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THE SEARCH FOR MORAL ABSOLUTES

Philip E. Devine

(ca. 1994)

For Celia

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PREFACE

Men and women who agree about a wide range of moral issues can still disagree about the status of the rules to which they appeal. Some hold that they are mere rules of thumb, some hold that they are exceptionless norms, some that their position is somewhere in between (say strongly entrenched prima facie rules or virtual absolutes). People who believe in exceptionless norms disagree about the spheres of morality in which they are to be found: some find them primarily in sexual ethics; others in political principles such as that protecting freedom of speech; others in rules protecting human life. Adherents of absolute rules also differ about the *source* of such rules: some of them regard such rules as divine commands, but others see them as requirements of practical reason, direct intuitions of conscience, or perhaps even deeply entrenched social conventions. It is with the existence of exceptionless norms, not their content or source should they exist, that I am here centrally concerned. A cognate issue is whether we can ever have infallible moral knowledge: whether we might be required to revise, in the light of further insights, our belief that it is wrong for parents to kill their children because they find their continued existence inconvenient.

The issue received its most intensive discussion around 1978, when, as it happens, the author's *Ethics of Homicide* was published. But it continues to be of importance, as may be gleaned from the recent Papal Encyclical on moral issues (John Paul II, *Veritatis Splendor*, 1993), and from the recent anthology edited by Joram Graf Haber (*Absolutism and its Consequentialist Critics*, 1994). It is my hope that this book will at least move the argument forward, though not that it will resolve the many moral problems around which the debate has turned.

In addressing questions of moral theory, I shall make the minimum teleological assumption that ethics is concerned with happiness -- whether the happiness at issue is the agent's own or that of others, whether happiness is thought of in welfarism or perfectionist terms, and whether it is to be

found in this world or the next. A moral position, I shall assume, is unacceptable if its observance means misery without compensation (here or elsewhere) for all concerned. Hence moral rules, including any absolutes we may discover, must in some wide sense be justified by their utility. But I take into account the utility of rules as well as that of acts; and, in judging questions of utility, invoke goods such as knowledge and friendship as well as pleasure and desire-satisfaction. Hence my argument will escape consequentialism, at least in its simplest forms.

My conclusion is that there are exceptionless moral norms, but it is not possible, at least for a philosopher, to formulate them with any precision. (A possible exception: One ought never to intend that another do wrong, either by his own lights or by one's own, though it is legitimate to persuade him to change his mind or attempt to overcome a merely emotional resistance to some proposed action.) The most one can do on philosophical premises is to identify danger zones, in which agents and moralists must proceed with caution. And we may hope to formulate principles that, though we do not know them to be absolutes in the strict sense, still may be treated as absolute for all practical purposes. As ordinary people put it, "There are limits," "We have to draw the line somewhere," and "Some things are sacred and not to be treated lightly."

The need for, and the difficulty in formulating, moral absolutes arises from the same consideration -- namely the complexity of situations and the multiple sources of moral judgment. Against the powerful consequentialist influences that bear on our moral judgments, two sorts of argument that might support moral absolutes are available, but these arguments do not altogether converge. One emphasizes the bad consequences, e.g., of conventional rules authorizing the police to kill citizens whenever it seems on the whole best to do so. The other emphasizes the incommensurability between, e.g., life itself and its various possibilities. A world without me is a radically different place from a world in which my life prospects are in some way diminished.

Another source of incommensurability arises from the fact that we create ourselves by our actions - though this is true also of the consequences we accept and of the risks we take. In short, the need for absolutes, and the difficulty in believing in them, arise from the same source -- the complexity of human moral experience.

Such crosscurrents produce considerable turbulence in our moral consciousness. Sometimes I think my conclusion is mere common sense. Sometimes I think it so paradoxical that I cannot hope that others will take it seriously. Such is the fate of a philosopher in these times -- and especially of one who attempts to honor the complexity of human experience without succumbing to postmodern despair, and in the process to remain in dialogue with as wide a class of persons as possible.

My argument for moral absolutes is a transcendental one. Given the open texture of moral language, the diversity and messiness of moral situations, and the twistiness of the human mind, a morality without absolute limits would be unable ever to reach the firm conclusions we need, especially in a world in which the adherents of any morality are likely to find themselves beleaguered. There is an analogous position on the cognate issue of infallibility: there may be standards about which a moral community could not be in error and still claim to provide a reliable guide to life; but it is not possible, except perhaps very tentatively, to distinguish these teachings from those about which the community claims only to be right.

A longer version of the argument to come follows. In Chapter 1 I address the fact that moral issues, particularly those thought to engage moral absolutes, are largely debated within religious communities, and attempt to sort out philosophical from theological arguments. Chapter 2 displays the multi-dimensional complexity of the situations moralists and morally responsible persons face, and Chapters 3 to 5 consider the various strategies employed to resolve them,

including the claim that the incommensurability of goods means that we have no way of challenging or overriding moral rules such as that against contraception. Chapter 6 argues that the case for moral absolutes, and the case against them, can be made to converge in a way suggested by Kant's solution to his antinomies: there are moral absolutes, but we do not know what they are. Chapter 7 attempts to locate moral absolutes, with the help of the concept of the sacred, and suggests that there are virtual absolutes that may serve for practical purposes.

One limitation on my argument is a relative neglect of virtue, with the important exception of prudence, to which I devote Chapter 4. As Christina Sommers among others has emphasized, discussion of virtue is of great importance, particularly in pedagogy, because it avoids the impression, that emphasis on controversial issues and moral dilemmas is likely to create, that morality is primarily concerned with conflict, whether among human beings or within a given human being. On the contrary, the range of actions about which moralists of every school agree is quite large, and the issue frequently is not discovering one's duty, but finding the strength to perform it. And overemphasis on social policy undermines individual responsibility, and obscures the fact that even the best policies require officials gifted with integrity as well as prudence to carry them out.

Nonetheless, even the most virtuous people face situations in which it is difficult to discern the right course, and it is worthwhile asking how much guidance a defensible moral code is able to give them -- in particular whether a moral code can contain exceptionless rules. We may ask, for example, whether a just judge or sheriff will ever, whatever the circumstances, frame an innocent man. I regard principles and virtue not as rivals, but as complementary approaches to moral and ethical issues.

One outcome of my argument is that people of faith are entitled to hold more stringent moral views than is common, and cannot be convicted of unreasonableness for so doing. Nor can they be rightfully kept, say on grounds of "public reason," from acting on their views as citizens. But I do not have an answer to the problem of Abraham -- of a person who, for reasons of faith, is led not to stiffen the requirements of common morality, but to breach them.

It has become the custom for authors of scholarly works to declare their interests. The author is a Roman Catholic, though not of the "ultra" sort, committed to the project of harmonizing faith and reason -- however difficult this project may seem in practice. My indebtedness to the tradition of Catholic Christianity extends to influences refracted through persons, at least from the time being, alienated from it. My work may be of interest to those who exercise pastoral and magisterial functions within the Church, as well as to those who advise them, but I have no desire to usurp pastoral or magisterial authority. In any case -- though I presume generally Christian moral intuitions -- this is a philosophical work addressed to reasonable men and women, rather than an in-house argument addressed only to Catholics. (Like many serious Jews, I dislike the expression "Judeo-Christian tradition." But Jewish and Christian approaches to morality do have important similarities.)

A sketch of the argument of this book is forthcoming in *Argumentation*. An NEH Summer Institute under the directorship of Ralph McInerny, held at Notre Dame in 1985, did much to advance my thought on the issues considered here. I am indebted to James O'Rourke of St. Anselm College for suggesting that I focus my work on ethical theory on the question of absolutes, to Joseph Boyle of the University of Toronto for help in understanding the positions of Finnis and Grisez, and to Patrick Walker of Scranton, Pennsylvania and Michael Wreen of Marquette

University for many relevant discussions. (Patrick also helped with the proofreading.) My debt to Celia Wolf-Devine of Stonehill College is as always immeasurable.

I use *he* in the sense of *he or she*, except where the context requires a male individual. Recent examples of the use of *he or she* (and *she or he*), not to mention *him or herself* (and *her or himself*), convince me that the attempt to be sexually egalitarian in this way only increases the gap between author and reader a difficult argument creates in any case. The capital *He* for God is also to be read generically.

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PHILOSOPHY, THEOLOGY, AND LAW

The subject of this book is moral absolutes, i.e., kinds of action forbidden or required by morality whatever the circumstances or consequences.ⁱ Positive moral absolutes (e.g., *Provide for your family, no matter how*) swallow up all other moral requirements, and are for that reason hard to defend. And even negative absolutes must be few in number; otherwise we should be paralyzed. Nonetheless, moral absolutes, should we be able to discover them, would have considerable strategic importance, since they place limits on how moral judgments can diverge and thus allow moral reasoning to proceed without having to evaluate an endlessly widening range of options (usually on consequentialist grounds). If I do not have to consider killing my wife when she is in a bad mood, I will find moral judgment quite a bit simpler.

1.1. Ethics and Morals

I have become skeptical of the philosophical casuistry attempted in my *Ethics of Homicide*ⁱⁱ -- which is not the same as withdrawing the conclusions reached there. Philosophers who address social issues find themselves in the thick of political conflicts and messy personal situations to which the somewhat abstract forms of reasoning they favor are less than adequate. Contemporary practices need to be judged in the light of the expectations and understandings of those who take part in or are affected by them, which will supply premises that narrow the range of philosophical disagreement on issues of special ethics. The question of affirmative action, for example, makes sense only against the background of what one of the more astute writers on the issue frankly refers to as "the American Dream" -- i.e., the understanding of justice at which many citizens of the

United States have arrived in the Twentieth Century.ⁱⁱⁱ What is of greatest importance in discussions of applied ethics is not the conclusions reached by this or that writer, but what issues are taken as open for discussion. We take the wrongness of slavery for granted when we discuss surrogate mothering, but in fact the issue was only settled in America by a bloody Civil War. Casuistry, carried out in independence of religious belief on the one hand, and settled laws and *mores* on the other, quickly turns into a merely rhetorical exercise, in which one manipulates concepts to reach a foreordained conclusion. A philosopher cannot count on enough agreement, in advance of argument, to make possible a persuasive argument concerning controversial issues. One can always choose a narrower subset of one's contemporaries for one's audience, but -- except for some religious communities -- one is left to define that subset essentially for oneself.

It is necessary to distinguish *morals*, or the inherited principles of conduct to which we with varying degrees adhere, from *ethics*, or philosophical reflection on such principles.^{iv} Some people have strict morals; others have loose morals, and others no morals at all (and those who are strict on one set of issues may be loose on another), well before anyone reflects systematically on moral issues. There are many people who have moral codes but have never reflected on their philosophical justifications or implications, whereas ethics without morals is impossible (though some professional ethicists are reputed to approximate this condition). Morals were taught long before ethics arose, both in the life of the species and the life of the individual. Philosophical ethics is organized according to principles, whereas morals are organized by topic: communication, life and death issues, sexual morals, and so forth.

The experience of diversity of morals suggested a conclusion that Socrates and Plato strove to combat, that the moral code of any society is a conspiracy of the weak to keep the strong in line, which the superior person will happily disregard. But refuting sophistic egoism is not the same

thing as deriving a code of conduct, and Plato's reasons for his striking practical proposals are notoriously cryptic. Appeals to the privileged intuitions of the philosopher-king (or queen) only raise the issue, who is to count as a genuine philosopher, and who as a counterfeit. Even if we settle on some overarching moral theory and attempt relentlessly to apply it to concrete cases, we will quickly discover a looseness of fit between ethics and morals that interferes with our endeavor. Let us now suppose that we have somehow justified a moral code, and need only to apply it to the messy circumstances in which we find ourselves. The language we use in formulating that code, be it abstract like *utility* or concrete like *adultery*, is open-textured, and requires judgment in its application. Philosophers are no better at making the prudential judgments involved in applying it than are men and women of other sorts. And the same is true about the predictions about consequences (including the consequences of changes in our laws and *mores*) that play a large role in moral and political reasoning. .

Sometimes concrete cases are invoked to test abstract theories. But philosophers have been prepared to defend even the most repellent conclusions. The constraints on moral argument here are social -- and for that reason historically conditioned -- rather than philosophical, though they still may represent the ordinary person's grasp of moral truth rather than the de facto conventions of a given group.

A recurrent skepticism about ethical theory has a significant effect on moral reasoning, especially in the practical contexts (institutional review boards, for example) in which some philosophers find themselves these days. No longer -- or so many philosophers argue -- should we accept a top-down model of moral reasoning; on the contrary the interpretation of what has happened so far in the group in which the problem arise, and what its possible futures may be, plays an essential role in deliberation. In short the moralist needs to construct a description of the

problem situation, place the conflicting views of the parties within it, and thus point the way toward a resolution that will take into account the legitimate concerns of everyone involved. On this view, the moralist is no longer an expert in applying some moral theory, but is one among other participants in a process.

But even a perfect process may have a deficient, perhaps even a gravely unjust, result; moral philosophers dare not renounce the transcendence of moral obligation lest they end up sanctioning Nazism and the like. Still, no process is in fact perfect: those who believe a result to be deficient can always point to a deficiency in the process: either some interest has been systematically neglected, or one or more parties are ideologically closed to dialogue with the others, or indulge in systematic irrationalism. And examination of the issues that arise in contemporary society discloses that not only our particular understandings, but also the larger meta-narratives in which these narratives are embedded, are contested. For this reason moral disputes are as interminable on the process view as on any other.

Saints and martyrs are more important to the moral life than are philosophers. Even a philosopher like Socrates can find himself bound in conscience to oppose the dominant forces of his society, even if his reasons for so doing transcend the capacities of philosophical argument. One does not stop being a citizen or a moral agent, with an obligation to take a stand against evil, just by reading Wittgenstein. But we need somehow to distinguish saints and martyrs, even saints and martyrs with whom we disagree, from crackpots. One way of attempting to do so is their ability to appeal to a moral rule, for example that against the killing of innocent people, which we ourselves accept although we may not apply it as stringently as they do.

1.2. Philosophy and Theology

One philosophical tradition dismisses religion as morally irrelevant.^v Such an approach has some plausibility if we believe we can discover a fundamental moral principle, by which inherited codes can be evaluated and, where necessary, revised. But those of us who have grown skeptical of such a project have no alternative but to begin with the morality we have inherited from our ancestors, will ourselves transmit, in improved or impoverished form, to our descendants. And this morality is religiously entangled, so that those who wish to preserve something approximating traditional morality, while rejecting its accompanying religion, face a somewhat difficult problem. Belief in moral absolutes is particularly tied to the belief that moral requirements are divine commands, which we dare not violate for any reason. But other widely held moral principles, such as the inherent dignity of all persons, also have religious roots.

I here use Christian ethics as my example of religiously influenced moral reasoning, since I know the Christian tradition best. It does not seem appropriate, however, in a philosophical essay, to make acceptability to Christians a criterion for judging ethical theories^{vi}. Though one never escapes one's skin, a clear-headed Christian thinker still needs to distinguish between discourse addressed to fellow believers, and discourse addressed to all reasonable people -- even when reasonableness is understood as including a respectful attitude toward tradition.

Our moral tradition is a mixed affair, in which Christian elements exist alongside elements drawn from many other sources, including the Enlightenment and the Romantic Movement. A believing Christian will hope that the Christian elements in our tradition will prevail in a fair contest, but the contest still remains to be fought. Moreover, the implications of Christian belief for ethics (and for many other branches of philosophy) are now contested among self-described

Christians: what interpretations are acceptable is a matter for the Christian community (in exactly what way is itself contested) rather than for a philosopher.

The intuitive case for accepting some moral absolutes is strong, even without appealing to distinctively Christian notions. One critic of Joseph Fletcher's "new morality" cites "the rule against rape or ... using violence against an invalid, or babies, or the aged ... or peddling dope to children."^{vii} Groups that question such examples, say on the ground that one can benefit children by using drugs to liberate them from social convention, are nonetheless likely to hold moral absolutes (or virtual absolutes) of their own, say against informing on one's comrades to the enemy (for example, to the police). As Joram Graf Heber sums it up, "the appeal of absolutism lies in the value of the convictions we hold and our obstinate unwillingness to give them up."^{viii}

«USIX»One argument for traditional morality (including traditional moral absolutes) has a highly pragmatic character. One cannot invent a moral code even for oneself, and the constraints on doing so for a society, many of whose members are not given to reflection, are even more severe. And the evils that arise if we do not control our instincts and appetites are very grave. Hence we need to accept strict moral rules from our cultural background, and accept whatever losses adherence to them in difficult cases may entail. Nonetheless, many people, and not only philosophers, have affirmed, on the basis of a reflective consideration of experience, that all moral rules have exceptions. So the debate about moral absolutes is hardly over.

1.3. The Relevance of Moral Theology

Moral issues continue to be debated in relatively conventional religious contexts. And the families and informal communities, in which they also arise, are in significant ways like religious communities, though their lack of a formal doctrinal structure changes the character of the resulting discussions. But many of our religious and informal communities, including those, which at one

time had a reputation for solidarity of opinion, are now deeply divided. And the members of such communities are in disagreement, not only about the merits of particular issues, but also about the appropriate methods of moral reasoning and the range of legitimate opinion within the community. They also disagree about the question addressed in this book, whether there are sorts of actions that are wrong regardless of circumstances or consequences.

One should not expect theology to provide lucid solutions to problems left open by philosophy. For legalists and antinomians -- to use the polemical terms each uses for the other -- both have their favorite proof texts,^{ix} and their favorite hermeneutical strategies.^x The issue is not one that divides Roman Catholics and Protestants,^{xi} or corresponds to community boundaries of any other sort, but one that afflicts all reflective men and women. Hence not only the Bible, but also subsequent expressions of our various traditions, and "natural law" authorities such as Aristotle^{xii} and the common morality of the West^{xiii} are all open to multiple interpretations. Moral theology is of interest to philosophers in rather the way the law is, as the application of norms to actual human problems within the context of some particular community. In the case of the law, we are concerned with the settlement of disputes and the imposition of sanctions on transgressors. In the case of moral theology we are concerned with moral exhortation and the counseling of persons of troubled conscience -- all carried on within a community's whose self-understanding is expressed in ritual and (in a non-derogatory sense) myth. And both law and moral theology bring out a feature of moral discourse not always salient for ethical theory: the utility of clear and firm rules of conduct, to help us avoid both endless scruples of conscience and unlimited rationalizing.

1.3.01. Styles of Interpretation

An important methodological issue concerns interpretation, especially of authoritative texts such as the Bible and the Constitution; or of vaguer traditions such as the American way of life. Views on interpretation are to be understood as impulses and rhetorical strategies first, and as doctrines and methods only second.

At one end of the spectrum, fundamentalism^{xiv} responds to challenge by hardening doctrine and drawing the lines between those within and those without the community with increased sharpness.^{xv} Fundamentalists hold that the interpretation and application of such texts is self-evident to any "right-thinking" person,^{xvi} and that those who would adapt them to the felt necessities of the time are in bad faith. (A typical bit of fundamentalist reasoning, frequently cited in the literature, is as follows: Psalm 110 must have been written by David, since Jesus so quotes it -- ignoring the possibility that Jesus was simply using the customary name of the book of Psalms.) Usually the fundamentalist appeal is to some earlier, supposedly pristine, state of their tradition, but one sort of Catholic fundamentalism responds to challenge by making extreme claims for the authority of the (present) Pope.

Taken seriously (or, if you will, literally), fundamentalism leaves a community without capacity to adapt to changed circumstances, including advances in knowledge. But in fact fundamentalists have shown considerable capacity for innovation; their common sense is -- as is often the case with human beings -- better than their logic.

At the other end of the spectrum, deconstructionists hold that authoritative texts and traditions can be made to mean whatever an individual or group wants to make of them (and consequently are without effective authority). Deconstruction leaves a community without any norms, especially for the guidance of the rising generation, and thus invites a fundamentalist

response. Deconstruction and fundamentalism thus reinforce one another. For both assume that once space has been created for what Richard John Neuhaus calls "hermeneutical legerdemain"^{xvii} there are no limits to its operation.^{xviii}

1.3.02. Revealed Norms

Christians, like Jews and Moslems, traditionally hold that God has set forth certain moral standards (the Ten Commandments, for example). And God is immune to the limitations that afflict human legislators and those who formulate customary codes. Hence -- it might be thought -- believers can quickly conclude that some moral norms, i.e., those revealed by God, are absolute. Even in the most religious of moralities, moral absolutes must be the exception rather than the rule. But there is no absurdity in God's having revealed certain *prima facie* duties. And although God is immune to error and limitation, His human interpreters are not. Hence flexibility in the application of norms -- in technical language, equity -- is not excluded by appeal to their divine origin. The Ten Commandments do not recognize exceptions, but they do not include a no-exceptions clause either.

1.3.03. Infallibility

Many believers hold, not only that God has revealed certain norms, but also that these norms have been infallibly expressed in the documents of their tradition. The precise extent of this infallibility is disputed: some Catholics affirm,^{xix} whereas others deny,^{xx} that the teaching against contraception formulated in «MDUL»*Humanae Vitae*«MDNM» (1968), and other concrete teachings of the same sort, are infallible. Some people hold that we can reach infallible judgments about moral issues, without appeal to the collective judgment of some community, by examining the actions themselves or our individual consciences -- possibly, but not necessarily, thought of as the voice of God.^{xxi}

Questions of infallibility and exceptionlessness are not the same. We may have an infallible source for prima facie duties, or for moral rules that become obsolete as a result of historical changes. And exceptionless norms may rest on the authority of the individual's fallible conscience. But the two issues manifest the same deeper question: whether (and if so how and to what extent) it is possible to entrench our moral standards against the vicissitudes of historical and personal circumstance.

1.3.04 Judging the Heart

A maxim of Christian ethics that has become part of our common moral consciousness is *Judge not, lest you be judged*. This does not mean that we should cease to have moral standards, nor that we should not apply them to one another's conduct. Nor does it mean that, in cases of dispute, the more permissive interpretation of a rule is always to be favored. But it does bar any inference that the more rigorous position is for that reason alone the more virtuous one, as well as positions that exclude or minimize the possibility of good faith moral error.

The most important implication of the maxim against judging is that it requires a distinction between a person's deepest intentions and dispositions -- which are known to God alone -- and the behavioral and consequential features of his actions, which for social purposes may (and indeed must) be subjected to scrutiny. And self-examination has an important social dimension. Hence an approach to moral issues that neglects the behavioral and consequential features of our actions, and focuses entirely on an agent's orientation of reason and will, either is socially useless or breaches the precept against judging others.

Philosophers under the influence of Wittgenstein will argue as follows. Intentions and dispositions are meaningless unless somehow tied to behavior -- though necessary and sufficient behavioral conditions for their presence are not required. It is nonsense to suppose that someone

whose every visible act shows a deeply evil disposition is somehow good at heart, or that someone whose every visible act is that of a saint is nonetheless a deep-dyed scoundrel. We may lack knowledge of a person's circumstances and temptations, but when these are fully known, there is nothing else to know.

But we are here dealing with a maxim of Christian morality, however secular the context in which it may sometimes appear. Hence it is legitimate to point out that, according to the Christian faith. *God* knows our deepest intentions and dispositions, and is entitled to judge us, as our fellow human beings are not. And from a human point of view, we never know everything about a person's circumstances and temptations. Moreover, in our understanding of the human personality, a small detail may turn out to make a very large difference. Humility in judging others can therefore be argued for, at least in part, on secular grounds.

1.3.05. Love and Law

The formulation, interpretation, and application of moral rules will be informed by one's outlook on human beings and their world. If one is a Christian, one's moral understanding will be shaped by the centrality of unselfish love. But the tempering of the Law in the interests of love is not to be confused with a permissive interpretation of the Law. Questions about moral absolutes cannot be resolved by invoking a desire to make life easier for troubled people. In fact, the denial of moral absolutes may make life more difficult, in that it makes it more difficult to know what one ought to do.«

1.3.06. Grace

No serious morality can long avoid the question of grace. For whether our morality is customary, religious, philosophical, or personal in its origins, some people will find its requirements too hard to keep. Peter Singer plausibly -- though not necessarily correctly^{xxii}--

derives from utilitarian premises an obligation to observe a vegetarian diet, and to live on next to nothing and send one's surplus to people in Africa. But some people are as incapable of this way of life as they are of celibacy. And the same sort of incapacity exists for standards resting on individual self-interest, such as abstention from alcohol by recovering alcoholics.

In such a situation, there are two unappealing possibilities. One of them is to make a compassionate exemption from the moral law in favor of those who find it too hard to keep -- a strategy that quickly leaves us without any moral standards. For human beings can have an orientation to any form of behavior whatever, including rape and murder. Or we can declare those incapable of keeping the moral law ("hardened criminals," for example) moral outlaws -- exempt in principle from all moral requirements, even those they do not find initially difficult. Respectable people will protect themselves against such persons, both physically and psychologically, but will not attempt to address them in moral terms. Only what Charles Taylor has called a "moral source"^{xxiii} a Power capable of overcoming moral impotence and empowering us to put into practice the principles to which we adhere in theory -- can resolve the discrepancy we experience between the demands of our conscience and the limitations of our nature.

