St. Thomas developed the well known distinction between "liberty of exercise" and "liberty of specification."[10] At the same time he modified his earlier position. Reason is not the final cause of the will's activity. This is proper to the will itself. Rather, practical reason is to be considered more a formal cause directing the will's activity. In developing his thinking in this way the Dominican doctor gives a more active role to the will and at the same time diminishes the role reason plays in presenting the object to the will.

St. Bonaventure and the Franciscan school accentuated even more than St. Thomas the active role of the will in their understanding of the human act. Freedom, they said, is the opposite of all servitude; it implies mastery and domination. Thus free will dominates its

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7. St. Thomas's disciple Geoffrey of Fontaines argued for freedom in man's theoretical reason..

8. Cf. De veritate, q.24, a.2.

9. Cf. De malo, q.6; S.T., I-II, qq.9-10.

10. libertas exercitii is the freedom to act or not act; libertas specificationis is the freedom to do this or that.

object (by choosing it from a number of others) and the very act of choice itself (by bringing it into being and causing it to cease). Reason, in the whole process, acts primarily as a disposing cause.[11]

The medieval debate as to whether the will is an active or passive power is of considerable importance for a number of reasons. As we shall observe in the next chapter the position taken on this fundamental issue influences greatly the approach to be taken to the moral act, to law and conscience and to the vexed question of grace and free will. In the second place one can find in the Franciscan interpretation of freedom the seeds of a later voluntarist understanding of the human act and the casuistry that resulted from it.

The scope of human freedom was explored in medieval theology through a detailed discussion of man's responsibility for the first movements of his sensitive appetites.[12] For the sake of convenience here I shall refer to such movements as sensualitas. The discussions that centred round the question of sensualitas and moral responsibility were intimately linked, in the minds of medieval thinkers, with wider issues such as the concept of man as body and spirit, the nature-grace relationship, the nature, extent and limits of human freedom as well as the notion of sin.

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11. Followers of Bonaventure attacked the Thomistic understanding of the will, e.g. Gerard d'Abbeville (d.1269) argued that the "intellectus movet voluntatem secundum metaphoram, et non secundum veritatem." (cf. O. Lottin: Morale Fondamentale, p.98). St. Thomas, we must note, based his explanation of the will on the dictum of Aristotle "appetitus movens motum" (i.e. the will is activated by the practical intellect.)

12. Cf. R. Couture O.M.I.: L'imputabilité morale des premiers mouvements de sensualité de saint Thomas aux Salmanticenses.
O. Lottin: "Les mouvements premiers de l'appetit sensitif de Pierre Lombard à saint Thomas d'Aquin," Psychologie et Morale, II, pp.493-589. Summarized in Morale Fondamentale, pp.100-103.

The notion "sensualitas" was considered to include the first movements of human passion (e.g. anger, pride, lust etc.) that arise spontaneously within a person prior to his mentally adverting to the fact. Most medieval theologians acknowledged at least some culpability for the disordered indeliberate movements of sensualitas that occur in man.[13]

It has been argued that the origin of the discussion of sensualitas is to be found in the writings of Augustine.[14] But it is with Peter Lombard that we encounter the first systematic discussion of the issue.[15] For the Master of the Sentences sins fall into one of three categories:

(a) those performed with firm will (i.e. in the ratio superior); here there is grave fault;

(b) sins which consist in consenting to pleasure (i.e. in the ratio inferior); these may become grave if prolonged;

(c) disordered movements towards pleasure residing in the sensitive appetite (sensualitas) prior to any intervention by the reason; this constitutes a very light venial sin (veniale ac levissimum peccatum).[16]

This understanding of human sinfulness immediately raised two closely related questions:

(a) Why is an indeliberate movement of sensualitas a sin?

(b) If imputability presupposes deliberation how can an

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13. Cf. R. Couture: op.cit., pp.xxi-xxii.

14. Cf. De trinitate, lib.12, c.12 (P.L. XLII, cols. 1007f.).

15. Cf. In II Sent., lib.2, dist. 21 and 24.

16. Cf. R. Couture: op.cit., pp.4-5.

indeliberate movement be imputed to someone?

The theological inquiry that flowed from these questions developed on two fronts. A number of authors distinguished between movements of sensualitas: (a) those which arise in man as a bodily animal; for these he is not responsible, and (b) those which arise in man the knower, that is the sensory movements deriving from knowledge in a bodily way.[17] The second approach pursued by some medieval theologians involved a study of reason in relation to first movements. Some (e.g. Peter of Poitiers) argued deductively from the rational control man ought to exercise over his body. Others were less comprehensive in their claim arguing that a person ought to control individual movements of the sensitive appetite even if reason was not capable, in principle, of preventing all disordered movements.[18] Still others (e.g. John of La Rochelle) located culpability for first movements of sensualitas in a sin of omission.[19]

Bonaventure argued that if the will could prevent or suppress each individual movement of sensualitas then there must be some sin present.[20] Aquinas himself added little that was new to the discussion. He drew on many of the precisions developed by earlier theologians. However, he never employed the notion of "omission" since this had a very precise meaning for him.[21] In his anthropology St. Thomas

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17. Cf. William of Auxerre: Summa aurea, lib.II, tr.28 quoted by Lottin in Psychologie et Morale, II, p.524.

18. Cf. O. Lottin: op.cit., p.514; R. Couture: op.cit., p.3 on Geoffrey of Poitiers.

19. Alexander of Hales followed this approach, as did Bonaventure.

20. This is not a voluntarium simpliciter but a voluntarium interpretative or secundum quid.

21. For St. Thomas an "omission" signified "the will not to place an act." The cause of a sin of omission is a deliberate act of the will (cf. S.T., I-II, q.71, a.5). This does not apply to indeliberate movements of sensualitas. (Cf. O. Lottin: Morale Fondamentale, p.103).

discerned three appetites in man - natural, sensitive and rational. The first of these does not come under the rule of reason and so man is not responsible for first movements of this appetite.[22] The movements of man's sensitive appetite involve some sense knowledge and hence are imputed in an imperfect way.

During the course of the 13th century, therefore, a noticeable development of thought can be observed. From the position that all first movements of sensualitas are sinful since they should be subject to man's rational powers.[23] we find gradual acceptance of the explanation that sin is in some way derived from the individual's omitting to suppress such first movements. Only gradually did the argument that first movements are not sinful gain acceptance since there is no consent.[24]

Another dimension of medieval thinking on the moral act can be found in the discussions on whether there can be a morally indifferent act in the concrete.[25] The question was raised explicitly around 1235 A.D. John of La Rochelle argued that men may act for purely

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22. The natural movements (primo primi) are differentiated from first movements of the sensitive appetite (secundo primi).

23. Cf. J. Fuchs: Die Sexualethik des hl. Thomas von Aquin, pp.13-21 is quoted by R. Couture: op.cit., p.20, note 67. Medieval theology viewed sexuality in a pessimistic fashion after the example of Augustine. They looked askance at the marriage act since in its performance reason is clouded over by passion and in some way original sin was considered to be closely linked with fleshly concupiscence. Thinking of this sort was quite influential in the discussion of sensualitas.

24. Cf. R. Couture: op.cit., pp.6-46 for a study of thinkers from Henry of Ghent (d. 1293) to Gabriel Biel (d. 1495).

25. Cf. O. Lottin : "L'indifference des actes humains chez saint Thomas d'Aquin et ses prédécesseurs," Psychologie et Morale, II, pp.469-489. This is summarized in Morale Fondamentale, pp.270-273.
L. Marchal: "Moralité de l'acte humain," D.T.C., X. 2, cols. 2470-2472.

natural ends which would render such acts morally indifferent. He had in mind such acts as eating to keep alive. Bonaventure distinguished between acts directed to God and other types of acts. It is only a charitable intention that confers moral value on objectively indifferent acts. The Franciscan school as a whole kept closely to the Augustinian tradition in not emphasizing man's natural virtues. In restricting their study of virtue to the theological arena a great part of their consideration of the human act was clouded by the confusion of moral good (and evil) with supernatural merit.[26]

Albert the Great and Aquinas, under the influence of Aristotle's teaching on virtue, saw in the practical reason the proximate norm of morality. In so doing they valued human virtue in itself. This disentangled questions of morality from questions of supernatural merit. In the light of his position on human virtue Aquinas concluded that, in the concrete, there could not be a morally indifferent act.[27]

A question closely related to morally indifferent acts is one which grew in importance during the medieval period: are there acts which, because of their object and independently of every subjective element, remain intrinsically good or evil?[28] Peter Lombard argued that certain acts are intrinsically (in se, per se) evil and are in

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26. Cf. O. Lottin: Morale Fondamentale, p.271.

27. Cf. S.T., I-II, q.18, a.9; In II Sent., dist.40, q.1, a.5.

28. Cf. J.F. Dedek: "Moral Absolutes in the Predecessors of St. Thomas", T.S., 38 (1977) 654-680.
: "Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas," Thomist, 43 (1979) 385-413.
J.C. Milhaven: "Moral Absolutes and Thomas Aquinas" Absolutes in Moral Theology?, (ed.) C.E. Curran, pp.154-185.
O. Lottin: "Le problème de la moralité intrinsèque d'Abelard à saint Thomas d'Aquin," Psychologie et Morale, II, pp.421-465; summarized in Morale Fondamentale pp.279-281.

no way altered by the good intention of the person performing them. Such acts are evil generically (genere). There can also be intrinsically good acts but this goodness may be vitiated by an evil intention. This explanation of good and evil acts is based on a principle that became axiomatic in the developing scholastic analysis of the moral act:

bonum ex integra causa, malum ex quocumque defectu. [29]

A good number of theologians argued for the existence of intrinsically evil acts. They are described as acts which sine praevaricatione fieri nequeunt (Peter of Poitiers), are per se evil (William of Paris, Albert the Great), are in se et secundum se bad (William of Auxerre)[30] and are deformed in themselves. The examples most commonly discussed were murder, fornication, adultery, stealing, usury and lying. Such acts are, as soon as they are named, held to be evil on two counts:

(a) they are actions circa materiam indebitam (e.g. an innocent man is the wrong matter for the physical act of killing), and

(b) they are performed ex libidine, that is from a selfish desire that prefers a creature to God.[31]

St. Thomas's doctrine on intrinsically evil acts - an expression, by the way, he never used - is continuous with the thinking of his predecessors. Two points in his teaching ought to be noted. In the first place Aquinas changed his terminology from the traditional

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29. The axiom originated with the author of the Liber de divinis nominibus (P.G., III, col.130) according to L. Marchal: op.cit., col.2472.

30. William of Auxerre made a distinction between bonum in se et secundum se (i.e.what is always and necessarily good, e.g. the act of charity made towards God) and bonum in se sed non secundum se (i.e. where good acts are vitiated by bad circumstances, so almsgiving for vain glory). The distinction was then applied to evil. (cf. O. Lottin: Morale Fondamentale, pp.279f.).

31. Cf. J. Dedek: T.S., 38 (1977) 679.

bonum/malum ex genere to bonum/malum ex obiecto. This emphasized the fact that the moral act is defined specifically by its object in so far as it is conformable to reason. Reason is the proximate norm in the moral life.[32] Secondly, the Dominican doctor discussed intrinsically evil acts in the context of the decalogue. In treating of the commandments he appears to have used three approaches:

(a) The commandments permit no dispensation in that they forbid actions in the formal sense. God, however, can permit dispensations of material acts (homicide, adultery, stealing).

(b) Thomas distinguished between commandments directed to God (which God could not dispense without self-contradiction) and the precepts directed to one's fellow man. These may be dispensed.

(c) On the basis of the distinction between primary and secondary precepts of the natural law, Thomas did permit more exceptions to secondary precepts.[33]

The medieval theologians found it difficult to admit of exceptions in the area of usury and lying.

Two further questions contributed to the developing scholastic appreciation of the moral act:

(a) Is ignorance of the law a sin?

(b) Does this ignorance excuse from sin?[34]

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32. Cf. A.M. Meier: § 22. "Das generisch Gute und Schlechte", Das Peccatum Mortale ex Toto Genere Suo. pp.190-211.

33. Cf. J. Dedek: Thomist, 43 (1979) 387-388; 408-411.

34. This outline of the discussion on ignorance, law and the human act is based on O. Lottin: "La nature du péché d'ignorance depuis XII^{e} siècle jusqu'aux temps de saint Thomas d'Aquin", Psychologie et Morale, III, pp.11-51. This is summarized in Morale Fondamentale, pp.336-339.

Gratian distinguished ignorance of law from ignorance of fact. The former is always culpable.[35] In general the decretalists followed Gratian's position. But during the following centuries one can observe a progressive development in this legal tradition. Simon of Tournai, for example, argued that ignorantia facti might excuse the moral agent whereas ignorance of natural law is never excusable. Such ignorance is itself sinful as are all acts performed in the state of ignorance. Alan of Lille did not fully agree. He argued that if ignorance of the natural law is invincible it excuses from sin.

At the beginning of the 13th century two thinkers advanced the discussion. Prevostin of Cremona argued that all ignorance excuses (at least in part) from sin. If ignorance is invincible there is no fault, but should it be preceded or accompanied by a fault (and even followed by a fault!) the moral agent is not excused completely. William of Auxerre considered that ignorantia facti excuses completely provided every effort has been made to exclude such ignorance. On the other hand ignorantia iuris never excuses. The early Dominican masters[36] objected to William's stand on ignorantia iuris, although they sustained his other position. The Franciscan masters generally taught the same doctrine. Albert the Great and Aquinas, too, are in harmony with the theological thinking of their day. Invincible ignorance, they stated, excuses entirely unless it follows from a

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35. "Ignorantia iuris naturalis omnibus adultis damnabilis est"; "ignorantia iuris neminem excusat nisi cui ius ignorare permittitur". Texts of Gratian quoted by O. Lottin in Morale Fondamentale, p.337.

36. E.g. Roland of Cremona, Hugh of Saint-Cher, Richard Fishacre.

prior fault. Vincible ignorance, on the other hand, concerning laws that all men can and ought to know without great difficulty is considered to be culpable. Ignorantia iuris is sinful for those with the use of reason and is considered by Aquinas as a sin of omission or culpable negligence.

It is quite noticeable in the medieval debates on ignorantia iuris how the scope of the discussion enlarged. In its early stages it dealt primarily with first principles of the natural law. In time the notion of law was extended to include the truths necessary for salvation, the decalogue and the duties appropriate to one's state in life.

At this point we may conveniently turn to the question of circumstances and the moral act.[37] In his extensive study of medieval teaching on the role of circumstances in the human act Johannes Gründel observes that the medieval concept circumstantia differed from the classical Greek and Latin understanding. In early classical rhetoric "circumstance" had a very wide meaning. It embraced everything that contributes to our knowledge and evaluation of the moral act.[38] Only indirectly were circumstances understood in a moral sense. Aristotle ascribed moral significance to circumstances since they are related to the purpose of an act. The penitential books prior to the scholastic period did not deal explicitly with circumstances

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37. This section is based on
J. Gründel: Die Lehre von den Umständen der menschlichen Handlung im Mittelalter.
O. Lottin: "La place du 'finis operantis' dans la pensée de saint Thomas d'Aquin", Psychologie et Morale, IV, pp.489-517.

38. Cf. J. Gründel: op.cit., p.646.

although they did take them into account in evaluating sinfulness.

Thinkers who emphasized the role of intention gave little or no attention to circumstances in their reflection. By the 13th century, however, the influence of Aristotle in the Dominican school, as well as the earlier teaching on rhetoric (especially the De inventione of Cicero), achieved general acceptance of the seven circumstances relevant to the moral act. This was expressed succinctly in the hexameter:

quis, quid, ubi, quibus auxiliis, cur, quomodo, quando.

Franciscan theologians developed the following expression for all the circumstances that contribute to serious sin:

> aggravat ordo, locus, persona, scientia, tempus, aetas, conditio, numerus, mora, copia, causa, et modus in culpa, status altus, lucta pusilla. (39)

In the writings of St. Thomas there is an observable development of thought regarding circumstances. In his earlier works (especially the commentaries on the Sentences and the Nicomachean Ethics) St. Thomas emphasizes the role of the finis of the act in giving it its basic orientation. All other morally relevant factors were included among the circumstantiae. In his later writings - the Quaestio Disputata: De Malo and the Summa - circumstances are considered to be only those factors that contribute morally to an already morally constituted act. In so doing Aquinas distinguished between the essential elements of an act and its concomitant circumstances. However, in the moral evaluation of the human act, the object-end (the essential elements) as well as the morally relevant circumstantiae are the principal ingredients.[40]

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39. J. Gründel, op.cit., p.651.

40. Cf. J. Gründel, op.cit., p.652.

The question of moral intentionality[41] came to the fore in the medieval period because of the lack of clarity that surrounded the terms being used. This itself pointed to uncertainty as to what constitutes intention. As we have noted already Peter Abelard, in reacting against the objectivist morality of his day, emphasized the role of the moral intention in the human act. His starting point was a discussion of sin which in Christian tradition fundamentally consists in an act of the will. Abelard claimed this understanding was imprecise. Sin does not consist in the will as such but rather in the "consent" of the will.[42] In his later writings Abelard replaced consensus by the term intentio especially in relation to external acts. Some acts were traditionally considered to be morally bad (e.g. homicide) and yet an act of homicide might also be to the good.[43] This led Abelard to believe that the unique character of the moral act is to be found in the intention with which it is performed. External acts are without moral quality and hence are indifferent in themselves.[44] Intention is, therefore, the primary element in the moral act.[45]

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41. Cf. A. Kenny: "The History of Intention in Ethics", The Anatomy of The Soul, pp.129-147.
O.Lottin: "L'intention morale de Pierre Abélard à saint Thomas d'Aquin", Psychologie et Morale, IV, pp.309-486. This is summarized in Morale Fondamentale, pp.268-270.

42. "non itaque concupiscere mulierem, sed concupiscentiae consentire peccatum est; nec voluntas concubitus, sed voluntatis consensus dammabilis est." Ethica, c.3 (P.L., CLXXVIII, col.639) quoted by Lottin in Psychologie et Morale, p.311.

43. For example, Judas's betrayal of Jesus was an act of homicide and yet from God the Father's point of view it was "intended" for the salvation of men. Cf. Ethica, c.3, cols. 644, 649.

44. Cf. Ethica, c.7, col..650b.

45. "duo quidem distinguimus intentionem scilicet et opus , unam tamen bonitatem intentionis", Ethica, c.7, col.650.

But if the moral quality of the human act is primarily dependent on the agent's intention why does not every good intended by the agent (i.e. what he thinks to be good) actually make for a morally good act?[46] Abelard's reply was that it is not merely sufficient to believe one has a good intention - it must be good in fact:

> non est itaque intentio bona quia bona videtur,
> sed insuper quia talis est sicut existimatur. (47)

Intentio, as used in this text, signifies a determination to place an act which follows on a conviction of reason, that is on the knowledge given by a judgment of conscience.[48] Here Abelard can be seen to have linked the question of moral intention to the normative value of conscience in the moral life. Thus in his thinking intentio came to imply two notions:

(a) the movement of the will to an end, and/or

(b) the judgment of conscience.

Under attack from his contemporaries Abelard modified his position slightly in his Dialogus. He accepted, in this work, that there are some things in the moral order that are good or evil in themselves, namely virtues and vices. Acts, however, are basically indifferent and become morally good or bad through the agent's moral intention.[49] A number of authors followed Abelard's analysis. One of these, Hugh of St. Victor, in emphasizing the primacy of the will explained

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46. For example those who persecute Christians may believe they are performing a holy act. Abelard argues that this statement must be false: "aemulationem Dei habent, sed non secundum scientiam (ad Rom. 10:2)."

47. Ethica, c.9, col.653.

48. Cf. O. Lottin: Psychologie et Morale, IV, p.312.

49. Dialogus inter philosophum, iudaeum et christianum, (P.L., CLXXVIII, col. 1652).

that if one is hindered in the performance of the good act one wills then the merit attached to such an act is in no way diminished by the non-performance of the external act. His axiom: "quantum vis tantum mereris"[50] contributed to the later confusion in theological writings between supernatural merit and moral responsibility.

Peter Lombard has proved to be one of the earliest opponents of Abelard's "intentionalism". He did this through his efforts to clarify the three terms most commonly used in his day - voluntas, finis and intentio. "Voluntas est qua volumus aliquid." This does not refer to the faculty,[51] but to the act though which we will. The term finis has two meanings in the writings of Lombard:

(a) it designates the term of the will's motion ("illud quod volumus per quod impletur ipsa voluntas")

(b) the preference that causes the willing of such an end ("vel potius aliud propter quod illud volumus").[52]

Lombard thus uses the term intentio sometimes in the sense of finis at other times in the sense of voluntas.[53] The interrelation of these notions is well illustrated when Lombard explains an example dealing with help given to one's neighbour:

> Si velim esurientem reficere ut habeam vitam aeternam, voluntas est qua volo reficere esurientem, cuius finis est refectio esurientis; intentio vero qua sic ad vitam pervenire volo. (54)

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50. De sacramentis, lib.2, para.14, c.6 (P.L., CLXXVI, col.561).

51. Lombard considered the faculty of the will to be always good. Cf. Libri IV Sententiarum, lib.2, dist.35, c.3.

52. Cf. O. Lottin: op.cit., p.317.

53. Cf. Libri IV Sententiarum, lib.2, dist.38, c.4.

54. Cf. Libri IV Sententiarum, lib.2, dist.38, c.4. Text quoted by Lottin: op.cit., p.318, n.2.

The voluntas is the act of the will by which I relieve my neighbour's need, the help received is the finis and the intentio is the purpose I have of obtaining my salvation. The intentio of an act for Lombard is the end or purpose an agent assigns to his action. The internal act of the will or voluntas is given its moral quality by the end pursued. Lombard quotes Augustine on this point: "ex fine suo.... voluntas cognoscitur utrum recta an prava sit."[55] This end is ultimately God or charity.[56] As regards the external act Lombard wonders whether the "end" is the factor actually giving morality to the act.[57]

Lombard accepted Augustine's position that certain acts such as blasphemy and luxuria are of their nature sinful (i.e. per se peccata). These can never be good no matter how good the intention. Good acts, on the other hand, may be vitiated by an evil intention. In general it can be said that Peter Lombard adopts a position quite near that of Abelard - but with the important qualification just mentioned. Human acts become morally good or bad according to the agent's intention - except for those acts which are already evil in themselves.[58]

The lack of clarity that still remained in Lombard's explanation of voluntas, finis and intentio provoked his followers to make the concepts more precise.[59]

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55. Cf. Libri IV Sententiarum, lib.2, dist.38, c.1.

56. Cf. Libri IV Sententiarum, lib.2, dist.38, c.1 and 2.

57. "utrum et ipsi (actus) ex fine, sicut voluntas, pensari debeant boni vel mali?" or "utrum omnia opera hominis ex affectu et fine sint bona vel mala?" Libri IV Sententiarum, lib.2, dist.40, c.1.

58. "omnia igitur opera hominis secundum intentionem et causam iudicantur bona vel mala, exceptis his quae per se mala sunt." (Libri IV Sententiarum, lib.2, dist.40, c.1) quoted by Lottin: op.cit., p.319.

59. Cf. O. Lottin: op.cit., pp.343-354.

It was Stephen Langton (d.1228)[60] who offered a more radical opposition to Abelard's "intentionalism". He is considered to be the author of the axiom: "quantum intendis tantum facis."[61] which was much used in the later medieval period. The English theologian emphasized the objective aspects of the moral act rather than intention. If evil acts are being considered, he asserted, then the object and/or the circumstances are of considerable importance in the process of moral evaluation. In the case of good acts charity is of greatest importance. This is an objective reality extrinsic to the agent's intention.

Alexander of Hales in his De intentione (c.1225) developed still further the understanding of intention. He clearly distinguished intentio from voluntas. Intentio has reference to the agent's reason which directs the will towards its end whereas voluntas refers primarily to the will. He also distinguished between a judgment of conscience (credulitas) and the decision of the will (intentio).

Another medieval thinker, Odo Rigaldus (d.1275), is an important link between the above authors and the great scholastic thinkers of the 13th century with regard to the question of intention. In his Commentary on the Sentences[62] Odo argued that the ordering of acts to a particular end may come about in two ways:

(a) the intention is brought about by the will itself (ex intentione operantis), or by

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60. Cf. O.D.C.C., pp.798-799; O. Lottin: op.cit., pp.354-367.

61. This axiom is first found in Langton's gloss on the texts Matt. 12:35; Luke 6:45: "bonus homo de bono thesauro profert bona, et malus homo de malo thesauro profert mala".

62. In II Sent., dist.38.

(b) the good of the act's natural purpose (ex ratione operis). This distinction is very similar to the later used finis operantis and finis operis. Albert the Great[63] and Bonaventure[64] continued the work of precision that culminated in the synthesis of Aquinas.[65]

In his Commentary on the Sentences St. Thomas's position is close to that of Albert and Bonaventure. In addition he emphasized rather more than his contemporaries the informing role of practical reason in the act of intention:

> intentio est actus voluntatis secundum quod vis rationis ordinantis in voluntate manet. (66)

Intention itself is a movement of the will to a particular end through appropriate means. If the end is evil the intention is vitiated. Where the end is good Thomas distinguished between the finis volentis and the finis actus voluntatis. These two terms later became the finis operantis and the finis operis respectively.[67] This

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63. Cf. O. Lottin: op.cit., pp.450-455.

64. Cf. O. Lottin: op.cit., pp.455-461.

65. Cf. O. Lottin: op.cit., pp.462-477.

66. In II Sent., dist.38, a.3.

67. In the human act there are two aspects - the internal act of the will and the external action. Each has its own proper object. The end sought (finis operantis) is the proper object of the internal act of the will. The matter which goes to make up the external dimension of the human act is the proper object of the external act. The matter (obiectum) specifies the external act, the end (finis) the internal act of the will. The finis vis-a-vis the external act enjoys the role of "form", for it is the will, through its internal act, that causes the other human faculties to produce the external act. Hence the moral specification of human acts is established formally by the finis operantis and materially by the finis operis. (cf. S.T., I-II, q.72, a.1, ad.1; a.3, ad.2). Cf. O. Lottin: "La place du 'finis operantis' dans la pensée de saint Thomas d'Aquin," Psychologie et Morale, IV, pp.489-517.

distinction of ends permitted St. Thomas in his discussion of distinction 38 to clarify the axiom "quantum intendis tantum facis." The axiom is true if the end is evil. If however the finis is good then we must distinguish between the finis volentis and the finis actus voluntatis. If we consider the finis actus voluntatis the axiom is true, it is false, however, if the finis volentis is being considered.

In his commentary on distinction 40 particularly article 2 (utrum actio sit simpliciter iudicanda bona vel mala ex voluntate?) Aquinas considers the willing process from two points of view:

(a) the will as directed to its end ("voluntas secundum quod intendens");

(b) the will as choosing means to attain its end ("voluntas secundum quod eligens").

This distinction is further clarified in later writings especially S.T., I-II, qq.8, 12, 18-20. There Aquinas clearly distinguishes the three terms voluntas, electio, intentio. Voluntas is the will's movement to an end in an absolute way[68]; electio[69] is the will's direction of itself to the means necessary to attain its end; intentio[70] is the act of the will to an end as attainable through particular means.

A number of other questions concerning moral intentionality were discussed in the schools but they need not delay us here.[71]

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68. Cf. S.T., I-II, q.6, a.3.

69. Cf. S.T., I-II, q.13, a.3.

70. Cf. S.T., I-II, q.12.

71. Cf. O. Lottin: op.cit., pp.478-486.

2. The Thomistic Analysis of the Moral Act.[72]

The structural unity of St. Thomas's moral theology is clearly presented at the beginning of the Prima Secundae of the Summa Theologica:

> ubi primo considerandum occurrit de ultimo fine humanae vitae, et deinde de his, per quae homo ad hunc finem pervenire potest, vel ab eo deviare: ex fine enim oportet accipere rationes eorum, quae ordinantur ad finem: et quia ultimus finis humanae vitae ponitur esse beatitudo.... (73)

A little later Aquinas continues:

> quia igitur ad beatitudinem per actus aliquos necesse est pervenire, oportet consequenter de humanis actibus considerare; ut sciamus quibus actibus perveniatur ad beatitudinem, vel impediatur beatitudinis via. (74)

The distinction between the end (finis) and that which is ordered to the end (ea quae sunt ad finem) permeates the whole of Aquinas's moral teaching especially his understanding of the human act. Because of the central role of the finis we need first to get clear the senses in which Aquinas uses it. He himself divides the end into the finis cuius and the finis quo.[75]

The finis cuius for the great Dominican theologian is the objective reality of human destiny. In the Thomistic scheme of things man is viewed as having only one final end. This finis is man's final

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72. For a general outline of Aquinas's understanding of the moral act see:
J. Bishop: "Anthropology and Ethics: The Thomistic Vision" New Blackfriars, 55 (1974) 248-253.
K. Hörmann: "Die Bedeutung der konkreten Wirklichkeit für das sittliche Tun nach Thomas von Aquin", Theologisch-praktische Quartalschrift, 123 (1975) 118-129.
H.G. Kramer: The Indirect Voluntary or Voluntarium in Causa, pp.1-9.
J.A. Oesterle: "Human Act", N.C.E., VII, pp.206-209.

73. S.T., I-II, q.1 in the introductory division of the material to be studied.

74. S.T., I-II, q.6 introduction.

75. Cf. S.T., I-II, q.1, a.8c.

and complete perfection.[76] Unlike God man is incomplete, requiring his potential to be fulfilled. This will only be achieved when life is ended.

Aquinas explained the tension between the fulfilment of man's final end and the incompleteness of the present in terms of tendencies. Following Aristotle St. Thomas defined the "good" as that which all things seek. But everything seeks its own perfection.[77] He thus sets up an identity between what is good and what is man's perfection. The primary sense of "good" is, then, "perfection" or "being." This metaphysical position is significant on two counts. First, "good" in its proper sense applies to man's perfection. It may only be used of other things analogously. In the moral arena, then, an external act can be seen to be good only in reference to the primary analogue, man's perfection. In the second place, Aquinas's ethics can be said to be naturalistic. Because "being" and "good" are inter-changeable, the "ought" is seen to derive from the "is".[78]

This philosophical explanation of man and his finis cuius is complemented by St. Thomas's theological analysis of the notion, "image of God."[79] Here Aquinas insists man is an imperfect image but yet he is able to become more and more the image of God.[80] Man's seeking his own complete perfection is, therefore, identical with

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76. Cf. S.T., I-II, q.1, a.5.

77. Cf. S.T., I-II, q.5, a.1c.

78. Cf. L. Janssens: Intention and Proportion, p.30.

79. See Aquinas's commentaries on Gen. 1: 26-27; Rom. 8:29; 2 Cor. 3:18; Col. 3: 9-10.

80. Cf. S.T., I, q.35, a.2, ad.3.

his becoming more completely the image of God.

The finis quo considers the subjective process by which man attains his final destiny.[81] We have already noted above that man has a number of tendencies. A tendency for Aquinas is an inclination in the subject towards the reality corresponding to his wants.[82] The two principal human tendencies are the intellect in its orientation to truth and the will in its orientation to the good. The other-directed character of both intellect and will seeks its completion in the finis of human life, namely God himself. The natural qualities of both these faculties are enriched by the grace of God and the theological virtues.

On the level of persons and things the morally good attitude is based on the so-called first principle of the natural law: "bonum est faciendum et prosequendum, malum est vitandum."[83] In intending to do good the moral agent becomes good in himself, that is a virtuous man.[84]

> Because a moral virtue is nothing else but the disposition of a subject, the 'moral good' applies preeminently to the person who has that disposition. The virtuous person is the moral good in its basic sense. (85)

It is only from the good man that good intentions may come. These in turn are the source of morally good acts.[86]

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81. Cf. L. Janssens: op.cit., pp.34-35.

82. Cf. S.T., I-II, q.8, a.1.

83. S.T., I-II, q.94, a.2c.

84. See Aquinas's study of habitus (S.T., I-II, qq.49-54) and the virtutes (S.T., I-II, qq.57-67). S. Hauerwas in his Character and the Christian Life: A Study in Theological Ethics, pp.68-82 presents a clear synthesis of the Thomistic position.

85. L. Janssens: op.cit., p.42.

86. "sed actus boni sunt actus virtutis; quia virtus est, quae bonum facit habentem, et opus eius bonum reddit, ut dicitur in 2 Ethic. (cap.6)." (S.T., I-II, q.21, a.2c; see also q.92, a.1c).

In the Thomistic perspective the moral agent, through the inclinations of his intellect and will, develops dispositions and virtues that flow into concrete deeds. Because a virtue is primarily an operative disposition[87] the inter-relation of virtues and deeds in the virtuous person may be likened to an upward spiral making the person more virtuous. Of course a downward spiral into vice is the other side of the coin. Because of this synthetic understanding of the moral life the good or virtuous person may thus be said to develop an affinity for or a connaturality with the good actions he chooses to perform.[88]

Thus far we have been considering St. Thomas's notion of the finis or end. It is now necessary to direct our attention to "ea quae sunt ad finem,"[89] namely the human act. The truly human act originates in the informed will of the moral agent.[90]

> Thomas never abandoned the position that the inner act of the will must be considered the starting point.... (He) stresses that it is the end of the inner act of the will that determines the concrete structure of the action. 'Finis dat speciem in moralibus.' (91)

By definition, then, moral acts are those human performances done

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87. Cf. S.T., I-II, q.55, a.2.

88. Cf. L. Janssens: op.cit., p.44.

89. Cf. S.T., I-II, qq.6-21. While strictly a study in philosophical psychology St. Thomas's thought must never be divorced from his theological framework.

90. "illae ergo actiones propriae humanae dicuntur, quae ex voluntate deliberata procedunt." (S.T., I-II, q.1, a.1c.). Thus St. Thomas could claim: "idem sunt actus morales et actus humani" (S.T., I-II, q.1, a.3c.) and "ibi incipit genus morum, ubi primum dominium voluntatis invenitur" (In II Sent., dist. 24, q.3, a.2c; see also dist. 40, q.1, a.1c). The moral act is ordered and commanded by reason and will (De Malo, q.7, a.6c.; see also In II Sent., dist. 40, q.1, a.5c).

91. R. McCormick: "Notes", T.S., 36 (1975) 89; Cf. S.T., I-II, q.1, a.3; q.18, aa.2-4; q.72, aa.1 and 3; In II Sent., q.40, a.2c; De Malo, q.2, a.4, ad.9.

with an end in view. This also implies at least some knowledge of the means necessary to achieve the end in view.[92] The finis of a human action is both the principium and terminus of the performance: principium both in the order of time (the agent intends the end first of all) and at the level of causality (the end brings about the performance of the act).[93] The end is later realized or terminated in the performance of the projected deed. The finis is, therefore, the extremely vital formal dimension that specifies the entire voluntary process. In this scheme of things the external action is to be located between the intentional finis and its realization, that is the external act is seen as a "means" in the fulfi lment of the end.[94]

> For a means to be proportioned to the end intended, the external action must be nothing more but also nothing less than what the realization of that intention demands. (95)

In his discussion of the act of the will as related to the finis St. Thomas considers voluntas, fruitio and intentio.[96] As we have already observed intentio differs from voluntas in that it incorporates an appreciation of the means necessary to attain the proposed end. Once the end is attained the agent finds enjoyment, pleasure or fulfilment which is fruitio.[97]

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92. Cf. S.T., I-II, q.6, a.2c.
93. Cf. S.T., I-II, q.1, a.1, ad.1.
94. Cf. S.T., I-II, q.12, a.4.
95. L. Janssens: op.cit., p.59.
96. Cf. S.T., I-II, q.12, a.1, ad.4.
97. Cf. S.T., I-II, q.11.

Aquinas's description of the choice of means absorbs many of the concepts current in his day: consilium involves deliberating about means appropriate to attain the end proposed;[98] the will then consents to the options presented;[99] this leads to the choice of a particular means which will effectively bring about the end proposed; the process of choice incorporates what the scholastics of the period called usus[100] and the actus imperatus.[101]

With his two much enriched concepts, intentio finis and electio eorum quae sunt ad finem, St. Thomas was able to develop a highly sophisticated and unified doctrine on the human act. As we shall observe in the next section the question of intention and choice of means is central to the question of killing in self-defence.[102] The structural unity of the moral act involving as it does the interior will-act and external performance is described by Aquinas in terms of the hylomorphic doctrine of matter and form.[103]

> .... as the forma determines the specific being of a reality, so the end of the interior act of the will specifies the concrete totality of the human act ('finis dat speciem actui humano'). (104)

98. Cf. S.T., I-II, q.14.

99. Cf. S.T., I-II, q.15.

100. Cf. S.T., I-II, q.16.

101. Cf. S.T., I-II, q.17.

102. L. Janssens describes his understanding of the relationship as follows: "The intentio is directly aimed at the absolute element of the structure of the action, that is, the end itself which is the reason that the means are willed and consequently is the principle of the act (finis as principium actionis humanae), the formal element which specifies the act. On the other hand, the electio signifies the relative element of the act, viz., the means (by its own definition means indicates a relation to the end) which is only useful until the end has been attained (finis as terminus actionis humanae)." (op.cit.) p.119.

103. Cf. S.T., I-II, q.17, a.4.

104. L. Janssens: "Ontic and Moral Evil", Louvain Studies, 4 (1972) 121; see also S.T., I-II, q.1, a.4; q.18, a.6, ad.2.

On the basis of such a unified view of the moral act, explained philosophically, Aquinas was able to propose an understanding of the moral quality of the human act:

> actus interior et exterior sunt diversi secundum genus naturae. Sed tamen, ex eis sic diversis constituitur unum in genere moris. (105)

St. Thomas, therefore, has distinguished two dimensions of the human act: the actus secundum speciem naturae and the actus secundum speciem moris[106]. The actus secundum speciem naturae has been our primary concern this far. It is now necessary to turn to St. Thomas's understanding of the moral goodness and evilness of the human act.

St. Thomas adopts the principle "bonum ex integra causa, malum ex quocumque defectu" in assessing the moral act. A good action is governed by recta ratio,[107] that is the external performance is properly ordered to the good intended by the agent. The congruence of end intended and external performance for a morally good act is explained by Aquinas in one of two ways. He uses the matter-form model to explain this congruence.[108] For example: a doctor may desire the recovery of a seriously ill patient. This intention motivates and informs all his medical attention. If he expends so much time and energy on this task such that other patients or his family suffer then he has failed to materialize suitably his

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105. Cf. S.T., I-II, q.20, a.3, ad.1; also q.17, a.4.

106. Cf. S.T., I-II, q.1, a.3, ad.3.

107. Cf. S.T., I-II, q.18, a.5c; q.74, a.7c.

108. "... bonum hominis est secundum rationem esse; malum autem quod est praeter rationem: unicuique enim rei est bonum, quod convenit ei secundum suam formam; et malum, quod est ei praeter ordinem suae formae..." (S.T., I-II, q.18, a.5c.).

intention.[109] The act is, therefore, "malum ex quocumque defectu."

The means-end distinction is the second explanatory model used by Aquinas in evaluating the moral act. To the extent it is a means the external performance is not willed for its own sake, rather the end is willed in the means.[110] This medium participates in the goodness of the finis or intention when it is rightly proportioned to the end. This is discerned by reason. St. Thomas's notion of debita proportio is clearly expressed as follows:

> Sin in its proper sense consists in the act which does not have a correct proportion (debitum ordinem) to the end to which it is directed. Due proportion to an end is measured according to a certain rule... In voluntary agents the proximate rule is reason itself, the supreme rule is the divine law. When a human act achieves its end in accord with reason and the eternal law it is upright, whenever it deviates from this rectitude it is sinful. (111)

III THE PRINCIPLE OF DOUBLE EFFECT

All the historical studies consulted in the preparation of this thesis concur on one important point. They grant that St. Thomas's study of the question concerning killing in self-defence is at the beginnings of the principle of double effect. On the question whether Aquinas actually formulated the P.D.E. as we know it today there are two conflicting opinions. One group of Catholic thinkers, notably J. Mangan and T.L. Bouscaren, argue that St. Thomas actually formulated the double effect principle in S.T. II-II, q.64, a.7.

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109. Cf. L. Janssens: Louvain Studies, 4 (1972) 127, for the example of sexual intercourse.

110. Cf. S.T., I-II, q.8, a.2.

111. S.T., I-II, q.21, a.1c.

They find support for this not only in the text itself but also in the large number of moralists down through the centuries who have maintained this position. Another group of scholars, on the other hand, deny that the P.D.E. can be found in the Thomistic discussion on killing in self-defence. They accept that Thomas's discussion did set in motion a particular approach to indirect effects that culminated in the fully articulated P.D.E. Apart from the writings of V. Alonso and J. Ghoos, who belong to this second group, there is very little material, in addition to the above mentioned work of Mangan, that studies specifically the origins of the P.D.E. Most contemporary moralists, if they mention the historical development of double effect at all, simply adopt the position of one or other group and give the same bibliographical references.

In this section I wish to present as clearly and succinctly as possible the positions of both groups. This will prepare the way for the discussions to be pursued in subsequent chapters. But before doing this we must first note the body of article 7 of question 64 where Aquinas explains his thought concerning killing in self-defence:

> Respondeo dicendum, quod nihil prohibet unius actus esse duos effectus, quorum alter solum sit in intentione, alius vero sit praeter intentionem. Morales autem actus recipiunt speciem secundum id quod intenditur, non autem ab eo quod est praeter intentionem, cum sit per accidens, ut ex supra dictis patet. Ex actu ergo alicujus seipsum defendentis duplex effectus sequi potest: unus quidem conservatio propriae vitae; alius autem occisio invadentis. Actus ergo hujusmodi, ex hoc quod intenditur conservatio propriae vitae, non habet rationem illiciti, cum hoc sit cuilibet naturale quod se conservet in esse quantum potest. Potest tamen aliquis actus ex bona intentione proveniens, illicitus reddi, si non sit proportionatus fini. Et ideo si aliquis ad defendendum propriam vitam utatur majori violentia quam oporteat, erit illicitum. Si vero moderate violentiam repellat, erit licita defensio, nam secundum jura «vim vi repellere licet cum moderamine inculpate tutelae.» Nec est necessarium ad salutem ut homo actum

> moderatae tutelae praetermittat ad evitandum occisionem alterius; quia plus tenetur homo vitae suae providere quam vitae alienae. Sed quia occidere hominem non licet nisi publica auctoritate propter bonum commune, ut ex supra dictis patet, illicitum est quod homo intendat occidere hominem, ut seipsum defendat, nisi ei qui habet publicam auctoritatem, qui intendens hominem occidere ad sui defensionem, refert hoc ad publicum bonum, ut patet in milite pugnante contra hostes, et in ministro judicis pugnante contra latrones, quamvis etiam et isti peccent, si privata libidine moveantur. (1)

A few general observations may be made about this text before we proceed to a more detailed analysis. First, it ought to be noticed that although Aquinas limits justifiable self-defence to situations where the attack is unprovoked he does not state that the attack must be unjust. Secondly, the intention of the person defending himself is central to the argument (i.e. the defender must primarily want to save his own life). Thirdly, St. Thomas does not rule out the use of self-defensive force that one foresees (with practical certainty) will bring about the attacker's death. Fourthly, direct killing by soldiers or law officers is treated as an exception on the grounds of the common good. Finally, St. Thomas bases his justification of killing in self-defence on man's natural inclination towards self-preservation.[2]

Vincente Alonso S.J.[3] has presented the most detailed study in recent times of the question of killing in self-defence as discussed by Thomas Aquinas. He argues that the basic purpose St. Thomas had in mind is to be found in the context and purpose of

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1. S.T. II-II, q.64, a.7.

2. Cf. G. Grisez: "Toward a Consistent Natural-Law Ethics of Killing" The American Journal of Jurisprudence, 15 (1970) 74-75.

3. Cf. V. Alonso S.J.: El principio del doble efecto en los comentadores de Santo Tomas de Aquino desde Cayetano hasta los Salmanticenses.

question 64 of the Secunda Secundae. Through this question the Dominican scholastic introduces his study of those vices contrary to commutative justice.[4] In article 1 of question 64 we have the basic premises that govern the solutions to be arrived at in the following seven articles. An integrated world-view permeates the argumentation: living things are subordinated to beings of a higher order - plants to animals, the latter to man. Even each individual person is viewed as being ordered to the total community.[5]

Alonso argues that S.T., II-II, q.64 closely parallels an earlier article, S.T., I-II, q.73, a.8,[6] in which St. Thomas considers the harmful effects of sinful acts and whether such effects contribute in any way to the moral quality of an already sinful deed. Here Aquinas distinguishes the harm as:

(a) praevisum et intentum,

(b) praevisum sed non intentum,

(c) nec praevisum nec intentum.

Alonso claims that in question 64 of the Secunda Secundae St. Thomas groups articles 2-6 under (a), article 7 under (b) and article 8 under (c).[7] If this is the case then article 7 deals with a case of foreseen unintended effects. It is Alonso's argument that St. Thomas forbids a defender to intend his assailant's death in such a way that this purpose constitutes the total end of his action.

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4. Cf. questions 64-78.

5. Cf. art.2.

6. "Ultrum gravitas peccati augeatur secundum maius nocumentum."

7. Cf. V. Alonso: op.cit., pp.214-218.

It is not, however, unlawful for such a defender to choose the assailant's death if this is an appropriate means to preserve his life.[8] Alonso defends his understanding of St. Thomas on killing in self-defence by asking two questions based on Aquinas's understanding of human action *secundum speciem naturae* and *secundum speciem moris*:[9]

(a) At the level of causality (i.e. *secundum speciem naturae*) what factor distinguishes the two effects, namely the aggressor's death and the safeguarding of the defender's life?

(b) At the intentional level (i.e. *secundum speciem moris*) what is the position of the will regarding the two foreseen effects just mentioned?[10]

On the basis of these two questions our author discusses in detail (a) *per se* and *per accidens* effects as well as (b) acts performed *ex intentione* and *praeter intentionem*. This provides him with a key to open up the argumentation so tightly organized by St. Thomas in question 64, article 7.

1. In discussing *per se* and *per accidens* causes and effects Alonso moves in three stages before concentrating explicitly on the question of killing in self-defence.

He commences by discussing the text of St. Thomas, *De Malo*, q.1, a.3, ad.14, where he distinguishes two types of *per accidens* cause and effects:

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8. "Si realmente ello es así y el articulo septimo se ha de entender en el caso en que el daño es previsto aunque no pretendido, tendríamos que el Santo lo único que niega es que sea lícito pretender la muerte de suerte que ella constituya el fin total de la accíon, a la cual todo lo demás se ordena, y no que no sea lícito elegir la muerte como medio para defenderse." (V. Alonso: *op.cit.*, p.218).

9. Cf. *S.T.*, I-II, q.1, a.3, ad.3.

10. Cf. V. Alonso: *op.cit.*, pp.219-220.

(a) A builder is the per se cause of the construction of a house. That he is a musician is accidental (per accidens) to the building of the house. The house once built (per se effect) and occupied may also become a happy home. This too is accidental to its construction.

(b) A grave-digger, while doing his job, accidentally (per accidens) discovers a treasure trove.

In the first case the fact that the house becomes a happy home is accidental to the builder's intention (i.e. it is praeter intentionem). Nevertheless, there is a causal connection (that between builder and house) needed for there to be a happy home. In the second case, on the other hand, the effect is accidental and completely by chance. In both cases the per accidens effects are from the agent's point of view praeter intentionem. In the first situation there is a causal link, in the second there is not.

Alonso next turns his attention to St. Thomas's discussion of scandal.[11] Scandal may be active or passive. As regards the former there may be per se scandal which occurs when the agent intends to lead another into sin or per accidens scandal which takes place when the agent's word or action is not directed to another's ruin. If scandal is given in this latter case it is considered to be praeter intentionem agentis. For St. Thomas, then, an effect is per accidens when (a) it is not praecogitatus, praevisus, intentus, (b) it is not willed simply (voluntarium simpliciter) and (c) when the cause does not really flow into the effect. Such an effect is per

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11. Cf. S.T., II-II, q.43, a.3.

accidens secundum speciem morum when it is per accidens volitum vel intentum.[12]

The third stage in Alonso's argument consists in a comparison of four texts:

1: S.T., I-II, q.20, a.5.

Utrum eventus sequens aliquid addat de bonitate, vel malitia ad exteriorem actum.

Si autem eventus sequens, non sit praecogitatus, tunc distinguendum est, quia si per se sequitur ex tali actu, et ut in pluribus, secundum hoc, eventus sequens addit ad bonitatem vel malitiam actus: manifestum est enim meliorem actum esse ex genere suo ex quo possunt plura bona sequi, et peiorem ex quo nata sunt plura mala sequi. Si vero per accidens ut in paucioribus, tunc eventus sequens non addit ad bonitatem vel malitiam actus; non enim iudicatur de aliquo secundum quod est per accidens, sed solum secundum illud accidens, sed solum secundum illud quod est per se.

2: S.T., I-II, q.73, a.8.

Utrum gravitas peccati augeatur secundum maius nocumentum.

Quandoque nocumentum nec est praevisum, nec intentum; et tunc si per accidens se habeat ad peccatum directe, sed propter negligentiam considerandi nocumenta quae consequi possunt, imputantur homini ad poenam quae eveniunt praeter eius intentionem, si dabat operam rei illicitae. Si vero nocumentum per se sequatur ex actu peccati, licet non sit intentum, nec praevisum, directe peccatum aggravat; quia quaecumque per se consequuntur peccatum, pertinet quodammodo ad ipsam peccati speciem puta si quis publice fornicetur, sequitur scandalum plurimorum quod quamvis ipse non intendat, nec forte praevideat directe per hoc aggravatur peccatum.

3: De Malo, q.1, a.3, ad.15.

Utrum bonum sit causa sui.

Ad decimum quintum dicendum quod aliquod accidens alicuius effectus coniungitur ei, ut in paucioribus et raro, et tunc agens dum intendit effectum, per se non opportet quod aliquo

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12. Cf. V. Alonso: op.cit., p.221.

> modo intendat effectum per accidens. Aliquando vero huius modi accidens concomitatur effectum principaliter intentum semper, ut in pluribus et tunc accidens non separatur ab intentione agentis. Si ergo bono quod voluntas intendit, adiungitur aliquando malum, ut in paucioribus potest excusari a peccato; sicut si quis incidens lignum in silva per quam raro transit homo proiiciens lignum interficit hominem.

4: S.T., II-II, q.64, a.8.

> Utrum aliquis casualiter occidens hominem incurrat homicidii reatum.
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> Respondeo dicendum quod secundum philosophum in 2 Physic. (tex. 49 et 50) casus est causa agens praeter intentionem; et ideo ea, quae casualia sunt, simpliciter loquendo, non sunt intenta, neque voluntaria; et quia omne peccatum est voluntarium, secundum Augustinum (lib. de Ver. Rel., cap. 14) consequens est, quod casualia in quantum huiusmodi, non sunt peccata: contigit tamen, id quod non est actu et per se volitum, vel intentum, esse per accidens volitum vel intentum, secundum quod causa per accidens dicitur removens prohibens; unde ille qui non removet ea ex quibus sequitur homicidium, si debeat removere, incurrit quodammodo homicidium voluntarium.

In the first text, if the effect is not praecogitatus then what follows as an effect may occur either as a per se effect in which case it occurs ut in pluribus or as a per accidens effect in which case it occurs ut in paucioribus. In text two the harm is neither praevisum nor intentum and so is per accidens. Negligence on the part of the agent in not considering the harmful effects of his act may result in such effects being imputed to him even though they are actually praeter intentionem. In the third text from De Malo Aquinas considers the relationship between the effects of an intended act. An effect [A] is considered accidental if it is joined to the other effect [B] in paucioribus et raro. The former [A], is per accidens, the other [B] per se. However, when an accidental effect [A] is linked to what the moral agent primarily intends [B] in such a way

that it occurs ut in pluribus, or always, then it may not be separated from the agent's intention. In the final text St. Thomas claims that what happens by chance may not be held to be intended or voluntary. Hence, that which non est actu et per se volitum vel intentum is considered to be per accidens volitum vel intentum.

Alonso, in his analysis of the above texts, seeks to highlight aspects of the cause-effect relationship that are of considerable importance for S.T. II-II, q.64, a.7. The above study of Aquinas demands that one bear in mind:

(a) the frequency with which an effect follows on a cause;

(b) that foreseen effects may become intentional if the agent has not taken proper care;

(c) that the way effects follow on an intended cause, but particularly the way they relate to one another, may be morally significant;

(d) that the will may be responsible for a per accidens effect if the agent is obliged in some way that such an effect not occur.

Having clarified St. Thomas's teaching on the relationship between causes and effects Alonso brings his insights to bear on the issue of killing in self-defence.[13] He argues that Aquinas speaks of the aggressor's death as a per accidens effect "ex quo quandoque sequitur homicidium".[14] This expression corresponds to "aliquando...et ut in paucioribus" of the De Malo text above. Alonso wishes to show that

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13. Cf. V. Alonso: op.cit., pp.224-227.

14. S.T., II-II, q.64, a.7, ad.4: "quod actus fornicationis vel adulterii non ordinatur ad conservationem propriae vitae ex necessitate, sicut actus ex quo quandoque sequitur homicidium".

the assailant's death is not contained in the concept of self-defence even though the act of self-defence, here and now, results in his death. The fact that the evil effect is foreseen does not imply that such an effect is no longer per accidens. As we have observed in the discussion on scandal and accidental homicide above it is possible to be the conscious cause of evil while not intending to do evil.

St. Thomas asserts that in order to preserve one's life it may be appropriate to perform an act from which homicide follows aliquando (i.e. "sometimes" or "at times"). The distinction between ex necessitate and aliquando helps us exclude death dealing acts which bring about the effect (death) per se or ex natura sua. Because the defender in S.T., II-II, q.64, a.7 is seen to employ force sufficient to preserve his life the subsequent death of the aggressor is considered by Aquinas to be per accidens.

2. Alonso next turns his attention to the notions ex intentione and praeter intentionem.[15] He discusses them in the context of Aquinas's understanding of voluntary acts. As we have seen already St. Thomas understands the term "intention"[16] as referring to the will's orientation to an end, not in an absolute way (this is voluntas, velle), but as attainable through certain means. In the act of choice (electio) the will is directed to the means necessary to attain the end in view:

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15. Cf. V. Alonso: op.cit., pp.228-234.

16. Cf. S.T., I-II, q.12, a.1c. See also H.D. Simonin: "La notion d'intentio dans l'oeuvre de S. Thomas d'Aquin," R.S.P.T., 19 (1930) 445-463. Alonso argues that Aquinas uses "intention", "to intend" consistently throughout his writings. Cf. In II Sent., dist. 38, q.1, a.3c.; De veritate, q.22, a.13; S.T., I-II, q.12, a.1 (op.cit., pp.232-233).

> Sic igitur in quantum motus voluntatis in id quod est ad finem, prout ordinatur ad finem, est electio: motus autem voluntatis, qui fertur in finem, secundum quod acquiritur per ea quae sunt ad finem, vocatur intentio, cuius signum est, quod intentio finis esse potest, etiam nondum determinatis his quae sunt ad finem, quorum est electio. (17)

A further clarification of St. Thomas's understanding of intention may be found in his discussion of fear (metus)and its effect on the moral act.[18] Take the case where cargo is jettisoned to save a ship from sinking:

> .... sicut proiectio mercium ur mare fit voluntarium tempore tempestatis, propter timorem periculi: unde manifestum est, quod simpliciter voluntarium est; unde et competit ei rationi voluntarii; quia principium eius est intra. Sed quod accipiatur id quod per metum fit, ut extra hunc casum existens, prout repugnat voluntati, hoc non est nisi secundum rationem tantum: et ideo est involuntarium secundum quid, idest prout consideratur extra hunc casum existens. (19)

The act of throwing cargo overboard is the direct object of the will yet the effect is praeter intentionem for it is not wanted for its own sake but only in that it is ordered to the saving of the ship. This latter is uniquely ex intentione.[20]

Alonso argues that the above text may be applied to S.T., II-II, q.64, a.7. The expression proiectio mercium may replace occisio aggressoris, so too causa salutis may be substituted for causa defensionis.

In the light of his close analysis of the texts of St. Thomas

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17. S.T., I-II, q.12, a.4.

18. Cf. Contra Gentiles, lib.3, c.5,6; S.T., I-II, q.6, a.6.

19. S.T., I-II, q.6, a.6c.

20. Cf.V.Alonso: op.cit., pp.233-234.

and the discussion of homicide among Aquinas's contemporaries Alonso arrives at the following conclusions:[21]

(a) The main purpose of S.T., II-II, q.64, a.7 is an acceptance of the received teaching that one may lawfully defend oneself against an unjust aggressor even to the extent of killing one's assailant. Aquinas made the solution more precise. The aggressor's death must be praeter intentionem (which differentiates it from homicidium voluntate, non necessitate) and hence it is per accidens. For St. Thomas the evil quality of an act is not determined by what is per accidens but by what is per se.

(b) In emphasizing that each person has a right to preserve his life, since this is based on a natural inclination in man, St. Thomas can be considered to have left behind the distinctions of many of his contemporaries that governed their discussion of killing in self-defence.[22] Likewise, in emphasizing moderate use of counter-force Aquinas may be seen to reject one school of thought that removed any limits from an act of self-defence. These thinkers simply reduced an act of counter-force in self-defence to an act of killing. They did not consider the possibility of other ways of self-defence such as Aquinas's insistence on due proportion demands.

(c) The argument that a man is bound to care for his own life more than the life of his neighbour is directed, Alonso argues, against the rigorists of St. Thomas's day who contended that use of force in self-defence is contrary to the Gospel.

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21. Cf.V.Alonso: op.cit., pp.243-246.

22. The distinction between homicide committed by the "perfect" or "imperfect", by the layman or the cleric.

(d) Articles 2-6 of question 64 consider killing simpliciter, that is where the agent intends to kill another as the ultimate purpose of his act. This is permissible to those commissioned publica auctoritate propter bonum commune. In article 7 the agent in defending himself does not kill simpliciter. Rather the killing which occurs is the praeter intentionem, per accidens effect of an act of self-defence performed by a "private" person.

(e) In S.T., II-II, q.64, a.7 there is not to be found the P.D.E. as we know it today.[23] This is so on two counts. First, if we consider the causal order: the death of the unjust aggressor is the means or sine qua non condition by which the defender preserves his life. In no way do the good and evil effects proceed from the cause with equal immediacy as the P.D.E. requires. Secondly, if we consider the intentional order it may be concluded, in the light of the foregoing analysis, that an effect which is praeter intentionem may be voluntarily brought about (i.e. chosen by the will as a lawful means to an equally lawful end). The evil effect (i.e. the aggressor's death) may not be intended simpliciter but only insofar as it is related to and necessary for the attaining of self-defence which the will directly intends.

Twelve years after Alonso presented his thesis Joseph T. Mangan S.J. published an article contradicting the main points of the earlier article by Alonso.[24] He pinpointed correctly the question dividing

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23. Cf.V.Alonso: op.cit., pp.245-246.

24. J.T. Mangan S.J.: "An Historical Analysis of the Principle of Double Effect", T.S., 10 (1949) 41-61.

the two schools of thought on the text S.T., II-II, q.64, a.7.

> The crux of the difficulty in interpreting this text lies in the proper understanding of what St. Thomas meant by his terms intendere and non intendere, ex intentione and praeter intentionem. (25)

The American Jesuit attended to the question of intention and brought two arguments to bear against Alonso's approach.

First, he argued that Alonso neglects entirely the distinction St. Thomas makes between the two kinds of ends an individual may intend - one the ultimate end of an action and the other an intermediary end which is a means to the ultimate end.[26] St. Thomas asserted that both these ends are intended.[27] Whereas Alonso prefers to interpret "intention of an end" to mean "intention of an ultimate end" it is equally legitimate to interpret "intention of an end" as applying to an intermediary end which itself is ordered to an ultimate end.

St. Thomas also speaks of proximate ends and remote ends.[28] To speak of "intending an end" may refer to proximate ends just as validly as to remote ends as Alonso would claim.

Mangan, in addition, argues as follows:

A moral act is divided into object, circumstances, and end.[29]

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25. J. Mangan: op.cit., p.44.

26. Cf. J. Mangan: op.cit., p.47.

27. Cf. S.T., I-II, q.12, a.2c; q.1, a.3, ad.3; De Malo, q.2, a.6, ad.9.

28. Cf. S.T., I-II, q.1, a.3, ad.3; De Malo, q.2, a.6, ad.9. Mangan acknowledges that while the remote and proximate division of ends may point to a development in Aquinas's thought, he did assert in Contra Gentiles, lib.3, c.6: "intentio enim est ultimi finis."

29. Cf. S.T., I-II, q.18, a.1,2,3,4,5,10.

> But the object, even though it is not the matter about which the act is terminated, of its very nature is an end which the agent intends.[30] Hence, if a circumstance becomes a part of the object, it participates in the nature of the object, and of its nature is an end which the agent intends. Therefore, in St. Thomas's mind also, when he wrote the Summa Theologica, the agent always intends the object of the moral action and not only the ultimate end. And the object of the moral action is almost always, if not always, a means to the ultimate end of the action. For it is what is primarily intended, in order to bring about the ultimate end intended by the agent. (31)

On the basis of this understanding of intention Mangan concludes that when St. Thomas writes, in article 7 of question 64, that "illicitum est quod homo intendat occidere hominem, ut seipsum defendat...." it can reasonably be interpreted to mean

> that it is wrong for a man to will the death of another as part of the object of his moral act, or as an intermediary end to the ultimate end of his own defense, or as a proximate end directed to the remote end of his own defense. (32)

The second criticism Mangan raises with regard to Alonso's interpretation of intentional killing concerns Aquinas's permission that public authority may intend the death of a criminal. As Alonso sees it, then, public authorities may intend the criminal's death as an ultimate end and not only as a means to the common good. Yet the facts of the case[33] suggest that St. Thomas uses "to intend"

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30. S.T., I-II, q.73, a.3, ad.1: "obiectum, etsi sit materia circa quam terminatur actus, habet tamen rationem finis, secundum quod intentio agentis fertur in ipsum." See also q.72, a.3, ad.2.

31. J. Mangan: op.cit., pp.47-48.

32. J. Mangan: op.cit., p.48.

33. Cf. S.T., II-II, q.64, a.2, 3, 7.
"si aliquis homo sit periculosus communitati....laudabilitur et salubriter occiditur, ut bonum commune conservetur." (a.2)
"occidere malefactorem licitum est, inquantum ordinatur ad salutem totius communitatis" (a.3)
"occidere hominem non licet nisi publica auctoritate propter bonum commune .... illicitum est quod homo intendat occidere hominem ... (a.7).

as intending a means to an end, for St. Thomas

> limits the lawfulness of killing by public authority to killing as a means, or as an intermediary end, or as a proximate end to that of the common good. (34)

We shall have cause to return to the arguments proposed by Mangan shortly. But before concluding it is important to note that his reading of the terms intendere and intentio permit him to interpret S.T., II-II, q.64, a.7.