1.3.07. Sin

The antitype of grace is sin, not in the sense of specific transgression, but of deeply ingrained alienation from God (or -- more broadly -- whatever else one takes as one's moral source).

Theological liberals tend to deplore the influence of St. Augustine on the morality of the West, but he identified a strain in human nature that it would be dangerous to forget. There is abundant evidence for a perverse, even demonic, strain in the human make-up: perhaps the Saint located it too much in the region of the pelvis, but it is there. (It may not even be malice, in the strict sense of a desire to do evil for its own sake: a delight in the use of one's powers, and a corresponding

impatience with any constraint however necessary, will have many of the same practical consequences as malice.) This strain in our nature, and the need of any morality to control it, means that the most superficially reasonable moral position is not always in fact the most reasonable one. For a superficially reasonable moral argument make may dangerous concessions to the dark side of human nature.

1.3.08. God's Friendship

When a religious moralist says that an action offends God, he does not mean only that, unless the agent repents, he will be damned. He also means that it entails a present breach with God which the agent -- as in the case of a tragic sinner -- may recognize and regret, although he is unable to free himself from it.^{xxiv} Such alienation differs from alienation from a friend or a human community in that -- if theism is true -- it can never be justifiably incurred. But, for reasons I explain later, *never offend God* does not count as a moral absolute in the sense employed in this book.

1.3.09 Reward and Punishment

The possibility of divine reward and punishment, especially punishment after death, has often been pictured in luridly hedonistic terms. It is difficult to integrate such rewards and punishments into ordinary morality -- to avoid, for example, the conclusion that it is a good deed to kill a newly baptized infant, whose salvation will thereby be assured. One cannot appeal to the threat of hell fire to support the assertion that otherwise innocent actions are wrong. For a Power that punished and rewarded human beings at random could not be believed when It purported to reveal Its intentions.

1.3.10. Dostoevsky's Maxim

The best-known claim that morality and religion are essentially linked is Dostoevsky's maxim, *If God does not exist, then everything is permitted*. This maxim does not mean that atheists are without moral principles, or even that moral discussion cannot proceed, at least for a while, without appealing to theological considerations. In its most defensible sense, it means that morality without God will reveal its incoherence under pressure.

More specifically, morality without God breaks down in the following ways. (1) The morality discovered by examining our considered moral judgments is heterogeneous in character, and includes both consequentialist and deontological elements. We must find some way of avoiding the conclusion that this morality is inconsistent, for if we accept the doctrine of most logicians, that from a contradiction everything follows, such a morality will enable us to justify whatever we might desire to do.^{xxv} The alternative is to wall off inconsistencies through a variety of ad hoc devices.

(2) Moral standards need to be independent both of the *mores* of society and the inclinations of individuals, even when both of these have been purged by reflection. Moreover, unlike mathematics, the standards of morality have an imperative character that sometimes conflicts with custom and inclination. Kant's Categorical Imperative, hanging in metaphysical midair, is not a satisfactory articulation of this phenomenon.^{xxvi} If moral standards derive from or express the judgments or attitudes of human individuals or groups, there is no reason to expect them always to be consistent. Nor is there any reason to expect them always to override, even in principle, the preferences of individuals and the *mores* of society. But if they derive from a wise and benevolent God, we can both exclude incoherence and account for the imperative character of moral judgment.

1.4. Legal and Political Aspects

The civil law may seem to provide at least a partial answer to the questions of this book. For its norms are relatively clear, and its sanctions, though not perfectly reliable, are less mysterious than those which religion supplies. Moreover, there are serious arguments that some legal norms, for example those protecting free expression, should be held as absolute, even when observing them has significant costs. Free expression, it is argued, is so vital to the welfare of our society that it is worthwhile accepting such costs rather than making exceptions to the rules protecting it. And in general it may be highly useful to take certain matters off the political agenda, even "for good and all," so that men and women can live together in the confidence that their rights in such matters will be respected.

But, in some circumstances, a virtuous citizen will act outside the law and sensible officials ignore his violations, regardless of any formal authorization to do so.^{xxvii} And if this is true of citizens, how much more will it be the case of officials sworn to preserve and protect the institutions of their society in times of stress. Thus rules protecting free speech are by their very nature subject to one exception, that when the survival of the society that sustains free expression is at issue, all bets are off. (Though cautions against decisions taken in panic are always in order; domestic Communists did not in fact pose a "clear and present danger" to America's survival during the 1950s.) The subordination of free speech to the common good does not mean that it protects only one's political friends, only that sufficiently extreme circumstances may require exceptions to all merely political rules.^{xxviii} Yet liberal theorists have never been happy with the pragmatic status their principles must have on their larger assumptions. John Rawls, for example, begins his *Theory of Justice* with a ringing declaration of faith:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.^{xxix}

But in subsequent writings he has based his views on justice on an appeal to "overlapping consensus" that undercuts his invocation of the peremptory claims of truth.^{xxx} Nonetheless, he persistently attempts to protect liberal principles against revision or exceptions by ruling out potentially disruptive sorts of considerations from reasoning about justice and political liberty.^{xxxi}

Crucial to Rawls's finished argument for political absolutes is his conception of public reason, i.e., of a constrained form of reason to which we are limited, at least when we discuss central constitutional issues. This conception of reasonableness limits not only the deliberations of legislators and judges, or the dialogue among citizens, but even the private reasons on which an individual citizen votes. As Rawls puts it, "the ideal of public reason not only governs the public discourse of elections insofar as the issues involve those fundamental questions, but also how citizens are to cast their vote on those questions" (p. 215).

This sort of constraint disenfranchises many voters, for it denies their right to vote their convictions. To ask Catholics, feminists, or Mormons to ignore their beliefs when voting, or to refrain from joining with others like themselves to express shared concerns in the public arena, is on its face both repressive and, in a generally open society, absurd.

Rawls defends his strategy by appealing to civic fairness (p. 217). But fair-mindedness requires us to listen to men and women whose positions may require us to modify our conception of public reason, at least as if they are expressed in a reasoned manner. Rawls in fact concedes that

citizens like the abolitionists and Martin Luther King may appeal to their comprehensive views, so long as the end result is to strengthen public reason (Lect. VI, § 8). Moved perhaps by piety, he is even prepared defend Abraham Lincoln's "Second Inaugural with its prophetic (Old Testament) interpretation of the Civil War as God's punishment for the sin [of] slavery, falling equally on North and South" on the ground that "what he says has no implications bearing on constitutional essentials or matters of basic justice [!]" (p. 254).

A sort of benign Machiavellianism is possible. Persons exercising authority are entitled not to recite the exceptions to norms whenever they invoke them -- at least if there is no plausible reason to suppose that such exceptions obtain in the case at hand. Imagining foreign invasion when nothing of the kind is occurring, except perhaps in the overheated imaginations of partisans, is a dangerous proceeding. But may we go further and deny exceptions that we in fact fully intend to and expect to make (and regard ourselves as entirely justified in making)? I should say not, except insofar as law^{xxxiii} is regarded as a mere array of rules, from which any reasonable person would depart from upon occasion. For to introduce an element of deceit into the fundamentals of social life has devastating implications. I have in mind the citation of moral considerations to warrant one's own actions and criticize those of others. If one's morality is treated as a fact about one's self like one's ancestry, lying about it, say to the Nazis, presents a different question.

I conclude by attempting to state in what sense this book represents a philosophical inquiry, as opposed to a theological reflection or an explication of the «MDUL»mores«MDNM» of late twentieth century America. While I presume the acceptance of at least vaguely Christian moral views, believing Jews, agnostics, and atheists are among my intended readers. I am particularly interested in addressing the sort of agnostic who wishes to maintain the broadly Christian character of our moral tradition, on the ground that this is the only sort of morality a society such as ours can

be brought to accept. On the other hand, the moral sensibility of my own time is too incoherent to be susceptible of the sort of reconstruction I attempted in *The Ethics of Homicide*. Hence my argument is intended to appeal to men and women of reflective conscience, who may frequently find themselves required to take a critical attitude toward the *mores*.

NOTES

ⁱ For further conceptual refinement, and an important distinction between strong and weak absolutism, see Joram Graf Haber ed., *Absolutism and its Consequentialist Critics* (Lanham, Md.: Rowman and Littlefield, 1994), Introduction.

ⁱⁱ Ithaca, N.Y.: Cornell University Press, 1978. Paperback ed.; Notre Dame: University of Notre Dame Press, 1990.

ⁱⁱⁱ Louis Katzner, "Is the Favoring of Women and Blacks in Employment and Educational Opportunities Justified?" *Philosophy of Law*, Joel Feinberg and Hyman Gross eds., (Belmont, Calif.: Wadsworth, 1980), p. 356.

^{iv} I here develop further lines of thought begun in my essay, "Theory and Practice in Ethics," *Moral Theory and Moral Judgments in Medical Ethics*, Baruch A. Brody ed. (Dodrecht: Kluwer, 1988), pp. 213-23. For further discussion see Stanley G. Clarke and Evan Simpson eds., *Anti-Theory in Ethics and Moral Conservatism* (Albany: SUNY Press, 1987).

^v On how this view came to dominate the American academy, see George M. Marsden, *The Soul of the American University* (New York: Oxford University Press, 1994).

^{vi} This sentence is directed against J.L.A. Garcia, "Love and Absolutes in Christian Ethics," in Thomas P. Flint ed., *Christian Philosophy* (Notre Dame: University of Notre Dame Press, 1990), pp. 163-3 and 193 n.1

^{vii} John W. Swomley, Jr., Book Review in Fellowship, November 1966; reprinted in Harvey Cox ed., *The Situation Ethics Debate* (Philadelphia: Westminster, 1968), p. 87. None of these rules is taught plainly in Scripture, in the way a prohibition on theft or homosexual practices is.

^{viii} *Absolutism and its Consequentialist Critics*, p. 2.

^{ix} A Christian legalist can cite Mark 10:19, where Jesus endorses the Mosaic Law. A Christian antinomian will prefer John 13:34, where Jesus proclaims the "new commandment" of love.

Citations on both sides could be multiplied.

^x For a Biblical defense of situation ethics, see O. Sydney Barr, *The Christian New Morality* (New York: Oxford University Press, 1969). Garth Hallett, *Christian Moral Reasoning* (Notre Dame: University of Notre Dame Press, 1967), ch. 4, defends "value-balancing" with the help of the later Christian tradition. For the legalist response, see John Finnis, *Moral Absolutes* (Washington, D.C: Catholic University of America Press, 1991).

^{xi} For a comparison between Protestant and Catholic approaches to moral issues, see James F. Gustafson, *Protestant and Roman Catholic Ethics* (Chicago: University of Chicago Press, 1978).

^{xii} Finnis, *Moral Absolutes*, pp. 31-34, points out that Aristotle recognizes moral absolutes, including a prohibition of adultery (*Nichomachean Ethics*, 1107a9-17). But adultery for Aristotle included intercourse with a married woman by a man not her husband, and not, as it does for us, intercourse by a married man with a woman other than his wife.

^{xiii} Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford: Clarendon Press, 1987), ch. 4, invoke "common morality" to support a moral argument for unilateral nuclear disarmament. But, though a morality that rules out consequentialist reasoning as radically as theirs does may be true, it can hardly claim to be common.

^{xiv} On the problems of definition, see the essays by Jarislov Pelikan, George M. Marsden, Clark H. Pinnock, and James Davison Hunter in Norman J. Cohen ed., *The Fundamentalist Phenomenon* (Grand Rapids: Eerdmans, 1990), chs. 1-4, as well as Martin E. Marty and R. Scott Appleby,

"Conclusion," in their collection *Fundamentalisms Observed* (Chicago: University of Chicago Press, 1991), ch. 15.

^{xv}Ernest R. Sandeen, *The Roots of Fundamentalism* (Chicago: University of Chicago Press, 1970), sees fundamentalism as primarily a millenarian movement. But millenarianism is a stiffening of resistance to the modern world -- both by emphasizing those elements of the Christian tradition most offensive to modern people and by asserting that the modern world itself is destined for imminent destruction.

^{xvi} On the centrality of common sense epistemology in the hermeneutics and polemics of American fundamentalism, see Marsden, *Fundamentalism and American Culture* (New York: Oxford University Press, 1980), esp. ch. 24

^{xvii} Neuhaus, *The Catholic Moment* (San Francisco: Harper, 1990).

^{xviii} James Barr, *Fundamentalism* (London: SCM Press, 1977), esp. ch. 1, argues that the issue for Protestant fundamentalists at least is not interpretation but Biblical inerrancy. But with sufficient hermeneutical agility, any difficulty can be overcome.

^{xix} E.g., John C. Ford, S.J., and Germain Grisez, "Contraception and the Infallibility of the Ordinary Magisterium," in Ford *et al.*, *The Teaching of Humanae Vitae* (San Francisco: Ignatius, 1988), pp. 117-219.

^{xx} E.g., Francis A. Sullivan, S.J., *Magisterium* (New York: Paulist, 1983), pp. 140-52.

^{xxi} David Solomon calls this position "moral fideism."

^{xxii} See my "Moral Basis of Vegetarianism," *Philosophy*, October 1978, for an evaluation of Singer's arguments.

^{xxiii} Taylor, *Sources of the Self* (Cambridge, Mass.: Harvard University Press, 1989).

^{xxiv} See Dietrich and Alice von Hildebrand, *Morality and Situation Ethics* (Chicago: Franciscan Herald Press, 1966), ch. 3.

^{xxv} See my article, "The Conscious Acceptance of Guilt in the Necessary Murder," *Ethics*, April 1978.

^{xxvi} See my *Relativism, Nihilism, and God* (Notre Dame: University of Notre Dame Press, 1989) and Leszek Kolakowski, *Religion* (New York: Oxford University Press, 1982).

^{xxvii} For a detailed study of this problem, see Mortimer R. Kadish and Sanford H. Kadish, *Discretion to Disobey* (Stanford, Calif.: Stanford University Press, 1973).

^{xxviii} This sentence is directed against Stanley Fish, *There's No Such Thing as Free Speech ... and it's a Good Thing, Too* (New York: Oxford University Press, 1994).

^{xxix} Rawls. *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 3.

^{xxx} "Kantian Constructivism in Ethics," *Journal of Philosophy*, 77 (1980), 515-72; "Justice as Fairness: Political not Metaphysical," *Philosophy & Public Affairs*, 14 (1985), 223-51; and "The Idea of Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (1987), 1-25. Rawls's later work is brought together in his *Political Liberalism* (New York: Columbia University Press, 1993), which I cite parenthetically in the text.

^{xxxi} For example, "that we have one conception of the good rather than another is not relevant from a moral standpoint. In acquiring it we are influenced by the same sort of contingencies that lead us to rule out knowledge of our sex and class." ("Fairness to Goodness," *Philosophical Review*, 84 [1975], 337.)

^{xxxii} I am indebted to James L. Nelson for pointing out the need for this distinction.

SITUATIONS

Human beings are diverse and complex; so our philosophy, and even more so our literature, constantly inform us. Life was not simple in ancient and medieval times, but our awareness of its complexity is in some ways a modern phenomenon -- though one recognized by many writers before the coming of the modern age. Some writers would press this insight to the metaphysical level, and assert with Sartre that man is that creature who lacks a nature or essence of any sort. But such a move is self-destructive, since it makes a claim about human nature, i.e., that human beings are entities who lack a nature. Thus we do best to retain our awareness of human complexity and diversity without turning it into a metaphysical dogma.

Still, modern insight creates problems for moral thought -- problems that account in part for the persistent strain of anti-modernism in our culture. Complex and diverse human beings create, and find themselves in, complex and diverse situations, in which stock moral terms like *adultery*, *theft*, and *murder* may not seem adequate to the needs of moral judgment.¹ Yet it is necessary to make some firm moral judgments, say against killing human beings by reason of their ancestry, if decent social life is to be possible. In this chapter I display the full complexity of moral situations, before discussing the strategies employed to resolve moral questions.

Writing in a bioethical context, Carl Elliot has described the phenomenon to be analyzed very well:

A person's moral judgment is reflected in what he chooses to include in a description: whether he mentions that the patient's wife has visited her critically ill husband only twice over the past three weeks, whether he reports a bed shortage in the I[n]tensive C[are] U[nit], if he notes that the patient's children stand to inherit their dying man's estate, how he

describes the patient's prognosis, whether he brings up the option of palliative care, if he notes that the nursing staff feels strongly that treatment should be stopped, whether he mentions that the patient was an I[ntra]V[enous] drug abuser. One of the most interesting and disturbing discoveries to be made in a medical ethics case conference is how one's moral intuitions change as each player in the drama says his piece, as another perspective is added to one's own.ⁱⁱ

2.1. *The Varieties of Moral Judgment*

The triad obligatory-permissible-forbidden is not adequate to the needs of moral judgment. Theologians distinguish between mortal and venial sins, lawyers between felonies and misdemeanors, secular moralists between serious offenses and peccadilloes. Less formally, there are actions which are "within our rights," or for which no one would blame us, which are less than admirable or heroic.

Nor does the evaluator always stand in the same relationship to the act or proposed act in question. The most central form of evaluation concerns acts under consideration by the evaluator himself: thus Kant imagines an unhappy man contemplating suicide, who asks first whether his proposed action can be squared with the requirements of morality. At a remove from decision itself is the role of the moral adviser, who usually can abstain from judgment, with the help of an expression like *Follow your conscience*.

There are actions over and done with, such as the atomic bombing of Hiroshima and Nagasaki, the evaluation of which lacks the practical urgency of the first two sorts. About such actions the agent himself, a friend or spiritual counselor, and a third party all may make judgments. And the culpability of the agent may be as important (or more so) than the legitimacy of his act.

Our argument must also address the judgments moral teachers, including parents, moralists, and religious leaders, must make. Such teachers need to combine honesty, responsibility, and concern for the well being of those whom they are instructing. For those who are incompetently instructed may rebel against the requirements of morality if too many demands are placed upon them, and they may also regard with contempt a morality that is presented as pliant to their every felt need. In such circumstances the most important distinction is that between justification and excuse -- a distinction habitually neglected by those who would go easy on others. But some excuses are agent-relative -- inexperience for example -- and others, such as duress, involve mitigating circumstances that are sometimes almost as good as justifications.

2.2. *Action Kinds*

Sorting out relevant from irrelevant detail is the first task of the moral evaluator, and this task is both challenging and has important implications for subsequent moral judgment. There is an important gap between a messy real-life situation and a "case of conscience" in which the problems of Titius and Bertha present themselves in neatly ordered fashion.

Most moral judgments use "thick" act-descriptions such as *adultery*, *theft*, and *murder*; as well as more recent coinages such as *racist* and *irresponsible*. To condemn an act just as (morally) wrong is quite rare. The precise range of thick moral concepts is open to dispute, but there are core cases where users of such expressions concur in their judgments. That the Nazis murdered millions of Jews and others is a correct description of their conduct, though it would be rhetorical exaggeration to say that they murdered the soldiers the German army killed in combat. (On the other hand, *murder* is sometimes used to describe the wanton killing of a brute animal.) But such descriptions conceal a complex background. Adultery and theft are only possible within institutions of marriage and property. These institutions vary from time to time and from place to

place, and their present versions have been criticized, rightly or wrongly, on a number of grounds. Nothing follows immediately for personal morality from such criticisms. An institution of "half-open" marriage, in which the husband but not the wife is conventionally held at liberty to engage in extramarital relations, is unfair to women. But this unfairness does not immediately imply that husbands who take advantage of their liberty are guilty of adultery, or that women who respond in kind are not so guilty. Nor do criticisms of existing property relations, however justified, imply a license to steal. Yet to assert an absolute obligation to accept the definitions imposed by unjust institutions is to help guarantee their permanence.

Murder is somewhat different from adultery and theft. The distinction between living and dead, and between human beings and things (or brute animals) the concept of murder presupposes are not socially constructed in the same way the institutions of marriage and property are. But the concept of a person has a conventional aspect, while the institutions of marriage and property have at least some basis in nature. All we can say at this point in the argument is that our moral world has both natural and conventional aspects, that one aspect or the other may be more evident in a given situation.

We must also address the question of nominalism: whether human acts form natural kinds, or whether descriptions such as *murder*, *theft*, and *adultery* are assigned to human behavior by convention. For many subcultures describe what are in some sense the same actions in very different terms, such as *weeding out the unfit* or *eliminating the king's enemies*, *liberation* (say, of a book from a shop), and *courtly love*. The metaphysical perspective adopted here is "safety net Platonism": the vagaries of our language and social practice are constrained by an objective structure, but we have no reason to suppose that this structure corresponds to that recognized by any natural language. On no account can an individual or a society by giving a previously

forbidden form of activity a pleasing name, escape the bad consequences to which it or its toleration may lead.

John Finnis objects to the ordinary language/phenomenological approach to these issues:«
Common speech [he writes], which is not systematically oriented toward precise moral understanding and is impressed by behavioral and consequential similarities and by legal categories is not a safe guide. It uses the action-related terms, including even *act* and *intention*, with an ambiguity which can be overcome only by careful attention to the importance of the end and means united in a proposal shaped by intelligent deliberation (however rapid), and adopted by choice.ⁱⁱⁱ

And in particular he insists that what behavior looks like has little or nothing to do with its moral acceptability.

The physical behavior and causality and outcome can be exactly the same, when completely different acts are done. ... Equally, acts can be identical in every way relevant to a moral absolute's nonevaluative act-description, even though the physical behavior differs very noticeably.^{iv}

Against the behavioral and consequentialist emphases of common speech, even when it identifies acts as of a certain kind, he insists on a tradition that identifies acts by their objects, i.e., by their intentions, including the subordinate intentions called "means to an end."^v But God alone knows a person's deepest intentions: (§ 1.3.04): for purposes of social life, we need criteria of intentionality that include, among other things, the look of an action and its expected consequences.^{vi}

2.3. *Consequences*

Consequentialists hold that a favorable balance of consequences is the sole (or decisive) criterion of right conduct; that traditional moral language embodies useful rules of thumb, but that these rules should be neglected whenever one can calculate the consequences coolly, and finds that they favor a forbidden action. Not only the advocates of moral absolutes reject consequentialism: but also, from a different angle, by believers in what Samuel Scheffler has called, "an agent-centered prerogative" or "dispensation to devote more attention to one's own welfare than to the welfare of other people."^{vii} But one not need to be a consequentialist to take consequences into account: most moral codes contain rules that can be overridden to avoid sufficiently bad consequences (respect for civil law is a plausible example), and hold that it is wrong to incur (or even seriously risk) very bad consequences except for a morally worthy end.

The consequences of our actions are complex and varied, and for some of our actions extend indefinitely forward in time. Those who beget or give birth to children are causally responsible for everything their remote descendants do. In the same way, those whose ideas gain acceptance are causally responsible for the uses to which they are put, even when (as is common) they would have regarded these uses with horror. And even more ordinary-seeming actions sometimes have unexpected long-range consequences.

In moral judgment we invoke, not just any consequences, but those consequences that the agent foresaw or ought to have foreseen. But what consequences we foresee, or believe that others ought to have foreseen, depends on our worldview and in particular on the kinds of causal relations we are likely to find probable. When we discuss the causes of war, crime, economic depression, totalitarian government, or epidemic disease, our explanations reflect our differing conceptions of people and their world. Nor are all consequences on the same moral level. Both law and morals

understand consequences differently when the action of another person intervenes.^{viii} A related example is effects that depend on the emotional reactions of the agents or others, which are under varying degrees of voluntary control.

I now consider six sorts of consequence of special importance for moral judgment. The first are the consequences of proposing or accepting a moral rule (or principle, or ideal, or...), either for oneself or for some community in which one has an authoritative role. Such rules, if accepted and adhered to within a group, have effects different from those of their acceptance by a series of individuals, and even more so from that of the behavior the rule would counsel if not embodied in an accepted practice. Moreover, such rules have a certain independence from the considerations that motivate their acceptance. For that reason, there can be a slippery slope, by which an apparently minor departure from previous understandings has consequences, good or bad, far exceeding the intentions or expectations of its proponents.

A second set of consequences has to do with the abandonment of a conventional principle previously accepted, for example the tacit understandings that make a written constitution possible. All conventional rules are sometimes violated, but if enough people, or enough important people, violate them with impunity they cease to have conventional force. The customary principles of a group form at least a rough system, though some social scientists have exaggerated their coherence. Hence conventional rules tend to lose their force together. The violation of one conventional rule provokes the violation of others -- whether in retaliation, in self-protection, or by virtue of the maxim, *If they can do that, we can do this*. The resulting condition is remedied only by the development of fresh conventions, variously related to the old ones. This development is always a difficult process, and sometimes a highly painful one. It may be somewhat less so, however, if we can believe that the norms established reflect something more than individual or collective will.

If our conventions were entirely beneficent, their collapse would be an unmitigated disaster; if they were entirely malignant, their collapse would be a good (and the fact that an act was in breach of social convention a reason for doing it). In fact the conventions of all societies, our own included, are in part beneficent and in part malignant: if they were entirely malignant, no one would support them; if they were entirely beneficent, no one would challenge them -- except perhaps for transparently base motives. Nonetheless, since our conventions are, whatever their merits, the only conventions we have, considerable prudence is called for in dealing with proposals to displace or revise them.

Let us suppose that we should accept the present system of conventions -- or reform them only so far as the system of conventions itself makes reform possible. The issue then arises, how great a burden may be placed on individuals to sustain a system of conventions, particularly when these individuals have been unjustly disadvantaged by these conventions. In practice, there is no clear correlation between social advantage and felt loyalty to a society and its practices. But where such loyalty exists, it includes a devotion to the norms of a society greater than their consequentialist basis alone would warrant.

Third, there are costs of deliberation. Deliberation that explores the full complexity of moral situations risks paralysis -- the more so, the more appreciative of such complexity we are. Even if we do not dither until the occasion for action has passed, expenditure of time and energy on prolonged deliberation has significant costs. Certain sorts of deliberation also entail special costs: a society in which politicians routinely deliberate about the elimination of their opponents suffers significant harms independent on their acting on their deliberations. For those who engage in such deliberations will assume that others are doing the same thing, and protect themselves accordingly.

A climate of distrust will be the inevitable result. Hence there can be benefits to entrenching a moral rule against possible revision of any sort.

Fourth, every decision we make has an effect on the sort of people we are. To respond to a situation in a certain way, say to yield to a temptation, is to become the sort of person who responds in that way. In part this is metaphysics: we define ourselves by our acts. But in part the contingencies of habit-formation are involved. But this effect results not only from our intentions, and but also, though to a lesser degree, from the risks and the foreseen bad consequences we accept.

Fifth, there are consequences that arise, not from the facts as such, but from people's opinion of the facts, including the conclusions they are likely, unless well schooled in "advanced" *mores*, to draw from certain circumstances. For example, if a woman visits a man in his hotel room after midnight, he is likely to conclude that she has consented to intercourse, although she may not in fact have done so.

Sixth, consequences flow from people's opinions of what is good and right, even if this opinion is in fact misguided. If I do something another person believes to be wrong, and he learns of it, I may make it easier for him to follow suit -- perhaps by doing things that are wrong apart from his opinions. The same is true of myself, insofar as my pre-reflective attitudes are not entirely within my power. These considerations also operate on an abstract level, insofar as emphasis on the complexity and ambiguity of human situations may make it easier for people to rationalize actions that are in fact unambiguously wrong.

Hedonism evaluates consequences in terms of pain and pleasure; it supposes that all pleasures and all pains can be assimilated for methodological purposes to the simplest items within each class -- the pleasure of an infant playing with a glass of water in the one case, toothache pain

in the other. A more adequate account of subjective values shows that they are diverse, incommensurable, and unstable. Something that pleases a person intensely may leave him with a feeling of weariness and disgust.^{ix} We may be drawn to an experience in one part of our souls, while repelled by it in another. Other forms of welfarism -- say those that define the good as desire-satisfaction -- are open to objections of the same sort.

"Perfectionist" moral philosophers have appealed to a plurality of objective goods, such as knowledge and friendship, to escape these problems; the problem of comparing these goods for the purposes of moral reasoning then becomes acute. And the shift from welfarism to perfectionism complicates moral reasoning in many other ways as well. (For example, Rawls's "Maximin" strategy makes no sense on perfectionist premises, though the claims of equality may be felt in some other way.)^x

2.4. Intention

The most popular distinction among non-consequentialist moralists is that between foreseen and intended consequences, enshrined in the principle of double effect. This distinction makes it possible to argue that it is legitimate for a physician to give a dying patient morphine that will shorten his life, and to omit life-preserving measures judged extraordinary (say open-heart surgery on someone suffering from Alzheimer's Disease); but not to do something with the specific purposes of hastening a patient's death. These arguments are most naturally addressed to those making decisions, who are presumed to be aware of their own intentions and plans of action. For purposes of third-person morality, the distinction between acting and refraining provides a rough guide to the deeper moral distinction.^{xi}

But the intention/foresight distinction conceals a number of complexities. It is legitimate to give morphine to a person dying in great pain, but not to remove his head to ease pains in it, not

because (or not only because) death is more certain in the second case than in the first. Rather, decapitation just is killing while giving medicine for pain has a different significance. Decisions such as to cease giving water and nutrients through tubes require more discussion, but the examples given are the reference points from which the relevant arguments can proceed.

Two theoretical questions arise from such discussions. First, whence arise the limitations on redescription of actions necessary to the argument? Second, to what extent are such limitations permanent features of human life, and to what extent do they change as history unfolds? Thus we reach, by another route, a question crucial to this study: whether the conditions of human life can be limitlessly re-described to advance our agendas; and if not what the limits are, how they are grounded, and how they can be found.

I have said that human beings are presumed to be aware of their own intentions and plans of action. This is not quite so: muddle and self-deception about one's intentions are as possible as are muddle and self-deception about one's affections. Sometimes muddle of this sort is especially pertinent to double-effect issues. If there is an effect I should welcome but which I cannot in good conscience pursue, say the death of an elderly and troublesome relative from whom I expect an inheritance, it will be easy for me to conceal from myself the extent to which my patterns of behavior tend toward bringing it about, and even are shaped by a desire for it. There are people, like King David, who have a knack for getting others to do their dirty work for them while avoiding personal responsibility. Hence while a morality of consequences opens all the problems of an uncertain future and of comparing incomparable goods, a morality of intentions opens all the mysteries of the human heart.

2.5. Symbols

One of the more frustrating features of moral and political debate is the persistence of issues about which men and women feel strongly, but which the skeptical mind is likely to dismiss as trivial or as a mask for something more serious. The American obsession with skin color, which in some ways afflicts anti-racists more than it does racists,^{xii} is one example; concern about hair length in men, and skirt length in women, is another. Religion has generated many disputes about details of observance -- precisely how one receives Communion, for example -- with which the worldly are impatient. Scholarship, too, has its petty issues: whether footnotes belong at the margin or at the end of the text (or in both places) for example.

A form of Marxism that has many conservative adherents holds that economic issues are central, while other issues (styles of dress, for example) are peripheral. But attempts to find the "real" issues behind apparently trivial questions encounter many difficulties. Economic motives, such as the desire to support a family, economic institutions, such as money and property, technologies, such as birth control pills, and economic phenomena, such as the behavior of the stock market -- all have significant cultural and psychological dimensions.

Brecht said, *Erst kommt das Fressen*, but human eating (*Essen* as opposed to *Fressen*) has an enduring cultural dimension: people have to be more than ordinarily hungry to eat dog-food, and those whose diet is adequate and even healthy, but cannot afford a special meal to celebrate a holiday, are importantly deprived. And eating other people's leavings is felt to be degrading, even though it is neither immoral nor (necessarily) unhealthy.^{xiii}

Considerations of sanitation apart, the disposal of human remains might seem a trivial issue. But the way we deal with a person's corpse defines our relationship to him, which continues to be morally important after his death. Creon and Antigone were fighting about something real, not just

attempting to exert power over one another. Sex, too, has a powerful symbolic dimension,^{xiv} not reducible to the sensations experienced at orgasm (or anything else). One reason for this fact is that men and women have the power to create new life -- a fact about human sexuality that affects our feelings even when reproduction is unlikely or impossible.^{xv}

Finally, controversy about the details of religious observance cannot be dismissed as minor. A service is not merely entertainment for the laity while they wait to receive the desired theological, moral, or political message (or are dispensed valid sacraments). A service may also convey an undesired message of its own, e.g., that the doctrines preached are fantasies designed to console the losers of this world but to be ignored in "real" life.^{xvi}

2.6. *Tradition, Convention, and Change*

The social environment of action affects moral judgment in a number of ways. In the first place, the language in which we frame moral issues -- not only the language of "Ten Commandments" morality, but also philosophers' expressions such as *duty* and *happiness* -- is both conventional and traditional. It carries with it a freight of conventional understandings that can be canceled only with difficulty. Expounders of Aristotle have constantly to explain that for him *virtue* does not mean chiefly sexual self-restraint, and *prudence* does not mean chiefly caution. Nor is the word *morality* innocent: it carries with it a possibly undesired suggestion that sexual issues are the most important moral questions.

Second, the consequences of our actions depend in part on how others interpret them. An otherwise innocent act may be wrong because another person will interpret it in a morally corrupting way; this consequence is traditionally called *scandal*.

Third, insofar as an action has a symbolic dimension, its moral acceptability depends on the conventions of meaning prevalent within one's world. Whether it is a lie to describe a jolly

heterosexual as "gay" depends on one's time, place, and audience. Likewise the symbolic ramifications of sexual practices, and of ways of disposing of human remains, depend in part on how the agent and others understand them. Conventions affect even what a person can intend: I cannot say, "Jones is a depraved criminal who ought to be extirpated for the good of society," or spit in his face, while intending to express my love and admiration for him.

Fourth, not everyone can do everything. Human beings have responded to this problem by defining a number of social roles, including those of husband, mother, and social critic, performance of which can be assessed according to common standards. What these roles are, and what the requirements of the role morality attached to each of them is, depends largely on convention.

Finally, our conventions and traditions may preserve moral insights. On any account sifting is required, but to reject the wisdom of the ages altogether is to give oneself the impossible task of creating the moral and social world afresh. In morality as in science we are sailors who must repair our vessel on the open sea: there is no Archimedean point outside our practice from which our morality can be re-evaluated. Hence methodological conservatism is the only alternative to a paralyzing skepticism: criticism, however radical, must begin with an examination of the status quo.

But people begin in very different places. And many people these days suggest that our ship has sprung so many leaks that it is beyond the possibility of repair, indeed that it was unseaworthy from the beginning. Only an examination of the difficulties and of our resources (personal as well as collective) for meeting them can begin to provide an answer to such critics.^{xvii} I have not so far distinguished between three different elements in our social norms. One is the ephemeral domain of taste and fashion. The second consists longer-lived conventions such as

political constitutions, which nonetheless have limited span of life. The third includes those even longer-lasting traditions for which their adherents claim permanent validity. On any account, identification of the third class requires selectivity; those who defend traditional sexual morality do not mean to include the view that, since boys will be boys, it is just as well that there is a class of loose women for them to be boys with. There is nothing wrong with this procedure, but it requires principles of evaluation and not just the citation of authorities.

Not everyone is the beneficiary of the same tradition. The whole world is now Western, in a trashy, least common denominator way, but beneath this surface a multitude of local, communal, regional, and national traditions persist. Each agent must make the best of what is given him, but what is given each of us varies from individual to individual.

All societies change, but one can imagine a society in which change took place so slowly that human beings were unaware of it, or so quickly and decisively that memory of former ways of life was lost. But we live in a world in which both change and the consciousness of change are all pervasive. To examine other possibilities is merely to underline how different we are from people in a highly traditional society, for example. We stand rather in an uncomfortable relationship to our cultural and religious past, as witness our surfeit of translations of the Bible.

What is crucial for present purposes is the different ways people react to change. Some embrace it with enthusiasm, and endeavor to drive others, sometimes brutally, "kicking and screaming into the Twentieth Century." Others seek a refuge from the modern world, secured among other things by stringent moral rules. Still others attempt a more discriminating response. And such divergent responses lead to the classic situation of ideological deadlock, in which considerations *A* finds persuasive *B* finds irrelevant, or even supportive of the opposite conclusion.

An exchange between Finnis and his liberal opponents, on the cognate issue of infallible teachings on moral issues, illuminates the considerations at work here. The liberals adduce the complexity of modern moral problems to cast doubt upon the possibility of finding definitive answers to modern moral problems by appeal to revelation. Finnis sees an argument from *some* to *all* here, or more exactly an argument from

(1) Some moral issues are too complex for definitive judgment.

(2) All moral issues are too complex for definitive judgment.

And he concludes, "Glassand non sequiturs which seem more at home in politics are to be found, remarkably, in serious theological books, and they serve for a time"^{xviii} -- an example, no doubt, of the nonpolitical style he thinks appropriate for theological reflection.

But the liberals' point is not a mere non sequitur, though it is not as decisive as they perhaps think. Modern problems are not only complex but interacting: the sort of family structure we have (or ought to have) is in part a function of the sort of economic structure we have (or ought to have), and vice versa. And education, government, and other aspects of our collective life also have an impact on families. Under such circumstances, one might well doubt the capacity of human beings to fix for all time moral requirements concerning marriage, or to discover that God has done so. But one might also conclude that, without infallibly taught moral norms, moral judgment would be impossible. And the same argument will apply to exceptionless norms.

2.7. *The Heterogeneity of Morality*

Charles E. Larmore argues "we do best to see morality, at its deepest level, as a motley of ultimate commitments. As a result we should acknowledge that moral conflict can be ineliminable" (xi).^{xix} Hence the possibility of a moral blind alley, in which I can honor one of my ultimate

commitments only by breaching another, haunts contemporary reflection on moral issues.^{xx}

Larmore believes that his observation supports a self-consciously modern approach to moral and political issues.

But in fact Larmore's recognition of complexity undermines his response to Alasdair MacIntyre's anti-modernist arguments. Uncharitably attributing a foundationalist moral epistemology to MacIntyre, Larmore maintains that "contextualism -- the view that a disputed belief is sufficiently justified if justified by appeal to other beliefs not challenged by the particular dispute" (29) -- is as reasonable an epistemology for morals as it is for science. This may be so, but it does not answer MacIntyre.

For MacIntyre is contending that the context of modern morality has been shattered -- that the rise of the officially neutral state and the sundering of morality from its religious setting, as well as the decline of Aristotle's influence in philosophy, have created a world in which emotivism, whatever its flaws as a philosophical theory, is a correct description of how moral argument actually proceeds. When we find ourselves in disputes which threaten to widen until our entire picture of the universe is at issue, standard liberals put an end to reflection by invoking a ban on "imposing one's values" on other people.

Examination of our considered judgments reveals three sorts of standard: consequentialist standards, which hold us responsible for how the world goes, so far as that is within our power; deontological restrictions on action, such as the prohibition on lying; and partial commitments to friends, family, and (for example) colleges and universities. These principles stand at a considerable remove from the rules of "Ten Commandments" morality; two or three of them, and possibly other considerations as well, may support a single commonsense rule. Conflicts between each of these requirements and any of the others are possible (ch. 6). In the absence of a general

theory of how to resolve such conflicts, or a belief about the world that limits their possibility, we are faced with two unappealing prospects. One is a possibly unlimited assemblage of moral blind alleys; the other is a morality composed entirely of situational judgments.^{xxi} In either case the deconstruction of the Western ethical tradition is well underway.

2.8. *Individual Variation*

A common attempt to defend actions other people think wrong goes as follows. Such conduct would be wrong if ordinary people did it, but I -- and a few others like me -- are different in ways that make it permissible (and perhaps sometimes even obligatory) for us.^{xxii} This argument will not do as it stands, since it means that any moral requirement whatever can be evaded by pleading individual difference. And, while human beings differ enormously in temperament, they do not group themselves into psychological types such that principles that apply to persons of one type cannot be applied to persons of another.

Homosexuality, to use the most common example of radical human difference, is a highly various phenomenon, associated with a variety of other personality traits, and in the production of which differing mixtures of choice, genetic difference, and environmental influence combine. And many of those who take part in homosexual relations, or are tempted to do so, will come to prefer the opposite sex upon maturity or release from prison, or would have preferred the opposite sex but for bitter personal experiences.

In addition to differences of desire of the sort just mentioned, people also differ in the sorts of person they admire and want to become. These differences of ideal are at least partly moral in character, though they lack the purity of Kant's reverence for the moral law. Some people are more capable of sophisticated moral analysis than others, and of acting on conclusions that conflict with their own inclinations or the *mores* of society. People also differ in decision-making styles: some

people cut through difficulties on the way to their ends, whereas others multiply complications for fear of having left out any relevant consideration. These differences extend also to the sphere of morals: some people are temperamentally lax, whereas others are temperamentally scrupulous. Finally, people stand in different relations to the conventions and traditions of society: they differ in background, subsequent moral influences, and present situation of comfort or disadvantage. The bad Catholic, the non-practicing, unbelieving Jew, and the agnostic Protestant are very different sorts of people.

The simplest way in which we take differences among human beings into account in moral judgment is in admitting excuses -- some of which almost, though not quite, count as justifications. Some people, for reasons not their fault, find some rules of morality hard to recognize or, if they do recognize them, hard to observe. If we think of moral requirements as analogous to penal laws, the difference between excuse and justification will tend to disappear, since that many people find a criminal law too hard to keep is a reason for repealing it (though of course not always a decisive reason). But this analogy has distinct limitations; moral standards are not only methods of social control, but also describe elements of a life worthy of a human being.

It is not, however, possible to limit the impact of human differences on morality to questions of excuse. The advisability of self-improvement campaigns, diets for example, depends in part on a person's capacity to follow through with them -- and thus on his (and his adviser's) estimate of his probable future actions. One might well hesitate to end, or to urge another to end, a monogamous though from a moral point of view less than ideal sexual relationship, if the result were to be a life of promiscuity. A crucial issue is how far this line of thought can be pressed without exempting some people, by reason of their peculiar personalities, from observing the requirements of morality.

2.9. *Concluding Remarks*

It is now possible to cut back the complexity of moral situations a little.^{xxiii} It is not necessary to formulate moral rules to cover naturally impossible situations, such as those involving kittens injected to produce super-cats with human intelligence;^{xxiv} or which presume knowledge that human beings cannot have, such that if I have sexual intercourse now, my great-great-grandson will be a mass murderer (and I will not have a great-great-granddaughter whose good deeds outweigh his crimes).

There can be no practical need for rules covering such cases, and any result one reaches for them will sound odd, if only because of the oddness of the situation envisaged.^{xxv} Moreover capacity for moral judgment arises in the world as it is, and there is no reason to suppose that it extends to possible worlds other than our own. Hence a moral code will be sufficiently defended if it applies satisfactorily to all naturally possible situations, including only those forms of knowledge of which human beings are naturally capable.

It is possible to strengthen this conclusion, and exclude from consideration even some naturally possible situations. Ursula K. LeGuin^{xxvi} imagines a race of intelligent androgynies, each of which is capable of both begetting and bearing a child. These beings undergo an estrus cycle, and have no institution of marriage. (Their only important conventional rule about sexual behavior requires "brothers" to separate after one of them has given birth to a child.) Such beings may be naturally impossible, say for reasons involving hormones, but even if they are possible we need not worry about them when we formulate our principles concerning sex, reproduction, and family life. For we have no practical dealings with such creatures, and they are structurally discontinuous with us in respects relevant to these domains of morality. The same would not be true, however, of our

principles governing violence and deceit, procedural principles such as *Accept traditional rules that withstand scrutiny* or general moral principles as such *Never use a rational being as a mere means*.

Actual situations are unsettling enough, without the help of science fiction. Hence we need not be concerned here with a contention such as Kai Nielsen's, that "As the world goes, there are good grounds for holding that judicial killings [of innocent people] are morally intolerable, though ... if the world (including human beings) were very different, such killings could be something that ought to be done."^{xxvii} For our moral rules -- including those which traditional morality designates as absolute -- are tied to a world similar, at least in its most important aspects, to our own.

NOTES

ⁱ We may call this sort of approach "Ten Commandments" morality, though the literal Ten Commandments are not always at issue (they contain no general ban on lying).

ⁱⁱ "Where Ethics Comes from and What to Do about It," *Hastings Center Report* 22 (July-August 1992): 28.

ⁱⁱⁱ *Moral Absolutes* (Washington, D.C.: Catholic University of America Press, 1991), p. 72.

^{iv} *Ibid.*, pp. 38-9

^v *Ibid.*, esp. § III.3 (also p. 66).

^{vi} See my *Ethics of Homicide* (Ithaca, N.Y.: Cornell University Press, 1978; paperback ed. Notre Dame: University of Notre Dame Press, 1990), ch. 4.

^{vii} *The Rejection of Consequentialism* (Oxford: Clarendon Press, 1982), pp. 15, 16n.4. For a consequentialist response, see Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989).

^{viii} See H.L.A. Hart and A.M. Honoré, *Causation in the Law* (Oxford: Oxford University Press, 1962).

^{ix} As Plato has memorably shown. "Leotius son of Agathon, on his way up from the Pireaus under the outer side of the northern wall, becoming aware of the dead bodies that lay at the place of public execution at the same time felt a desire to see them and a repugnance and aversion, and ... for a long time he resisted and veiled his head, but overpowered in despite of all by his desire, with wide staring eyes he rushed up to the corpses and cried, There, ye wretches, take your fill of the

fine spectacle!" Republic 439e-440a, Paul Shorey trans. In *Collected Dialogues*, Edith Hamilton and Huntington Cairns eds. (New York: Pantheon, 1963), p. 682.

^x See Thomas Hurka, "Consequentialism and Content," *American Philosophical Quarterly* 29 (January 1992): 71-8.

^{xi} See my article, "Acting and Refraining/Intention and Foresight," *Dialogue*, spring, 1987

^{xii} Some people insist that *people of color* is the only acceptable term for black people (or for nonwhites generally), while condemning the use of *colored people* as proof of bigotry.

^{xiii} Another example: employees with a strong union (and seniority privileges) sometimes receive their wages while doing nothing after the plant at which they were working closes. (They have to report to "work," and so cannot use their leisure for any creative purpose.) While better than starvation, this solution is unsatisfactory.

^{xiv} The symbolic dimensions of human acts, sexual or other, has been somewhat neglected by English-speaking philosophers. But Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), p. 107, condemns some sexual acts as "life-denying in their imaginative significance."

^{xv} See my article, "Birth, Copulation, and Death," *New Scholasticism*, summer, 1985.

^{xvi} Thomas Day, *Why Catholics Can't Sing* (New York: Crossroad, 1992) confirmed my views on this point.

^{xvii} On the concept of continuing a tradition, and the suggestion that a tradition may be exhausted, see Yuval Lurie, "Wittgenstein on Culture and Civilization," *Inquiry* 32 (1989): 375-97.

^{xviii} *Moral Absolutes*, pp. 92-3.

^{xix} Parenthetical references in this section are to Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987).

^{xx} See for example Michael Walzer, "Political Action: the Problem of Dirty Hands," *War and Moral Responsibility*, Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds. (Princeton: Princeton University Press, 1974), pp. 62-82.

^{xxi} Larmore maintains that "a ... decision where violating our deontological duty for the sake of some particularistic commitment would amount to physically harming or even killing another (who was innocent) ... is next to impermissible" except "in the case where failure to heed the principle of partiality would bring us to avoid a similar deontological prohibition" (p. 144). I am not sure how this conclusion, which subordinates particular commitments to deontology, is to be squared with an insistence on the radical heterogeneity of moral principles.

^{xxii} See for example Charles E. Curran, *Tradition and Transition in Moral Theology* (Notre Dame: University of Notre Dame Press, 1979), ch. 3.

^{xxiii} If anything, I have understated this complexity; I have for example ignored the possibility that some acts might be denounced as moral abominations. As Jeffrey Stout reminds us, "where sacrilege and sodomy fail to offend, necrophilia, bestiality, and cannibalism often succeed." (*Ethics After Babel* [Boston: Beacon Press, 1988], p. 146.) Perhaps this dimension of situations can be assimilated to their symbolic aspect.

^{xxiv} Hence the writer conceded too much to Michael Tooley in his *Ethics of Homicide*, e.g., pp. 95-96.

^{xxv} Miracles pose a problem here, but we have no right to count on their occurrence. And a God who gives us supernatural knowledge of the future will presumably instruct us how to act on it.

^{xxvi} *The Left Hand of Darkness* (New York: Ace, 1983).

^{xxvii} "Against Moral Conservatism," in Joram Graf Haber ed., *Absolutism and its Consequentialist Critics* (Lanham, Md.: Rowman and Littlefield, 1994), p. 169.

AXIOMS, CASUISTRY, ELITISM

In order to criticize some actual or proposed action, John cites a moral rule of the Ten Commandments variety ("Thou shalt not commit adultery," for example). Mary can reply that her act is not one of adultery, or that adultery in her books is not a sin. But she can also reply, "Life is more complicated than you think: adultery, though ordinarily wrong, is acceptable under these circumstances."

John has a choice of replies:

(J1) "Yes, life is complicated, and whether adultery is wrong is a matter for case by case judgment. In this case, it is legitimate (or wrong, as the case may be)."

(J2) "No, life is *not* complicated, or not as complicated as you think. Adultery is always adultery, and as such always wrong. Those who think otherwise, in G.E.M. Anscombe's phrase, 'show a corrupt mind.'"

(J3) "Adultery is sometimes justified (and in fact is justified in this case). But those of us who are intelligent enough to discern the cases where adultery is acceptable ought also to be prudent enough to keep quiet in front of those whose control over their instincts, and whose capacity to make moral distinctions, is weaker than ours."

(J4) "Yes, life is complicated, but its very complexity requires that some possibilities be excluded from moral deliberation. Married life is complicated enough as it is, without admitting adultery as a legitimate possibility." (Those who reject answer J1 or J4 for adultery may still accept it for murder, rape, or selling dope to children.)

By examining John's replies we will be evaluating not only ways of resolving moral questions, but also ways of sustaining or challenging moral absolutes. The argument of chapters 2 and 3 suffices to refute answer *J2*, which denies the complexity of human life. But it is not evident what is the best way of dealing with life's complexity: answer *J4* admits complexity while preserving the norm. In this chapter and the two following, I survey the various moves made in disputes about moral absolutes, beginning with appeal to some moral axiom.