> as an enunciation of the principle of double effect as we understand it today, and as an application of that principle to the lawfulness of killing in self-defense. (35)

The interpretation of intendere and intentio adopted by Mangan permits the American to see the third condition of the P.D.E. present in St. Thomas's analysis. Alonso and his school of thought deny that the third condition is present in the Thomistic study of killing in self-defence.

IV THE DIRECT-INDIRECT DISTINCTION

Considerable attention has already been given to St. Thomas's understanding of the moral act both in itself (section II) and in so far as it has assisted in analysing the question of killing in self-defence (section III). In this section we will consider his teaching on the voluntarium. This is necessary since it prepares the way for an understanding of the developments to be discussed in chapter two. Following this we shall consider three models that

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34. J. Mangan: op.cit., p.49.

35. J. Mangan: op.cit., p.49. Mangan sees St. Thomas using the P.D.E. in S.T., II-II, q.43, a.7 and 8 on the question of scandal. But in this case he does not explicitly mention it as in the question of killing in self-defence.

illustrate Aquinas's teaching on the human act. Finally, we will dwell briefly on acts with two-fold effects.

1. For Aquinas voluntariness exists when

> homo maxime cognoscat finem sui operis, et moveat seipsum, in eius actibus maxime voluntarium invenitur. (1)

The voluntary is, therefore, a broader category than the intentional. Intention is defined as an act of the will concerning a goal for the sake of which something is done.[2] The end is wanted the means are chosen; what is intended is neither the end in itself nor the means in themselves, but the end through the means.[3] The fact that, for St. Thomas, the voluntary and the intentional are not coextensive is important for our study of direct and indirect in the following chapters.

This point has been lost sight of in the discussion of the voluntarium indirectum and acts voluntary in causa in later centuries. For that reason we must be clear about St. Thomas's understanding of both concepts. First, his concept of the indirectly voluntary:

> Respondeo dicendum, quod voluntarium dicitur, quod est a voluntate. Ab aliquo autem dicitur esse aliquid dupliciter. Uno modo directe, quod scilicet procedit ab aliquo, inquantum est agens; sicut calefactio a calore. Alio modo indirecte, ex hoc ipso quod not agit; sicut submersio navis dicitur esse a gubernatore, inquantum desistit a gubernando. Sed sciendum, quod non semper id, quod sequitur ad defectum actionis, reducitur sicut in causam in agens, ex eo quod non agit, sed solum tunc, cum potest, et debet agere: si enim gubernator non posset navem dirigere, vel non esset ei commissa gubernatio navis, non imputaretur ei navis subm_ersio, quae per absentiam gubernatoris contingeret.

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1. S.T., I-II, q.6, a.1. Following Aristotle, Gregory of Nyssa and Damascene, Thomas sees voluntariness "non solum cuius principium est intra, sed cum additione scientiae."

2. Cf. S.T., I-II, q.12, a.1, ad.4.

3. Cf. S.T., I-II, q.13.

> Quia igitur voluntas volendo, et agendo potest impedire hoc quod est non velle, et non agere, et aliquando debet, hoc quod est non velle, et non agere, imputatur ei, quasi ab ipsa existens. Et sic voluntarium potest esse absque actu; quandoque quidem absque actu exteriori cum actu interiori, sicut cum vult non agere; aliquando autem etiam absque actu interiori, sicut cum non vult agere. (4)

Aquinas discusses the voluntarium in causa when he examines the question whether passion totally excuses from sin. If the passion is such as to render the act totally involuntary there is no sin. If the act is not rendered involuntary the following considerations are relevant:

> Primo quidem, quod aliquid potest esse voluntarium vel secundum se, sicut quando voluntas directe in ipsum fertur; vel secundum suam causam, quando voluntas fertur in causam, et non in effectum; ut patet in eo, qui voluntarie inebriatur; ex hoc enim quasi voluntarium ei imputatur, quod per ebrietatem committit. Secundo considerandum est, quod aliquid dicitur voluntarium directe, vel indirecte: directe quidem id, in quod voluntas fertur: indirecte autem illud, quod voluntas potuit prohibere, sed non prohibet.... (5)

From these two brief texts of Aquinas it is possible to conclude as follows:

(a) The term voluntarium indirectum is applied to the effect of an omission. It is attributed to the agent when he can and ought to stop the effect coming into existence but does not do so. The term is only applied to evil effects.

(b) The notion voluntarium in causa applies to an effect that, while not explicitly caused by the will, follows on from the act explicitly willed.

(c) The use of direct voluntary indicates the direction of the will in causing the act. It is what I shall call psychological

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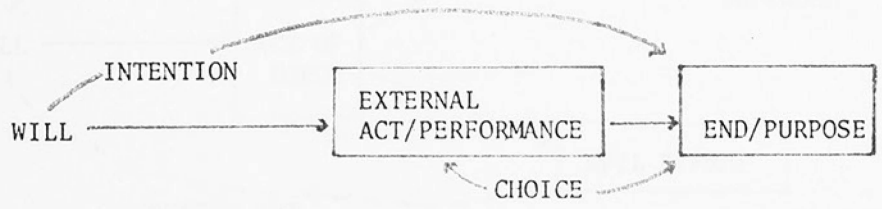
4. S.T., I-II, q.6, a.3c.

5. S.T., I-II, q.77, a.7c.

intention or simply intention. In the use of voluntarium indirectum and voluntarium in causa there is no causal link between the effect and the will - at least at the level of efficient causality. Both terms suggest criteria for ascribing evil effects to an agent at the level of morality. In this both notions apply to an area (viz. the moral) different from the term voluntarium directum which indicates the stance of the will or its intention.

2. Closely related to St. Thomas's understanding of direct and indirect is his understanding of the human act. It would seem that Aquinas's use of medium or means is ambiguous when he speaks of an action. In achieving an end a particular external act or performance may be the means for adequately fulfilling this purpose,[6] for example to remove my headache I take two Aspros.

[MODEL 1]

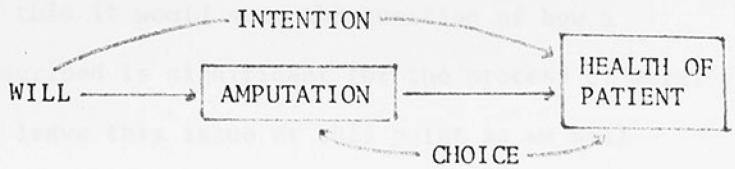


In this case the physical act of taking the two tablets is a means to the desired end, all of which constitutes a moral act. If, however, we take the case of a doctor amputating a gangrenous leg to save his patient's life, the act of amputation may be treated as (a) a chosen means to the end envisaged or (b) an immediate end which results in the patient's life being preserved (remote end).

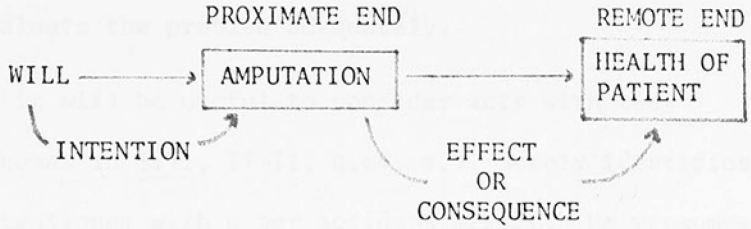
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6. Cf. S.T., I-II, q.20, a.4; q.72, a.3, ad.2.

[MODEL 2] (A)

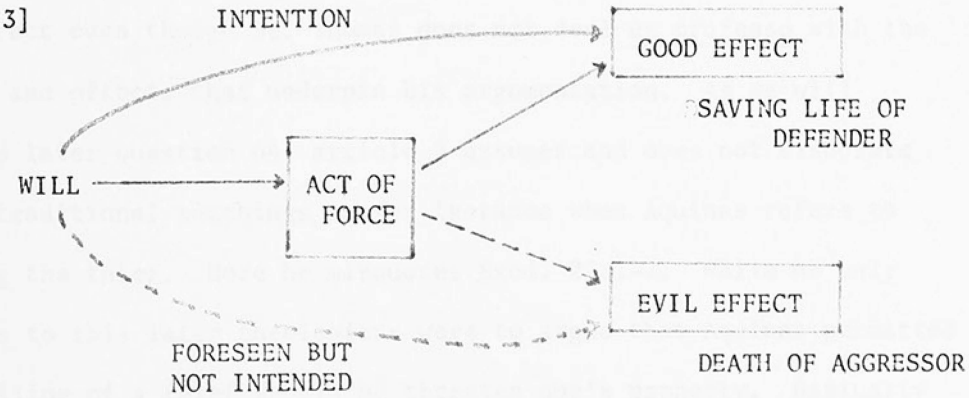


(B)



When we turn to the act of killing in self-defence the model differs from the teleological pattern illustrated above.

[MODEL 3]



A basic issue, as far as this thesis is concerned, is whether a particular performance or external action is to be accounted a means in the sense of adequately incarnating the agent's intention as in model 2(A) above or whether the performance is to be considered a means to the end.(model 2(B)). In the case of killing in self-defence one may view the act from the point of view of the will (as in model 3) or one may express the same act in terms of either model 2A or 2B.

In the light of this it would seem the question of how a particular act is described is significant for the process of moral evaluation. We will leave this issue at this point as we will have cause to add two more models in chapter two. Only then will it be possible to evaluate the problem adequately.

3. At this point it will be useful to consider acts with two-fold effects. St. Thomas in S.T., II-II, q.64, a.7. merely identifies an effect praeter intentionem with a per accidens effect. He presumes the whole framework of his thinking on causes and effects. It is the strength of Alonso's thesis that he is able to show that Aquinas is consistent with earlier writings when he argues briefly about killing in self-defence. It would appear that Alonso's argumentation is correct even though St. Thomas does not deal ex professo with the causes and effects that underpin his argumentation. As we will observe later, question 64 article 7 assumes and does not elaborate other traditional teachings, as for instance when Aquinas refers to killing the thief. Here he misquotes Exod. 22:1-2. While he only alludes to this later theologians were to argue that Aquinas permitted the killing of a thief should he threaten one's property. Basically then I wish to argue that S.T., II-II, q.64, a.7 is a concise, even schematic presentation of an argument understandable only within the context of the theological approaches current at the time St. Thomas wrote.

The historical context is particularly important when we consider the notion of intentio. It has been argued earlier that the term was relatively recent in the theological writings at the time of Aquinas. Originally it was a term that paralleled the legal literature on homicide. It is this parallelism that is primary when Aquinas

discussed killing in self-defence. St. Thomas's use of Aristotelian psychology on the human act gave intentio a strictly psychological dimension. To speak from this latter point of view and in terms of directly intended and indirectly intended is to incorporate St. Thomas's thinking on the psychology of the human act to a question in which he does not seem to use it. It would appear that the legal tradition of his day on the issue of killing in self-defence was more influential on his thought than his own analysis of the human act.

If we turn to the corpus articuli in S.T., II-II, q.64, a.7 we find St. Thomas referring to one effect in intentione and the other praeter intentionem. From what has been expressed already in this chapter it is possible to conclude:

(a) that St. Thomas distinguishes what is foreseen and what is intended.

(b) There is nothing about the nature of intention which requires that one intend those effects which follow from one's end. Intention is an act of the will bearing on the end in so far as it is the term of something ordered to it, namely the means;

(c) "whatever does not function as an end of action or a means to the end can be praeter intentionem, even if it is a natural consequence or a property of what is within the intention, if it can be separated from the goodness of the end intended or the resolve to achieve that good."[7]

At the level of moral evaluation little can be added to what

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7. J.M. Boyle Jr.: "Praeter Intentionem in Aquinas," Thomist, 42 (1978) 665.

has already been said. The objective reality of obligation united with an agent's ability to avoid an evil effect are the two requirements St. Thomas places that a voluntarium indirectum be attributed morally to an agent. It would appear that the terms direct and indirect have primarily a descriptive or indicative value in the writings of St. Thomas.

Chapter 2

EVOLUTION AND CLARIFICATION

(1500-1700)

I HISTORICAL BACKGROUND

During the 16th and 17th centuries important developments occurred in the area of moral theology. It is during this period that moral reflection became a separate discipline in Roman Catholic theology. In this chapter we will note a considerable evolution in reflection on the human act in general and the act with double effect in particular. It is during this period, too, that the direct-indirect distinction was commonly applied to a wide range of moral issues. Such a concentrated effort during two centuries did result in a degree of clarity regarding the use of the double effect principle and the direct-indirect distinction.

Since this chapter surveys two centuries of moral reflection it will only be possible in this historical introduction to emphasize those aspects of the period that contribute to our study of the human act, double effect and the direct-indirect distinction. Briefly then we will consider the theological schools of thought and their concerns that were to be found in the Church at the beginning of the 16th century. This will be useful since certain traditional theological approaches exercised a considerable influence on thinkers and issues during the period we will be studying in this chapter. Following this only the briefest possible reference will be made to the social and scientific developments of the period. These were of great

significance not only because they created new moral problems but also because they effectively changed man's understanding of himself and his activity. In the third place we will consider the renewal in Thomistic moral theology that occurred during the late 16th century and the growth of the new discipline of moral theology within Roman Catholic universities and seminaries. This development was significant since the literature and concerns of the period shaped moral theology in the Roman Church right up until the Second Vatican Council. Finally, we will consider some of the theological controversies of the 17th century since these influenced moral consideration of the human act and the commandment: "thou shalt not kill."

Three theological traditions were of lasting importance through the medieval period and well into the modern era. The first of these originated with Thomas Aquinas. Although the great scholastic has been held in high esteem by his own Dominican order his influence has been varied in the Church at large. Three years after his death which occurred in 1274 a number of his opinions were condemned at both Paris and Oxford.[1] This was a victory for the Augustinian school.[2] Even after his canonization in 1323 St. Thomas did not exercise the influence in the Church he was to have at the end of the last century and for the first half of this century.[3] As we shall

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1. Cf. J.A. Weisheipl O.P.: op.cit., pp.339-353; A. Kenny: Aquinas, pp.26-27.

2. Thomas's doctrine denying universal hylomorphism and his teaching on the plurality of forms aroused the strongest opposition among "old school" thinkers. (Cf. J.A. Weisheipl:"Thomism", N.C.E., XIV, p.128).

3. Leo XIII (1878-1903) made Aquinas the "common doctor" (the official theologian) of the Roman Church. Puis X in 1914 gave Thomistic philosophy and theology a place of honour in ecclesiastical educational institutions. Cf. A. Kenny: op.cit., p.27. See also I.C. Brady, J.E. Gurr, J.A. Weisheipl: "Scholasticism", N.C.E., XII, pp.1153-1170.

see shortly the revival of Thomism at Salamanca at the end of the 16th century was short lived. It is a characteristic of Aquinas's synthesis that he harmonized faith and reason, natural and supernatural spheres.[4] His moral reflection developed logically out of his scriptural and dogmatic reflections. His thinking on the theological virtue of charity is symptomatic of his attention to the neo-Platonic tradition following Augustine: caritas est forma virtutum.[5] At the same time the influence of Aristotle is observable in his understanding of charity as moving and ordering all other virtues.[6]

The Franciscan school of theology from Alexander of Hales (d.1245) to Duns Scotus (d.1308), but most especially the writings of St. Bonaventure (d.1274), articulated a moral teaching centred on Christ and charity. For the Franciscan thinkers

> moral theology ought not to serve simply for contemplation, but ought to make us better. It is wisdom stimulating faith within us. All moral thought is love drawn from the very source of love, God in Jesus. The Franciscan theologians affirmed the primacy of charity, and also

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4. St. Thomas's "intellectualism differs from Augustinian contemplative theology and from Franciscan affective voluntarism; he keeps the balance between reason and faith because he knows both the value and limits of reason." (P. De Letter: "Theology, History of", N.C.E., XIV, p.52).

5. Cf. G. Gilleman S.J.: The Primacy of Charity in Moral Theology, pp.42-43, for a detailed analysis of this point.

6. Cf. S.T., II-II, q.23, a.8. This article presumes St. Thomas's study of the psychology of the human act (S.T. I-II, qq.6-17), the moral quality of human acts (S.T., I-II, qq.18-21), his teaching on habitus and virtus (S.T., II-II, qq.49-67). For an excellent study of character in the Christian life according to Aquinas see S. Hauerwas: Character and the Christian Life: A Study in Theological Ethics, pp.68-82. For an analysis of Aquinas on caritas see L.-B. Gillon O.P.: "Charité: V.1 Dominicains", Dictionnaire de Spiritualité, II, cols. 579-686.

the primacy of the will. (7)

St. Bonaventure, although open to the newly discovered Aristotle, preserved the Augustinian approach to theology.[8] Central to his theology was the idea of the "good" rather than "being" as with Aquinas. The role of the will and love was more strongly emphasized in the Franciscan tradition than the role of the intellect and knowledge in the understanding of faith.[9]

Bonaventure opened the way for another great Franciscan thinker, Duns Scotus (1270-1308), to emphasize the role of the will. According to Scotus metaphysics does not directly speak of God but only of creatures. Only Scripture provides the data of the faith. The doctor subtilis cut through the main arteries of any theological system. It is no longer man's insight into the nature of what is revealed that is important, rather it is God's will that guarantees the connection between what is revealed and what man believes.[10] In moral theology Scotus stands between Aquinas and Ockham. With Aquinas he grants the existence of unalterable moral principles but he is nearer to Ockham in emphasizing the role of the divine will in the determining of the human moral order.[11]

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7. L. Vereecke: "History of Moral Theology (700 to Vatican Council I)" N.C.E., IX, p.1120. Van Ackeren describes the synthesis achieved in the Augustinian tradition by Bonaventure and the Franciscan school as "affectively contemplative or mystical rather than scientifically speculative". ("Theology", N.C.E., XIV, p.45). The Franciscan thinkers rejected the role of any intrinsic analogy in theology. Human reason was considered competent for the things of the world. It could not enter in to revealed truth. So in this tradition "theology is a work of divine illumination rather than a work of reason enlightened by faith. In this tradition theology is primarily practical and affective rather than speculative, mystical in its mode rather than rational." (C.E. Van Ackeren: op.cit., p.45).
8. Cf. R.P. Russell: "Augustinianism" and "Augustinianism, Theological School of", N.C.E., I, pp.1063-1071.
9. Cf. P. De Letter: op.cit., p.53.
10. Cf. P. De Letter: op.cit., p.53.
11. Cf. F.C. Copleston: A History of Philosophy. Vol.2 Medieval Philosophy. Augustine to Scotus. pp.545-551. More briefly in A History of Medieval Philosophy, pp.213-229.

Historically Scotus's

> moral doctrine helped to prepare the way for that of Ockham, in whose eyes the moral law, including the whole decalogue, is the arbitrary creation of the divine will. (12)

With William of Ockham (c.1285-1347)[13] we have the voluntarism of the Franciscan school taken to extremes and the synthesis of the great scholastics ruptured by the nominalist dialectic. Underlying much of Ockham's thought is an epistemology quite different from that of Aquinas. Where St.Thomas had an understanding of universals that recognized their existence in the mind, and that universals were arrived at by a process of abstraction from sense knowledge, Ockham argued that the mind itself could grasp particular things by means of intuitions. For him universals had only a logical existence, they were meanings, the contents of the mind when thinking generally.[14] Ockham's nominalism withdrew almost all the data of faith from the realm of reason and through his emphasis on the omnipotence and mercy of God gave central place to the divine will in relation to human life.[15] All morality consists in man's free obedience to the divine law. "The influence of Nominalism was great,

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12. F.C. Copleston: A History of Philosophy, II, p.550.

13. Cf. "William of Occam (or Ockham), O.D.C.C., pp.1483-1484; E. Amann and P. Vignaux: "Occam, Guillaume d'", D.T.C., XI.1, cols.864-904; E. Gilson: "William of Ockham", History of Christian Philosophy in the Middle Ages, pp.489-498; A. Pinckaers: "Ockham and the Decline of Moral Theology", T.D., 26 (1978) 239-241; F.C. Copleston: A History of Philosophy III, pp.43-121; ibid: A History of Medieval Philosophy, pp.230-276.

14. Cf. D.W. Hamlyn: "Epistemology, History of", The Encyclopedia of Philosophy, (ed.) P. Edwards, III, pp.14-16.

15. Cf. G. Kung: "Nominalism", N.C.E., X, pp.482-486; E. Gilson: op.cit., pp.499-520; W.J. Courtney: "Nominalism and Late Medieval Thought: A Bibliographical Essay", T.S., 33 (1972) 716-734 (for recent research on Nominalism); H.A. Obermann: The Harvest of Medieval Theology. Gabriel Biel and Late Medieval Nominalism (for more general background).

especially in methodology, which in moral science opened the doors to casuistry."[16] The fact that the University of Paris became a centre of Nominalist thought is significant for what follows. The influence of Nominalism on Luther through Gabriel Biel is well known but perhaps what is less well known is the fact that the leading exponent of St. Thomas's thought at the end of the 16th century received his early education at Paris from a reformed Nominalist, Peter Crockaert.

Each of the three theological traditions just considered, namely that coming from Aquinas, the Franciscan school and, finally the Nominalist thinkers, had a continuing influence during the period covered by this chapter. As we will see below the revival of interest in the writings of St. Thomas was not as enduring as the influence of St. Augustine in Franciscan theology and the impact of late medieval Nominalism. We will have cause to note this in passing when we discuss the moral issues of the 17th century and the approach to the human act and double effect in later sections.

After 1500 great changes took place in Europe. The growth of empirical sciences and the discovery of the New World dramatically changed European man's Weltanschauung.[17] The medieval world view of a closed system hierarchically ordered and fully integrated gave way to new possibilities and completely new problems. The wealth of

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16. L. Vereecke: op.cit., p.1120.

17. Cf. N. Scheel: "Science (in the Renaissance)", N.C.E., XII, p.1209. See also R. Mandrou: From Humanism to Science 1480-1700, pp.17-65; A.R. Hall: "Scientific Method and the Progress of Techniques," The Cambridge Economic History, IV, pp.96-154.

the New World altered the social and economic structure of Spain. Gold and coins brought a revaluation and rejection of the Church's teaching on usury,[18] it brought about a market economy, inflation, depopulation of the countryside with consequent famine and food shortages. Politically the rise of absolute monarchs began. Moral questions arising from conquest concerned thinkers: issues such as the rights of individuals (as in the case of the South American Indians), the right of the Church to spread the gospel and the rights of nations (through the development of international law) absorbed moralists during the 16th century.[19] During the 17th century absolute monarchs such as Louis XIV in France entered into an uneasy relationship with the Roman Church. Treaties similar to that of Westphalia (1648) sought to end armed conflicts between religious groups and divided countries along religious lines.[20] The divisions and antagonisms of the period spilled over into the theological and moral controversies that we will mention below.

> At the end of the sixteenth century and throughout the seventeenth, the Church of Rome went through a period of profound change for which a number of factors had prepared the way: long theological investigations, a great deal of holiness, and many painful gropings. (21)

Here we shall consider only one aspect namely the renewal of moral theology during these two centuries. Part of the renewal of theology before the Council of Trent originated in a renewed interest in scholastic writings. The leaders in this movement were Conrad Köllin

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18. Cf. J.T. Noonan Jr.: The Scholastic Analysis of Usury. F.P. Brandel and F. Spooner: "Prices in Europe from 1450 to 1750", The Cambridge Economic History, IV, pp.378-486. H. Van der Wee: "Monetary, Credit and Banking Systems", The Cambridge Economic History, V, pp.290-393.
19. Cf. J. Fernandez-Alonso: "Spain (3. Modern)", N.C.E., XIII, pp.506-517. The relectiones of Francisco de Vitoria, De Indis, De jure belli Hispanorum in barbaros, De potestate civili, De potestate ecclesiae, constitute him the founder of international law. (Cf. Relecciones Teológicas del Maestro Fray Francisco de Vitoria, (ed.) A. Getino).
20. Cf. W.A. Clebsch: Christianity in European History, pp.180-193.
21. J. Delumeau: Catholicism between Luther and Voltaire: A New View of the Counter Reformation, p.1.

O.P. in Germany,[22] Thomas de Vio O.P., Cardinal Cajetan (in Italy)[23] and Peter Crockaert O.P. in Paris.[24] Each of these men wrote commentaries on Aquinas's Summa and, because of their importance in their own lands, was able to exert a considerable influence in the Reformation period. It was through their efforts, too, that the Summa entered the universities as a text book. The influence of scholastic theologians was not insignificant at the Council of Trent where a number were periti.[25] One peritus, Melchior Cano O.P.,[26] through his De locis theologicis was to influence the course of systematic theology in the Roman Church up until recent time.[27]

As far as moral theology is concerned it is important to note two diverging approaches to the Summa when it became the standard theological text during the 16th century. The early Dominican commentators of St. Thomas's work kept closely to the basic text. They discussed dubia and attempted to clarify difficult passages. It

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22. Cf. M.-D. Chenu: "Koellin, Conrad", D.T.C., VIII.2, cols. 2370-2372 J. Hennessey: "Köllin, Conrad", N.C.E., VIII, p.246. See also R. Couture: op.cit., p.55, note 207 (extensive bibliography).

23. Cf. "Cajetan", O.D.C.C., p.219; R. Bauer: "Cajetan", L.Th.K., II, cols.875-876; J.A. Weisheipl: "Cajetan (Tommaso de Vio)", N.C.E., II, pp.1053-1055.

24. Cf. E.M. Filthaut: "Crockaert", L.Th.K., III, col.98; J.F. Hinnebusch: "Crockaert, Peter", N.C.E., IV, p.469.

25. "Unter den 66 Doktoren von Salamanca, die am Trienter Konzil teilnahmen, befänden sich viele Bischöfe und Theologen, die zu Füssen Vitorias gesessen hatten." H. Jedin: Handbuch der Kirchengeschichte, IV, p.564.

26. Cf. "Cano", O.D.C.C., p.230; F. Courtney: "Cano, Melchior", N.C.E., III, pp.28-29; P. Mandonnet: "Cano, Melchior", D.T.C., II.2, cols. 1537-1540; R. Couture: op.cit., p.85, note 106 (bibliography).

27. Books 2-11 of the De locis theologicis study the ten theological loci: scripture, oral tradition, the Catholic Church; the Councils; the Roman Church; the Fathers; theologians; natural reason; philosophers; human history. Cf. E. Marcotte O.M.I.: La nature de la théologie d'après Melchior Cano. The issue of the sources of moral theology will not be explicitly considered in this thesis. It is useful to note that the sources of moral reflection underpinned the Jansenist-Laxist controversy of the 17th century and much of the contemporary reevaluation of moral theology.

is only with the work of John of St. Thomas (1589-1648) that we find a Dominican treating the basic text more feeely. The Jesuit commentators, on the other hand, treated the Summa more freely and soon developed their thought independently of the text.

Mention has already been made above of the role of Peter Crockaert, the Nominalist thinker who became in his later life a Dominican and a Thomist. He had learned Nominalist philosophy at Paris from the Scottish scholar Joannes Major (1469-1550).[28] On becoming a Dominican he came under the influence of St. Thomas and lectured on the Summa until his death in 1514.[29] Among his students at Paris during this period was the Spanish Dominican, Francisco de Vitoria (1483-1546).[30] In 1526 Vitoria was to become professor of theology at Salamanca University[31] where he immediately replaced the Sentences of Lombard with the Summa of Aquinas.

A number of factors made the work of Vitoria important for the spread of Thomistic thought and the evolution of the new discipline

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28. Cf. R. Couture: op.cit., p.67, note 21; also P. Feret: La faculté de théologie de Paris et ses docteurs les plus célèbres, II, pp.92-96. The relationship between Nominalism and scholasticism, especially the thought of Aquinas, was not one of rivalry in the early period. When Crockaert became a Thomist Joannes Major still viewed him as one of his best followers. W. Ong suggests that much of the Nominalist thought was to be found in the arts faculty which was controlled by secular masters. The religious orders concentrated their attention in the field of theology. (Cf. W.J. Ong S.J.: Ramus: Method and the Decay of Dialogue, p.147).

29. For a study of the state of theology at the University of Paris at this time see R. Villoslada: La Universitad de Paris durante los estudios de Francisco de Vitoria.

30. Cf. V. Beltrán de Heredia: "Vitoria", D.T.C., XV.2, cols. 3117-3144; : Francisco de Vitoria.
C.H. McKenna: "Vitoria, Francisco de", N.C.E., XIV, pp.727-728. Also, R. Couture: op.cit., pp.64-67; P. Feret: op.cit., II, pp.269-273; J. Giacon: La seconda scolastica, I, pp.218-220.

31. Cf. M.B. Murphy: "Salamanca, University of", N.C.E., XII, pp. 977-980.

of moral theology. Vitoria belonged to the convent of St. Stephen in Salamanca.[32] His teaching reached a large number of Dominican students who were to return to their own countries and continue his work. Among his students were a number of outstanding scholastic thinkers, for example Melchior Cano, Bartolomeo de Medina and Domingo Bañez to name but a few. A number of these followed Vitoria in the chair of theology at Salamanca.

The use of a common text in the Summa as well as the introduction of dictation as a classroom method[33] insured a systematic and detailed study of the text and the spread of a professor's teaching.[34] This was an important means of disseminating the new theology prior to the printed book[35] at a time when orthodox teaching was highly valued.

We have spent some time on the Thomistic renewal in 16th century Spain for three reasons. First, there is in the concern of the scholastics for the secunda pars of the Summa of Aquinas the roots of later practical concerns in Roman Catholic moral theology. Secondly, the Salamancan theologians' preference for practical issues was fostered by the Nominalist spirit and philosophy which pervaded their thinking as well as their reading of the Summa. This explains partially the emphasis on law and conscience we note in the literature

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32. Cf. V. Beltrán de Heredia: "El convento de San Esteban en sus relaciones con la Iglesia y la Universitad de Salamanca durante los siglas XIII, XIV, y XV", Ciencia Tomista, 84 (1957) 95-116.

33. Cf. R. Villoslada: op.cit., pp.308-319.

34. Much of the extant commentary on the Summa by Vitoria came from student notes (reportata, reportationes). Cf. V. Beltrán de Heredia: Los manuscritos del Maestro Fray Francisco de Vitoria.

35. At one time the use of dictation in the faculty of Paris was forbidden (e.g. by Urban V in 1366) because of the abuses that developed in the Middle Ages. The use of reportata prepared the way for a casuistry heavily dependent on authorities or recognized opinions.

of the 17th century. Finally, it was a time with new problems and new horizons that stretched the decadent philosophy and theology of the late Middle Ages to breaking point. What resulted was a developing moral discipline cast adrift from its scriptural and theological moorings and blown about by post-Reformation concerns.

The spread of moral theology in the 17th century may be attributed to two influences. The first was the spread of the Summa as a classroom text to Rome and Louvain by Jesuit moralists. Francis Toletus S.J. (1533-1596),[36] a pupil of Domingo de Soto O.P. at Salamanca, later introduced the Summa to the Collegio Romano in Rome. In 1590 another Jesuit, Leonard Lessius (1554-1623),[37] instituted St. Thomas's writings as the basic text in the Jesuit academy at Louvain.[38]

The second important influence derives from the Council of Trent and the work of the Society of Jesus in the post-Tridentine Church. One of Trent's more significant reforms concerned the institution of seminaries for the preparation of qualified clergy. These spread quickly throughout Europe in the late 16th and early 17th centuries.[39]

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36. Cf. F. Cereceda: "Tolet (Toledo)", D.T.C., XV.1, cols.1223-1225; A. Segovia: "Toledo", L.Th.K., X, cols. 237-238.

37. Cf. "Lessius", O.D.C.C., pp.817-818; R. Baumer: "Lessius", L.Th.K., VI, cols.981-982; P. Bernard: "Lessius ou Leys (Leonard)", D.T.C., IX.1, cols.453-454; C. Meyer: "Lessius Leonard", N.C.E., VIII, p.678.

38. Cf. R. Martin: "L'introduction officielle de la Somme de Saint Thomas à l'ancienne Université de Louvain", Revue Thomiste, 18 (1910) 230-239.
E. Van Eijl O.F.M.: "Louvain's Faculty of Theology during the Fifteenth and Sixteenth Centuries", Louvain Studies, 5 (1974-75) 219-233.

39. Cf. J. Delumeau: op.cit., pp.31-34.

Ignatius Loyola established the Collegio Romano in Rome in 1556. From 1586 it came to be known as the Gregorian University. In the early years of its existence a number of outstanding moralists taught there.[40] The ratio studiorum of the Jesuit order directed that students receive training in moral theology to equip them for their pastoral ministry.[41] At the Collegio Romano a two year course concentrating on cases of conscience was developed in answer to this instruction.[42] The notes developed for this course and others in moral theology were printed as Institutiones Morales. These were the forerunners of the manuals of moral theology which became the standard genre up until this century.

During the 17th century the centre of attention, from the point of view of moral theology, is the French Church. It is the influence of Jansenism[43] and the subsequent conflict with the Jesuits that concern us most especially here.

Jansenism originated to the north in what is now Belgium. Baius (1513-1589)[44] developed a new theological method. He neglected the

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40. E.g. Toletus, Suarez (1580-1585) and Vazquez (1585-1591).

41. For the influence of the ratio studiorum of the Society of Jesus on the developing discipline of moral theology see J. Theiner: Die Entwicklung der Moraltheologie zur eigenständigen Disziplin.

42. Cf. R. Villoslada S.J.: Storia del Collegio Romano dal suo inizio (1551) alla soppressione della Compagnia di Gesù (1773).

43. Cf. "Jansen", "Jansenism", O.D.C.C., pp.726-727.
N.J. Abercrombie: The Origins of Jansenism
J. Carreyre: "Jansénisme", D.T.C., VII.1, cols. 318-529.
: Le jansénisme durant la Régence (3 vols.).
L.J. Cognet: "Jansenism", N.C.E., VII, pp.820-824.
A. Gazier: Histoire générale du mouvement janséniste depuis les origines jusqu'à nos jours. (2 vols.).
J. Orcibal: Les origines du jansénisme. (5 vols.).
: Saint-Cyran et le jansénisme
L. Willaert: "Jansenismus", L.Th.K., V. cols.865-869.

44. Cf. P.J. Donnelly: "Baius and Baianism", N.C.E., II, pp.19-21.

teaching on original sin and justification as developed by the great medieval scholastics and later by the Council of Trent. He concentrated rather on the teaching of Scripture as it was interpreted in the anti-Pelagian writings of Augustine. Here we have the seeds of later conflicts at Louvain, the Sorbonne and Rome during the 17th century.[45]

The approach of Baius was given definitive shape in the Augustinus, a large work published by Cornelius Jansen (1585-1638) in the year of his death.[46] The book was quickly attacked as having revived the condemned teachings of Baius, especially the teaching which appeared to have removed all reality from free will and suggested that Christ died only for the elect. The subsequent history of Jansenism in 17th and 18th century France is one of dispute, condemnation, evasion and further condemnation.[47]

What interests us here is Jansenism as a type of piety and as a theological movement. As a particular type of piety Jansenism was extremely rigorous and weighted its followers down with fear of damnation. Human nature was viewed as corrupt and conditioned by concupiscence. Sacramental absolution did not remit sin but simply declared sins as having been forgiven. This was only possible if the penitent loved God perfectly. Communion was to be received only when the recipient had acquired a certain degree of perfection

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45. The teaching of Baius was condemned by Rome in 1580. Cf. P. Donnelly: op.cit., p.19.

46. Cf. L.J. Cognet: "Jansen, Cornelius Otto (Jansenius)", N.C.E., VII, pp.818-819; L. Willaert: "Jansenius", L.Th.K., V, col.869.

47. The Augustinus was first condemned by the Inquisition in 1641, and by a bull of Urban VIII in 1643. This later document was so general in its wording that the controversy continued.

in his dispositions.[48]

The rigorous moralism of the Jansenists divorced flesh and spirit and so rejected the theological synthesis of the medieval scholastics. The influence of Augustine and the Nominalist Weltanschauung pervaded their theology. Jansenist thinkers rejected violently the casuistry of the Jesuits.[49] since this gave great importance to human freedom in the moral life. They accused the Jesuit moralists of a moral laxity contrary to the gospel.[50]

The influence of Aquinas is most evident in the moral teaching of the 17th century Jesuits when they emphasized the role of freedom in the moral life.[51] Their casuistry[52] presents an optimistic view of man in line with the Tridentine teaching on justification. It would seem that the voluntarism of the Nominalist school was present in germ particularly in the writings of Suarez on conscience, law and voluntary acts. We will illustrate this aspect of Jesuit teaching in the next section of this chapter. As

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48. Cf. B. Matteucci: "Jansenistic Piety", N.C.E., VII, pp.824-826.

49. A. Arnauld and F. Hallier in their Théologie morale des jésuites (1643) and B. Pascal in his Provincial Letters were leading opponents of the Jesuit moral teaching.

50. Cf. E. Amann: "Laxisme", D.T.C., IX.1, cols.37-86.
F.J. Connell: "Laxism", N.C.E., VIII, p.573.
M. Petrocchi: "Lassismo", E.C., VII, cols.928-930.
: Il problema del lassismo nel secolo XVII
G. Römer: "Laxismus", L.Th.K., VI, col.843.

51. Cf. J. de Blic: "La théologie morale dans la Compagnie de Jésus", D.T.C., VIII, cols.1069-1092.
U. Lopez S.J.: "Il metodo e la dottrina morale nei classici della Compagnia de Gesù", La Compagnia di Gesù e le scienze sacre, pp.82-113.

52. Cf. F. Böckle: "Kasuistik", L.Th.K., VI, cols.18-20.
R. Brouillard S.J.: "Une jugement récent sur la casuistique et les casuistiques", N.R.T., 52 (1925) 65-74.
E. Dublanchy: "Casuistique", D.T.C., II.2, cols.1859-1877.
E. Hamel: "Casuistry", N.C.E., III, pp.195-197.
: "Valeur et limites de la casuistique", Sciences ecclésiastiques, 11 (1959) 147-173.
J. Tarocchi: "Casistica", E.C., III, cols.981-983.

the role of conscience in the moral life came to the fore moral theology attempted to develop criteria for assuring certainty of conscience. Moral systems were developed to facilitate this task.[53]

Finally one other group that was heir to the Salamancan scholastics contributed substantially to 17th and 18th century Catholic moral theology. A number of Carmelite friars engaged in teaching at Salamanca published two sets of manuals during the period 1631-1724. The Salmanticenses,[54] as they are now called, published during the seventy years after 1631 their multi-volume Cursus theologicus Summam d. Thomae complectens.[55] Between 1665 and 1724 the six volumes of the Cursus Salmanticensis Theologiae Moralis were also published. The latter work studied matters not considered in the Cursus theologicus. Its express aim was to prepare students for the ministry of the confessional. It did not attain the high standard of scholarship of the earlier work and at times can be criticised for adopting unduly lax positions. "Despite these limitations, however, it remains a landmark in the history of Catholic moral theology."[56]

This very schematic discussion of the evolving discipline of moral theology in the Roman Catholic Church during the two centuries between 1500-1700 provides us with sufficient background to appreciate

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53. Cf. F.J. Connell: "Morality, Systems of", N.C.E., IX, pp.1131-1134. We will discuss briefly such theories as probabilism, probabiliorism and equiprobabilism at the beginning of the next chapter.

54. Cf. "Salmanticenses", O.D.C.C., p.1229; R. Couture: "Salmanticenses", N.C.E., XII, pp.987-988; F. Deman: "Salamanque (Theologiens de)", D.T.C., XIV.1, cols.1017-1031; O. Merl O.C.D.: Theologia Salamanticensis.

55. Published anonymously, the identity of the authors of the different volumes is now well established. The Cursus presupposed a course of Thomistic philosophy written at the Carmelite college of Alcalá de Henares. This work is known as the Complutenses.

56. R. Couture: op.cit., p.988.

the developments we will now study regarding the human act and the P.D.E. The wider historical canvas with its many complex factors is an essential element in appreciating the extension of the voluntarium indirectum to cover a greater number of moral cases and explains how the P.D.E. gradually occupied a position in later general treatises on the human act.

II THE HUMAN ACT

In our analysis of St. Thomas's teaching on the moral act in the previous chapter it is clear that the great Dominican scholar, with help from Aristotle, attempted to maintain the internal dimension of the human act in tension with its external aspect (i.e. the performance). For him it is the virtuous man judging, willing and acting who performs the good deed. The balance Aquinas brought to the study of the human act was gradually lost in later centuries particularly as a result of Nominalist epistemology and increasing emphasis on the role of the will in the understanding of the moral act.[1]

Once the link between man's life and being was severed from the

1. G. de Lagarde notes correctly: "La discontinuité de l'humain est une des conclusions fondamentales de la psychologie ockhamiste, et cette psychologie nous conduit directement à une morale ou les actes seuls seront pris en considération, à une sociologie ou les droits et libertés des individus seront les éléments fondamentaux de l'ordre juridique et social." La naissance de l'esprit laïque au déclin du Moyen Age, VI, p.47. As a result of Nominalism "the principles of personal freedom and private judgment were being introduced as the guiding principles of moral living." C. Williams: "Conscience. 3 In Theology", N.C.E., IV, p.201.

divine law as understood in the High Middle Ages it was only a matter of time before moralists concentrated on responsibility for actions and their effects. Historically, this process began with Bartolomeo de Medina's[2] exposition of the S.T., I-II, q.19, a.5 and a.6.[3] In a lengthy commentary on these two articles the Spanish Thomist developed his understanding of conscience.[4] For this he is considered the father of probabilism.[5] Out of this concern with conscience there developed, during the 17th century, a great number of juridico-moral treatises which discussed in detail questions of law, rights and justice.[6]

> This reversal of values gave rise to a strange paradox seldom pointed out, but one that should, on no account, be missed or overlooked. On the one side, the ultimate rule of morality became something completely subjective. The all-important condition for good moral action was no longer correspondence with objective reality and the law of God, author of that reality, but rather the subjective good faith or good intention of the individual, whether his

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2. Cf. "Medina", O.D.C.C., p.898; A. D'Amato: "Medina, Bartolomeo", E.C., VIII, cols.598-599; E. Filthaut: "Medina", L.Th.K., VII, col .233; M. Gorce: "Medina (Barthélemy de)", D.T.C., X.1, cols.481-485.

3. Expositio in Primam Secundae Angelici Doctoris D. Thomae Aquinatis.

4. Cf. Th. Deman: "Probabilisme", D.T.C., XIII.1, cols.464-470 for a detailed outline of Medina's thought.

5. Probabilism is "the moral system according to which in a doubt of conscience about the morality of a particular course of conduct, a person may lawfully follow the opinion for liberty, provided it is truly probable, even though the opinion for law is definitely more probable." F.J. Connell: "Probabilism", N.C.E., XI, p.814. See also: "Probabilism", O.D.C.C., pp.1127-1128; J. De Blic: "Probabilisme(Historique)", Dict. Apol. IV, cols.311-340; Th. Deman: "Probabilisme", D.T.C., XIII.1, cols.417-619; A.M. Mruk: "Probabilismus, Probabiliorismus", L.Th.K., VIII, cols.777-778; A.V. Rovighi: "Probabilismo", E.C., X, cols.57-61; A. Vermeersch S.J.: "Probabilisme (partie doctrinale)", Dict. Apol., IV, cols.340-361.

6. Cf. the tract De Justitia et Jure written by Suarez, Lessius, Gregory of Valencia, Tolétus and Vazquez.

> moral judgment was objectively right or wrong, true or false. Provided the intention is good, whether the judgment is right or wrong, it is equally the voice of God for the person acting. This is the direct antithesis of traditional moral teaching in the Western Church (cf.... S.T., I-II, 19, 5.6). On the other hand, concrete human activity became completely mechanized and impersonalized through the mechanization of the judgment of conscience, which came to mean nothing more and nothing better than weighing opinions that the individual does not share personally and does not even live existentially. Thus all sense of the real meaning of creative activity (cf. S.T., I-II, 5,7; 6 prol.; In II Sent. 34,1,3)... is completely lost. (7)

In this paragraph Williams has characterized succinctly the paradox that pervades much of the moral literature during the two hundred years we are considering in this chapter.

Reference has already been made to the great number of commentaries on the Summa of Aquinas during the 16th century.[8] As we have already considered the essential elements of St. Thomas's teaching on the human act in chapter one there is little to be gained here, in a detailed analysis of later commentaries. Even if the commentator should have strayed from Aquinas's thought on a particular point the general structure and approach to the human act remained. In this chapter we will consider authors who developed aspects of the Thomistic analysis of the human act in a way that contributed to the development of the P.D.E. and the direct-indirect distinction.[9]

Along with the commentaries on the Summa in the early 16th century

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7. C. Williams: op.cit., p.201.

8. For a detailed survey of commentaries on the Summa Theologica see A. Michelitsch: "De commentariis in Summam Theologiae S. Thomae Aquinatis", Xenia Thomistica, (ed.) S. Szabo O.P., III, pp.449-458.

9. The following authors will concern us: Cajetan, Vitoria, Medina, Suarez, Vazquez, Lessius, Sanchez, John of St. Thomas and the Salmanticenses.

we find a number of moral theology texts of the older school. The Summa Sylvestrina composed by Sylvester Prierias (1460-1523) was organized in the fashion of an encyclopedia with practical cases arranged in alphabetical order.[10] Another equally influential work was the Manuale confessariorum et poenitentium of Navarrus.[11] The text is based on the decalogue and in the sixth of the praeludia introducing the work he discusses the human act in general:

> Definitur autem actus humanus sive moralis, esse actus hominis transitorius et voluntarius perfecte ac simpliciter, vel omissio eius. (12)

In his moral assessment of the human act Navarrus gave greatest weight to the object of the act. He discussed a number of cases that we will discuss in some detail in section IV of this chapter. However since many of the developments we will next discuss regarding the human act arose out of particular cases it will be helpful to indicate briefly the issues that primarily concerned Navarrus.

(a) Abortion: Azpilcueta condemned abortion[13] but permitted medicine being given to a pregnant woman even though there is danger she will abort.[14]

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10. Cf. A. D'Amato: "Mazzolini, Silvestro (Prierias)", E.C., VIII, cols.537-538; M.-M. Gorce: "Mazolini Silvestre, Silvestre Prierias", D.T.C., X.1, cols.474-477; F.C. Lehner: "Mazzolini, Sylvester" N.C.E., IX, pp.524-525.

11. Cf. J. Bellamy: "Aspilcueta, Martin", D.T.C., I, col.2119; A. Lambert: "Azpilcueta", D.H.G.E., V, cols.1368-1374; U. Mosiek: "Azpilcueta, Martin de", L.Th.K., I, col.1160; L. Simeone: "Martino de Azpilcueta (Navarrus)", E.C., VIII, cols.219-220.

12. Manuale confessariorum et poenitentium, praeludium, VI, nn.1-3.

13. Navarrus: op.cit., cap.XV: Qui peccant contra V praeceptum, n.14: "peccat mulier gravida, quae procurat aborsum, sumendo pharmaca in eum finem confecta, vel nimio labore corpus defatigando, vel quocumque alio modo...."

14. Navarrus: op.cit., cap.XXV: De peccatis medici et chirurgi, n.72: "... peccat qui praegnanti praebet aliquid, quo abortiat, etiam si praebeat ut eam a morte servet, si credit vel dubitat fetum esse animatum; sed si probabiliter credit non esse anima rationali animatum, in quo investigando debet diligentiam maximam adhibere, licite poterit illud praebere, quo vitam matris servet."

(b) Pollution:[15] This is a sinful deed if deliberately procured. If it was not deliberately begun it may still be sinful if the person can and ought to hinder sexual arousal but does not do so.[16]

(c) Scandal:[17] Navarrus applied the same criteria here as he did in the case of pollution.

It is in the context of practical cases such as these that I wish to indicate four aspects of the moral teaching on the human act during the 16th and 17th centuries that are significant for what we will study in the second half of this chapter.

1. The first aspect we ought to consider concerns the difficulty many moralists had in maintaining a balanced understanding of the human act. The synthesis in the tradition between the actus interior and the external act was placed under great pressure by the objectivist thinking of a man like Gabriel Vazquez S.J. (1549-1604).[18]

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15. Pollution is considered a vice contrary to nature and a species luxuriae (cf. S.T., II-II, q.154, a.11) in the tradition. It is sinful because an "indebitus venereorum usus contra ordinem naturae" (Salmanticenses Morales, t.III, tract. XXVI, cap.VII, punct. 1,1). Pollution is grouped with bestiality, sodomy and unnatural intercourse among the vices contrary to nature. The term pollutio in the moral texts may be used formally to describe the sin of unlawful sexual pleasure or it may be used materially to indicate seminal or vaginal emission. It denotes acts wider than the term masturbation which may be defined as "self-stimulation to orgasm" (P.S. Keane S.S.: Sexual Morality: A Catholic Perspective, p.59).

16. Cf. Navarrus: op.cit., cap. XVI: De VI praecepto: non moechaberis, nn.6-8.

17. Cf. Navarrus: op.cit., cap. XIV: Qui peccant contra IV praeceptum, nn.30-44. In the case of pollution and scandal Navarrus applies the following principle: "il y a péché quand je dois et quand je suis dans la possibilité d'éviter l'acte principal, d'où peut provenir la pollution ou la péché d'autrui." (J. Ghoos: "L'acte a double effet. Etude de théologie positive" E.T.L., 27 (1951) 34. Henceforth referred to as Article). In section IV below we will observe how the moralists of 16th and 17th centuries used obligation and ability (or capacity) as criteria for assessing the morality of acts and omissions that result in evil effects.

18. Cf. "Vazquez", O.D.C.C., p.1430; J.M. Dalmau: "Vazquez, Gabriel", N.C.E., XIV, pp.581-582; J. Hellin: "Vazquez on Vasquez, Gabriel", D.T.C., XV.2, cols. 2601-2610; K. Reinhardt: "Vazquez", L.Th.K., X, cols.645-

His thinking was modified by Thomas Sanchez S.J. (1550-1610)[19] and completely rejected by John of St. Thomas O.P. (1589-1614).[20]

Vazquez's understanding of indirectly willed effects[21] was developed from his more fundamental concept of sin.[22] The formal cause of sinfulness is the disproportion that exists between an act and man's rational nature[23] which is the norm of human moral life. Vazquez accepts that certain acts are contrary to man's

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Footnote 18 (continued)..
647; C. Testore: "Vázquez, Gabriel", E.C., XII, col.1146. The two works that will concern us here are Vazquez's Opúscula Moralia and his Commentaria ac Disputationes in 1^m2^{ae} partem D. Thomae.

19. Cf. "Sanchez", O.D.C.C., pp.1232-1233; R. Brouillard: "Sanchez", D.T.C., XIV.1, cols.1075-1085; R. Hofmann: "Sánchez", L.Th.K., IX, col.307; C. Testore: "Sánchez, Tomás", E.C., X, col.1749. The two works that concern us are Sanchez's Opus morale in praecepta decalogi and his De. S. Matrimonii Sacramento disputationum tomi tres.

20. Cf. "John of St. Thomas", O.D.C.C., p.754; A. D'Amato: "Giovanni di San Tommaso", E.C., VI, cols.607-608; A. Hoffmann: "Johannes a S. Thoma", L.Th.K., V, cols.1078-1079; J. M. Ramirez: "Jean de Saint-Thomas", D.T.C., VIII.1, cols.803-808. The Cursus theologicus in Summan Theologicam D. Thomae will concern us in this thesis.

21. There is an obligation, according to Vazquez, to avoid indirectly willed evil effects: (a) if the effect is intrinsically evil in itself, it is always to be avoided, even indirectly. (cf. J. Vazquez: Commentaria ac Disputationes in 1^m2^{ae}, disp.73, c.5, n.18; disp.90, c.3, n.6; disp.73, c.7, n.31; disp.97, c.2, nn.5-6; disp. 101, c.5, n.16). (b) if the effect is not evil in itself there is no obligation to avoid it. (cf. G. Vazquez: op.cit., disp.24, c.3, n.9; disp.73, c.7, n.32; disp.101, c.6, n.19).

22. G. Vazquez: op.cit., dis.101, c.5, n.15: "Observandum est in peccato duo esse, ut disp.95, c.8 dictum est, et rationem formalem illius, quae est relatio illa inconvenientiae cum natura rationali; et fundamentum hujus relationis, quod nihil est aliud, quam actus ipse cum talibus circumstantiis libere factus."

23. G. Vazquez: op.cit., disp.95, c.9, n.40: "Vera igitur sententia est, rationem formalem peccati positam esse in relatione quadam extrinseca, et respectu oppositionis humanae operationis cum natura rationali ut rationalis est."

rational nature (e.g. murder and adultery). There are other acts, however, which are not contrary to nature, that is they are natural to man (e.g. pollution).[24] These become sinful when they are freely chosen by the will. Freedom is the "condition" for achieving moral activity. For our author it is never an essential element. Acts such as adultery and murder are morally evil prior to any consideration of the agent's intention. These acts willed even indirectly are sinful.[25] But in the case of acts such as pollution, if such a pollution should only be indirectly willed it is not sinful. This is so because Vazquez has stipulated that sinfulness only occurs when the will directly intends and formally causes the evil.[26] In addition, since an act such as pollution is not intrinsically evil, there is no serious obligation on an agent to avoid such effects especially if they are only indirectly intended.[27]

Present in Vazquez's objectivist appreciation of human activity is an a priori division of acts into acts "contrary to nature", all of which are intrinsically evil and hence may never be legitimately intended. The norms proscribing such acts impose a serious obligation on the Christian conscience. Acts which are "according to nature" may become sinful because of evil intention. The dichotomy between the will and man's physical processes is most clearly illustrated here. Vazquez accepts that the individual moral agent is not responsible

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24. Vazquez does not distinguish clearly his use of "nature". In speaking of murder and adultery he uses "nature" in the sense of natural moral law whereas in his discussion of pollution "nature" refers to the physical and biological processes of the human person.

25. Cf. G. Vazquez: op.cit., disp.73, c.7, n.31; c.9, n.43.

26. Cf. G. Vazquez: op.cit., disp.101, c.6, nn.19-20.

27. Cf. G. Vazquez: op.cit., disp.24, c.3, n.9; disp.115, c.3; see also J. Ghocs: Article, p.40.

for the physical forces that are part of his human make-up.[28] He is not responsible for the effects of these natural forces because they are not bad in themselves nor are they able to be stopped by the moral agent.[29] Man's responsibility in the moral life lies solely in whether or not he freely sets such physical processes in motion.

The division of human acts made by Vazquez caused him difficulties when faced with acts with double effects. He proposed two cases:

(a) May a person escape by horse if it is foreseen that someone standing on the narrow exit road will, of necessity, be trampled under foot?

(b) May a pregnant woman be bled for health reasons even though it brings the possibility of an abortion?

Vazquez rejects the position of an earlier authority, Anthony of Corduba, that the deaths which follow in both cases are not necessarily the result of the good intended.[30] Because of his prior opinion on human acts, the deaths that result are intrinsically evil and so prohibited. In spite of his strict position Vazquez does acknowledge in passing the difficulty of his position when he mentions a case where common sense would appear to contradict his answer to case (b) above. If a pregnant woman sees a bull running at her she can flee even though there is danger of abortion. His reason for accepting the legitimacy of escape here is interesting given later formulations of

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28. Vazquez's approach to physical forces is very much influenced by his analysis of sensualitas. He argues that the mind must first advert to the first movements of sensualitas before the agent can become morally responsible. (Cf. R. Couture: L'imputabilité morale des premiers mouvements de sensualité, pp.117-122).

29. Cf. G. Vazquez: op.cit., disp.94, c.3, nn.13-14.

30. Anthony of Corduba was, according to Vazquez, the only theologian at that time permitting indirect abortion. See his Opuscula moralia, c.2, dub.7, n.28.

the P.D.E.:

> fuga matris natura sua sit in protectionem utriusque; et non tantum unius, sed aeque utriusque. (31)

So far we have indicated Vazquez's particular understanding of the human act, its implication in particular cases and the difficulties even he himself had with it when confronted with acts having good and evil effects.

Thomas Sanchez pondered the same cases as his colleague and in his solutions modified Vazquez's position. A pollution that occurs accidentally and unintentionally from an act which is useful and necessary, is for Vazquez not sinful. But, argued Sanchez, could not the same type of reasoning be applied in the case of an abortion that occurs indirectly.[32] In so arguing Sanchez implicitly rejected the double classification of acts used by Vazquez and moves in the direction when acts will be evaluated morally not only in terms of their object but also in terms of the agent's intention and the morally relevant circumstances.[33]

It is with the writings of John of St. Thomas that we return to a more balanced understanding of the human act. John explicitly rejected Vazquez's approach and argued that the morality of a human act is to be found formally in the free act.[34] This is not to be found

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31. Opuscula moralia, c.2, dub.7, n.27. This does not apply in the case of a bleeding for health reasons. Vazquez does, however, admit the probability of Anthony of Corduba's opinion permitting indirect abortion.

32. T. Sanchez: De S. Matrimonii Sacramento, lib.9, disp.20, n.14: "....quia pollutio tam intrinsece mala est ac foetus animati peremptio, illa tamen quamvis procurare nunquam liceat, fas est permittere, dando operam rei licitae et necessariae, ex qua per accidens et praeter intentionem sequitur: ergo in eodem casu licebit et hanc permittere."

33. Cf. J. Ghoos: De Daad met Dubbel Gevolg. Ontstaan en Evolutie van de Principes (1575-1630), (henceforth Thesis), p.160.

34. Cf. John of St. Thomas: Cursus theologicus, Vol.6: De bonitate et malitia actuum humanorum, disp.11, a.5, n.5.

exclusively in either the object or the intention but in the combination of both these elements which together constitute the free act.[35] Every free act is composed of two elements: (a) an internal act (or intention)[36] and (b) an external act (or election).[37] The intention morally qualifies the action (the internal dimension). The object (the external aspect) specifies the intention.[38]

While John of St. Thomas attempted to present the teaching of Aquinas to the world of his day we must note that the division between the subjective and objective spheres in the understanding of the moral act during the 16th and 17th centuries pervaded his approach to his mentor. He succeeded better than others in keeping the two aspects of moral life in harmony. In this he clearly differs from the sharp division Vazquez found necessary to inject into his understanding of the human act. These three moralists sufficiently indicate the range of positions current during the period under consideration. They also give some specific instances of the voluntarist spirit of the age that we have discussed already in section I.

2. The dilemma that Vazquez faced regarding indirect abortion as a result of his concept of moral acts caused a number of scholars

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35. Cf. John of St. Thomas: op.cit., disp.11, a.2, nn.9-10; disp.11, a.5, n.1.

36. "actus interior sit intentio, quae est circa finem, et inde derivetur ad actum exteriorem seu imperatum, qui est electio..." (op.cit., disp.11, a.3, n.1).

37. Cf. John of St. Thomas: op.cit., disp.11, a.1, n.3.

38. Cf. John of St. Thomas: op.cit., disp.11, a.1, nn.13-14. disp.11, a.5, nn.25, 27.

to investigate the issue of causes in an effort to explain satisfactorily why certain indirectly willed effects were not morally culpable.

It is to Thomas Sanchez that we must turn for an early explanation of causes and effects that are per se or per accidens. Let us return to a case which, by now, is becoming familiar. Sanchez inquires about an agent's responsibility for a foreseen but unintended pollution that follows on the performance of a particular act.[39] According to our author the pollution may occur either (a) from an act performed in the fulfilment of one's office or from an act that may not be omitted without harm, or (b) from an act which is neither useful nor necessary. If the pollution results from an act in group (a), the pollution is only willed in its cause and so gets its moral value from the cause itself.[40]

In the case of acts which are neither useful nor necessary in themselves from which a pollution follows Sanchez distinguished acts which are causae per se of the pollution from deeds which are only causae per accidens of the same effect.[41] If the act placed is a causa per se of pollution then to place the act would be mortally sinful according to our author.[42] If, however, the act placed is only an accidental cause of the pollution there would only be venial sinfulness.[43] The development of a better understanding of the causal

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39. Cf. T. Sanchez: De S. Matrimonii Sacramento, lib.9, disp.45.

40. Cf. T. Sanchez: op.cit., lib.9, disp.45, nn.3-4.

41. Cf. T. Sanchez: op.cit., lib.9, disp.45, n.13.

42. Sanchez argued that it is natural law which prohibits every freely willed seminal emission outside of marriage as well as acts conducive to it. (op.cit., lib.9, disp.45, n.15).

43. Cf. T. Sanchez: op.cit., lib.9, disp.45, n.21.

structure of foreseen unintended effects is seen in Sanchez's analysis of abortion. In the case of medicine given that could effect an abortion Sanchez employed the same distinction we have seen him use in the case of pollution. If the medicine is a per se cause of the foetus's death it is unlawful, if however its primary effect is curative and only per accidens brings about the foetus's death then such procedures are lawful. This use of the per se - per accidens distinction and its application to the causal structure of the act must be seen as complementing his more general approach to the moral act referred to earlier.

John of St. Thomas employed the same distinction when he studied S.T., II-II, q.64, a.7. His explanation runs as follows: the will to defend oneself against an aggressor is a morally good intention (his "internal act") whereas the assailant's death is an evil (the "external act"). The death here is a consequence of the agent's good intention and is not directly caused by the internal act.[44] John argued from this that when an internal act causes an external act which has an evil consequence, the moral value of both internal and external act are not vitiated by the evil provided it follows only per accidens.[45]

We also find in the Cursus theologicus of the Salamanca Carmelites a detailed study of per se and per accidens causes[46] as applied to the question of sexual pleasure. They do not appear to have added

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44. Cf. John of St. Thomas: op.cit., disp.11, a.3, nn.7, 10.

45. Cf. John of St. Thomas: op.cit., disp.11, a.3, n.15.

46. Cf. Cursus theologicus, t.7, tr.13, disp.10, dub.6, nn.211-213.

anything substantial to what has been outlined above. It is worth noting, however, that Joseph Mangan whom we mentioned in the last chapter, considers this text as an expression of the P.D.E. It is a significant text, he argues, since

> the authors who come after the Salmanticenses began discussing the principle more and more in their sections of general moral theology, and then in their sections of particular moral problems they referred back to the more general treatment. (47)

It would seem that the concern with per se and per accidens causes and effects as they are understood to apply in acts with twofold effects contributed considerably to a better appreciation of man's responsibility for the foreseen unintended evil effects of his acts. We have discussed these effects in section III of the first chapter in so far as they apply to St. Thomas's treatment of killing in self-defence. Where theologians such as Sanchez, John of St. Thomas and the Salmanticenses differ from Aquinas is in their ultimate concern for per se and per accidens effects. St. Thomas discussed causes to clarify his descriptive understanding of the moral act whereas the 16th and 17th century moralists used the distinction to clarify the scope and limits of moral responsibility - especially the degree of sinfulness involved. This basic shift of emphasis will be developed in the next section of this chapter in the light of the Roman law axiom permitting the use of force to repel force.