3.1. Axioms

Consider the following propositions:

(A1) One ought always do good and avoid evil.

(A1a) One ought always to produce the greatest net good.

(A1aa) One ought always to produce the best possible balance of pleasure over pain.

(A2) One ought to act only on those maxims that one can will as universal laws (of nature).

(A3) One ought always treat humanity as an end in itself, never as a mere means.

(A4) One ought always observe the mean, as defined by the man (or woman) of practical wisdom.

(A5) One ought always obey the conventions of one's society (so far as these can be rationally defended).

(A6) One ought always to perform the duties of one's station.

(A7) One ought always to do the most loving thing possible (toward God and neighbor).

(A8) One ought always act in accordance with the constant teaching of the Church or the plain meaning of Scripture.

(A9) One ought never offend God.

Such propositions -- call them *moral axioms* -- purport to govern all of our conduct. All are sometimes defended with the claim that they provide the sole alternative to "moral" judgments that reflect nothing but the inclinations of the individual or the prejudices he has absorbed from his group. Judgment is required in their application. Axiom *Alaa* -- the principle of utility interpreted in a hedonistic sense -- comes closest to implying concrete rules for conduct. But it can also be challenged by appeal to intuitions reflecting a deontological or partialist perspective. Why should I kill, deceive, or inflict pain upon my wife or mother, just because the greatest net happiness will be advanced, perhaps only slightly, by my doing so?

And all moral axioms can be challenged in a more fundamental way, by arguments supporting an anti-theoretical approach to ethics. The first step in the argument for anti-theory is the fact that -- whatever else it may be -- morality is a feature of human social life before it is a matter of philosophical reflection. Unless we already had a conception of happiness and right conduct, or of virtue and rights, at work in our moral language, moral philosophers would have nothing to work with. It is perhaps possible to imagine a world in which no one ever asked whether inherited conceptions of the good and the right were defensible, but hardly one that consisted only of philosophers proceeding on principles that they had adopted after critical reflection. The latter kind of society would contain no children.

Michael Oakeshott (ch. 8)ⁱ distinguishes between morality as a habit of affection and conduct, and morality as the application of criteria (including the self-conscious pursuit of moral ideals and the reflective observance of moral rules). And he concludes that, while the second sort

of morality may be an appropriate endeavor for an individual, only the first sort is proper for a society. In his own words, "human life is a gamble; but while each individual must be allowed to bet according to his inclination, society should always back the field" (p. 186).

There is, however, something absurd about Oakeshott's undertaking. One cannot decide, in advance of the situation, how much either an individual or a society should rely on habitual responses, and how much on reasoned reflection, in making decisions. Oakeshott may be right in complaining that "the predicament of Western morals ... is first that our moral life has come to be dominated by the pursuit of ideals ... and secondly that we have come to think of this dominance as ... an achievement of which we should be proud" (pp. 202-3). But he has not produced a persuasive argument for this conclusion.

Nonetheless, some philosophers have regretted the fact that they exist as members of society before they begin to criticize its practices. Descartes goes so far as to complain that

Given the fact that we were all children before being adults and that for a long time is our lot to be governed by our appetites and our teachers... it is almost impossible for our judgments to be as pure or solid as they would have been had we had the full use of reason from the moment of our birth and never been led by anything but our reason.ⁱⁱ

To reject such a position is to advance the discussion a little.

The next step in the anti-theoretical argument is a critique of philosophical attempts to define an extra-historical starting point from which inherited standards can be critically evaluated. Here Wittgenstein's work is helpful. For he introduces the human element by way of an *a priori* reflection on the nature of knowledge. He concludes that what is given in cognition is not sense data but practices -- what he calls "forms of life" or "language games." Hence he rejects the priority of the first person singular advocated by Descartes, in favor of a perspective that makes

knowledge depend on a language that enables one to share one's conclusions with others, and enables others to scrutinize and correct one's results. And the only languages available for this purpose are those transmitted from past generations, though each generation modifies its inheritance in some way.ⁱⁱⁱ Applied to ethics, Wittgenstein's argument supports an approach like that of Hegel. As Hegel sums it up with uncharacteristic lucidity, "When a father inquired about the best method of educating his son in ethical conduct, a Pythagorean replied, 'Make him a citizen of a state with good laws.'^{iv} For only such a state -- or rather, only such a community, -- will support the full array of concepts, practices, and motivational incentives needed for sound moral reasoning and the putting of its conclusions into practice. But no more for Hegel than for Wittgenstein is the essential argument about education. Hegel's contention is that a morality of abstract principles is empty until filled out by the concrete morality of a community, transmitted through its moral language. (Such a community need not, despite Hegel, be the nation-state, but can range from a pair of friends or lovers to the human race as a whole.) Words like *theft*, *murder*, and *love* make possible concrete moral and evaluative judgments.

The third and final step is an observation concerning the nature of inherited morality, one that makes it resistant to restatement in axiomatic form. Human beings pursue a multitude of goods, by way of a multitude of practices governed by a multitude of norms. (The phrase *by way of* should not be allowed to conceal that many of the goods human beings pursue -- friendship for example -- are internal to the practices by which they pursue them.) And they admire, and try to practice, a multitude of virtues. That business, friendship, family life, politics, education, religion, and art should all be governed by the same principle, or short list of principles, is credible only to those committed, on a priori«MDUL»«MDNM» grounds, to the existence of such principles.

There is a large gap between any proposed fundamental principle and the concrete decisions that form the moral life. In order, for example, to establish contact between the consequentialist axiom *A1* and the moral life it is necessary to apply it not only to individual acts, but also to attitudes, rules, institutions, and methods of moral education. And since the effects of any one of these will depend largely on the character of the others, we will end up evaluating entire ways of life. Or rather, since it is not possible to create a way of life out of nothing, we will need to evaluate proposed changes in our way of life, taking into account the fact that both change and failure to change may have unexpected and sometimes unwelcome effects. We have thus moved very far from the prospect, originally presented by utilitarianism, of reconstructing our moral tradition from without. The same argument will apply to any other moral axiom -- including those I have listed at the head of this section -- that one might use for such a purpose.

The conventionalist axioms *A5* and *A6* might seem to yield a more determinate result, at least if one ignores the possibility of radical critique of existing conventions. But we must distinguish between conventionalism as a moral theory and the moral judgments of conventional people, which are sometimes accompanied by a non-conventionalist moral theory or, more often, by none at all. To apply conventionalist moral theories, one has to identify one's group and then discern its conventions. Both operations present problems, the second as much as the first. Even for the most conventional among us, public opinion polls are no way to settle moral issues; those who attempt to settle them in that way are called "politicians" and held in little respect by the rest of us.

Stuart Hampshire has pointed out the complex, even quirky, character of the inherited rules and attitudes with which the reflective moralist must of necessity deal.«USSX»

Every natural language [he writes] flaunts its idioms and inconsistencies, because they lend the language, spoken and written, its distinctive flavor and spirit. In some important areas of morality, which are least regulated by rational calculation, the rules that support a particular way of life, and its determinate conception of the human good, will be particularly stringent rules. (p. 152)

But the issue immediately arises, whether this defense is not available for the most blatantly irrational institutions. In overtly racist societies like the Old South, intercourse between a black man and a white woman, even in marriage, was strongly tabooed, whereas intercourse between a white man and a black woman, though not in marriage, was regarded as a normal part of a young man's education.

Some people attempt to step outside the *mores* of society and evaluate them as an essential part of our moral tradition. When we undertake the critique of institutions and *mores* we find irrational, we invoke principles that look very much like moral axioms. These have, to be sure, a certain conventional standing, but those who employ them claim on their behalf a supra-conventional force.

The anti-theoretical movement in ethics is sound so far as it casts doubt upon the project of producing an axiom (or short list of axioms), standing outside the moral tradition of our culture, from which moral conclusions can be drawn by applying it to "value-neutral" facts. But to go further, and to reject moral theory as an enterprise, is to condemn oneself to one of two unpalatable positions. Either one must accept the *mores* of one's society without question, however stupid or brutal they appear; or else moral argument turns into a partisan enterprise, subordinate to Polemarchus's principle: *Help your friends and hurt your enemies*. Another possibility is a religious morality, in which one's personal relationship to God or Christ takes precedence over

principles of every sort. But, even on such a view, reflection will be necessary to help us discern what the requirements of this relationship may be.^v

3.2. *Casuistry*

Casuistry attempts to apply received rules and principles to novel situations (and all situations will in some respects be novel). Casuistical reasoning consists in the expansion or contraction of received norms in territories under dispute, in order to resolve contested moral issues. It responds to motley of considerations.

First, each of our crucial moral terms has a descriptive core and at least vague descriptive limits. This observation is consistent with the fact that they are defined with the help of value-laden terms such as *marriage* and *property*. A happily married man away from his wife on a journey sleeps with a woman in order to relieve his boredom and frustration: to defend such conduct means abandoning the concept of adultery in its modern, monogamous sense. And -- however much someone may disapprove of such conduct -- cheating on one's income tax is not adultery, gambling is not cruelty to animals, and contraception is not murder.

But moral terms have more flexibility than literal-minded people might think: St. Thomas Aquinas argued that in cases of extremity all property is in common, so that one who takes what appears to be another's goods to ward off starvation is not guilty of theft -- not that his theft is excusable or even justifiable. And the possibility remains that the sense and reference of our moral language is entirely a historically contingent matter. Some people might think that our moral rule against murder requires massive revision under conditions of overpopulation.

Second, outside the descriptive core, but within the descriptive limits, of the application of a moral word every morally relevant consideration is pertinent. Even if we do not accept utilitarianism or consequentialism, it remains the case that whether we consider a wide range of acts murder is in part a function of whether we deem it advisable to do so. But in the case of murder the value we place on human life and on the uniqueness of each individual will be an important part of the relevant considerations. And there are powerful prudential reasons not to redefine «MDUL»murder«MDNM» or other crucial moral terms to meet every passing moral or political agenda.

Third, the casuist, as opposed to the ethical theorist, works within a framework of rules and principles that he receives but does not create (though this distinction is one degree). The resulting diversity of starting points means that casuistry will be, at least in a broad sense, a theological activity, i.e., the interpretation and application of some authoritative tradition, if only the humanistic tradition of the West.

Fourth, the coexistence of communities with differing moral and cultural traditions requires two sorts of casuistry. On the one hand, the representatives of each community attempt to elaborate its tradition in order to deal with novel situations. On the other hand, there must be rules of coexistence -- what John Courtney Murray calls "articles of peace" -- among these groups, if their relationship is not to be one of endless war. And these rules will require interpretation and application, to questions of civil disobedience for example.

These two forms of casuistry cannot proceed in isolation from one another. The representatives of a community must be concerned with the possibility that the surrounding social world may become increasingly hostile or indifferent to its concerns, and engage in subtle or overt

forms of persecution as a result. And those who elaborate the norms of a pluralistic society cannot be indifferent to the possibility of communities at war with the rest of society.

One important causistical tool is the principle of double effect:^{vi} A classic formulation of this principle is that of J. -P. Gury, S.J.:

It is lawful to actuate a morally good or indifferent cause from which will follow two effects, one good and the other evil, if there is a proportionately serious reason, and the ultimate end of the agent is good, and the evil effect is not a means to the good effect.^{vii}

Those who adhere to moral absolutes require such a principle. For there are circumstances in which, whatever one does, an innocent person will die, someone will acquire a false belief as a result of one's speech or silence, or some other result one is forbidden to produce directly will follow. One needs to be able to say, in such cases, that one is not doing evil that good may come of it, but rather doing good from which evil unfortunately follows. Hence a physician may prescribe pain relievers that, as a regretted or at least an unintended side effect, shorten the patient's life. But it is not necessary to believe in absolutes in the strict sense in order to accept the principle of double effect. Some moralists, without believing in moral absolutes in the strict sense, believe in virtual absolutes (see § 6.3.) or in acts intrinsically evil in the weak sense -- namely that, though they may sometimes be justified, they always require a justification.^{viii} Such moralists also can use the principle of double effect. So long as it makes a difference whether one is doing evil or accepting it as a side effect of one's action, the principle of double effect is a necessary causistical tool.

The credible use of this tool of casuistry requires three conditions. First, there need to be action-kinds resistant to elision into either desired or foreseen consequences. If one can say, "I am not committing adultery, only securing my release from a concentration camp so that I can rejoin

my family," the principle of double effect will be superfluous. And if one is required to admit that one is killing those people whose suicide results from one's literacy campaign, the principle of double effect will have no application.

Second, the fact that the bad consequences of one's acts are regretted or at least unintended must have some effect on one's behavior. We must be prepared to take real care, and in the process take real risks, to avoid killing noncombatants if we are to claim that we do not intend the deaths of those who die as a result of our military actions.^{ix} Likewise, if we decide not to try to prolong the life of a dying person or a severely damaged infant, we must, in order to support our invocation of the principle of double effect, show respect for the patient in other ways (including ways whose importance is symbolic).

Third, the application of the principle of double effect requires a background ethics of "my station and its duties," although this ethics need not be immune to overriding or revision, say on the ground that it reflects a gravely unjust set of institutions (slavery, for example). Failure to do one's conventionally defined duty, or acting in accordance with a defensible interpretation of that duty, has a different intentionality than does the intervention of a stranger.

Two pairs of examples developed by Shelly Kagan make the crucial point:^x

(SK1a) A philosopher expected to win a prize that cannot be awarded posthumously is being kept alive on life-support systems. A rival disconnects him, he dies, and the rival then wins the prize.

(SK1b) A severely injured boy is also being kept alive on life-support systems. His doctor concludes that recovery is impossible, and after consultation with the boy's family, disconnects him. The boy then dies.

(SK2a) Parents fail to feed their children, who then die of starvation.

(SK2b) I fail to feed a homeless person, who then dies of starvation.

Most of us would say that in cases *SK1a* and *b*, the rival philosopher kills and the doctor only allows death; and that in cases *SK2a* and *b*, the parents kill but I only allow death. And since at least one criterion for imputing intention in difficult cases is the distinction between action and inaction,^{xi} we are also likely to say that the rival philosopher and the parents intend the deaths of their victims, whereas doctor and I merely foresee them (at least in the absence of further reason for imputing intention in these cases). But central to our judgments in these cases is the fact that the doctor is fulfilling a conventionally defined role, and the parents are failing to do so. If all such roles are presumptively illegitimate, then these moral distinctions will cease to make sense.

3.3. *Elitism*

One possible source of difficulty is the contemporary belief that all men and women, including those who used to be called the "vulgar," are equally entitled to take part in moral discussion. But a tradition represented by Plato,^{xii} Sidgwick,^{xiii} and Roger Scruton^{xiv} suggests that there is a significant difference between two classes of moral agents -- the common people and the enlightened few.

One way of spelling out this difference is as follows. Moral judgments are matters of convention, and these conventions rest ultimately on will and force, by which superior persons (or the majority) impose their agendas on their inferiors (or the minority). We may add that the element of force and will underlying our morality should be kept from the majority with the help of pious lies. Some such position was attributed to a wide range of other writers by Leo Strauss, and may have been in fact have been that of Strauss himself.^{xv} In another form, this tradition allows a

select class of morally sensitive person to make highly discriminating situational judgments, while leaving the mass of mankind to strict deontological norms.

On such views, religion and conventional morality are fictions necessary to keep the masses in line -- or, more politely, to maintain »social order. Meanwhile philosophers, who have seen through the swindle, are entitled to pursue their ends without regard to inherited moral codes, though they may have codes of their own which place some constraints upon their actions. This strategy makes ample provision for Machiavellianism: philosophers can advise their rulers (and those among their students who seem destined for rule) to depart from communal codes ruthlessly when necessary to preserve the community that sustains them; they can also supply sophistical arguments as necessary to refute indiscreet skeptics.

The hypocrisy required by this strategy renders it unacceptable. Moreover it ignores the fact that there is now a substantial "trickle down" from elite to mass attitudes. Lastly, it supposes, contrary to fact, that philosophers are immune to the physical, intellectual, and emotional limitations that afflict ordinary people. Philosophers as much as ordinary folk are subject to social pressures, including the various forms of "political correctness." Philosophers who undertake propaganda for Machiavellian reasons are likely to end up believing their own lies for the same reason ordinary people are. Philosophers as much as ordinary folk often fail to live up to their own convictions; philosophers as well as ordinary folk must die.

Nonetheless, those who insist, as I would, on the public character of moral judgments,^{xvi} must admit one important qualification. There are strong social conventions against direct expression of disapproval of other people's behavior. Disapproval is usually expressed obliquely, often with qualifiers like "it's all right if that's what they want" Only when the person making the judgment has a personal interest in the matter (including an interest such as raising his children

"right"), or else has an institutional position, say as religious leader, which entitles him to speak out on moral issues, is direct expression of moral disapproval considered appropriate. How far politeness can qualify honesty in moral matters is itself a matter of casuistry, which nothing in the present argument enables or requires me to resolve.

NOTES

ⁱ Parenthetical references, by contributor and chapter or page, in this section are to *Anti-Theory in Ethics and Moral Conservatism*, Stanley G. Clarke and Evan Simpson eds. (Albany: SUNY, 1989) -- an anthology to which I am much indebted. For an ethics textbook that takes the contribution of anti-theorists into account, see Christina Sommers and Fred Sommers eds., *Vice and Virtue in Everyday Life* (San Diego: Harcourt Brace, 1993).

ⁱⁱ *Discourse on Method*, Donald A. Cress, tr. (Indianapolis: Hackett, 1980), p. 7.

ⁱⁱⁱ I have used the restatement of Wittgenstein's argument in Roger Scruton, *From Descartes to Wittgenstein* (New York: Harper and Row, 1985), pp. 279-84.

^{iv} *Philosophy of Right*, §153 Remark. T. M. Knox, trans. (Oxford: Clarendon Press, 1957), p. 109.

^v I am here indebted to a conversation with my colleague Sandra Fairbanks.

^{vi} See my *Ethics of Homicide* (Ithaca, N.Y.: Cornell University Press, 1978) (paperback ed.; Notre Dame: University of Notre Dame Press, 1990), ch. 4, and the literature cited there. Other pertinent works include my article, "Acting and Refraining/Intention and Foresight," *Dialogue*, spring, 1987; Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), §5.3; Grisez, *The Way of the Lord Jesus*, I (Chicago: Franciscan Herald Press, 1983), ch. 12, app. 3; Bernard Hoose, *Proportionalism* (N.p.: Georgetown University Press, 1987), ch. 5; Richard A. McCormick, "Nuclear Deterrence and the Problem of Intention," *Catholics and Nuclear War*, Philip J. Murnion ed. (New York: Crossroad, 1983), 168-82; Cornelius Van der Poel, "The Principle of Double Effect," *Absolutes in Moral Theology?*, Charles E. Curran ed. (Washington: Corpus, 1968), 186-210; and Michael Walzer, *Just and Unjust Wars* (New York: Basic, 1977), pp. 152-9. Also in point are the following contributions to Curran and McCormack eds., *Readings in*

Moral Theology, No. 1 (New York: Paulist, 1978): Peter Knauer, S.J., "The Hermeneutic Function of the Principle of Double Effect," (pp. 1-39); Bruno Schüller, S.J., "Direct Killing/Indirect Killing" (pp. 138-57), and Albert Di Ianni, S.M. "The Direct/Indirect Distinction in Morals" (pp. 215-43).

^{vii} Quoted, e.g., in Donagan, *Morality* p. 158.

^{viii} Di Ianni, "Distinction," pp. 224-5.

^{ix} See Walzer, *Wars*, *loc. cit.*

^x *The Limits of Morality* (Oxford: Clarendon Press, 1989), pp. 101-6.

^{xi} See in particular my article "Acting and Refraining."

^{xii} *Republic* 414b-c.

^{xiii} *The Methods of Ethics* (New York: Dover, 1966), p. 489: "Thus the Utilitarian conclusion, carefully stated, would seem to be this; that the opinion that secrecy may render an action right which would not otherwise be so should itself be kept comparatively secret; and similarly that the doctrine that esoteric morality is expedient should itself be kept esoteric."

^{xiv} *The Meaning of Conservatism* (Totowa, N.J.: Barnes and Noble, 1980), pp. 139-40. "Like Plato, the conservative may have to advocate the 'Noble Lie'. He might in all conscience seek to propagate the ideology which sustains the social order whether or not there is a reality that corresponds to it."

^{xv} For the attribution of such ideas to Strauss himself, see Shaida Drury, *The Political Thought of Leo Strauss* (London: Macmillan, 1988). Mark Henrie's review of Drury, *University Bookman*, 32, no. 3 (1992), 17-23 spotlights the issues.

^{xvi} See my article, "The Conscious Acceptance of Guilt in the Necessary Murder," *Ethics*, April 1978.

ANTI-PROPORTIONALISM

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

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

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

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

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

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

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

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

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

4.1 A Master Argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2 An Appeal to Heaven

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

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

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

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

4.3 Getting Down to Cases (1)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(MA 16-17)

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

4.4 Getting Down to Cases (2)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.5 Conclusion

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

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

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

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

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

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

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

NOTES

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

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

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

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

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

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

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

^{vii} In his collection *Consequentialism and its Critics* (Oxford: Oxford University Press, 1988), p. 1.

^{viii} Grisez, "The First Principle of the Practical Reason," *Natural Law Forum* 10 (1965): 168-201.

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

^{ix} FE; Grisez, "Against Consequentialism," *American Journal of Jurisprudence* 23 (1978): 49-62;

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

^x Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1982).

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

^{xii} Milwaukee: Bruce, 1964.

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

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

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

^{xvi} Hittinger, *New*, p. 215 n. 93.

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

^{xviii} The reference is to St. Thomas Aquinas, *Summa Theologiae* Ia IIae, q. 18, a. 5, ad 3.

^{xix} This is a relatively early essay; Finnis's position may have stiffened since.

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

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

^{xxii} Title of a book by Martha Nussbaum (Cambridge: Cambridge University Press, 1982).

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

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

^{xxv} This chapter benefited from the comments of an anonymous reader.

PRUDENCE

In all moral systems, rules and principles sometimes fail to give us the guidance we need. And the problem of reaching reasonable judgments where rules and principles are insufficient arises, not only in morality, but also in the philosophy of science, in critical theory, and in the attempt to deal intellectually with the relationship between rival cultures.ⁱ The sort of judgment then required has gone by various names. One such word is *discernment*, but its aesthetic and theological overtones are best avoided at this stage of the argument. *Prudence* is better but requires some elucidation.

For mainstream English speaking philosophy understands prudence as that virtue concerned with promoting one's own interests,ⁱⁱ or even as one self-regarding virtue among others (distinct, for example, from courage).ⁱⁱⁱ But prudence in the proper moral sense takes into account the interests of other persons, at least insofar as virtue requires attending to them in our decisions. And one requirement for an adequate account of prudential reasoning is to avoid (or at least minimize) the quantitative language that bedevils prudential reasoning.

5.1 Understanding Prudence

Our first task must be to understand, as adequately as possible, the prudential judgments human beings make. I begin with some examples, and then examine the contribution of Aristotle and his followers.

5.1.01 Some Examples

1. The following sort of thing might have happened at Oxford between the two World Wars.
A frustrated and lonely man, call him "Joseph," discovers that a younger friend, call him

"Kevin," desires him sexually. Joseph feels a conventional repugnance to homosexual practices -- a repugnance that includes elements of fascination -- whose moral standing and whose motivational force for Joseph are so far untested. He is unwilling, despite the conflicts which Kevin's advances trigger in him, to sacrifice a friendship to which he accords great value. Joseph recalls the ideal of Platonic love, and casts himself in the role of Socrates and Kevin in the role of Alcibiades or Phaedrus, a role which, let us suppose, Kevin is willing to accept. Thus Joseph preserves a valuable friendship while avoiding a more passionate relationship that might well (although we cannot be sure of such things) have ended in mutual hatred. His decision is not merely to observe the Law of Moses, but to take his situation as an opportunity to realize a good not otherwise attainable.

2. A Scriptural text of persistent interest to philosophers is the prophet Nathan's rebuke to King David for his adultery with Bathsheba and his murder, under cover of battle, of her husband Uriah the Hittite (II Samuel 12). Nathan does not charge David with violations of the Ten Commandments; rather he tells him a story of the theft of a ewe lamb, and thus secures David's repentance. As an example of the principle, *Treat like cases alike*, this is rather poor. Wives unlike ewe lambs have developed preferences of their own; moreover no one in the ewe lamb story claimed the privileges of royalty. On the other hand, the ewe lamb story did not involve murder. What Nathan did was to get David to see his behavior as the gratification of passion at another's cost. Nathan did not show any special insight in condemning David's behavior -- about that there was really no question. Rather he showed prudence in the always-hazardous task of reproaching the powerful.
3. The evaluation of rival candidates for an academic position involves incommensurable and overlapping considerations: scholarship, teaching, and a candidate's "fit" with a particular

department and institution -- even apart from more controversial issues such as those involved in affirmative action. It is also necessary to interpret ambiguous information, for example a letter of reference, which describes a candidate as "excitable." Somehow a committee (and each member of it) must bring all these considerations together into an intuitive judgment that some particular man or woman is the right one for the job.

4. Artists sometimes request public support for works offensive to the moral or religious sensibilities of many of their fellow-citizens. On the one hand, art is good, and requires liberty: many great works have offended the more prudish of the artists' contemporaries. And artistic experience should not be the monopoly of the wealthy and their protégés. On other hand, it is not acceptable to ask citizens to be indifferent to the way their tax dollars are spent, or to demand that hard-pressed working people subsidize crude assaults on what they hold most dear. (Imagine a publicly supported festival of anti-Semitic art, uncritically presented, or the use of public money to support a vacation in Tahiti or a meal at an expensive restaurant, presented as a form of "concept art.") The needed aesthetic judgments inevitably have moral and even political overtones; apolitical aestheticism is among other things a political ideology, designed in part to protect existing institutions against some forms of criticism. The attempt to resolve the problem by ceasing public support for the arts threatens all governmental support for high culture, even public libraries, leaving television in undisputed possession of our common culture. What we need are arts administrators with a firm sense of the difference between art and trash (tacky lawn art for example), which should not receive public money even if it offends no one. They also require a sense of a difference between what a society tolerates and what it encourages and supports; not everything that ought not to be made a crime deserves to be celebrated as

good. Such administrators will be able to distinguish challenging and even disturbing art from mere crudity, and to judge when a controversial work is good enough to risk public outcry.

5.1.02 Aristotle

The Aristotelian tradition insists that prudence is not a morally neutral quality, that the practical wisdom of the virtuous is different from the craftiness of the wicked. At the same time, Aristotle^{iv} thinks of prudence as pre-eminently the political virtue -- what we expect, but do not always get, from our leaders, even if we are out of sympathy with them ideologically.^v But this sort of virtue is consistent with even the wicked projects; Hitler would have been more prudent to postpone (or abandon altogether) his invasion of Russia, and to content himself with a smaller empire in which to do his evil deeds.

Aristotle writes that "virtue ... consists in observing the mean relative to us, a mean which is defined by a rational principle, such as a man of practical wisdom would use to determine it."^{vi} But he never sorts out the discernment necessary to deciding, e.g., how to deal with a difficult family member, from the technical judgments a person must make in carrying out his morally worthy projects. A physician must use prudence in deciding on a course of treatment even when there is no question about the wisdom of attempting to prolong the patient's life. But it is characteristic of personal relations, except of the crudest sort, that their ends are not fixed, so that prudence in such cases cannot be reduced to means-ends judgment.

Aristotle sometimes describes finding the mean as hitting a target, and remarks that, in difficult cases, "the decision rests with our (moral) sense" -- a formulation that does not support talk about calculation. But he elsewhere remarks, "Deliberating and calculating are the same thing." And St. Thomas Aquinas bafflingly observes: "For though keeping the mean is the aim of moral

virtue, it is in the correct marshalling of the means to the end [*eorum quae sunt ad finem*] that the mean is to be found."^{vii}

The aim of Aristotelian ethics -- a life of active virtue -- is not specifiable independently of the moral quality of the acts that contribute to it. Hence one way of understanding Aristotle's conception of prudence is as follows.^{viii} Learning to perform well in a sport or game is partly a matter of learning principles, but more importantly a matter of constant practice under the tutelage of an acknowledged master. And since mastery includes knowing when to break the rules as well as when to adhere to them, prudence so understood can be at the same time conservative and progressive. Happiness (or more exactly *eudemonia*) is victory in the game of life, and prudence tends to bring about victory of this sort (though chance can always interfere).

But applying this conception of prudence runs into two major difficulties. First, in games and sports, we know when departure from the rules has won; in life there is no criterion, this side of Jordan, by which such questions can be decided. Nor do we have a shared conception of happiness by which various strategies of life can be assessed. Second, and connectedly, there is no agreement about who the masters of the art of living are. The break-up of the *polis*, the rise of Christianity, and the development of a post-Christian civilization, have left us with a plurality of incompatible models, and our continuing disputes about the reputations of the famous and the infamous testify to our bewilderment on such issues. Even in Athens, whether one accepted Pericles as a model of prudence might depend on one's political sympathies.^{ix}

5.1.03 Some Modern Writers

Perhaps some more recent writers will prove more useful in helping us reach an understanding of prudence. We begin with two writers strongly influenced by St. Thomas Aquinas.

Joseph Pieper identifies prudence with situation conscience: "It includes," he writes, "above all the ability to be still in order to attain objective perception of reality."^x And we may agree that attentiveness to the situation as it in fact is, and not (for example) as it might please our *amour propre* to suppose it to be, is an essential element of sound situational judgment. And attentiveness to the still, small voice of conscience is part of prudence as many people experience it.

But we still need to know a lot more about how prudence (or situation conscience) works in practice. Daniel Nelson has recently interpreted St. Thomas's ethics, so as to emphasize the priority of prudence, especially over natural law as standardly understood.^{xi} If we accept this interpretation, we must ask how prudence is to be recognized. And the best Nelson is able to say is that judgments of prudence depend on the common sense of some community. Nonetheless, "The community can be wrong, and our culture knows of instances in which critics were able to persuade a community of its corruption ... but in order to make the case the critics have to appeal to publicly available criteria of judgment." But this formulation raises the specter of relativism, since different communities will have different standards, and these differences will persist however much they reform their practice.

In the "analytic" camp, Martha Nussbaum (following Henry James) proposes a corrective to the excessive intellectualism of the Aristotelian tradition.

Moral knowledge [she suggests] is not simply an intellectual grasp of propositions; it is not even intellectual grasp of particular facts; it is a perception [and here she cites Aristotle]. It is seeing complete, complex reality in a highly lucid and richly responsive way; it is taking in what is there, with imagination and feeling.^{xii}

Such knowledge includes awareness of the character and motives of all those concerned, including that of the agent himself (who needs to know what sources of distorted judgment he

needs to fear). Yet Nussbaum's account is in one sense not rich enough: it excludes the role moral rules play in the judgments of even the most sensitive agents. She describes a difficult situation in the relationship between a woman and her father, but their sensitive resolution of this situation would not have been possible if incest were a possible solution. Concentration on the complex ways in which the various sides of human life interact in real situations is a valuable exercise, but carried beyond a certain point it paralyzes moral (and political) judgment.

Thus Hilary Putnam insists against Nussbaum that moral rules must be taken seriously. They "are important because they are the main mechanism we have for challenging (and if we are successful, shaping) one another's consciences."^{xiii} He offers two metaphors for what we are to do when the rules are ambiguous or in conflict: adjudication and reading. Both adjudication and reading, he argues, are

By [their] nature provisional -- not in the sense that there must be a better perspective, a "true" reading (or a *truer* reading) which we will all someday get to if we are lucky, but in the sense that (for all we know) there may be. Some things which were once problematic are now issues for condemnation or approbation and not adjudication. Human slavery is no longer problematic; it is just plain wrong,^{xiv}

Both adjudication and reading get their credibility "from a shared sense of what is and is not reasonable, from people's loyalties to one another, and a commitment to 'muddling through' together."^{xv} But the persistence of injustice in our world means that we are unable always to muddle through in tolerable fashion.

Putnam's examples of rules are the Ten Commandments and the Equal Rights Amendment; his example of an adjudication or reading the Supreme Court's abortion decision in *Roe v. Wade*, and his diagnosis of the impediments to successful "muddling through" a moderate form of Leftism

critical of both Marxism-Leninism and neoconservatism. In other words, his examples of binding rules include both an ancient text believed to have come from God and an unsuccessful attempt to amend the American Constitution, while his example of adjudication is a judicial decision of the most controversial (not to say explosive) sort.^{xvi} And, in his broader analysis of our woes, Putnam neglects the fact that we suffer not only from injustice but also from a number of other problems as well.

These include lack of agreement about what justice requires (or even the creatures to which it is due), from the absence of what Charles Taylor calls a "moral source" capable of motivating people to bring about social justice, and from deep disagreements about the broader conceptions of human nature and flourishing that are needed to support our conceptions of justice and provide them with their motivating power. Nor is it possible to mend matters by adducing other examples, or providing a different political analysis: any judgment with substance will be controversial in the ways Putnam's judgments are.

Stanley Hauerwas adds an important dimension to the discussion of the nature of prudence.

Our moral reasoning [he writes], especially in cases of moral doubt, is not deductive but analogical. That is to say, we do not find what we ought to do by having an abstract principle from which can be deduced the "right act." Rather, what we do when we engage in moral reasoning is, by comparing cases, to find out what is common to the situations. ... In this sense moral reason is more dependent on imagination than strict logical entailment.^{xvii}

On such a view, moral notions such as *murder*, *theft*, and *adultery* define classes of relevantly similar acts: they "are concepts that help us define areas of significance for our life together."^{xviii} Thus moral discernment consists in the ability to discover, for example, whether the

analogies between abortion and infanticide are more important than the differences between them; or whether discrimination against white males is essentially the same as, or importantly different from, discrimination against women and black people.

Our judgment calls in these and other cases are affected by our background picture of self, society, and world. Hence Hauerwas also writes:

Universal ethical principles become ethically significant only as we learn their meaning in stories. ... Modern moral philosophers have failed to understand that moral behavior is an affair not primarily of choice but of vision.^{xix}

Thus our entire sensibility is thus at work in a judgment call.

Let us remember that judgment calls involve the interpretation of a cultural tradition, and its application to complex situations. We then can see that Putnam has very well expressed the reason for the phenomenon described by Hauerwas:

Not only is interpretation a highly informal activity, guided by few, if any, settled rules or methods, but it is one that involves much more than linear propositional reasoning. It involves our imagination, our feelings -- in short our full sensibility.^{xx}

Our sensibility is formed, in significant part, by the social world in which we live. And the interpretation of situations is an essential element of prudential judgment. Hence Hauerwas's ethics requires a homogeneous community to sustain its judgments.^{xxi}

A sentence by David Wiggins makes clear the central issue. "The man of highest practical reason," he writes, "is the man who brings to bear upon a situation the greatest number of genuinely pertinent concerns and genuinely relevant considerations commensurate with the importance of the deliberative context."^{xxii} But if anyone tried to take into account every possible consideration, or even any consideration someone might think relevant, before making a judgment, the result would

be paralysis. Emphasis must therefore fall on the expressions *genuinely pertinent* and *genuinely relevant*.

We have some fairly clear notions of what is relevant to moral decisions in particular cases - for example, that a consideration of the abortion issue that ignores the facts of embryology is inadequate. But it is in general a matter of prudence to decide what sorts of fact need to be taken into account in making moral and practical judgments. Everything depends on how we represent a situation to ourselves: what aspects of it we deem of crucial relevance and what aspects of it we deem peripheral or irrelevant.

In fact, prudence, particularly in decision making on behalf of some community, places limits on the questions of fact a decision maker investigates, excluding material of borderline relevance that might raise irrelevant emotions. For example, if two of my colleagues have a long-standing quarrel, of whose origins I am ignorant, I might deliberately choose not to investigate them, on the grounds that knowledge of it could only create confusion.

5.1.04 A Synthesis

We all make prudential judgments in our personal, professional, and civic lives. And though judgment calls may be difficult to make and evaluate, it is easy to discern imprudence or want of judgment, at least in others. In the same way, though it may be hard to discover the Aristotelian mean, it is easy to identify people who habitually run to extremes.

Every attempt to give such a general account of how prudence works has failed, and the nature of the prudential task does not encourage theoretical optimism. Mere abstract reasoning will never grasp the complexity of lived experience, whereas immersion in the present moment in all its concreteness fails to guide action; somehow these heterogeneous sorts of reasoning need to be

combined. On the other hand, we need to avoid the sort of prudential nihilism suggested by many critics of the rationalist tradition, which celebrates the unpredictability of human events and the quasi-mystical perceptions of some political actors, and reduces the concept of good political judgment to the capacity to persuade others by fair means or foul.^{xxiii}

Prudential judgment does not centrally address the question, "Is act *A* right or wrong?" It deals with the open-ended question, "What is to be done?" as well as, though less centrally, with the question "How shall I respond to what Jones has done (or is doing)?" It constructs an imaginative representation of the situation -- or in cases like Nathan's of the act to be evaluated -- which so arranges its features that the proper course to follow (or the proper judgment) becomes apparent -- or so one hopes. No subjectivism is implied here: the features of the situation to which the prudent appeal, and quite possibly the order they discern in them, exist in the world before they make their judgments. Still, considerable activity of mind is involved; in this respect prudence is to be contrasted with intuition, conceived of as "gut" feeling reflecting the agent's cultural background. Lastly, prudence involves trained attentiveness, of the sort needed by an artist or writer who needs to know when his work is finished.

A certain effort at detachment is involved in prudential judgments. They nonetheless engage the whole personality. Thus one of the most difficult problems for prudential judgment is balancing the detachment characteristic of moral judgment with the identification with a given community our dependence on a moral tradition implies.^{xxiv} Prudence is, in any event, as far as possible removed from decisions "under the veil of ignorance" in the manner suggested by Rawls. But the considered judgments he takes as data will require prudence; otherwise we would never know when we had moved sufficiently beyond off-the-cuff responses.

Prudence is associated with conservatism in the sense of risk avoidance, though not necessarily with conservatism as a political philosophy. It involves an awareness that we live in a world we only imperfectly understand, and that our actions may set in motion trains of consequences that we cannot control, and which we may well come to regret. But prudence sometimes requires boldness -- on what occasions is itself a matter for prudential judgment. Prudence replaces "probabilism," and every other attempt to provide general rules for dealing with moral uncertainty.

Among the other virtues that tend to prudence, the most important are those, such as patience, necessary to the maintenance of a marriage or other long-term commitments. The reason is that such commitments require one to attend to the less obvious consequences (and more broadly the less obvious aspects) of one's actions, and that this sort of awareness is an important element of prudence.

We are in possession of rules and principles of varying degrees of stringency, including what can be described as "rules of prudence." An example of this sort of principle is *Do not go to the limits of the permissible except for compelling reasons*. But it is also part of prudence to know when to go to the limit, just as it is part of prudence to know when it is necessary to undergo martyrdom. In any event, such principles are not substitutes for prudence; they help the already prudent person to decide what is to be done.

Prudence is directed to a comprehensive good, i.e., the flourishing of human beings in a good society. This good permeates the means a prudent person chooses to attain it: it is for example incoherent to suppose that one can build a just society by massively unjust means. Prudence compares and mixes goods in a way that respects their diverse and partly

incommensurable character, without freezing us into an impracticable rigorism.^{xxv} Yet there are reasons for dissatisfaction with this result. Wiggins has observed:

I entertain the unfriendly suspicion that those who feel that they *must* seek more than all this provides want a scientific theory of rationality, not so much from a passion for science, even when there can be no science, but because they hope and desire, by some conceptual alchemy, to turn such a discipline into a regulative or normative discipline, or into a system of rules by which to spare themselves some of the agony of thinking and all the torment of feeling and understanding that is actually involved in reasoned deliberation.^{xxvi}

But this suspicion is not just unfriendly, but also a bit unfair. For prudent moral agents are well aware of their need for rules and principles, lest their actions be altogether chaotic or opportunistic. And practical wisdom includes an awareness of one's own failings, including one's disposition to rationalize misbehavior. Hence prudence can lead, not just to modifications of received moral rules, but also to support for moral rules of a strict (and possibly even absolute) sort.

5.1.05. The Limits of Prudence

In a heterogeneous moral tradition, some persons -- and some aspects of each person -- will stress one aspect of our shared moral ideas at the expense of others. Once admitted as legitimate, prudence tends to claim for itself a hegemonic role. And, as Paul Ramsey has put it, "proportionality's 'constitutional monarchy' within the kingdom of morality threatens to become a despotism."^{xxvii} But there can be no question of regarding prudence as the sole or sovereign method of moral judgment, to the exclusion of moral rules and principles.

First, it is not possible to be "finely aware and richly responsible" towards all the features of a situation every time one makes a decision; the method must be reserved for situations perceived on

independent grounds as difficult. And prudential judgment is impossible unless some proposed solutions are antecedently excluded.

Second, it is possible to offer a prudential argument against always expecting a firm prudential judgment. A way of conceiving the situation that supplies a wholly satisfactory resolution of a problem may not always be available. Sometimes we must slog along, observing some moral constraints at least, without being entirely resolved or at peace.

Third, the representations of situations employed in prudential judgment include both not only personal but also historical and even world-historical narratives. In the writings of John Noonan,^{xxviii} for example, it looks as if in order to make up one's mind about some moral issue, it is necessary to know the whole history of the human race, both as it concerns the form of activity in question, and as it concerns allied issues in, for example, theology. Thus his exploration of bribery quickly entangles him in the complexities of the theological doctrines of grace and redemption.^{xxix} All our narratives are highly contested, the world-historical one most visibly so: where some see progress, others see decadence. Hence there is no reason to suppose that people who attempt prudential judgments will reach compatible results, especially in an age where the privilege of strategic moral judgment is no longer reversed to a select few.

Fourth, there are incommensurable considerations that resist even trained moral judgment. One of these is between death, thought of as the annihilation of the self, and continued life however miserable. (Death thought of as the door to eternal bliss or woe is also incommensurable with earthly life, though in a different way.) To speak of "incommensurable considerations" here is dangerous, since we are dealing, not only with a difficulty in measurement, but with an obstacle to the imagination that inhibits moral reflection of all sorts.^{xxx} The obstacle can be evaded only by treating death, not as the fate of a unique individual, but entirely from a third-person perspective --

in Kierkegaard's language as "something in general";^{xxxii} or, in technical philosophical contexts, a comparison among possible worlds.^{xxxii}

Fifth, we must be concerned with the question, how prudential judgment is to be distinguished from rationalizing what one wants to do. This concern is particularly acute in public contexts, where necessity has always been the tyrant's plea. Sometimes the exclusion of proportionalism rests on a deeper proportionalist judgment, that the risks of proportionalism in this context exceed its benefits.^{xxxiii} But it is not necessary, and quite possibly dangerous, to conclude that judgments of proportion, rather than the unconditional demands of certain human goods, support all our moral judgments at the deepest level.

Sixth, we must examine the question, to what extent judgments of prudence can be restated in straightforward inferential terms. We may take it for granted that, *at the time of decision*, prudential judgment goes beyond what can be argued for. But the possibility remains of rationally reconstructing prudential decisions as applications of some principle; for example, *Choose that action which is most coherent with one's commitments, or those of the group for which one is acting*. As Peter J. Steinberger has put it, "Intelligent performance is at least prospectively propositional."^{xxxiv}

The principle of coherence is not an exception to the opacity of prudence. It seems to us self-evident, in retrospect, that abolishing slavery was the right way to establish (relative) coherence in the laws and customs of Jacksonian America. But, at the time, the way forward was not so clear: defenders of slavery argued for a rejection of the individualist premises of the Declaration of Independence, for the exclusion of black people from their scope, or for the recognition of two different national communities embodying differing understandings of justice.

Our own judgments on this matter inevitably reflect a decision already made, and sealed by a bloody civil war.

This argument has implications for Steinberger's attempted resolution of the dispute between Jürgen Habermas and Hans-Georg Gadamer^{xxxv} concerning the role of "prejudice" in interpretation. *Prejudice* is not here derogatory: some prejudices are confirmed rather than rejected upon reflection.

Gadamer maintains that it is impossible to get beyond prejudice (though our prejudices can and do change); Habermas responds that a once we are aware of a prejudice we are also aware of the possibility of thinking outside it. Steinberger attempts to split the difference, concluding that Prejudices are typically in the background and are invoked intuitively, immediately, and unreflectively [in judgment]. But ... prejudices can be most certainly can be uncovered and subjected to a systematic analysis, and it seems impossible to deny that this kind of analysis dramatically alters their status. ... What was merely an implicit *knowing that* becomes explicit and ... is suddenly eligible for evaluation and revision. [Yet] any such analysis will itself depend on further prejudices.^{xxxvi}

«This last sentence, however, gives the point to Gadamer, at least once he admits that prejudices can and do change, and that what once was prejudice can be rejected or turned into a considered judgment.^{xxxvii} For at crucial points the issue will not be, how good an agent's articulate reasons are, but whether he has the ability to make the required sort of judgment.

5.2 Back to Moral Absolutes

We now need to consider and examine a principle that lies in the background of much philosophical discussion of morals. It may be called the Discontinuity Thesis -- that there is a sharp

break between moral and "merely prudential" decisions. We may grant that the decision whether to take one's own life or that of another is graver than a choice between vanilla and chocolate ice cream, but this remark does not yet amount to sharp moral/prudential distinction.

Kant divides the field of decisions between questions of duty and other questions that have merely to do with the choice of appropriate means to one's ends. There is no such distinction in Aristotle: his table of the virtues includes those qualities conducive to giving a good party and to being an entertaining companion^{xxxviii} alongside those which a modern reader is likely to regard as moral virtues. In a Kantian mood, one might be tempted to identify the moral with those decisions to which prudential reasoning is inappropriate. But this way of drawing the distinction will not work. A survey of examples of prudence, including the question of how a conscientious official should resolve a controversial issue, produces many issues that at least feel moral.

Stuart Hampshire defines the sphere of the moral as follows:

Morality ... might be defined by reference to its central topics, and not by the alleged logical peculiarities of moral judgments. ... It is a system of prohibitions and injunctions concerning justice in social relations, the control of violence, about war and peace, the regulation of kinship, the customs of friendship and family.^{xxxix}

If we accept this definition, we will find prudential judgments everywhere within the moral realm.

I conclude that, while some decisions are worth more agony than are others, the Discontinuity Thesis cannot be sustained.

The picture of moral reasoning that arises from the discussion so far is as follows.

Sometimes proportionalist, even consequentialist, reasoning is appropriate. Sometimes, however, such reasoning is dangerous to essential features of a good human life. Moralists need to learn to respect the differing qualities of the moral terrain, as agriculturists need to learn to respect the

differing qualities of the soil, some parts of which are in greater need than others of what Wendell Berry calls "kindly use."

It is the task of prudence to mediate incommensurables. In the simplest cases, we need to decide between incommensurable goods; in more complex cases we are deciding between radically differing ways of understanding the same the same situation: whether adultery, for example, is to be understood as an adventure or a breach of a sacred obligation. The best we can do is to *make* the needed judgments, without hoping to understand them very well.

Nonetheless, the complexity of human situations does not require situationism, but implies a need for moral rules. Odysseus, when he wanted to hear the Sirens, had himself bound so as to be unable to follow their voices to his doom; in the same way a husband or wife may accept a moral rule prohibiting adultery for the sake of a successful marriage. And some of these moral rules may even be absolute. But what moral rules we accept, whether any of them are absolute, and if so which, are matters of prudential judgment and as such opaque to philosophical understanding.

We can, however, still make the judgment that our society is now insufficiently sensitive to the rough texture of the terrain of value, and tends to reduce all considerations to pleasure and pain (or to dollars and cents). Hence it may be the case that, under some circumstances, the best we can do is follow received moral rules and not trouble ourselves about outcomes overall. The place of moral absolutes in this picture will be our next question for consideration.

NOTES

ⁱ As Alessandro Ferrara shows in "On Phronesis," *Praxis International* 7, no. 3/4 (winter, 1987/8), esp. pp. 246-49. Ferrara's account of *phronesis*, however, is overly aesthetic.

ⁱⁱ Henry Sidgwick, *The Methods of Ethics* (New York: Dover, 1966), pp. 327-8.

ⁱⁱⁱ W. D. Falk, *Ought, Reason, and Morality*, Kurt Baier ed. (Ithaca, N.Y.: Cornell University Press, 1986), pp. 204-9.

^{iv} *Nicomachean Ethics*, 1140b 8-11.

^v Peter J. Steinberger, *The Concept of Political Judgment* (Chicago: University of Chicago Press, 1993), brings out the issues here very well.

^{vi} Quotations are from *Nicomachean Ethics*, 1106b 35, Martin Ostwald, trans. (Indianapolis: Bobbs-Merrill, 1962), p. 43; 1006b 30-34 (Ostwald, p. 43); 1009b 202-24 (Ostwald, p. 51); and 1139 a 13 (Ostwald, p. 147).»

^{vii} *Summa Theologiae* IIa IIae 47, 7; Thomas Gilby trans. (London: Blackfriars, 1974), vol. 36, p. 25.

^{viii} I am here indebted to a lecture by Anthony Celano given at Harvard University in April 1993, and to conversations with Dr. Celano.

^{ix} Aristotle's citation of Pericles as a paradigm of the man of practical wisdom (*Nicomachean Ethics* 1140b 9) would have been vigorously contested by Plato (*Gorgias* 515).

^x *The Four Cardinal Virtues* (Notre Dame: University of Notre Dame Press, 1966), p. 13. The identification of prudence with situation conscience is at p. 11.

^{xi} Daniel Mark Nelson, *The Priority of Prudence* (University Park, Penna.: Pennsylvania State University Press, 1992); quotation, p. 142.

^{xii} "Finely Aware and Richly Responsible," *Anti-Theory in Ethics and Moral Conservatism*, Stanley G. Clarke and Evan Simpson eds. (Albany: SUNY Press, 1989), p. 116.

^{xiii} *Realism with a Human Face* (Cambridge, Mass.: Harvard University Press, 1990), p. 195.

^{xiv} *Ibid.*, p. 183.

^{xv} *Ibid.*, p. 185.

^{xvi} James Davison Hunter's commentary on cultural politics after *Roe* is ominously titled *Before the Shooting Begins* (New York: The Free Press, 1994).