3. The influence of Nominalist voluntarism is particularly obvious when we turn our attention to the third aspect of the human act that merits consideration during this period. The question pondered by a

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47. J. Mangan: op.cit., p.56.

number of theologians follows on from the distinction between *per se* and *per accidens* effects. On what grounds may it be claimed that *per accidens* effects are voluntary?[48]

Basic to any understanding of Francisco Suarez's answer to this question is the notion he had of law. He rejects St. Thomas's concept of human law as an *ordinatio rationis*[49] and prefers a more voluntarist notion:[50]

> actus voluntatis justae et rectae quo superior vult inferiorem obligare ad hoc vel illud. (51)

When Suarez comes to treat of *per accidens* effects he does so in the context of his understanding of the *voluntarium in alio*.[52] Suarez distinguished two types of effects which are voluntary *in alio*:

(a) the effect follows from the nature of the act itself,[53] e.g. if I set fire to a house the destruction of the property and any loss of life is for Suarez a *voluntarium in alio*;

(b) the effect flows from a cause independently of, or even contrary to the agent's intention, when he places the cause, e.g. if I give alms to someone and know that he will do evil with what he has received then the evil is also *voluntarium*

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48. Cf. H. Kramer: *The Indirect Voluntary or Voluntarium in Causa*, pp.17-22.

49. Cf. *S.T.*, I-II, q.90.

50. Cf. R. Brouillard: "Suarez", *D.T.C.*, XIV, cols.2696ff. See also M.B. Crowe: *The Changing Profile of the Natural Law*, pp.216-220 for an outline of Suarez's approach to law.

51. Cf. F. Suarez: *De legibus*, lib.1, c.5, n.24, quoted by Brouillard *op.cit.*, col.2696.

52. F. Suarez: *Opera Omnia*, IV: De voluntario et libero, disp.1, sect.4, n.4: "....voluntarium in alio, non solum non est involuntarium sed est vere ac positive voluntarium, non quidem per actum qui immediate ad ipsum terminetur, in hoc enim distinguitur a voluntario in se, sed per actum qui terminatur immediate ad illud, in quo virtualiter seu moraliter contineri censetur id quod dicitur voluntarium in alio, ut cum quis vult comedere cibum suae saluti contrarium, aegritudo inde contracta dicetur voluntaria non in se, sed in alio, id est in appetitu cibi."

53. Cf. J. Ghoos: *Thesis*, p.67, note 1.

in alio.[54]

Turning our attention to this second sort of per accidens evil effect we must note that for Suarez two conditions must be fulfilled if such effects are to be voluntary.

(a) the effects must be linked in some way

(b) there must be an obligation incumbent on the agent to avoid the evil effect.[55]

In applying these criteria to the case of alms-giving it is clear that the cause and effect are not physically connected since the evil effect depends on the ill will of a second person, in this instance the recipient of the alms. A precept of divine or human law proscribing the evil is sufficient for Suarez to constitute a moral union between cause and evil effect. Suarez himself proposed the objection that a precept, being something extrinsic to the will, cannot make that voluntary which is not in itself voluntary, but can only make that illicit which is first of all voluntary. Although the precept is something extrinsic, he answers, nevertheless it produces a change in the act as a whole in that it creates a moral union between the cause and effect where there was no union before.[56]

What is notable in Suarez's attempt to explain the voluntary dimension of per accidens effects is the role he has given to law in determining the moral dimensions of such effects. "Suarez did not merely require that the effect be forbidden, but that the act be forbidden because of the effect, in order that the effect per accidens be voluntary."[57]

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54. Cf. F. Suarez: op.cit., disp.1, sect.4, n.8.

55. Cf. F. Suarez: op.cit., disp.1, sect.4, nn.6-7.

56. Cf. F. Suarez: op.cit., disp.1, sect.4, n.10.

57. H. Kramer: op.cit., p.21.

The Salmanticenses refined Suarez's explanation as to why per accidens effects are voluntary. They argued that unintended effects become voluntary per accidens because of the obligation to avoid them. This obligation may arise from justice or charity.[58] In the two examples of voluntarium in alio given above in discussing Suarez we are able to note a development in the arguments of the Salamanca Carmelites. They divided effects into

(a) those which are per se and intended;

(b) those which are per se but not intended;

(c) those which are per accidens.[59]

Let us continue the example cited regarding Suarez. If I set fire to the tall grass around the house and intend to clear the undergrowth only, but the entire house is burnt down with loss of life, we could say that the destruction of the long grass, shrubs and bushes is the effect per se that I intend. The loss of life and property are the per se unintended effects of my act. By means of this distinction the Salmanticenses have recognized that a number of effects - to use Suarez's term voluntary in alio - are seen to be linked with the cause in a physical way in a manner that is not the case in the above example of almsgiving.

The primary purpose of this speculative investigation into the structure of causes and the requirements for voluntary accidental effects was to clarify the scope of moral culpability. The context of law and its impositions on the subjective conscience together with an increasing concern for a casuistry that attempted to ameliorate the all-

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58. Cf. Salmanticenses: Cursus theologicus, t.7, tr.13, disp.10, dub.6, nn.239-241.

59. Cf. Salmanticenses: op.cit., t.7, tr.13, disp.10, dub.6, n.214.

embracing demands of law for the individual conscience are the significant factors that distinguish this analysis from the one outlined by Alonso in chapter one regarding the question of killing in self-defence.

4. The final observation we ought to make on the 16th and 17th century moralists and their understanding of the moral act concerns the element of confusion that exists in their writings. The confusion is between the descriptive understanding of the moral act and the question of moral evaluation of particular aspects of the human act. In this thesis our primary concern is with foreseen unintended effects of a legitimate act.

It would appear that at least two causes of this confusion may be pin-pointed. The first arises from the general concern among moralists of the period with the question of moral culpability in an era when conscience, law and sin were central issues. This concern resulted in a lack of clarity in their writings between a descriptive analysis of the human act and a moral evaluation of its components. The second cause of the confusion resulted from the extension of the discussion on killing in self-defence to a wide range of other cases. In St. Thomas's discussion of killing in self-defence there is a recognition of the fact that the assailant's death and the saving of the defender's life are effects of the same cause, namely the act of counter-force. In the case of killing someone by trampling them underfoot while fleeing from an aggressor or in the case of a pregnant woman who takes medicine causing an abortion as a side-effect the causal structure is different from the model used by St. Thomas. The discussion of acts causing pollution and the case where the giving of

alms results in the recipient doing evil are certainly different from St. Thomas's analysis of killing in self-defence. The key to understanding this confusion is the understanding of the voluntarium indirectum that developed during the two centuries under investigation in this chapter. An analysis of this notion is to follow in section IV below.

III THE PRINCIPLE OF DOUBLE EFFECT

Reference has already been made to the two conflicting schools of thought regarding the origins of the P.D.E. Joseph Mangan has argued that S.T., II-II, q.64, a.7 is an

> enunciation of the principle of the double effect as we understand it today, and .... an application of that principle to the lawfulness of killing in self-defence. (1)

In the light of this conclusion Mangan has claimed that there are strong reasons to believe that 16th and 17th century moralists have held the same position. It does not appear that a close reading of the texts cited by the American Jesuit substantiates his claim. Rather it would appear that a number of authors essentially repeated the argumentation used by Aquinas. Because of his later influence let us take Cajetan's commentary as an example:

> In articulo septimo eiusdem quaestionis sexagesimaequartae, intellige bene distinctionem litterae, scilicet quod dupliciter potest referri occisio alterius ad conservationem vitae propriae: primo, ut medium ad finem; secundo, ut consequens ex necessitate finis. Et ut in littera dicitur, multum interest altero modo se habere. Nam et finis et medium ad finem cadunt sub intentione: ut patet in medico, qui intendit sanitatem per potionem vel diaetam. Id autem quod consequitur ex necessitate finis non cadit sub intentione,

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1. J. Mangan: op.cit., p.49.

> sed praeter intentionem existens emergit: ut patet de debilitatione aegroti quae sequitur ex medicina sanante. Et iuxta duos hos modos diversimode occidere potest licite persona publica, et privata. Nam persona publica, ut miles, ordinat occisionem hostis ut medium ad finem subordinatum bono communi, ut in littera dicitur: persona autem privata non intendit occidere ut seipsum salvet, sed intendit salvare seipsum non destiturus a sui defensione etiam si alter ius mortem ex sua defensione oporteat sequi. Et sic iste non occidit nisi per accidens: ille autem per se occidit. Et propterea ad illud requiritur publica auctoritas, ad hoc non. (2)

Francisco de Vitoria,[3] de Lugo[4] and a number of other authors repeat St. Thomas's arguments in a similar fashion.[5]

A solid body of theological opinion rejected the opinion that the aggressor's death may not be intended. Let us take the argument proposed by L. Lessuis as an example of this position:

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2. Cajetan: Sancti Thomae Aquinatis Opera Omnia, t.IX, S.T., II-II, 57-122 cum commentariis Thomae de Vio Caietani Ordinis Praedicatorem, p.74.

3. Cf. F. de Vitoria: Comentarios a la Secunda secundae de Santo Tomas. ed. V. Beltrán de Heredia O.P. t.III. De Justitia (qq.57-66), pp.302-308.

4. Cf. de Lugo S.J.: Disputationes Scholasticae et Morales. t.VI, De Justitia et Jure, disp. X, sect.6, nn.148-150. The weakness of Mangan's argument is well illustrated by T.L. Bouscaren S.J.: Ethics of Ectopic Operations, pp.34-38 where he admits that the P.D.E. is not to be found in the texts cited on killing in self-defence. He argues that the P.D.E. is to be found in other examples discussed by Lugo where innocent people are killed indirectly (e.g. bombardment of a fortress, trampling a child to death on a narrow road while a person is fleeing for one's life). Section IV will argue that these cases were discussed not as examples of the P.D.E. but as the extension of the use of the voluntarium indirectum.

5. Cf. John of St. Thomas O.P.: Cursus theologicus, VII, tr. "De spe", disp.XI, a.4, n.11.
Gregory of Valencia S.J.: Commentariorum Theologicorum, t.III, disp.V, q.8, punct.4.
Salmanticenses: Cursus theologiae moralis, III, tr.25, c.1, punct.4, § 2, n.52.

> ... licitum est in actu defensionis intendere omne id, quod iudicatur ad vitae membrorumque defensionem necessarium: ac proinde interdum etiam laesionem mortiferam, et consequenter ipsam mortem; nempe in causa. Ita docet Sotus supra, et Victoria relect. de homicidio nm. 17 et Nav. c.14, n.3. D. Antoninus 3.p. tit.4, c.3, § 1. Ratio est; quia nisi liceret eam sic intendere, defensio sui saepe redderetur impossibilis: saepe enim fieri nequit ut te defendas, nisi invasori vulnus lethale infligas, ut sclopo, vel hasta. Quod autem D. Thomas insinuat, privatae personae non licere occidere invasorem nisi per accidens: omissa Soti solutione, sensus est, personae privatae non esse licitum, absolute desiderare ut invasor moriatur: hoc enim non est necessarium ad sui defensionem; sufficit enim ut concidat viribus destitutus,ne amplius laedere possit. Non tamen vult negare; quin modis omnibus possit se tueri, et intendere quicquid ad hoc prudenter iudicatur necessarium. Unde in periculo conflictu non debet esse scrupulose anxius ne hostem lethaliter vulneret; sed potest eum ferire eo modo, quo commodius fuerit, ut vim ipsius comprimat, etiamsi caput vel pectus traijciendum foret, quod si moro sequatur, id ei displicet: non enim id directe et secundum se intendebat: et hoc est quod vult Caietanus, et alii. (6)

The basic differences - both explicit and underlying - between the texts of Cajetan and Lessius will be explored more fully in the following section of this chapter. Here it is appropriate to note the school of thought opposed to Mangan. It is characterized by its detailed historical investigation into the development of the P.D.E. This has already been well illustrated when we discussed Alonso's discussion of St. Thomas on killing in self-defence. Josef Ghoos has built on Alonso's earlier work. He argues that the principles for the act with double effect are the result of the theological developments that occurred between 1575 and 1630. Ghoos claims that it was only when John of St. Thomas incorporated the discussion on the principles concerning double effect into his study of fundamental moral

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6. L. Lessius: De Justitia et Jure, lib.2, c.9, dub.8, n.53; see also D. de Soto: De Justitia et Jure, lib.5, q.1. a.8 and G. Vazquez: Opuscula moralia, "De restitutione", c.2, § 1, dub.6, n.16.

issues that the P.D.E. achieved its definitive form.[7]

Turning now from the historical question concerning the development of the P.D.E. it is possible to indicate four areas of development in the discussion of killing in self-defence in addition to those to be studied in more detail in the following section.

1. St. Thomas in his discussion of killing self-defence grounded his argument in the natural inclination to self-preservation.[8] This natural law argument retained some force during the fourteenth and fifteenth centuries even though modified by particular social and historical factors. Two great professors of law during the 14th century clarified and extended the notion that the private individual shares in the power to kill (whether it be from divine or public authority) through the instrument of law. Joannes Andreae[9] argued that the legal tradition permitted a private individual to kill a criminal (e.g. a highwayman or "a nocturnal despoiler of one's fields") where judicial punishment would come too late, if at all. The law was seen by Andreae as granting a person the legal capacity to decide to kill someone.[10] According to Joannes de Lignano the legal instrument is not civil law but natural law.[11]

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7. Cf. J. Ghoos: Article, p.32. The basic thesis proposed by Ghoos is, I believe, correct. It will be developed in section IV.

8. "Actus ergo huiusmodi , ex hoc quod intenditur conservatio propriae vitae, non habet rationem illiciti, cum hoc sit cuilibet naturale quod se conservet in esse quantum potest." (S.T., II-II, q.64, a.7c).

9. Joannes Andreae (c.1270-1348) was one of the most successful and distinguished lay canonists of the Middle Ages. He was professor of law at Bologna. Cf. C.M. Rosen: "Joannes Andreae", N.C.E., VII, pp.994-995.

10. Cf. Joannes Andreae: Decretalium libros novellae commentaria on Significasti, De homicidio, where he quotes c.3.27.

11. Cf. S. Sullivan: op.cit., p.24. Joannes de Lignano (d.1383), like his predecessor Andreae, was professor of law at Bologna.

The civil disturbances of the 15th century (e.g. private vendetta, casual violence and petty wars) as well as the rigid stratification of society where "gentlemen" could carry arms and others could not provided the background to a question considered at the time: may less noble people defend themselves against their betters? Gerson and Antoninus of Florence[12] repeated St. Thomas's position although it is possible to infer from his Summa that there was a body of opinion at the time which answered the question in the negative.[13]

It is against this background that we are to view the discussion in the 16th and later centuries on whether flight is a viable alternative to killing one's aggressor. Panormitanus had argued that an answer to this question depended on the social status of the persons involved and the social consequences (e.g. shame, being thought timorous) which would result.[14] Sylvester Prierias developed the implications of the earlier theologian's work and argued that a "superior" person could kill to escape dishonour even when he could avoid the killing by another means.[15] Covarrubias (d.1577) permitted Prierias's position as probable though he himself emphasized the inequality of honour and life.[16] In the 17th century Lessius,[17]

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12. Cf. "Antoninus", O.D.C.C., p.67. Antoninus (1389-1459) was a Dominican archbishop of Florence, reformer and moral theologian.

13. Cf. Summa Theologica, pars. 3,4,3,1.

14. Nicolò de' Tudeschi (1386-1445) was a Benedictine canonist and after 1435 Archbishop of Palermo (hence Panormitanus). Cf. Panormitanus: Commentaria in libros decretalium, on Significasti, De homicidio.

15. Cf. Summa Sylvestrina, Bellum, II, 2.

16. Cf. Diego de Covarrubias: Opera, In Clementina (p.784).

17. Cf. De Justitia et Jure: lib.2, c.9, dub.8, n.44.

Diana[18] and Busenbaum[19] taught that if there would be disgrace in flight one need not flee but may kill the aggressor of one's honour.

The development of St. Thomas's initial natural law argument during later centuries, especially during the 16th and 17th century, undermined the whole notion of necessary means to preserve one's life. Rather it extended the moral evaluation of a situation of conflict to include the weighing of injuries other than the physical ones that could possibly be lethal. This argumentation also opened the door to a laxist interpretation of situations of aggression and conflict.

2. The second notable development during the two centuries between 1500 and 1700 concerns a shift in emphasis regarding "intention" in the act of self-defence against an aggressor.[20] In Aquinas the notion of "intentio" entails the desiring of an end that one wishes to achieve by appropriate means. The concept does not include a detailed recognition of the means necessary to achieve the end or a knowledge of how this end will be achieved. Thus in speaking of killing in self-defence Aquinas wished to emphasize what the defender is doing, namely saving his life. Because of this focus the defender would be more inclined to use moderation in defence and avoid revenge.

In the approach used by Lessius in the text quoted above and in the writings of a number of other moralists[21] the emphasis is on the

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18. Cf. Coordinatus seu Omnes Resolutiones Morales, 8,5,1.

19. Cf. Medulla Theologiae Moralis, I, lib.3, tr.4, c.1, dub.3. Alphonsus repeated Busenbaum's teaching but added that he would judge that never or most rarely would a person be justified in killing another only to protect his honour. In 1679 Innocent XI in proposition 30 condemned such killing (cf. D.S. 2131).

20. Cf. S. Sullivan: op.cit., pp.32-34.

21. Cf. D. de Soto: De Justitia et Jure, 5,1,8; Navarrus: Manuale, 15; L. Molina: Opera Omnia, III, 4,3,11; Diana: Resolutiones, 8,5,19.

"means" to be used by the defender. They do so for two reasons:

(a) They wish to justify the intending of what they view is a necessary means (killing) to a good end (self-preservation). The means is necessary and therefore not evil because of the aggression. To take such an action is a good thing.

(b) These authors also wished to forestall excessive and unwarranted sentiments of guilt in the person who kills in self-defence.

Sullivan describes succinctly the shift in emphasis from Aquinas to a number of 16th and 17th century moralists:

> By restricting the private individual to desiring to preserve his own life, Aquinas demands that the end of the action be the preservation of a good, a positive objective. The others (i.e. Lessius, Soto, Molina etc.) would legitimate a negative objective, the deprivation of life.... Soto and the others would make killing a 'good', which may then be desired; Thomas wants to retain emphasis upon the evil in killing. To kill in self-defense may be necessary, but for Thomas it remains a necessary evil, legitimated only as the consequence of a desire to achieve some good. (22)

3. This brings us to the third element in St. Thomas's argument in S.T., II-II, q.64, a.7c where he invokes the legal tradition: "vim vi repellere licet cum moderamine inculpatae tutèlae." The due moderation that Aquinas demands if an act of self-defence is to be legitimate implies that the violence used as a counter-force ought to be equal to and not exceed the violence brought to bear by the aggressor. During the succeeding centuries St. Thomas's argument took the form that the defender ought to exercise a moderate use of force necessary to repel injury. Whereas Aquinas emphasized the

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22. S. Sullivan: op.cit., p.33.

violence being used to inflict injury later writers increasingly emphasized the injury to be effected through aggressive force.

The roots of this new approach are to be found in an argument proposed by his contemporary, Bonaventure. Bonaventure indicated that there is a case of reduced guilt should an individual kill another rather than flee when this latter alternative appears shameful to this individual.[23] As we have indicated above, later thinkers developed Bonaventure's approach to its logical conclusions. Where he would reduce guilt, later thinkers argued to total absence of fault.

Antoninus in his discussion of rape exemplifies the shift of emphasis from "force" or "violence" to "injury".[24] If the woman being attacked does not consent there is no sin. Should she consent the act of fornication or adultery is a lesser sin than killing the aggressor. Antoninus argued that should the woman kill her attacker she would be causing a greater evil than the evil of rape.[25]

After the Summa Sylvestrina and the writings of Navarrus the change of emphasis is complete regarding due moderation in the use of force.[26] From the attention to the equality of counter-force

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23. Cf. Bonaventure: Opera Omnia, XII, Sermo VI.

24. Cf. Summa, pars. 2,7,8,2,4 and 5.

25. Antoninus's position would appear to be transitional and still very much influenced by the canonical tradition. He seems to suggest that it is the law which will determine what is to be considered the "greater evil". (Cf. S. Sullivan: op.cit., p.29).

26. Navarrus stated his position: "do that without which the injury could not be avoided", Manuale, 15:3 (quoted by S. Sullivan: op.cit., p.35). In the following century Lessius gave the same explanation: "... in defensione non potes uti maiori vi, quam sit necesse ad iniuriam arcendam...." (De Justitia et Jure, lib.2, c.9, dub.8, n.43).

(Aquinas) and the evils resulting from the use of violence (Antoninus) the moralists of the 16th and 17th centuries concentrated on the injury to be prevented in the use of force.[27] These thinkers did not permit a disproportionate use of violence in self-defence, as, for example, when a defender kills his attacker even though the latter's blow would inflict only light injury.

What is important in this shift of perspective over a number of centuries is the fact that once attention is directed primarily to the avoiding of injury it is only a small step to justifying the means necessary to escape injury with little or no evaluation of the relative importance of the injuries being compared.[28] This goes some way to explain the development of casuistry in Roman Catholic moral theology during the 17th century, particularly the abuses of lax moral positions.[29]

4. The fourth and final shift of emphasis regarding killing in self-defence may be called a change from "authority" to "rights". In discussing suicide St. Thomas expressed the issue of divine authority in terms of God's dominion over human life and man's stewardship of this gift.

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27. The areas in which injury may be inflicted on a person were discussed, e.g. honour, property, one's good name or virtue. See:
Martinus Bonacina: Tractatuum Moralium, lib.2, disp.2, quaestio ultima, sect.1, punct.9-11.
P. Laymann: Theologia Moralis, lib.3, sect.5, tr.3, p.3, c.3.
Salmanticenses: Cursus Theologiae Moralis, t.5, tr.25, c.1, punct.4.

28. Cf. S. Sullivan: op.cit., p.36.

29. See a detailed study of the laxist propositions condemned by Innocent XI in 1679 in E. Amann: "Laxisme", D.T.C., IX.1, cols.72-85.

> .... quia vita est quoddam donum divinitus homini attributum, et eius potestati subiectum qui occidit, et vivere facit. Et ideo qui seipsum vita privat, in Deum peccat; sicut qui alienum servum interfecit, peccat in dominum cuius est servus; et sicut peccat ille qui usurpat sibi iudicium de re sibi non commissa. Ad solum enim Deum pertinet iudicium mortis et vitae, secundum illud Deut. XXXII, 39: 'Ego occidam, et ego vivere faciem.' (30)

Reference has been made already to the distinction between public and private authority and its importance in discussing killing since the 12th century. The development of De Justitia et Jure tracts in 16th and 17th century moral theology prepared the ground for a detailed analysis of human rights.[31] This emphasis complemented the growing concentration on "injury" during the same period. S. Sullivan has well illustrated the shift in approach when he discusses killing in defence of private property.[32] It is worth noting this issue, even if only briefly, since St. Thomas uses an a pari argument in the sed contra of S.T., II-II, q.64, a.7 based on a text from the book of Exodus:

> Sed contra est quod Exod. XXII,2 dicitur: 'Si effringens fur domum, sive suffodiens inventus fuerit, et accepto vulnere mortuus fuerit, percussor non erit reus sanguinis'. Sed multo magis licitum est defendere propriam vitam quam propriam domum. Ergo etiam si aliquis occidat aliquem pro defensione vitae suae non erit reus homicidii. (33)

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30. S.T., II-II, q.64, a.5.

31. Cf. J. Theiner: op.cit., pp.298-310.

32. Cf. S. Sullivan: op.cit., pp.79-167.

33. Exod. 22:1-2 was incorporated in the decretal Si perfodiens, De homicidio, X, 5,12,3. The thief in the night may be killed because it cannot be determined whether he has come to kill or merely steal. When he defends himself with a sword the thief in the light of day is considered to have the intention to kill. The same legislation is to be found in Roman law. (Cf. S. Sullivan: op.cit., pp.84-87).

In omitting the verse specifying the difference between day-time and night-time homicide[34] Aquinas appears to accept the possibility of justified killing in defence of property as a general principle.[35] Later authors certainly understood him as doing this.[36]

> Between the twelfth and fourteenth centuries.... there was both the development of a social order which accentuated the importance and value of property and the rediscovery of a theory of property which considered private ownership an institution of natural law, even, in the case of Ockham, a 'natural right.' (37)

The 14th century scholar, Joannes de Lignano, linked the person and his property to the extent that an injury accrues to the person when his property is threatened.[38] During the 16th century the teaching that a thief may be killed in defence of property alone gained wide acceptance.[39] In the following century moralists permitted a person to kill to defend his property even when there is no threat to life. Lessius, Diana, the Salmanticenses and Busenbaum emphasized the right a person has to his property. This justifies depriving a thief of his life in order to prevent the loss

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34. Cf. A. Phillips: op.cit., pp.92-93.

35. Since Aquinas does not deal separately with killing in defence of property Sullivan is forced to conclude his study as follows: "Although Thomas will have a significant role to play as a supporter of killing in defense of property, it does not seem that the statement in itself can be taken as an unequivocal legitimation of killing in defense of property. Such an offhanded, indirect reference does not seem to be the way that Thomas would interject a radical, tradition-flaunting teaching. He usually takes pains to express his reasons." (op.cit., p.94).

36. For example: Cajetan: Summa, II-II, 64, 7; Vitoria: De Justitia, II-II, 64,2 and 7; Salmanticenses: Cursus theologicus, VI, 25, 1, 4, n.83.

37. S. Sullivan: op.cit., p.100.

38. J. de Lignano: Tractatus de bello, 114; 117; 118; 122.

39. Cf. Summa Sylvestrina, Homicidium, I, 5, 5 and 6; I, 8; Bellum, I, 3; II, 1, 2 and 8. Cajetan: Summa, II-II, 64, 2 and 7; Navarrus: Manuale, 15, 3; Molina: Opera, III, 4,3, 11 and 16.

of property.[40]

Basic to the argument regarding property, and killing on its behalf, is the evolution in thought from viewing it as something to be used to seeing it as an absolute right. Having the right to use property, akin to the stewardship of life in the medieval period, gave way to an understanding of property which belonged to its owner by natural law or natural right.[41]

The four areas of development just outlined in regard to Aquinas's study of killing in self-defence indicate the historically conditioned process involved in the evolution of the P.D.E. It exemplifies, too, some of the elements discussed in section II on the human act and prepares the way for an understanding of how the notion voluntarium indirectum came to be applied to a range of moral cases. In these cases good and evil effects result from a good or indifferent act. As the concept of the indirect voluntary became clearer it was applied by moralists to the original case or model, namely killing in self-defence. It is to a study of the voluntarium indirectum as used during the 16th and 17th centuries that we must now turn.

IV THE DIRECT-INDIRECT DISTINCTION

The previous section on the P.D.E., in continuing to focus on the issue of killing in self-defence, has indicated clearly that

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40. Cf. Lessius: De Justitia et Jure, lib.2, c.9, dub.11, nn.65-67;
Diana: Resolutiones, VIII, 5, 29.
Salmanticenses: Cursus theologicus, VI, 25, 1, 4, nn.77-78, 81;
Busenbaum: Medulla, I, lib.3, tr.4, c.1, dub.3, 4.

41. Cf. S. Sullivan: op.cit., pp.158-163.

where there has been a change in approach to this particular act with a two-fold effect such change has occurred as a result of external factors. There has been, during the two centuries under investigation, no discernible internal development as regards the method of argumentation used by moralists to justify the taking of life by an individual in self-defence.

What has resulted during this period has been a development in understanding regarding indirectly willed effects. This was caused by the increasing concern with an individual's responsibility for his actions. As we have seen earlier the emphasis on conscience, law and sin in the context of a theory of probabilism generated new approaches to problems in moral theology. It is noteworthy that during the 16th century and on into the following century, as moral theology texts assumed the form of a commentary on the Summa of Aquinas, new cases were studied in addition to those examined by St. Thomas. Cajetan and Vitoria, for example, discuss killing in defence of property in the context of the S.T., II-II, q.64, a.7. The De Justitia et Jure treatises, in using Aquinas's text as a starting point, enlarged the range of cases still further.[1] Not only was there an increasing number of cases studied in the context of the fifth commandment, "thou shalt not kill", but there was a corresponding increase in interest in a number of cases similar to

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1. While varying slightly in format most of these treatises adopted the same structure in their analysis of the fifth commandment. In chapter 3 we will consider this approach in terms of the manuals of moral theology which followed on from the justice tracts of the 16th and 17th centuries.

that of killing in self-defence. This is significant for our understanding of the direct-indirect distinction and its place in an evolving moral theology. As moralists studied cases in such areas as sexual pleasure, scandal and cooperation there is to be observed a development in the use of direct-indirect distinction. While this evolution in understanding did not noticeably affect the study of killing in self-defence beyond what has been mentioned in section III above, it will be noted in following chapters that the development of direct and indirect in the context of other cases dealing with killing (e.g. abortion and war), sexual pleasure, scandal and cooperation was later applied to killing in self-defence.

In this section, then, we will proceed in two stages. First, we shall discuss briefly the cases which caused an evolution in the understanding of indirectly willed effects. This will permit us to indicate the type of development that occurred. Secondly, we will consider how a number of moralists clarified the understanding of moral responsibility for indirectly willed effects. They were partially successful in explaining how and why a moral agent is morally responsible for indirectly willed effects. Succeeding chapters of this thesis will look at later attempts to overcome some of the inadequacies left by moralists of this period.

1. In addition to the question of killing in self-defence and the killing of innocent people in war[2] or situations where a person

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2. Cf. P. Laymann S.J.: Theologia Moralis, lib.2, tr.3, c.12, n.11. Questions of war increased in importance as the technology of war developed. See also
Vitoria: op.cit., II-II, q.64, a.6, n.6;
Molina: op.cit., t.1, disp.119;
Toletus: Enarratio in Summam Theologiae S. Thomae Aquinatis, t.2, q.34, a.1; q.64, a.6;
Suarez: op.cit., t.12, tr.3, disp.13, sect.7, nn.15-19.
Lessius: op.cit., lib.2, c.9, dub.7, nn.36ff; 57-59; lib.2, c.9, dub.10, n.62.

exposes himself to mortal danger[3] two cases were of particular interest to moralists during the 16th and 17th centuries. The first concerns a man fleeing for his life from an attacker. The only route open to him is a narrow passage in which he finds a child blocking his way. Is the fleeing man responsible if his horse should trample the child to death as he escapes by this route?[4] The second case we have already seen. May a pregnant woman take a medicine or other means to cure herself of an illness where there is danger that the fetus will be aborted?[5]

Following the definition of Aquinas the moralists of the 16th and 17th centuries considered generally the words or deeds that the agent foresees will result in the passive scandal of others.[6] The treatises of this period on scandal are, on the whole, analytic with very few examples. The act or word that is "minus rectum" may be so because of the agent's formal sin, or arise because of an office he has. In addition to discussing active and passive scandal a good number of authors divide active scandal into per se and per accidens scandal. Gregory of Valencia defines them as follows:

Footnote 2 (continued).
Bonacina: op.cit., lib.2, "De restitutione", disp.2, quaest. ult., sect.1, punct.7, n.2.

3. This may occur in situations of war or in the case of living the Christian life with danger of martyrdom.
Cf. Vitoria: op.cit., II-II, q.64, a.5, n.7.
Sanchez: Opus Morale, t.2, lib.6, c.4, dub.13, n.4.
Laymann: op.cit., lib.2, tr.3, pars.3, c.1, nn.3-8; c.3, n.2.
Lessius: op.cit., lib.2, c.9, dub.6, nn.27ff.
Bonacina: op.cit., lib.2, "De restitutione", disp.2, q. ult., sect.1, punct.5, n.3.
Suarez: op.cit., t.23b, disp.46.

4. Cf. Vazquez: Opuscula moralia, "De restitutione" c.2, § 1, dub.7, n.24.

5. Cf. Vazquez: op.cit., n.24;
Sanchez: De S. Matrimonii Sacramento, lib.9, disp.20, nn.17-19.

6. In S.T. II-II, q.43, a.1 St. Thomas defined scandal as "dictum vel factum minus rectum praebens occasionem ruinae."
Cf. Suarez: op.cit., t.12, tr.3, disp.10, sect.3, 4
Layman: op.cit., lib.2, tr.3, c.13, n.8ff.
Gregory of Valencia: Commentariorum Theologicorum, t.3, disp.3, q.18, punct.4.

> Scandalum per se hoc loco appellamus, cum ex certa et expressa intentione datur alteri occasio peccandi. Ut si quis hortemur alterum, ut peccet, intendens formaliter ruinam ipsius; vel quando facit aut dicit aliquid, quod per se et ex natura sua est inductivum ad peccandum.... Scandalum autem per accidens nunc nominamus, cum praeter intentionem praedictam, et praeter naturam ipsius actus sequitur alterius ruina. (7)

L. Lessius discussed the question of female fashions.[8] If a woman intends to provoke men by her dress there is per se scandal. Should she not intend to give scandal, though others are affected, there would be per accidens scandal. Lessius points out here that the woman is not responsible for the sinful dispositions of those who are scandalized.

Closely associated with scandal is the question of cooperation in the evil act of another.[9] B. de Medina discussed a number of cases where an evil effect is brought about by the evil intentions of a person other than the agent. Does a girl walking through the town cooperate in some way in the sinful desires of the men she passes, particularly when she knows she will cause them to have impure feelings?[10] Does an arms salesman cooperate in the evil brought about by someone who purchases one of his weapons or does a Christian butcher cooperate in the false cult of a Jew who purchases meat from him?[11] Lessius discussed whether an inn-keeper cooperates in the sin

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7. Gregory of Valencia: op.cit., t.3, disp.3, q.18, punct.1.
8. Cf. L. Lessius: op.cit., lib.4, c.4, dub.14, nn.13-14.
9. Cf. Sanchez: Opus morale, lib.1, c.7, nn.8-18;
   Laymann: op.cit., lib.2, tr.3, c.13, nn.4,8.
   Molina: op.cit., t.1, tr.2, disp.115, n.4.
   Bonacina: op.cit., lib.2, "De restitutione", disp.1, q.2, punct.10, nn.3ff.
   lib.2, "De legibus", disp.2, q.4, punct.2, nn.17-20.
   Valentia: op.cit., t.3, disp.1, q.10, punct.5.
10. Cf. B. de Medina: op.cit., q.20, a.5, n.335.
11. Cf. B. de Medina: op.cit., q.20, a.5; q.78, a.1.

of one who breaks the rule of fast or abstinence when he is providing the food requested by a traveller.[12]

Another set of cases examined during the period under discussion is closely related to the cases dealing with scandal and cooperation. They concern an agent's culpability for omitting particular acts. Medina discussed the case of a man who escapes from prison.[13] If I am able to detain him and am obliged to do so (since I am a prison guard) then I am responsible for the effects of this omission just as the navigator of a ship is responsible when his negligence results in the ship's loss.[14] Vazquez pursued the question of omissions a little further. He discussed the obligation a priest has to pray the breviary daily. In the case he proposed a certain priest on a long sea journey did not want to pray each day so he threw his prayer book overboard. The omission is not sinful later, Vazquez argued, since the obligation does not bind when it cannot be fulfilled. Only the original act of throwing the book into the sea was considered wrong by our author.[15] Vazquez's solution must be viewed against the background of his understanding of sin and freedom.

The final group of situations analysed by moralists between 1500 and 1700 concerned the performing of an act from which illicit

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12. Cf. L. Lessius, op.cit., lib.4, c.2, dub.4.

13. Cf. B. de Medina: op.cit., q.6, a.3.

14. Cf. S.T., I-II, q.6, a.3c.

15. Cf. G. Vazquez: op.cit., disp.93, c.2.

pollution or venereal pleasure will arise.[16] A number of authors posed the case where a student of literature or medicine, because of his studies, is liable to consent to sexual pleasure or pollution. B. de Medina was unable to accept the reasoning prevalent in his day that he who wills a cause necessarily wills those consequences essentially connected.[17] As we shall see in a moment this case forced him to refine the notion of indirectly willed effects. Vazquez held that if sexual desires or pollution resulted from a good act the agent is not responsible and so is free of sin.[18]

The cases given above contain the main arguments and issues in the light of which the notion of indirectly voluntary effects was refined.[19] It is now possible to indicate the developments of the notion voluntarium indirectum during this period.[20]

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16. Cf. T. Sanchez: De S. Matrimonii Sacramento, lib.9, disp.45, nn.4-32.
P. Laymann: op.cit., l.3, sect.4, n.16.
L. Lessius: op.cit., l.4, c.3, dub.8, nn.60, 65.
M. Bonacina: op.cit., l.1, pars.2, q.4, punct.9, n.9.

17. Cf. B. de Medina: op.cit., q.74, a.6.

18. Cf. G. Vazquez: op.cit., disp.108, c.3.

19. A large number of casuists during the 17th century merely multiplied cases (e.g. Diana studied 20,000 in his Resolutiones) without adding significantly to the theoretical understanding of indirectly voluntary effects. For this reason Diana, Caramuel, Escobar, and many others have not been considered in this section. Although H. Busenbaum (1600-1668) belongs to this period his Medulla Theologiae Moralis is closer to the manuals. For this reason he will be grouped with Alphonsus in the next chapter. For a savage attack on 17th century casuists, especially for their practice of "directing the intention", see The Provincial Letters of B. Pascal (trans.) A.J. Krailsheimer, pp. 102-116 (letter VII). For an incisive assessment of one of the leading casuists of the period see D. Pastine: "Dallo scetticismo e dal probabilismo all'operatività: Juan Caramuel," Rivista Critica di Storia della Filosofia, 30 (1975) 411-419 esp. pp.413-414.

20. In this I agree substantially with J. Ghoos's thesis. Cf. Article, pp.35-47.

Many of the cases mentioned above concern positive acts from which evil effects flow. Traditionally, the axiom "he who wills the cause, wills the effects" had influenced the moral attitude to evil effects. The difficulty confronting early 16th century moralists resulted from the performance of good acts with evil effects, as in the case of a student studying literature and having a pollution or an arms salesman doing good in his business but finding his weapons will be used for evil ends. The prevailing principle was not helpful in those cases where the agent foresees but does not intend evil effects that flow from the good intended.

B. de Medina found in S.T., I-II, q.6, a.3 a means by which he could overcome this difficulty. For Aquinas the notion voluntarium indirectum applied to the foreseen unintended effect following on the omission of an act. Such effects are culpable if the agent who omits to act can and ought avoid them. Medina applied these same criteria to effects that are voluntary in causa. An evil effect which results from a willed action is indirectly voluntary and imputable when one can and ought avoid it.[21] Implicit in this conclusion is the understanding of acts which are intrinsically evil because contra naturam. If an evil effect is intrinsically evil it would be always forbidden. If, however, the evil effect is not contra naturam its presence is due to the limitations of the concrete human situation (where sensual feelings develop on their own contrary, at times, to the will) or to the ill-will of other people (as in the

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21. Cf. B. de Medina: op.cit., q.6, a.3.

misuse of the purchased weapons).[22]

Gabriel Vazquez accepted the structural parallel between the terms voluntarium indirectum and voluntarium in causa.[23] Vazquez himself contributed to the development of the notion voluntarium indirectum by expanding the concept to include the voluntarium in causa. Thus the term voluntarium indirectum covered three different effects:

(a) the effect of an omission[24]

(b) the effect which is voluntary in causa;[25]

(c) the omission that results from a directly willed act.[26]

While expanding the notion voluntarium indirectum in this way Vazquez refined his understanding of effects that are voluntarium in causa:

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22. The common element in the voluntarium indirectum and the voluntarium in causa may be specified as Ghoos does: "les deux découlent de causalités mises en marche à l'occasion d'un acte libre - bien sûr - mais viciés par des causalités extérieures, jusqu'à produire un effect contraire à la volonté libre de l'agent." (J. Ghoos: Article, p.39, note 22).

23. G. Vazquez: Comm ac Disp., disp.24, c.1, n.3: "Nunc igitur praesens difficultas est de eventu, qui aliquo modo sequitur omissionem, utrum ipsi omittenti sit voluntarius saltem indirecte, seu interpretative, sicut est eventus, qui sequitur causam aliquam positivam, verbi causa, si aliquis videat navim submergi, aut domum igne conflagrare, et cum possit impedire, non impedit, eritne illi voluntarium submergi navim, aut domum comburi, in ipsa omissione, tanquam in causa, sicut esset homicidium, si ipse positivam aliquan causam illius dedisset sine expressa voluntate occidendi?"

24. Voluntariness implies a relation between the effect and the agent who wills it. When an individual wills to omit an external act, the omission is not the physical cause of the evil effect. The willed omission is the moral cause of such an effect if the agent is capable of avoiding such an effect and is obliged to do so. (Cf. G. Vazquez: op.cit., disp.24, c.3, nn.12-13).

25. Cf. G. Vazquez: op.cit., disp.24, c.3, nn.8-9.

26. G. Vazquez: op.cit., disp.24, c.3, n.7: "Mihi vero ea sententia placuit, quae affirmat primum, non modo eventum positivum, verum etiam omissionem ortam ex causa voluntaria positiva esse voluntariam indirecte, si adsit notitia eius, quamvis nulla obligatio intercedat non apponendi talem causam: deinde eventum positivum, qui sequitur omissionem, ut in casu posito in c.1 non esse voluntarium adhuc indirecte ei, quo omittit, nisi ex praecepto aliquo debeat impedire et ex culpa omittat."

> Deinde notandum est, ex iis quae voluntaria dicuntur, quaedam directe voluntaria, quaedam indirecte voluntaria vocari, sive ut alii loquentur, quaedam explicite, quaedam interpretative voluntaria. Directe voluntaria ea sunt quorum fuit explicita et expressa voluntas, nec tantum in causa volita sunt, et ex hac voluntate ortum habuerunt.... Exemplum directe voluntarii sit cum quis dedit causam quam secutus est homicidium, et illam posuit volens occidere, tunc enim dicitur homicidium voluisse explicite et directe:si autem tantum dedit causam, quam sequi poterat homicidium, non ita necessario, nec ex voluntate expressa occidendi, dicitur indirecte, implicite voluisse. (27)

For Vazquez an effect is indirectly voluntary as the result of a positive act when it does not necessarily flow from the cause, but does so accidentally. That our author mixes voluntariness with moral accountability indiscriminately will be examined below. It is clear, however, that for an effect to be indirectly voluntary Vazquez requires two elements:

(a) an obligation to avoid the evil effect (objective element);

(b) foreknowledge and willingness on the part of the agent (subjective element).

The effect if it comes about from an omission is caused by forces separate from the agent's free will (as we observed above with Medina). If the evil effect is caused by the agent it must not occur per se on the placing of the cause but only per accidens.

It is with the contribution of L. Lessius that we get the final development of the voluntarium indirectum during this period. A key to an understanding of Lessius's approach may be found in the following text:

> Voluntarium indirecte dicitur, quod non est in seipso volitum, sed in alio, ex quo aliquo modo, tamquam ex causa sequitur:

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27. G. Vazquez: op.cit., disp.24, c.1, n.2.

> quod dupliciter fieri potest. Primo, si ex actione directe voluntaria sequatur aliquis eventus praeter expressam intentionem, ratione tamen aliquo modo advertente.... Secundo, si ex omissione voluntaria alicuius actionis sequatur aliquis eventus, ratione aliquo modo advertente.... Adverte tamen, non omne illud quod sequitur ex actione positiva, vel omissione alicuius actionis, censeri voluntarium, sed illud tantum quod tenebaris impedire. (28)

Having grouped the positive act and act of omission together under the heading of voluntarium indirectum in a more explicit and comprehensive fashion than Vazquez did Lessius makes his thought on indirectly willed effects quite explicit.

(a) When a directly willed act that is the cause of an evil effect is morally good in itself it may be performed. The act must not be omitted on account of the evil effect provided the evil effect

(i) occurs per accidens,

(ii) the goodness of the act is not offset by the evil effect,

(iii) the evil effect is not intrinsically evil.[29]

(b) An agent is obliged to avoid an act that causes an evil effect

(i) when the act itself is morally evil

(ii) when the act, although itself morally good, does not offset the evil brought about per accidens.[30]

It is this understanding of indirectly voluntary effects - whether of a positive deed or an omission - that, when joined with an understanding of the human act that does justice to the object, circumstances and

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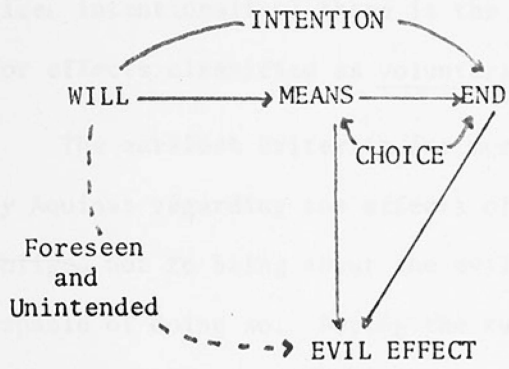
28. L. Lessius: De beatitudine, de actibus humanis, q.6, a.3. Lessius discusses the voluntarium in causa in his De Justitia et Jure, lib.4, c.3, dub.14, nn.97-102.

29. Cf. L. Lessius: De Justitia et Jure, lib.4, c.3, dub.14, nn.98, 101.

30. Cf. L. Lessius: De Justitia et Jure, lib.4, c.3, dub.14, nn.99, 100-104.

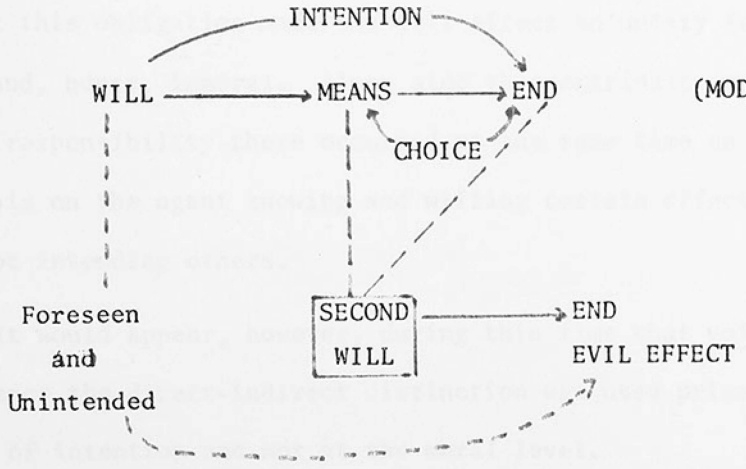
end of the act, provided the basis for the P.D.E. as we know it today.

2. The discussion of an even larger number of cases between 1500 and 1700 permits us to enlarge the models already discussed in chapter one. The moral issues of pollution and abortion suggest the following pattern:



(MODEL 4)

The problems of scandal and cooperation indicate the following pattern:



(MODEL 5)

In discussing cases covered by model 4 above Sanchez and Lessius use the distinction between <u>per se</u> and <u>per accidens</u> causes and effects.

Only evil effects that occur per accidens are not imputed to the agent.

Suarez, in discussing the voluntarium in alio[31] emphasized the elements of knowledge and willingness. Both are required before the evil effect in models four and five may be intentional. In addition to a better understanding of the causal link between evil effect and causing action and the element emphasized by Suarez (i.e. intentionality) there is the dimension of moral responsibility for effects classified as voluntarium indirectum.

The earliest criterion for moral accountability was that used by Aquinas regarding the effects of an omission. The agent must be obliged not to bring about the evil effect. As well he must be capable of doing so. During the two centuries under examination in this chapter we have observed the extension of this criteria to effects voluntary in causa. A number of thinkers (e.g. Suarez and the Salmanticenses) attempted to link the evil effect (in model five) to the will causing the original act. They indicated positive law as fulfilling this role. If a positive law prohibited the evil effect this obligation made the evil effect voluntary for the first will and, hence, immoral. Along side this extrinsic approach to moral responsibility there occurred at the same time an increasing emphasis on the agent knowing and willing certain effects, foreseeing and not intending others.

It would appear, however, during this time that voluntarium indirectum and hence the direct-indirect distinction was used primarily at the level of intention and not at the moral level.

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31. Cf. F. Suarez: op.cit., IV, De voluntario et libero, disp.1, sect.4, n.4.

Chapter 3

THE MANUALS OF MORAL THEOLOGY: APPLICATION OF THE DIRECT-INDIRECT DISTINCTION (1700-1900)

I HISTORICAL BACKGROUND

The controversy between Jansenist writers and moralists who espoused some form of casiustry dominated the latter part of the 17th century in France.[1] As the text-books of the Catholic universities and seminaries assumed a standard format they came to concentrate on a particular moral system.[2] One of the most influential of these was the theory of probabilism which developed out of the principle that a doubtful law does not bind.[3] A good number of Jesuit moralists favoured a probabilist way of thinking with its emphasis on human freedom and responsibility.

By the end of the 17th century the influence of probabilism was being challenged by a rigorist moral teaching that had spread throughout Europe.[4] In its severity it reached almost to Jansenistic rigorism.[5]

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1. For a more general background study to the moral thinking of the 17th century see A. Levi S.J.: French Moralists. The Theory of the Passions 1585 to 1649.
2. A moral system "is a method of forming one's conscience properly regarding the moral aspect of an action that is being contemplated with a view to performing or omitting it." F.J. Connell: "Morality, Systems of", N.C.E., IX, p.1131.
3. Lex dubia non obligat. Cf. Chapter 2, II, note 5 for bibliography on probabilism.
4. Cf. E. Hamel: "Retours à l'Evangile et théologie morale, en France et en Italie aux XVII^{e} et XVIII^{e} siècles," Gregorianum, 52 (1971) 668.
5. Cf. L. Vereecke: op.cit., p.1122.

Even though dominant after 1700[6] rigorist moral teaching did not completely eradicate the influence of probabilism. In spite of the conflicts between rigorist and laxist theologians as well as that between probabilists and probabiliorists[7] a sizeable minority of thinkers tried to adopt a middle position.[8]

The most important controversy, prior to and contemporaneous with the emergence of Alphonsus Liguori as the leading moral theologian of the 18th century, was begun by the Italian Dominican Daniel Concina (1687-1756). In 1743 he published his history of probabilism in which he attacked the theory.[9] The work was highly successful and because of its success it provoked a heated response from a number of Jesuit casuists.[10]

It is against this background that we must view the writings

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6. The Assemblée du Clergé de France in 1700 and particularly Bossuet's contribution to the assembly's work did much to foster moral rigorism during the 18th century especially in France. Cf. Th. Deman: op.cit., cols.553-558.

7. Probabiliorism argued that in cases of doubt regarding a proposed course of action the opinion of law must be followed unless that favouring personal freedom is more probable. (Cf. F.J. Connell: "Probabiliorism", N.C.E., XI, p.814). Tutiorism is close to probabiliorism in that the safer opinion (i.e. the law) must be followed unless the opinion favouring freedom is most probable. (Cf. F.J. Connell: "Tutiorism", N.C.E., XIV, p.348).

8. E.g. C. Billuart O.P. (1685-1757) and P.G. Antoine S.J. who attempted a synthesis of moral and dogmatic theology. For a survey of 18th century moralists belonging to the Jesuit, Dominican and Franciscan orders see Th. Deman: op.cit., cols. 558-564.

9. Modern commentators on the period differ regarding Concina's exact position. Deman considers him an anti-probabilist whereas Hamel argues his thinking is in the tradition of the rigorist moralists. (Cf. Th. Deman: op.cit., cols.574-580; E. Hamel: op.cit., p.676).

10. F.A. Zaccaria (1714-1795) was the most important of those who responded. In 1749 he published a corrected edition of Claude Lacroix's manual which was in the mainstream of Jesuit moral thinking in the previous century. In the same year Concina published his monumental Theologia christiana dogmatico-moralis which contributed to the further development of rigorist moral teaching. Benedict XIV to whom the work was dedicated appears to have favoured the author's approach to morality.

of Alphonsus Liguori (1696-1787)[11], considered subsequently to be the greatest moral theologian of the period. Liguori's approach to moral teaching was much influenced by his missionary work in the rural areas around Naples.

In 1748 he published his Annotationes on Busenbaum's Medulla theologiae moralis and later his influential manual, Theologia moralis (1753-1755), which appeared in seven more editions before his death. Three pastoral works of moral teaching ought also be mentioned. The Homo Apostolicus (1759) appeared originally in Italian and according to Häring is "probably the most mature of the saint's works, it went through 118 editions."[12] The Praxis confessarii ad bene excipiendas confessiones and Il confessore diretto per le confessioni della gente di campagna were meant as helps to priests in their work as confessors.

Alphonsus began his theological reflections as a probabiliorist although there is evidence that some controversialists grouped him with the Jesuit probabilists. However, the experience of evangelizing in country areas made him increasingly suspicious of the pastoral consequences of a rigorist moral theology. Little by little he modified his probabilist thinking. By 1762 his thinking had developed what is now called equiprobabilism.[13] It is the moral system

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11. Cf. "Alphonsus Liguori", O.D.C.C., pp.39-40.
G. Cacciatore: "Alfonso Maria di' Liguori", E.C., I, cols.864-873.
B. Häring and E. Zettl : "Alfons Maria di Liguori", L.Th.K., I, cols.330-332.
J. Kannengieser: "Alphonse de Liguori", D.T.C., I.1, cols.906-920.
G. Liévin: "Alphonse de Liguori", Dict. de Spir., I, cols.357-389.
A. Palmieri: "Alphonse de Liguori", D.H.G.E., II, cols.715-735.

12. B. Häring: The Law of Christ, I, p.22.

13. Cf. F.J. Connell: "Equiprobabilism", N.C.E., V, pp.502-503.

> according to which in a doubt of conscience concerning the morality of a certain course of conduct, a middle way between law and liberty is to be taken. When the opinions on both sides are about equally probable, the opinion for liberty may be followed if the doubt concerns the existence of the law (whether there is a law, whether it extends to this case, etc.); but the law must be observed when the doubt concerns the cessation of the law (whether a law that certainly did exist has been fulfilled, whether it has been dispensed with, etc.). For in the former case liberty is in possession, in the latter case the law; and the fundamental principle of this system is 'In a doubt the possessor is to be favoured.' Furthermore, if the opinion for liberty is notably more probable, whether the doubt concerns the existence or the cessation of the law, the opinion for liberty may be followed; if the opinion for law is notably more probable, the law must be observed. (14)

The real merit of Alphonsus's theory "consists in paving a secure way through the maze of opinions"[15] that proliferated in his day. His moral teaching appreciated the concrete circumstances of moral actions and eschewed any mechanical application of a formula. In all of this he is firmly within the tradition of post-Tridentine moral teaching that we discussed in the previous chapter.

At the beginning of the 19th century Roman Catholic theology in Europe had reached a low ebb.[16] The rigorism that Alphonsus reacted to in Italy held the French Church in its grip throughout the 18th century.[17] Surprisingly the Italian moralist had no influence on

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14. F.J. Connell: op.cit., p.502.

15. B. Häring: op.cit., p.22.

16. Cf. E. Hocedez S.J.: Histoire de la théologie au XIX^{e} siècle, Vol.I: Decadence et reveil de la théologie (1800-1831) pp.13-21.

17. Cf. J. Guerber S.J.: Le Ralliement du clergé français à la morale liguorienne. L'abbé Gousset et ses precurseurs (1785-1832), pp.21-93.

French moral teaching during his life-time. His thinking only entered French seminaries through the efforts of Cardinal Thomas Gousset (1792-1866) who published in 1832 Justification de la théologie morale du B. Alphonse de Liguori .[18]

Two other moralists introduced the "new" moral theology inaugurated by Liguori's Theologia moralis to the seminaries and colleges of France. J.-B. Bouvier's Institutiones theologicae came to be the text used in most French seminaries during the second half of the 19th century.[19] Equally influential was the Compendium theologiae moralis (1850) published by the French Jesuit J.-P. Gury.[20] This work was the earliest of the many manuals of moral theology that were to be influential in priestly formation from the mid-19th century until Vatican II.

The Church in Germany during the century 1750-1850 underwent considerable changes.[21] The anti-Protestant polemic that had sustained German theology gave way to a new battle against the rationalist

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18. Cf. J. Guerber: op.cit., p.98, 207-327.

19. Cf. F.C. Lehner: "Bouvier, Jean-Baptiste", N.C.E., II, p.740.

20. Cf. J.H. Campana: "Gury, Jean Pierre", N.C.E., VI, p.866. See also T.S., "Notes", 12 (1951) 52-56 in which G. Kelly S.J. evaluates the impact of Gury's Compendium a century after its publication. Deman argues that it is through Gury's work that a healthy probabilism and casuistry returned to 19th century moral reflection (cf. op.cit., cols. 592-593).

21. For a study of moral theology in Germany during the 18th and 19th centuries see:
J. Diebolt: La Théologie Morale Catholique en Allemagne au temp du Philosophisme et de la Restauration, 1750-1850.
M. Reichmann: Der Zweck heiligt die Mittel. Ein Beitrag zur Geschichte der christlichen Sittenlehre. pp.83-131.
B. Häring: The Law of Christ, I, pp.23-33.
Free and Faithful in Christ, I, pp.51-54.

philosophy of the time.[22] Moral theology during this period rejected laxist casuistry and, returning to the Scriptures and Tradition , organized the discipline in a rational way.

The first attempt at reconstructing moral theology on traditional foundations was made by B. Stattler (1728-1797), a Bavarian Jesuit. His moral thinking was influenced by utilitarianism and the probabilist tradition.[23] This attempt at reform, however, swam against the tide of the Enlightenment. It was not until the early 19th century that we can locate the two pioneers of contemporary moral theology. They are Johann Michael Sailer (1751-1832)[24] and Johann Baptist Hirscher (1788-1865).[25]

> These pioneer theologians felt the urgent need of shaping - over and above the casuistic moral of the age - a moral theology whose primary concern should be to restate the perfect ideal of the whole Christian life and to underline the means of attaining it. Since the basis of their moral teaching is the Gospel, the method and approach differ radically from the procedure and technique of jurisprudence, and the language is closer to the word and spirit of the Gospel. (26)

In 1817 Sailer published his three volume Handbuch der christlichen Moral in which he systematically presented teaching on the Christian

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22. Cf. J. Diebolt: op.cit., p.2.

23. Cf. J. Diebolt: op.cit., pp.127-138.

24. Cf. J.F. Groner: "Sailer, Johann Michael", N.C.E., XII, pp.851-852.

25. Cf. F.C. Lehner: "Hirscher, Johann", N.C.E., VI, p.1142.

26. B. Häring: The Law of Christ, I, p.23.

vocation and its ideals. Hirscher centred the whole of his moral teaching on the biblical concept of the kingdom of God.[27] Both writers exercised influence on a number of German Catholic moralists, some of whom belonged to the Tübingen school.[28] It was not, however, until the 20th century (and particularly after World War II), that the biblical and historical approach to moral theology initiated by Sailer and Hirscher gained general acceptance among Roman Catholic scholars.

During the last quarter of the 19th century the moral texts or manuals most in use fall into two groups. The first, inspired by the method and synthesis of Aquinas,[29] concentrated on the principles of Catholic moral theology. Generally the moral life was explained in terms of virtues rather than commandments. The manuals of the Dominican moralists B.H. Merkelbach[30] and D. Prümmer[31] exemplify this trend. Speculative moral reflection was pursued also by Thomas Bouquillon[32] and his successor at Bruges, G.J. Waffelaert.[33]

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27. Cf. Die christliche Moral als Lehre von der Verwirklichung des gottlichen Reiches in der Menschheit. 3 vols. (Tubingen, 1835).

28. For example, F. Probst, B. Fuchs, M. Jocham, F.X. Linsenmann, A. Koch, J. Mausbach and O. Schilling.

29. Pope Leo XIII in his encyclical Aeterni Patris (1879) recommended the writings of Aquinas to all Catholic theological institutes. Merkelbach et alii indicate the influence of the papal directive on the discipline of moral theology. (Cf. "Scholasticism", O.D.C.C., p.1246).

30. Cf. C. Lozier: "Merkelbach, Benôit Henri", N.C.E., IX, p.686.

31. Cf. C. Lozier: "Prummer, Dominikus", N.C.E, XI, p.930.

32. Cf. J.P. Whalen: "Bouquillon, Thomas Joseph", N.C.E., II, p.731. Bouquillon taught at the seminary in Bruges and later in the Catholic faculties of Lille University and Catholic University, Washington. In 1873 he published his Institiones theologiae moralis fundamentalis.

33. Cf. P.K. Meagher: 'Waffelaert, Gustave Joseph", N.C.E., XIV, pp.762-763.

Both moralists attempted to introduce rigorous method into moral reflection. The Tractatus de actibus humanis (1880) by G.J. Walsh[34] pursued the same goals and was often quoted in later literature.

The second group of manuals that developed during the latter part of the 19th century were published up until the Second Vatican Council and were directed to the formation of good confessors. The influence of St. Alphonsus's Theologia moralis is quite noticeable on this type of literature. The manuals cited in the remainder of this chapter are, in the main, from this group. They are characterized by a solid casuistry. In format and teaching they are quite similar to one another.

Among the Redemptorist exponents of St. Alphonsus we can include the Frenchman, Clément Marc,[35] and his Belgian confrere, Jozef Aertnys.[36] The Jesuit moralists, through their manuals, exercised a considerable influence in seminaries and theological faculties. Antonio Ballerini[37] wrote not only on the probabilism of St. Alphonsus[38] but enhanced the value and extended the influence of Gury's Compendium through his annotations on the text. The Gury-Ballerini

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34. Cf. T. Joyce: "Walsh, William Joseph", N.C.E., XIV, pp.784-785.

35. Cf. A. Sampers: " Marc, Clément", N.C.E., IX, p.187.

36. Cf. A. Sampers: "Aertnys, Jozef", N.C.E., I, p.159.

37. Cf. J.C. Willke: "Ballerini, Antonio, N.C.E., II, p.31.

38. Ballerini's treatise De morali systemate S. Alphonsi Mariae de Liguorio (Rome, 1863) provoked a heated discussion on the probabilism taught by Liguori. A study of this revival of the probabilism debate is discussed by
A. Vermeersch S.J.: "Soixante ans de théologie morale", N.R.T., 56 (1929) 873-874.
E. Hocedez S.J.: op.cit., III, pp.334-337.
J. de Blic S.J. and A. Vermeersch S.J.: "Probabilisme", Dictionnaire Apologetique de la Foi Catholique, IV, cols. 301-361.

manual was subsequently edited by another Jesuit professor at the Gregorian University in Rome, D. Palmieri.[39] Two other moralists at the Gregorian, G. Bucceroni[40] and his successor A. Vermeersch[41] have left manuals of moral teaching.