^{xvii} *Vision and Virtue* (Notre Dame: Fides, 1974), p. 22.

^{xviii} *Ibid.*, p. 24.

^{xix} *Ibid.*, pp. 115-6, 34.

^{xx} *Realism with a Human Face*, p. 129.

^{xxi} See for example his "Reconciling the Practice of Reason: Casuistry in a Christian Context," in Baruch A. Brody ed., *Moral Theory and Moral Judgments in Medical Ethics* (Dordrecht: Kluwer Academic Publishers, 1988), pp. 135-55. For a defense of Hauerwas (and Alasdair MacIntyre and Gilbert Meilaender) against the charge of sectarianism, see Joseph J. Kotva, Jr., "Christian Virtue Ethics and the 'Sectarian Temptation,'" *Heythrop Journal*, 35 (Jan. 1994), 35-52.

^{xxii} "Deliberation and Practical Reason," *Practical Reason*, Joseph Raz ed. (Oxford: Oxford University Press, 1978), pp. 146-47.

^{xxiii} See Steinberger, ch. 1.

^{xxiv} Some data are collected in Ronald Beiner, *Political Judgment* (Chicago: University of Chicago Press, 1983), ch. 6, especially his discussion of the controversy surrounding Hannah Arendt's *Eichmann in Jerusalem*,

^{xxv} I am here indebted to conversations with Richard Velkley .

^{xxvi} "Deliberation and Practical Reason," p. 150.

^{xxvii} "Incommensurability and Indeterminacy in Moral Choice," *Doing Evil to Achieve Good*, R.A. McCormick, S.J and Paul Ramsey, eds. (Chicago: Loyola University Press, 1978), p. 99.

McCormick reinforces Ramsey's concern by sliding into consequentialism in his "A Commentary on the Commentaries," *ibid.*, esp. pp. 260-5.

^{xxviii} E.g., *Contraception* (Cambridge, Mass.: Harvard University Press, 1985); *Bribes* (Berkeley: University of California Press, 1989).

^{xxix} *Bribes*, esp. chs. 3 and 8.

^{xxx} For detailed argument, see my *Ethics of Homicide*, paperback ed. (Notre Dame: University of Notre Dame Press, 1990), pp. 8-12, 23-31, 193-201.

^{xxxi} *Concluding Unscientific Postscript*, David T. Swenson and Walter Lowrie trs. (Princeton: Princeton University Press, 1941), pp. 147-52; quotation, pp. 149.

^{xxxii} See for example Fred Feldman, "Some Puzzles About the Evil of Death," *Philosophical Review*, 100 (April 1991), 206-30; as well as his *Confrontations with the Reaper* (New York: Oxford University Press, 1992).

^{xxxiii} I here generalize an argument against utilitarianism made by D. H. Hodgson, *Consequences of Utilitarianism* (Oxford: Clarendon Press, 1967).

^{xxxiv} *The Concept of Political Judgment*, p. 219. The principle of coherence stated in the text is due to Steinberger.

^{xxxv} Gadamer has been a major force in reviving the philosophical concept of prudence, though he does not tell us much about how it works in practice. See Matthew Foster, *Gadamer and Practical Philosophy* (Athens, Ga.: Scholars' Press, 1991), pp. 69-78, and texts cited there.

^{xxxvi} *The Concept of Political Judgment*, pp. 223-225; quotation p. 225.

^{xxxvii} A problem for Gadamer that remains is, why criticize disembodied thinking if such thinking is in any case impossible? Steinberger gives the right answer: "hermeneutics, properly formulated, is criticizing not disembodied thinking ... but the illusion of disembodied thinking" (p. 236).

^{xxxviii} *Nichomachean Ethics*, IV, 2 & 8.

^{xxxix} "Morality and Conflict," in *Anti-Theory in Ethics and Moral Conservatism*, p. 144.

ABSOLUTES

Any discussion of the question of moral absolutes must meet some formidable tests. As Richard A. McCormick, S.J., has put it, "One is asked to be both theoretically consistent and practically sensitive to the complexity and intransigence of reality -- in other words to plug all the loopholes in a prudent and persuasive way."ⁱ I begin by attempting to define clearly what a moral absolute would be, then assess both the case against such absolutes and the case for them.

6.1. *Doing Evil to Achieve Good*

The traditional phrase *never do evil that good may come* suffers from many ambiguities. The first of these is whether the phrase "that good may come" is redundant: if, as the scholastic tradition tells us, everything we choose we choose *sub ratione boni*, then there is no other way of doing evil. Fr. McCormick denies the scholastic doctrine, and holds that "even a disvalue which has no necessary causal relation to the good can be, perversely indeed, desired."ⁱⁱ My students agree with McCormick: they believe in the possibility of unmotivated malice. It still seems to me, however, that the traditional doctrine is sound, so long as one pays sufficient attention to the range of goods that motivate choice (though the question is admittedly a close one).

In cases of seemingly pointless wrongdoing -- say the young St. Augustine's theft of inedible pears -- the agent is moved by a desire to assert his independence, to establish a sphere where he and no one else makes the rules. Within limits -- say in dealing with a domineering parent -- this motive is even legitimate, though its excess is demonic pride. For a person can also be deficient in self-assertion, as are those who submit to authorities so completely as to do evil at their behest. And malignant envy, of the sort felt by Melville's Claggart for Billy Budd, arises out of a warped respect for virtue and a warped regret that one falls short of its requirements (as well as

a warped admiration for Billy's other admirable qualities). In simple terms, Billy's beauty and virtue make Claggart feel ugly and evil, and for that reason Claggart tries to release the tension by destroying Billy.ⁱⁱⁱ

One interpretation of the phrase *never do evil (that good may come)* is that one ought never to do (what one oneself regards)^{iv} as *moral* evil, to achieve any end whatever; or in short:

(W) In no circumstances must one do wrong.^v

The denial of *W* is incoherent; as Thomas Nagel has put it,

The notion that one might sacrifice one's moral integrity justifiably, in the service of a sufficiently worthy end, is an incoherent notion. For if one were justified in making such a sacrifice (or even morally required to make it), then one would not be sacrificing one's moral integrity by adopting that course; one would be preserving it.^{vi}

St. Paul, when he counseled against doing evil that good might come of it, was centrally interested in the sacrifice of one's moral integrity for the sake of spiritual benefit: sinning more that grace might abound (see Romans 6:1). (Another version of the same idea is doing evil in order to release one's creative powers.) Though a repentant sinner might rejoice, after the fact, in sins that brought him grace, to advance this justification before the fact is to affirm that the same act both is and is not a sin. *W* does nothing, however, to tell us what acts are right and what wrong.

But is it not possible to violate one's moral integrity by undertaking to deceive oneself about what is right and wrong? The most common way of doing this, engaging in habitual wrongdoing, directly violates *W*. Those who undertake courses of indoctrination, or habitually lie about moral issues in hopes of persuading themselves, treat their future selves as persons other than themselves. Their conduct thus falls under the principle to be discussed next.

When one is dealing with other people's moral integrity, some distinctions have to be drawn. If it is wrong to do an act, it is wrong to intend that another do that act on one's behalf. If it is wrong for me to kill a colleague, it is also wrong for me to put out a contract on him. Hence -- so long as my agent and I are in agreement on the pertinent moral question -- the question of one's own integrity and that of others turns out to be the same.

If my agent and I differ in moral judgments, two cases need to be distinguished. I may believe the act in question is wrong, while my agent has no scruples about doing it. (I employ a hired killer for whom *business is business* trumps even the rule against murder.) In that case I remain guilty of murder, but at least I have not corrupted anyone. In the other case, I believe the act in question innocent or obligatory, but my agent regards it as wrong. A doctor, let us say, strongly urges a Jehovah's Witness to have a blood transfusion to save his life, or even invokes coercive means to get him to do so, while the Jehovah's Witness believes that receiving such a transfusion is a major sin. The doctor may (1) hope to persuade his patient that his religion is, at least in this respect, unreasonable, and so to consent in good faith to the transfusion. Or he may (2) hope that, by being pressured into violating his convictions -- and perhaps by being convinced that, if his religion were true, there would be no hope for his salvation -- the patient would be led to renounce the Jehovah's Witness faith in favor of, say, liberal Protestantism. Or he might (3) be indifferent to the effect of his behavior on the patient's soul, so long as he manages to do the transfusion. Finally, he (4) may believe that the strength and sincerity of the patient's opposition to blood transfusions may legitimately be tested, so that if it turns out to be merely conventional he will be able to save the patient's life, while if it is sincerely held he will admire him for his integrity while watching him die.

The doctor's behavior in case 4 is easiest to defend: there need be, on his part, no intention that the patient act against his own convictions. Case 1 is somewhat harder: since persuasion in religious matters is notoriously difficult, it merges into the other and more difficult cases. Case 3 is harder still: indifference to the patient as a moral being, and concern for him only as a diseased body, is one of the banes of contemporary medicine. Hardest of all to defend is case 2: playing with another soul in this fashion shows many of the marks of satanic evil. In any event, we have a principle, which can demand acceptance as absolute if such things are possible:

(S) It is always wrong to intend that a person do what he himself regards as wrong. The violation of this principle is called *scandal*; it reflects the fact that a person's moral integrity is a good of a different order than the other goods he may also pursue.

We must distinguish scandal in sense of *S*, however, from the sort of scandal that involves doing an action with morally corrupting effects. One possible example of scandal in the second sense is proudly telling people about actions of one's own that they regard as wrong; another is saying "Follow your conscience" under circumstances when this remark is likely to be taken as an endorsement of moral subjectivism.^{vii}

In such cases, however, the danger of scandal must be weighed against other possible bad effects, including other sorts of scandal. To take the case of the moral adviser: the inquirer may have a genuinely confused conscience, without being in a position to accept what his moral guide believes to be the correct moral view. Or he may be driven away from observance of all the requirements of morality by his guide's insistence on a view that he cannot articulate in a way satisfying to the inquirer's intelligence. (John Mahoney calls this last possibility "scandal of the strong.")^{viii}

But it would be rash to conclude that, by formulating the principle forbidding scandal, we have completed, even provisionally, our search for moral absolutes. For the concept of scandal presupposes a body of standards other than the principle itself; it belongs among what Alan Donagan has called the "second order precepts" of morality.^{ix} If we hold a view of morality according to which exceptionless first-order principles are impossible in principle, then at some point we will be reluctant to attribute such principles to others. For if we regard an alleged moral conviction as unreasonable beyond a certain point, we may regard it, instead, as an emotional aversion or social prejudice.^x In order to gain the respect of others, a scruple of conscience need not be exceptionless, at least not in the simplest possible way.^{xi} A conscientious objector to a particular war may accept wars in defense of the homeland, or pre-modern wars, or wars directly commanded by God, or wars that meet the stringent tests of a just-war theory, or possibly even wars he deems progressive. But if a person's judgment of conscience is responsive to any changes in circumstance however small, we cannot expect those who have the power to change the circumstances of his choice to have much respect for scruples that stand in the way of what they regard as politically or even morally imperative projects.

We have so far been able to make some sense of the maxim, *Do not do evil that good may come*. But it is absurd to refuse ever to do evil to achieve good, if doing evil means doing an act with some bad aspect or consequence. For there are many circumstances in which whatever we do is bad in some respect, if only by causing some people emotional pain or defeating their legitimate expectations.

In order to gain further precision on this issue, let us consider the following sentence from Pope Paul VI's controversial encyclical on contraception.

(V) It is never lawful, even for the gravest reasons, to do evil that good may come of it -- in other words, to intend directly something which by its very nature contradicts the moral order.^{xii}

Let us especially consider the phrases *something which by its very nature contradicts the moral order* and to *intend directly*. If by "something which by its very nature contradicts the moral order" is meant moral evil, we have here *W* or *S* -- principles that yield no specific results about contraception or any other first order moral issue. If it means something non-morally bad in itself, for example a disease, two difficulties arise. First, it is sometimes right to infect a person with a mild case of a disease in order to prevent a severer one later on (the process is called inoculation). Second, it is not a bad thing that a couple should have intercourse without procreating, that a woman should be temporarily sterile, or that a spermatozoon should be ejaculated without fertilizing an ovum. This last event takes place massively even in fertile intercourse.

Nor is it clear what it is to "directly intend something." Do homosexuals directly intend the sterility of their relations? Do those who practice artificial insemination by husband, or versions of *in vitro* fertilization employing the husband's semen, take as the object of their intentions something different from married people desiring offspring who have intercourse with the specific intention of producing an heir? What do those who practice Natural Family Planning intend directly, if not to enjoy the other goods of sexual intercourse without producing offspring?^{xiii} There are cases where we cannot answer the questions of intention, and of the moral acceptability of what is intended, except by way of a moral judgment on the form of activity in question. In the cases where an independent moral judgment is required to apply V, it is not functioning as a moral criterion, but as a way of expressing a conclusory moral judgment^{xiv}

6.2. *The Search for Moral Absolutes Continued*

Let us therefore begin afresh. To say that a norm is a moral absolute is to say, in part, that it is never permissible to breach it, no matter what the circumstances. But not every norm that meets this requirement counts as a moral absolute in the relevant sense.

For consider the following principles:«

(D) One ought always do one's duty.

(F) One ought never to engage in sexual immorality (in one sense of that word, fornication).

(L) One ought never to engage in wrongful deceit (in one sense of that word, lying).^{xv}

(M) One ought never to engage in wrongful killing (in one sense of that word, murder).^{xvi}

There are ways of reading these standards that give them some content. Thus *duty* in *D* can be read in the sense of "my station and its duties," and *immorality* in *F* in the sense of breach of conventional moral standards. But, taken in their most straightforward sense, these standards tell us nothing about, for example, which sorts of deceit are morally acceptable and which not. At most they point out zones in which transgression is likely and dangerous.

Consider, second, the moral axioms discussed in chapter 3, for example:

(A1) One ought always do good and avoid evil.

These axioms can be specified further, without gaining significant content; for example:

(A1m) In medical practice, do good and avoid evil.

If these axioms are true, one ought never to break them. And they are not completely trivial, since they at least make some moral arguments easier and others more difficult. *A1*, for example, directs our attention toward non-moral goods to be promoted, preserved, or respected in our actions, and away from an ethics of duty for duty's sake. But the sorts of absolutes with which moralists are concerned give far more guidance in decision making than, on the most optimistic assumptions, a moral axiom can do.

A more difficult case is:

(P) It is wrong to inflict serious pain just for one's own or another's pleasure.

P seems to be both true and exceptionless, but does not satisfy the demand for moral absolutes. It fails to do so, I think, because there is no such thing as doing something merely for pleasure: there is always something else that pleases one in one's action, for example emotional release or the exercise of power. And the desire to please another involves either the expression of love (at least in the sense of affection) or some ulterior end, such as placating someone in power.

Also tricky is the following:

(H) One ought never act out of hatred for a person.^{xvii}

In order to make this example plausible, it needs to be read as:

(H*) One ought never to act *only* out of hatred for a person.

For it may be morally necessary to kill or otherwise injure someone. And, in doing so, some feeling of hatred may be inevitable. In that case hatred is regrettable, but not, if involuntary, morally wrong. (A harder case is where hatred is deliberately stirred up, say in soldiers before a battle.) But *H** implies that one has no sufficient reason, other than hatred, for injuring (or attempting to injure) a person. It is thus only apparently a moral absolute.

Another tricky case is:

(K) It is wrong to kill your boss because he has refused you a promotion, where you have been working at your job with reasonable but not extraordinary diligence for less than three years and need the money to buy a second yacht, where neither you nor your boss are members of caste in which killings of honor are an accepted custom ... (and so on for a complete description of the action in question).

Such statements, if true, have no exceptions. Nor do the descriptions they include contain an adverse moral judgment by way of logical implication. Nor do they restate moral axioms. Yet they do not count as moral absolutes in the needed sense, since they do not enable one to conclude that an act is wrong independently of a complete evaluation of the situation.

There are also moral standards that are in no sense absolute, but nonetheless give real guidance. An example is:

(B) Gratitude is due to benefactors.

Another is:

(O) In an imperfectly just society,^{xviii} do not violate the civil law.

Both of these principles are guides to virtuous conduct, though neither plausibly holds no matter what.

Many moralists have asserted the following non-trivial principle as absolute:

(A) One ought never to commit adultery.

Many people who hold *A* also hold, independently or as an instance of it:

(F*) One ought never have sexual intercourse outside marriage -- what is in the other principal sense called "fornication."

But in my discussion of adultery I shall leave open the question both of the truth of *F**, and whether *A* includes or entails it.

Consider now the following cases:

(C1) Abraham lives in a society in which it is customary for a man to have more than one wife. He marries Sarah, and when she proves barren, Hagar.

(C2) Bertha lives in a society in which it is customary for a woman to have more than one husband. She marries Sam, and when he grows old, Henry.

(C3) Charles lives in a society in which marriage is monogamous, but in which men who are faithful to their wives (but not women who are faithful to their husbands) are looked down upon, even by their wives, as insufficiently *macho*. He marries Mary, and has affairs with Jane and Jill.

(C4) Deborah lives in a society in which marriage is monogamous but in which both married men and married women who fail to have extra-marital affairs are looked down upon, even by their spouses, as prudes. She marries Martin, and has affairs with John and Philip.

(C5) Edward and Frieda live in a society in which serial polygamy is customary; in which marriage, though exclusive, is understood by all concerned to be dissoluble. They get married, and thereafter abstain from sexual relations with others. But, after their marriage breaks down and they are legally divorced, Edward marries Linda, and Frieda Carlos.

(C6) In the same society, George and Hilde get married and then divorced, after which they marry Susan and John. But they have sexual relations with their new partners before their divorce papers are final.

(C7) Isaac and Justine are living together in an informal relationship, understood by both of them to be exclusive so long as it lasts. But Isaac has an affair with Roberta, which he conceals from Justine just as an erring conventional husband would do.

(C8) Karl and Leonard are also living in such a relationship -- homosexual marriages not being legally recognized in their society. Karl has an affair with Joseph, concealing his affair, as would a conventional erring husband.

(C9) Martina and Nancy likewise have a homosexual "marriage." But Martina has a covert affair with Kingsley, whom she subsequently marries.

(C10) Oliver and Paula are Roman Catholics, and understand their marriage as indissoluble. But Oliver leaves both the Church and Paula, and marries Dorothy in a civil or Protestant ceremony. Until his marriage to Paula, Dorothy regards Oliver as still her husband, but afterwards feels free to marry William (and does so).

(C11) Quentin and Roberta are also Catholics. After their marriage fails, Quentin dishonestly obtains an annulment and remarries Lucy in the Church. Roberta then marries Richard.

(C12) Steven and Theresa are divorced and Theresa marries Jonathan. During her marriage to Jonathan, Theresa has an affair with Steven.^{xix}

There are more questions one can ask about such cases than "are these acts right or wrong?" What I am concerned with here is whether the behavior of Abraham and the others constitutes adultery. In giving our answer to this question, we must also ask to what extent our characterization of an act as adulterous, if we in fact so characterize it, is a result of a prior judgment that it is reprehensible -- or, rather, that it is reprehensible in the way adultery is thought to be by those who hold *A*.

There is a lurking ambiguity here. If an act is reprehensible in precisely the way, and precisely for the reasons, adultery is, it is a case of adultery. Still, there is a difference between saying action-kind *X* is wrong for the same sort of reasons as action-kind *Y*, and saying, straight out, that *X* is a subset of *Y*. There are forms of betrayal, which are wrong for some of the reasons adultery is, without being themselves adulterous. But to the extent that the judgment "Abraham is (or is not) guilty of adultery" rests on an independent judgment of his act, *A* has become a spurious moral absolute, to be spelled out perhaps as follows:

(A*) One ought never, by one's sexual conduct, breach the obligations of (true) marriage.

Thus Finnis moves too quickly when he writes: "where, as in most cases of adultery, there is no doubt that the one party, if married, is not married to the other, then the Lord's precept applies exceptionlessly, whatever the other circumstances."^{xx} For if he were casuistically minded, D.H. Lawrence could have argued that Mellors and Lady Chatterley were not adulterers. For Sir Clifford's failure to relate his will appropriately to the goods at stake in marriage, he might have argued, invalidated his supposed marriage to Lady Chatterley, whereas she and Mellors (at least relatively speaking) related their wills to these goods in an appropriate way.^{xxi} And a couple one or both of whom has a divorced spouse still living can have intentions that are in the fullest sense marital, e.g., to procreate and rear a child as an expression of their mutual love.

The question whether a person relates his will appropriately to the human good, and whether his conduct is morally appropriate, cannot be distinguished in practice. If I am right in this assertion, then Finnis has turned *A* into the following spurious absolute:

(A**) One should never engage in sexual behavior that relates one's will to the goods at stake in sexual intercourse in an inappropriate way.

One source of difficulties here, and many other difficulties about sexual ethics, is that marriage has multiple aspects, and that these sometimes fail to coincide. Marriage is a sexual (and otherwise intimate) relationship between the spouses. It also is a civil relationship, connected with property relations and responsibility for the rearing of children. It is also a link between families and groups of friends -- as can be observed at a conventional wedding. Finally, it is a religious institution, important among other things for what it symbolizes. There are acts that are in breach of marriage in all four dimensions, which are therefore uncontroversially adulterous. But these are difficult to specify, and in any case represent a far narrower range of behavior than adherents of *A* usually intend.

Another common example of a moral absolute is the rule against murder. *Murder* is often defined as the intentional killing of the innocent. But the term *innocent* is ambiguous: it ranges in meaning from "not at fault morally" to "not harming," with all the ambiguities of the word *harm*.

Consider the following cases:

(M1) the execution of a killer for a legacy now rendered harmless;

(M2) the killing in war of an enemy soldier, who may or may not believe in the justice of his own cause;

(M3) the killing of a prisoner, in a war in which we regard our enemies not just as wrong but as criminal.

(M4) the abortion of a fetus or unborn child whose growth threatens his mother's life (even if we regard fetuses as in every sense human beings or persons).

(M5) the shooting of an insane person who is on the verge of shooting someone else;

(M6) the killing of an infant rival to the throne;

(M7) the exposure of a child whose existence threatens a country with overpopulation or a family with destitution.

Reasoning about *M1- M7* will illustrate how much moral judgment goes into designating a person as innocent, in order to declare killing him murder.

The views of St. Thomas Aquinas on paradoxical episodes in the Old Testament such as the (almost-) sacrifice of Isaac illustrate further the difficulties that afflict the search for moral absolutes.^{xxii} St Thomas argues as follows. When God commanded Abraham to slay Isaac, He changed the species of the act from murder (or unjust killing) to sacrifice (or just execution). This change was possible because, as a result of original sin, Isaac deserved to die "the death of nature." Murder and sacrifice (like adultery and marital intercourse) are thus physically similar, but morally

different, sorts of act. And this distinction does not mean only that the one sort of act is right and the other wrong.

St. Thomas does not invoke the principle of double effect in such cases: he does not argue that Abraham does not intend Isaac's death, but only accepts it as a side-effect of his religious obedience. Rather he argues, in Lee's words:

The direct object of Abraham's act here is the justice God intends in the act, even if Abraham does not understand *how* it is just. That is, Abraham does not do anything, or intend anything, other than to execute God's intention. ... The executor of a superior's project (intention) has no project of his own distinct from that of the superior.

There are circumstances where such an analysis is possible, even for people who have come to distrust the defense of superior orders. Socrates, who condemns suicide before drinking the hemlock, intends only to obey the decree of the Athenian court. But this analysis will not work for Abraham: he must form plans and intentions of his own to carry out what he believes to be God's will; for example he must secure Isaac's compliance or at least acquiescence.

If we set aside the implausible claim that Abraham did not intend to kill Isaac (and, had he killed Isaac, would not have done so intentionally), the supposed moral absolute at stake here would seem to be:

(K*) One ought never to kill a person unjustly.

This principle might have some content, insofar as it excludes killing someone on grounds of public or private benefit deemed to overrule considerations of justice. But St. Thomas's argument requires him to understand *K** as permitting the killing of anyone except Jesus Christ (and, given later theological developments, the Virgin Mary), at the behest of God, Who, as author of Nature, is

entitled to exact the penalty for original sin and to authorize others to act on His behalf. This is not what is usually meant by an absolute prohibition against murder.

Moreover, K^* is a special case of

(U) One ought never act unjustly.

And U is very close to the tautology:

(W) Under no circumstances must one do wrong.

U and W are different because injustice is not the only species of wrongness. An act, even one of killing, can be wrong, not because it is unjust but because it is cowardly or cruel.^{xxiii} But, since any justification a theist might offer for homicide could be understood as an attempt to show that it is agreeable to the will of God, and for that reason not unjust, the distinction between U and W is of no practical importance.

It still seems possible to formulate some standards that are absolute if any standards are.

(G) It is wrong to kill people by reason of their ancestry (genocide).

(R) It is wrong to engage in sexual activity with a person without his or her consent (rape).

(T) It is wrong to torture a person.^{xxiv}

Despite the ambiguities about consent that sometimes afflict R , and the blurry line between torture and beating someone up or threatening him that afflicts T , it seems that these propositions are both true and exceptionless. (I leave it to the reader to find possible ambiguities in the rule against genocide.) Or rather only an *a priori* conviction that all moral rules have exceptions can lend credence to the possibility of sometimes justifying their breach. Yet those who are committed to finding exceptions to all moral rules will no doubt be able to develop plausible exceptions even to G , R , and T .

6.3. *The Case Against Moral Absolutes*

It is not possible to settle the question of moral absolutes by formulating putative absolutes and testing them against intuition with the help of real-life or ingeniously constructed examples. For any morality will involve hard cases, i.e., cases about which individuals and communities are ambivalent. And all plausible exceptions to plausible absolutes will fall into this class.

Nor is it possible to settle the issue by invoking the refusal of admired persons to break moral rules when the consequences of adhering to them were grim. Examples include Socrates' refusal to "fetch Leon of Salamis from his home for liquidation"^{xxv} and St. Thomas More's decision

Knowingly [to incur] the traitor's penalty of life imprisonment and confiscation of all his goods, ... not because the oath [demanded of him] was against the faith... but because swearing that he believed a marriage invalid when he judged it valid would have been a lie.^{xxvi}

Those who accept the correctness of Socrates' and More's judgments in these cases could still argue they would have acted otherwise if the consequences of what they did had been worse or more certain of occurrence. (Socrates was not in fact punished for his refusal.) Or they might argue that they would have behaved otherwise if broader circumstances rather than immediate consequences had been different. (More was a respected lawyer whose judgment on Henry VIII's marital shenanigans had special weight; moreover as a lawyer he had a special interest in the integrity of his own judgments.) Accordingly, I approach the question of moral absolutes as an a priori issue. I here state the case against absolutes, postponing the case for them and the drawing of my conclusions until the next section.

Let us suppose, for the sake of argument, that the moral legitimacy of an act is a function of the intentions of the agent and the foreseeable consequences of his act -- that the other dimensions of situations (the symbolic dimensions of acts, for example) can be reduced to these two. If so, an

absolute would be an independently specifiable class of acts such that, for any member of that class, its intentions, its consequences, or both together, render it impermissible. But each human action is different. Each has a unique set of (expectable) consequences; in each case the agent displays a unique set of evaluative priorities and patterns of practical reasoning. Nor is there any reason that human acts will seem other than unique when dimensions other than intentions and consequences are taken into account.

Now consider action kinds to which there attaches a moral stigma, such as adultery, theft, and murder. The language by which we describe such conduct is open-textured: there are more central and less central cases of each, and moralists sometimes extend or contract their range of application in surprising ways. Moreover, people sometimes propose to retire a morally stigmatizing word from circulation -- as for example *miscegenation* -- or re-describe what would be called by condemnatory terms such as *mass murder* in neutral terms such as the *final solution*. Some of these proposals are horrible, and others legitimate, but our evaluation of them rests on a prior set of evaluative commitments not supportable by conceptual analysis.

The defense of moral absolutes not reducible to a moral axiom or to a tautology, therefore, requires either (1) a complete survey of the possible consequences of, or of the possible intentional structures accompanying, a given sort of act; or (2) an essentialist ontology of actions corresponding to the action-kinds recognized in ordinary English (or medieval Latin).^{xxvii} An understanding of some tradition as fixed at say 1300, or of the symbolic significance of actions as immune to changes in the understanding of both agents and their neighbors, might also accomplish the same task. All these enterprises face formidable obstacles.

There is still room, on this view, for moral rules of thumb. But we must always keep in mind the possibility that any situation, if we look at it with sufficient care, will disclose features unique to it that require a modification of stock moral judgments.

6.4. *The Case for Moral Absolutes*

Many absolutists are aware of the central premises of the case against moral absolutes.^{xxviii} And it is possible to combine a belief in moral absolutes with recognition of the open-texture of moral concepts (including crucial concepts such as *intention*). In order to see how this is so, let us ask how things would be if the arguments for situationism were given their fullest rein.

That evaluatively laden language is open to interpretation, and that diverse agendas will produce diverse interpretations of crucial terms, is a commonplace among those familiar with the history of literary criticism, theology, and law. But if situationists are right, there are no constraints on the interpretation of a word such as *murder*: what other people call murder can be reinterpreted as population control, the vindication of one's honor, or the destruction of the Queen's enemies. Conversely, the slaughter of animals for the human table can be re-described as murder. Moreover, even if it is conceded that a proposed act is one of murder, the possibility always exists for situationists that murder is necessary under the circumstances -- even that it is the most loving act possible. And what these circumstances are cannot be specified in advance: they are left solely to the discernment of morally responsible persons. But a clause exempting us from observance of all moral rules in cases of necessity is unlimited in its application, unless we restrict it in ways that produce a new, formally exceptionless, rule.^{xxix} Or the very word *murder*, like *blasphemy* in many circles, may pass out of use or be sidelined. In that case, whatever restraints there might be on the taking of life will be conceptualized in radically different ways, and many kinds of killing now

regarded as out of the question will be routinely open for consideration. And what is true of *murder* is true of all other crucial moral concepts, such as *torture*, *fraud*, and *incest*.

Situationists do not conceive of themselves as promoting moral anarchy, but as advocating a higher ethics based on the Greatest Happiness Principle, or on the Law of Love. But *happiness* and *love* are also open to interpretation: people dispute whether a state of drug-induced euphoria is one of happiness, or killing another human being can be an act of love. Hence whatever hermeneutical maneuvers are available for *murder* are available for these moral notions as well, and indeed for any concept that one might invoke in moral argument.

One can also appeal to moral paradigms to place limits on the vagaries of moral judgment: the Nazis, we can all agree, were evil, and behavior that resembles theirs is to be avoided. But we can re-describe the Nazis as moral pioneers, and their opponents as fuddy-duddies deluded by illusions of an objective moral order. Or we can distinguish our "liberal" euthanasia campaign, designed to deal with the stresses of a superannuated society that spends too much of its resources on health care, from the Nazis' "reactionary" program, infected with racist, sexist, and homophobic notions.

The argument just made might be dismissed as a "parade of imaginary horrors" or "slippery slope." "You ignore," a critic might argue, "the good sense of human beings, and their capacity to make necessary moral distinctions." But slippery slopes do occur, the social fabric does break down, and atrocities of every variety are a frequent occurrence in human history. (Indeed, there are reasons to fear that our own society is on such a slope, and about a number of issues.) No doubt such events have economic and political as well as cultural causes, though these sorts of causation can only be distinguished to a limited extent. But I am not here concerned with political strategy, however broadly conceived, but with a problem in the logic of morals: how to constrain

the human capacity to defend a wider and wider range of behavior by discovering and exploiting ambiguities in our shared moral code.

At this stage of the argument a critic will invoke the ethics of virtue. A virtuous person will know what analogies and distinctions are legitimate and what mere sophistry. The most important virtue in question here is called *prudence* (§ 5.1). But living in a corrupt society can undermine our prudence, and discerning which societies are corrupt and which virtuous itself requires judgment. Hence we require principles beyond situational prudence (though not of prudence in the widest sense), which can support the promulgation of moral rules.

Many writers appeal at this point to the concept of human nature, as placing limits on the possible vagaries of moral language. Thus in a striking passage, Thomas Fleming writes:

The laws and decrees enacted by human government are mutable and sometimes tyrannical, but the laws of human nature, curled tight within the spiral of the genetic code, are unchanging and just. More than just, they are justice itself, in this sublunar sphere.^{xxx}

Some sorts of acts, such people argue, are bad for human beings, both those who perform them and others. And what particular acts fall into these sorts is itself determined by the features of human nature that make actions of such sorts bad.

But *human nature* itself is a highly contested concept, and the appropriate relationship among the intellectual, social, emotional, and physical sides of our nature is much debated. For that reason, defining the classes of forbidden acts will pose considerable difficulty. And naturalists like Fleming have a hard time explaining how institutions and forms of behavior he regards as unnatural in fact take place.

The argument of this section and that of the last are consistent with one another. For the previous argument calls into question our ability to discern moral absolutes, while this argument

concludes that some absolutes are necessary to a functioning morality and thus also to social life, however difficult it may be to discern them. I have, in short, defended the commonsense claims that "there are limits," that there is such a thing as "going too far," that it is necessary to "draw the line somewhere." But the question, where exactly we should draw the needed lines, remains unanswered.

NOTES

ⁱ "Ambiguity in Moral Choice," *Doing Evil to Achieve Good*, Richard McCormick, S.J., and Paul Ramsey, eds. (Chicago: Loyola University Press, 1978), p. 35.

ⁱⁱ *Ibid.*, p. 53n.55.

ⁱⁱⁱ I am here indebted to some unpublished work by Don Montaldi of Gonzaga University, and to a conversation with Celia Wolf-Devine.

^{iv} Recall that, for an agent engaged in a particular decision, there can be no difference between what is right and wrong, and what appears to be so.

^v Plato, *Crito*, 49b. Hugh Treddenick trans. *Collected Dialogues* (New York: Pantheon, 1961), p. 34. *W* is not to be confused with two related non-tautological principles also asserted by Socrates: (1) One ought not return injury for injury, i.e., the fact that someone has injured you does not make an otherwise wrongful action right. And (2) it is never in a person's interest to do wrong.

^{vi} "War and Massacre," *War and Moral Responsibility*, Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds. (Princeton: Princeton University Press, 1974), pp. 12-13.

^{vii} On this problem, see Germain Grisez and Joseph M. Boyle, Jr., *Life and Death with Liberty and Justice* (Notre Dame: University of Notre Dame Press, 1979), pp. 431-2.

^{viii} *The Making of Moral Theology* (Oxford: Clarendon Press, 1987), p. 298.

^{ix} *The Theory of Morality* (Chicago: University of Chicago Press, 1977), ch. 4.

^x As Ronald Dworkin suggests we should with objections to pornography and homosexual practices. See *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), ch. 10.

^{xi} On this issue, see David Malament, "Selective Conscientious Objection and the *Gillette* Decision," *War and Moral Responsibility*, pp. 159-80.

^{xii} *Humanae Vitae* (1968), ¶14. Tr. in Claudia Carlen, I.H.M. ed., *The Papal Encyclicals, 1958-1981* (N.p.: Consortium, 1981), p. 227.

^{xiii} One might of course prefer NFP to other forms of birth regulation on grounds other than differences of intention, for example that NFP teaches willingness to accept deferred gratification. But it is hard to see how such arguments would support an absolute prohibition on "artificial" contraception.

^{xiv} I here write as a philosopher only. I consider the possible role of theological authority in moral reasoning at the end of the book.

^{xv} The biggest difficulty here is the capacity of human speech to express many meanings, as reflected in the human penchant for euphemism. Is it a lie to say, "Kevin is gay," when he is a jolly heterosexual, or "John and Mary slept together" when they fell asleep on the same bus?

^{xvi} But see my *Ethics of Homicide* (Ithaca, N.Y.: Cornell University Press, 1978) (paperback ed.; Notre Dame: University of Notre Dame Press, 1990), §1, for a more adequate analysis of *murder*.

^{xvii} Donald Evans, "Love, Situations, and Rules," *Norm and Context in Christian Ethics*, Gene H. Outka and Paul Ramsey, eds. (New York: Charles Scribner's Sons, 1968), pp. 401-12

^{xviii} In a thoroughly unjust society, one might be free to break the civil law whenever the consequences of so doing were acceptable. In a perfectly just society, the moral claims of civil law might well be more stringent than they are in ours. But one of the purposes of civil law is to control the bad effects of unjust institutions, so that the matter is more complex than I have indicated.

^{xix} See Evelyn Waugh, *Men at Arms* (Boston: Little, Brown, 1952), ch. 13

^{xx} *Moral Absolutes*, p. 8.

^{xxi} Hence also it is insufficient to say that the "'Pauline privilege' [is] founded on considerations of another order (the economy of redemption and the identity of sacramental marriage) ... which [leave] untouched the absoluteness of even the norms against divorce and adultery." *Ibid.*, p. 8n.17.

^{xxii} The most important text is *Summa Theologiae*, Ia IIae, q. 100, a. 6, ad 3. I here follow Patrick Lee's interpretations, "The Permanence of the Ten Commandments," *Theological Studies* 42 (Sept. 1981), 422-43; quotation, p. 433.

^{xxiii} For reasons for not defining *murder* as "unjust killing," see my *Ethics of Homicide*, pp. 31-3.

^{xxiv} But Donagan (p. 188) argues that torture is sometimes legitimate, unless prohibited by positive law.

^{xxv} Finnis, *Fundamentals of Ethics* (Washington, D.C.: Georgetown University Press, 1983), §V.2., quoting Plato, *Apology*, 32 c-e.

^{xxvi} *Moral Absolutes*, p. 9 n.18.

^{xxvii} On the limitations of Latin as a language for moral reasoning, see Mahoney, pp. 322-3. Among other things, Latin has a hard time distinguishing between *bad* and *evil*. Finnis, on the other hand attributes a special standing to the medieval Latin *homicidium*. *Moral Absolutes*, p. 37

^{xxviii} See Finnis, "The Rights and Wrongs of Abortion," *Philosophy & Public Affairs* 2 (1973), 143-4.

^{xxix} On necessity, see Michael Walzer, *Just and Unjust Wars* (New York: Basic, 1977), pp. 144-51, 239-42, 251-5, and 323-35. I treat necessity as a modifying a moral rule, in a way that evades the full force of the concept, in my *Ethics of Homicide*, §21.

^{xxx} *The Politics of Human Nature* (New Brunswick: Transaction, 1993), p. 231.

THE CONCEPT OF THE SACRED

The final stage in the argument of this book is to place the conclusions reached so far within the context of the larger questions of worldview that perplex men and women of our time, and to try at least to roughly locate the moral absolutes whose possibility in principle I have argued for so far.

7.1 Cultural Left and Cultural Right

Irving Howe has protested the use of the expression *cultural Left*ⁱ to refer to a movement that has little in common with the traditional political Left except some rhetoric and an ad hoc alliance.ⁱⁱ But no better language suggests itself -- Howe's "insurgents" has problems of its own, since the insurgents are sometimes in control. And the Right-Left continuum in culture is more stable than the corresponding continuum in ordinary politics. The issue, how much the fortunate owe the unfortunate, and to what extent this obligation may be enforced by civil law, remains important. But after Rawls and Nozick, the best that can be said about distributive justice theoretically is that divergent positions represent rival understandings of the same moral and political tradition.ⁱⁱⁱ The most serious problem is motivating people to make the sacrifices required by even the most undemanding requirements of social justice.

One source of difficulty is that words like *liberal* and *conservative*, and even supposedly more precise expressions like *neoconservative*, designate primarily not systems of ideas, but groups of people brought together by the contingencies of political alliance and enmity. Alliances of this sort have an impact on the life of the mind; since people tend to accept their friends' views on questions they are unable to investigate for themselves, including disputed questions of fact.

It is nonetheless possible to indicate, in broad terms, the issues that divide the cultural Right from the cultural Left. The cultural continuum ranges from Alasdair MacIntyre to Paul Feyerabend among mainstream English-speaking philosophers, from the Ayatollah Hominy to Michel Foucault among other intellectuals, and among non-intellectuals from the Russian Old Believers to groups such as Queer Nation. It concerns the question, to what extent human life can be governed by stable norms, and to what extent it is a matter of continuous and idiosyncratic adaptation, so that any attempt to constrain the way of life that emerges from the practice of an individual or group is oppressive. This issue applies also to intellectual questions, e.g., the legitimacy of nonstandard ways of investigating the human mind and body and treating their ills.

A representative of the hermeneutical school, Manfred Frank, suggests another way of characterizing the difference between the cultural Right and the cultural Left.

The model that underlies both the structural theory of language and texts, as well as Searle's "taxonomy of speech acts" is ... the crystal lattice in which all the molecules are immovably fixed in their positions, if the temperature is sufficiently low, separated from all the others, but also connected with them. In contrast with the elemental world, the historical-cultural world cannot simply be cooled down to the absolute freezing point. ... Language and literature thrive only in a certain warmth that permits flux: the exchange and reconstellation of signs.^{iv}

If we accept Frank's analysis, we need to ask whether the prospect of conceptual meltdown is a promise or a threat, and how we are to deal with the resulting theoretical and practical decisions. Those who find such a meltdown liberating belong to the cultural Left, while those who find it threatening belong to the cultural Right.

A line of thought that has had much influence on the cultural Left goes as follows. God is dead. Religion continues to be practiced, of course, but honest would-be believers can be brought to acknowledge that they are going through the motions, for the sake of the children perhaps. And the death of God means more than the end of religion: it means the end of an intellectual and cultural tradition centered on claims to objective truth, and hence also of philosophers' logical scruples about saying that God once existed and now does so no longer. This supposed insight is not an axiom from which the rest of the argument follows deductively, but rather a perspective that informs the interpretative and dialectical methods of its adherents.

The most thoroughgoing version of cultural Leftism is called "postmodernism." Characteristic of the postmodern sensibility is the juxtaposition of concepts and images drawn from discordant universes of discourse, without any attempt to establish even the appearance of coherence or consistency among them. Much contemporary literature expresses a postmodern sensibility,^v and the "real world" persistently produces postmodern phenomena as well. *The New York Times* coverage of the recent Middle East peace negotiations^{vi} heavily emphasized the color of President Clinton's tie. In its most consistent forms -- not that postmodernists value consistency highly --, postmodernism is apolitical, is devoted to a merely expressive form of politics, or accepts the *status quo* and exposes the absurdity of all attempts to improve it. But an important variant, called "political correctness," tries to turn postmodernism into a "progressive" political dogma. Some of our contemporaries attempt to stop the slide into chaos by embracing the *status quo*: the end of history is, if not their belief, then at least their hope and their goal. We must live with injustice, they argue, or better yet redefine our conception of justice so that persistent injustice ceases to count as such.^{vii} These writers dismiss the egalitarian strain in our tradition, despite the Declaration of Independence, as a product of envy. But too many people find the *status quo*

intolerable, for reasons recognized as legitimate by our cultural and political tradition, to make this strategy acceptable.

I have dealt with the roots of the cultural Leftist argument elsewhere.^{viii} Arguments for the existence of God are useless here, since such arguments suppose that *God* is a coherent concept, which a cultural Leftist will deny. But if there is no way of proving the coherence of the concept of God, there is no way of disproving it either, at least in the absence of a criterion, such as the positivist Principle of Verifiability, which the advocates of deconstruction cannot admit. Hence we may postulate the falsity of Nietzsche's maxim, and proceed from there.

Despite their propensity to use *dogma* and *metaphysics* as terms of abuse, the cultural Left does what dogmatic metaphysicians have always done: they take certain features of our experience as the key to reality. As Plato took mathematics, Aristotle biology, and Kant the claims of duty, so the cultural Left takes historical change and malleability of language as their key to how things are. It is a dogma of the cultural Left that no norm or standard of any sort can be taken as more than provisionally binding. We may call this dogma the *metaphysics of universal contingency*; its slogan is *Never say never*.

One application of this dogma is the situationist denial of exceptionless moral rules: others include the denial of infallible moral and spiritual authorities, the rejection of necessary propositions with interesting content, and belief in the possibility of a completely open mind. These are stock beliefs among intellectuals; only lack of caution distinguishes postmodernists from many liberals, and only dogmatism and intolerance distinguishes the politically correct from much of the rest of academia. The attempt to use relativism to resolve social issues is widely accepted, even among the bitterest opponents of the politically correct.

The metaphysics of universal contingency is self-destructive. If it is true, it is false (or on another interpretation, we have no right to assert it). Nor does it help to limit its scope to (first-order) principles, while designating it as a meta-principle. For whatever reason one might have for asserting it would also appear to be a reason for asserting a broader principle (call it a meta-meta-principle) which applies to the metaphysics of universal contingency itself. And, if we decline to make this move, there is no way of excluding the possibility of another meta-principle, likewise absolute in character, having interesting implications at the level of principle, such as one requiring certain conditional principles to be treated, for practical principles, as absolutes.

Nor can one save the metaphysics of universal contingency by limiting its scope -- say by reducing it to the claim that all non-tautological principles are contingent. This modification limits the metaphysics of universal contingency in two ways: (1) some necessities are admitted, i.e., tautologies; (2) among contingent truths, some may be exceptionless (and even have the quasi-necessitarian status of laws of nature). But this principle -- call it the *empiricist principle* -- is neither a tautology nor is it treated by its adherents as contingent.

On the other hand, the attempt, characteristic of the cultural Right, to avoid prudential accommodations to the world of one's experience is self-destructive. Sometimes, to be sure, an unbending attitude is appropriate: the Hasidim who went to the gas ovens chanting, "I believe in the coming of the Messiah, and, though he tarry, yet I shall wait for him," fared better, even in worldly terms, than those of their fellow Jews who went to their deaths cursing God. But at an earlier stage of the Holocaust, when there was reason to hope that wise decisions would enable the Jews to escape the gas ovens, the use of prudence to protect oneself and one's family was obligatory. Moreover, the attempt to specify what aspects of our culture represent the "permanent

things," and are for that reason immune to challenge, runs into persistent difficulties, some of which we have explored in this essay (§ 6.2).

Both the cultural Left and the cultural Right, in their extreme forms, are guilty of a Manichean revolt against the created order, which includes elements of both permanence and change. In more mundane terms, both cultural Rightists and cultural Leftists ask us to feel guilty about being human -- about adapting to circumstance while at the same time refusing to regard every aspect of our lives as open to radical revision.

Neither the cultural Right nor the cultural Left can possibly win, though both of them can do much damage (and conceivably some good) in the process. The cultural Right cannot win because the world changes. There is no such thing as an unchanging society, and our society contains within itself many internal sources of change -- technology and a market economy, for example. And when the world changes, people will ask whether the old rules still apply -- and the right answer will sometimes be No. The cultural Left cannot win because a society in which nothing is constant cannot survive from one generation -- or even from one moment -- to another. The idea of progress disappears unless there are constant standards by which we can distinguish it from degeneration (or pointless change). Nor can one speak of development, as opposed to discontinuous change, unless there is something constant that undergoes it. Hence traditional moral standards cannot be questioned all at once: even apologists for Michel Foucault^{ix} hasten to assure us that he did not deliberately infect other people with AIDS -- as distinct from risking the transmission of the disease.

One source of the cultural Left is a desire to defend the conclusion either that our ancestors were wrong about important moral issues -- let us say slavery --, or that changed circumstances mean that we are no longer bound to follow their views. But unless there is some constant

principle linking them and us, such judgments represent nothing more than an irrational "paradigm shift," which can be imposed by force but not established by reason.

We have two ways of seeing our beliefs, including our moral beliefs, which do not fit together very well. One is as a set of propositions that exclude their contradictories, which we normally claim are true but sometimes doubt; let us call this the "truth and error perspective." The other is as a product of our interaction with our natural and social environment, and that of our physical and spiritual ancestors -- an interaction that will continue after we are dead. Let us call this the "historicist perspective."

There is no formal inconsistency between these two perspectives: our beliefs are both true (or false) propositions and cultural-historical products. But each of these perspectives, when pressed to the limits of its logic, crowds out the other. Our bitterest opponents' positions quite as much as our own, are products of the interaction of traditional ideas with their natural and social environment. And the rise and fall of intellectual systems, that has entered in to the outlook of both ourselves and our opponents, is only in part the result of reasoned argument in any sense: sometimes war and conquest decide the issue, and sometimes a way of thinking loses its grip on its adherents in a way that cannot be rationally reconstructed.

The truth and error and the historicist perspective share a common root, in our capacity to step back and examine our beliefs, first to ask whether they are true, and second to notice that they differ from those of their ancestors. To make them cohere fully would require a sort of radical transcendence of which human beings are not capable: not just the limited transcendence involved in asking where the truth lies in some contemporary controversy, or making sense of some portion of our history, e.g., the history of philosophy, but a "God's eye point of view" in the fullest sense.

The writings of John Noonan illustrate the central issue.^x Noonan has strong moral beliefs. He condemns bribery as he condemns many other traditionally condemned activities. He finds his criterion of moral judgment in "the satisfaction of true human needs," and supports his judgments by moral arguments of the customary sort. But in his historical and sociological perspective, the distinction between bribery and the other reciprocities that form the ordinary stuff of social life turns out to depend on the discretion and felt necessities of the authors, interpreters, and enforcers of law. Our understanding of bribery, as of other moral issues, will develop or degenerate as the history of our civilization unfolds, but there is no reason to suppose that such developments will eliminate the element of historical contingency in our morality. Noonan's innocence of any deconstructive intent only makes more urgent the question of the relationship between history on the one hand and the categorical requirements of morality on the other.

The question of our right to accept our inherited beliefs, as reformed by dialogue with one another, encounter with other traditions, and interaction with our shared environment, is another version of the question of our right to trust our faculties. Any argument we might make against "demon" skepticism supposes that we are able to know its premises and that they support its conclusion. Thus our trust in our faculties must of necessity be a matter of (rational) faith.

7.2. The Concept of the Sacred

The thought that informs my reasoning in this essay is as follows. The cultural Left is correct in asserting the diversity and complexity of human life. Each friendship is, for example, unique, because each person, and each history of interaction between two or more people, is unique. And the same is true of every marriage.