A contemporary of Vermeersch during his teaching assignment at Louvain was another Jesuit, Edouard Genicot.[42] His Institutiones and Casus were subsequently edited by his nephew and successor in the chair of moral theology in Louvain, J. Salsmans S.J.[43] In German speaking lands August Lehmkuhl S.J.[44] and H. Noldin S.J.[45] published handbooks.

In the U.S. the first moralist of importance was Francis P. Kenrick (1796-1863),[46] later Archbishop of Baltimore. "His Theologia Moralis was the first book on the subject to relate general principles to the American scene, but is best remembered for its acceptance of slavery."[47] The Italian Jesuit, L. Sabetti,[48] taught

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39. Cf. J. Flynn: "Palmieri, Domenico", N.C.E., X, p.936.

40. Cf. R.M. Bush: "Bucceroni, Gennaro", N.C.E., II, p.843.

41. Cf. J.M. Upton: "Vermeersch, Arthur", N.C.E., XIV, pp.618-620.

42. Cf. J.H. Campana: "Genicot, Édouard", N.C.E., VI, p.332.

43. Cf. J.H. Campana: "Salsmans, Joseph", N.C.E., XII, p.989.

44. Cf. R.M. Bush: "Lehmkuhl, August", N.C.E., VIII, p.619.

45. Cf. J. Upton: "Noldin, Hieronymus", N.C.E., X, pp.481-482.

46. Cf. H.J. Nolan: "Kenrick, Francis Patrick", N.C.E., VIII, pp.155-156.

47. J. Hennesey S.J.: "Roman Catholic Theology in the United States," Louvain Studies, 6 (1976) 15.

48. Cf. J. Hennesey: "Sabetti, Luigi", N.C.E., XII, p.783.

at the Jesuit theologate at Woodstock from 1871 until his death in 1898. In content and method he represented the school of Busenbaum, Gury and Ballerini, and through his influence the Compendium of Gury-Ballerini became a standard textbook in American seminaries. The French Sulpician, A.A. Tanquerey,[49] during his work at St. Mary's, Baltimore (1887-1902), wrote his Synopsis theologiae moralis to relieve the shortage of suitable textbooks for American seminaries.

Two English Jesuits contributed substantially to English language moral literature. Thomas Slater[50] and Henry Davis[51] have left important works that we will refer to in the following pages.

III THE HUMAN ACT

In spite of the great number of manuals of moral theology published since the end of the last century one does not find substantial differences between them regarding their structure and content. This is certainly the case for the treatise De actibus humanis.[1]

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49. Cf. J.A. Laubacher: "Tanquerey, Adolphe Alfred", N.C.E., XIII, p.934.

50. Cf. J.G. Bischoff: "Slater, Thomas", N.C.E., XIII, p.280.

51. Cf. T. Corbishley: "Davis, Henry", N.C.E., IV, pp.662-663.

1. Cf. J. Aertnys C.SS.R. and C.A. Damen C.SS.R.: Theologia moralis secundum doctrinam S. Alfonsi de Ligorio, I, nn.1-46.
J. D'Annibale: Summula theologiae moralis, I, tr.2.
A. Ballerini S.J. and D. Palmieri S.J.: Opus theologicum morale in Busenbaum Medullam, I, tr.1.
J. Bucceroni: Institutiones theologiae moralis secundum doctrinam S. Thomae et S. Alphonsi, I, nn.36-38.
H. Busenbaum S.J.: Medulla theologiae moralis, I, lib.1, tr.2, c.4.
H. Davis S.J.: Moral and Pastoral Theology, I, c.1.
L.J. Fanfari O.P.: Manuale theorico-practicum theologiae moralis ad mentem D. Thomae, I, tr.2.
E. Genicot S.J., J. Salsmans S.J. and A. Gortebecke S.J.: Institutiones theologiae moralis, I, tr.1.

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The Summa Theologiae Moralis of H. Noldin S.J., A. Schmitt S.J. and G. Heinzel S.J.[2] may be taken as a typical example of the manualist analysis of the human act. The text proceeds in three stages. First, it discusses the human act (its nature, the voluntarium, the principles governing it as well as its impediments).[3] Secondly, it subjects the moral act to analysis under five headings:

(a) the nature of moral acts;

(b) the norm of morality;

(c) the sources of morality (i.e. object, circumstances, end);

(d) the morality of the external act;

(e) the imputability of moral acts.[4]

Finally, the manual examines morally good acts (those that are supernatural and meritorious) as well as the question of morally

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Footnote 1 (continued)..

J.P. Gury S.J. and A. Ballerini S.J.: Compendium theologiae moralis, I,
B. Häring C.SS.R.: The Law of Christ, I, pp.189-195.
F. Hürth S.J. and P.M. Abellán S.J.: Notae ad praelectionis theologiae moralis, lib.II.
T.A. Torio: Theologia moralis, I, tr.1.
A. Lehmbuhl S.J.: Compendium theologiae moralis, I, lib.1, tr.1.
J. Mausbach and G. Ermecke: Katholische Moraltheologie, I
B.H. Merkelbach O.P.: Summa theologiae moralis ad mentem D. Thomae et ad normam iuris novi, I
J.A. McHugh O.P. and C.J. Callan O.P.: Moral Theology, I, nn.94-105.
H. Noldin S.J., A. Schmitt S.J. and G. Heinzel S.J.: Summa theologiae moralis, I, nn.40-104.
D.M. Prümmer O.P. and E.M. Münch O.P.: Manuale theologiae moralis secundum principia S. Thomae Aquinatis, I
E.F. Regatillo and M. Zalba S.J.: Theologiae moralis summa, I,
T. Slater S.J.: A Manual of Moral Theology for English Speaking Countries, I, pp.5-10.
A. Tanquerey - F. Cimetier: Synopsis theologiae moralis et pastoralis, I.
A. Vermeersch S.J.: Theologiae moralis principia, responsa, consilia, I.
L. Wouters C.SS.R.: Manuale theologiae moralis, I.
M. Zalba S.J.: Theologiae moralis compendium, I.

2. 31st edition, 1957.

3. nn.40-62.

4. nn.63-86.

indifferent acts.[5]

Two areas studied by the tracts on human acts concern us here. The first concerns the notion of the voluntarium to be found in the literature and the second pertains to the moral quality of the human act.

Noldin defines the voluntarium as follows:

> Voluntarium dicitur, quod a voluntate (tamquam effectus a sua causa) procedit cum praevia cognitione intellectus. Duo ergo de ratione voluntarii sunt: (a) ut actus a voluntate tamquam a causa sua procedat; (b) ut ponatur praelucente cognitione intellectus. (6)

The involuntarium is that which does not proceed from the will. Following on the definition of the voluntarium and involuntarium the manuals distinguish between the voluntarium (a) necessarium and liberum; (b) perfectum and imperfectum; (c) simpliciter and secundum quid; (d) expressum and tacitum; (e) in se and in alio (or in causa); (f) directum and indirectum; (g) actuale, virtuale and habituale.[7] The involuntarium is divided as follows: (a) positive and negative (or privative); (b) perfectum and imperfectum.[8]

The distinctions that primarily concern this thesis are those between voluntarium in se and voluntarium in alio (or in causa), voluntarium directum and voluntarium indirectum. Noldin distinguishes

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5. nn.87-104.

6. H. Noldin, A. Schmitt and G. Heinzel: op.cit., n.42. Liguori also gives a similar definition: Theologia Moralis, lib.5, tractatus praeambulus, art.2, n.VII; Homo Apostolicus, I, tr.3, c.1, n.3.

7. Cf. H. Noldin: op.cit., n.42; Ballerini-Palmieri: op.cit., I, n.37 emphasizes the differences in terms used by moralists.

8. Some authors refer to the involuntarium negative (or privative) as non-voluntarium since there is no act of the will involved.

them as follows:

> Voluntarium in se et in alio seu in causa (quod ab aliis voluntarium directum et indirectum dicitur) ratione modi, quo aliquid intenditur: voluntarium in se est ipsum obiectum in quod tendit voluntas, ut in finem sive relative ultimum, sive intermedium ad alium; sic ei, quo inimicum deliberate occidit, mors inimici in se voluntaria est. Voluntarium in causa est, quod ipsum non intenditur, sed praevidetur secuturum ex illo obiecto, quod in se intenditur. Procedit ergo a voluntate solum eatenus, quatenus eius causa a voluntate procedit. Sic ei, qui vult feram occidere, mors amici, quae non intenditur, sed secutura praevidetur ex illa actione, est voluntaria in causa. (9)

In this text the author refers to a number of moralists who identify the voluntarium in se with the voluntarium directum and the voluntarium in causa with the voluntarium indirectum.[10] This equation of terms that began with Medina, Vazquez and Lessius is very significant for later use of the direct-indirect distinction. Alphonsus Liguori himself equated the voluntarium in causa with the voluntarium indirectum.[11]

The second aspect of the tract on human acts that ought to be noted briefly is the manualists' understanding of the moral quality of the act. Regarding the morality of the external act the manuals conclude that

(a) foreseen effects, if intended, add to the moral quality of the act;

(b) unforeseen effects that follow naturally (i.e. per se)

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9. H. Noldin: op.cit., n.43, 5.

10. Cf. P.J. Glenn: Ethics, pp.14-15; V. Frins: De actibus humanis sect.2, n.181.

11. "Dividitur 4. in voluntarium directum et indirectum. Illud directe et immediate procedit a voluntate, tamquam a causa efficienti. Hoc vero licet non procedat a voluntate immediate, ab ea tamen mediate dependet. Sed nemo non videt, hanc quartam voluntarii divisionem facile ad tertiam (i.e. voluntarium in se and voluntarium in causa) posse redire" Theologia Moralis, lib.5, tractatus praeambulus, art.2, n.IX.

and usually from an act make the act better or worse depending on their character;

(c) unforeseen effects that follow only accidentally (i.e. per accidens) and rarely from an act do not affect its moral quality.[12]

For an act to be imputed to a moral agent three conditions must be fulfilled:

(a) the act must be human (i.e. done knowingly and willingly);

(b) the moral quality of the act must be known by the agent - at least in a general way;

(c) the moral quality of the act must be willed.[13]

In the light of this brief survey of the moral theology manuals on the human act some comments are appropriate. It has already been mentioned that a good number of the manuals differ very little one from another. The differences that do occur are on specific points and entail matters of emphasis. Most begin their treatises on fundamental moral theology with the tract De actibus humanis. This is the case after the manual of Gury published in 1850. St. Alphonsus and a number of the earlier manualists retain the format of an earlier period. His Theologia Moralis commences with the study of conscience and only studies human acts in general in the preface to the tract on sins. This change in format points to a change of emphasis in the later manuals. In place of a predominant concern with conscience,

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12. Cf. McHugh-Callan: op.cit., I, n.94; Vermeersch: op.cit., I, n.116; S.A. Loiano and M.A. Grizzana: Institutiones theologiae moralis ad normam iuris canonici, I, n.28.

13. Cf. McHugh-Callan: op.cit., I, nn.97-104; Noldin: op.cit., I, nn.79-80.

and means of assuring certainty of conscience in the moral life, the manuals after Gury attempted to be more objective, analytic and deductive.[14] A rigorous analysis of the moral act permitted the manualists to reach certain basic principles or axioms that they then applied to issues in special moral.

Two other influences should be adverted to here. The first concerns the role of Aquinas in much of the manualist teaching as well as the increasing reference to the Code of Canon Law which applied in the Church after 1918. The influence of neo-Thomism and its understanding of natural law is pertinent to a number of issues that will be studied in section IV and in later chapters. The influence of Church law was more indirect. It accounts for increasing reference and subservience to statements of the Holy Office and the papal magisterium in later editions of the manuals. These two trends will become obvious in the particular questions discussed regarding the commandment: "thou shalt not kill."

Apart from the systematic study of the human act - in its earliest form begun by John of St. Thomas - the manualist teaching on the moral act is significant for our study on the direct-indirect distinction on two counts:

(a) we find an increasing identification of direct and indirect

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14. This emphasis is also present in the manuals of moral philosophy which were used as preparation for the course in moral theology in the seminary.
Cf. V. Cathrein S.J.: De bonitate et malitia actuum humanorum.
M. Cronin: The Science of Ethics, vol.I.
V. Frins S.J.: De actibus humanis ontologice et psychologice consideratis.
P.J. Glenn: Ethics. A Class Manual in Moral Philosophy.
W. McDonald: Principles of Moral Science.
S. Schiffini S.J.: Disputationes philosophiae moralis.

with voluntarium in se and voluntarium in causa.

(b) The manuals insist that the moral agent must know what he is doing and must will the moral quality of the act.

III THE PRINCIPLE OF DOUBLE EFFECT

The older manualists - Busenbaum and Alphonsus Liguori - do not refer to the P.D.E. in their studies on the human act. It is only with Gury's Compendium (1850) that moralists "universally give an adequate, thorough explanation of the principle of the double effect as a general principle applicable to the whole field of moral theology."[1] The majority of the manuals articulate the P.D.E. in essentially the same way, generally with four conditions.[2] Noldin is typical of the manuals:

> Licet ponere actionem, ex qua sequitur bonus et malus effectus, si quatuor condiciones simul verificantur: Scil.
> (a) Si actio ipsa est bona vel indifferens vel saltem non praecise ideo prohibita, ut effectus malus impediatur....
> (b) Si effectus bonus non sequitur per effectum malum, sed aut aeque immediate aut saltem effectus malus per effectum bonum. Secus malus effectus intenderetur tamquam medium ad effectum bonum....
> (c) Si effectus malus, qui praevidetur secuturus, non intenditur neque approbatur sed mere permittitur: nam etiam actio in se honesta fit mala, si agens in ea perficienda pravum finem intendat....
> (d) Si adest ratio proportionate gravis ponendi causam et permittendi effectum malum: accedente enim causa sufficienti cessat lex, vi cuius effectus malus erat vitandus; cessante

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1. J. Mangan: op.cit., p.59.

2. Cf. Aertnys-Damen: op.cit., I, n.14; Bucceroni: op.cit., I, n.36; Davis: op.cit., I, pp.13f; Fanfani: op.cit., I, tr.2, c.2, art.10; Genicot: op.cit., I, n.14; Gury: op.cit., I, n.8; Hürth-Abellán: op.cit., n.389; Iorio: op.cit., I, n.23; Lehmkuhl: op.cit., I, nn.11-12; Mausbach-Ermecke: op.cit., I. p.258; Merkelbach: op.cit., I, n.173; McHugh-Callan: op.cit., I, n.104; Prümmer: op.cit., I, n.57; Regatillo-Zalba: op.cit., I, nn.183-195; Slater: op.cit., I, pp.5-10; Tanquerey-Cimetier: op.cit., II, nn.220-227.

> autem hac lege effectus malus licite permitti potest, ut si quis ad se ipsum conservandum occidit invadentem. (3)

A small number of manuals give only three conditions in their P.D.E. C. Marc C.SS.R. presents the principle as follows:

> Licet ponere causam honestam, ex qua immediate sequitur duplex effectus, alter bonus, malus alter; dummodo bonus tantum ab agenti intendatur, et adsit causa proportionate gravis permittendi effectum malum. (4)

Piscetta-Gennaro give as their first condition of the P.D.E. that the "finis agentis sit honestus", and the second that "effectus bonus proveniat non ex effectu malo sed ex causa bona, vel indifferenti, saltem aeque immediate ac malus."[5]

These two manuals differ only in a slight way from the majority of those who give the P.D.E. in four conditions. They have elided the first two conditions given by Noldin and have assumed that the act in itself must be at least good or indifferent for the agent to place a causa honesta or have a finis honestus.

During this century there has been a growing body of literature critical of the P.D.E. as it was used and articulated by the manuals. Much of this literature will concern us in the two chapters that follow. There are, however, four manualists who raise a number of substantive difficulties with the principle defined above. The first two wrote during the first half of the 20th century. The latter two more recently.

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3. Noldin-Schmitt-Heinzel: op.cit., I, n.83.
4. Institutiones morales Alphonsianae, I, n.314.
5. Elementa theologiae moralis, I, n.31.

W. McDonald in his text Principles of Moral Science[6] subjected the manualist P.D.E. to a thorough-going critique.[7] In so doing our author foreshadowed some of the later discussions in the periodical literature.

McDonald assumed an objectivist understanding of the human act, that is the morality of the human act is determined by the object of the act and its effect(s) prior to any involvement of the will:

> .... external acts, as such, do not depend for their morality on any concomitant or subsequent act of the will. If I slay an innocent man directly, my action is morally wrong, no matter how holy my intention may be; so too, if I rescue some one from drowning, I am doing right, so far, even though the rescue should be effected with a view to cruelty. Let it be remembered always that the question at issue is, not whether the agent in a particular case commits a sin by an act of his will, but rather whether his external act is materially lawful or unlawful. (8)

Because of his understanding of the moral act McDonald argues that the real distinction should be between direct and indirect causality, not direct and indirect intention as the manualists assume in their use of the P.D.E. He cites the now familiar example of a pregnant woman who has a fever. The doctor gives her a drug to reduce her temperature. This, however, precipitates an abortion. According to McDonald the manuals argue that if the drug was given to cause an abortion the evil effect is "directly" produced whereas it is only "indirectly" caused if the physician's intention is to lower her temperature. But what "has the intention of the agent to do with the causality of his external act? The external act is really the same in both cases; why, again, should the evil effect be caused directly in one case

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6. Bk.II, Ch.2: "Actions with Complex Formal Objects" (pp.187-209).

7. Although a book of moral philosophy McDonald's text is within the methodology used by the manuals.

8. W. McDonald: op.cit., p.190.

and indirectly in the other?"[9] In the light of this example McDonald is of the opinion that the direct-indirect distinction is of no value.

Another area of difficulty for our author regarding the P.D.E. concerns the notion that the will permits the evil effect to occur. McDonald is unable to see how permitting something to happen is applicable when the agent is the efficient cause bringing the effect into being. To overcome this difficulty he develops the notion of "pretermission".

> I have a notion that the term permittere as used in this connection, is a substitute for praetermittere, and signifies, as not rarely in classical Latinity, 'to omit or pass over', - which is exactly what the will does in the process of abstraction just described. An object is recognized by the intellect as inordinate under a certain aspect. The will can embrace this aspect, thereby doing what is wrong; or it can either hate that aspect or at least omit to embrace it, tending towards the object under an entirely different aspect which is in order. Pretermission or 'permission', in this sense, is necessary, whenever the effect produced has an evil aspect, if the agent is to avoid an inordinate act of the will. (10)

Both criticisms raised by McDonald illustrate the confusion of causal, intentional and moral dimensions of acts with two-fold effects. These points of confusion will be discussed repeatedly in the next two chapters as we trace recent uses of the direct-indirect distinction and the P.D.E.[11]

Arthur Vermeersch S.J. presents the second approach to the P.D.E.

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9. W. McDonald: op.cit., p.196.

10. W. McDonald: op.cit., pp.220-221.

11. McDonald himself defined the P.D.E. as follows: "An external action is to be considered morally good, even though it should produce a bad as well as a good effect, provided (1) it does not subordinate a being which by nature is not to be subordinated; and (2) the good effect produced is sufficient to compensate for the bad." (op.cit., p.200).

to be considered here. He formulates the principle as follows:

> Effectus malus qui actionem sequi permittitur, non imputatur, si diversa est efficientia immediata, et permissio excusatur ratione proportionate gravi, quatenus haec requiratur. (12)

Vermeersch, in this definition of the principle, attempts to formulate the P.D.E. in a comprehensive fashion so that it is applicable to all acts and effects. He finds fault with the standard formulation of the P.D.E. in four conditions:

(a) not only are the evil effects of a good or indifferent act excused for a sufficient reason, but also the evil effects of an evil act are excused to some extent (for example, pollution, which one knows will follow from drunkenness). This is not as serious as pollution directly procured.

(b) The traditional manner of stating the P.D.E. merely compares the effects of the act in question, whereas the moral character (e.g. the goodness) of the act itself should also be considered.

(c) The traditional P.D.E. demands that the good effect alone be intended in order that the act be good, whereas, if one has a secondary evil intention, the act is not entirely corrupted.[13]

Kramer is highly critical of these three reasons:

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12. A. Vermeersch: op.cit., I, n.117. H. Kramer translates the text: "an evil effect which is permitted to flow from an act is not imputed if the immediate efficient cause of the effect is different (i.e. of a different moral character), and if there is a proportionate reason for permitting the evil." (The Indirect Voluntary or Voluntarium in Causa, p.75).

13. Cf. A. Vermeersch: op.cit., I, n.118.

> This statement of the rule, however, does not seem to be an improvement. In regard to his first reason, we have already seen that although the unintended evil effect of an evil act influences the morality of the act in a less degree than it would, were the evil effect intended, nevertheless this difference is of no practical importance. Moreover, Vermeersch's own rule does not really cover this case, as he states that the evil effect is not imputed if its permission is excused by some sufficient reason. He does not state in his rule that the imputability of the evil is lessened if there is no excusing cause.
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> His second reason for restating the rule is also not convincing. It is true, the moral character of the act itself must be considered when judging the relative amount of goodness and evil that the act causes. But what is meant by saying that an act is good? It means only that the act produces or acquires for the agent some perfection that is in conformity to its nature. In other words, we judge the moral character of an act from the moral character of the object or effects that it produces. An act of almsgiving is considered good because of the good it effects, it relieves the need of another. Ordinarily, we speak of this act of alms_giving as an act that is good in itself. But if we examine why we call the act good, we will find that it is because the act produces or effects something that is good.
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> The third reason that Vermeersch gives for restating the rule of double effect is that the intention need not be restricted to the good in order that the act be good. If the principal intention is good, a secondary evil intention will not make the act itself evil. The killing of the innocent in a fortress will not be imputed to the general even if he orders the enemy fortress to be destroyed in a fit of anger. The case Vermeersch here has in mind is one in which the principal intention, the motive of the act, is good. To take revenge, the evil intention, is only the secondary intention, and does not entirely corrupt the otherwise good act. But the reason for this is, as Vermeersch himself states, that here there are really two distinct acts of the will. The act of aggression is commanded act of the will; the desire of revenge is an elicited act. As we have already stated, the principle of double effect applies only to commanded acts of the will. It is of use in determining the morality of a single will-act that produces several external effects. But it is of no service in determining the moral character of several distinct will-acts upon a single object. Each new will act must be judged individually, according to its object and motive. (14)

Kramer does not stop with this negative criticism but then proceeds to give his "rule of the double effect":

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14. H. Kramer: op.cit., pp.76-77.

> evil may be indirectly willed (i.e. permitted) for a sufficient reason.
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> This formula is even more inclusive than the traditional statement of the principle. It includes the evil effects of the acts both of ourselves and of others. Although it does not state that the act in question must be good, or at least indifferent, it does state that the evil must be only indirectly willed, and thus implies that there is some other object that is directly willed and gives the act its moral character. The rule here given merely states that the act will not lose the moral character it receives from the intended object, provided there is sufficient reason for permitting an unintended evil object. If the act was good, it will remain good in spite of the evil effect.
>
> The suggested formula also implies that there must be at least two effects, and that the intended effect is caused as immediately as the unintended effect or more immediately than it. If there is an unintended effect, there must also be an intended effect, for no human act is placed without some motive. The intended effect, moreover, cannot be obtained by means of the unintended effect, for then what is called the unintended effect would really be directly willed. The formula given permits only the unintended effect to be evil, and therefore excludes the possibility of the means employed being evil. (15)

The extended critical analysis of Vermeersch's formulation of the P.D.E. just quoted gives some idea of the concerns with the principle that engaged moralists during the period between the first and second World Wars. A full appreciation of Vermeersch's approach to double effect will only be possible when we analyse his debate with A. Gemelli in the next chapter. What can be deduced so far from Vermeersch's attempt to reformulate the principle is an awareness that as presented in the manuals the principle does not respond to all the moral dilemmas to which it was applied.

Two manuals of moral theology published since the fifties witness to many of the criticisms of the P.D.E. that have come to the surface since World War II. As much of this material will be considered in the next two chapters it suffices here to mention briefly the approaches

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15. H. Kramer: op.cit., p.77.

pursued by these two authors.

G. Guzzetti[16] was much aware of the element of "compromise" in many of the moral decisions people make. He reinterpreted the P.D.E. radically, making it the principle of the best possible. Since the moral agent is not able to do all the good that is possible, he must do the best he can, maintaining his desire for the complete good and regretting the evil his conduct brings into being.[17] By reinterpreting the principle in this way Guzzetti has effectively suppressed the first condition as given by Noldin above and has rejected the third condition since for Guzzetti it would be possible to will an evil so as to attain a good end.

C.H. Peschke[18] puts his finger on the two contemporary difficulties regarding the P.D.E. as used by the manuals. First, the principle presupposes there are certain actions which are always and absolutely evil. Many ask today: can there ever be such absolutely evil acts?[19] Secondly, it was argued in the past that if certain evil effects were not permitted much good would be left undone. This argument, Peschke contends, holds true also for some instances of directly willed effects.[20] He proposes the case of a woman in the fifth month of a pregnancy who falls seriously ill. Her life can only be saved by a therapeutic abortion. Would this operation, evil as it may be,

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16. Cf. G. Guzzetti: Morale generale, pp.157ff.
17. Cf. L. Rossi: "Come si formula il principio del duplice effetto," La rivista del clero italiano, 42 (1961) 280-282.
"Il limite del principio del duplice effetto", Rivista di teologia morale, 4 (1972) 22-24.
18. Cf. C.H. Peschke S.V.D.: Christian Ethics, I, pp.209-213.
19. Cf. C. Peschke: op.cit., I, pp.210-211.
20. Cf. C. Peschke: op.cit., I, p.213.

be permissible rather than let the mother and child die? Peschke's response to the issue brings the problem clearly into focus:

> .... it causes wonder that the entire reasoning limits itself to an argument a posteriori, which justifies the principle of the double effect only by the absurd consequences of the contrary.... Is there no possible argument a priori which could be called upon? The argument which spontaneously offers itself is that in a conflict between two evils one must opt for the lesser one. However, this argument would also hold for some instances of directly-willed evil effects, such as the mentioned example of therapeutic abortion. The directly willed evil effect of a therapeutic abortion is in terms of detriment to human life a lesser evil than the death of mother and child together. Naturally, lawful admission of a directly-willed evil effect would also presuppose that the intention of the agent is good, not evil, and that a proportionately grave reason exists. In other words, the third and fourth conditions for the admission of indirectly willed evil effects would universally apply for any kind of evil effect. (21)

With the works of Guzzetti and Peschke we have entered a more recent period of reflection on the P.D.E. It is now necessary to return to the main body of manualist literature and assess their understanding of the direct-indirect distinction.

IV THE DIRECT-INDIRECT DISTINCTION

In this section we will consider the manualist treatment of direct and indirect killing and in the light of this it will be possible to clarify their use of the direct-indirect distinction.

All the manuals of moral theology give considerable attention to the fifth commandment of the decalogue: "thou shalt not kill."[1]

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21. C. Peschke: op.cit., I, p.213.

1. Cf. Aertnys-Damen: op.cit., I, lib.3, tr.5; Alphonsus Liguori: Theologia Moralis, V, lib.3, tr.4, c.1; Homo Apostolicus, I, tr.8 D'Annibale: op.cit., II, lib.3, c.3; Ballerini-Palmieri: op.cit., II, tr.6, sect.5; Bucceroni: op.cit., I, nn.708-761; Busenbaum: op.cit., I, lib.3, tr.4, c.1; Davis: op.cit., II, pp.141-199; Fanfani: op.cit., II, tr.5, sect.2, c.2; Genicot: op.cit., I, tr.6, sect.5; Gury-Ballerini: op.cit., nn.389-409; Häring: op.cit., III, pp.187-257; Hürth-Abellán: op.cit., nn.86-104; Iorio: op.cit., II, tr.6, sect.5; continued..

Whether they do this in the context of their study of the precepts of the decalogue[2] or under the heading of vices contrary to commutative justice[3] is, on the whole, unimportant. As has already been mentioned the format of most manuals is quite similar. The differences that do occur are generally due to developments in the area of medical ethics. Later editions of a number of the manuals give evidence of new issues. Where these will be discussed in later chapters of this thesis we will not delay here on the manualist analysis of the same problems.[4]

The structure of the manualist treatment of the fifth commandment is as follows:

1. The obligation to preserve life.
2. Killing oneself: (a) suicide;
   (b) exposing oneself to danger.
3. Mutilation: (a) definition of mutilation;
   (b) mutilation of oneself - castration;
   - sterilization;
   (c) mutilation on behalf of another (organ transplants).
4. Killing the evil doer: (a) capital punishment;
   (b) tyrranicide;

Footnote 1 (continued)..
Lehmkuhl: op.cit., I, pars.1, lib.2, div.3, tr.2, nn.832-859; Loiano-Grizzana: op.cit., III, nn.379-416; McHugh-Callan: op.cit., pp.98-128; Marc: op.cit., I, tr.5; Mausbach-Ermecke: op.cit., III, pp.72-97; Merkelbach: op.cit., II, nn.349-374; Noldin: op.cit., II, nn.325-354; Peschke: op.cit., II, pp.307-370; Piscetta-Gennaro: op.cit., III, nn.194-237; Prümmer: op.cit., II, nn;112-146; Regatillo-Zalba: op.cit., II, tr.5; Slater: op.cit., I, pp.194-208; Tanquerey-Cimetier: op.cit., III, nn.256-329; Vermeersch: op.cit., II, lib.2, tr.5, sect.3, tit.3; Wouters: op.cit., nn.731-751.

2. For example: Busenbaum; Alphonsus and the majority of the Jesuit moralists.

3. For example: St. Thomas and the Dominican moralists - Fanfani, McHugh-Callan, Prümmer, Merkelbach. The Sulpicians , Piscetta-Gennaro belong to this group.

4. Cf. Issues such as craniotomy, ectopic pregnancy, abortion and war.

(c) genocide.

5. Killing the unjust aggressor.

6. Killing the innocent: (a) homicide
(b) craniotomy
(c) ectopic pregnancy
(d) abortion

7. Duelling.

8. War.

Of the eight topics listed above we will only discuss here those which throw some light on the direct-indirect distinction: killing of oneself, mutilation and killing the unjust aggressor.

1. Two issues - suicide and exposing oneself to danger - are frequently discussed under the heading of killing oneself. All manualists assert that it is never lawful "propria auctoritate se ipsum directe occidere."[5] even if one's life appears hard or useless. The prohibition is grounded on three assumptions:

(a) man's life is under the power of God alone; to destroy one's life is to exercise an authority man does not possess.

(b) Suicide is an act against the proper love an individual should have for himself.

(c) Human life continually offers an individual the opportunity to reach supernatural life; to commit suicide is, therefore, to act contrary to God's justice and love.[6]

In addition to these reflections on the value and purpose of human life, scriptural[7] and canon law[8] prohibitions against suicide are

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5. Noldin: op.cit., II, n.326.

6. Cf. S.T., II-II, q.64, a.5.

7. Cf. Exod. 20:13; Gen. 9:6; Deut. 32:39; Wis. 16:13ff; Rom. 14:7-9.

8. Cf. C.I.C., can.1240, 1, 3; can.2350, 2 which exclude all who commit suicide from ecclesiastical burial; can.985, n.5 declares all who attempt suicide as irregular.

generally invoked by the manuals. In recent literature the question of man's lack of autonomy - so basic to much of the manualist analysis of killing and mutilation - has been subjected to increasingly critical studies as we shall observe in later chapters.

The manuals distinguish direct and indirect killing of oneself:

(a) Direct killing occurs "si mors ipsa est intenta in se sive ut finis, sive ut medium ad alium finem (quamvis bonum); ponitur ergo actio occisiva cum intentione mortis; immo, si actio ex sua natura ordinata est immediate et exclusive ad mortem inferendam, est intrinsece mala et intentio necessario etiam in eundem malum finem dirigitur, quamvis agens protestetur et alium finem bonum praetendat."

(b) Indirect self-killing occurs "si mors non est voluntaria in se, sed in causa, i.e. active permissa, in quantum praevidetur secutura praeter intentionem ex actione, quae ex natura sua etiam ad alium effectum immediatum ordinatur et propter hunc solum ponitur. Exemplo sit factum Samsonis (Jg. 16, 30)."[9]

The moral books follow many of the examples given by Busenbaum in his Medulla:

(a) Dangerous acts undertaken foolishly (e.g. to win a bet), out of fear, or in order to be sensational (e.g. trapeze artists) may be immoral killing of oneself.

(b) The immediacy of good and evil effects is well illustrated

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9. Noldin: op.cit., II, n.326, 1(a).

by the case of Eleazar in 1 Macc. 6:43ff. A number of military acts, e.g. the destruction of a ship or fort through explosives with real danger of death to the agent, are considered justified after the example of Eleazar.

(c) Citizens, rulers or military personnel who are bound to remain at their post even though they foresee they will be killed are considered by the manuals to kill themselves only indirectly. Such would be the case for anyone standing out against a tyrant knowing in advance that he would be killed.

(d) To jeopardize one's life with fatal consequences (e.g. to place oneself between an assassin and his intended victim), to take the place of an unjustly condemned person or to give up one's place on a life-raft are all considered to be examples of lawful indirect self-killing.[10]

The above examples are considered to be justified as indirect self-killing since there is a proportionately grave reason permitting the placing or the omission of an act where it is foreseen death will result. All direct killing of self is considered to be immoral.[11]

The P.D.E. and the direct-indirect distinction are employed by the manuals when they discuss cases where a person places his life in danger.[12] In this area they also distinguish remote and proximate danger to life. The less proximate a danger is the less serious need

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10. These typical examples are to be found in Alphonsus: Theologia Moralis, lib.3, tr.4, n.366; Homo Apostolicus, tr.8, c.1, n.1; also Noldin: op.cit., II, n.326, 4 and 5.

11. Cf. Noldin: op.cit., II, n.326(b).

12. Cf. Alphonsus: Theologia Moralis, lib.3, tr.4, nn.367-368; 370-371 : Homo Apostolicus, c.1, n.2, 16.
Noldin: op.cit., II, n.327; Häring: op.cit., III, p.214.

be the cause justifying the act or omission. The manuals maintain that moral necessity or the practice of virtue are sufficient to justify the exposing of one's life to danger.

The many cases discussed by the manuals since the time of Busenbaum may be conveniently grouped under five headings:

(a) People may legitimately expose their lives to danger if they are nursing others with contagious disease or if their work is heavy or dangerous.

(b) A number of cases discussed deal with escape from situations of danger. In these instances the escapee is forced to take a course of action almost as dangerous as that which threatens him. The following are considered by the manualists to be lawful and indirect killing of self:

(i) to throw oneself out of a window to avoid incineration;

(ii) to set fire to a ship so as to avoid falling into enemy hands;

(iii) a virgin may throw herself out of a window to avoid attempted and violent rape.

(c) A number of military cases similar to those mentioned above in reference to 1 Macc. where extreme danger is involved.

(d) Some manuals discuss questions regarding religious obligations in cases where life is endangered.

(i) ought a Carthusian eat meat when critically ill?

(ii) are penances which shorten one's life lawful?

(e) The use of the hunger strike as a political and moral weapon against tyranny and unjust imprisonment is considered only by Davis. He applies the P.D.E. to the issue.[13]

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13. Cf. H. Davis: op.cit., II, pp.143-144.

2. In the cases illustrating the question of killing oneself the manuals consistently applied the approach to the voluntarium indirectum developed by Lessius and many of the 17th and 18th century casuists. When we turn to the manualist treatment of mutilation we will observe the traditional understanding and evaluation placed under increasing strain by developments in the medical field. The possibilities of blood transfusions, psychosurgery, cosmetic surgery, but especially organ transplants posed problems for the traditional approach to mutilation.[14]

The moral principles governing mutilation are put succinctly by Alphonsus:

> non licet se mutilare nisi sit necessarium ad conservationem corporis totius, quia nemo est suorum membrorum absolute dominus. (15)

It is an extension of the basic assumption that man has stewardship over his life and body, not dominion. There is present, too, a notion of totality. These two principles were placed under pressure by contemporary medical techniques. The question, then, is: what actually constitutes mutilation? L. Simeone, in a survey of the literature, indicates three opinions on the issue:[16]

(a) A number of manualists argue that a mutilation occurs when a living part, or an organ strictly so called, is removed.

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14. In this study of the manuals on mutilation I shall incorporate more recent periodical and monograph literature, which by rights should be examined in chapter four. I do so for two reasons: (a) it will permit us to examine the issues as a unit; (b) once the issue of organ transplants was resolved by Catholic moralists there has been no substantial developments in argumentation beyond what will be discussed here.

15. Alphonsus: op.cit., n.373.

16. Cf. L. Simeone: "De mutilatione quaedam", Miscellanea Francescana, 55 (1955) 59-87.

This also applies to the excision of any part of an organ vital to its functioning (e.g. the removal of a cornea);[17]

(b) Some hold that suppression or diminution of the use (permanently or temporarily) of an organ or its part is also mutilation (e.g. the wasting of a limb through lack of use);[18]

(c) Others incorporate both aspects just mentioned; mutilation is the "abscissionem seu extirpationem aut recisionem organi stricte dicta, etiam minoris momenti v.g. alicuius dentis, aut saltem partis organicae functionem propriam habentis, nisi ex contextu latior significatio evidenter appareat".[19]

Although there is not complete agreement among the manuals regarding direct and indirect mutilation Simeone suggests the two may be defined as follows. Direct mutilation is that performed as the proper and intended end of one's action or as the means to another end. Indirect mutilation occurs when the mutilation is the foreseen effect of either an end sought or a means employed. The effect may be either per se or per accidens.[20]

For the sake of convenience we may divide mutilation into

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17. Cf. Vermeersch: op.cit., II, n.299; Iorio: op.cit., II, n.168; Merkelbach: op.cit., II, n.367; A. Michel: "Mutilation", D.T.C., X, col.2569.

18. Cf. L. Simeone and G. De Ninno: "Mutilazione", E.C., VIII, col.1573.

19. L. Simeone: op.cit., p.61; see also Noldin: op.cit., II, n.328, 1.

20. Cf. L. Simeone: op.cit., pp.61-62.

(a) mutilation of oneself and (b) mutilation on behalf of another.[21]

(a) An individual is considered to be mutilated when he undergoes psychosurgery[22] and cosmetic or plastic surgery.[23] Experimentation on human subjects may at times involve mutilation.[24] We will not delay on these forms of mutilation but will concentrate on mutilation inflicted on the individual for religious or social reasons.

Castration undertaken to avoid sexual temptations or to remove habits of incontinence are considered by the manualists to be unlawful self-mutilation. Sinfulness in this area is to be overcome by other means.[25] Another practice - now only of historical interest - was that of castrating boys who sang in church choirs. This, too, is now considered to be immoral, although we do find Alphonsus taking a more lenient position.[26]

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21. Cf. J.J. Lynch: "Mutilation", N.C.E., X, pp.145-146
A. Michel: op.cit., cols.2569-2581.

22. Cf. T.J. O'Donnell: "Psychosurgery (Moral Aspect)", N.C.E., XI, p.985; see also T.S., "Notes", 11 (1950) 45-47; 13 (1952) 73-75; 14 (1953) 44-45; 15 (1954) 601-602; 18 (1957) 235-236.

23. Cf. "Notes", T.S., 21 (1960) 240-242; 595. Other forms of therapeutic mutilation considered in the literature were the use of truth drugs (Cf. T.S., 8 (1947) 104; 11 (1950) 44-45; 15 (1954) 84); the use of hypnotism (Cf. T.S., 20 (1959) 601-602); anaesthesia (Cf. T.S., 22 (1961) 243-244) and the removal of healthy organs (cf. T.S., 9 (1948) 90-95).

24. For a good survey of the question of experimentation on human subjects refer to J.J. Shinners: The Morality of Medical Experimentation on Living Human Subjects in the Light of Recent Papal Pronouncements; G. Kelly S.J.: Medico-Moral Problems, pp.261-269; J.J. Lynch: "Experimentation, Medical", N.C.E., V, pp.756-757.

25. All the authors quote S.T., II-II, q.65, a.1.

26. Cf. Alphonsus: Theologia Moralis: n.374; Homo Apostolicus, c.1, n.3; see also Noldin: op.cit., II, n.328, resolutiones, 2.

The social reasons proposed as justifying the mutilation of an individual are three-fold: punitive, eugenic and therapeutic. The manuals based their arguments against punitive and eugenic sterilization on the encyclical Casti connubii and the decrees of the Holy Office.[27] Sterilization imposed as a penalty for crimes committed or to prevent future wrong-doing, especially by the sexually deviant, was rejected by the manuals.[28] Eugenic sterilization ordered by public authorities as a means of preventing the generation of weak or defective members in the state was likewise condemned by the Holy Office.[29]

Contraceptive sterilization has been divided traditionally into direct and indirect. The manuals consider direct sterilization unlawful since it is a serious act of mutilation that destroys or impedes the "naturally ordained function of the sexual organs".[30] Indirect sterilization may be legitimated according to the principles

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27. Casti Connubii, A.A.S., 22 (1930) 564f. Cf. Noldin: op.cit., II, n.328 resolutiones, 3; Davis: op.cit., II, pp.156-166; Peschke: op.cit., II, pp.329-334.

28. A number of authors attempted to argue by analogy from Aquinas's treatment of capital punishment (S.T., II-II, q.64, a.2) to the lawfulness of civil authorities imposing punitive sterilization. Cf. L. Simeone: op.cit., pp.72-73. For later discussion of the issue see T.S., "Notes", 9 (1948) 96; 11 (1950) 48-49.

29. The Holy Office reply on 24th February 1940 to the dubium: "An licita sit directa sterilizatio sive perpetua, sive temporanea, sive viri, sive mulieris", was "negative et quidem prohiberi lege naturae eamque quoad sterilizationem eugenicam attinet Decreto huius S. Congr. de 21 martii 1931 (A.A.S., 23 (1931) 118) reprobatam iam esse." (D.S.2283). See also T.S., "Notes", 1 (1940) 423-425; G. Kelly: Medico-Moral Problems, pp.149-167; T.J. O'Donnell: "Sterilization", N.C.E., XIII, pp.704-705; P.F. Forsthoefel: "Eugenics", N.C.E., V, pp.627-629.

30. Cf. Noldin: op.cit., II, n.328, resolutiones, 3; T.J. O'Donnell: op.cit., p.704.

of the voluntarium in causa or the double effect.[31]

(b) There is a similarity in the use of direct and indirect in the cases concerning self-killing and self-mutilation. It is with the development of new surgical and medical techniques that organ transplantation became a possibility for large numbers of people. At the same time it posed some difficulties for moralists who approached the issue with the same principles (viz. double effect and voluntarium in causa) and the same assumptions (regarding man's stewardship of life and body) that they had employed in other areas covered by the fifth commandment. The manuals accepted the lawfulness of blood transfusions and skin grafts on the grounds that the donor's body replaced what was taken from it. The transplantation of a healthy organ to another person was hard to justify by either the P.D.E. or the voluntarium in causa since an evil means is being used in transplantation to achieve a good end. Noldin is typical of a number of manualists opposed to organ transplants. He could see no proportionate reason justifying the process. Just as it is never lawful to kill oneself directly that another might live so also it is never permitted to mutilate oneself directly that another might be whole.[32] A number of proponents of transplants justified the

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31. O'Donnell, speaking of sterilization, states that it "is called indirect and therapeutic if it is done to correct a disorder of the reproductive system and the resulting sterility is merely a side effect of the therapy." (op.cit., p.704). For later discussions on therapeutic sterilization see T.S., "Notes", 3 (1942) 591-593; 5 (1944) 439-452. 514-517. 518; 4 (1943) 588-589; 11(1950) 48-49; 12(1951) 68-73; 15(1954) 604-605; 16(1955) 574-576; 17(1956) 561-562; 18(1957) 230-233. 238; 21(1960) 599-603; 24(1963) 79-85.

32. Cf. Noldin: op.cit., II, n.328; resolutiones, 4.

operation by using the analogy of the body. The manualists denied this analogy from totality since the relation of an individual to other members of society does not parallel the relationship between one bodily organ and other organs in a living person.[33]

In order to justify organ transplants moralists were forced to move away from the circumscribed criteria in the tradition. They proceeded to justify the operation by the principle of fraternal charity or love. The contribution of B. Cunningham to the discussion paved the way to a general acceptance by moralists of organ transplants. He concluded his thesis by reasoning as follows:

> Because of the unity of the human race with the resultant ordination of men to society and to one another as members of society, because of their ordination to one another as members of Christ, whether actual or potential, because in virtue of the precept of charity it is licit for men to do for others that which they do for themselves -to refer some corporal detriment of their own bodies to a proportionate good of the body of the neighbour - in view of all these reasons it seems a sufficiently probable opinion that homologous transplantation of the organs or sections of organs from one person to another is licit and commendable, though not of obligation. (34)

Although much discussed in the periodical literature,[35] it is fair to say that organ transplantation was recognized as a lawful medical procedure once moralists moved beyond the direct-indirect mutilation categories employed until then.

3. In their discussion of killing the unjust aggressor[36] the manuals

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33. Cf. J.J. Lynch: op.cit., p.146.

34. B.J. Cunningham C.M.: The Morality of Organic Transplantation, pp.70-71.

35. Cf. "Notes", T.S., 5(1944)517-518; 8(1947)97-103; 16(1955)572-574; 17(1956)557-561; 18(1957)228-232. 570-572; 19(1958)178-181; 20(1959) 247-250; 22(1961)248-249; 24(1963)627-630. See also J. Paquin: "Organic Transplants", N.C.E., X, pp.754-756.

36. In addition to the manuals referred to in note 1 above see the following general studies within the manualist approach: N. Lohkamp: "Self-Defense", N.C.E., XIII, pp.60-61; V. Oblet: "Defense de soi", D.T.C., IV.1, cols.227-230; P. Palazzini: "Difesa legittima", E.C., IV, cols.1581-1582.

add nothing new to what has already been presented by Aquinas and the moralists of the 16th and 17th centuries. They present, in an organized fashion, the arguments of the tradition:

(a) the argument of St. Thomas justifying killing in self-defence;[37]

(b) the conditions warranting a counter-force that causes the assailant's death;[38]

(c) the teaching of Scripture, the Fathers and the Magisterium on the issue.

A good number of the manualists claim that the arguments used by St. Thomas regarding killing in self-defence embody the P.D.E.[39] Others, as we have already seen, doubt that this is so.[40] On the basis of whatever group they belong to some manuals argue that the

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37. Cf. Noldin: op.cit., II, n.332; "Ius naturae permittit, ut vim vi repellas et aggressorem, qui inique eripere tibi conatur vitam aut quae ad eam honeste agendam tibi sunt necessaria, ut bona temporalia, honores, pudicitiam, membrorum integritatem praevenias et occidas; ita tamen, ut id fiat animo te defendendi et cum moderamine tutelae inculpatae, non inferendo maius damnum, nec utendo maiore vi, quam necessarium est ad arcendam iniuriam." (Alphonsus: Theologia Moralis, n.380).

38. E.g. (a) the use of force in self-defence must be against a present attack; it may not be preemptive or in revenge after the aggression is finished. (b) It is immaterial whether the aggressor is materially or formally unjust. (c) The harm anticipated as a result of the attack must be serious - be it to life, health, bodily integrity or necessary goods of great value. (d) The act of self-defence resulting in the fatality must be the only option open. (e) While an individual has a right to defend his life against an aggressor no-one is bound to exercise this right. (Cf. Noldin: op.cit., II, n.332; Davis: op.cit., II, pp.153-154).

39. Cf. Davis: op.cit., II, p.153; Vermeersch: op.cit., II, n.607.

40. Cf. N. Lohkamp: op.cit., p.61.

person defending his life may only indirectly intend the assailant's death[41] while others follow de Lugo and argue that his death may be directly intended.[42] Davis rejects the latter approach since, he says, it is based on a fallacy:

> The death of the aggressor need never be intended as an end nor as a means. The whole of my defensive action has as its intended and its first and direct result my own preservation; its second, consequential, indirect and permitted result may be the death of the assailant. Those who permit the directly intended killing of the assailant are misled by the fallacy that what we can rightly permit we may rightly do. What we rightly do is to defend our life; we need intend nothing else. It is not true to say that what we rightly permit we may rightly intend. (43)

The manuals conclude their discussion of killing in self-defence by referring to the goods of great value which permit a person to defend even at the loss of the aggressor's life. The goods may be one's own or another's property, virtue, good name or honour.[44]

Before concluding this discussion on direct and indirect killing it is important to note that the teaching in the manuals is repeated in the volumes of casus conscientiae published since the time of Gury.[45]

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41. Cf. Prümmer: op.cit., II, n.120; Merkelbach: op.cit., II, n.360, 4; n.363, 1; Vermeersch: op.cit., II, n.607; Iorio: op.cit., II, n.172; McHugh-Callan: op.cit., II, n.1834.

42. Cf. P. Palazzini: "Uccisione", E.C., XII, cols.667-668.

43. Davis: op.cit., II, p.153.

44. Noldin: op.cit., II, n.334.

45. Cf. A. Berardi: Praxis confessariorum seu moralis theologiae theorico-practica, I, nn.736-796.
J. Bucceroni S.J.: Casus conscientiae, I, pp.170-180.
J.B. Ferreres S.J.: Casus conscientiae, I, pp.217-247.
E. Genicot S.J.: Casus conscientiae, I, pp.148-165.
E. Genicot S.J. and J. Salsmans S.J.: Casus conscientiae, pp.110-124.
J.P. Gury S.J.: Casus conscientiae, pp.254-275.
A. Lehmkuhl S.J.: Casus conscientiae, I, pp.264-273.
E.J. Mahoney: Questions and Answers. II Precepts, nn.384-392.
J. McCarthy: Problems in Theology. II The Commandments, pp.119-175.
T. Slater S.J.: Cases of Conscience for English Speaking Countries, I, pp.226-233.

Elements of the tract on the fifth commandment are duplicated in the course of discussion on particular moral problems.

Chapter 4

THEOLOGICAL DEBATES: REFINEMENT OF THE DIRECT-INDIRECT DISTINCTION (1850-1960)

Introduction

The literature considered in this chapter, from a chronological point of view, overlaps with the manuals of the last chapter. Because we will be discussing the periodical literature and monographs published between 1850 and 1960 it has been necessary to treat of the discussions in this genre in a separate chapter. As we will see moralists discussed many new issues in the different periodicals that came into existence during the second half of the 19th and early part of the 20th centuries. Through their analyses of the new problems confronting them moral theologians refined the understanding and application of the direct-indirect distinction that had dominated the manuals of moral instruction. This refinement process prepared the way for the revaluation that is now going on in contemporary Roman Catholic moral reflection.

Since this chapter covers a century in common with chapter three, what follows must be seen as complementing the contribution of the manualists. There is basic agreement between these two chapters on the human act and the P.D.E. For that reason sections two and three, as they appear in the previous three chapters, will not be considered here. The manualist concept of the human act and the P.D.E.[1] was

1. Besides the writings of Alonso, Ghoos, Kramer and Mangan mentioned earlier no original material on the P.D.E. was published between 1850 and 1960 in the periodicals. Cf. L. Bender: "De daad met een goed en een kwaad gevolg", Nederlandsche Katholieke Stemmen, 33(1933) 48-55.

generally accepted by the majority of writers in the periodical literature. In fact a number of the manualists contributed to the material to be discussed in the following pages. Any articles modifying the prevailing approach to the moral act or double effect will be incorporated where relevant to the issues under discussion.

This chapter, therefore, will fall into three sections. In the first a brief historical introduction will prepare the way for a detailed study of direct and indirect killing. Section II will discuss the issues involved at the beginning of human life (viz. abortion, craniotomy, ectopic pregnancy and hysterectomy). Section III will analyse a number of problems dealing with violent death (viz. war, suicide and exposure to danger of death).

I. HISTORICAL BACKGROUND

Reference has already been made in this thesis to the renewal of moral science begun in Germany during the early decades of the 19th century. The German moralists were seeking to overcome the many severe criticisms levelled at the moral theology to be found in the moral texts of the post-Reformation Roman Church. The manuals were criticized for giving too little prominence to the Scriptures, for concentrating

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Footnote 1 (continued)...
Cf. W. Conway: "The Act of Two Effects", I.T.Q., 18 (1951) 125-137.
L.J. Cornelissen: "De gevolgen van onze daden", Studia Catholica, 15 (1939) 429-443; 16 (1940) 133-155.
L. Janssens: "Daden met meerdere Gevolgen", Collectanea Mechliniensia, 17 (1947) 621-633.
: "Tijd en ruimte in de moraal", Miscellanea moralia in honorem E.D. Arthur Janssen, I, pp.181-197.
O. Lottin: Principes de Morale, I, pp.192-199. II, pp.155-175.
G. Perico: "A proposito del 'principio del duplice effetto'", Aggiornamenti Sociali, 3 (1952) 373-380.
A. Van Rijen: "Daden met meerdere gevolgen en de leer over de bronnen der zedelijkkeid", Werkgenootschap van kath. theologen in Nederland, Jaarboek 1960, pp.48-82.

on the clergy and ignoring the vocation of Christians in general, for emphasizing the minimum standards of obligation and not relating this to positive teaching on Christian ideals. As well, the manualists were accused of presenting an individualistic moral teaching isolated from current philosophical discussions of ethical theory. They were insensitive, too, to the rapid social changes which raised new problems not quickly soluble by the traditional methods of casuistry. These new issues often cast doubt on traditional rulings such that some thinkers questioned the whole notion of an immutable divine law.[2]

The scholastic revival initiated by Leo XIII at the end of the 19th century[3] did much to advance the renewal of moral theology. The social teaching proposed by Leo XIII and his successors renewed studies in natural law[4] and introduced increasingly frequent teachings on moral issues by successive popes and by the Roman congregations.[5] The role of the new Code of Canon Law was closely related to these developments.[6]

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2. Cf. "Moral Theology", O.D.C.C., p.938; A. Vermeersch S.J.: "Soixante ans de théologie morale", N.R.T., 56 (1929) 869-876.

3. Cf. E. Hocedez S.J.: Histoire de la théologie au XIX^{e} siecle, III, p.325; K. Hilpert and H. Oberhen: "Ethics", Concise Dictionary of Christian Ethics, (ed.) B. Stoeckle, p.81.

4. Cf. J. Zeiger: "De conditione theologiae moralis moderna", Periodica, 28 (1939) 188-189; M.B. Crowe: The Changing Profile of the Natural Law, pp.246-290.

5. For a detailed list of statements of the magisterium see G. Kelly S.J.: Medico-Moral Problems, pp.336-339.

6. Cf. D.F. O'Callaghan: "A Hundred Years of Moral Theology", I.E.R., 102 (1964) 237ff; R. Metz: "Canon Law, History of", N.C.E., III, pp.49-50.

It was, however, with the development of Catholic theological periodicals that the means were at hand for moral theologians to respond more quickly to the new problems of the age. Vermeersch goes so far as to say that "les travaux plus originaux et plus approfondis reçoivent l'hospitalité dans les périodiques."[7] After 1870 one finds a dramatic increase in the number of new journals and periodicals in all parts of the Catholic world.[8] In this chapter our concern will be with a number of the more important discussions to be found in the periodicals and journals since 1870.

In section II our study will concentrate on problems of direct and indirect killing associated with the beginnings of human life. These issues arose as a result of developments in medical and surgical knowledge and techniques. As moral theologians attempted to discuss these new cases they gave rise to a completely new type of literature within the discipline of moral theology. The earliest pioneers of Roman Catholic medical ethics were Carl Capellmann[9] and J. Antonelli.[10] Their writings are a synthesis of the new medical developments of their day with the manualist teaching of Alphonsus Liguori, Gury

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7. A. Vermeersch: op.cit., p.866.

8. For an exhaustive list of periodical titles see E. Hocedez: op.cit., p.330; A. Vermeersch: op.cit., pp.866f.

9. Cf. C. Capellmann: Pastoral Medicine.(trans.) W. Dassel. This English translation is based on the 3rd German edition of 1879. The latest edition consulted for this thesis is the 18th German edition, edited by W. Bergmann: Pastoral-Medizin (1920).

10. Medicina Pastoralis, 4 vols.

and Lehmkuhl.[11]

The term "medical ethics" in Roman Catholic moral theology applies to the systematic study of value problems as they arise in the relationship between physicians and their patients.[12] The early works by Capellmann and Antonelli on pastoral medicine and the more general medical ethics texts of the 1940s and 1950s[13] adopted the format of the manuals in the presentation of their thought.[14] Since Vatican II the traditional medical ethics texts have given way to the more comprehensive study of bioethics.[15]

It is against this background of journals and periodicals and an increasing body of literature concerned with issues in medical ethics that we now turn to a series of important discussions that forced moralists to adopt a more precise understanding of direct and indirect killing.

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11. Cf. L. Walters: "Medical Ethics", N.C.E., XVI, p.290.

12. Cf. L. Walters: op.cit., p.290. Because Roman Catholic medical ethics has its roots in traditional moral theology it is not primarily a professional code for medical personnel but a more general ethic with norms applicable to doctors and patients alike.

13. Cf. P. Finney and P.O'Brien: Moral Problems in Hospital Practice.
G. Kelly S.J.: Medico-Moral Problems.
J.P. Kenny O.P.: Principles of Medical Ethics.
C.J. McFadden O.S.A.: Medical Ethics.
A. Niedermeyer: Compendium of Pastoral Medicine.
T.J. O'Donnell S.J.: Morals in Medicine.
More recently medical ethics texts have been published by the following:
J.F. Dedek: Contemporary Medical Ethics.
B. Häring: Medical Ethics.
: Manipulation.
G.V. Lobo S.J.: Current Problems in Medical Ethics.
C.J. McFadden O.S.A.: The Dignity of Life. Moral Values in a Changing Society.

14. Cf. L. Walters: op.cit., p.291.

15. Bioethics has been defined as "the systematic study of the moral and social implications of practices and developments in medicine and the life sciences." L. Walters: "Bioethics", N.C.E., XVI, p.28; K.D. Clouser: "Bioethics", Encyclopedia of Bioethics, I, pp.115-127.

II DIRECT AND INDIRECT KILLING: PROBLEMS AT THE BEGINNING OF LIFE

The problems at the beginning of human life that have been discussed by moralists in the different journals and periodicals since 1870 amount to an enormous quantity of literature. In order to assist our understanding of the question of direct and indirect killing it has been necessary to divide this section into four sub-sections. In the first we shall begin with the discussion of medical abortion that had its roots in a number of the manuals. From this we pass on in succeeding points to an analysis of craniotomy, ectopic pregnancy and hysterectomy. In each of these issues the question of direct and indirect killing was of great importance.

1. Abortion and acceleratio partus

It is against the background of the manualist teaching on abortion that we must view the discussion on acceleratio partus that developed during the second half of the 19th century. Alphonsus Liguori discussed three questions of particular interest to us here.[1]

He asked first of all whether a pregnant woman could lawfully take a drug to directly expel an unanimated fetus and whether a woman who has been raped may remove the aggressor's semen. Liguori outlined the two opinions current in his day on these questions. One group of moralists held that for grave reasons an unanimated fetus may be directly expelled. They argued that this is possible since the fetus is part of the mother's womb. She is not bound to preserve something that is dangerous to her total welfare. In expelling the fetus the woman is acting against an aggressor; she is not bound to

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1. Theologia Moralis, lib.III, tr.4, dub.4, n.394.

neglect her present life in favour of the future life of her offspring.[2]

The second opinion - and the more common according to Alphonsus - held that it is lawful for a woman to take a drug which is directly curative but which indirectly expells the fetus.[3] The argument is based on the already accepted prohibition that it is never lawful to expel a man's semen. A fortiori, with the fetus which is propinquior vitae humanae. This group of moralists rejected the argument given above that the fetus is but a part of the mother. Rather, they viewed the fetus as inchoative condistinctum individuum humanum.

Alphonsus concluded that both of the above opinions were equally probable, "but his own judgment is that the negative opinion must be followed in practice as the safer opinion."[4]

The second question posed by Liguori asked whether a pregnant woman may take a medicine to directly overcome an illness even though there was danger an animated fetus may be aborted. Any remedy which directe tendat ad occisionem foetus is ruled out of court. If however the medication directly preserves the mother's life it would be licit to take it in those cases where it is judged morally certain both mother and child will die.[5]

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2. Alphonsus cites Sanchez, Laymann, Navarrus, Viva et al as arguing this way.

3. Cf. Lessius, Lugo, Bonacina, Salmanticenses, Elbel.

4. J. Connery S.J.: Abortion: The Development of the Roman Catholic Perspective, pp.209-210.

5. In the mother-child dilemma Alphonsus differs from Sanchez (in theory, at least) regarding the obligation of the mother to give priority to the spiritual welfare of the fetus. Cf. J. Connery: op.cit., p.210.

In a third and final question Alphonsus discusses his opinion on animation. He rejected the theory of immediate ensoulment quia foetus certe non animatur antequam sit formatus. He preferred to follow the forty and eighty day computation then in vogue.[6]

It is regarding the question of animation that the most significant developments occurred during the century following Alphonsus. Because of advances in medical knowledge theologians gradually moved away from theories of delayed animation to an acceptance of immediate ensoulment for both the male and female fetus. "It is safe to say that a consensus of theologians regarding animation was reached in the second half of the nineteenth century."[7] Complementing this theological shift there occurred a change in the discipline of the Church. Since 1591 the canonical penalty for the abortion of an animated fetus had been excommunication.[8] In 1869 Pius IX extended the penalty to include the abortion of any fetus. This legislation was incorporated into the Code of Canon Law.

We have delayed on Alphonsus at the beginning of this section since many of the later developments have their roots in the arguments and positions just considered.

The early editions of J.P. Gury's Compendium did "no more than present the common opinion that therapeutic abortion was not permissible

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6. Later in his tract on baptism Alphonsus is less categorical on the time of animation. (Cf. Theologia Moralis, lib.VI, tr.1, c.1, dub.4, n.124).

7. J. Connery: op.cit., p.211.

8. Cf. J. Delmaille: "Avortement", Dictionnaire de droit canonique, I, cols. 1540f.

even if otherwise both mother and fetus would die."[9] In 1857 the French periodical Revue théologique published a lengthy article on moral theology. It was particularly critical of Gury's manual[10] and rejected outright his position on abortion. The article presented a case from an anonymous doctor in Antwerp.

A woman pregnant four or five months suffered from severe uterine hemorrhaging which, in spite of the doctor's efforts, could not be stopped. She was dying from loss of blood. The doctor consulted with other physicians who were also unable to stop the bleeding. In a short time the woman would be dead and a tomb for the fetus she was carrying. The doctors agreed that there was only one way to save the mother. They asked permission to remove the fetus from an environment where it could not continue to survive to one where it would not be able to live (since it was not viable). In other words they wished to procure an abortion.[11] The author of the article posed his dilemma bluntly. If the doctors were told they could not operate then both mother and child would die, the latter without benefit of baptism. If the doctors could operate only the child would die - with baptism.

In making his stand against therapeutic abortion Gury had invoked the condemnation of Sixtus V on direct abortion.[12] His critic argued that the prohibition applied only to those who killed the fetus in

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9. J. Connery: op.cit., p.214.

10. "Essai sur la théologie morale", Revue théologique, 2(1857) 219-273.

11. Cf. Revue théologique, pp.267-268.

12. Sixtus V's bull "Effraenatum" (29th October 1588). Cf. J. Delmaille, op.cit., cols.1540f.

the womb.[13] The real question is:

> est-il permis et licite d'avancer de quelques heures la mort d'un foetus non viable, afin de le baptiser et de sauver la mère? (14)

Answering his own question the article's author argued that to do so is a legitimate step in difficult circumstances.[15]

Our author did not leave matters there. He proposed a number of objections to his position and proceeded to answer them.

(a) To the criticism that the commandment "thou shalt not kill" admits of no exception he cites the example of killing in self-defence as a legitimate exception to the law.

(b) But there is a difference between abortion (i.e. acceleratio partus) and killing in self-defence. In the latter case the defender kills against his will. May not the same be said of the doctor when confronted with the mother-child dilemma. It is against his will that the child dies; his real purpose is to baptize the fetus and save the mother's life.

(c) The removal of the fetus from the womb is simply doing evil to achieve good. No, our author replies, the relocation of the fetus is not an evil in itself.[16]

In the 1862 edition of his Casus conscientiae Gury discussed the case of a certain woman called Pelagia.[17] The case was identical to

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13. Cf. Revue théologique, pp.268-269.
14. Revue théologique, p.269.
15. Cf. Revue théologique, p.270.
16. Cf. Revue théologique, pp.270-271.
17. Cf. J.P. Gury: Casus conscientiae, casus X (pp.268ff.).

that proposed by the Revue théologique article. In his resolution of the case Gury condemns the practice of acceleratio partus.

> Atqui in praesenti casu est occisio directa hominis; nam intenditur directe ejectio foetus immaturi, modo violento procurata, ut, eo remoto, mater incolumis fiat. Porro, hoc est vera et proprie dicta occisio, siquidem foetus violenter ab utero matris eruitur, et ponitur in statu in quo vivere minime potest.

Gury was of the opinion that his solution was the sententia communissima among theologians even though a number would accept therapeutic abortion in cases similar to that of Pelagia.

In the light of Gury's clear position on the issue it is all the more remarkable that we find him reversing his opinion in the 17th edition of his Compendium published in 1866, the year of his death, as well as in the second edition of his Casus.[18] On the Pelagia case he argues:

> Attamen affirmandum videtur cum recentioribus doctoribus in casu, ubi mera habetur partus acceleratio. Tunc enim non intervenit directa occisio foetus, qui tantum amovetur a loco, in quo vivere non potest, et statuitur in alio loco, in quo magis vitam producere nequit, et proinde in pejori conditione minime constituitur atque aliunde beneficio baptismi donari potest.

In response to the objection that evil means are being used to attain a good end Gury argued that the evil (i.e. the fetus's death) is merely permitted, not procured. He argued from the commonly accepted opinion of Alphonsus that it is lawful to baptize an infant with ice-water even though it may hasten the child's death.

Gury's successor at the Gregorian University in Rome published a commentary on the Compendium.[19] In it A. Ballerini supported the

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18. 2nd edition (Paris, 1867).

19. Cf. J.P. Gury - A. Ballerini: Compendium theologiae moralis, I, nn.402-403 notes (a)-1°,2°,3°,4°.

later position adopted by Gury. On the question of hastening delivery he notes that

> a premature delivery.... can be either direct or indirect, depending on whether the remedies used are aimed at curing some ailment the mother has or immediately at inducing delivery. And even in the case where the acceleration of delivery itself is direct by reason of the means used, it can still be direct or indirect by reason of intention. (20)

Ballerini substantiates his position by referring to S.T., II-II, q.64, a.7.[21]

Ballerini concluded his discussion of Gury's text by noting that the controversy over premature delivery (be it by relaxing the uterine muscles or puncturing the sac) is not whether the mother may deprive the fetus of life but rather to what extent she is obliged to preserve its life. Ballerini develops the dimensions of this obligation. Admittedly a mother has a special obligation to the fetus she carries. This obligation may be compared, Ballerini argues, to the case of a mother carrying a child in her arms. She is drowning in the sea. What is the obligation on the mother to hold on to her child? When her own life is in danger may she legitimately desert her child? Ballerini quotes Lugo to the effect that in such circumstances the mother's obligation ceases.[22] So, too, it might be argued in the mother-child case given above.[23] It is important to note here that Ballerini's argument in favour of acceleratio partus is only as strong as the analogy he uses. It would seem that the

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20. Cf. J.P. Gury - A. Ballerini: op.cit., 5°; J. Connery: op.cit., pp.217-218.

21. Cf. J.P. Gury - A. Ballerini: op.cit., 6°.

22. Cf. J.P. Gury - A. Ballerini: op.cit., 7°.

23. "In justice to Lugo it should be added that he was drawing a comparison with indirect abortion, not as Ballerini is doing, with direct abortion." (J. Connery: op.cit., p.218).

analogy is open to criticism.

> What is new in Ballerini's analysis is the distinction between acceleratio partus and causing direct injury or death to the fetus, or in more technical language, direct abortion and direct killing. Previous authors had identified the two, and considered abortion homicide for this reason. (24)

A. Lehmkuhl S.J. is the third 19th century manualist that we need consider here. As with his two confreres he accepted the lawfulness of acceleratio partus. The German moralist developed the Pelagia and Antwerp cases a little further. The danger to the mother's life is not immediate but will occur at the time of delivery.[25] May the abortion be induced earlier than the time of delivery so as to avoid the danger at term. Lehmkuhl accepted this as a lawful procedure, all things being equal. The only qualification he made was that the hope of validly baptizing the fetus be equal to that at term.

In his discussion of therapeutic abortion Lehmkuhl compares the effects.[26] One effect, the hastening of the fetus's death, involves evil. The good effects (saving the mother's life and the child's baptism) are as equally immediate as the bad effect and far surpass the evil involved. In stressing the equal immediacy of both good and evil effects Lehmkuhl was able to maintain that the procedure of acceleratio partus did not involve directly intending the evil

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24. J. Connery: op.cit., p.219.

25. Cf. Theologia moralis, I, n.844.

26. Cf. Theologia moralis, I, n.845.

effect. Hastening a fetus's delivery is therefore not direct abortion since it does not entail the killing of the fetus but merely the permitting of its death.[27] This is not the case in situations where craniotomy is used. In this case the good and evil effects are not equally immediate, an evil means is used to attain a good end.[28]

Not all 19th century moralists accepted the approach used by Gury, Ballerini and Lehmkuhl. Capellmann argued that acceleratio partus is direct abortion since the danger to the mother's life is removed through the abortion. 'It is a means to an end and so directly intended.[29]

The development we have just briefly traced prepared the ground for the issues we will now discuss namely craniotomy, ectopic pregnancy and hysterectomy.

2. The Craniotomy Debate[30]

The discussion over craniotomy was generated by an ambiguous reply given by the Sacred Penitentiary to a question thought to have

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27. Cf. J. Connery: op.cit., p.221; J.T. Noonan Jr.: "Abortion and the Catholic Church: A Summary History", Natural Law Forum, 12(1967)121.

28. Cf. Theologia Moralis, I, n.847.

29. Cf. C. Capellmann: Medicina Pastoralis, pp.14-17.

30. Craniotomy entails the cutting of the fetal head so as to facilitate delivery. It is to be distinguished from cephalotripsy where the head is crushed and from embryotomy which involves the dismembering of the fetus in the womb prior to delivery. (Cf. J. Connery: op.cit., p.332, note 2). The term craniotomy was used imprecisely in the moral literature under discussion. It was often used in the sense of embryotomy and cephalotripsy.

originated in the United States.[31] The case proposed concerned a certain Julia who was unable to deliver her child normally. She faced death unless the fetus could be dismembered, even though it was still alive, and so delivered by forceps. In its reply of September 2nd, 1869 the Roman Congregation merely advised the petitioner to consult the approved authors for an answer.[32] The literature that developed from this response can be seen to fall into three groups. The first phase consisted in a discussion as to the meaning of the Sacred Penitentiary's discussion. Phase two involved more systematic discussion. This led into the final phase which entailed an argument over the thought of Gury and Ballerini mentioned above. Let us now take each stage in turn.

M. Craisson[33] commented on the Sacred Penitentiary's response and argued that the rather non-committal reply indicated that the case was clear cut. He himself was of the opinion that craniotomy was never permissible.[34] Against those who favoured craniotomy in dilemma situations Craisson argued:

(a) It is never permissible to take the life of an innocent person.

(b) The child in the womb is not an unjust aggressor.

(c) The mother's life is not to be valued more than that of the fetus.

(d) The fetus may not be sacrificed as part of the whole (viz. the mother).

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31. F.P. Kenrick: Theologia Moralis, tr.3, c.9, n.128 appears to have been the first manual to have discussed craniotomy.

32. Cf. J. Connery: op.cit., p.226.

33. Cf. M. Craisson: "De l'avortement médical - Peut-on sauver la mère par la mort certaine de l'enfant? Revue des Sciences Ecclésiastiques, 25(1872)451-453.

34. Cf. M. Craisson: op.cit., p.453.

(e) To argue that the fetus will die and there is no wrong in hastening the inevitable opens the door to arbitrary homicide when death is considered near. Craniotomy also excludes the possibility of baptism.[35]

In the following number of the same journal, A. Eschbach took issue with Craisson's interpretation of the Congregation's reply.[36] He felt that the non-commital reply indicated an unwillingness on the part of Rome to decide a disputed point. In the absence of any literature arguing in favour of craniotomy in the difficult situations envisaged, Eschbach proposed four arguments.

(a) Moralists have always permitted killing in self-defence. Classical cases such as the killing of a child used as a shield by an aggressor and the trampling to death of a child on a narrow escape route by a man fleeing for his life were discussed in the past and legitimized. Is there not some parallel between these cases and that of the fetus that threatens a pregnant woman's life.?[37]

(b) Craniotomy is not direct killing since the doctor's primary intention is to save the mother's life. According to Aquinas it is this which specifies the morality of the act. The killing of the fetus is unintentional.[38]

(c) Craisson had denied that the fetus was an unjust aggressor.

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35. Cf. M. Craisson: op.cit., pp.451-453.

36. A. Eschbach: "L'Embryotomie au point de vue moral", Revue des Sciences Ecclésiastiques, 25 (1872) 563-568.

37. Cf. A. Eschbach: op.cit., pp.564-566.

38. Cf. A. Eschbach: op.cit., p.566.

But a study of past moralists indicates that they justified direct abortion of an unanimated fetus because it was an aggressor. Could not the animated fetus be considered in the same way?[39]

(d) Alphonsus had permitted the hastening of death so that a child might be baptized. Craniotomy involves no greater acceleration of death.[40]

These two moralists presented some of the central arguments that were to be discussed in the following years. Eschbach himself did not accept the validity of craniotomy as a lawful alternative in difficult situations.[41] He merely reacted to Craisson's reading of the situation implicit in the Sacred Penitentiary's response. The first proponent of craniotomy was P. Avanzini who published his arguments in the journal Acta Sanctae Sedis.[42] This provoked Eschbach to respond in detail to the arguments proposed.

One of Avanzini's arguments was new to the discussion. He insisted that the real question was not about "right to life" but rather about determining how the fetus should die.[43] In saying this Avanzini assumed that the fetus would inevitably die and because of

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39. Cf. A. Eschbach: op.cit., pp.566-567.

40. Cf. A. Eschbach: op.cit., pp.567-568.

41. Cf. A. Eschbach: Revue des Sciences Ecclésiastiques, 26 (1873) 194-201; 298-304.

42. "Quaestio moralis de Craniotomia seu de occisione infantis in utero matris ut mater a certa morte servetur", Acta Sanctae Sedis, 7(1872-74) 285-288; 460-464; 516-528. Although these articles were unsigned it is generally agreed that Avanzini was their author.

43. Cf. P. Avanzini: op.cit., pp.286-287.

this fact it loses its right to life. Eschbach strongly rejected this argument. No moralist in the past ever claimed that a person loses his right to life when it becomes impossible to prolong that life.[44]

It is with the writings of Viscosi[45], Pennacchi[46] and Apicella[47] defending craniotomy that we enter the second phase of the craniotomy debate. They were strenuously opposed by Eschbach[48] and Waffelaert.[49] This period is notable for the detailed argumentation used by both sides.

Pennacchi marshalled seven arguments in favour of craniotomy in serious dilemma situations.[50] He argued that

(a) the killing of the fetus in craniotomy is indirect;[51]

(b) it is the lesser of two evils;[52]

(c) indirect killing of an innocent person is lawful;[53]

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44. Cf. A. Eschbach: op.cit., pp.364-368.

45. Cf. D. Viscosi: L'embriotomia nei suoi rapporti colla morale cattolica.

46. Cf. J. Pennacchi: De abortu et embryotomia.

47. Cf. S. Apicella: La craniotomia considerata in riguardo alla morale.

48. Cf. A. Eschbach: Disputationes physiologico-theologicae.

49. Cf. G.J. Waffelaert: "De abortu et embryotomia", N.R.T., 16 (1884) 94-106; 160-179; 293-321; 377-385; 17 (1885) 60-68; 200-210; 369-380; 528-550.

50. Pennacchi used arguments proposed by Viscosi and Apicella.

51. Cf. J. Pennacchi: op.cit., p.33; D. Viscosi: op.cit., pp.27-39.

52. Cf. J. Pennacchi: op.cit., p.34; D. Viscosi: op.cit., pp.39-53.

53. Cf. J. Pennacchi: op.cit., p.35; D. Viscosi: op.cit., pp.53-75.

(d) it is lawful to take the life of an unjust aggressor;[54]

(e) craniotomy does not differ from the case of medical abortion (i.e. acceleratio partus);[55]

(f) craniotomy does not violate the rights of the fetus;[56]

(g) in a conflict of rights the stronger right prevails.[57]

Some comments on the above arguments are now necessary. Regarding the first both Viscosi and Pennacchi argue that direct and indirect may be taken in two senses. The terms may refer to the physical act itself which of its nature aims at death or brings it about accidentally. Secondly, it may refer to the agent's intention. If the agent intends death the death is direct no matter what the nature of the causes placed. If the agent does not directly intend it then death is indirectly willed no matter what the causes placed. As we have noted earlier S.T., II-II, q.64, a.7 is invoked in support of this position. Basically these authors insist on the primary importance of the agent's intention in determining the morality of the situation under discussion.[58]

In arguing that craniotomy is not different from acceleratio partus Viscosi and Pennacchi argued that the latter is just as homicidal as craniotomy. Gury and Ballerini did not see the hastening of delivery as a direct attack on the fetus. To this approach the

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54. Cf. J. Pennacchi: op.cit., pp.36-40; D. Viscosi: op.cit., pp.75-106.

55. Cf. J. Pennacchi: op.cit., pp.40-42; D. Viscosi: op.cit., pp.170-187.

56. Cf. J. Pennacchi: op.cit., p.42; D. Viscosi: op.cit., pp.187-201.

57. Cf. J. Pennachi: op.cit., pp.42-44.

58. Cf. J. Connery: op.cit., p.238.

Italian moralists responded:

> If you take a fish out of water, you kill him.
> If you put a bird in a vacuum, you kill him.
> The same thing happens when you remove a nonviable fetus from the womb, just as effectively as when you dissect it with a knife. But this is permissible when there is unjust aggression. (59)

The final argument was proposed by Apicella. Where a conflict of rights occurs either one right does not exist at all or else it is subordinate to the other. Applying this to the mother-child dilemma it may be argued that the mother's right to life prevails because of her domestic, social, religious and moral obligations. This network of obligations does not exist for the fetus. They will never exist since the fetus will never be born under any circumstance.

Taking all seven arguments together Waffelaert concluded:

> Il est facile de voir que chacun de ces arguments, pris à part, ne constitute pas toujours un argument complet et subsistant par lui-même. Il en est qui ne sont que les éléments d'une même argumentation. Ainsi le troisième constitute la majeure, le premier la mineure d'un même raisonnement, qui se formule comme suit: Il est permis, dans certaines conditions, de tuer indirectement un innocent (troisième argument). Or la craniotomie n'est que l'action de tuer indirectement un innocent, dans ces conditions (premier argument). Donc. (60)

On these and other grounds Waffelaert subjects the arguments proposed by those advocating craniotomy to the severest criticism.[61]

To conclude our study of this second phase of the debate on craniotomy it will be useful to delay briefly on two issues arising from the argumentation discussed.

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59. J. Connery: op.cit., pp.248-249.

60. G.J. Waffelaert: N.R.T., 16 (1884) 98.

61. Waffelaert pointed out that the second argument which says craniotomy is the lesser of two evils contains a petitio principii (cf. N.R.T., 16 (1884) 99).

First the issue of indirect killing and the role of intention. Waffelaert repeats here the traditional teaching of moralists that both end and means may be directly willed and where there is an act with two-fold effects the equal immediacy of both effects is crucial for moral evaluation.[62] This is not the case with craniotomy which is a means to an end and differs from such traditional cases of killing a child-shield, the child on a road or innocent people in a city under bombardment. In these cases the good and evil effects are equally immediate and hence indirectly intended although foreseen as a regrettable outcome of the death dealing cause.[63] Eschbach maintained that the proponents of craniotomy had confused indirect killing with what is voluntary secundum quid. The jettisoning of cargo to save a ship from being wrecked is an act voluntary secundum quid as we have observed earlier.

Regarding intention both the proponents and opponents accepted the principle that evil may not be intended either as an end or means.

> The difference between the two would seem to be that the proponents of embryotomy consider only the effect (the death of the fetus) evil. Their opponents look upon the act itself (the embryotomy) as evil. The proponents of embryotomy, then, are satisfied if the death of the fetus is not intended either as an end or a means. Their opponents will not allow the embryotomy itself as an intended means. (64)

The second issue is taken up by Waffelaert in his analysis of

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62. Cf. G.J. Waffelaert: N.R.T., 16 (1884) 161-162; 167-168.

63. Cf. G.J. Waffelaert: N.R.T., 16 (1884) 171-173.

64. J. Connery: op.cit., p.333, note 19.

unjust aggression.[65] If the fetus in the womb is an aggressor it would only be materially so. The cause of the danger is really the presence of the fetus in the womb. Can one really speak of aggression when only passive presence is involved?

Waffelaert used an example to illustrate his argument. If two shipwrecked people are on a raft that will hold only one, can either be considered an aggressor merely by his presence on the raft? The only reason justifying the ejection of the other would be if his presence on the raft (and a pari the fetus in the womb) involved some injustice.[66]

It is against the background of these debates on craniotomy that the Archbishop of Lyons submitted a question to the Holy Office asking if craniotomy could be safely taught in Catholic faculties. The reply given in 1884 was in the negative.[67] This decision slowed the debate on craniotomy in theological circles but it did not resolve the question of acceleratio partus and the question as to what constitutes direct and indirect abortion. It is at this point we enter phase three of the discussion on problems at the beginning of life.

An exchange of articles took place in the Nouvelle Revue Théologique

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65. Cf. G.J. Waffelaert: N.R.T., 16 (1884) 293-321; 17 (1885) 60-62.

66. In N.R.T., 16 (1884) 377-385 Waffelaert argued that both mother and child have the right not to be unjustly deprived of their lives. This right is the basis of the right to self-defence against an aggressor. But unjust aggression does not exist in the mother-child dilemma so there is no actual conflict of rights.

67. Cf. Acta Sanctae Sedis, 17 (1884) 556.

during the years 1885-1886 between M. Matharan S.J. and A. Eschbach.[68] The debate concerned primarily the correct interpretation that should be given to the writings of Gury and Ballefini on the question of acceleratio partus.

Matharan defended his colleagues Gury and Ballerini and argued that

(a) all abortions procured by an act which of its nature tends directly to kill the fetus are really homicidal;

(b) an abortion that comes about as the result of an act which does not, of its nature, kill but only transfers the fetus outside the womb may be lawful in extreme cases to save the mother.[69]

Eschbach argued in response that in (b) Matharan merely asserts that acceleratio partus is not lethal. But

> il a été reccnnu et enseigné universellement que l'avortement provoqué était un foeticide, c'est-à-dire, un homicide. (70)

He also points out that "la cause immédiate de la mort sera donc en toute circonstance l'ultimum agens qui éteindra la vie en séparant l'âme du corps!"[71] In the case where the delivery of an non-viable fetus is hastened the death of the fetus follows necessarily from its premature

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68. Cf. M. Matharan S.J.: "La doctrine du R.P. Ant. Ballerini sur l'embryotomie et l'avortement", N.R.T., 17 (1885) 410-435.
: "Reponse du R.P. Matharan au R.P. Eschbach", N.R.T., 18 (1886) 283-291.
A. Eschbach: "Lettre de R.P.A. Eschbach au R.P. Matharan S.J.", N.R.T., 17 (1885) 551-562.
: "L'avortement est-il toujours occisif de sa nature?" N.R.T., 18 (1886) 434-439.

69. Cf. M. Matharan: N.R.T., 18 (1886) 290-291.

70. A. Eschbach: N.R.T., 18 (1886) 435.

71. A. Eschbach: N.R.T., 18 (1886) 437.

removal from the uterus and without the intervention of any other cause.[72]

To clarify the issue the Archbishop of Cambrai submitted in 1886 a complicated set of questions to the Holy Office in Rome.[73] The reply given in 1889 repeated the condemnation of craniotomy given in 1884 and extended the prohibition to "quamcumque chirurgicam operationem directe occisivam fetus vel matris gestantis."[74] Since Matharan and those supporting acceleratio partus did not consider that the procedure fell under the prohibition against directly death dealing surgery another case was submitted to Rome. The reply given in 1895 asserted that acceleratio partus involved direct killing and could not be justified any more than craniotomy.[75]

The decisions of the Holy Office ended the discussions on acceleratio partus and craniotomy. After 1895 all the manuals condemned direct abortion as immoral. They included the above two operations within the notion "direct abortion".

3. Ectopic Pregnancy

Any implantation of a fertilized ovum that occurs outside the uterus is called an ectopic pregnancy. This condition first received

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72. Cf. J. Connery: op.cit., p.291; A. Eschbach: N.R.T., 18 (1886) 438.

73. For the text of questions see T.L. Bouscaren S.J.: Ethics of Ectopic Operations, Appendix (pp.173-176)

74. Acta Sanctae Sedis, 22 (1889-1890) 748; cf. T. Bouscaren: op.cit., p.12; J. Connery: op.cit., p.291.

75. Cf. Acta Sanctae Sedis, 28 (1895-1896) 383f. In the light of this decree Lehmkuhl revised his earlier position and accepted that the fetus itself was the object of attack. (Cf. A. Lehmkuhl: Theologia Moralis, 1910 ed., I, n.1008 (p.565).

detailed medical attention during the second half of the 19th century. Most of the literature considered here appears to have discussed tubal ectopic pregnancy. In tubal pregnancy the ovum, after burying itself in the mucous membrane of the fallopian tube, tends to penetrate into the underlying muscular tissue. This results in an erosion of the walls of the muscular covering of the tube. There follows a sudden eruption of blood into the incubation chamber which tears the ovule away from its connections bringing the pregnancy to an end.[76] The actual outcome of tubal pregnancy appears to be in the following order of frequency: (a) tubal abortion; (b) rupture of the pregnant tube, (c) transit to secondary abdominal pregnancy, (d) uninterrupted development to term in the tube.[77]

Most medical literature[78] suggests that tubal pregnancy constitutes grave danger to the life of the mother. Medical treatment of the condition varies according to the nature of the ectopic pregnancy - whether the fetus is viable or not, whether the tube has ruptured or remains intact. In the early discussions on tubal pregnancy the medical diagnosis of the condition was not adequate. For that reason moralists used to treat of two situations - where there was uncertainty as to the existence of a fetus (or a tumour) and, secondly, where there was certainty of diagnosis regarding the presence of a fertilized ovum.

The first moral evaluation of ectopic pregnancy appeared in the American Ecclesiastical Review during the years 1893-1895. A. Lehmkuhl

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76. Cf. T. Bouscaren: op.cit., pp.78-89.

77. Cf. T. Bouscaren: op.cit., p.80.

78. Cf. T. Bouscaren: op.cit., pp.65-145.

permitted the removal of the ectopic fetus on the same grounds he permitted acceleratio partus. It could not be shown with certainty that the operation was directly lethal. The P.D.E. was invoked to justify the procedure.[79] Sabetti agreed with Lehmkuhl in permitting the operation but rejected his argumentation. He regarded the fetus as an unjust aggressor. Aertnys, on the other hand, denied the liceity of surgical intervention.[80] Eschbach agreed with Aertnys in his opposition to Lehmkuhl and Sabetti.[81] These early discussions by moralists were not helped by the lack of precision in the medical knowledge and terminology current at the time.

Three decrees of the Holy Office considered ectopic pregnancy. The 1889 degree mentioned above was considered to have prohibited the excision of an ectopic pregnancy since the fifth and sixth cases in the list of questions submitted described extrauterine pregnancies.[82] In 1898 the Holy Office replied to the question: "Is laparotomy licit in the case of extrauterine pregnancy?", as follows:

> In case of urgent necessity, laparotomy for the removal of ectopic conception is licit, provided serious and opportune provision is made, so far as possible, for the life of both the fetus and the mother. (83)

Some doubt remained after this decision since it was thought that provision for the life of the fetus excluded removal of the ectopic pregnancy before viability. A further question was submitted to clarify

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79. Cf. T. Bouscaren: op.cit., pp.17-18; T.J. Noonan Jr.: op.cit., pp.122-123.

80. Where the existence of the ectopic fetus was doubtful Aertnys permitted excision of the tube on the ground that the certain right of the mother prevails over the rights of an uncertain fetus. (cf. T. Bouscaren: op.cit., p.19).

81. Cf. T. Bouscaren: op.cit., p.20.

82. Cf. T. Bouscaren: op.cit., Appendix, pp.175-176.

83. Cf. Acta Sanctae Sedis, 30 (1897-1898) 703-704.

this doubt. The negative reply given by the Holy Office in 1902[84] did not close matters since it was issued lacking papal approval. The main question confronting moralists after 1902, therefore, was whether the decree absolutely prohibited every removal of an ectopic pregnancy before viability or whether it applied only to those operations which were directly lethal to the fetus.[85]

From what we have already seen with Eschbach it comes as no surprise that he adopted a strict position against surgical intervention. Many other moralists argued with Bouscaren that the Holy Office decrees did not exclude operations which were only indirectly the cause of the fetus's death.[86]

It was, however, the work of T.L. Bouscaren that resolved much of the moral discussion on ectopic pregnancy. First submitted in 1928 as a thesis at the Gregorian University in Rome, the work appeared in English in 1933 and in a second updated version in 1944.[87] Bouscaren rejected as inadequate a number of arguments already discussed regarding craniotomy.[88] He concluded:

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84. Cf. Acta Sanctae Sedis, 35 (1902-1903) 162; A. Lehmkuhl: op.cit., n.1010.

85. Cf. T. Bouscaren: op.cit., pp.58-62.

86. An example of positions for and against the lawfulness of surgical intervention at about the time Bouscaren was preparing his thesis:
H. Davis S.J.: "A Medico-Moral Problem" - Ectopic Gestation", E.R., 77 (1927) 275-291; 405-414.
P.A. Finney C.M.: "A Medico-Moral Problem - Ectopic Gestation", E.R., 78 (1928) 54-71.

87. The 1944 ed. incorporated new medical evidence (pp.109-145).

88. For example: the fetus is an unjust aggressor; the fetus may be presumed to give its consent; the conflict of rights arguments.

> The removal of a pregnant fallopian tube containing a non-viable living fetus, even before the external rupture of the tube, can be done in such a way that the consequent death of the fetus will be produced only indirectly. Such an operation may be licitly performed if all the circumstances are such that the necessity for the operation is, in moral estimation, proportionate to the evil effect which is permitted. (89)

Bouscaren's thesis permits the use of the P.D.E. It also presumed that the tubal pregnancy creates a pathological condition in the tube. Finney had earlier objected to this line of argument when he maintained that

> there may be no pathological condition whatever in the tube apart from the pregnancy, and it is the presence of the growing fetus that is actually causing the danger. (90)

Bouscaren refuted this claim. He argued that those who argued as Finney did failed to distinguish between the remote cause of the pathology (viz. the pregnancy) and the pathology itself which is the direct object of the operation.[91]

As a result of Bouscaren's work theologians generally accepted his conclusions. There may have been differences of opinion regarding details[92] but there was general agreement that the tube might be

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89. T. Bouscaren: op.cit., p.147.

90. P. Finney: op.cit., p.60.

91. Cf. T. Bouscaren: op.cit., pp.154-155.

92. Cf. J.W. O'Brien: "Ectopic Gestation - II. Moral Aspects", E.R., 105 (1941) 95-103.
H. Davis S.J.: "Ectopic Gestation: A Rejoinder", E.R., 106 (1942) 122ff.
J.C. Ford S.J. discussed the controversy between O'Brien and Davis in T.S., "Notes", 3 (1942) 590-591. See also F.J. Connell's treatment of ectopic pregnancy in A.E.R., 117 (1947) 321-333.

removed as a pathological organ when necessary to save the mother's life.[93]

4. The Question of Hysterectomy.[94]

The discussion on the lawfulness of certain hysterectomy operations on pregnant women was raised at a meeting of the Società Italiana di Ostetricia et Ginecologia in Milan in 1931. A certain Dr. E. Pestalozza, a leading gynaecologist at the University of Rome, argued that surgical intervention to save the life of a mother does not fall under the prohibition of direct abortion in the recently published encyclical Casti Connubii.[95] He proposed the case of a pregnant woman who, in the third month of pregnancy, is found to have cancer of the cervix. The malignancy may be cured by immediate excision of the cancer. In doing this, however, the life of the fetus is terminated. Pestalozza announced in his speech that he had been advised by A. Vermeersch S.J. that the death of the fetus was indirect. From this case Pestalozza proceeded to argue that he could lawfully remove the placenta of a pregnant woman who was suffering from uncontrollable vomiting (hyperemesis gravidarum). In this case, he maintained, he was not directly killing the fetus but was eliminating an area in the mother that was poisoning her system.[96]

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93. Cf. J. Connery: op.cit., p.303; also G. Kelly S.J.: Medico-Moral Problems, pp.105-110. For more recent discussions see J.J. Lynch S.J.: "Ectopic Pregnancy: A Theological Review", Linacre Quarterly, 28 (1961) 9-14; J.J. Farraher S.J.: T.S., "Notes", 22 (1961) 622-623, discusses the morality of removing only a tiny spot in the tube where the fetus is attached thus preserving the tube intact.

94. For an outline of the controversy see:
D.J. Ceriani: "Aborto diretto o aborto indiretto? (Ai margini d'una polemica fra P. Gemelli e P. Vermeersch" La Scuola Cattolica, 62 (1934) 79-81.
A. Janssen: "L'hystérectomie pendant la grossesse. Une controverse recente," E.T.L., 11 (1934) 525-535.

95. Cf. A.A.S., 22 (1930) 539-592.

96. Cf. D. Ceriani: op.cit., pp.80-81; A. Janssen: op.cit., pp.528-529.

A. Gemelli O.F.M. reacted strongly to Pestalozza's argumentation.[97] He attempted to translate the direct-indirect distinction used by moralists into terms easily understood by non-professional theologians. He defined direct abortion as that which occurs when doctors employ means which surely and effectively bring about abortion. The abortion is indirect if the means cure some sickness in the woman but also involve the possibility (but not the certitude) of an abortion.[98] By explaining the direct indirect distinction in this fashion Gemelli made certainty of outcome the criterion of direct abortion and the lack of certainty the requirement for indirect abortion.

A. Vermeersch disagreed strongly with Gemelli's understanding of direct and indirect. The deba te which ensued is worth noting on some points.[99] In fact, reading the articles together one is given the impression that Vermeersch was patiently replying to Gemelli's arguments, clarifying the poor argumentation at each stage.

In his first article Vermeersch attempted two points of clarification:

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97. Pestalozzi and Gemelli had already exchanged views on therapeutic abortion in L'Osservatore Romano, Jan. 22nd and 28th, 1931.

98. Cf. A. Janssen: op.cit., p.530.

99. The articles published in this debate are the following:
A. Vermeersch S.J.: "De causalitate per se et per accidens", seu directa et indirecta", Periodica, 21 (1932) 101*-116*
: "Avortement direct ou indirect. Réponse au T.R.P. Gemelli O.F.M.", N.R.T., 60 (1933) 600-620.
: "Une courte conclusion", N.R.T., 60 (1933) 694-695.
A. Gemelli O.F.M.: "De l'avortement indirect. Application à l'avortement des notions de causalité per accidens et de causalité indirecte", N.R.T., 60 (1933) 500-527; 577-599.
: "Encore l'avortement indirect. Réponse au T.R.P. Vermeersch S.J.", N.R.T., 60 (1933) 687-693.

(a) The terms per se and per accidens may be understood from two points of view. They may be applied to the frequency of an effect following on a cause. The effect may occur frequently (i.e. per se) or rarely (per accidens). Secondly they may be used from the point of view of efficient causality: "per se fieri quidquid agens praevidit et intendit secuturum, vel quod in sua causalitate, iam per se spectata, continetur seu ad quod iam per se sola ordinata est; per accidens autem quod, praeter intentionem sequitur (intentionem intelligas vel finis vel medii) ob concursum alterius causae quam agens impedire nequit."[100]

This permits Vermeersch to conclude as follows:

"non ex effectu plus vel minus certo, sed ex directione actionis, ex eius incidentia, in effectum, causalitas directa vel indirecta vocatur.[101]

(b) Vermeersch points out three ways in which direct and indirect may be used of the human act:

(i) The agent's intention may be emphasized as we have seen with Ballerini and Lehmkuhl on medical abortion and in the case of Pestalozza.

(ii) Emphasis is placed not only on the agent's intention but also on the intrinsic end (the finis operis) of the act.[102] This is Vermeersch's own position.

(iii) Emphasis is placed on whether there is certitude of death or merely danger of death to the fetus.

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100. A. Vermeersch: Periodica, 21 (1932) 107*.

101. A. Vermeersch: Periodica, 21 (1932) 109*.

102. Cf. A. Vermeersch: Periodica, 21 (1932) 115* - 116*.

This is Gemelli's opinion.

Gemelli argued that the death of the fetus in the case at hand is voluntary in its cause. Because the surgeon foresees the certain and inevitable death of the fetus should he perform an hysterectomy such an effect is voluntarium in causa. The good and evil effects are not equally immediate but the mother's health is obtained through the death of the fetus.[103]

Vermeersch again responded making two points:[104]

(a) He distinguished intention, election, "active permission" and "passive permission". Active permission occurs when the agent tolerates the insertion of a foreign causality into one's activity. Passive permission takes place when the agent omits to act so as to prevent an effect.[105] The agent is responsible for his intention and election of means as well as for "passive permission" when he is obliged to prevent an effect. "Active permission" of an evil occurs if (i) the foreseen good effect can not be reached by any other unobjectionable route and (ii) there is due proportion between the good and evil consequences of the act. In cases where (i) and (ii) are verified the evil effect is actively permitted, indirectly and accidentally caused.[106]

(b) Vermeersch pointed out that the terms indirect and accidental have more than one meaning. Indirectly voluntary may refer

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103. Cf. A. Gemelli: N.R.T., 60 (1933) 523.

104. Cf. A. Vermeersch: N.R.T., 60 (1933) 600-620.

105. Cf. A. Vermeersch: N.R.T., 60 (1933) 602.

106. Cf. A. Vermeersch: N.R.T., 60 (1933) 603. Vermeersch discusses cases such as Eleazar (1 Macc. 6:46), that of a general bombarding an enemy fortress and S.T., II-II, q.64, a.7.

to a "voluntary omission" (i.e. voluntarium indirectum in Aquinas) or "negative voluntary". Accidental may apply to what is rare, exceptional, unexpected or may be used of what is normal but not essential.

Vermeersch argued that Gemelli was not sensitive to these distinctions. In the case of a pregnant but cancerous uterus it can be argued that the fetus which normally inhabits the womb before viability is at the same time not an essential or permanent aspect of the uterus. A pregnancy can thus be considered "une situation accidentelle de l'uterus". So, too, an effect may be said to be accidental - even if it is foreseen and certain - when it is due to the concurrence of two causes. Gemelli's error was to treat of the hysterectomy situation as a single cause-effect situation (i.e. in terms of means and end). Vermeersch continues:

> dans notre cas, l'acte d'enlever l'utérus infecté trouve dans cette extraction sa fin intrinsèque: finis operis. Donc l'autre effet, la mort du fruit, ne saurait être qu'un effet médiat. Donc la causalité qui a amené la mort ne peut, suivant saint Thomas, qu'être accidentelle. (107)

A further exchange of views took place between Vermeersch and Gemelli without adding substantially to the discussion.[108]

During the decade following the above debate the position adopted

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107. A. Vermeersch: N.R.T., 60 (1933) 613.

108. Cf. note 99 above. Two further debates occurred on the question of hysterectomy of a pregnant uterus. They do not add substantially to the discussion between Gemelli and Vermeersch.
(a) A. Mancini S.S.: "In questioni di'isterectomia'," Palestra del Clero, 13 (1934) 361-365; "De hysterectomia terapeutica utero pleno", Palestra del Clero, 14 (1935) 5-9.
A. Vermeersch S.J.: "De hysterectomia in mulierem gradivam exercita", Periodica, 23 (1934) 193* - 196*.
(b) A. Mancini S.S.: "L'argomento dell'autorità nella questioni dell'isterectomia", Palestra del Clero, 16 (1935) 135-137; 272-276; 370-373.
: "Adhuc de uteri pleni hysterectomia" E.T.L., 12 (1935) 582-585.
A. Janssen: "La controverse sur l'hystérectomie pendant la grossesse", E.T.L., 12 (1935) 335-349.

by Vermeersch became the more commonly accepted one.[109] Pius XII appears to have accepted it in an address given in 1951.

> On purpose We have always used the expression 'direct attempt on the life of an innocent person....' Because if, for example, the saving of the life of the future mother, independently of her pregnant state, should urgently require a surgical act or other therapeutic treatment which would have as an accessory consequence, in no way desired nor intended but inevitable, the death of the fetus, such an act could no longer be called a direct attempt on an innocent life. Under these conditions the operation can be licit.... (110)

Commentators on this and an earlier speech,[111] for example J.McCarthy,[112] L. Bender O.P.,[113] F. Hürth S.J.[114] and G. Kelly S.J.,[115] paid close attention to Pius XII's use of direct and indirect.

"Though he admits a close similarity between an actio directe occisiva and an actio per se occisiva F. Hürth denies their identity."[116] In this Hürth follows closely in the thought of Vermeersch outlined above.

> Dicitur 'directe occidere', ut significetur: agi tantummodo de actione quae mortem non solum efficiat, sed etiam in eam efficiendam (sive ex natura actus positi,

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109. Cf. J. Delmaille: op.cit., cols.1554-1558.

110. Cf. A.A.S., 43 (1951) 855. Text quoted by N. Lohkamp O.F.M.: The Morality of Hysterectomy Operations, pp.35f., note 56.

111. The earlier speech was to Catholic midwives. Cf. A.A.S., 43 (1951) 838-839. English translation: Clergy Review, 36 (1951) 382-383.

112. Cf. J. M. McCarthy: "Recent Papal Address and Indirect Killing", I.E.R., 77 (1952) 38-41; reprinted in his Problems in Theology, II, pp.158-162.

113. Cf. L. Bender O.P., "Occisio directa et indirecta", Angelicum, 28 (1951) 224-253.

114. Cf. F. Hürth S.J.: "Animadversiones", Periodica, 40 (1951) 402-432.

115. Cf. G. Kelly S.J.: T.S., "Notes", 14 (1953) 40-41.

116. G. Kelly: op.cit., p.40.

> sive ex intentione agentis) tendat. 'Tendit' ex natura actus, quotiescumque mors est actionis positae unicus effectus immediatus per se, 'tendit' ex intentione agentis, quando eius voluntas in mortem efficiendam (sive ut in medium sive ut in finem) dirigitur; ('voluntarium in se, sed non propter se' - 'voluntarium in se et propter se').
>
> Indirecta occisio habetur, quando actio posita mortem efficit quidem (fortasse necessario et ex natura actus), sed non 'tendit' in eam efficiendam, neque ex natura actus neque ex intentione agentis. (117)

In this section we have traced the debates among moralists that have progressively refined and clarified the notions of direct and indirect killing. Before passing on to the contemporary discussion of direct and indirect it will be useful to reflect on similar discussions in two other areas.

III DIRECT AND INDIRECT KILLING: QUESTIONS OF VIOLENT DEATH

This section of our thesis is extremely selective not only in the literature considered but also in regard to the questions raised. In considering two areas of discussion: (a) obliteration bombing, and (b) acts of suicide or those involving exposure of oneself to danger, it will be possible to complement and complete the principal understandings of direct and indirect killing that are to be found in periodical and monograph literature during the period 1850 to 1960.

1. War and Obliteration Bombing

The study of war in Roman Catholic moral theology[1] has been

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117. L. Hürth: Periodica, 29 (1940) 346. This appears in a commentary on the Holy Office decree condemning homicide by governments on eugenic grounds. The understanding of direct and indirect is repeated in Periodica, 40 (1951) 402-432 in substantially the same terms.

1. Cf. "War, Christian Attitude to", O.D.C.C., pp.1459-1460.
R.A. McCormick: "War, Morality of", N.C.E., XIV, pp.802-807.
F. Ortolan: "Guerre", D.T.C., VI.2, cols.1899-1962.

closely linked with the so-called just war theory.[2] A considerable number of contemporary moralists question whether this understanding of warfare is applicable to modern methods of waging war.[3] It was the practice of obliteration or carpet bombing which first occurred during the Second World War that divided Catholic moralists.

Two areas of concern prefaced their studies on aerial bombardment. First was the morality of reprisals.[4] Reprisals were understood to be

> acts of retaliation in kind for damage done by the enemy - and done in violation of either natural law or international convention. (5)

The moral principles governing military reprisals were quite clear for the authors of the period. Direct attack on non-combatants in retaliation for a similar enemy attack is intrinsically wrong and, therefore, never justifiable. Such reprisals were deemed to be contrary to the natural law. If, however, the reprisals are for violations of international convention they may be justified in some

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2. A nation may legitimately go to war if the following conditions are fulfilled:
   (a) war has been declared by a legitimate authority
   (b) for a just cause;
   (c) it must be a last resort, and
   (d) entered into with a right intention,
   (e) in a proper manner (i.e. without the destruction of the innocent).
   (Cf. R. McCormick: op.cit., p.803).

3. Cf. R. McCormick: op.cit., p.803; R. Coste: Le problème du droit de guerre dans la pensée de Pie XII.

4. Cf. J. McCarthy: Problems in Theology, II, pp.177-180.
   E.J. Mahoney: Questions and Answers, II, pp.67-78.
   For more recent discussions on reprisals see
   B. Paskins and M. Dockrill: The Ethics of War, pp.240-244.
   M. Walzer: Just and Unjust Wars, pp.207-222.

5. J. McCarthy: op.cit., II, p.177.

cases.[6]

This raised a second set of questions:

(a) Who - if any - in modern (total) warfare fall within the category "non-combatant", and

(b) What rights do non-combatants have regarding their lives in such wars?

The killing of enemy soldiers in war was justified by the manuals on the grounds that they were not innocent but guilty (i.e. of unjust aggression or of the violation of rights which could be forcibly vindicated). The individual soldier may only have been materially guilty but his immediate cooperation in violent and unjust acts made him a legitimate object of direct killing. The soldier (one of the nocentes) was thus traditionally distinguished from the innocentes. More recently the terms "combatants" and "non-combatants" came into use.

Mahoney pointed out that the traditional use of "innocent" in the sense of "blameless", that is "not responsible for the inception or continuance of the war", is no longer applicable to civilians in a modern democratic state since they elect the government and, therefore, cannot dissociate themselves from its actions.[7] For this reason he preferred to speak of military and non-military objectives. The discussion thus hinged on who were combatants strictly so called and

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6. Cf. J. McCarthy: op.cit., II, p.178; E. Mahoney: op.cit., II, p.68. Both authors cite the use of poison gas or biological methods of warfare as examples of international convention violations. Reprisals as an act of vengeance or on defenceless places or persons, in no way connected with war, are entirely unjustifiable. (cf. H. Davis: Moral and Pastoral Theology, II, p.150).

7. Cf. E. Mahoney: op.cit., II, p.67.

who qualified as non-combatants.[8] The latter, according to traditional moral principles, were to be considered immune from attack.

It is against this background that we must view J.C. Ford's acticle condemning the practice of obliteration bombing.[9] A number of moralists prior to 1944 had accepted the Allied strategy of bombing German cities. In their support they had invoked the P.D.E. They argued in this fashion:

> The bombing has a good effect, the destruction of war industries, communications, and military installations, leading to the defeat of the enemy; it also has an evil effect, the injury and death of innocent civilians (and the destruction of their property). The destruction of civilian life (and property) is not intentional; it is not a means to the production of the good effect, but is merely its accidental accompaniment. Furthermore, the slaughter, maiming and destruction can be permitted because there are sufficiently weighty excusing causes, such as shortening the war, military necessity, saving our own soldiers' lives, etc. This viewpoint, therefore, would find a simple solution to the moral problem merely by advising the air strategist to let go his bombs, but withhold his intention. (10)

Ford regarded this type of argumentation an unwarranted use of the P.D.E.,[11]

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8. Cf. L.L. McReavy: "Reprisals: A Second Opinion", Clergy Review, 20 (1941) 131-138.
   J.C. Ford S.J.: "The Morality of Obliteration Bombing", T.S., 5 (1944) 261-309.

9. Cf. J.C. Ford S.J.: op.cit.

10. J. Ford: op.cit., p.289.

11. Ford's comments on the P.D.E. are worth noting:
"The principle of the double effect, though basic in scientific Catholic morality, is not, however, a mathematical formula, nor an analytical principle. It is a practical formula which synthesizes an immense amount of moral experience, and serves as an efficient guide in countless perplexing cases. But just because it is called into play to solve the more difficult cases, it is liable to sophistical abuse. Some applications of it can only be called casuistical in the bad sense of that word ." (op.cit., pp.289-290).

and this on two grounds.

(a) The argument as proposed is open to the criticism of "direction of intention".[12] But the nature of obliteration bombing and the professed objective of undermining morale suggested to Ford that the direct intent of violating the rights of innocent civilians is present in the act of letting the bombs drop. This is gravely immoral.[13]

(b) The argument that there is due proportion between good and evil effects is not acceptable, Ford claims, since "the alleged proportionate cause is speculative, future and problematical, while the evil effect is definite, widespread, certain and immediate."[14]

On these grounds Ford concluded that obliteration bombing involves an immoral attack on the rights of the innocent. It includes a direct intent to do them injury. There is no proportionate cause justifying what is done.[15]

2. Acts of Suicide and Acts Exposing the Agent's Life to Danger

Two cases involving the taking of one's own life are dismissed quickly by moralists since the last war. The first concerns a soldier, resistance fighter or spy captured behind enemy lines. Aware that torture or drugs will be used on him he feels quite sure he will divulge important information and, what is more important, will jeopardize the lives of his colleagues. May he take a lethal dose

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12. Pascal raised this same criticism in the 17th century. Cf. B. Paskins and M. Dockrill: op.cit., p.231.

13. Cf. J. Ford: op.cit., p.295.

14. J. Ford: op.cit., p.302.

15. Cf. J. Ford: op.cit., pp.308-309.

of poison?[16] The second case involves a secret service agent who is provided with the means of taking his own life if captured and there is real danger of his divulging vital information. May he follow his government's instructions should he be captured?[17]

Most of the authors who discussed these cases considered that direct self-killing is involved. On this ground it is immoral. This is so because the individual has no authority to take his own life,[18] just as a government has no authority to condemn an innocent man to death.[19] In the popular mind such acts may be considered acts of heroic self-sacrifice. Kelly acknowledges the possibility of good faith but judges that the only excuse from grave sin would come from ignorance on the part of the agent.

During the mid-1950s a lively discussion developed in the Italian ecclesiastical journal, Palestra del Clero, as a result of an article written by S. Pani.[20] He proposed the case of an alpine guide who found his party of mountain-climbers and himself so precariously positioned that the rope which kept them from crashing to their deaths just as effectively kept him from advancing to safety. It is impossible for him to turn back and just as impossible for those behind him to move forward. If the rope which joins them

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16. Cf. G. Kelly: "Notes", T.S., 9 (1948) 89; J. Connery: "Notes", T.S., 16 (1955) 570; J. McCarthy:"Direct and Indirect Suicide", I.E.R., 82 (1954) 340-343 (reprinted in his Problems in Theology II, pp.119-122.

17. Cf. G. Kelly: "Notes", T.S., 9 (1948) 89; L. Simeone: "De suicidio quaedam", Miscellanea Francescana, 56 (1956) 74-81.

18. Cf. G. Kelly: op.cit., p.89.

19. For an exposition of the traditional "argument from dominion" see J.J. Shinners: op.cit., pp.26-40; B.J. Cunningham: op.cit., pp.18-31.

20. Cf. Palestra del Clero, 34 (1955) 765-766.

is allowed to remain intact, all are doomed. By cutting the rope, the guide himself can escape while the others fall to their death.

Pani argued that the guide would be committing murder if he cut the rope. He saw this situation as identical with that of the mother-child dilemma discussed earlier. To hasten the death of the fetus by a lethal act would be homicide. For this reason Pani did not permit the guide to cut the rope.

The response to Pani's conclusion was immediate.[21] Opponents pointed out the fallacy in his reasoning when he equated the guide's action with craniotomy - assessing both as direct killing. Cutting the rope is a morally indifferent act which, in the circumstances envisaged, would result in two equally immediate effects - the loss of several lives and the preservation of one. The P.D.E. was thus invoked to legitimate the guide's act.

Two American commentators of the case clearly articulated the issues underlying the discussion. J.J. Lynch S.J. remarked:

> When theologians.... permit a soldier at the sacrifice of his own life to blow up an enemy ship or fortress, they do so even on the supposition that death is absolutely certain, short of a miracle. Those who speak of death as following per accidens in such cases are referring the term to the agent's intention (using it synonymously, therefore, with praeter intentionem) and not to the causal nexus between action and evil effect.... I would have no hesitation, therefore, in agreeing.... that in the case in question the evil effect, although certain, can none the less be indirect. (22)

J. Connery is not too sure whether the guide has the right to cut the rope.

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21. Cf. Palestra del Clero, 34 (1955) 858; 1102-1104.

22. J.J. Lynch S.J.: "Notes", T.S., 17 (1956) 170-171.

> The classical example of the two men on the raft makes me hesitate to say that he has. We have no quarrel with the man who jumps off the raft to lighten the load and save his companion, but we do insist that the companion has no right to push him off - or tip the raft so that he will fall off. On the other hand, if he accidentally slips and grabs hold of his companion to save himself, the companion has a perfect right to break his grip and save his own life. Is cutting the rope equivalent to pushing the man off the raft - or tipping it so that he will fall off? Or is it similar to breaking the grip of the man who accidentally slips and grabs hold of his companion to save himself? To put it in more technical language, are the mountain climbers unjust aggressors (material, of course) or not? This will depend on just what kind of agreement exists between a guide and mountain climbers. (23)

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23. J. Connery S.J.: "Notes", T.S., 17 (1956) 563.

Chapter 5

CONTEMPORARY ISSUES: REEVALUATING THE DIRECT-INDIRECT DISTINCTION

I HISTORICAL BACKGROUND

The period between 1960 and the present has been for Roman Catholic moral theology a time of profound re-evaluation. The individual (and isolated) developments in different areas of Christian ethical reflection that we have observed taking place in the time-span covered by the last chapter, now come together into a coherent process of renewal. The documents of the Second Vatican Council (1962-1965) and Paul VI's encyclical Humanae Vitae are, I believe, the two most important catalysts for change in contemporary Catholic moral theology. Apart from the many specific issues being studied today, probably the most notable developments within the discipline have occurred at the level of what I shall call "perspectives" and "sources".

1. Vatican II and Moral Theology.[1]

The schema De ordine morali[2] that was prepared for the Council

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1. Cf. Ph. Delhaye: "The Contribution of Vatican II to Moral Theology" Concilium, 8 (1972) 58-67.
J. Fuchs: Human Values and Christian Morality pp.1-75.
: "Vocazione e speranza: indicazioni conciliari per una morale cristiana," Seminarium, 23 (1971) 491-512.
E. Hamel: "Lux Evangelii et Gaudium et Spes", Periodica, 59 (1970) 215-249; 60 (1971) 103-120.

2. Cf. M. Callahan: "The Changing Face of Catholic Moral Theology: From the Constitution De Ordine Morali to Gaudium et Spes," Louvain Studies, 3 (1970) 41-51.

represented the conservative manualist tradition of the recent past. Its three authors - HÜrth, Gillon and Lio - had prepared a document strongly opposed to the contemporary "situationism" of the new morality and deeply suspicious of a moral theology of charity. What resulted from the work of the Council was vastly different and for the future of moral theology extremely important. It is very interesting to note that during the course of the deliberations leading up to the final documents there were very few periti engaged in the work who were professional moral theologians. What we have from the Council in its documents is a profound theological synthesis that "gave priority to those truths of faith which are essentially relevant to life."[3]

The explicit teaching on the nature of a renewed moral discipline is contained in two sentences in the "Decree on the Training of Priests":

> Special care should be given to the perfecting of moral theology. Its scientific presentation should draw more fully on the teaching of holy Scripture and should throw light upon the exalted vocation of the faithful in Christ and their obligation to bring forth fruit in charity for the life of the world. (4)

In this text we have the essential elements of the renewal process that continues to this day. The source of Christian moral teaching is the Scriptures.[5] Christian life is essentially a gift from Christ and is the fruit of the Spirit.[6] In responding to the call of

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3. Ph. Delhaye: op.cit., p.61.

4. Optatum Totius, par.15(Flannery:p.720; Abbott, p.452).

5. Dei Verbum, par.25(Flannery, pp.764f.; Abbott, pp.127ff.)

6. Lumen Gentium, par.7(Flannery, pp.354-356; Abbott, pp.20-22).

Christ[7] the individual Christian lives his life of faith[8] and love[9] in the context of a pilgrim community.[10] There is no dualism present in the conciliar teaching. Rather the individual and the Church community must be open to the intrinsic value of the world and the goodness of the universe.[11] Moral theology today, to be true to the orientation given it by Vatican II, must be grounded in the search for human values[12] and must develop the implications of Christian anthropology.[13]

In the life of the Church since the Council the renewal of moral theology, and what it implies for the individual and the community of the Church in a complex world, has only slowly gained momentum. This attests to its organic development, grafted on as it now is to the theological tree. Prior developments in scriptural and dogmatic studies as well as changed understandings of what it means to be a Christian in a pluralistic and technological environment have all contributed to the evolving of new approaches to ethical issues. Nothing has contributed more to this process than the encyclical Humanae Vitae.

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7. Lumen Gentium, par.31(Flannery, pp.388f.; Abbott, pp.57f.).
8. Dignitatis Humanae, par.10(Flannery, pp.806f.; Abbott, pp.689f.). Dei Verbum, par.5 (Flannery, p.752; Abbott, pp.113f.). Gaudium et Spes, par.21 (Flannery, pp.920-922; Abbott, pp.218-220).
9. Gaudium et Spes, par.24;(Flannery, p.925, Abbott, p.223). Apostolicam Actuositatem, par.13(Flannery, pp.781f.; Abbott, pp.504f.).
10. Lumen Gentium, par.9-17(Flannery, pp.359-369; Abbott, pp.24-37).
11. Gaudium et Spes, par.34; 40-45 (Flannery,pp.933f.; 939-947; Abbott, pp.232f.; 238-248).
12. Delhaye perceives six reasons in the Council documents for the Christian's secular commitment: the fundamental goodness of creation; the dignity of man; the service of charity; the "recapitulation" in Christ; Christ's own example; the cosmic relevance of the Resurrection. See Apostolicam Actuositatem, par.7; Gaudium et Spes,pars.43,45,58. (op.cit., p.65).
13. This anthropology proceeds from an understanding of man as the image of God (Gaudium et Spes, par.12) and a renewed appreciation of the common good (ibid., par.26).

2. Humanae Vitae (1968).[14]

The encyclical has been a true catalyst for change both in the discipline of moral theology and in the lived experience of so many individual Christians. The publicity the papal teaching received, as well as the subsequent discussion, have ensured that no adult Catholic could remain ignorant of the issue of contraception.

What is of interest to us here is the wide range of issues that have received ever increasing attention in the theological literature since the encyclical's publication. All of these issues are in some way related to the single question of contraception. The encyclical has provoked heated discussion on the Church's traditional teaching on sexual morality, especially within the context of marriage. The nature of Christian and sacramental marriage, the role of family life and the place of children are central concerns of contemporary moral reflection. In addition to this the significance and importance of the natural law argumentation used by the document as well as the contribution of empirical and behavioural sciences in the attaining of moral norms have likewise come under close scrutiny. Finally, the very right of the teaching authority of the Church to propose its teaching, the possible limits of such teaching and its binding force and the possibility of conscientious dissent from authoritative pronouncements are now being seriously considered.

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14. For background to the contraception issue see:
J.T. Noonan Jr: Contraception. A History of Its Treatment by the Catholic Theologians and Canonists.
A. Valsecchi: Controversy: The Birth Control Debate, 1958-1968.

For the relevant papal and episcopal teaching see:
J. Horgan (ed.): Humanae Vitae and the Bishops. The Encyclical and the Statements of the National Hierarchies.

These are but a few of the areas that have developed through vigorous discussion as a result of Paul VI's teaching on contraception. In the years to come I believe we shall be able to look back on the encyclical as one of the positive contributors to the renewal of moral theology authorized by Vatican II. To conclude this general introduction it will be helpful now to observe the depth and the extent of the present renewal process by considering the change in perspectives that has gone on of recent years.

3. Changes in Perspective.[15]

The most noteworthy change of emphasis in recent moral literature is that from a "classicist world-view" to an "historically conscious world-view".[16] Charles Curran sees the former exemplified in the manualist tradition of doing moral theology. The emphasis in this literature was on the static, the immutable, the eternal, all of which proceeded from a method that tended to be abstract, a priori and deductive. The newer historically conscious approach emphasizes the changing, developing and evolving aspects of the world based as it is on a concrete, a posteriori and inductive methodology.[17]

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15. For a general survey of recent moral theology see:
C.E. Curran: "Moral Theology: The Present State of the Discipline", T.S., 34 (1973) 446-467.
T. Dubay S.M.: "The State of Moral Theology: A Critical Appraisal", T.S., 35 (1974) 482-506.
J.J. Farraher: "Moral Theology, History of (Contemporary Trends), N.C.E., IX, pp.1122-1123.
R.A. McCormick S.J.: "Notes", T.S., 36 (1975) 77-129.
J.G. Milhaven S.J. and D.J. Casey S.J.: "Introduction to the Theological Background to the New Morality", T.S., 28 (1967) 213-244.

16. Cf. C.E. Curran: "How My Mind Has Changed, 1960-1975" Horizons, 2 (1975) 196-197.
J.M. Gustafson: Protestant and Roman Catholic Ethics, p.55.
N. Rigali S.J.: "Morality and Historical Consciousness" Chicago Studies, 18 (1979) 161-168.
R. McCormick S.J.: "Notes", T.S., 41 (1980) 110-113.

17. Cf. C.E. Curran: op.cit., p.196.

Related to this perspective has been a growing concern for the moral agent. To quote Gustafson, moralists are finding "there are philosophical and religious reasons for being more concerned about the uniqueness and richness of personal and interpersonal existence."[18] The past emphasis on an objective order with which human existence must align itself is giving way to a deeper consideration of freedom and the personal conscience in the sphere of individual morality, as well as a much richer notion of the common good in the area of social ethics.[19]

The third shift in perspective that one can observe in contemporary literature is a little harder to characterize and yet is central to much of what will be discussed in this chapter. More and more attention is being paid to the total human situation when moral evaluation is called for. No doubt the philosophical influences of American pragmatism and European existential phenomenology have had a part to play, as have the social and behavioural sciences. Not only the immediate but also the long term implications of our actions, i.e. the total picture, appear to be important dimensions of our moral thinking in a world where we, and our children, will have to live with nuclear waste, pollution and so on. The importance of this new perspective will be obvious as we consider contemporary analyses of the human act.

The final shift in perspective, in a sense, is a natural outcome of the above. The reality of "pluralism" within and outside contemporary

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18. J.M. Gustafson: op.cit., p.55.

19. Cf. C.E. Curran: op.cit., pp.197-199.

moral theology is an accepted fact.[20] The typical moral endeavour of the past, e.g. the manual, has given way to studies which begin from different philosophical and theological starting points, that employ different methodologies (e.g. psychological or sociological frameworks) and that range freely over the areas covered previously by the separate disciplines of moral, pastoral and ascetical theology. The influence of Protestant moralists has also ensured a true pluralism within Christian ethical reflection today.

4. The Sources of Moral Reflection.

The renewal of contemporary Roman Catholic moral theology has caused moralists to research seriously in the sources of their tradition. Starting with the teaching of the Scriptures and all the hermeneutical questions raised by such research, moralists have engaged in serious historical research on different moral matters. An historically conscious discipline has been able to deepen our understanding of the magisterial teachings of the past. The work of J.T. Noonan Jr. on contraception, usury and marriage annulment is but one example of recent works in this field. Detailed and rigorous ethical reflection has accompanied each of the above developments. Questions arising from situation ethics, natural law theory, human experience etc., have all received detailed analysis as this chapter will show. Given the great richness and breadth of present developments one could not but agree with Timothy O'Connell when he says:

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20. Dubay is critical of the pluralism in contemporary Catholic moral theology (op.cit., pp.484-493).

> the moment at which we find ourselves in moral theology is a moment of beginning. It is not the time for complete new systems. Even less is it a time for the repetition of old formulas. It is a time to mine the past for useful and helpful insights. And it is a time to begin to reformulate and rearticulate the perennial truths of the Christian life. It is a time to ask hard questions, and it is a time to attempt tentative but internally coherent answers to those questions. (21)

II THE HUMAN ACT

1. The Magisterium and the Human Act.

"Vatican II marks the transition to a new epoch in moral theology just as plainly as it does to a renewed understanding by the Church of its own nature."[1] This was made possible for the Church because "the human race has passed from a rather static concept of reality to a more dynamic, evolutionary one."[2] The changed Weltanschauung of the twentieth century and the renewed understanding of the Church have been two important influences on the outlook, concerns and methods of a good number of contemporary Roman Catholic moralists.

Before discussing some of these thinkers, particularly their thinking on the human act, it is worth noting differing emphases in the official Church Magisterium on the human act.

The Pastoral Constitution on the Church in the Modern World

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21. T.E. O'Connell: Principles for a Catholic Morality, p.19.

1. B. Häring: "Moral Theology: I. Catholic", Encyclopedia of Theology, (ed.) K.Rahner, p.991.

2. Gaudium et Spes, par.5 (Abbott, p.204).

(Gaudium et Spes) of the Second Vatican Council articulates its understanding of human activity in one short chapter.[3] Starting from an understanding of man as God's image and the recipient of God's command to subject all of creation to himself, the Council views all efforts that improve the circumstances of human life as being in accord with God's will. This obligation to build up the world applies to the most ordinary of human activities.[4] "Human activity proceeds from man: it is also ordered to him. .... It is what a man is, rather than what he has, that counts."[5] In another document the Council explicitly identifies the practical involvement of Christians in the world as imitation of Christ.[6] As citizens of two cities Christians are exhorted "to discharge their earthly duties conscientiously and in response to the gospel spirit."[7] This implies, however, that the religious dimension does not diminish the autonomy and independence of the secular sphere but rather complements,[8] and actively cooperates with it.[9]

A theological understanding of human activity is expressed by the Council in terms of "sin", "paschal mystery" and "new earth." Man's efforts towards wholeness or integrity are seen as conflicting

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3. par.33-39 (Flannery, pp.933-938 ; Abbott, pp.231-238).
4. par.34 (Flannery, pp.933f.; Abbott, p.232).
5. par.35 (Flannery, p.934).
6. Lumen Gentium, par.41 (Flannery, pp.398-400; Abbott, p.70).
7. Gaudium et Spes, par.43 (Abbott, pp.242f.).
8. Cf. ibid., par.36 (Flannery, p.935; Abbott, p.233f.).
9. Cf. ibid., par.76 (Flannery, pp.984f.; Abbott, p.288).

with the powers of darkness that pervade human history.[10] The effects of the redemption are applied through the Spirit so that each individual reaches personal fulfillment through a life of activity.[11] All human effort ceases with the second coming of Christ. Till that event it is possible to distinguish "earthly progress" from the "growth of the Kingdom" so that "to the extent... the former can contribute to the better ordering of human society, it is of vital concern to the Kingdom of God."[12]

The richly varied appreciation of human activity to be found in many of the documents of Vatican II has not been repeated, let alone developed, by later teaching issuing from Rome. This is particularly the case in Paul VI's encyclical Humanae Vitae[13] and the "Declaration on Certain Questions Concerning Sexual Ethics" published by The Congregation for the Doctrine of the Faith.[14] In both documents the teaching is more akin to the natural law argumentation of the manuals. Because man does not have dominion over his body, and especially his sexual faculty, contraception and premarital sex are not open to him as a lawful activity. So too because of the intrinsic finality of man's sexual powers contraception, homosexual relations and masturbation are deemed intrinsically wrong

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10. Cf. ibid., par.37 (Flannery, p.936; Abbott, p.234).

11. Cf. ibid., par.38 (Flannery, p.937; Abbott, pp.235-237).

12. Cf. ibid., par.39 (Abbott, p.237).

13. Cf. A.A.S., 60 (1968) 481-503. The literature dealing with the encyclical is enormous. The following are particularly useful:
J. Horgan (ed.): Humanae Vitae and the Bishops. The Encyclical and the Statements of the National Hierarchies.
C.E. Curran (ed.): Contraception: Authority and Dissent.
R. McCormick S.J.: "Notes", T.S., 29 (1968) 707-741; 30 (1969) 264-284; 635-668; 40 (1979) 80-97.
C.E. Curran: "Moral Theology in the Light of Reactions to Humanae Vitae," Transition and Tradition in Moral Theology, pp.29-58.

14. Cf. A.A.S., 68 (1976) 77-96; see also R.McCormick S.J.: "Notes", T.S., 38 (1977) 100-114.

(intrinsice inhonestum).[15]

There is reason to believe that the theological and dynamic understanding of the human act present in the teaching of Vatican II is not being used by later instructions issuing from Rome. The development of the Council teaching is, however, to be found in the recent moral literature published by Roman Catholic scholars All of them assume an historically conscious world-view and accept the pluralism of much of contemporary moral theology.[16] In the following two sections we will briefly examine those moralists who emphasize the moral agent and total situation in evaluating the moral act.

2. Intersubjectivity, Community and the Human Act.

Much of the contemporary criticism of the manualist understanding of the human act identifies two defects:

(a) a fragmented understanding of the moral act which devalues its unified character, and

(b) an over-emphasis on the physical aspects of the act in assessing its moral worth.

In reacting to these defects two moralists, Cornelius Van der Poel[17] and

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15. Cf. Humanae Vitae, par.14.

16. Cf. Section I, 3. For general studies of the human act see
F. Böckle: Fundamental Concepts of Moral Theology, pp.29-44.
B. Häring: The Law of Christ, I, pp.189-213; 287-328.
T. O'Connell: Principles for a Catholic Morality, pp.45-56.
C. Peschke: Christian Ethics, I, pp.185-213.
W. Molinski: "Human Act", Sacramentum Mundi, III, pp.65-74.

17. Cf. C.J. Van der Poel: "The Principle of Double Effect", Absolutes in Moral Theology? (ed.) C.E. Curran, pp.186-210.
: The Search for Human Values. Moral Growth in an Evolving World, pp.49-62.

W. Van der Marck,[18] attempt to explain the human act with the help of insights from existential phenomenology.

Commencing with an appreciation of man as a "being-in-the world" Van der Poel sees the human vocation as self-realization through activity. This activity acquires its meaning and value from the social framework in which the agent operates.[19] Hence any judgment about an individual human act must not be made about the human act in itself (as a separate entity) but insofar as it contributes to or destroys the society in which it is performed.[20]

Furnished with this "community-building" and "community-destructive" criterion Van der Poel sees in human activity transcendental and horizontal dimensions. The divinely transcendent God Christians serve is immanent in human activity. "This means man fulfills his responsibility to God through and in his responsibility to the totality of his surroundings."[21] Individual acts which make up human activity must be viewed in the totality of their relationships "to man-in-this-world and his transcendent destination. The material effects, or results, have no moral values in themselves."[22] Morality only enters in

> where these material results become the visible expression of human activity in the strict sense of the word. Human activity is always communication with others or the frustration of this communication, and as a consequence it is good or evil accordingly. (23)

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18. Cf. W. Van der Marck O.P.: Love and Fertility. Contemporary Questions about Birth Regulation.
: Toward a Christian Ethic. Renewal in Moral Theology.
19. Cf. C. Van der Poel: "The Principle of Double Effect", op.cit., p.190.
20. Cf. C. Van der Poel: op.cit., pp.192-193.
21. C. Van der Poel: op.cit., p.204.
22. C. Van der Poel: op.cit., p.205.
23. C. Van der Poel: op.cit., p.205.

Van der Marck develops a similar approach to the moral act. His analysis is more detailed than that of Van der Poel and pays due attention to the Thomistic tradition. Free activity implies a reality that is "inter-subjective".[24] All human activity is "corporeal"; it is uniquely human when inter-subjective. Our author cites a number of examples substantiating this thesis:

(a) the physical reality of killing (i.e. as corporeal act) may be (as an inter-subjective reality): murder, waging war, administering the death penalty, suppressing an insurrection, self-defence etc.

(b) removal of a non-viable fetus may be abortion, murder, removal of the effects of rape, saving the life of the mother.[25]

By explaining human acts as corporeal and inter-subjective Van der Marck is convinced that he is consistent with the distinctions used in past moral theology texts. His own terms express (a) the "means" - "ends" distinction;[26] (b) the distinction between "act" and "intention";[27] (c) "act" and "circumstance";[28] (d) secundum speciem naturae and secundum speciem moris.[29] He would have us believe the corporeal-

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24. Cf. W. Van der Marck: Toward a Christian Ethic, pp.43-47.

25. Cf. W. Van der Marck: op.cit., p.55.

26. Sexual intercourse may be considered a means; the intersubjective end might be egoism, love, self-satisfaction etc. (op.cit., p.57).

27. "Walking, for example, is corporeity, means, or act; mincing primly is intersubjective, or end, or intention". (op.cit., pp.57-58).

28. Cf. S.T., I-II, q.7, a.4.

29. Cf. S.T., I-II, q.1, a.3, ad.3; II-II, q.59, a.3, ad.3 (in this text Aquinas uses materialiter-formaliter).

intersubjective model is more helpful.

> When we .... speak of act and consequences, of act and effect, of means and end, we are, in the first place, not speaking of something that happens now and has results, consequences, or effects, or that achieves an end later; rather we are speaking of a particular corporeal action that, precisely as a human act, has immediate implications with respect to the relationship between 'subjects'. (30)

The dominant role intention has in giving meaning to particular acts is always limited by the social milieu in which the agent moves. Van der Marck argues that the traditional distinction between good, bad and indifferent acts arose from a particular social framework. They were the "language"[31] ascribed to acts viewed from the perspective of object, circumstances and end. The new language of ethics must incorporate not only object, circumstances and end, as in the past, but must also pay attention to the inter-subjective and communitarian facets of human activity.[32]

The American moralist, Charles Curran, is quite close to the above two moralists when he speaks of "an ethical model of relationality and responsibility".[33] Theology has traditionally viewed human life in terms of relationship (e.g. love, covenant, sin). In the light of this emphasis in theology Curran develops his understanding of "responsibility".[34] The Christian is not only accountable to the truth and

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30. W. Van der Marck: op.cit., p.50.

31. H. McCabe in Law, Love and Language adopts "language" (i.e. verbal communication between people) as a model explaining morality and ethics.

32. Cf. W. Van der Marck: op.cit., pp.66-67.

33. Cf. C.E. Curran: "Utilitarianism and Contemporary Moral Theology: Situating the Debates", Readings in Moral Theology No.1, (eds.) C.E. Curran and R.A. McCormick S.J., p.356.

34. Cf. C.E. Curran: "Responsibility in Moral Thought: Centrality, Foundations and Implications for Ecclesiology", The Jurist, 31 (1971) 113-142.
: "Dialogue with a Theology of the Church: The Meaning of Coresponsibility", Catholic Moral Theology in Dialogue, pp.150-183.

the teachings of Christ[35] but is, in addition, responsible for all the many relationships he enters into with his fellow men and women.[36] For Curran an equally important dimension of human activity[37] is man's "response-ability". Phenomenological reflection leads him to conclude "that our lives are more understandable in terms of responding to the many happenings of human existence rather than adhering to a prearranged plan in search of our goal."[38] For these reasons Curran is critical of the "physicalism"[39] of past moral teaching and is more inclined to emphasize the personal and responsible character of moral activity.[40]

3. The Moral Act and the Total Human Situation.

The second notable development in recent Roman Catholic theology on the human act complements the emphasis discussed in the previous point. More and more attention is being given to the total human situation within which the moral act is performed. Moralists are approaching their study of the human act from three points of view. A number are seeking to reinterpret the natural law tradition (e.g.

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35. Cf. C.E. Curran: A New Look at Christian Morality, pp.1-72.

36. Cf. C.E. Curran: "How My Mind Has Changed, 1960-1975", Horizons, 2 (1975) 202.

37. Curran's basic "stance" as a moralist is grounded on the five Christian mysteries of creation, sin, incarnation, redemption and resurrection. (cf. New Perspectives in Moral Theology, pp.47-86). Human activity must, if it is to be adequately explained, take account of each of these mysteries.

38. C.E. Curran: "Utilitarianism", op.cit., p.356. On this point Curran follows the "call-response" model employed by his old teacher, B. Häring, (Cf. A New Look at Christian Morality, pp.145-158).

39. Cf. C.E. Curran: Transition and Tradition in Moral Theology, pp.30-37.

40. W.G. Jeffko is another writer adopting a personalist moral theology. He differs from the three thinkers above in that he bases his approach on the thought of John Macmurray. Cf. W.G. Jeffko: "Processive Relationism and Ethical Absolutes" Readings in Moral Theology No.1, (eds.) C.E. Curran and R.A. McCormick S.J., pp.199-214.

G. Grisez, J. Finnis, W.E. May); others (e.g. J. Fuchs) examine human activity in the context of moral norms. A final group, particularly American thinkers, gives great attention to the empirical dimensions of human activity. We will now discuss each of these three approaches briefly but in sufficient depth to provide an introduction to the sections which follow.

Germain Grisez,[41] while within the Thomistic tradition of natural law and a rigorous defender of it, recognizes that only empirical inquiry will suffice to explain the basic tendencies and inclinations within man.[42] He proceeds to develop his ethical theory by reflecting on the basic human experience of choosing particular goals or "goods". He perceives that there are certain "inherently worthwhile activities which contribute in their appropriate ways to human flourishing".[43] Grisez articulates eight types of goods that he believes are fundamental to man's human existence.[44] Each of these

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41. Cf. G. Grisez: Contraception and the Natural Law.
: "A New Formulation of a Natural Law Argument against Contraception", Thomist, 30 (1966) 343-361.
: Abortion: The Myths, the Realities and the Arguments.
: "Toward a Consistent Natural Law Ethics of Killing", The American Journal of Jurisprudence, 15 (1970) 64-96.
G. Grisez and R. Shaw: "When Action is Ambiguous", Beyond the New Morality. The Responsibilities of Freedom, pp.138-149.
G. Grisez: "Against Consequentialism", The American Journal of Jurisprudence, 23 (1978) 21-72.
G. Grisez and J.M. Boyle Jr.: Life and Death with Liberty and Justice. A Contribution to the Euthanasia Debate.

42. Cf. C.E. Curran: "Moral Theology: The Present State of the Discipline", T.S., 34 (1973) 449.
Grisez has drawn on the writings of the psychologist Ernest Hilgard and the anthropologist R.H. Lowrie to show that all men, simply because they are men, have certain basic needs and inclinations. (Cf. Contraception and the Natural Law, pp.60-72).

43. G. Grisez: Life and Death, p.360.

44. Grisez gives as basic goods: (a) life itself both physical and mental; (b) activities engaged in for their own sake (e.g. games, hobbies); (c) experiences sought for their own sake (e.g. aesthetic experiences); (d) knowledge pursued for its own sake (e.g. philosophy); (e) interior integrity (i.e. inner harmony); (f) genuineness (i.e. conformity between one's inner self and one's external behaviour); (g) justice and friendship; (h) worship and holiness. (Cf. Abortion, pp.312-313). In Life and Death, pp.359-361 Grisez admits that the above list may not be exhaustive.

goods can be said to contribute to the totum bonum humanum [45] and each is incommensurable.[46] They are incommensurable because "each of these goods makes a peculiar and irreducible contribution to the complete well-being of persons".[47] They are incommensurable, also, in the way they operate in rational reflection. "The good appeals to intelligence, not merely presenting itself as possible, but offering itself as a possibility to be realized through action. Thus there is a direct, normative appeal in every human good."[48]

It is against this background of basic human goods and the principles of practical reasonableness that Grisez develops his understanding of the moral act. The moral agent in choosing and acting for some human good should at the same time appreciate, be open to and respect the other basic goods that are not involved in the present performance. Not to do so is to effect evil.[49]

When discussing the ambiguous character of acts with two-fold effects[50] Grisez concluded that the unity of a human moral act is to

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45. Cf. W.E. May: Human Experience, Medicine and Ethics, p.10.

46. The Protestant moralist Paul Ramsey argues, as does Grisez, that basic goods are incommensurable. See his two articles: "Abortion: A Review Article", The Thomist, 37 (1973) 174-226. "Incommensurability and Indeterminancy in Moral Choice", Doing Evil to Achieve Good, (eds.) P. Ramsey and R.A. McCormick S.J., pp.69-144.

47. Cf. G. Grisez: Life and Death, p.361; "Against Consequentialism", pp.41-43.

48. G. Grisez: Life and Death, p.363; Cf. Contraception and the Natural Law, p.111.

49. There has been a noticeable refinement in Grisez's thinking on moral activity. Recently he has incorporated four intermediate axioms or what he calls "modes of moral obligation", viz. (a) never act directly against any basic human good; (b) help others when possible; (c) consider impartially actions which will affect others; (d) respect the rights of those to whom one has duties. (cf. Life and Death, pp.369-371). In his latest book the treatment of moral acts has been influenced by J.M. Boyle Jr. and W.E. May.

50. Cf. G. Grisez and R. Shaw: "When Action is Ambiguous", pp.140-144.

be found in (a) the indivisibility of the performance and (b) the unity of the agent's intention.[51] When an act is a unified performance and is one by reason of the agent's intention such an act receives its moral quality from the intention and not from any aspect of the performance.[52]

The implications of Grisez's concept of the human act will be developed in the following section. However, before leaving him it is worth noting the contribution of two other thinkers who, while not moral theologians, have influenced the development of Grisez's thought. John Finnis[53] bases his thinking on basic goods[54] and has gone beyond Grisez in developing eight requirements for "practical reasonableness".[55] These basic requirements are considered by Finnis to be modes of moral obligation or responsibility, for each plays its part in rational decision-making.[56]

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51. Cf. G. Grisez: "Towards a Consistent Natural-Law Ethics of Killing", pp.87-89.

52. Cf. G. Grisez: Life and Death, pp.381-392.

53. Cf. J. Finnis: "Natural Law and Unnatural Acts," Heythrop Journal, 11 (1970) 365-387.
: "The Rights and Wrongs of Abortion", The Rights and Wrongs of Abortion, (eds.) M. Cohen, T. Nagel, T. Scanlon, pp.85-113.
: Natural Law and Natural Rights.

54. Finnis classifies the basic goods as: life, knowledge, play, aesthetic experience, sociability or friendship, practical reasonableness and "religion". (Cf. Natural Law and Natural Rights, pp.85-90).

55. Finnis's requirements of practical reasonableness are:
(a) a coherent plan of life;
(b) there must be no arbitrary preferences among values
(c) and persons;
(d) detachment and commitment;
(e) the (limited) relevance of consequences must be considered: there must be efficiency within reason;
(f) there must be respect for every basic value in every act;
(g) the requirements of the common good must be considered;
(h) one must follow one's conscience. (op.cit., pp.100-126).

56. Finnis develops his understanding of the human act in the context of his study of contraception and abortion.

William E. May,[57] like Finnis, follows closely the ethical theory developed by Grisez.[58] With them he adopts a deontological position on normative questions in morality.[59] May insists strongly that the Christian is interested in human acts

> not so much because of what they 'get done' but because of what they 'get said'. We are interested in human acts insofar as they manifest our identity and insofar as we make ourselves what we become in and through the deeds we choose to do. (60)

The two elements just highlighted in the writings of Finnis and May have been absorbed, in part, into the later works of Grisez.

The second approach to the human act is to be found in the writings of Josef Fuchs.[61] His point of departure is an historical and dynamic understanding of natural law. In considering the moral act Fuchs emphasizes the role of practical knowledge regarding the consequences of particular types of conduct.[62] When he considers "behavioral norms" Fuchs gives evidence that he values the total human situation in which the act is performed. He requires three

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57. Cf. W.E. May: "Experimenting on Human Subjects", Linacre Quarterly, 41 (1974) 238-252.
: Becoming Human. An Invitation to Christian Ethics.
: "Ethics and Human Identity: The Challenge of the New Biology", Horizons, 3 (1976) 17-37.
: Human Existence, Medicine and Ethics. Reflections on Human Life.
: "Sterilization: Catholic Teaching and Practice", H.P.R., 77 (1977) 9-22.
: "Modern Catholic Ethics: The New Situationism", Faith and Reason, 4 (1978) 21-38.
: "The Moral Meaning of Human Acts", H.P.R., 79 (1978) 10-21.
: "Double Effect", Encyclopedia of Bioethics, I, pp.316-320.

58. For a concise summary of Grisez's position see May's Human Existence, Medicine and Ethics, pp.10-12.

59. Cf. "The Moral Meaning of Human Acts", H.P.R., 79 (1978) 12-13.

60. Human Existence, Medicine and Ethics, p.9.

61. Cf. J. Fuchs: "The Absoluteness of Moral Terms", Gregorianum, 52 (1971) 415-457.

62. Cf. J. Fuchs: op.cit., pp.435-436.

elements to be present in behavioral norms.

(a) The significance of the action, as a value or non-value, must be determined with special reference to its impact on the individual, on interpersonal relationships and on society at learge.

(b) The significance of the act must be viewed in the light of man's total reality, the life of his society and the place of both in the history of culture.

(c) Finally, the priority of values one to another, and the particular urgency that a certain particular value(s) be brought about in certain situations must also be borne in mind.

Only on the basis of this total view may normative moral statements be made about human actions.[63] The role of norms in the moral life will be pursued below.[64]

Richard McCormick has followed closely the writings of his German confrere and has characterized his thinking on the human act as follows:

> Fuchs says that the moral quality of an act cannot be determined without reference to the intention and in this sense he qualifies the traditional understanding of object, end, circumstances. Traditional moralists said that certain actions were morally evil ex obiecto in the sense that no good intention could purify them. The basic morality of such acts was determined by the object. Fuchs

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63. Cf. J. Fuchs: op.cit., pp.436-437.

64. In this Gregorianum article Fuchs has absorbed the thought of J.G. Milhaven on the role of experience and that of W. Van der Marck on the importance of interpersonal relationships (op.cit., p.435, n.25 and p.436, n.26). The work of B. Schüller S.J. on the priority and urgency of particular values in the process of practical decision-making is also to be observed. (cf. B. Schüller; Die Begründung sittlicher Urteile, pp.39-45).

> says, in contrast, that 'a moral judgment of an action may not be made in anticipation of the agent's intention, since it would not be the judgment of a human act.' In other words, the object must be taken with the intention before the meaning of the action, its true moral character, can be stated. (65)

In his approach to both the moral norm and the human act Fuchs indicates that he wishes to enlarge the traditional understanding in favour of a more comprehensive appreciation of the moral act and its context.

Considerable attention has been given to the empirical dimensions of the moral act in recent Roman Catholic moral theology. Thinkers who pursue this approach constitute the third group of studies on the human act that we wish to consider here.

In his earlier writings Richard McCormick S.J.[66] was quite close to the traditional argumentation of the manuals. He had "repeatedly turned to the notion of the significance or meaning of an action as that which generates concrete moral norms and contains the seed of their limitations."[67] But what did McCormick mean when he used the term "significance" in reference to the moral act? How do we determine the significance of a human act?

The American Jesuit's use of "significance" is to be viewed against

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65. R. McCormick: "Notes", T.S., 33 (1972) 73. McCormick also remarks: "to what extent this departs from the traditional understanding is not altogether clear. That depends on how many circumstances traditional moralists allowed to enter the statement of the obiectum and how many Fuchs excludes." (op.cit., p.73, n.15). See also T.S., 36 (1975) 89.

66. Cf. R. McCormick S.J.: "Human Significance and Christian Significance", Norm and Context in Christian Ethics. (eds.) G. Outka and P. Ramsey. pp.233-261.

67. R. McCormick: "Notes", T.S., 36 (1975) 92.

the background of how he understands morality in general.[68] For him morality basically concerns values, significance and norms.

> Significance is based on the relation of action to value, and norms are based on significance. Intention plays a role, but it can never change an action's basic human significance. Morality is objective (based on values), yet situational (concrete situations involve different values at different times). (69)

Because of this the moral agent, in his activity, can be said to participate, as subject, in value(s). This action, as objectifying a particular value, has a "definite content of being human even if any man or group of men, no matter how many, deny it."[70]

David Blanchfield[71] has subjected McCormick's earlier writings to close scrutiny and has urged him to modify his value-significance approach. Blanchfield proposed that

> intention should, within certain limits, enter much more into the formulating of significance and meaning. The limit is this: the intention may not determine the significance when it would involve violating an absolute value. (72)

In arguing this way Blanchfield wishes to come to grips with situations where conflicts of values occur. He illustrated his intent by using

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68. McCormick's moral theology assumes "that man is a rational symbolic being who creates himself (freedom) by exercising fundamental options in response to values he intuits. Ultimately, these basic decisions are responses to the value - that which is ultimate, unconditional, absolute, the horizon and ground of all, God." D. Blanchfield: "Methodology and McCormick", A.E.R., 168 (1974) 385.

69. D. Blanchfield: op.cit., p.375.

70. D. Blanchfield: op.cit., p.386.

71. Cf. D. Blanchfield: "Balancing in Moral Theology" A.E.R., 164 (1971) 90-96.
: "Methodology and McCormick" A.E.R., 168 (1974) 372-389.

72. D. Blanchfield: "Methodology and McCormick", A.E.R., 168 (1974) 388.

the case made famous by Joseph Fletcher. A certain Mrs. Bergmeier, imprisoned in a concentration camp, can only be released and united with her family if she becomes pregnant. She arranges with a camp-guard to be impregnated and on becoming pregnant is freed to return to her family.[73] Blanchfield proposed that where a higher value is intended this intention should "re-describe" the significance of the action involved. Thus Mrs. Bergmeier's act of sexual intercourse with the guard, which for McCormick has the negative significance of adultery, is absorbed into Mrs. Bergmeier's basic intention of saving her family.[74]

We will not delay here on Blanchfield's stipulation that the moral agent never violates an absolute value.[75] Sufficient has been said to indicate McCormick's point of departure and the difficulties it poses for contemporary moral issues. In the pages that follow we will note a definite evolution in McCormick's thinking on the human act. Of later years he has given greater attention to the role of intention and the importance of consequences in determining the significance of moral acts.

Granted the above understanding of significance, how may we determine the significance of a particular moral act? What criteria are required to determine whether a particular act (e.g. coitus with another man's wife) embodies a value or is, in fact, an attack on it? According to McCormick one thing is clear:

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73. Cf. J. Fletcher: Situation Ethics, pp.164-165.

74. Cf. J. Walter: "Joseph Fletcher and the Ends-Means Problematic", Heythrop Journal, 17 (1976) 57 for an analysis of redescription in Joseph Fletcher's writings. The same critique applies to Blanchfield.

75. Cf. D. Blanchfield: "Balancing in Moral Theology", A.E.R., 164 (1971) 95 and R. McCormick: "Notes", T.S., 36 (1975) 92-93.

> we do not prove that an individual act (and all like it - a category therefore) contains an attack on value, if by proof we mean a type of logical argumentation which all but traps the mind into assent. Hence, too, we do not prove the validity of norms based on this recognition of value or disvalue. Since the meaning or significance of a piece of conduct involves its relation to value, and since value is something utterly original, we can only describe, point to, and assert significance. We cannot prove it. We can make logical statements about it, but we cannot logically demonstrate it. (76)

In the light of this the American moralist indicates five factors that should enter in to any consideration of the significance of moral acts:

(a) a dynamic understanding of natural law;

(b) the contributions of other disciplines;

(c) the consequences of a proposed course of action;

(d) the subjective elements that affect the agent's perception of the act's significance (e.g. affections, the presence or absence of virtue(s), etc.);

(e) the communal aspects of the perception of significance (e.g. the ethos or value-system adopted by a particular community).[77]

J.G. Milhaven[78] is another American moralist who has attempted to clarify the way men determine the significance of particular acts. His writings develop (b), (c) and (d) in McCormick's methodology. Milhaven maintains

(a) that certain values are recognized immediately (e.g. the value

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76. R. McCormick: "Human Significance and Christian Significance", op.cit., pp.246-247.

77. Cf. R. McCormick: op.cit., pp.247-261.

78. Cf. J.G. Milhaven: "Toward an Epistemology of Ethics", Norm and Context in Christian Ethics, (eds.) G. Outka and P. Ramsey, 219-231.
: "Objective Moral Evaluation of Consequences", T.S., 32 (1971) 407-430.

of love between a man and a woman); the number of these intuited values is, in fact, quite small.

(b) Further evidence for moral evaluation is derived from empirical evidence.[79]

It is the second of these two theses that interests us here. Two difficulties suggest themselves. First, how large must the area of evidence be before the basic significance of an action will be clear?[80] Secondly, in what way are we to develop criteria for re-evaluating moral norms and acts in the light of changed empirical data?[81]

Milhaven has attempted a response to these questions in a later article. Here he has emphasized the role of consequences and experience in evaluating moral activity. In opting for a consequentialist evaluation of moral activity Milhaven considers that it offers the best opportunity to assess the ethical value of a performance (act) objectively. Trained experience, empirical science and straight-forward factual knowledge provide the possibility of a positive and negative critique of the action to be evaluated.[82] We will have cause to return to the question of consequentialism later in this chapter.

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79. Cf. J. Milhaven: "Toward an Epistemology of Ethics", op.cit., pp.223-226.

80. Cf. R. McCormick: "Human Significance and Christian Significance", op.cit., p.252.

81. See G.J. Hughes S.J.: "Infallibility in Morals", T.S., 34 (1973) 415-428 and B. Tierney: "Infallibility in Morals: A Response", T.S., 35 (1974) 507-517 for an interesting analysis of ethical norms, their authority and reformability.

82. Cf. J. Milhaven: "Objective Moral Evaluation of Consequences" T.S., 32 (1971) 418.

In addition to emphasizing the consequences of the moral act Milhaven stressed the role of affections in moral thinking and decision-making.

> Not only does the affective stance of an individual inescapably affect his moral judgment,.... it can be responsible for some of the objective insight the individual has into value. Far from being blind, love can enable a man to see more value than he would otherwise have seen. (83)

Milhaven perceives "a spiraling dialectic between moral commitment and moral knowledge "[84] in the lives of individuals and communities. In this he is quite near the thought of Aquinas who accepted that one can know moral value connaturaliter.[85] This has led Milhaven to value experience - whether of the individual or that shared with another. He is convinced that experience is vital in generating the love that makes insight into values (and disvalues) possible. Such insight is only possible in and through experience. Value is known only as experienced.[86]

Milhaven's insistence on human experience "as a source of knowledge about the human good and as a confirmation of moral judgments"[87] highlights one of the developments in contemporary Roman Catholic moral reflection. Insistence on experience in the moral life has brought to the surface epistemological questions. In the past Aquinas

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83. J. Milhaven: op.cit., p.421.

84. J. Milhaven: op.cit., p.426.

85. Cf. S.T., II-II, q.45, a.2c.; q.1, a.4, ad.3.

86. Cf. J. Milhaven: op.cit., p.428.

87. J. Gustafson: Protestant and Roman Catholic Ethics, p.55.

viewed "the human knower primarily as a rational-animal-subject of acts (sensation, apprehension and judgment)."[88] According to Rigali this psychological and individualistic approach is inadequate. Instead

> the person as person (and not the person as mind or as mind and virtues) knows moral meaning in its essential, basic, original reality. In other words, man knows moral meaning primarily in and through a personal act, a moral act. (89)

In place of a "world-out-there" which the knowing subject appropriates to himself through his psychological faculties (the Thomistic model), in which reality is perceived as a collection of individual substances only accidentally related one with another, Rigali offers a model of relationships.[90] "The human knower must be understood fundamentally as a person in relation to other persons and only secondarily as a rational subject of acts."[91] The implications of this approach have been developed by Rigali and an increasing number of moralists on both sides of the Atlantic in their discussion of the role and importance of human experience in the moral evaluation of human conduct.[92]

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88. N. Rigali S.J.: "Human Experience and Moral Meaning", Chicago Studies, 13 (1974) 95.

89. N. Rigali: op.cit., p.91.

90. Rigali depends here on the American philosopher Robert Johann. Cf. his book Building the Human and Gustafson's incisive analysis of Johann's contribution to contemporary moral thinking (op.cit., pp.89-90).

91. N. Rigali: op.cit., p.95. For the foundations of Rigali's thinking see his earlier article "New Epistemology and the Moralist", Chicago Studies, 11 (1972) 237-244, especially p.241.

92. Cf. F. Böckle: Fundamentalmoral, pp.268-287.
K. Demmer: "Sittlich Handeln aus Erfahrung" Gregorianum, 59 (1978) 661-690.
D. Mongillo: "Esperienza e norma: la proposta morale contemporanea", Rivista di teologia morale, 6 (1974) 491-501.
E. McDonagh: "The Meaning and Structure of Moral Experience", Gift and Call, pp.17-39.
B. Schüller: "Die Bedeutung der Erfahrung für die Rechtfertigung sittlicher Verhaltensregeln", Christlich Glauben und Handeln, (eds.) K. Demmer and B. Schüller, pp.261-286.

Rigali and Schüller adopt J.H. Newman's distinction between real and notional assent.[93] For Newman, to give real assent is to make an act of religion whereas notional assent involves merely a theological act. The theological act attains a theological notion whereas an act of religion attains the religious reality itself. The latter involves not only discernment but also a resting in and an appropriation of the religious reality.[94] Just as religious reality is known only in a personal religious act, so too is moral reality only known in a personal moral act.

For Rigali "the primary locus of human or moral meaning is experience, the experience of communion with other persons."[95] Reflective knowledge is only "instrumental in its nature" looking beyond itself to experience. Intellectual knowledge is thus subordinated to and in the service of personal knowledge.[96]

Bruno Schüller develops this line of reflection a little further when he points out the way experience contributes significantly to the determination of correct moral behaviour.[97] Take, as an example, the rule: "you ought not to throw stones". Schüller argues that it arises from two insights - one moral ("you ought not to harm another"), the other empirical (given the rules of physics, a stone thrown with force will do damage).

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93. Cf. N. Rigali: Chicago Studies, 13 (1974) 92; B. Schüller: op.cit., p.265.
94. Cf. N. Rigali: op.cit., p.92.
95. N. Rigali: op.cit., p.98.
96. Cf. N. Rigali: op.cit., p.101.
97. Cf. B. Schüller: op.cit., pp.277-286.

From his analysis of such rules Schüller concludes that moral insight will determine the goals we ought to set before ourselves, whereas experiential or empirical knowledge provides us with the ways and means for attaining the desired goals. Rules such as "you ought not to throw stones" are what Schüller calls "mixed norms", that is they contain a value judgment and a judgment of fact. Experience incorporates both these elements, according to Schüller. As we shall soon see this approach is consistent with much recent literature which argues for a teleological approach to moral norms and human conduct.

The analysis of the human act that has taken place in recent Roman Catholic literature and that we have discussed briefly in this section has involved an extensive and profound reevaluation of the manualist tradition. It is against this background that we must view the analysis of the P.D.E. that follows. There are a number of points only touched on in this section which will be discussed in greater detail below.

III THE PRINCIPLE OF DOUBLE EFFECT

1. The Principle of Double Effect in Contemporary Literature.[1]

In the light of the present serious reevaluation of the understanding

1. For general analyses of the P.D.E. consult:
F.J. Connell: "Double Effect, Principle of", N.C.E., IV, pp.1020-1022.
W. Daniel S.J.: "Double Effect and Resisting Evil", A.C.R., 56 (1979) 377-389.
J.F. Dedek: Chicago Studies, 13 (1974) 236-237.
R.A. McCormick S.J.: "Le principe du double effet" Concilium, 120 (1976) 105-120.
W.E. May: "Double Effect", Encyclopedia of Bioethics, I, pp.316-320.
J. Palazzini: "Principium duplicis effectus", Dictionarium morale et canonicum, III, pp.781-782.

of the moral act in contemporary Roman Catholic moral theology it is only to be expected that the same scrutiny would be given to the P.D.E. It has been my contention throughout this thesis that the two are inseparably connected.

The criticism of the P.D.E. that we will note here applies generally to the rule and its application on the one hand and to specific elements of the principle on the other.

It is quite surprising how little the historical development of the double effect principle concerns moralists writing on it. The work of Ghoos, Mangan, Kramer and Alonso are most often quoted and then the author passes on to consider practical applications of the principle.[2] Although a number of contemporary thinkers still consider that Aquinas first formulated the principle, the question of the third condition makes it difficult for them to sustain this position. If one holds that the good effect must not come about by means of the evil effect[3] then it seems almost impossible to sustain the argument that Aquinas formulated the double effect principle in the case where the aggressor's death is so intimately connected with the saving of the defender's life.[4] Most recent authors accept that

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Footnote 1 (continued)..
L. Rossi: "Il limite del principio del duplice effetto" Rivista di teologia morale, 4 (1972) 11-37.
: "Principio del duplice effetto", D.E.T.M., pp.272-287.
S. Windass: "Double Think and Double Effect" Blackfriars, 44 (1963) 257-266.
M. Zalba: "Nihil prohibet unius actus esse duos effectus" L'Agire Morale, V, pp.557-568.

2. Cf. F.J. Connell: op.cit., p.1021.
3. May formulates the third condition in this manner. Cf. W.E. May: op.cit., p.316.
4. Cf. W.E. May: op.cit., pp.316-317; W. Daniel: op.cit., p.378.

the principle's use in practical moral theology became more and more extensive through the centuries until it embraced all of the discipline. Gury is considered to be the moralist most responsible for its general application.[5] One recent commentator has suggested that there are three discernible stages in the principle's evolution: (a) its formulation by Aquinas; (b) the extension of the principle to problems other than self-defence, and (c) the interpretation of the principle in terms of direct and indirect.[6] Comment on this thesis will be left to the analysis at the end of this work.

The process by which the double effect principle became a general rule has been questioned by a number of contemporary writers. Charles Curran considers that from an historical view-point and from the great diversity of situations where the principle is applied there is reason to question the principle's role in moral theology today. He wonders if it is possible to have a coherent, all-inclusive principle in practical decision-making in the way many have claimed in the past.[7] Apart from this query about its scope, a number of moralists have questioned the principle for a number of other reasons.

Some argue that the principle is applied inconsistently, for it permits an abortion to take place if certain organs are in a pathological condition. If no pathology exists the principle does

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5. Cf. W.E. May: op.cit., p.317.

6. Cf. H.F. Moore: "Acting and Refraining", Encyclopedia of Bioethics, I, pp.32-38.

7. Cf. C.E. Curran: "The Principle of Double Effect", Ongoing Revision in Moral Theology, p.190.

not permit an abortion even though both mother and child will certainly die.[8] Daniel suggests that in this latter case the principle has become a principle for action.[9] As we will see in a moment difficulties with the second and/or third condition(s) of the principle underpin this objection.

Harold F. Moore cites two objections appearing in Anglo-American moral philosophy.[10] R. A. Duff[11] has argued that the P.D.E. generates ridiculous conclusions. He cites two examples[12] both of which do not seriously undermine the principle since they consider two distinct and separable actions, rather than actions with both good and evil effects. The second objection proposed argues that the P.D.E. is morally insignificant: "for what seems to be of paramount moral interest is the character of the action being performed or refrained from and not the narrower issue of whether or not the consequence was merely foreseen and not intended."[13] While a defender of the double effect principle might well argue that it is only sometimes morally justifiable to appeal to the P.D.E., the objection itself would appear a substantive one. It leads us, in these intro-

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8. Cf. W.E. May: op.cit., p.318.

9. Cf. W. Daniel: op.cit., p.378.

10. Cf. H.F. Moore: op.cit., pp.34-35.

11. Cf. R.A. Duff: "Intentionally Killing the Innocent" Analysis, 34 (1973) 16-19.

12. An example of killing: the case of Dudley and Stephens who, lost at sea, ate their cabin boy in order to survive. The second example is one of transplantation: a doctor removes the heart, lungs and liver of one (living) patient so as to save the lives of three others.

13. Cf. L. Geddes: "On the Intrinsic Wrongness of Killing Innocent People", Analysis, 33 (1973) 93-97.

ductory remarks, to a consideration of some of the difficulties internal to the principle itself. A good number of the general observations that follow will be developed in greater detail in the sections which follow.

The contemporary difficulties with the P.D.E. concern all four conditions of the rule. The principal problem with the first condition (that the act itself be morally good or indifferent) is with the description of the act. How can a human action, considered by itself and independently of its effects, be pronounced as morally good or bad?[14] Another related issue is that between an act and its consequences.[15] Both of these issues will be mentioned only in passing in the course of this chapter. They have been mentioned already in the previous section on the human act and will be again soon in reference to intrinsically evil acts. In the Conclusion a brief analysis of the issues will be possible.

Regarding the second condition of the P.D.E. (viz. that the good must be intended and the evil only permitted) there appear to be four separate yet closely interrelated difficulties for contemporary critics of the rule. First, a growing number of thinkers reject the direct-indirect distinction as morally significant.

> I do not think there is any moral difference between direct and indirect sterilization, and I believe that both of them can be permitted for the same proportionate reason which does not have to be of great gravity.

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14. Cf. W. Daniel: op.cit., p.378.

15. Cf. P.E. Devine: "The Principle of Double Effect", The Ethics of Homicide, pp.114-116.

> The concept of direct based on the physical causality of the act in this particular case does not seem to make any moral difference whatsoever. (16)

A good number of other writers, particularly among the utilitarians, can see no sense in the distinction between a directly intending and an indirectly intending (permitting) will.[17] They argue that the end result is the same: for instance between killing a person for merciful reasons and allowing a person to die by refusing to use extraordinary means of life support. Those who defend the validity of the distinction argue that the same result is achieved in radically different ways.[18] This issue will be seriously discussed by a number of authors to be studied later.

A second cause of difficulty in recent writing arises from the confusion of two distinctions: that between directly and indirectly (permitting) evil on the one hand and between acting and refraining on the other. May correctly points out that the distinctions are not the same.[19] If I refrain from doing some action that I can and ought to do, this can be equivalent to doing an evil deed with direct intent.

A third difficulty for some arises from the "stance" of the will. "How could one be said merely to 'tolerate' an evil of which one was

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16. C.E. Curran: op.cit., p.191. B. Schüller identifies with this position.

17. Cf. G.L. Williams: The Sanctity of Life and the Criminal Law pp.280-291.
J. Fletcher: "Ethics and Euthanasia", To Live and To Die: When, Why and How, (ed.) R. H. Williams pp.113-122.
Both quoted by W.E. May: op.cit., p.318.

18. In one instance the person dies from some underlying disease or injury that it is no longer reasonable to combat whereas in the other case the person dies from an act that can be described as killing.

19. Cf. W.E. May: op.cit., p.318.

the cause?"[20] Implicit in any answer given to this question is a psychological theory. As we will observe later, Richard McCormick argues that there is a morally significant difference in an act with evil effects - between "willing" and "tolerating" such effects.

Closely related to the above difficulty with the direct-indirect distinction is the difficulty many have in distinguishing between "intended" and merely "foreseen" consequences of one's acts. The distinction has received considerable attention in recent Anglo-American literature.[21] The distinction is an important one for the second condition of the double effect principle, yet all would admit that it is quite difficult to draw the right line between intending and foreseeing. The grounds for doing so are vitally important.[22]

When we turn to the third condition of the P.D.E. (i.e. the good effect must not come about by means of the evil effect) a particular structure of the human act is assumed. According to the traditional interpretation of this condition "if the evil effect in the order of physical causality occurs first then the good is obtained through an evil means and the act is direct".[23] As we have seen, Romans 3:8 forbids such occurring.

We have already seen in the writings of Van der Poel and Van der

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20. W. Daniel: op.cit., p.378.

21. Cf. B. Aune: "Intention and Foresight" Journal of Philosophy 63 (1966) 652-654.

22. Cf. P.E. Devine: op.cit., pp.116-118.

23. C.E. Curran: op.cit., p.192.

Marck a strong reaction to this materialist or "physicalist" understanding of human action. A large number of recent moral theorists have absorbed the distinction between physical (ontic, premoral, nonmoral) evil and moral evil and have argued that it is morally permissible to intend a physical evil (e.g. death, sterilization, mutilation etc.) provided there is a proportionate reason for doing so. In so doing they have reduced the P.D.E. to a principle of proportionate reason.

There is very little discussion in the literature on the criteria for proportionate reason. Those who question the validity of the second and third condition of the principle generally find the final condition adequate for their purposes.

In the following four sub-sections an attempt will be made to develop in more detail some of the more important points mentioned above through a study of some of the leading contributors to the discussion.

2. Conflict, Compromise and Double Effect

The extent and depth of the recent process of reevaluation in Roman Catholic moral theology manifests itself most clearly in the area of the P.D.E. The principle itself is not being assessed in a vacuum and this makes for some of the difficulty in outlining the discussion. In this section I will try to gather the more important issues which are a background to the double effect study or complement it in some way. Hopefully the reader will be able to appreciate the rich and varied work of renewal that is currently being carried on by Catholic moralists. Our discussion will fall under three headings -

conflict and the moral life, law and the Christian vocation, moral norms.

2.1 Conflict and the Moral Life

The P.D.E. has arisen through the course of the centuries to assist in the discerning of a right course of action where good and evil are the result of actions performed. Acts are considered, by one group of thinkers, to express values or disvalues. Values th_emselves are also protected in society through norms or law. Hence, at times, human conduct and particular actions come into conflict with competing values (disvalues) and the norms enunciated to protect such values or eliminate disvalues. Much of the discussion on these matters today reflects many of the concerns present in the double effect analysis.

The question of evil brought about by conduct and the conditions under which one may cause or permit its existence concern contemporary moralists. Traditional moral theology has always been realistic in situations of "conflict" as is evidenced by its teaching on cooperation, doing and counselling the lesser evil,[24] double effect and probabilism.[25] What has occurred during the last two decades is a renewed effort to explain conflict situations in a more satisfactory way than in the past, especially when the human act itself is being

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24. Cf. E.T. Hannigan: "Is it ever lawful to advise the lesser of two evils?", Gregorianum, 29 (1949) 104-129.

25. Cf. H. Weber: "Der Kompromiss in der Moral . Zu seiner theologischen Bestimmung und Bewertung". Trierer Theologische Zeitschrift, 86 (1977) 105-109.

seriously reconsidered. W. Burghardt has characterized the notion of conflict very precisely when he spoke of "here-and-now values (which) clash with always-and-everywhere principles".[26]

But do conflict situations really exist in the moral life or are such conflicts merely apparent?[27] The traditional teaching of the moralists denied that there could be any genuine conflict between moral values. Since moral value is derived from the agent's conformity with the demands of natural law, any conflict a person might feel he is confronted with is not due to the fact that two moral values (which are mutually exclusive) are making demands on him. The conflict could be due to a conflict of physical values or be due to ignorance on the part of the individual confronted by the situation.[28] R. McCormick agrees with this approach. If there were real objective conflicts of rights and duties, for instance, this would suggest there are no inherent limitations in such rights and duties - which would be absurd. The American Jesuit argues that any apparent conflict should urge a greater precision regarding the parameters of the right and/or duty in question, as well as greater clarity regarding the whole hierarchy of values. The act would still be objectively moral even though it did not incarnate all possible values in the situation.[29]

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26. Quoted by R. McCormick in T.D., 21 (1973) 315-316.

27. Cf. M.V. Attard, O. Carm: Compromise in Morality, pp.11-46.
E. Quarello: "Per il superamento dei « conflitti di coscienza »" Salesianum, 33 (1971) 127-153.

28. Cf. H. Noldin S.J. - A. Schmitt S.J. - G. Heinzel S.J.: Summa Theologiae Moralis, (32nd ed.) I, nn.66-68.

29. Cf. R. McCormick: "Notes", T.S. 28 (1967) 755, 758; 32 (1971) 80.

Josef Fuchs approaches the issue from the point of view of norms. He argues that there can be no objective conflict between moral precepts but only a conflict of value judgments on the part of the person confronted by the conflict.[30]

In contrast to the above denial of real conflict in the moral life at least two groups argue that real conflicts do exist. The French hierarchy spoke of a "conflict of duties" with regard to the question of birth control.[31] The French moralist Charles Robert claims that the Christian is always in a situation of conflict.[32] In this he acknowledges his dependence on the German Lutheran theologian, Helmut Thielicke.

Mention of Thielicke introduces us to a very varied and quite fundamental discussion on the causes of conflict (real or apparent) in the Christian life. Roman Catholic theology has sought to explain conflict in terms of "compromise" on the one hand, and "sin" on the other.

The term "compromise" in ordinary English speech has a somewhat pejorative connotation. Europeans use the term ("Kompromiss", "compromesso") in a neutral way to denote the necessary concessions arising from man's limitedness in space and time. The Reformed theology

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30. Cf. J. Fuchs: "The Absoluteness of Moral Terms", Gregorianum, 52 (1971) 442f.

31. Cf. "Note Pastorale des Évêques Français sur 'Humanae Vitae'", Documentation Catholique, 65 (1968) 2055-2062. A number of Catholic writers have attempted to explain conflicts between rights and duties. See N.D. O'Donoghue: "Towards a Theory of Exceptions", I.T.Q., 35 (1968) 217-232 and D.E. Hurley O.M.I.: "A New Moral Principle: When Right and Duty Clash" Furrow 17 (1966) 619-622 and "In Defense of the Principle of Overriding Right." T.S., 29 (1968) 301-309. For an analysis of this discussion see R. McCormick: "Notes", T.S. 28 (1967) 757-758; T.S. 32 (1971) 80; M. Attard: op.cit., pp.218-222; E. Quarello: op.cit., pp.132-137.

32. Cf. V. Attard: op.cit., p.15.

of thinkers like Thielicke has been quite influential. Proceeding as he does from an understanding of man as corrupted by sin and as confronted by the unconditional demands of the Gospel, Thielicke argues that every aspect of human life is a compromise.[33]

A number of Catholic theologians have adopted the notion of compromise but without the theological and anthropological framework implicit in Thielicke's writings. Klaus Demmer[34] at the Gregorian University develops his understanding of compromise from the traditionally positive view of man in Catholic theology. He sees compromise as manifesting an attitude that the moral agent is ready to grow. The moral agent's free and responsible decisions in conditions that are sinful and limited can offer him the possibility of growth morally.[35]

Helmut Weber proposes the view that all our choices are compromises "in the sense that they achieve good at the cost of evil - even if that cost is the good left undone because of the limited nature of human choice".[36] It is in this neutral, even metaphysical sense,

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33. Compromise is the "modus vivendi of a world which does not run smoothly". H. Thielicke: Theological Ethics, II, (Philadelphia: Fortress, 1969) p.268. For Thielicke the compromises we are forced to make are not only a personal failure but guilty ones as well. "Behind this stands a notion of the corruption of the world and necessary sin. In face of this the Christian may compromise, because he/she is confident of God's foregiveness. But such compromises do not correspond to God's original will. They must be lived and experienced as a wound that cannot be healed." R. McCormick: "Notes", T.S., 39 (1978) 97.

34. Cf. K. Demmer: "Entscheidung und Kompromiss, Gregorianum 53 (1972) 323-351.

35. Cf. M. Attard: op.cit., pp.38-40. C. van Ouwerkerk in "Gospel Morality and Human Compromise", Concilium, 5 (1965) 5-12, speaks of an "apparent compromise" in conflict situations. He argues that theologians should not seek to justify compromise but should work at restoring the harmony between faith and moral awareness (p.12).

36. R. McCormick: "Notes", T.S. 39 (1978) 98; H. Weber: op.cit., pp.114-117.

that Fuchs, Janssens and others view human decisions in conflict situations.

The writings of Charles Curran recognize the pervasive influence of sin not only in personal decisions but also in the objective order of the world.

> The word compromise tries to indicate the tension involved in recognizing even in the objective order the fact that sin is present and the Christian tries to overcome it, but at times the Christian will not be able to overcome sin completely. (37)

Curran developed his theory of compromise in the context of two difficult pastoral problems. The first is that of homosexuality, especially with regard to stable relationships between homosexual inverts. Curran accepts that such homosexual unions are examples of compromise.[38] The question of abortion, as a possible compromise solution for women in Bangladesh who were raped and as a result were now no longer acceptable to their communities, was also proposed for consideration.[39]

R. McCormick some time ago was critical of Curran's theory. As presented compromise is neither a theory nor a principle since it does not tell a person which compromises may best be made. "In a sinful world, sometimes 'the best I can do' (pastorally that is what theory implies) is the very worst that could be done."[40] Recently Curran

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37. C.E. Curran: "The Principle of Double Effect", Ongoing Revision in Moral Theology, p.186.

38. Cf. C.E. Curran: "Dialogue with the Homophile Movement: The Morality of Homosexuality", Catholic Moral Theology in Dialogue, pp.184-219.
: "Moral Theology, Psychiatry and Homosexuality" Transition and Tradition in Moral Theology, pp.59-80.

39. Cf. C.E. Curran: "Abortion: Its Legal and Moral Aspects in Catholic Theology", New Perspectives in Moral Theology, pp.163-193.

40. R. McCormick: "Notes", T.S. 28 (1967) 760 (parenthesis added). Cf. M.D. Place: "The Pastoral Implications of Charles Curran's 'Theory of Compromise'", Chicago Studies, 17 (1978) 341-356.

has admitted the weaknesses in his theory and has recognized that he should have developed the strictly ethical aspects of his approach.[41]

Under criticism the Washington moralist has clarified his thinking in recent articles. He now argues that moralists should recognize four sources of conflict situations:

a) conflicts that arise from the difference between the subjective and objective aspects of human acts;

b) conflicts arising from finitude and limitation;

c) conflicts arising from eschatological tension;

d) conflicts arising from the presence of sin.[42]

The theory of compromise was never meant to apply to all these conflict situations but only to those in which sinfulness predominates.

As theologians grapple with the problem of explaining conflict situations they are, increasingly, giving more and more attention to the reality of sin.[43] Curran himself sees sin as the origin of conflict situations from three points of view:

a) the universal sinfulness ("the sin of the world") existing in the world; this is at the basis of Aquinas's teaching on private property;

b) the sinfulness incarnate in the human situation, as in the case of the irreversible homosexual, and

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41. Cf. Transition and Tradition in Moral Theology, p.77.

42. Cf. C.E. Curran: "Utilitarianism and Contemporary Moral Theology: Situating the Debates", Readings in Moral Theology No.1, p.357.

43. Cf. J.M. Gustafson: Protestant and Roman Catholic Ethics, pp.6-12 for a concise presentation of traditional Catholic and Protestant understandings of sin.

c) the sinful actions of another person affecting my action, as in the case of the captain threatening to shoot a large number of innocent villagers unless I shoot one of them myself.[44]

Josef Fuchs has recently written on the "sin of the world" and has located in concupiscence the reason why an individual chooses otherwise unjustifiable choices.[45] How sin affects moral knowledge and the formulation of moral norms is of great interest to Fuchs. He appears to have accepted the neutral connotation given to compromise by Weber earlier. Hence the "sin" in situations of conflict and compromise is sin in an anthropological not an ethical way.[46] With regard to norms a decision involving compromise (and "sin") may not necessarily be a failure in the face of an absolute behavioral norm but rather a necessary correction of a norm formulated inexactly.[47] Fuchs's general position, which we will consider soon, will help place his latest writing on sin in perspective.

2.2 Law and the Christian Vocation

Already in our study of G. Grisez, J. Finnis and W.E. May we have observed the importance of natural law for their normative ethics. While some thinkers are quite critical of the natural law tradition

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44. Cf. C.E. Curran: "Utilitarianism", p.359; Cf. M. Attard: op.cit., pp.154-211.

45. Cf. J. Fuchs: "The 'Sin of the World' and Normative Morality", Gregorianum, 61 (1980) 51-75.

46. Cf. J. Fuchs: op.cit., pp.71-73.

47. Cf. J. Fuchs: op.cit., p.74.

and might even go so far as to reject it completely, the mainstream of Catholic moralists has remained basically within a natural law framework.[48]

Contemporary understandings of natural law reveal these characteristics:

a) "There is an increasing tendency to approach natural law more as a thought-structure than as a normative content. The basic assertion of this thought-structure would be: man's obligation is founded on man's being.

b) This thought-structure emphasizes above all, rational creativity in human conduct.

c) It tends to recognize formal rather than material norms as universally valid principles of natural law."[49]

In this extract Attard has expressed concisely the main approaches underlying the theologians we will be considering in the following sections. Fuchs and Schüller have written explicitly on natural law early in their professional lives.[50] Janssens, Curran, Cornerotte, Knauer, as well as the moralists just mentioned, give a strong ontological basis to their normative ethics, appreciate the importance of discernment and decision-making (as the discussion of debita proportio indicates), and analyse in detail the scope and import of moral norms.

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48. Cf. J.M. Gustafson: Protestant and Roman Catholic Ethics, pp.12-20; 80-94; 100-108.
C.E. Curran: "Moral Theology: The Present State of the Discipline" T.S. 34 (1973) 446-457.
R. McCormick: "Notes", T.S., 28 (1967) 760-769.
M. Attard: op.cit., pp.74-153.

49. M. Attard: op.cit., p.107.

50. Cf. J. Fuchs: Natural Law: A Theological Investigation
B. Schüller: Gesetz und Freiheit: eine moraltheologische Untersuchung (Düsseldorf: Patmos, 1966).
: "Zur theologischen Diskussion über die lex naturalis" Theologie und Philosophie, 41 (1966) 481-503.

Therefore in our reading of individual authors the theological tradition out of which they operate is of considerable significance.

2.3 Moral Norms

In the course of the next three sections constant reference will be made to moral norms. For that reason it will be useful here to introduce sufficient general discussion of moral norms (laws, rules) such that the contributions of individual authors may be appreciated.

Recent moral theology has tended to distinguish between formal norms which indicate what our dispositions ought to be and concrete material norms. The latter are concrete since they apply to definite actions whose material content they indicate.[51] Timothy O'Connell has developed this general division and has proposed three categories of norms: "transcendental" norms (which are formal), as well as "tautological" and "concrete" norms both of which are equivalent to the category of concrete material norms proposed by Janssens.[52]

Transcendental norms "articulate an attitude, an approach to life, a style of life more than they articulate the specifications which should comprise that life. 'Love thy neighbour' is a transcendental norm."[53] The "Golden Rule", Christ's new commandment of love and the first

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51. Cf. L. Janssens: "Norms and Priorities in a Love Ethic" Louvain Studies, 6 (1977) 207, 210.

52. Cf. T.E. O'Connell: "The Search for Christian Moral Norms" Chicago Studies, 11 (1972) 89-99.
: "The Question of Moral Norms" A.E.R., 169 (1975) 377-388.
: Principles for a Catholic Morality, pp.155-164.
O'Connell's distinction is based on J. Fuchs's distinction between transcendental, categorical and operative norms. Cf. J. Fuchs: "Absoluteness of Moral Terms", Gregorianum, 52 (1971) 452-453.

53. T.E. O'Connell: Chicago Studies, 11 (1972) 90.

principles of natural law are all considered to be transcendental norms.[54]

Tautological norms appear at first sight to give clear directions for moral behaviour, for example: "do not murder", "do not steal", "do not lie". On further reflection, however, it becomes clear that these norms do not specify our actions at all. For they do not tell us precisely which killings are murder, which takings of money are stealing or which evasions of the truth are lying. Tautological norms, according to O'Connell, emphasize the moral importance of certain actions "but they do not really help us to determine the moral quality of those actions."[55]

The concrete norm on the other hand "spells out a specific 'piece' of human behavior and declares that it is either morally right or wrong, always."[56] Prohibitions regarding contraception, suicide, abortion, premarital sex, adultery as well as norms in treatises on justice and the sacraments would qualify as concrete norms.

Much of the contemporary discussion in moral theology has been concerned with the universal character of concrete material norms. Before discussing the main features of the literature on this point I should like to delay for a moment on the role and importance of transcendental or formal norms. O'Connell has argued persuasively

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54. These norms do not declare a particular action to be good or bad but rather point out the moral perspective from which all of life must be viewed.

55. T. O'Connell: op.cit., p.91.

56. T. O'Connell: op.cit., p.91.

that

> for the Christian moral life formal norms are, if anything, more important than material norms. The fact that formal norms are absolute and exceptionless more than satisfies the human need for such stability. (57)

The present concern for immutable, exceptionless, universal material norms is based on a false assumption, O'Connell argues. Rather than being concerned with instruction (i.e. what good actions are to be done and evil avoided) norms are primarily motivational. They answer the question: "must I really do this really good thing?"[58] The crucial issue today for the Church is to articulate formal norms,[59] the application of these in material norms is a subsidiary issue.[60]

O'Connell offers an interesting explanation as to why material norms have concerned Roman Catholic moral theologians down through the centuries. From Reformation times until recently much of Protestant ethics based itself on a nominalist and voluntarist metaphysics. It denied the notion of objective and intrinsic value.[61] This denial meant that material norms became virtually meaningless.[62]

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57. T. O'Connell: A.E.R. 169 (1975) 383.

58. T. O'Connell: op.cit., p.385.

59. "The critical issue for moral science is how to articulate the values which men experience and, at least non-reflectively, know so that they become genuinely persuasive in the arena of personal moral combat." (op.cit., p.387).

60. Cf. T. O'Connell: op.cit., p.387.

61. Cf. T. O'Connell: op.cit., p.387, note 18.

62. James Gustafson places this in sharp focus when he speaks of Protestantism as a "wasteland of relativism" (pp.33-46) and emphasizes the existentialism and "occasionalism" of much of Protestant ethics in his Protestant and Roman Catholic Ethics, pp.71-80.

The defence of intrinsic values and the validity of material norms within the Roman Catholic moral theology of the Counter-Reformation can thus be appreciated. The subsequent overemphasis on material norms, their significance in the pastoral office of confessors and teachers, resulted in a lack of appreciation for formal norms. The present need is to redress the imbalance. O'Connell's hypothesis, if not totally satisfactory, is an appropriate warning at this point as we begin our more detailed discussion of material norms. It is useful, too, in explaining some of the emphases and shifts of method we will observe in individual moralists.

Concrete norms prohibiting certain "pieces" of human behaviour, such as suicide, abortion, etc., have generated intense discussion among moralists as to how and why such norms should be negative moral absolutes. In an effort to understand such norms a number of thinkers have engaged in a serious reevaluation of Aquinas's understanding of moral norms as it derived from his natural law theory.[63]

As we have already observed in chapter one of this thesis the medieval thinkers prior to Aquinas, and Thomas as well, had an objectivist appreciation of morality. Certain acts were absolutely forbidden and could never be justified, since the words used to describe them (e.g. fornication, stealing etc.) designated more than an act

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63. Cf. J.F. Dedek: "Moral Absolutes in the Predecessors of St. Thomas" T.S., 38 (1977) 654-680.
: "Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas", Thomist, 43 (1979) 385-413.
J.G. Milhaven: "Moral Absolutes and Thomas Aquinas" Absolutes in Moral Theology? pp.154-185.
F. Scholz: "Problems on Norms Raised by Ethical Borderline Situations: Beginnings of a Solution in Thomas Aquinas and Bonaventure", Readings in Moral Theology No.1, pp.158-183.

in materia indebita. The act-terms designated as well an act performed ex libidine, i.e. from a selfish desire which preferred a creature to God. God could not permit even this. All he could do is separate the material act from its bad end and give it a good end, as for example in the sacrifice of Isaac.[64] The mutatio materiae[65] that St. Thomas saw in the precepts of the decalogue permitted him to argue that a just killing (e.g. capital punishment) no longer falls under the prohibition of murder.[66] The matter has so altered as to avoid the prohibition.[67]

It is interesting to find in the writings of Aquinas a double approach to norms and their power to bind men. As has just been mentioned norms which forbid acts in a formal sense could not be dispensed. But there are occasions when material acts (homicide, adultery, stealing), forbidden by the second table of the decalogue, may be authorized due to a "change of matter". This places the act outside of the scope of the norm. The second approach to be found in St. Thomas depends on whether the norm belongs to the first or second table of the decalogue. God can not dispense from the first without contradicting himself, whereas the second table which deals with

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64. Cf. J.F. Dedek: T.S., 38 (1977) 678-679.

65. Scholz argues that Aquinas in distinguishing "between formulation and meaning of the law, between letter and spirit (epikeia), between 'generally' valid rules of thumb and principles valid without exception, between factual and value-laden concepts, systematically prepared for the comprehension of the 'change of matter'." F. Scholz: op.cit., p.172.

66. Cf. S.T. I-II, q.100, a.8, ad.3.

67. Cf. F. Scholz: op.cit., p.172.

man's dealings with his fellow man, may be dispensed.[68]

Two further points from recent historical research merit mention here since these elements appear in a number of moralists' writings. The first concerns the well-known distinction between the letter of the law and the meaning of the law. The fifth commandment, for example, does not simply forbid the destruction of human life.

> It was never intended to be consistently valid. God's intent is directed only at prohibiting the morally improper destruction of life which alone opposes original justice. (69)

The second element of some importance in the writings of St. Thomas is the role of authority (divine and human) regarding acts which are negative moral absolutes. J.G. Milhaven, in his interesting analysis of St. Thomas's treatment of the biblical incidents where God seemed to authorize the violation of negative moral absolutes (that Aquinas had defended in his "natural law" argumentation), concluded

> that the moral center of gravity for Thomas did not lie in the act itself and its physical effect, though these were relevant factors. As long as the acts contributed to some good purpose, the crucial question to decide the legitimacy of a given means was the authority of the person acting: not what was to be done, but who would do it. Abortion and premarital sexual intercourse would be absolutely wrong if the agent had only normal human authority. But God could, by a special initiative, authorize a man to perform the same acts. (70)

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68. Cf. J.F. Dedek: Thomist, 43 (1979) 409-410.

69. F. Scholz: op.cit., p.167.

70. J.G. Milhaven: op.cit., pp.181-182.

Whether man has been given the authority to dispense himself from the demands of traditionally accepted negative absolutes (e.g. suicide, divorce, abortion) is now being seriously discussed by moralists (e.g. Schüller). To appreciate the full significance of this line of questioning we must bear in mind a wider theological discussion on the autonomy of man.[71] To dwell on this here would deflect us from the main concern of this thesis.

Returning now to contemporary notions of concrete material norms and the discussions surrounding them it is important to be clear about some relevant distinctions. First, the question whether concrete norms are mutable or unchanging. Aquinas himself held that the nature of man is changeable[72] and hence the precisions of the natural law vary with the different states and conditions of man. In the second place one must distinguish the objectivity of law from its immutability.

> The primary force of the Catholic understanding of natural law is precisely that moral obligation is objective, that it is not a matter of whim or wile, that its ultimate metaphysical basis is not personal judgment but rather actual existential reality. (73)

It is a further question to ask whether this objective and actual reality is always the same (i.e. immutable). Thirdly, what is objective is opposed, as we have just seen, to what is subjective. Objective in this context is seen to have the sense of non-arbitrary. Finally, moral norms have been referred to in this chapter as negative

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71. Cf. F. Böckle: Fundamentalmoral, pp.48-92.

72. Cf. S.T., II-II, q.57, a.2, ad.1.

73. T.E. O'Connell: A.E.R., 169 (1975) 383.

absolutes. In attributing absoluteness to an action or norm we must distinguish whether the act/norm is (a) universal in its scope or exceptionless in its application or (b) objective, that is it is an act or norm that conforms with reality.

The development that has occurred in Roman Catholic moral theory since the mid-sixties regarding norms appears to have evolved in two phases. The first was by way of reaction against teachings by the Magisterium on sterilization and contraception. The tendency to identify the moral act with the act's physical structure generated responses such as those of Van der Marck, Van der Poel et al as we have observed above. Another approach distinguished between physical (ontic, premoral, nonmoral) evil and moral evil (e.g. Janssens, Fuchs). Still others appealed to the notion of commensurate reason as justifying the performance of acts previously held to be wrong by the manuals (e.g. Knauer). B. Schüller and others developed this still further and have argued that there must be a teleological justification for norms and that a consequentialist calculus must operate if we are to decide whether certain acts are right or wrong. As this approach gained adherents among Catholic moralists it was still almost totally concerned with issues internal to the Catholic Church - sterilization, contraception etc. It was when the Catholic debates attended to the discussion on utilitarianism in moral philosophy and questions such as promise-keeping, fidelity, justice, etc., that the discussion on moral norms entered its second phase. Exposure to discussion in moral philosophy has contributed to a better understanding of consequentialism and teleology within contemporary studies as I shall now show.[74]

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74. Cf. C.E. Curran: "Utilitarianism and Contemporary Moral Theology", p.355.

The question as to how moral norms are arrived at and how they are to be grounded and justified has much exercised the German moralist, Bruno Schüller, for a decade or more. He has argued that norms regarding lying, killing, contraception etc., have been refined through human history on the basis of consequences.[75] On the basis of this and other reasons Schüller opts for a teleological method of normative ethics.

C.D. Broad has divided normative ethics into two sharply defined groupings - deontological ethics and teleological ethics.[76] A deontological theory of ethics is one which holds that some acts are morally obligatory regardless of their consequences.[77]

> Ethical theories of a teleological type, on the other hand, maintain that a particular way of acting is ethically right or wrong, depending always on whether it produces certain consequences which are good or bad in themselves. (78)

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75. Schüller's arguments will be discussed in III.4 below.

76. Cf. C.D. Broad: Five Types of Ethical Theory, pp.206f.

77. Cf. R.S. Olson: "Deontological Ethics", The Encyclopedia of Philosophy (ed.) P. Edwards, II, p.343.

78. B. Schüller S.J.: "Various Types of Grounding for Ethical Norms" Readings in Moral Theology, No.1, p.185. Schüller's definition has been included in the text even if it is restrictive since this is the general use of the term in the following pages. Teleology may also designate: (a) "a doctrine that everything in the world has been designed by God to be of service to man... (b) The theory or study of purposiveness in nature: characteristically, certain phenomena seem to be best explained not by means of prior causes, but ends or aims, intentions or purposes." A Dictionary of Philosophy, (ed.) A. Flew p.325. Aquinas's moral theory is teleological in sense (a) as is his explanation of natural law (b).

While Broad's distinction is logical and neat, it is very rare today for thinkers to fall within the pure deontological or pure teleological categories. More recently in moral philosophy a number of authors have tended to favour a modified deontological ethics in the form of "rule utilitarianism."[79] This latter form of utilitarianism is itself a modification of the more radical "act utilitarianism,"[80] (a teleological ethics). Some clarity of terms is required as well as an awareness of what type of deontology or teleology an author is espousing. This is so because one finds in some of the literature we will be discussing accusations that certain authors are deontologists or consequentialists etc. Implicit in such accusations is a particular understanding of the term or an acceptance that the terms are used univocally. Often the objector misses the mark completely since the author under attack does not accept the theory attributed to him.

This brings us to three thinkers who have adopted a refined position (the second phase mentioned above). Charles Curran argues that there are three general positions in contemporary normative ethics:

a) utilitarianism, strict teleology or strict consequentialism (e.g. J.J.C. Smart);

b) mixed consequentialism or mixed teleology (C. Curran)

c) deontology or nonconsequentialism (e.g. G.E.M. Anscombe)[81]

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79. Cf. R.S. Olson: op.cit., p.343. Rule utilitarianism "is the view that although any moral rule must be justified by showing that its adoption has humanly desirable consequences, an act violating a moral rule cannot itself be morally justified in the same manner" (op.cit., p.343).

80. Cf. J.J.C. Smart: "Utilitarianism", The Encyclopedia of Philosophy, VIII, pp.206-212. "Act utilitarianism is the theory which assesses the rightness or wrongness of each individual action directly by its consequences." (op.cit., p.206). For a survey and assessment of utilitarianism see C.E. Curran: "Utilitarianism and Contemporary Moral Theology", pp.341-352.

81. Cf. C.E. Curran: "Utilitarianism", p.352.

Curran favours the middle position. It differs from the strict consequentialism of the first position since it maintains that:

a) "moral obligation arises from elements other than consequences.

b) The good is not separate from the right.

c) The way in which the good or evil is achieved by the agent is a moral consideration."[82]

Richard McCormick arrived at the same position as Curran and the same basic threefold division. Independently he had categorized them as absolute deontologists, moderate teleologists and absolute consequentialists.[83] Bruno Schüller likewise has adopted the same basic divisions with slightly different terminology.[84]

The reforming Catholic theologians are "mixed consequentialists" or "moderate teleologists", as we will see in the following sections, since

> in their explanations of materia apta (Janssens), commensurate reason (Knauer), proportionate reason (Schüller), (they) insist that elements other than consequences function in moral rightness and wrongness. I (i.e. McCormick) include myself among those who so insist. (85)

A few words of comment might well be appropriate at this point. Granted the developments and precision that have been traced here regarding the question of moral norms one can not but wonder whether

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82. C.E. Curran: op.cit., p.352.
83. R. McCormick: "Notes", T.S., 38 (1977) 82.
84. Cf. B. Schüller: "Anmerkungen zu dem Begriffspaar 'teleologisch-deontologisch'," Gregorianum, 57 (1976) 756.
: "The Double Effect in Catholic Thought: A Reevaluation", Doing Evil to Achieve Good, p.167.
85. R. McCormick: "Notes", T.S., 38 (1977) 82-83; Curran argues in much the same way in "Utilitarianism", p.354.

the deontology - teleology debate in Roman Catholic moral theology is another "misplaced debate."[86] By saying this I do not wish to indicate that contemporary discussion and research have offered little of real value. The work of relating the intrinsic value of acts to their consequences must continue. One wonders, however, whether the fact that the discussion has grown out of pastoral difficulties with norms, that material norms have a predominantly educative role (cf. O'Connell) and that difficult dilemma situations (e.g. the southern sheriff) are resolved by rational reflections alone. Ultimately, all these will retard the development of "theological" ethics. Perhaps more emphasis needs to be given to formal norms as O'Connell has suggested (especially their motivational role), to the importance of affections and experience in individual decision-making, to the inter-subjective and communitarian perception of particular values.[87]

By way of concluding this section and as a post-script to the above discussion of the teleological and deontological grounding of norms it is necessary to refer briefly to two other issues that ultimately discuss the same question. These are the issues of consequentialism and the intrinsically evil act.

First consequentialism. In our earlier analysis of J.G. Milhaven we noted that he proposed and developed "a love ethic based on a proper empirical evaluation of the consequences of our actions in the light of love."[88] In his exposition he emphasized the importance of

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86. Cf. D. Maguire: The Moral Choice, pp.157-163.

87. Cf. J. Miller O.P.: "Rahner's Approach to Moral Decision Making", Louvain Studies, 5 (1975) 350-359.

88. C.E. Curran: T.S., 34 (1973) 450.

experiencing values and the contribution of the social sciences to this end. By this approach we can obtain an objective evaluation of consequences. McCormick has commented correctly when he claims that Milhaven has only offered an imperfect method for testing value judgments.[89] Milhaven's consequentialism may not be comprehensive, Curran suggests. In his early writings Milhaven had concentrated on the question of absolute norms. He denied the possibility of such norms because of the great importance consequences have in determining our actions. Whether this approach reduces the total ethical method to one of consequences I am not sure.[90]

Like Milhaven, John R. Connery's contribution to the discussion of consequentialism belongs to what I have designated earlier as the first phase of the discussion.[91] His avowed aim was to question "the validity of a moral system that makes the judgment of an act depend solely on its consequences."[92] By means of a detailed study and critique of act and rule-utilitarianism Connery prepares the ground for his criticism of Knauer, Fuchs and Schüller whom he associates with rule-utilitarianism

> in the sense that 'all rules are subject in one way or another to the principle of consequences.' The basic problem he finds in this is that 'it seems to call for, or at least allow, exceptions which go against commonly held convictions.' (93)

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89. Cf. R. McCormick: T.S., 33 (1972) 86-90.

90. Cf. C. Curran: T.S., 34 (1973) 454; cf. J.M. Gustafson: op.cit., pp.51-53.

91. Cf. J.R. Connery S.J.: "Morality of Consequences: A Critical Appraisal", T.S., 34 (1973) 396-414.

92. J. Connery: op.cit., p.398.

93. R. McCormick: "Notes", T.S., 36 (1975) 93.

Consequentialism, Connery argues, is difficult to establish on the theoretical level[94] and is dangerous to apply on the practical level. He prefers the traditional "so-called secondary rules", namely the P.D.E.[95] It is understandable that the "reformist" moralists who see themselves as mixed consequentialists should object to Connery's article.[96]

The issue of intrinsically evil acts divides theologians along the same lines as that between deontologists and teleologists. There are those who argue that there are certain physical actions which are morally evil ex objecto, that is, they are so morally disordered in themselves that they may never be justified in any circumstances or for any purpose. A number of writers indicate that this is the position of the official magisterium of the Church on questions such as contraception, homosexual acts, direct sterilization, abortion and masturbation. In other words, certain acts in these areas are designated intrinsically evil.

In a recent study of St. Thomas J.F. Dedek notes that the expression "intrinsically evil act" does not occur in the writings of the great scholastic doctor.[97] As we have observed already he does admit that some actions may never be done either because an act is

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94. G. Grisez in "Against Consequentialism", The American Journal of Jurisprudence, 23 (1978) 21-72, subjects consequentialism to a thorough critical analysis. Essentially the same material is covered in G. Grisez and J.M. Boyle Jr.: Life and Death with Liberty and Justice, pp.346-355. J. Finnis lists six ways in which consequentialism is arbitrary in Heythrop Journal, 11 (1970) 369-370.

95. J. Connery: op.cit., p.413; cf. J. Gustafson: op.cit., pp.53-54.

96. Cf. C. Curran: "Utilitarianism", p.354.

97. Cf. J.F. Dedek: "Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas", Thomist, 43 (1979) 385-413.

secundum se evil,[98] is formally designated by the decalogue or is a primary precept of the natural law.[99] Apart from this specific group of acts Aquinas appears to have permitted exceptions to norms as we have mentioned earlier. Dedek's study suggests, in fact, that normative ethics is possible without resorting to the term "intrinsic evil" as it has been used by the Magisterium and the manuals.[100]

The term was used extensively in the manuals of moral theology but the understanding of the notion was formulated differently.[101] Murtagh discerns three differing positions.

a) Authors who use intrinsically evil in the sense of absolutely intrinsically evil.[102] Various reasons are given however. An act is intrinsically evil if

   i) "it is repugnant to man's last end,

   ii) it necessarily disagrees with a determined human nature,

   iii) it *de industria* frustrates the end to which it is naturally destined.

Others speak of the object being intrinsically evil if:

   iv) the object is bad of its nature,

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98. Thomas used this expression which originated with William of Auxerre. (cf. J.F. Dedek: *op.cit.*, pp.390-391; 408).

99. See pp. 257f.above.

100. Cf. R. McCormick: "Notes", *T.S.*, 41 (1980) 108.

101. This section is dependent on J. Murtagh: *Intrinsic Evil: An Examination of this Concept and Its Place in Current Discussion on Absolute Moral Norms*.

102. See Bucceroni, Davis, Häring, Lanza-Palazzini, Liguori, Merkelbach, McHugh-Callan.

(v) the object intrinsically and of its nature is not in conformity with right reason."[103]

Finally, if an act violates an eternal value that must be preserved under all circumstances then such an act is absolutely intrinsically evil.

b) A second group of manualists speak of intrinsic evil with reference to the object of the act. This may be intrinsically evil either conditionally or absolutely.[104] Murtagh cites a text of Aertnys-Damen:

> Sic ablatio rei alienae, homicidium, famae laesio sunt intrinsice mala; aliquando tamen licita evadunt. (105)

This text suggests that certain acts become intrinsically evil in the presence of certain conditions.[106]

c) Gury follows the division of (b) above but distinguishes two types of conditionally intrinsically evil acts. Thus he perceives the objects of certain acts as being intrinsically evil independently of circumstances (e.g. blasphemy). Such acts are contrary to right order. Other acts are intrinsically evil because of some circumstance (e.g. taking the property of another, mutilation). Finally others are evil by reason of the danger that is ordinarily attached. (e.g. reading depraved

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103. J. Murtagh: op.cit., pp.15-16.

104. See Aertnys-Damen, Genicot, Kenrick, Noldin-Schmitt, Slater, Tanquerey.

105. J. Murtagh: op.cit., p.18.

106. Cf. J. Murtagh: op.cit.,pp.18-19.

books).[107]

This brief outline of manualist understandings of the terms "intrinsically evil" indicates a lack of clarity regarding the notion. Secondly it is not clear whether the term refers to the act as a whole or to the "object" of the act. Confusion exists on this latter point: is the object considered on its own as distinct from "circumstances" or are a number of circumstances included within the description of the object?

Magisterial documents[108] suggest two strands of thought regarding intrinsic evil. "The first is that an act which is intrinsically evil remains so regardless of circumstances, and the second is that an intrinsically evil act is an act contrary to nature."[109] What has caused the difficulty for moralists of recent times is the fact that they cannot accept:

(a) that one can isolate the object of an act and say that it is always wrong in any conceivable circumstances, nor

(b) that acts (described without circumstances) are morally wrong because they are unnatural (contraception) or because the agent lacks the right to perform such acts (direct killing of the innocent).

Contemporary theologians are arguing that

> when an action is always morally wrong it is not so because of unnaturalness or defect of right... but because when taken as a whole, the nonmoral evil outweighs the nonmoral good, and therefore the action is disproportionate.(110)

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107. Cf. J. Murtagh: op.cit., pp.20-23. Manualists in this third group: J.P. Gury, HUrth, Konnings, Lehmkuhl, Sabetti-Barrett.

108. Casti Connubii (Puis XI) was the first document to use the term "intrinsice inhonestum" (cf. A.A.S., 22 (1930) 559). Humanae Vitae used the same expression. See also Pius XII, A.A.S., 43 (1951) 843; 48 (1956) 472.

109. J. Murtagh: op.cit., p.31.

110. R. McCormick: "Notes", T.S., 39 (1978) 103; cf. E. Quarello: Salesianum, 33 (1971) 141-146.

The discussion of "intrinsic evil" by two contemporary thinkers merits attention here since it will conclude what we have already touched on in the section on the human act (Jeffko) and will prepare for our later analysis of direct and indirect (Di Ianni).

Jeffko[111] attempts to clarify our understanding of "intrinsic evil" by distinguishing it from "prima facie evil." Fundamental to his approach are two distinctions: (a) that between "absolute" and "intrinsic"[112] and (b) that between the common and particular features of an act. The notion of prima facie evil applies to the common features, the essential core of an act. It is this evilness at the core of an act which makes a general class of acts evil in general or evil in the ordinary run of situations (e.g. war). From this, however, it cannot be argued that every instance of the act is evil. Intrinsic evil on the other hand applies to the act as a whole - to both its common and particular features. For this reason it is universally and necessarily evil in all actual and possible instances (e.g. slavery).

It would appear to me that Jeffko has merely updated the terminological expression of what has already been perceived by the manualists. Di Ianni,[113] on the other hand, argues for an understanding

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111. W.G. Jeffko: op.cit., pp.207-210.

112. While "absolute" and "intrinsic" are the same in terms of universality and necessity they differ in two ways:
   i) "absolute is a primary or fundamental concept: it is the basis for all acts and principles which are either intrinsic or prima facie. On the other hand, intrinsic is a derivative or secondary concept; it derives its moral character precisely from community, the ethical absolute...
   ii) since the ethical absolute - qua absolute - implicitly covers, or is coextensive with, the whole moral order, it is somewhat indeterminate. On the other hand, intrinsic refers to a specific or determinate act or principle. (W. Jeffko: op.cit., p.207).

113. A.R. Di Ianni S.M.: "The Direct-Indirect Distinction in Morals" The Thomist, 41 (1977) 359-363.

of intrinsically evil in a sense weaker than that of the tradition.

He argues that contemporary moralists (Schüller, Fuchs, Janssens, McCormick et al.) are guilty of confusing

a) the finis operis of a human act (e.g. homicide) with

b) the effect brought about by the act (e.g. death).

The "free causation of a non-moral evil" or homicide is the reality that needs justification. Di Ianni continues:

> We must agree that 'death' is not, in itself, a moral concept - it refers to a non-moral, ontic or pre-moral evil - but the concept of the free causation of death has at least minimal moral meaning in itself prior to consideration of intention and circumstances; such an act might well be considered as intrinsically evil in a weaker sense than that of the manual tradition. This would allow us to speak of the principle of the lesser moral evil as one of the basic principles guiding actions in morals. (114)

Thus "direct killing of the innocent" need not always be forbidden whatever the circumstances. If it is performed, however, it would not produce moral guilt "but it would still be a bearer of certain moral claims and generate what I will call creative regret."[115]

In saying this our author wishes to distinguish his approach from Schüller and others who understand homicide as having negative ontic or premoral meaning. This approach, he feels, leans too far in the direction of act-utilitarianism or situationism which demands the voiding of the intrinsic moral meaning of all action concepts. Di Ianni thus concludes that "the prima-facie moral meaning of certain negative acts continues to make a moral claim even though such acts may be tolerated because of other features of the situation."[116]

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114. A.R. Di Ianni: op.cit., p.360.

115. A.R. Di Ianni: op.cit., p.361.

116. A.R. Di Ianni: op.cit., p.362.

I believe Di Ianni has high_lighted an interesting point with his notion of "minimal moral meaning". Although McCormick has argued that all the authors Di Ianni cited with Schüller have borne in mind the agent's attitudes and actions involving non-moral evil, one gets the impression from the way they discuss particular concrete cases that they have actually emptied pre-moral evil of any moral "perspective" or "orientation". Whether this impression is valid or not I hope will become obvious as we discuss the way values are calculated or proportionate reason is attained in the writings of individual moralists.

3. Double Effect and the Total Human Act

As we have already observed in II.2 of this chapter Cornelius Van der Poel emphasizes the unity and uniqueness of the moral act. He suggests that the P.D.E. over-emphasizes physical effects thus making for difficulties when moralists discuss the morality of transplantation.[117] The alternative he proposes is that

> the material effects need to be evaluated, not according to their 'goodness' or 'badness' in themselves but in their relationship to total human existence, namely, insofar as they contribute to it or destroy it, because only in concrete and total activity can they be good or evil. (118)

The intermediate stages in the process of the human act share in the morality of the act's purpose. This raises two questions for our author:

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117. Cf. C. Van der Poel: "The Principle of Double Effect", p.194.

118. C. Van der Poel: op.cit., pp.197-198.

(a) "is each intermediate stage a 'separate' product of the human will, that is, is it a separate human action?" and

(b) "to what degree does each intermediate stage place a responsibility upon the agent?"[119]

These questions bring to the fore the traditional problem of the "indirectly voluntary". As there is no uniform use of the term in the manuals Van der Poel uses it in the wide sense. He includes in the term

> all those aspects of human action which in themselves are not the purpose of the action but which are either the means to or the concomitant effects of the human actions. They are the regretted but unavoidable aspects of the total act. They themselves are willed, but only because and insofar as the totality of the act demands them. (120)

To illustrate the position of evils within the overall act, Van der Poel gives the example of a nature lover who, wishing to see the panorama offered from the top of a high mountain, accepts the fatigue and risks of the climb as inseparably linked with the ultimate pleasurable experience. The fatigue and risks are voluntarium in se sed non propter se, whereas the view experienced at the summit is truly voluntarium in se et propter se.[121]

This approach permits Van der Poel to deny any value to the traditional notions voluntarium indirectum and voluntarium in causa. They do not indicate separate voluntary actions but rather describe how the intermediate stages receive their moral value from the overall

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119. C. Van der Poel: op.cit., p. 199.

120. C. Van der Poel: op.cit., p.299, note 28.

121. C. Van der Poel: op.cit., p.210.

purpose of the act. In claiming this Van der Poel has modified quite considerably the second and third conditions of the P.D.E.

Richard McCormick has criticized Van der Poel's article on the P.D.E. on two points:

(a) "when are occurrences (of evil) to be viewed as only intermediate stages of a single action? May every premoral evil that occurs in any way in conjunction with my activity be reduced to an 'intermediate stage'?"[122] For example, is the killing of innocent children to get at the enemy's morale simply an intermediate stage of an action that can be described as "national self-defence"?

(b) "Because it seems legitimate to intend some premoral evils in se sed non propter se, does it follow that all evils which occur in conjunction with one's activity can be said to be intended in se sed non propter se? For instance, does one intend and choose the death of the fetus in a cancerous-uterus - situation in the same way one intends and chooses the fatigue and danger involved in a mountain climb?"[123]

W. Van der Marck is another who stresses the immediate implications and communitarian dimensions. Because of this he abandons the direct-indirect distinction as used with reference to the P.D.E. The distinction, Van der Marck argues, is an inadequate tool for explaining the meaning of our acts. Why? Because "a twofold intersubjectivity is ascribed to the act (two effects) and then one aspect of it is immediately cancelled

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122. R. McCormick: Ambiguity in Moral Choice, pp.29-30.

123. R. McCormick: op.cit., p.30.

out ('indirectly willed' for 'sufficient reason')."[124] If Van der Marck means by "cancelled out" that the moralist ignores or does not count this effect in his calculus then it would seem that he has failed to appreciate the fourth condition of the P.D.E. that necessitates a truly proportionate reason for the performance of an act.[125]

Another consequence of Van der Marck's great stress on the intersubjective[126] as determining the way one considers the human act has been his rejection of the bad means - good end axiom that has governed the use of the P.D.E. in the moral tradition of the Roman Catholic Church. Three critical and accurate observations have been made regarding Van der Marck's thought:

(a) The analysis of the human act in Van der Marck's writings is made in terms of decisions - consequences rather than

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124. W. Van der Marck: Toward a Christian Ethic, p.58.

125. Cf. R. McCormick: op.cit., p.22. McCormick also analyses Van der Marck's arguments in his article "Past Church Teaching on Abortion", Proc. C.T.S.A., 23 (1968) 140-145. Even though Van der Marck misunderstands the fourth condition of double effect, G. Grisez considers he has adopted the "methodology of utilitarianism" ("Toward a Consistent Natural-Law Ethics of Killing", The American Journal of Jurisprudence, 15 (1970) 84). Di Ianni considers that the thought of Van der Poel and Van der Marck differs little from "a thorough-going act - utilitarianism". ("The Direct-Indirect Distinction in Morals", Thomist, 41 (1977) 355).

126. G. Grisez in his critique of Van der Marck argues that the latter
(a) is in error in identifying his distinction "intention - performance (i.e. external act)" with Aquinas's "secundum speciem moris - secundum speciem naturae";
(b) is overly simple in "dividing intention of the end as the inner human meaning of the act against execution of the means" when Aquinas distinguishes clearly between acts of will directed to ends and acts of will directed to means;
(c) ignores St. Thomas's position that the entire goodness or malice of the external act does not depend solely on the "stance" of the will (cf. S.T., I-II, q.20, a.2).
(G. Grisez: op.cit., pp.84-85).

in terms of act-consequences. The traditional emphasis on means (or action) in the analysis of a performance "falls away and the finis operis of the act performed must take its place alongside the more mediate effects of the action."[127]

(b) Van der Marck's analysis of the act is inadequate Grisez argues since means and ends may be related in one of two ways:

(i) means in a performance may lead to a specific goal ulterior to the performance itself (e.g. a boy cuts grass (means) to earn enough money to buy a bicycle (end).)

(ii) means may be a "meaningful performance that partially actualizes a larger purpose". This larger purpose, which is the end, is not only on the side of human meaning, but also involves human existence."[128] For example, one studies in order to learn; one gives something valuable to another for the sake of friendship, etc. "In this structure of action, contrary to Van der Marck, both means and end involve an aspect of human meaning; the means involve a performance of some sort and the end a way of being."[129]

(c) Van der Marck is mistaken when he argues that there cannot be morally bad means to a good end. The meaning of a human act as means depends on the end, but is not identical with the end. There are other factors determining the morality of means. This criticism is substantially the same as that levelled by McCormick against Van der Poel above.

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127. A.R. Di Ianni: op.cit., p.354.

128. G. Grisez: op. cit., pp.85-86.

129. G. Grisez: op.cit., p.86.

Daniel Callahan[130] is the third thinker we ought to consider in this section on double effect and the approach to the moral act which emphasizes moral evaluation of the act as a totality. He discusses it in his book on abortion.[131] He is critical of past uses of the P.D.E. in this area for

> the 'weighing' in question (i.e. in the P.D.E.) is decisively one-sided,[132] takes physical life alone as the only value at stake, leaving no real room for even investigating any other considerations which might come into play. -It is evident, moreover, that a theology which would countenance the death of both the fetus and the woman (rare in fact, but pertinent in principle) rather than directly take the life of the fetus is one geared heavily to a pre-occupation with preserving individuals from sin or crime... The basic moral principle of 'Do good and avoid evil' is efficaciously rendered into the avoiding of evil alone. (133)

In place of a defective principle Callahan proposes directions for a new methodology.[134] Many of the elements of this we have already observed in Van der Poel and Van der Marck in their descriptions of the human act.

The indivisibility of the human act or behavioural process is central to Germain Grisez's approach to the P.D.E. He accepts the traditional definition of the principle[135] but admits to being

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130. Cf. D. Callahan: Abortion: Law, Choice and Morality, pp.422-426.

131. For a critical analysis of Callahan's thought see P. Ramsey: "Abortion: A Review Article", Thomist, 37 (1973) 174-188.

132. Callahan is here rejecting J.T. Noonan's thesis that the P.D.E. permits a process of weighing and balancing where innocent human life is not made an absolute. "In the weighing, the fetus (is) always given a greater value than zero, always a value separate and independent from its parents." (J.T. Noonan Jr.: "Abortion and the Catholic Church: A Summary History", Natural Law Forum 12 (1967) 130), quoted by Callahan: op.cit., p.424 note 42.

133. D. Callahan: op.cit., p.424; Cf. P. Ramsey: op.cit., p.208.

134. Cf. D. Callahan: op.cit., pp.426.

135. Cf. G. Grisez: Contraception and the Natural Law, pp.137-138
:"Toward a Consistent Natural-Law Ethics of Killing", p.78.
: "When Action is Ambiguous", p.145.

dissatisfied with the third condition governing the principle's application. In his earlier articles Grisez gave the impression he had suppressed the fourth condition. More recently he has developed his explanation of that condition.

Grisez differs from the authors just considered in that he "uses the principle (of double effect) as the sole justification of deadly deeds, while giving it a somewhat larger scope than is customary."[136] He contends that while human life may never be legitimately attacked directly, "the concept of indirect killing covers more cases than has generally been supposed."[137]

The third condition of the P.D.E.

> 'that a good effect also issue from the act, at least as immediately and directly as the evil effect, that is to say, provided that the evil effect does not first arise and from it the good effect';..... (138)

is inadequate according to Grisez. He continues:

> a means in the order of human action must be a single, complete human act (or a complex of such acts). The means cannot be a mere part of a human act. Now a human action derives its unity from two sources. One source is the unity of one's intention... The other source of unity.... is the indivisibility of the performance. (139)

We have already outlined Grisez's though on this twofold unity. All that is necessary here is to indicate what our author derives from it with reference to the third condition of the double effect principle:

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136. P.E. Devine: The Ethics of Homicide, p.121.

137. G. Grisez: "Toward a Consistent Natural-Law Ethics of Killing", p.66.

138. H. Davis S.J.: Moral and Pastoral Theology, I, p.14, quoted by Grisez: op.cit., p.87.

139. G. Grisez: op.cit., pp.87-88.

> If the unity of action is preserved and the intention specifying the action is good, whether the good or evil effect is prior in the order of nature is morally irrelevant. From the ethical point of view, all of the events in the indivisible performance of a unitary human action are equally immediate to the agent; none is prior (a means) to another. (140)

Grisez then applies his understanding of double effect to a number of cases. He considers that killing in self-defence fulfills the above criterion, but capital punishment does not. Only defensive warfare could be justified by this interpretation.[141] It is on the question of abortion and his extension of the P.D.E. that Grisez has encountered most criticism. He permits the abortion of a non-viable fetus if the pregnancy dangerously overloads the mother's heart or kidneys. In the case where the baby is stuck in the birth canal he accepts craniotomy.[142] He severely limits however the types of therapeutic abortions that can be performed. In the above two cases the abortion is considered indirect for if an artificial uterus were available the fetus could be transferred there and so remove the threat to the mother's life. Grisez does admit that some therapeutic abortions might be excluded by the principle of due proportion . But where abortion is used to get rid of a privately or publicly unwanted child, or is necessary to dispose of a defective one, the death of the child is clearly required by the abortionist's purposes. Thus the feticide committed is considered to be direct and unlawful.[143]

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140. G. Grisez: op.cit., p.90.

141. Cf. G. Grisez: op.cit., pp.91-93.

142. Cf. G. Grisez: op.cit., pp.94-96.

143. Cf. G. Grisez: op.cit., pp.94f.; P.E. Devine: op.cit., p.122.

Many today would agree with Grisez that the temporal order of good and bad effects is not decisive in moral evaluation. But

> the unity-of-the-act criterion is unclear, since what is precisely at issue is the legitimacy of redescribing one's act to include the production of the good effect but not the bad one. It seems just as plausible to say 'I'm not directly killing Smith when I shoot him in the head, only saving myself from Jones's attack' as to say 'I'm not directly killing Jones when I shoot him in the head, only saving myself from Jones's attack'. In both cases my act could be described, in a narrow context, as killing a man, and in a broader one as saving my life by killing a man. We tend to distinguish the two cases - believing that attackers may rightly be put at their peril whereas innocent third parties should be immune from lethal attack - but our distinction does not seem to have much to do with direct vs. indirect killing. (144)

Devine concludes from this that self-defence is a principle separate from double effect and nothing is to be gained from conflating these two modes of justification.

Two comments are appropriate here regarding Devine's criticism of Grisez. First, regarding redescription of the act. Hauerwas has argued correctly that in limiting the P.D.E. to a particular number of therapeutic abortions (which Grisez considers indirect) he has granted the point at issue namely

> that the agent's description of the act has some claim to acceptance as a proper description of the act. No matter how he may deny it, Grisez has actually assumed the relative value of the lives involved, since the removal of the fetus from a heart patient obviously presupposes a judgment of the value of the mother over that of the fetus. (145)

Paul Ramsey is the second critic of Grisez's requirement that no other human act intervene in those cases of therapeutic abortion that

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144. P.E. Devine: op.cit., pp.121-122.

145. S. Hauerwas: "Abortion and Normative Ethics", Vision and Virtue, p.145.

Grisez considers legitimate. Ramsey offers four counter-examples:

a) A criminal, holding an innocent hostage, continues to shoot bystanders; a policeman shoots through the hostage killing both.

b) A woman pregnant with misplaced acute appendicitis will die when it ruptures unless the surgeon goes straight through the uterus killing the fetus but thereby saving the mother's life.

c) An aneurysm of the aorta where the wall of the aorta is so weakened it balloons out behind a pregnant uterus. In this case, too, the doctor must first kill the fetus so as to deal with the aneurysm threatening the mother's life.

d) A woman with primary pulmonary hypertension who cannot oxygenate both herself and the fetus until she reaches term.[146]

Ramsey concludes from Grisez's principle that the latter would accept the killing in (a) and (d) but not in the other two cases, "because the act of removing and destroying the fetus is not part of the act that has healing effect."[147] Paul Ramsey is, therefore, dissatisfied with Grisez's emphasis on the unified nature of the human act as applied to the question of abortion, firstly because it is too restrictive in not permitting surgical interventions in cases (b) and (c) above (something Ramsey himself permits) and secondly the approach is too vague and general in its application:

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146. Cf. P. Ramsey: "Abortion: A Review Article", Thomist, 37 (1973) 214.

147. P. Ramsey: op.cit., p.218.

> the distinction whether it is precisely the infant's death or its 'removal' that benefits the mother allows 'removal' in four more cases than necessity requires. This, I fear, is subjectivism gone riot in scrutinizing intention. (148)

In order to conclude this analysis of Grisez on the P.D.E. it is necessary to indicate a particular development in his thinking. In his study of Grisez in 1973 Richard McCormick indicated a weakness in Grisez's writings at that stage.[149] Grisez had indicated in his book on abortion that he viewed the fourth condition of the double effect principle as permitting "covert, although limited, utilitarianism" - something he abhors. Grisez continues

> Though human good is not calculable and though diverse modes of human good are incommensurable, the basic human goods do require protection where possible. (150)

McCormick asks correctly: what does "when possible" means in practice? Up until that point in time Grisez could be justly accused, therefore, of not providing the necessary theoretical account of why so many of our moral arguments take the form of choices between lesser evils.[151]

In 1978 Grisez addressed himself to the criticisms levelled at his position in a long article: "Against Consequentialism".[152] He first of all clarified a number of ways in which the expression "greater

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148. P. Ramsey: op.cit., p.223. For a critique of Ramsey's own position on abortion see R. McCormick: "Past Church Teaching on Abortion", pp.137-140.

149. Cf. R. McCormick: Ambiguity, pp.45-53.

150. G. Grisez: Abortion, p.329.

151. Cf. S. Hauerwas: op.cit., p.146.

152. The American Journal of Jurisprudence, 23 (1978) 21-72, esp. pp.49-62. See also: Life and Death, pp.355-358.

good" can be used for calculations which lead to practical non-moral judgments.[153] He admitted also that the expression "proportionate reason" may be used of means to ends. Grisez applied this to S.T. II-II, q.64, a.7:

> 'proportionate reason' in this context does not imply commensuration of goods leading to moral judgment. The proportion is between the force used and the purpose of self-defense, which Thomas considers justifiable on other grounds. One need measure only degrees of damage to the attackers. (154)

Grisez, however, denies that "proportionate reason" may be specified by measuring life (a basic good) against other non-moral values. In response to McCormick, then, Grisez argues

> that one must have a morally acceptable reason for doing the good one is doing, considering the evil one is accepting as an unavoidable side effect. But is this not to admit that one measures the good against the evil? Yes and no. One can compare these if one has a moral standard. One cannot measure these against each other and reach any moral judgment if one considers them only as premoral values and disvalues. (155)

Grisez thus consistently rejects a balancing of premoral goods which he considers meaningless since they are incommensurable. Rather, one's doing of good and one's accepting evil "must be permissible according to every relevant moral criterion"[156] that is the middle order axioms mentioned earlier. Grisez can thus be seen to have maintained his basic reinterpretation of the P.D.E. outlined earlier.[157]

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153. For example, "the famous case of the careering trolley car" The American Journal of Jurisprudence, 23 (1978) 51.

154. G. Grisez: op.cit., p.53.

155. G. Grisez: op.cit., p.55.

156. G. Grisez: op.cit., p.56.

157. For a further critique of Grisez see:
C.E. Curran: Ongoing Revision in Moral Theology, pp.200-205.
S.T. Nicholson: Abortion and the Roman Catholic Church, pp.41-48.

4. Evil, Norms and the Principle of Double Effect

In this section on the P.D.E. we will consider three European moralists who have discussed double effect in a way that has emphasized the fourth condition and the place of evil and norms in discerning "due proportion".

Louis Janssens[158] at Louvain has approached the human act from two different perspectives. In his article of 1972 the Belgian professor analysed in considerable detail the concept of the human act in St. Thomas.[159] Earlier he had expressed his appreciation of human activity in terms of personalism or existential phenomenology.[160] Both these elements coexist in his writings and have resulted in a rich understanding of the human act and the notion of debita proportio.

In analysing human actions Janssens perceives a double ambiguity. The first consists

> in the presence and connection of premoral values and disvalues in reality, as well as in our actions insofar as our actions deal actively with reality. (161)

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158. L. Janssens: "Personalist Morals", Louvain Studies, 3 (1970-71) 5-16.
: "Ontic Evil and Moral Evil", Louvain Studies, 4 (1972) 115-156.
: Intention and Proportion.
: "Norms and Priorities in a Love Ethic" Louvain Studies, 6 (1977) 207-238.

159. Cf. L. Janssens: Ontic Evil and Moral Evil, pp.116-132; also Intention and Proportion, pp.18-97.

160. Cf. "Personalist Morals", Louvain Studies, 3 (1970-71) 5-16.

161. L. Janssens: Norms and Priorities, p.210.

Janssens' concept of "value" as our response to "goods" is similar to that of Grisez cited earlier. The premoral values and disvalues in the world about us, and in our actions, only become moral when absorbed into dispositions and choices of the moral agent.

The second ambiguity in human action arises from the fact that our acts must follow one another in successive moments of time. This poses difficulties for human choice. While an act of choice is an expression of our autonomy, freedom and self-determination it also means that in each choice there is, at the same time, an element of omitting or postponing other possible actions.[162]

> At every moment a multiplicity of premoral values awaits realization through our actions. Since we can only actualize one of them at a time, we are forced to make a choice in each case. (163)

Two traditional issues flow from this fact. Firstly, in making a choice one gives priority to a preferred value: how does one justify this preference? This is called the problem of the ordo bonorum.[164] Secondly, some choices operate to the advantage or well-being of a particular person or group - the traditional problem of the ordo caritatis.[165]

As regards human activity Janssens adopts the principle of the lesser evil:

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162. Cf. L. Janssens: op.cit., p.212. Janssens adopts the words of Henri Bergson: "every choice is a sacrifice".

163. L. Janssens: op.cit., p.212.

164. Cf. L. Janssens: op.cit., pp.229-230.

165. Cf. L. Janssens: op.cit., pp.219-228.

> In situations where premoral values are unavoidably connected with premoral disvalues or where it is impossible to avoid all of the premoral disvalues which are inseparably blended, we ought to choose the alternative which indicates our preference for the lesser premoral disvalue. (166)

Omissions, too, are morally wrong choices if they do not respect the priorities of the ordo bonorum and the ordo caritatis.[167] We shall discuss briefly the role of norms regarding acts and the two orders of priorities. But before doing so it will be necessary to consider Jannsens' explanation of those disvalues that are part of moral choices and moral actions. This he calls "ontic evil". He defines ontic evil as

> any lack of a perfection at which we aim, any lack of fulfillment which frustrates our natural urges and makes us suffer. It is essentially the natural consequence of our limitations. (168)

Each concrete action involves ontic evil. Janssens explains the presence of evil in our actions as follows:

(a) ontic evil arises from the limitations of time,

(b) and the limitations of space. "As temporality involves man in the problem of the 'omissio' and the conflict of duties or values, so our spatiality involves him in the problem of acts with several effects."[169]

(c) Ontic evil arises, too, from man's social life and the limited

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166. L. Janssens: op.cit., pp.213-214.

167. Cf. L. Janssens: op.cit., p.213.

168. L. Janssens: Ontic Evil and Moral Evil, p.134.

169. L. Janssens: op.cit., p.136.

physical resources at his disposal.

(d) Finally, ontic evil comes into the world as a result of the sinful deeds of men.[170]

Having accepted the presence of ontic evil in human life and having described some of its causes Janssens asks: "when and to what extent are we justified in causing or allowing ontic evil?"[171] The answer Janssens gives to this question is to be found in his analysis of debita proportio (i.e. the due proportion that should exist between "means" and the "end" of the action).[172] In saying this Janssens rejects the deontologists' emphasis on the external act as morally evaluated in itself (i.e. the first condition of the P.D.E.). Rather, moral evaluation is possible only when ends and means are together in the total act.[173]

> We never have the right to will ontic evil as the ultimate end of our intention, because the formal element of our action, viz., the end, the object of the inner act of the will, would be morally evil, and the malice of the end determines and characterizes the grade of morality of the entire action. (174)

Apart from excluding ontic evil from being our purpose for acting Janssens is quite definite in asserting that ontic evil, which is not ultimately intended but which is nevertheless associated with our action, will become moral evil if there is no proportionate reason

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170. Cf. L. Janssens: op.cit., p.138.

171. L. Janssens: op.cit., p.139.

172. When Janssens (and later Knauer) treat of proportionate (or commensurate) reason they "see the weighing of values between the external act and the end intended. Thus they do not explicitly invoke a broad calculus of all the values involved in a situation in a purely utilitarian fashion." (C. Curran: Ongoing Revision in Moral Theology, p.195).

173. Cf. L. Janssens: Norms and Priorities, pp.231-238.

174. L. Janssens: Ontic Evil and Moral Evil, p.141.

permitting its presence.[175]

In his more recent article, "Norms and Priorities in a Love Ethic", Janssens has approached the question of due proportion from the point of view of moral norms. His primary concern is with concrete material norms. The correct understanding of such norms permits the use of debita proportio in the moral life. Put briefly Janssens makes three points:

(a) Concrete material norms are expressed in a descriptive and a normative form. These norms "set forth the material content (what is done) of categories of actions and prescribe or forbid these actions as morally right or wrong according as they involve premoral values or disvalues."[176]

(b) Concrete material norms are relative in the sense of conditional. They are not binding if there is a proportionate reason why the case at issue is not governed by them. Janssens does admit the possibility of virtually or practically exceptionless norms (e.g. that forbidding rape).[177] In this context Janssens has developed four criteria or requirements that should govern the use of proportionate reason. Attention must be paid to

i) the contributions of human sciences;

ii) different types of human actions (e.g. instrumental acts such as work, acts having meaning in themselves such as play and expressive deeds which indicate

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175. Cf. L. Janssens: Intention and Proportion, pp.128-146.

176. L. Janssens: Norms and Priorities, p.216.

177. Cf. L. Janssens: op.cit., pp.216-218.

inner attitudes such as a confession of faith);

iii) institutional norms (e.g. contracts, promises)

iv) the ordo bonorum and the ordo caritatis.[178]

(c) Concrete material norms are affected by "historicity".[179] Cultural factors can cause a development or neglect of particular values.[180] Man's "historicity" can result in particular norms being abandoned and replaced by others.[181]

The writings of Louis Janssens are of some importance since they pull together a good number of the elements we find in the works of Fuchs, Schuller, Knauer and others.[182]

Josef Fuchs[183] develops his thought by considering the contemporary discussion on exceptions to moral norms.[184] He contends that most Catholic moralists have overlooked the distinction between "evil" and "wickedness" (i.e. between premoral and moral evil).[185] As we

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178. Cf. L. Janssens: op.cit., p.218.

179. Cf. L. Janssens: op.cit., pp.230-231.

180. Janssens cites the development regarding capital punishment and war. Although he does not mention any particular types of neglect of value perhaps we might include "religious values".

181. Traditionally the norm "marital intercourse only for procreation" has operated in Catholic sexual ethics. This has been replaced by a richer understanding of sexuality today.

182. R. McCormick reviews the two important articles by Janssens in "Notes", T.S., 36 (1975) 89-92; 39 (1978) 86-90.

183. Cf. J. Fuchs: "The Absoluteness of Moral Terms", Gregorianum, 52 (1971) 415-457.

184. Cf. J. Fuchs: op.cit., pp.440-443.

185. Cf. J. Fuchs: op.cit., p.442.

have already noted earlier Fuchs considers that conflict occurs in human life at the premoral level, not at the moral level. Where good and evil are concomitants of an action then a proportionate cause will justify the evil outcome.

> If the realization of the evil through the intended realization of good is justified as a proportionately related cause, then in this case only good was intended. (186)

Like Janssens, Fuchs emphasizes the role of due proportion in discerning the moral worth of an action as a whole. For this reason the axiom: "the end does not justify the means" is true only when the means are morally evil. Most often in decision-making the means being considered are premoral (e.g. death, wounding). They are but one element in the total action.[187]

As regards universally binding concrete norms and the possibility of intrinsically evil acts Fuchs is in accord with the thought of Janssens outlined above. Both authors through their understanding of the human act, evil and moral norms have revised the P.D.E. in favour of its fourth condition.[188]

The German Jesuit, Bruno Schüller,[189] has been a considerable

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186. J. Fuchs: op.cit., p.444.

187. Cf. J. Fuchs: op.cit., pp.446-447.

188. For an outline of Fuch's thought and some idea of his defence of his position against deontologists (e.g. Ermecke) see R. McCormick: "Notes", T.S., 33 (1972) 72-78; 36 (1975) 85-89;

189. B. Schüller S.J.: "La théologie morale peut-elle se passer du droit naturel?" N.R.T., 88 (1966) 449-475.
: "Zur Problematik allgemein verbindlicher ethischer Grundsätze", Theologie und Philosophie, 45 (1970) 1-24.
: "Typen ethischer Argumentation in der katholischen Moraltheologie", Theologie und Philosophie, 45 (1970) 526-550.
: "Zur Rede von der radikalen sittlichen Forderung", Theologie und Philosophie, 46 (1971) 321-341.
: "Direkte Tötung-indirekte Tötung" Theologie und Philosophie, 47 (1972) 341-357. (English trans.) "Direct Killing - Indirect Killing" Readings in Moral Theology No.1, pp.138-157.

influence in the development of "proportionate reason" as the most important condition of the P.D.E. A reading of his many books and articles indicates two areas of concentration in his reflections. The first takes as a starting point his earliest writing on natural law. From this he developed his understanding of norms, values and principles of preference. More recently Schüller has concentrated his efforts in the field of teleological ethics. He has sought to justify teleologically a number of traditional moral norms that had previously been grounded deontologically.

In his earlier writings the German Jesuit proceeds from a specific appreciation of value. All moral value, he insists, is something original, incapable of reduction to further components and apprehended in a unique way by the moral agent in an immediate moral experience. This moral knowledge is almost a type of intuition which can be not so much validated as described.[190] This original and underived experience of value is thus logically prior to any moral demands of revelation. Revelation and the experience of God open out, elevate and deepen the human reality (lex naturalis) into the supernatural (lex gratiae).[191]

Footnote 189 (continued)...

B. Schüller S.J.: Die Begründung sittlicher Urteile: Typen ethischen Argumentation in der katholischen Moraltheologie.

: "Neuere Beiträge zum Thema 'Begründung sittlicher Normen'" Theologische Berichte IV, pp.109-181.

: "Typen der Begründung sittlicher Normen" Concilium, 120 (1976) 648-654. (English trans.) "Various Types of Grounding for Ethical Norms", Readings in Moral Theology No.1 pp.184-198.

: "Anmerkungen zu dem Begriffspaar 'teleologisch-deontologisch'," Gregorianum, 57 (1976) 741-756.

: "Die Bedeutung der Erfahrung für die Rechtfertigung sittlicher Verhaltensregeln", Christilich Glauben und Handeln, pp.261-286.

: "The Double Effect in Catholic Thought: A Revaluation", Doing Evil to Achieve Good, pp.165-192.

190. Cf. B. Schüller: N.R.T., 88 (1966) 455f.

191. Cf. B. Schüller: op.cit., pp.456f.

The human goods and evils of this world which the individual experiences are of two types according to Schüller:

(a) those for which, in the last resort, man alone is accountable (what Schüller calls the "moral" sphere),[192] and

(b) those for which he is only partially responsible or not at all (e.g. health, talents, temperament etc.) This area our author designates as "non-moral".

On the basis of this distinction Schüller formulates a basic preference rule: in situations of conflict moral value is to be preferred over every conceivable non-moral value.[193]

As human activity is limited by the very nature of man it is necessary to measure one value against another before saying which deserves preference. This is even more important when we realize that nothing we do in relation to our fellow man can be absolutely good or evil for him.[194] If one's salvation or moral welfare and the inviolability of another's conscience are the only absolute moral values - analytically speaking - the question remains as to how a preferred non-moral value may become an absolute moral demand or duty. This brings Schüller to the question of norms that command non-moral values to be performed or omitted. Our author considers that norms

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192. Within the "moral sphere" Schüller discerns two types of norms:
(a) norms which consider man's attitude to non-moral values (or disvalues), e.g. "it is right to feed the hungry", and
(b) reflex norms which consider man's attitude to morality itself, e.g. "it is morally good always to do the right thing."
This latter type of norm is universal and exceptionless. Norms of type (a) are not since they are concerned with contingent non-moral values (or disvalues). It is at this level that man is confronted with different choices and conflicts. Cf. Die Begründung sittlicher Urteile, pp.39-45.

193. Cf. Die Begründung sittlicher Urteile, p.42.

194. Cf. B. Schüller: Theologie und Philosophie, 45 (1970) 7.

such as these bind except in those cases where they conflict, in a particular situation, with another more preferable value.[195] In other words such norms have an in-built exception clause.

From his understanding of values, norms and preference rules Schüller proceeds to develop a number of rules that he considers applicable to normative ethics.[196] It is at this point in Schüller's writings that his second concern, namely teleological norms and their justification, absorb his interest. McCormick puts it well

> The moral-theological problem of today, as Schüller sees it, is to discover plausible teleological justification for norms in control of actions that were interpreted deontologically in the past. This is the case precisely because the traditional reasons adduced for deontological understanding of these norms will not bear scrutiny. Schüller does not regard this as discontinuous with traditional value judgments, if one is careful not to confuse a value judgment with a historical formulation of it. (197)

In 1972 Schüller published an article on direct and indirect killing in which he argued that the P.D.E. is irrelevant in a teleological ethic.[198] As the substance of the article is concerned with the direct-indirect distinction we will leave our consideration of it to the next section of this chapter. Schüller himself is convinced

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195. Cf. B. Schüller: Theologie und Philosophie, 45 (1970) 534; also 46 (1971) 324ff.

196. In Die Begründung sittlicher Urteile, pp.27-135 Schüller studies a number of rules traditionally applied in moral theology, e.g. rules governing love of neighbour and love of self, the golden rule, beneficent love to those who are near, nearer and nearest, etc.

197. R. McCormick: "Notes", T.S., 38 (1977) 81.

198. Cf. Readings in Moral Theology No.1, pp.154-155.

> it is comparatively easy to apply this principle (i.e. the P.D.E.) correctly, but extremely difficult to give a satisfactory account of its meaning and validity. (199)

Reference has already been made in this chapter to the deontological - teleological distinction regarding norms. Schüller has consistently argued that there are two types of deontological norms. Those governing

(a) actions which are judged to be wrong because they frustrate the finality of a natural (God-given) faculty, e.g. lying, contraception;

(b) actions that are unlawful because they are performed without requisite authority (e.g. suicide).[200]

What has been notable in the history of moral theology is the way the P.D.E. has been used to ensure a restrictive interpretation of some deontological norms, for example in the cases of lying (mental reservation) and the indissolubility of marriage (restricting it to ratum et consummatum unions). In both these cases consideration of possible consequences has modified the demands of deontologically grounded norms.[201]

Schüller frequently takes up the question of killing to illustrate the pervasive influence of teleological reasoning. He shows how certain acts are neither suicidal (e.g. giving up a place on a life-raft, nursing the plague-stricken) nor to be seen as cases of killing an innocent person (e.g. a surgeon omitting to perform a craniotomy knowing the mother will die; performing a medically indicated

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199. B. Schüller: Doing Evil to Achieve Good, p.166.

200. Cf. B. Schüller: Doing Evil to Achieve Good, p.169, 187. Theologische Berichte IV, pp.122-127.

201. Cf. B. Schüller: Die Begründung sittlicher Urteile, pp.139-123. Doing Evil to Achieve Good, p.171.

hysterectomy on a pregnant woman). So too certain acts of omission are not classified as unlawful killing. "In the view of Catholic tradition it is only killing an innocent person that is wrongful irrespective of its consequences."[202] This deontological prohibition is thus restricted to direct killing while all forms of indirect killing are determined in the light of its consequences and are justified by a proportionately serious reason.[203] The distinction so made between direct and indirect killing is based on two separate reasons. The indirect killing, as we have just said, on teleological or consequentialist grounds, direct killing on the agent's lack of authority to perform it (ex defecta iuris in agente). This leads Schüller to conclude:

> the principle of double effect narrows the domain of the deontological norm and correspondingly enlarges the field where teleological considerations are recognized as legitimate. One further move in the same direction and the deontological norm resolves itself into a teleological one. (204)

Schüller makes the step himself. His earlier work on moral and non-moral values, rules of preference and the role of norms as well as his later rejection of the moral relevance of the direct-indirect

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202. B. Schüller: Doing Evil to Achieve Good, p.173.

203. Cf. B. Schüller: Doing Evil to Achieve Good, p.175. In another place Schüller observes that as far as he knows there are only two cases where traditional theology makes use of P.D.E. in a context of purely teleological considerations:
   (a) actions apt to induce other people to morally wrong behaviour (scandalum activum).
   (b) actions of cooperating with others in morally wrong behaviour (cooperatio cum peccato alterius).
   He claims that no analysis of the P.D.E. in the light of these cases has been undertaken in Roman Catholic moral theology.

204. B. Schüller: Doing Evil to Achieve Good, p.176.

distinction place the German moralist firmly among the "revisionist" theologians who have reduced the P.D.E. to a principle of due proportion.[205]

5. The Principle of Double Effect and the Balancing Process

The contemporary discussion of the P.D.E. was begun by the next author we are to consider - Peter Knauer S.J.[206] His article first appeared in French in 1965 and subsequently - with some modifications - in English.[207] Knauer maintains that although the P.D.E. had led a marginal existence in the manuals it is, in fact, "the fundamental principle of all morality."[208] It fulfills an

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205. L. Cornerotte does not go as far as Schüller in rejecting the P.D.E. He prefers to overcome the ambiguity present in the traditional use of the principle. He prefers to distinguish
    (a) the P.D.E. in the strict sense where the good end is attained by good means. The will merely permits the evil effect which is often a result and frequently accidental.
    (b) The P.D.E. in the wide sense where a good end is attained through a premoral evil. The premoral evil is positively willed - with regret. Cornerotte sees all the cases where the principle of totality is used, cases of legitimate self-defence, just war, capital punishment, protection of a secret etc., as fitting within the scope of the P.D.E. in the wide sense. (cf. L. Cornerotte C.I.C.M.: "Loi morale, valeur humaines et situations de conflit", N.R.T., 110 (1978) 502-532).
    McCormick is correct in seeing (b) as misleading. Cornerotte's teleology is substantially that of Schüller, Fuchs, Janssens et alii. But in the "classical understanding of double effect one could intend the evil neither as an end nor as a means." ("Notes", T.S. 40 (1979) 66).

206. Cf. R. McCormick: Ambiguity, p.7.

207. Cf. P. Knauer S.J.: "La détermination du bien et du mal moral par le principe du double effet", N.R.T., 87 (1965) 356-376. (Reviewed by R.McCormick: "Notes", T.S., 26 (1965) 603-608). This article appeared in German as: "Das rechtverstandene Prinzip von der Doppelwirkung als Grundnorm jeder Gewissenentscheidung", Theologie und Glaube, 57 (1967) 109-133, summarized as "The Principle of Double Effect", T.D., 15 (1967) 100-104. A revised form of the above articles appeared as "The Hermeneutic Function of the Principle of Double Effect", Natural Law Forum, 12 (1967) 132-162.

208. P.Knauer : Natural Law Forum, 12 (1967) 132.

important hermeneutic function mediating traditional moral principles.

> The principle of double effect, rightly understood, responds to the question whether in a given case the permission or causing of evil is justified or not. In answering this question it reveals itself as a principle which provides the criterion for every moral judgment. (209)

Knauer's central thesis is thus expressed at the outset:

> moral evil.... consists in the last analysis in the permission or causing of a physical evil which is not justified by a commensurate reason. Not every permission or causing of physical evil is a moral evil, but every moral evil depends on the permission or causing of physical evil. (210)

Knauer begins his analysis by considering Aquinas on killing in self-defence.[211] He utilizes the distinction between *finis operis* (the *finis* of the work) and *finis operantis* (the *finis* of the person acting) and concludes that neither can be understood on its own:

> neither the pure external happening nor the psychological intention is morally understandable alone; only the objective relation, in which both have a part, is understandable. (212)

In this Knauer agrees with Janssens, Fuchs, Schüller etc., that the whole act must be considered for moral evaluation and not solely the physical aspects of the act. This permits Knauer to reject the modern definition of the P.D.E. which he formulates as follows:

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209. P. Knauer: *op.cit.*, p.133.

210. P. Knauer: *op.cit.*, p.133; cf. "Uberlegungen zur moraltheologischen Prinzipienlehre der Enzyklika 'Humanae Vitae'," *Theologie und Philosophie* 45 (1970) 67.

211. Cf. *S.T.* II-II q.64, a.7. Knauer agrees with Mangan that Aquinas formulated the P.D.E. (*op.cit.*, p.133, note 2).

212. P. Kramer: *op.cit.*, p.136.

> one may permit the evil effect of his act only if this is not intended in itself but is indirect and justified by a commensurate reason. (213)

He argues that the notion direct-indirect is not to be tied to physical causality but is bound up with commensurate reason. Thus the principle may be adequately formulated:

> one may permit the evil effect of his act only if he has a commensurate reason for it. (214)

The key question in any assessment of Knauer's thought is the way he understands "commensurate reason".

> The principle of double effect means that to cause or permit an evil without commensurate reason is a morally bad act. The evil is no longer accidental in the intention of the person acting, but it becomes constitutive of the moral content of the act, the 'finis operis', or internal object. If a commensurate reason is present, the permission or causing of the evil becomes indirect and is objectively no longer the object of moral intention. The commensurate reason occupies the same area as what is directly willed and alone determines the entire moral content of the act. (215)

Implicit in Knauer's use of commensurate reason as central to the P.D.E. is the allocation of difficult meanings to "intention" and "direct-indirect". This has caused Germain Grisez to argue that Knauer is "carrying through a revolution in principle while pretending only a clarification of traditional ideas".[216] To assist an appreciation of Knauer's thought it is helpful to recall an example from the field of medicine that Knauer quotes.[217] In a leg amputation the psychological

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213. P. Knauer: op.cit., p.136.
214. P. Knauer: op.cit., p.137.
215. P. Knauer: op.cit., pp.140-141.
216. G. Grisez: Abortion, p.331.
217. P. Knauer: op.cit., pp.150-151.

attention of the surgeon is focused on the skilful removal of the leg. This removal is the concrete thing which he attends to and wills. But the morality of the act is not determined on this level of mere physical happening or psychological intention. It is only after we determine what value the act seeks to serve that we are in a position to determine its morality. If in the circumstances the act is the best possible way to ensure the patient's life and health, then in a moral sense what is intended is not the taking of the leg but the health of the patient. If, on the other hand, the reason is not commensurate, the amputation would be mutilation in the moral sense.[218]

The first conclusion that can be drawn from this example is that Knauer has distinguished pyschological and moral intention and has concluded that

> without a commensurate reason an evil is always willed directly, even if attention is not expressly directed to the evil but it is desired that there be no such evil. (219)

Critics of Knauer's approach seize on his understanding of intention. W. Daniel claims that the "externality of the moral 'intention'" has dismembered the moral act no less effectively than the emphasis on physical causality in the manualist approach to the P.D.E.[220] It would appear too that Knauer gives little or no meaning to psychological intent in the performance of an act. In addition to this I think McCormick is correct in observing that Knauer

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218. Cf. R. McCormick: "Notes", T.S., 32 (1971) 87; W. Daniel: A.C.R. 56 (1979) 383-384.

219. P. Knauer: op.cit., p.150.

220. Cf. W. Daniel: op.cit., p.384.

> does not satisfactorily indicate the limitations of intention in determining the meaning of concrete human actions and therefore he is unable to deal convincingly with cases like that of Mrs. Bergmeier who commited adultery to free herself from prison and rejoin her family. (221)

Knauer 's separation of psychological and moral intention in the understanding of the human act has effectively removed the distinction between directly and indirectly intended effects. He permits an agent to intend directly (i.e. psychologically) an evil effect as a means to a good end. Such a performance becomes morally direct if there is no commensurate reason. In this move Knauer has effectively removed the third condition of the P.D.E. and has made directness and indirectness depend on external criteria alone (viz. commensurate reason).

Two further criticisms of commensurate reason merit attention here. "How do we, or even can we, know that the reason for permitting or causing harm is commensurate?"[222] In his article Kramer argues that there should be a proper proportion between the act being performed and the value being preserved through such actions. In one place he does insist on the role of "rigorous objective criteria" in determining whether the reason for an act is commensurate or not.[223] Apart from this, however, he does not further our understanding by enunciating these criteria. This would seem to be a substantial lack in the argument presented.

Grisez raises the second set of objections to Knauer 's thesis.

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221. R. McCormick: Ambiguity, p.12.

222. R. McCormick: "Notes", T.S., 32 (1971) 94.

223. P. Knauer: op.cit., p.154.

> Knauer seems to me to have made a serious error of confusing a necessary condition of morality - commensurate reason, in his sense - with the sufficient criterion of moral goodness. (224)

Grisez offers three reasons for this claim. The requirement for commensurate reason

(a) does not show why there is a moral obligation to commit oneself to any good in the first place;

(b) does not explain why we have a prima facie obligation to fulfill the duties we have in the various communities to which we belong;

(c) does not show what is wrong with an exclusive and fanatical dedication to any single human value.[225]

The American Jesuit, Richard McCormick,[226] appropriately concludes

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224. G. Grisez: "Toward a Consistent Natural-Law Ethics of Killing", p.81.

225. Cf. G. Grisez: op.cit., pp.81-82.

226. R. McCormick S.J.: "Notes on Moral Theology",

T.S.,	26 (1965) 496-662	T.S.,	35 (1974) 312-359
	27 (1966) 607-654		36 (1975) 77-129
	27 (1967) 749-800		37 (1976) 70-119
	29 (1968) 679-741		38 (1977) 57-114
	30 (1969) 635-692		39 (1978) 76-138
	32 (1971) 66-122		40 (1979) 59-112
	33 (1972) 68-119; 531-552		41 (1980) 98-150.
	34 (1973) 53-102		

R. McCormick S.J.: "Human Significance and Christian Significance", Norm and Context in Christian Ethics, pp.233-261.
: "Morality of War", N.C.E., XIV, pp.802-807.
: "Past Church Teaching on Abortion" Proc. C.T.S.A., 23 (1968) 131-151.
: Ambiguity in Moral Choice, The 1973 Pere Marquette Theology Lecture. Reprinted in Doing Evil to Achieve Good, pp.7-53.
: "The New Medicine and Morality", T.D. 21 (1973) 308-321.
: "Personal Conscience. Fundamental Moral Theology -2", Chicago Studies, 13 (1974) 241-252.
: "To Save or Let Die", America. 130 (1974) 6-10; 131 (1974) 169-173.
: "Transplantation of Organs: A Comment on Paul Ramsey", T.S., 36 (1975) 503-509.

our study of contemporary literature on the P.D.E. I say appropriately because this leading Catholic thinker has done much down through the years to publicize developments in the field of moral theology by means of the "Notes" which regularly appear in Theological Studies. Besides being a publicist McCormick is an excellent example of the theological moderate whose thought has developed as the years have gone by. His self-appointed task of commentator and critic, however, leaves one with the impression that his theological thinking is somewhat eclectic and imbued not a little with American pragmatism. To survey all McCormick's writings would take as far afield and distract us from the basic concerns of this thesis. Therefore, I shall restrict this brief study to the two conditions of the P.D.E. that have primarily concerned the American moralist, namely the second and fourth.

In his Pere Marquette lecture of 1973 McCormick proposed six theses, the first four of which concern us here in our consideration of intention. He proposes, first of all, that there is a difference between an intending and permitting will.[227] This is significant since the mere presence of an evil effect in a moral act does not determine the meaning of the act that occasioned it. Rather, the way the will relates to the evil is also relevant. McCormick here perceives two postures of the will vis-a-vis the evil - an intending

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Footnote 226 (continued)....
R. McCormick S.J.: "Sterilization and Theological Method", T.S., 37 (1976) 471-477.
: "Le principe du double effet", Concilium, 120 (1976) 105-120.
: "A Commentary on the Commentaries", Doing Evil to Achieve Good, pp.193-267.

227. Cf. R. McCormick: Ambiguity, pp.70-72.

will which is more willing that the evil exist than a permitting will which tolerates its presence.

McCormick's second thesis is that "in a conflict situation, the relation of the evil caused to the value sought is partially determinative of the posture of the will (whether intending or permitting)."[228] Non-moral evil may be present in human activity either (a) as an aspect of the act in which case there is no causal relation with the good effect, or (b)as a means with a necessary causal relation to the good envisaged. In the latter case the means is willed by the agent while evil, as an aspect of the act, need not be so willed. McCormick accepts in this regard the criterion offered by Grisez regarding the unity of the act as an indivisible process.

The basic analytic structure in conflict situations is that of the lesser evil or the "morally avoidable - unavoidable, evil."[229] Here McCormick argues that the P.D.E. has been traditionally used to resolve conflict situations and the general acceptance of the principle of the lesser evil would indicate that the basic category in resolving conflict situations is that of proportionate reason. In this regard McCormick makes a very perceptive observation that will be most relevant to the next section of this chapter.

> Because the evil caused (in resolving conflict situations by means of the P.D.E.) was so often genuinely incidental and associated with a permitting will (psychologically), the distinction between direct and indirect came to be identified with proper intentionality. That is, from

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228. R. McCormick: Ambiguity, p.72.

229. R. McCormick: Ambiguity, p.76.

> being a subordinate vehicle in service of the determination of the lesser evil it became a principle of this determination. Awareness of its broad rootage gave way to a concentration on the actions, their causality and the psychological posture of the will in explaining the idea of twofold effect. (230)

McCormick's fourth thesis is that both the intending and permitting will are to be judged teleologically, that is, by the presence or absence of proportionate reason.[231] In this the American moralist aims to steer a middle course between two extremes. In the past it was too readily concluded that if an evil occurred in conjunction with an intending will it was on that account immoral. This was particularly the case concerning the values of life and sexuality. The other extreme claims that it is simply the existence of the evil, not its relation to the intending or permitting will, which has moral significance.

From these four theses it is possible to conclude that McCormick wishes to avoid readings of the P.D.E. that rely solely on intending the good effects, on the one hand, or the achieving of beneficial long-range consequences on the other. It is for this reason that he counts himself as a "moderate teleologist". It is in this area that there has been a shift of emphasis in McCormick's thought. His earliest writings had a more strictly deontological bias. Carney, however, has gone too far in considering the American Jesuit a utilitarian.[232] Langan considers "McCormick's revisionism in moral theology to be conservative and clarifying rather than radical and

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230. R. McCormick: Ambiguity, pp.77-78. Parenthesis and emphasis added. See also Concilium, 120 (1976) 107-108.

231. R. McCormick: Ambiguity, pp.82-83.

232. Cf. F. Carney: "On McCormick and Teleological Morality", The Journal of Religious Ethics, 6 (1978) 81-107. McCormick replied to Carney in "Notes", T.S. 40 (1979) 71-77.

simplifying."[233]

At this point it is logical to develop McCormick's treatment of direct and indirect within a teleological framework. As, however, our author's thought evolved through dialogue with Bruno Schüller it will be better to delay our analysis to Section IV. It is sufficient simply to note that McCormick agrees with Schüller regarding the traditional role of the direct-indirect distinction. It has, in the past, reduced the consequences of adherence to the rule proscribing the taking of all human life or every attack on the fruitfulness of the sex act. This restrictive interpretation of the norm has effectively preserved a norm deontologically grounded.[234]

By a teleological norm McCormick understands "a norm in which consequences always play a determining but not the sole role."[235] This brings us to a consideration of proportionate reason in McCormick's writings. The final two theses in Ambiguity in Moral Choice will introduce McCormick's thought on this topic. In the fifth thesis our author claims that proportionate reason implies three things:

(a) "a value at least equal to that sacrificed is at stake;

(b) there is no less harmful way of protecting the value here and now;

(c) the manner of its protection here and now will not undermine it in the long run."[236]

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233. J. Langan: "Direct and Indirect - Some Recent Exchanges Between Paul Ramsey and Richard McCormick", Religious Studies Review, 5 (1979) 97.

234. Cf. R. McCormick: Concilium, 120 (1976) 107.

235. R. McCormick: Doing Evil to Achieve Good, p.200.

236. R.McCormick: Ambiguity, p.93.

The judgment of proportionality in conflict situations is a difficult one. Not only must the agent judge whether the choice is the best possible service to all the values in the conflict situation, nor must he consider only the quantative good that can be salvaged (a merely utilitarian calculus), but he must weigh such things as social implications, the test of generalizability, cultural and religious wisdom as well as the agent's own faith-intention.[237]

A general statement such as this regarding a judgment of proportionality implies, of necessity, a certain understanding of moral knowledge. Recently McCormick has briefly touched on this issue. He speaks of a connatural and prediscursive element in our act of knowing in the field of morality. Karl Rahner has spoken of a "moral instinct of faith" which implies that

> there is a component to moral judgment that cannot be adequately subject to analytic reflection. But it is this component that is chiefly responsible for one's ultimate judgments on concrete moral questions. In this sense these ultimate judgments are not simply the sum of the rational considerations and analyses one is capable of objectifying and no adequate understanding of proportionate reason implies this. (238)

McCormick applies this, then, to specific judgments of proportionate reason.

> I have suggested that when the causal relationship between the means (involving nonmoral or premoral evil) and the end is not a necessary one, then other basic and associated goods are brought into play and in a way that can be detrimental to the very good one is seeking to realize. I would suggest here that this detrimental relationship is something we understand in an intuitive, prediscursive way, without the full ability to state it adequately, in rational analysis. (239)

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237. Cf. R. McCormick: Ambiguity, pp.95-96.

238. R. McCormick: Doing Evil to Achieve Good, p.251.

239. R. McCormick: op.cit., p.251.

The second element of McCormick's epistemology concerns the individual and/or community who adopt(s) a hierarchy of values. Deontologists claim that teleological reasoning involves measuring what is incommensurable (viz. "basic goods").[240] McCormick acknowledges that basic goods cannot be measured one against another. But this is possible when the individual or the society adopts a hierarchy of values.[241] In this latter part McCormick attests to the influence of Grisez and Ramsey on his thinking especially with regard to the role of basic commitments and the place of incommensurable goods in the process of decision-making.

Now to return to McCormick's sixth and final thesis as it appeared in Ambiguity in Moral Choice. Our author argues that "the notion of proportionate reason is analogous."[242] The basic criterion of proportionality is the ordo bonorum viewed in a Christian perspective,

> for it is the ordo bonorum which is determinative of the good one should attempt to do and the criterion of the objectively loving character of one's activity. (243)

In the light of this McCormick suggests three possible sense in which "proportionate reason" might be used.

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240. Cf. P. Ramsey: Doing Evil to Achieve Good, pp.69-75; 223-231
G. Grisez and J.M. Boyle Jr.: Life and Death with Liberty and Justice, pp.358-361.

241. R. McCormick: op.cit., pp.251-252. The author sees "association of basic values", "proportionate reason" and "adoption of a hierarchy of values" as attempting to say the same thing, or at least as very closely related. (p.253).

242. R. McCormick: Ambiguity, pp.97ff.

243. R. McCormick: Ambiguity, p.98. Both Janssens and Schüller have made initial attempts to articulate the content of a normative love ethic based on the ordo bonorum. Cf. L. Janssens: "Norms and Priorites in a Love Ethic", pp.219-230.
B. Schüller: "Various Types of Grounding for Ethical Norms", pp.189-198.

(a) Proportionate reason is used in situations where the only alternative to causing or permitting evil is greater evil (e.g. the mother-child dilemma; a drowning swimmer and a bystander who cannot swim).

(b) Proportionate reason operates where the alternatives are not so obvious (e.g. where I lay down my life for another).

(c) Some acts or omissions are proportionately grounded because of human weakness and immaturity. Thus the scholastic axiom: caritas non obligat cum gravi incommodo. [244]

Apart from a more precise understanding of the direct-indirect distinction which we will soon discuss McCormick attests to one other area of development in his thinking. This occurs in the way the will approaches evil in assessing proportionate reason.

Earlier we observed that McCormick considered that an "intending" will is more "willing" that an evil exist than would a "permitting" will. Schüller objected to this explanation.[245] He argued that where moral evil is concerned intending it necessarily involves approval of it precisely because it is unnecessary. Such approval manifests fundamentally bad moral attitudes and dispositions - what Grisez and Ramsey would consider as turning against a basic good. Where non-moral evils are concerned, however, this need not be the case. Intending and permitting may in fact be vehicles of the same moral or mental attitude. Both may express an attitude of fundamental disapproval: "I would not be prepared to perform this act if...."

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244. Paul Ramsey has subjected this sixth thesis of McCormick to a somewhat savage attack in Doing Evil to Achieve Good, pp.131-134.

245. Cf. R.McCormick: Doing Evil to Achieve Good, p.264.

> In terms of approval and disapproval, then, permitting and intending as a means can pertain to the same moral category (disapproval) where nonmoral evils are concerned, whereas intending as an end necessarily implies approval. (246)

The implications of McCormick's re-reading of intending and permitting (direct-indirect) in terms of a more fundamental distinction, approval-disapproval, will be explored shortly. What is of interest, however, is the further modification to his teleological theory. McCormick's earlier explanation of his teleological approach has generated accusations that he was at heart a utilitarian. In speaking of direct killing of non-combatants in war the American moralist had argued in two stages:

(a) that the long term effects of such an action constitute it as an immoral act

(b) that these effects are to be traced to the directness of the killing.[247]

More recently McCormick has revised this teleological/consequentialist explanation. I quote his new understanding as an apt conclusion to this section.

> Certainly disproportionate actions (unnecessary harm) can be expected to have deleterious long-term effects. But these effects are not the determinants of wrongfulness in the types of cases under discussion. Wrongfulness must be attributed to a lack of proportion. By that I mean that the value I am pursuing is being pursued in a way calculated in human judgment (not without prediscursive elements) to undermine it. I would further explain (tentatively) the disproportion in terms of an association of basic goods whereby the manner of protecting or pursuing a good brings other values or goods into play and can be responsible for disproportion as a result. In other words, I would abandon the long-term effects explanation of teleology: but I see no reason for abandoning the teleology itself. (248)

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246. Cf. R. McCormick: Ambiguity, pp.86-93.

247. R. McCormick: Doing Evil to Achieve Good, pp.264-265.

248. R.McCormick: op.cit., p.266

IV THE DIRECT-INDIRECT DISTINCTION

The previous two sections of this chapter have, I believe, illustrated clearly the far-reaching reevaluation of our understanding of the human act and the P.D.E. that has occurred in the recent past and that continues today. There remains in this final section the task of coming to grips with recent developments regarding the direct-indirect distinction as used by recent moralists. Most consider that the principal issue to be discussed is the meaning and moral relevance of the distinction as it has come down to us through theological tradition. As we have seen on a number of occasions before in this thesis

> certain actions, when done with direct intent (direct voluntary) were regarded as morally wrongful, regardless of the circumstances, consequences, or limited available alternatives. And they were regarded as morally wrong precisely because they were directly willed. Thus if a killing had to be designated as direct (for example, an abortion), it was thereby morally wrong. For this reason certain actions viewed as directly willed were beyond the reach of teleological considerations. (1)

Considerable attention has been given explicitly to the direct-indirect distinction of recent times. This will be consideredin the first part of this section. In the second part we will briefly consider the implications of the present study of killing and letting die insofar as it has a bearing on our understanding of direct and indirect killing.

1. Direct and Indirect Killing

In our previous analysis of the writings of Richard McCormick we observed that there is a different attitude of the will in cases

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1. R. McCormick: Doing Evil to Achieve Good, pp.196-197.

of "willing" an evil effect and in "permitting" the same effect. Daniel Maguire is correct when he claims that the direct-indirect distinction based on the difference between willing and permitting "was made to bear a freight that it would not carry."[2] What resulted from this were two defects. Let us take the example of direct killing.

(a) "It led to too much artificiality by inaugurating a facility to countenance indirect killing of the innocent in a way that gave an undue tidiness to military slaughter;

(b) it contributed to an unnuanced absolutism which negated a priori all direct termination of innocent life for good reasons other than self-defence."[3]

As we shall see from the following discussion both these elements have been uppermost in the minds of moralists.

Bruno Schüller[4] begins his investigation of the direct-indirect distinction by observing that the distinction has been applied in traditional moral theology to questions of leading another into sin (scandalum activum), to cooperation in the moral failure of another (cooperatio cum peccato alterius) and also to acts such as suicide, killing the innocent, contraception etc.[5] Schüller's next move depends,

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2. D. Maguire: Death by Choice, p.120. For an analysis of the traditional use of the direct-indirect distinction see L. Rossi: "'Diretto' e 'indiretto' in teologia morale", Rivista di Teologia Morale, 3 (1971) 37-65.

3. D. Maguire: Death by Choice, p.120.

4. B. Schüller S.J.: "Direct Killing - Indirect Killing", Readings in Moral Theology No.1, pp.138-157.

5. B. Schüller: op.cit., p.139.

on the already explained distinction between moral and non-moral evil. In the case of scandal and cooperation the sin of another person is an absolute disvalue. This fact alone forces a distinction between directly and indirectly effecting such moral evils.[6] Where, however, non-moral evils are concerned the decisive reason which led to the distinction between direct and indirect (intended and permitted), namely the absoluteness of the disvalue, disappears. If one judges a disvalue ought to be avoided, removed or prevented, and this disvalue is not absolute (but is a relative disvalue), then it is to be avoided only conditionally. The condition under which a relative disvalue should be avoided is this: "if it does not concur competitively with another relative value but one that is to be preferred to it, or with an absolute value."[7] For example, illness is to be avoided but not at any price (e.g. reducing one's family to poverty).

From this line of thought Schüller argues that

> for the sake of a correspondingly important good, one may merely permit a moral evil or cause it indirectly. But he may intentionally desire and directly cause the non-moral evil. (8)

Effectively the German moralist has built on his teleological theory and his distinction between moral and non-moral evil such that the direct-indirect distinction is to be considered morally decisive only with regard to moral evils. The infliction of non-moral evils is to be justified on the grounds of proportionate reason.[9]

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6. Cf. B. Schüller: op.cit., pp.140-142.
7. B. Schüller: op.cit., p.143.
8. B. Schüller: op.cit., p.144.
9. Cf. B. Schüller: op.cit., pp.154-155.

Richard McCormick initially agreed with Schüller's restrictive application of the direct-indirect distinction.[10] But a year later we find the American moralist reassessing his position. He became convinced that the difference between permitting and intending (direct and indirect) continues to be relevant in cases where non-moral evil is concerned. In McCormick's view, as we have noted earlier, there is a psychological difference between my intending a non-moral evil as a means and my permitting a non-moral evil as an effect. The real question then is whether the different relationship of the will to evil, in intending and permitting non-moral evil, is truly morally significant?[11]

In order to test his thinking McCormick ponders the principle of discrimination in the conduct of war (i.e. non-combatant immunity).[12] He wants to hold that direct killing of non-combatants in war is morally evil and that it is a "virtually exceptionless moral principle". The only way open to McCormick to substantiate this position is through teleological argumentation. He must show that there is a difference between the intended deaths of non-combatants (to sap the enemy's morale) and the permission of non-combatant deaths as a result of normal military activities. The resulting teleological argumentation hinges on two factors:

(a) the foreseen consequences are morally decisive.

"Taking innocent human life as a means removes restraints and unleashes destructive powers which both now and in the long

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10. Cf. R. McCormick: "Notes", T.S. 33 (1972) 71-72.

11. Cf. R. McCormick: Ambiguity, p.58.

12. Cf. R. McCormick: Ambiguity, pp.59-61; 86-93.

run brutalize sensitivities and take many more lives than we would now save by such action."[13]

(b) The killing of innocent people as a means (i.e. directly) in warfare is wrong because there is no proportionate reason for doing this. The "virtually exceptionless" norm prohibiting direct killing of non-combatants could also be argued from lex lata in praesumptione periculi communis (i.e. a law established on the presumption of common and universal danger). Just as norms proscribe the lighting of fires in the open in times of drought so we have norms proscribing direct slaughter of the innocent in times of war.[14]

Recently Bruno Schüller has subjected McCormick's position to detailed analysis.[15] The German moralist has sought to unravel some of the implications in the will-postures of intending and permitting. He perceives in the moral agent's attitude to good and evil certain attitudes of approval and disapproval. Approval and disapproval are contrary opposites. As long as the attitude revealed in my action inducing another to wrongful conduct or causing a non-moral evil entails approval then such activity would be morally wrong. But

> whereas intending and permitting someone's wrong conduct are related to one another in the manner of contrary opposites, intending a nonmoral evil as a mere means and permitting a nonmoral evil, considered as attitudes of will, differ in degree not kind. In the latter case of

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13. R. McCormick: Ambiguity, p.87. Cf. J. Langan: op.cit., p.97.

14. Cf. R. McCormick: Ambiguity, pp.90-93. McCormick also develops this approach in questions of medical ethics. See "The New Medicine and Morality", T.D., 21 (1973) 319-320. A.R. Di Ianni considers that in his theological assessment of the principle of discrimination and the case of judicial murder (cf. Ambiguity, pp.63-65) McCormick has espoused a type of rule-utilitarianism. (op.cit., pp.364-366).

15. Cf. B. Schüller: Doing Evil to Achieve Good, pp.176-191.

> nonmoral evil the crucial demarcation line does not run between intending and permitting, but between intending as an end on the one hand and intending as means or permitting on the other hand. (16)

McCormick, with his usual facility, summarizes the basic insights of his German confrere:

> Schüller argues that where nonmoral evils are concerned, intending and permitting are as morally significant as they entail approval or disapproval of the nonmoral evil. But intending as a means and permitting both may reveal disapproval ("I would not carry out..."). Therefore, it is not intentional (direct, as a means) killing that is wrong, but only that killing that entails approval - namely, killing intended as an end and unnecessary killing. And I suspect that Schüller would say that these two categories (as an end and unnecessary) are practically the same. (17)

In his response to Schüller's criticism and argumentation McCormick admits to being persuaded. It is here that one can observe the eclectic character of McCormick's thinking. Earlier, reference was made to the epistemology McCormick considered necessary for any discussion of proportionate reason. In giving great importance to reflection and choice one can observe a parallel to the Thomistic natural law approach of Grisez. Now McCormick accepts that direct killing of non-combatants is wrong because

> such killing is disproportionate to the good being sought because it undermines through the association of basic human goods the very good of life. Briefly, all things considered, it cannot be said to be necessary. (18)

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16. B. Schüller: Doing Evil to Achieve Good, pp.190-191.

17. R. McCormick: Doing Evil to Achieve Good, p.257.

18. R. McCormick: Doing Evil to Achieve Good, p.257.

It would appear that McCormick has accepted the approach of Grisez and Ramsey[19] regarding basic goods, their association together making for human flourishing and the significance of turning against a basic good. In so doing, however, McCormick has not become a deontologist with his compatriots. Rather the notion of an association of basic goods has permitted him to refine his teleological argument condemning the direct killing of non-combatants. Rather than simply weighing long term consequences McCormick has focused on the proportion between the means used and the value(s) sought. Disproportion arises not only from the means-end framework but requires consideration of other related values which enter in. If the evil involved in the means proposed is equal to or greater than the goods/values envisaged then disproportion is said to exist. These means bring about unnecessary premoral evil. This effectively signals the agent's basic approval of evil which is itself sinful.[20]

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19. Paul Ramsey has been an involved participant in much of the Roman Catholic moral discussions during the last decade, especially in the area of life-issues (abortion, euthanasia, medical ethics). Ramsey's deontology is obvious in the following:
"Abortion: A Review Article", Thomist, 37 (1973) 174-226.
"The Morality of Abortion", Moral Problems, (ed.) J. Rachels, pp.37-58.
"On (Only) Caring for the Dying", Ethical Issues in Death and Dying (ed.) R.F. Weir, pp.189-225.
"Incommensurability and Indeterminancy in Moral Choice" Doing Evil to Achieve Good, pp.69-144.
Ethics at the Edges of Life. Medical and Legal Intersections.

20. McCormick's modified teleology appears to be operating when he discusses guidelines and quality of life questions in "To Save or Let die", America, 130 (1974) 6-10.

Reference has already been made to the thought of A.R. Di Ianni S.M. with regard to moral and non-moral values, and his insistence that acts such as homicide have a "minimal moral meaning" and so are intrinsically evil in a weak sense.[21] He argues, as well, that the distinction between direct and indirect killing is morally relevant. In this he reacts to McCormick's earlier opinion based on the long term consequences of indiscriminate bombing, for example.[22] Di Ianni's own position is developed within an axiological framework. Direct killing is wrong, he claims, because it violates "dignity-values", as against "welfare - values". The values of welfare "center about the fulfillment of whatever potentials for action and enjoyment an entity might have, life, health, pleasure, power etc."[23] Values of dignity have little to do with these. Dignity-values are such things as self-respect, autonomy, fidelity, justice, trust, integrity etc. These values are of far greater importance and must be given greater weight in conflict situations.

Di Ianni sees the direct-indirect distinction as an important second level moral distinction.

> It is rooted in and is expressive of a more basic first-level moral distinction, the distinction between the more important dignity values and less important welfare values. It is valid because it generally generates conclusions which coincide with the conclusions generated by the more basic dignity/welfare value distinction. It is moreover practically valuable as a tool because of its greater tangibility. (24)

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21. pp.270-272 above.

22. Cf.A. Di Ianni: op.cit., pp.363-366.

23. A. Di Ianni: op.cit., p.370.

24. A. Di Ianni: op.cit., p.372.

In practice direct killing is worse than indirect killing because the former carries both types of disvalue ("indignity" and "ill_fare") whereas the latter causes "ill_fare" alone if there is a proportionate reason.

> To aim at an innocent man's death as an end or even as a means to a good end is usually to treat him as an object, as a non-person (a non-freedom), as a mere means, whereas to aim at a proportionate good knowing that evil to another person will also arise as a not-aimed-at side-effect is to produce some illfare but not a violation of dignity. Even this much should be avoided as much as possible but the latter may be tolerable whereas the former could hardly ever be. (25)

By means of his understanding of intrinsically evil acts in the weak sense and his dignity-welfare values distinction, Di Ianni argues that "practical behavioral absolutes" must be set up to proscribe activity that is devastating to human dignity and human welfare. Thus, like McCormick, our author accepts the necessity of "virtually exceptionless norms" in the human community.

In spite of his axiological framework Di Ianni appears to be a modified teleologist like McCormick - but for different reasons. Two comments seem appropriate here. One wonders whether Di Ianni has made an artificial distinction between dignity values and welfare values. Catholic moralists arguing for "proportionate reason" include in this notion what Di Ianni calls dignity values. In fact dignity-values do not eliminate a teleological understanding of norms; rather, they form part of it.[26]

The second criticism presupposes this basic question. Di Ianni argued that direct killing of an innocent person brings indignity and

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25. A. Di Ianni: op.cit., p.377.

26. Cf. R. McCormick: "Notes", T.S., 39 (1978) 108-109.

"illfare" on the victim, whereas indirect killing, for a proportionate reason, causes "illfare" alone. McCormick is right to ask why this should be.

> Unless Di Fanni says more about the meaning of direct and indirect intent, that difference seems stipulative. That is, it supposes the very thing that is to be established, scil., that there is a morally significant difference in the two types of action. As stipulative, therefore, it seems to beg the question. (27)

The final approach to the direct-indirect distinction that we will need to consider in this section is proposed by Franz Scholz.[28] He explores the direct-indirect distinction by a study of (a) object and circumstances, (b) essential effects and side effects.

In the narrow sense of the word, "circumstance" refers to an aspect of the human act which is extra substantiam existens.[29] Gradually the notion of circumstance became associated with that of accident. But, as Scholz points out, some circumstances affect the

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27. R. McCormick: op.cit., p.108.

28. F. Scholz: "Wie indirekt ist das indirekt Gewollte? Wege, Umwege, und Auswege der Moraltheologie, pp.61-126.
: "Objekt und Umstände, Wesenswirkungen und Nebeneffekte. Zur Möglichkeit und Unmöglichkeit indirekten Handelns", Christlich Glauben und Handeln, (eds.) K. Demmer and B. Schüller pp.243-260.

29. Cf. S.T., I-II, q.7, a.3. In scholastic literature circumstances are generally classified as quis, quid, ubi, quibus auxiliis, cur, quomodo, quando.

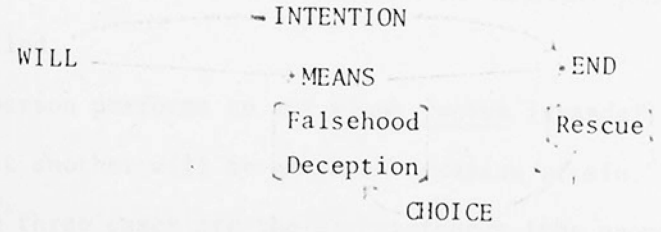
very essence or substance of the human act.[30] This variability of circumstance can be very easily overlooked when the term is associated with that of accident.

Scholz turns his attention next to the notion of accidental and essential effects. Essential effects are those which proceed from the substance of the act, whereas accidental effects are not produced by the act's substance but proceed from another cause.[31] Now when circumstances pertain to the essence of the act (i.e. its object) they cannot be said to produce side effects that are merely accidental. The important question is, therefore: which circumstances in a given case are to be counted in the object itself and which

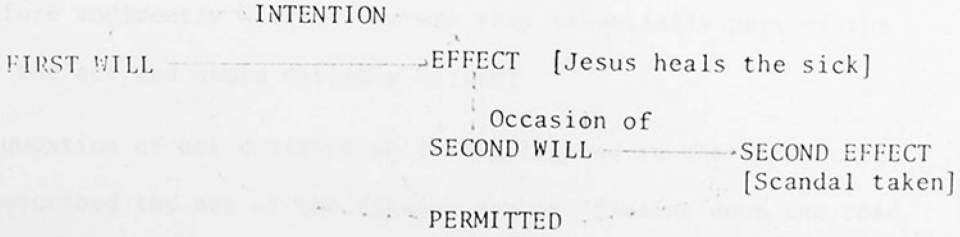
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30. Cf. F. Scholz: Christlich Glauben und Handeln, pp.247-249.

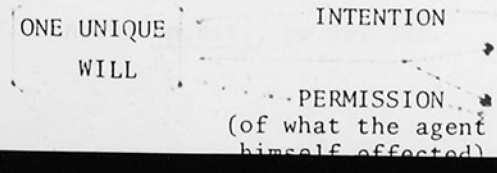
31. In Wege, Umwege und Auswege, pp.76-77 Scholz offers three diagrams to illustrate differently structured acts
(a) Example 1: speaking a falsehood to rescue another (i.e. using an evil means to a good end). Falsehood is directly willed.



(b) Example 2: Jesus heals the sick person. The Pharisees take scandal. The evil effect is brought about by another cause. It is indirect.



(c) Example 3: Person rescues another but in so doing has to cut off an arm that was trapped. The act with double effect.



are to remain accidental?[32] No a priori answer can be given to this question, Scholz argues; only life itself, reality itself provides a solution. On the basis of the answer given to the question will we be able to distinguish direct and indirect actions.

To illustrate the above theory Scholz takes three traditional casus we have seen already:

(a) An unarmed person meets an enemy who is intent on killing him. The only escape is by horse on a road occupied by a group of blind and crippled persons. He rides down the road killing and maiming many as he escapes. Traditionally moralists have argued that the presence of people on the road was accidental. This is a circumstance external to the object of the act and so their deaths were judged to be side effects of the act (i.e. unintended, indirect).

(b) Non-combatants in a fortress under attack: the attacker does not will their deaths. The cause (i.e. the explosions) and not the effect (i.e. deaths of innocent people) is directly willed.

(c) A person performs an act minus rectum (scandal) and foresees that another will be given an occasion of sin.[33]

In the above three cases are the circumstances (the people on the road, in the fortress; the person nearby) side effects of the principal action(s) - and therefore indirectly willed - or are they essentially part of the object of the act and hence directly willed?

The question of act description is highlighted in the first case. Authors described the act of the fleeing man as "fleeing down the road

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32. Cf. F. Scholz: Christlich Glauben und Handeln, p.251.

33. Cf. F. Scholz: op.cit., pp.252-253.

on a horse". Scholz objects to this restrictive reading of the object of the act since it relegates to a side-effect what pertains to the object of the act. Our author argues that this is a realistic interpretation of what occurs in fact. The escaper, therefore, cannot claim that he merely permitted the death and injuries. Rather they are means and so are directly willed.[34] So, too, in the case of the general attacking the fortress. He regrets the death of innocent people, but their deaths are a sine qua non condition of his reaching his goal (viz. taking the fortress).

> But he who is ready - under the call of an end - to realize a sine qua non condition, acts in exactly the same way as he who chooses an appropriate means (viz. directly). (35)

In the third case, Scholz argues, there is a true side effect since the operation of another cause is required.

Scholz's analysis of familiar cases leads him to believe, as a result of his reflections on object-circumstances, essential effect - side effect, that in the first two cases the deaths are not indirect. Rather they are a modified form of direct willing (i.e. secundum quid, with regret). The German moralist offers here an alternative to the direct-indirect distinction as traditionally used. It is "direct- but only for a proportionate reason."[36]

> Here, then, is yet another theologian who argues that every human choice is the resolution of a conflict, that the direct-indirect distinction is only descriptive, and that when actions were legitimated as indirect permitting

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34. Cf. F. Scholz: op.cit., pp.254-256.

35. "Wer aber unter dem Befehl des Zieles bereit ist, die conditiones sine qua non zu realisieren, handelt ebenso wie der, der das geeignete Mittel wählt, direkt." (op.cit., p.257).

36. F. Scholz: op.cit., p.258; Cf. Wege, Umwege und Auswege, p.126. In this Scholz acknowledges the influence of P. Knauer.

> of evil, actually they were morally direct in most cases, even if in a qualified form (secundum quid, with regrets: 'I would not be prepared to do this unless I had to). Hence Scholz is arguing that there is no morally significant difference between direct and indirect actions where nonmoral evils are concerned. (37)

In this last sentence I believe McCormick has put his finger on the pulse of contemporary Roman Catholic moral theology regarding the direct-indirect distinction. Recent questioning of its meaning, descriptive value and moral significance have indicated the "short-hand" value the distinction has had in moral theology in the past. It assumed a particular understanding of the human act and a particular interpretation of the P.D.E. Present rejection of the significance of the direct-indirect distinction (at least regarding non-moral values/disvalues) indicates a different appreciation of human actions and the P.D.E. as we have observed earlier in this chapter. Briefly now, to conclude our analysis of the distinction, it is necessary to discuss present analyses of the "killing-letting die" distinction so as to see if it contributes anything of value to what we have already concluded about direct and indirect as applied to killing.

2. Killing and Letting Die.

The issue of "killing" and "letting die" like the question of "direct" and "indirect" killing is bedevilled by the "lack of a profound and precise understanding of the moral relevance of these distinctions."[38] In fact when we speak of "killing" and "letting die" we are primarily speaking of acts and omissions, that is where a person performs an action or refrains from doing so. In chapter two we noted how St. Thomas's

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37. R. McCormick: "Notes", T.S., 39 (1978) 106.

38. R. McCormick: "Notes", T.S., 34 (1973) 70.

use of voluntarium indirectum (as applied to the effects of an omission) was elided with the notion voluntarium in causa such that the moralists of the 16th and 17th centuries used the concept of voluntarium indirectum (in an enlarged sense) to include those effects caused obliquely, as well as the effects of an omission. Hence, today, any discussion of direct and indirect killing can be seen to concentrate on caused activity (i.e. actions). Questions arising from the dying process and the developments of medical care have raised again the moral significance of the acting-refraining distinction.

To introduce our discussion of killing and letting die it might be useful to adopt Von Wright's distinction of acts and omissions into four elementary types.[39]

(a) Positive acts may be either

- productive, e.g. John ate some deadly berries, or
- preventive, e.g. John stopped his sister from eating deadly berries.

(b) Omitting acts may also be either

- productive, e.g. John refrained from eating the berries, or
- preventive, e.g. John let his sister eat the deadly berries.

The four examples that basically concern us can fit this pattern:

(a) directly killing someone;

(b) suspending treatment for a terminal disease (e.g. by switching off the respirator);

(c) refusing to operate on a (retarded) child, or not putting a patient on a respirator that would keep him alive;

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39. Cf. G.H. Von Wright: An Essay in Deontic Logic and the General Theory of Action, p.39.
: Causality and Determinism, p.39 quoted by Linacre Centre Papers, No.2, p.3.

(d) not using all the life support measures available for a terminally ill patient, or not preventing another from giving the patient a lethal injection. (40)

Before we discuss the approaches of a select number of moralists to the killing - letting die dichotomy and before we consider the distinction in greater detail it would be best to advert briefly to the larger background issues that, ultimately, may prove to be more decisive than the killing - letting die distinction.

Implicit in all the literature on the question of killing and letting die is an understanding of death and a particular attitude towards it. One basic question today with more and more urgency is: what is a natural death? Daniel Callahan has argued that contemporary man, whose medical advances have created a good number of problems related to death, has sought to solve such problems by developing more technology. The way we isolate the dying, the way we speak of death and relate the experience of another's death to our own lives and many other things bespeak a particular attitude to the reality. Medical personnel become "interventionist" (e.g. by eliminating defectives or the retarded) or "vitalist" in their thinking (by keeping the dying alive at any cost). These and many other elements operate in the discussion of death - both popular and scientific.[41]

In discussing issues of death, particularly for the terminally ill, many speak of simply hastening the inevitable. Grisez and Boyle put their finger on this question:

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40. Cf. Linacre Centre Papers, No.2, p.11; H.F.Moore: "Acting and Refraining", Encyclopedia of Bioethics, I, p.36.

41. Cf. R.McCormick: "The New Medicine and Morality", T.D. 21 (1973) 320-321.

> it must be noticed that hastening death is bringing about death; no one lives forever, and so all killing merely hastens death. The essential factor from a moral point of view is, not whether a person killed already is dying, but whether one's performance or omission executes a proposal that one bring about the state of affairs which includes the person's being dead when one thinks that otherwise they might be alive. (42)

Traditionally, Roman Catholic theology, in discussing care for the dying, has distinguished between the use of ordinary and extraordinary means to that end.[43] The degree of hardship in a given set of circumstances was considered the dominant element in deciding what may be ordinary or extraordinary means of prolonging life. Contemporary life-sustaining techniques have shifted the problem "from the means to reverse the dying process, to the quality of life sustained and preserved ."[44]

In the Judeo-Christian tradition life has been considered a relative good, and the duty to preserve it a limited one. The limits to this duty have always been expressed in terms of the means required to sustain life. Where individuals pursue the means of preserving life in such a way that life itself becomes an ultimate value then this would distort the true order of things. Life, according to McCormick, is

> a value to be preserved as a condition for other values, and therefore insofar as these other values remain attainable. Since these other values cluster around and are rooted in human relationships, it seems to follow that life is a value to be preserved only insofar as it contains some potentiality for human relationships. When in human judgement this potentiality is totally absent or

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42. G.Grisez and J.M. Boyle Jr.: Life and Death with Liberty and Justice, p.415.

43. On ordinary-extraordinary means see Linacre Centre Papers, No.3; S.Bok: "Ethical Views", Encyclopedia of Bioethics, I, pp.270-271.

44. R.McCormick: "To Save or Let Die", America, 130 (1974) 8.

> would be, because of the condition of the individual, totally subordinated to the mere effort for survival, that life can be said to have achieved its potential. (45)

The American Jesuit applies his guideline of "potential for human relationships" to decisions about sustaining the lives of grossly deformed or deprived infants.[46] Sufficient has been said here for us to appreciate the changed emphases and the nature of the issues that must be presupposed if killing and letting die are to be adequately discussed.

Let us return now to the explicit contributions of four Roman Catholic thinkers on the killing - letting die distinction. Richard McCormick in an article in 1973 pursued the unrefined teleology we have discussed earlier.[47] He disagreed with authors who see in the inevitability of death no reason to distinguish (morally) killing and letting die. He suggests that descriptively different actions may have different short and/or long range implications and effects. On the basis of this a different calculus of proportion would be required. When all the values are weighed McCormick considers that what is proportionate for allowing a terminal patient to die is not proportionate for directly causing death.[48] In another place he states:

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45. R.McCormick, op.cit., p.9.

46. Cf. R.McCormick: op.cit., p.10. Paul Ramsey has discussed care for the dying and has argued only for two exceptional cases where the life of a dying person may be directly taken:
(a) for those "irretrievably inaccessible to human care";
(b) for the dying person undergoing deep, prolonged and intractable pain. Ramsey's reasoning attests to a concern with death and quality of life questions as does McCormick's thought.
Cf. P.Ramsey: The Patient as Person, pp.157-164. Discussed by R.McCormick in T.D., 21 (1973) 312-314; "Notes" T.S. 34 (1973) 67-69; and C.E.Curran: Politics, Medicine and Christian Ethics, pp.152-163.

47. Cf. R.McCormick: T.D., 21 (1973) 318-319.

48. Cf. R.McCormick: op.cit., p.318.

> I myself believe that there is moral significance in the traditional distinction, in the minimal sense that we ought to maintain the distinction in practice, though I am far from sure how we ought to analyze it. (49)

As we have seen with the direct-indirect distinction one might expect McCormick to alter his teleological approach on the killing-letting die distinction even though he has not recently written on the matter.

Bruno Schüller does not give detailed attention to the killing - letting die distinction.[50] He admits that someone committed to teleological reasoning should deny the ethical weight of the distinction since it is the consequence or result that matters. His own initial reflections lead Schuller to two conclusions:

> (a) death as a misfortune may not even be allowed by passive neglect or omission
>
> (b) death as a blessed release may not be brought about by active measures. It would seem that a favor vitae is being asserted here. (51)

Schüller appears to indicate, as we have already seen with the direct-indirect distinction, that the distinction killing-letting die operates in the context of prior moral "stances". Whenever we say that it would be a misfortune for someone to die, Schüller claims, we tend to reject the validity of any moral distinction. So letting a person die when we could save him may be assessed as killing him. However, when we judge it would be better for a person to die then we insist on the distinction.

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49. R.McCormick: "Notes", T.S., 37 (1976) 107.

50. Cf. B.Schüller, S.J., "Various Types of Grounding for Ethical Norms", Readings in Moral Theology, No.1. pp.196-198.

51. B.Schüller: op.cit., p.197.

Gerard Hughes S.J. does not challenge the distinction so much as reinterpret it.[52] He takes up much the same point as that made by Schüller:

> The distinction between 'killing' and 'allowing to die' seems almost to depend on our moral judgment of the cases concerned rather than to provide a basis for that moral judgment. (53)

In considering the question of intention Hughes proposes the cases of two terminally ill patients, both comatose. The first one is supported by a heart-lung machine without which he would die in a few minutes. The other will die within a few days but if given an injection will die in the same time as the first patient should the machinery be shut off. Hughes can not see any difference between the two cases if the machine is shut off and the patient is given an injection.

Hughes concludes from his study that what is crucial are the attitudes of wanting a person dead or not wanting him dead. It is the agent who wants someone dead who is a threat to human life and to our rights. The distinction between killing and letting die is the practical way of maintaining the deeper distinction intact.[54]

> Thus the traditional distinction is important not of itself but instrumentally. It is, in a sense, only the best policy formulation we have for keeping the more crucial distinction alive and central in decisions involving life and death. (55)

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52. Cf. G.Hughes S.J.: "Killing and Letting Die", The Month, 236 (1975) 42-45.

53. G.Hughes: op.cit., p.43.

54. Cf. G.Hughes: op.cit., pp.44-45

55. R.McCormick: "Notes", T.S., 37 (1976) 106. For a critical assessment of Hughes and McCormick see G.Meilaender: "The Distinction between Killing and Allowing to Die", T.S., 37 (1976) 467-470. This author argues that neither Hughes nor McCormick have developed the discussion beyond Paul Ramsey in The Patient as Person (ch.3).

Daniel Maguire is one of the moralists who argue

> there may be cases where action (or inaction) to end one's own or someone else's life may be moral and good human behaviour. It is my contention that to deny that possibility a priori is to betray a taboo mentality which proscribes certain actions without sensitivity to their meaning - giving circumstances (56)

In his argumentation the American moralist gives four reasons why he considers acts and omissions differ in death-by-choice situations:

(a) they may differ in their effects,

(b) their deliberateness;

(c) in omission agency is diffuse - it is easier to say who did it than to say who did not do it;

(d) there are moral differences among omissions, e.g. not steering one's car from a child in its path; not stopping to tackle an armed robber; not giving insulin to an otherwise healthy diabetic; not giving insulin to a terminal cancer patient in pain; not attending to and caring for a dying patient after all medicine has been stopped. Commissions, too, take an infinite variety of forms. (57)

While Maguire's arguments for death by choice in special cases are open to criticism[58] it is unclear to me whether he attributes a morallysignificant difference to killing and letting die or simply chooses to see a descriptive difference.

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56. D.Maguire: Death by Choice, p.76.

57. D.Maguire: op.cit., pp.115-120.

58. R.McCormick in "Notes", T.S., 34 (1973) 70-72 subjects Maguire's arguments to criticism as they appear in "The Freedom to Die" Commonweal, 46 (1972) 423-427. Essentially the same arguments are used in Death by Choice.

The above brief discussion of "killing" and "letting die" indicates that it closely parallels the discussion on direct and indirect killing. A number of Roman Catholic moralists, while accepting the descriptive value and practical usefulness of the distinctions, have placed it within a larger framework. H.F.Moore puts it in this fashion:

> the issue that should play a central role in this moral discussion is not so much the narrow one of acting or refraining, but rather the rules that will define an appropriate and justifiable set of expectations.

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59. H.F.Moore: op.cit., p.37.

CONCLUSION

Situations of conflict and questions of moral responsibility for the evil effects of one's conduct have been the primary concern of the P.D.E. down the centuries. This thesis has attempted to indicate the efforts made by Roman Catholic scholars as they confronted these issues. By tracing the development of the P.D.E. we have been enabled to appreciate the close interrelation between the theoretical understanding of the human act and the pastoral endeavour to reach correct decisions regarding the morality of certain types of acts in different moral dilemmas. In concluding we will now attend to two tasks.

First, we shall indicate briefly some of the main conclusions to be drawn from our historical study of the human act and the P.D.E. I believe this thesis will contribute to the present reevaluation of fundamental moral theology especially in the area of the human act by bringing together the historical and analytic elements we have considered. To my knowledge this has not been done before. In the second place we will outline the issues and conclusions we are able to draw regarding the direct-indirect distinction as it has been and is being used in Roman Catholic moral theology. The great mass of studies on the direct-indirect distinction have been primarily analytic or have restricted themselves to a particular problem. Through our study we have developed previous investigations (a) by locating the direct-indirect distinction in a

broader historical context and especially in the framework of the human act and the P.D.E. In addition to this we have (b), studied "direct" and "indirect" as used in a range of issues arising from the commandment: "thou shalt not kill".

1. Our investigation of the extensive historical period and range of literature pursued in this thesis suggests the following conclusions:

1.1 The evaluation of evil effects in different moral dilemmas has taken place within three different conceptual frameworks. The framework itself is the way in which man sees himself as an individual and as a member of society. As well, his perception of the world and God enter in to his self-appreciation at each stage of human history.

In the medieval outlook of Aquinas the moral agent is understood as belonging to an hierarchically ordered cosmos under God. The structure of St.Thomas's argument in S.T., II-II, q.64 aptly indicates this hierarchic understanding. Life is a gift of God given into man's hands. As steward he may not arrogate to himself powers to kill that he does not possess. For the common good civil authority may put a person to death directly. Thomas's contribution to moral reflection was to justify killing in self-defence on the basis of a natural law argumentation that assumed the hierarchical structure of his world view. Only indirect killing was permitted to the private individual.

The world-view and self-understanding that we find in moralists of the sixteenth and subsequent centuries shifted the emphasis to "man-as-responsible". The self-consciousness of Descartes is paralleled by the moralists we considered in Chapter 2. Their concern with the moral agent and his subjective conscience before God, the law-giver, coloured much of their moral reflection.

In contemporary thought the individualism of earlier moral literature has given way to a concern for "man-in-relationship." This is seen as occurring in a world of change and growth. One might even go so far as to say that modern man views himself and his world as possessing very few certainties and absolutes.

These three differences in perspective are of considerable significance in assessing the issues of this thesis.

1.2 The second conclusion to be drawn from the preceding five chapters is the role and importance the historical context has at any given period of history on our understanding of the human act. In Chapter 1 the medieval discussions on different aspects of moral activity as well as the received tradition on homicide are of importance to our understanding of Aquinas and his writings. In Chapter 2 an awareness of Nominalism and its emphasis on the role of the will in human activity is important for an appreciation of post-Reformation casuistry. The enduring influence of Augustine - especially his anthropology and explanation of sin - pervaded much of Jansenist thinking and the moral rigorism of the 17th and 18th centuries.

The manuals, in shifting the treatise de actibus humanis from its place as a preface to the study of sin (as we find it in Alphonsus) to the early part of their study of fundamental moral theology, attest to the thinking of a post-Reformation Church engaged in building up a coherent theological synthesis in a world of competing religions and philosophies. The comprehensive analysis of the structure of the human act was expected to facilitate surety of mind and conscience in particular moral situations.

Contemporary moral reflection on the human act indicates a dissatisfaction with the manualist teaching, especially its "physicalist" emphasis, and a renewed appreciation of the theological and empirical elements that are relevant to our assessment of moral activity.

1.3 The dominant model of human activity that governed our study of the moral act during the first four chapters was that adopted by Aquinas. Human activity was viewed as "movement" in space and time. Even the teleological emphasis of the Summa Theologica assumes this fact. The five models illustrated in the first two chapters of the thesis indicate this underlying appreciation of the moral act. The implications of the five models proposed will be explored shortly. What is important to note here is the fact that the paradigm of "movement" in space and time is, for modern thinkers, inadequate to explain the reality of human behaviour in our contemporary world. Recent emphases on the personalist, inter-subjective and communitarian aspects of the moral act, as well as such factors as an act's value or significance, would seem to indicate

that the traditional model of motus is at present being modified, replaced or developed in different areas of contemporary moral literature.

1.4 This last point is extremely important for our understanding of the P.D.E. Throughout its history the P.D.E. has presumed the Thomistic analysis of the human act. Our study enables us to reach the following conclusions regarding the P.D.E.

1. St.Thomas, in his treatment of killing in self-defence, does not articulate the P.D.E. as we know it today. In S.T., II-II, q.64, a.7. Aquinas sketches an argument
   (a) that assumes the framework of questions 64i
   (b) assumes much of his other writing on intention and causality;
   (c) brilliantly synthesizes and simplifies the previous theological and canon law discussions on homicide.

   This he absorbed within the framework of his moral theology as developed in the Secunda Secundae of the Summa. Sufficient evidence has been offered to indicate that q.64, a.7 is a schematic answer proposed as an integral part of a larger work.

2. The detailed discussion of effects that are voluntarium in causa which occurred during the 16th and 17th centuries and the extensive discussion of cases concerning deeds of homicide, scandal, cooperation and those resulting in sexual

pleasure indicate an effort to define clearly areas of moral blame for the evil effects of otherwise unexceptionable activity. By means of the notion voluntarium in causa moral theologians attempted to explain how and why the moral agent was considered to be culpable for a clearly defined range of evil effects following on his activity.

3. When the treatise on the human act became a tract in fundamental moral theology the role of the voluntarium in causa as a tool explaining moral accountability for certain evil effects was absorbed into the more comprehensive P.D.E. The first three conditions of the principle merely articulated aspects of the moral act. (viz. its moral quality, the agent's intention and the act's causal structure) that had previously been assumed in the use of voluntarium in causa and the voluntarium indirectum.

4. Because of its historical roots it is not possible to view the P.D.E. as a principle in the way the principle of contradiction or the principle of the lesser evil is a principle. In its origins and its use in the manuals of moral theology (and other literature) the P.D.E. appears to be a tool or handy rule-of-thumb that enables us to disentagle difficult moral dilemmas concerning acts with two effects. This it does in such a way that the moral agent's responsibility for the ensuing evil effects is indicated but not necessarily proved. The implications of this last statement will be explored in a moment when we analyze the terms "direct" and "indirect".

5. The tendency in contemporary moral literature to reduce the P.D.E. to a principle of due proportion indicates a dissatisfaction with the notion of human activity underlying the double effect principle and a need to incorporate a wider range of factors (especially consequences) in the process of moral evaluation.

6. The continuing need in ethical reflection to consider morally relevant factors in dilemma or conflict situations and the need to show areas of moral accountability suggest that there will be a future role for a rule similar to the P.D.E. Contemporary reevaluations indicate that the P.D.E., in its present form, will be replaced by a rule which will assist practical decision-making and which will apply to a limited number of areas in the moral life.

2. In the context of the above conclusions it is now possible to propose some remarks and conclusions regarding the use of the direct-indirect distinction in Roman Catholic moral theology. Our analysis will proceed in two stages. First we shall investigate the implications for "direct" and "indirect" arising out of the changes in context and perspective we have indicated above. In the second part we shall explore the content, scope and significance of the terms "direct" and "indirect" as used in this thesis:

2.1 The historical and contextual approach employed in this thesis suggests that changes and developments in the human situation effectively change and develop our appreciation of the moral act. Our changed perception of the context within which the act occurs alters our perception of

the moral act to such a degree that it can be asked whether we are talking about the same reality both before and after the change.

The implications of this observation are best seen by referring to a number of situations already discussed in the previous five chapters. Aquinas's concern in studying killing in self-defence was to see all taking of life as a malum physicum. In his argument permitting justified killing in self-defence he insists on rightness of intention and moderate use of counter-force. When later moralists concentrated on the injury that could be inflicted by an aggressor and extended their treatment of killing in self-defence to include property, good name and bodily integrity it could be justly asked whether the perception of the human act of self-defence is identical in both cases. In the case of ectopic pregnancy the new medical appreciation of the fetus imbedded in the fallopian tube enables modern moralists to argue that a pathological condition alters the situation such that a new moral evaluation is possible. Developments in warfare, the possibility of organ transplantation etc., all suggest that a new context permits a new perception of the moral act that we specifyas being "direct" or "indirect". This line of thought would appear to be substantiated by the historical development of the P.D.E. Later moralists used St.Thomas's text, S.T., II-II, q.64, a.7 for new problems and imposed their interpretation on his argumentation (cf. Cajetan and Lessius). The manuals viewed killing in self-defence in the same way as other acts which have effects that are voluntary in their cause.

It would appear that the traditional applications of the P.D.E. and explanations of the direct-indirect distinction have not taken account of the effect changes in context have had on the moral evaluation of the human act. This brings us to the question as to how one describes the moral act. Between the two extremes - one which absorbs all activity under the umbrella of intention, the other which gives a pre-eminent place to the performance or object of the act - there lies a middle position which we observed Aquinas and John of St.Thomas attempting to sustain.

In the five models given in the first two chapters of the thesis we have the possibility of describing the same external performance in three different ways. Let us take our standard example of killing in self-defence. Thomas's treatment may be adequately expressed in terms of model 3. Cajetan and later moralists propose that the same case may be expressed in terms of model 2 (either as means-end or proximate-remote ends) or as end and consequence (model 4). It appears from our study that the selection of the model to explain the act of killing in self-defence, or any other acts with two-fold effect for that matter, at any particular period of history, is governed by the context as perceived by the individual moralist. This is important since a purely textual assessment of the arguments proposed confuses the observer with differences of emphasis and terminology which, I would argue, are indicative of changed context and altered perceptions of the moral act.

It seems clear from what we have studied in this thesis that the historical context is not the only influential factor in the way we approach a particular piece of behaviour. The agent and moralist themselves approach it with a particular frame of reference and particular priorities. This point is of special importance since a mere reading of texts discussing S.T., II-II, q.64, a.7 would indicate that the basic dividing line between variant interpretations hinges on the understanding of intentio in the text of Aquinas. Certainly Mangan does have a point in identifying the issue of "intention" in St.Thomas's text on killing in self-defence. He misses the mark, however, when he overlooks the different priorities and frameworks that operate when the agent performs an act of self-defence or when a moralist discusses the same issue from the viewpoint of a dispassionate observer.

It is being argued here that the way we describe a particular act-event, be it in terms of acts and consequences, means and ends, proximate and remote ends and the way we draw the line in particular moral situations are governed by prior moral commitments. What is said here of human acts may be said equally of other disputed issues referred to in the course of this thesis. Distinctions such as those between deontological and teleological methods of normative ethics, the possibility of intrinsically evil acts and absolute norms, make up a family of closely related issues with those just referred to above concerning the moral act. What has been said of prior commitments, frameworks and priorities regarding the agent or moralist as he "reads" a particular piece of human activity

could easily lead us to investigate some of the epistemological questions, understandings of "experience" and prediscursive elements (cf. McCormick) that were mentioned in Chapter 5. This, however, would distract us from our primary concern, namely, the direct-indirect distinction. Sufficient has been said for us to analyse the distinction in greater detail.

2.2 The direct-indirect distinction as used in Roman Catholic moral theology appears to be grounded on a circular and inadequate type of argument. Let us take the now familiar mother-child dilemma. Both will surely die unless a craniotomy is performed. Should this be performed the mother's life would be saved and the eventual death of the fetus merely hastened. The craniotomy operation can be said to have two effects - one good, the other evil. Moralists have studied the dilemma and have indicated that to crush the head of the fetus is direct homicide, which is immoral. If, however, the fetus happened to reside in a cancerous uterus its death would only be indirect should the uterus be removed. The discussion of both these cases involved detailed analysis of causes and effects and the role of intention in each performance.[1] Both deeds, however, result in the same effect namely the death of the fetus.

By designating certain procedures as directly or indirectly homicidal the arguments of traditional moral theology have not solved the moral dilemma why what is directly done is morally wrong and why what is indirectly effected may be, at times, legitimate. It is the conclusion of this thesis that the direct-

indirect distinction does not provide us with a decisive decision-making tool for discerning the moral quality of acts and effects to which it is applied. Rather "direct" and "indirect" are short-hand terms which operate on the basis of commitments, frameworks and priorities adopted before the moral evaluation of particular activity is undertaken. Bruno Schüller's recent proposal of "approval-disapproval", as basic underlying attitude, is akin to the argument proposed here.

The descriptive role of "direct" and "indirect" can be easily proved whether we adopt an act-centred or agent-centred analysis of the human act. In Aquinas we have a clear exposition of an analysis of the act of self-defence against an aggressor. Thomas is the observer analyzing acts and consequences, causes and effects, types of intention (in intentione, praeter intentionem). This approach is concerned with the rightness and wrongness of particular acts and is intent on assessing the act in the light of norms, goals or laws (especially the natural law).

Later analyses of the same case are agent-centred and are concerned with praise or blame. The will may directly intend a particular action or may only indirectly intend a particular evil effect. Since such acts are entered into knowingly and willingly they are matters for moral evaluation. By saying they are direct and indirect (whether causally or intentionally) we are no nearer to knowing why particular acts, if direct in a causal or intentional way, are necessarily morally direct. Nor are we clearer why indirect acts and effects, causally or intentionally considered, are also indirect when morally considered.

Jonathan Glover argues that

> "if the doctrine of double effect is to have any content, it must stipulate that acts which fall under certain descriptions may never, for purposes of moral evaluation, be described in a way which omits this feature of them." (1)

In arguing this way Glover has highlighted the principal role "direct" and "indirect" may have in future Roman Catholic moral theology. In addition to a purely descriptive role "direct" and "indirect" may be applied in a moral sense to those acts which are (a) considered to be contrary to some fundamental value or good (e.g. life, truth etc.) or (b) are clearly described in a normative way as essentially immoral. While recognizing the difficulties inherent in any effort to specify such acts it is important to recognize that the prior theological framework, faith commitments and priorities of the Church community require that certain deeds be nominated as directly or indirectly immoral (cf. 1 Cor.5).

This thesis, through its concentration on the historical roots and context of the direct-indirect distinction, has not attempted to answer completely the entire question of man's responsibility for indirect evil effects of his activity. Having clarified here the notions "direct" and "indirect" and their scope in Roman Catholic moral theology, it will be possible in the future to subject the distinction to further detailed analysis, while bearing in mind what conclusions we have arrived at in our present study.

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1. J.Glover: Causing Death and Saving Lives, p.91.

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