Yet those who celebrate chaos underestimate human complexity. For one persistent human desire is for an orderly life, in the teeth of the many internal and obstacles to achieving it. And it is

arbitrary for the votaries of openness to close themselves to this desire, alone among the galaxy of human desires. We need an understanding that enables us to see both the threat of chaos, and the dangers of the wrong sort of order, while allowing individuals and groups to seek order in appropriate ways.

Leszek Kolakowski undertakes "to speak in defense of the conservative spirit,"

However, [he writes] it is a conditional conservative spirit, conscious not only of its own necessity but also the necessity of the spirit that opposes it. As a result, it can see that the tension between rigidity and structure and the forces of change, between tradition and criticism, is a condition of human life.

This conservative spirit would be a vain and empty satisfaction were it not constantly aware of itself and mindful of the extent to which it was, is, and may continue to be used in defense of irrational privilege; and that it may be used in this way, not as a result of irrational privilege; and that it may be used in this way is the result, not of contingent circumstances, not of occasional abuse, but of the very nature of the conservative spirit.

This conservative spirit knows the difference between the conservatism of great bureaucrats and that of peasants, just as it knows the difference between the revolt of a people who are starving or enslaved and the purely cerebral revolutionism that reflects an emotional void.^{xi}

There is considerable ambiguity in this "conditional conservatism"; for example, it is not clear, on Kolakowski's showing, whether we are to prefer the conservatism of bureaucrats or that of peasants. But for present purposes his most important observation is the following:

The sacred order, which encompassed the realities of the secular world, never ceased to proclaim the message, "This is how things are, and they cannot be otherwise." ... We live in a world in which all our inherited forms and distinctions have come under violent attack;

they are attacked in the name of homogeneity, which is held up as an ideal with the aid of vague equations purporting to show that all difference means hierarchy, and all hierarchy oppression. ... Sometimes it seems as if all the words and signs that make up our conceptual framework and provide us with a basic system of distinctions are dissolving before our eyes, as if all the barriers between opposing concepts are gradually being torn down.^{xii}

One feature of many moral rules held as absolute is that they mark out the difference between socially important categories, say between human beings and brute animals. One drowns superfluous kittens, but not superfluous infants; one eats the flesh of beasts but not that of human beings. And when some people defend their moral judgments by saying -- rightly or wrongly -- that human life, marriage, or private property^{xiii} is sacred, and others reject such appeals as irrelevant and oppressive, the resulting debate is best understood in terms of Kolakowski's observations.

Another feature of moral absolutes is that they have a motivational dimension: a virtuous person will not merely abstain from rape or torture, for example, but will have an entrenched aversion to such acts that will prevent him from performing them even when they appear to be justified. Stuart Hampshire has provided us with a useful phenomenology of actions prohibited in this way: they involve

a sense of disgrace, of outrage, of horror, of baseness, of brutality, and, most important, a sense that a barrier, assumed to be firm and almost [?] insurmountable, has been knocked over, and a feeling that if this horrible, or outrageous, or squalid, or brutal, action is possible, then anything is possible and nothing is forbidden, and all restraints are threatened.^{xiv}

We expect virtuous people to consult their heads as well as their hearts, but sometimes our heads will tell us that such aversions are to be cultivated rather than resisted.

Sacred^{xv} is not just a strong word for good.^{xvi} In its traditional meaning, it has the double sense of "holy" and "accursed." Oedipus, just before his death, was sacred, both because he was polluted by patricide and incest, and because suffering for offenses committed in ignorance had hallowed him. And what is holy is also dangerous: a man can be struck down for laying profane hands on the ark of the Lord.

A contemporary example is the attitude sometimes expressed toward persons with AIDS. One can contract a deadly disease by contact with such persons, and irrational fears of them outrun the real dangers. And an HIV-positive person is marked for early death, without necessarily being, in the usual sense, sick. Many such persons also have the spooky quality associated with sexual ambiguity. Moreover, they are suffering, in a particularly horrible way, the consequences of a collective decision to take sexual matters more lightly than in retrospect seems defensible. Hence they are sometimes shunned, but sometimes also they are treated with a sort of reverence -- even as oracles, as in Tom Wolfe's *Bonfire of the Vanities*.^{xvii} Hence if we say that human life is sacred, for example, we mean two things. First, human beings are valuable in themselves, and their destruction for that reason an evil. Second, that the value we place on human life -- and the moral restraints we attempt to place on its destruction -- are in the following sense strategic. Infringements are not only bad in themselves, but threaten systematically to undermine the entire set of moral restraints that distinguish tolerable human social life from barbarism.

It is now time to respond to two characteristic consequentialist arguments. Kai Nielsen writes:

The general moral principles surrounding bans on killing innocent people are strong and play such a crucial role in the ever floundering effort to humanize the savage mind -- savage as a primitive and savage again as in contemporary industrial society -- that it is of the utmost social utility, it can be argued, that such bans on killing not be called into question in any practical manner by consequentialist reasoning.

However, in arguing in this way, the moral conservative has plainly shifted his ground, and he himself is arguing on consequentialist grounds that we must treat certain non-consequentialist principles as absolute (as principles which can never, *in fact*, from a reasonable moral point of view, be overridden, for it would be just too disastrous to do so).^{xviii}

But to invoke consequentialist considerations to justify the acceptance of a moral rule need not involve the acceptance of the contention that it admits of consequentialist overrides, as distinct from the acceptance of consequentialist arguments to resolve ambiguous cases in its application. (The principle of double effect, which includes a clause requiring "due proportion" seems -- despite Finnis and Grisez -- to require a limited sort of consequentialist reasoning.) On the contrary, the consequentialist argument for accepting a rule against killing the innocent is also an argument for resisting the making of consequentialist exceptions to it.

Consequentialists also argue as follows. If we regard God or Society as the author of the moral law, each of us may have to follow its requirements, even when they conflict with (what seems to be) what would produce the best consequences overall. But if I view myself as the author of the moral law, as one side of the Kantian tradition would have me do, I have no reason not to set aside some rule when it conflicts with my obligation to promote the good. As Conrad D. Johnson has put it, "to stand under external authority implies that the competence to make ... fundamental

revisions belongs to someone *else* (God, an elite, or the majority through the social conventions they create."^{xix} Hence consequentialism is the most appropriate morality for a secular, pluralistic society.

But this argument, even if we accept its ontological underpinnings, proves too much. Unless my morality includes some sense of external constraint, I have no reason not to revise it when it conflicts with my own interests or even my present inclinations. I therefore have no reason to prefer consequentialism to some form of moral minimalism -- whether nihilistic, egoistic, or extreme libertarian -- that denies that I have any obligation to come to the aid of others in their need.^{xx}

7.3. The Search for Moral Absolutes Concluded

I thus conclude that strongly entrenched moral rules are necessary to a workable morality, and thus also to social life, and that these rules are to be found in domains of human life where enormous powers for both good and evil are at work. The thought that there are norms whose reasons we may not fully understand (in hard cases, anyhow), but whose observation is necessary to tolerable social life, is extremely common. But its application runs into a number of difficulties.

First, the concept of a tolerable social life is not neutral among moral theories and moral positions. If radical animal rights advocates are right, nearly all human societies are in the Nazi class. Even vegetarian societies exploit animal labor in ways these advocates condemn.

Second, the relevant causal claims are easy to make but hard to sustain, even in retrospect. There may be people who, starting with reading newspapers on Sunday, or the use of conventional playing cards, have made shipwreck of their lives. But even in these cases it does not follow that the decision to play cards was the wrong turning of greatest practical importance; that may have come later or earlier.

Third, society has the ability to absorb remarkable amounts of misbehavior -- whether defined by its own standards or by the standards a critical moralist would defend. But sometimes this misbehavior reaches a point -- call it a "Watergate point" -- at which it is necessary to uphold or abandon challenged standards. But such points are unpredictable in advance; deciding when they have arisen is one of the most delicate tasks of prudence.

Finally, the decay of social orders, though always risky, is not bad without qualification. Some social orders are unjust beyond the limits of tolerance; some, for example, require lynching and other evil means to keep them going. Sometimes it is reasonable to endeavor to build a new society in the ashes of the old.

Nonetheless, social disasters do occur, and at least some examples of them are uncontroversial, at least in retrospect. And the path to disaster is paved by a multitude of individual and collective decisions, some of which at least are well intentioned. And the hope that social disaster will lead, after all the bloodshed and chaos, to a better social order cannot form the foundation for prudent action. The time to prevent Nazi Germany is thus during the Weimar period, when the social institutions of all sorts are in decay, not when the Nazis' "remedies" for this decay are being administered.

The moral reasoning of an individual begins with a set of fairly simple rules, of the Ten Commandments variety. But he encounters situations that make these rules seem too simple: they are then modified and adapted in various ways, leading to a far more complex set of rules and principles. But then he encounters a "check" -- a realization that, if one continues to loosen one's moral rules, chaos is a likely result. And so he attempts to restore one's moral rules to their pristine simplicity, and the dialectic goes on.

It is therefore irresponsible, even from a strictly worldly point of view, to hold with Donald Evans that "the history of allegedly revealed and allegedly exceptionless rules seems to me to be a history of empirical error and moral evil."^{xxi} Rigorous moralists, even those who in the final reckoning are unduly so, are like a canary in a mine; they warn others of dangers that will prove lethal unless action is taken. To be sure, excessive rigor about some issues may blind us to other, equally important, dangers, and may drive those unable to live up to the rigorists' burdensome standards to despair. And rigorists may lose credibility by spreading the alarm prematurely. But a moralist, for all that, needs to pay careful attention to those more rigorous as well as to those laxer than himself.

In an ideal world everyone would share the same (true) moral judgments -- not because he was coerced or manipulated into doing so, but because the truth of these judgments was evident to him upon reflection. But, as things are, when some people are too lax it is well that others are too rigorous, and when some people are too rigorous it is well that others are too lax. Or rather this is the case so long as the extremes do not reinforce one another, as they often do.

In technical terms, I am concerned with the acceptance-utility of moral rules (and of moral attitudes generally) -- the consequences, that is to say, of their being adopted by individuals and groups in real time. But I do not evaluate these consequences in hedonist/welfarist terms alone; moreover the problem of incommensurability reappears in a particularly troublesome way when we evaluate the consequences of our customary standards, or of proposed changes in these standards.

My argument diverges significantly from the philosophy of Kant and his followers, which is also invoked to support moral absolutes.^{xxii} Appeal to principled consistency requires a specification of what characteristics of a situation are morally relevant, in order to avoid moral principles adroitly crafted to favor the interests of the moralist or his friends. And the idea of

humanity as an end-in-itself requires an empirical content difficult to find in Kant's moral philosophy. We must somehow avoid the conclusion that, since Soul is immortal, it does not matter whom we kill (or what sort of other damage we inflict). It is necessary to appeal to the needs of human beings as natural and social, as well as rational, creatures, including their need for the protection of stable social formations during their periods of special vulnerability.

A pagan would speak here of the gods, whose favor lavishes benefits on human beings but whose wrath is very terrible. And the bad consequences that flow from the neglect or erosion of elementary moral restraints a pagan would describe as the wrath of Athena, Hera, and Aphrodite. In a modern philosophical context we can speak of a convergence of deontological and consequentialist considerations. We are especially concerned with acts that, in addition to whatever direct harm they do, also may release powerful and dangerous forces our moral rules strive to contain. Moral rules protecting us from such dangers also carry with them a powerful symbolic charge (§ 2.5).

Rationalistic moralists have written of a morality of inherited taboos, which is an enlightened morality of rational principles is destined to supersede. A plausible example of such a taboo is the idea that there is something particularly abominable about anal intercourse, even over and above any objection we might have to other deviant sexual practices. But it turns out that anal intercourse carries with it a special risk of infection with AIDS, and that its prevalence among homosexuals contributed to the AIDS epidemic. It does not follow that our ancestors had an insight into the causes of disease unknown to us. But this sort of surprising result does counsel a humbler attitude toward inherited ideas than many philosophers have been prepared to adopt. On the other hand, some taboos are just irrational, such as a prohibition on interracial intercourse,

especially where the male partner is black and the female white. How the two sorts of taboos are to be distinguished in practice is a difficult question.

Part of the argument is rule-consequentialist in a familiar way: by accepting, teaching, and upholding certain non-consequentialist standards we avoid bad consequences and secure good ones.^{xxiii} And the rule-consequentialist move is often enough neglected in the literature, as when Nielsen writes that "A consequentialist maintains that actions, rules, policies and practices are ultimately to be judged by certain consequences,"^{xxiv} ignoring the fact that rules as well as actions have morally important outcomes.

Nonetheless, without some sort of non-consequentialist backing for our norms, rule-consequentialism would lead to indeterminacy. For the range of possible rules is indefinitely large, and much of the utility of rules consists in their being shared. (Without shared rules and principles we could not, for example, discuss moral issues with one another.) More broadly, rule-consequentialists suppose that people can be brought to converge on some set of moral rules; otherwise his position would be utterly utopian. And the consequentialist considerations that support moral rules are not themselves morally neutral: life without friendship would be intolerable, and friendship includes an internal morality forbidding betrayal.

In any event, rule-consequentialism as a general moral system is not acceptable, since no human being could apply it. (Perhaps God is a rule-consequentialist, but then we would have to rely on revelation for His conclusions.) In practice we avoid such difficulties by starting with existing morality and considering large or small revisions in it, designed to remedy the difficulties its adherents experience in attempting to live their lives according to its tenets.

For suppose we are to choose between two moral codes, with differing results concerning a case we find difficult anyway (say when to cease attempts to prolong a dying child's life). On rule-

consequentialist premises, we need to ask what the effects of the adoption of these codes, either by ourselves as a society or each of us as an individual might be. It is not enough to ask about the consequences of accepting *R1*, requiring us to continue life support, and *R2*, requiring us to cease it. This move would collapse into act-consequentialism, since one could always fashion a rule valid "for this day and this train only." Moreover the consequences of one rule depend on the other rules in the system. (A rule prohibiting direct euthanasia will have different consequences if we are fairly lax about prolonging life, than if we are required to prolong each and every life, whatever the cost.) They also depend on the moral and semi-moral attitudes that surround the code aspect of one's morality, (A stringent moral code will have different consequences if the surrounding culture contains efficient means for dealing with guilt, than if each person is forced to bear the burden of transgression in lonely silence.) Indeed to talk about the consequences of a moral code is to talk about the consequences of an entire way of life.

If I am right in my argument so far, we can now make a bit more progress in our search for moral absolutes. They are to be found in those areas of life centrally important for human beings in society, where powers capable of doing both great good and great ill are at work.

1. The first of these is the domain of human life and its protection -- as well as prohibitions on violence of all sorts. The goods of human life require living human beings to sustain them, and a license to kill leaves few if any moral constraints intact. For if someone is causing me trouble, and I may kill him to free myself of his demands, I have a quick and easy way of escaping whatever claims he may make. (In many cases, extortion will also get me whatever I may demand of him.) The extreme possibility, that the human race should destroy itself by warfare, is not at all impossible, though it is less likely than it was just a short time ago.

Moreover, the use of violence invites retaliatory and pre-emptive violence, whether justified by our moral codes or not. Even when the objects of violence are too weak to defend themselves or to retaliate, and are lacking in powerful protectors, the lesson that the weak exist at the sufferance of the strong has immeasurable costs. The "bloody instructions argument" -- that those who defend violence create a world in which violence, including violence against themselves, is increasingly legitimate, remains sound. On the other hand human aggressiveness cannot be condemned as an absolute evil: if constrained it contributes to the good life in important ways. Hence it is appropriate to speak of human life as sacred.^{xxv} Even if we reject pacifism as unduly restrictive, it is reasonable to look for absolute standards constraining the human propensity to violence. But I do not see how a philosopher could claim anything more than to have approximated these absolutes, especially when one remembers that a moral absolute must be valid for persons of all times, places, and social situations. (This remark applies to my own efforts as much to anyone else's.)

The moral prohibition against taking human life is often expressed in terms of our right to live. And one of the appeals of rights theories is that they attempt to give us moral and political guidance without opening up the endless controversies about the good life for human beings that other approaches to ethics invite. But it turns out that such theories are undermined by the vices latent in these virtues. Alasdair MacIntyre's dismissal of belief in rights as "at one with belief in witches and in unicorns"^{xxvi} goes well beyond his argument. But we may agree with him that, as Jenny Teichman has well put it, "The concept of a right isn't separate from, or above or below, the other moral concepts."^{xxvii} Hence it is not sufficient to appeal to a right to life, whose contours are discovered in intuition, to settle moral issues about killing,^{xxviii} though one ought not express this conclusion in terms of a denial of the right to live.

2. A second area in which we might find moral absolutes might be that of honesty and deceit. Communication is a centrally important part of human life; imagine yourself in a society where no one speaks your language, and in which you are unable to learn a single word of the language others speak. And ingenuity in the use of language is both harmless and necessary. It is not a lie to begin a letter to an enemy or stranger "Dear Mr. Smith," nor does it make an insincere letter worse to conclude it "Sincerely yours." And nearly all moralists allow one to reply to a question, requesting information one is not at liberty to disclose, "I don't know."

But if one could never trust another person to tell the truth, where it differed from what it was advantageous for him to say; or to keep a promise when so doing entailed any cost, then cooperation among human beings would be impossible. No more for lying than for homicide, however, can one, by philosophical reasoning alone, state the prohibition in such a way as to include all and only legitimate exceptions.

3. It is difficult to state the third zone of absolutes for all societies. But in America it has to do with our Constitution, especially those parts of it designed to protect the individual from governmental tyranny. Few Americans -- whatever their political coloration -- are prepared to attack the Constitution; on the contrary political disputes get transformed into questions of interpretation of a document written to provide maximum scope for disagreement on constitutional issues.^{xxix} Those discontented with the prevailing interpretation can always hope that a future Supreme Court will favor their views.

The line between civil disobedience and terrorism, however unclear it may be in some cases, distinguishes those who remain in dialogue with their fellow citizens, from those who have withdrawn from the constitutional process in bitterness and despair. Americans, we may say, regard their constitutional order as sacred, even though they hold themselves at liberty to dispute its

meaning. Nonetheless, we cannot treat the American Constitution, or any other merely human institution, as of perpetual validity (see □1.4). One is forced to speak here of conditional sanctity. The rules of all societies are in constant flux, as these societies attempt to deal with issues ranging from labor unrest to national and ethnic minorities to competition with foreign business. But there are also background understandings that contain (they never abolish) political and social conflicts, and when they collapse lead to civil war. To these understandings -- which may or may not be expressed in a written constitution -- the members of a functioning society accord a certain sacredness.

We have not yet reached a moral absolute. Revolution is sometimes justified, and the duty of loyalty to a society's institutions does not bear on everyone with equal stringency. But somewhere here there are absolute obligations, whose assertion is necessary to the vitality of human social life. But there seems no prospect of formulating them with accuracy with the help of philosophical reason alone.

4. The fourth arena of absolutes is the one in which intuitions vary most widely. It includes that long and complex process by which generation succeeds generation, ranging from the sexual maturity of the parents to the sexual and social maturity of the offspring: in other words, the whole contested area of marriage, sex, childbearing, child rearing, and family life.^{xxx} Friendship in the ordinary sense, as well as Platonic relationships (whatever the sex of the parties) also partakes, to some degree, of the emotional complexities that are generated by sexual and reproductive life. Camile Paglia has powerfully -- if not with complete coherence -- challenged the popular view of sexual activity as no more than a way of expressing affection, and has reminded us of the deep and powerful psychological forces at work in the sexual impulse.

The most extreme bad consequence possible here, that the human race should cease to reproduce itself and thus die out, seems unlikely.^{xxx1} But the other evils chaos in this area produces are evident enough: epidemic disease, bitterness between the sexes and the generations, abuse and neglect of both the old and of the young, and the exploitation of persons who are economically, emotionally, and physically vulnerable. Hence we should accept the commonsense understanding that the sexual and reproductive aspect of human life requires firm, possibly even exceptionless, rules to sustain it.^{xxxii} What these rules exactly are is another matter, and one that the argument so far does little to resolve. Nor is there much hope that philosophy will resolve it.

Affecting all the areas where absolutes are to be sought is the following consideration. Some people are able to take part in deliberations concerning the rules of social life, and if these interests are neglected can make their displeasure felt. But infants and small children must rely on the rest of us to represent their interests. Absolutes constraining the sorts of injury that may be inflicted on them are therefore especially appropriate.

I have not here suggested actual exceptionless moral rules, only provided a partial list of danger zones,^{xxxiii} where both agents and moralists are well advised to proceed with caution in making exceptions to moral rules accepted ordinarily and for the most part. For human beings are notorious for taking every possible opportunity to exploit whatever loopholes may exist in moral rules that obstruct their passions or the pursuit of their self-interest.

We can, at least, hope to be able to formulate virtual absolutes. Virtual absolutes are rules having three features: (1) they are stated, in moral education (and self-education), as exceptionless; (2) those proposing the rules have not admitted any exceptions so far -- or else have included any exceptions in their formulation of the rules;^{xxxiv} and (3) when someone raises the possibility of an exception -- whether in theory or in practice, whether as a general matter or in a particular case --

the burden of proof rests with him.^{xxxv} For only such rules are strong enough to withstand the rationalizing tendencies of the human mind. And we have no reason to suppose that the formulation of virtual absolutes is impossible; prohibitions on genocide, rape, and torture are plausible examples with which to begin (see § 6.2).

The cultural relativist is right on one issue. Granted that some sets of moral standards are better than others, and that some are so atrocious that no conscientious person can accept them. Nonetheless, there is a wide range within which any moral code, however unsatisfactory, is better than no code at all. And there are important utilities in sharing a moral code with one's neighbors -- or at least in having one that is not so different from theirs as to create obstacles to communication and co-operation. Hence one ought, in the absence of persuasive reasons to the contrary, to support the conventions of one's society. And those who believe themselves to have such reasons for criticizing the conventions on one point ought not to widen their criticism into a general rejection of all inherited ideas; for example those who would criticize American institutions on the grounds that they authorize economic exploitation have a reason to address the rules of family life with some gentleness.

7.4. The Limits of Philosophical Argument

Philosophers have distinguished ethics, or reflection upon the principles of conduct, from morals, or the principles themselves, as first inculcated by parents and others, and subsequently developed by agents as they grapple with moral challenges. One implication of my discussion is that morals are independent of ethics. Theoretical reflection is only one of the influences on our moral consciousness, and not the most important one at that. Nor is the impact of philosophical ethics on day-to-day morals always benign: there is some reason to fear that the conventions of academic philosophy favor moral laxity or worse.

Literature can tell us about the complexity of human situations, and make us aware of claims that we have been neglecting. But it can do very little to help resolve moral conflicts. An author can punish a character for breaching a moral norm -- as Tolstoy pushes Anna Karenina under a train -- but novelists have no authority to impose their value judgments outside the four corners of their own works. And awareness of moral complexity, unless somehow balanced, tends to paralyze moral (and political) judgment.

Theology in the wide sense examines the common moral consciousness of a group of people -- be it Americans, feminists, Baptists, or professional philosophers -- and articulates, interprets, and applies the norms found there. So long as one adheres to a group, its norms will have binding force, but no merely human community can assert an absolute claim on persons in varying degrees alienated from it. Secession remains as a loophole to any moral standard, so long as it is sustained only by the consensus of a certain community.

Every human community has an implicit picture of the world and the place of human beings within it, in terms of which its members understand their life together and resolve disputes. In some cases, a community claims intimacy with the Author of the universe, Who has disclosed to it some part of His plans. But even such communities exist in history, and for that reason their ruling ideas are vulnerable to distortion. Even their most loyal members must deal with elements in their doctrines and practices that conflict with their reasons for adherence to them.

"For her committed members," Germain Grisez responds, the Church is not a society from which they are more or less alienated. For such people, to accept the Church's teaching is to be self-consistent. To wish to be a Catholic while refusing to accept the Church's teaching would be rather like wishing to have a friend without being a friend.^{xxxvi}«

But this observation is at best only part of the truth, at least so long as Roman Catholics hold with Vatican II that "Christ summons the Church, as she goes on her pilgrim way, to that continual reformation of which she always has need, insofar as she is an institution of men here on earth."^{xxxvii}

The most important obstacle to theological understanding is the gap between the experienced world of contemporary people and that of the people among whom the classical expressions of Christianity arose. The attempt to reflect on contemporary experience in the light of the Gospel constantly threatens to collapse in the face of whatever secular ideology is most pressing at the time. In Protestantism the constraint on dissolution is popular disaffection, as reflected in shrinking church membership; in Catholicism it is Vatican pressure; in both cases it is external to the structure of theological discourse. Theology has become a form of politics, and orthodoxy a form of political correctness rather than a form of truth. And the concepts of accommodation, dissimulation, repression, secession, and submission threaten to drive out both faith and reason.^{xxxviii} To require of oneself or others that they become first Century or medieval people (or early Nineteenth Century Americans) is to impose a burden that those who lived during the periods did not bear. Possible ways of changing this situation lie outside the scope of this essay, but now as always the highest court of appeal on Earth is the informed conscience.

An adequate account of the judgments of an informed conscience is one of the most difficult tasks of moral theory. Information about the relevant facts, including the official positions of communities of which one is a member, carries one only so far. Every moral code contains ambiguous, conflicted, and doubtful elements that make its mechanical application impossible. But act-intuitionism, which expects the conscientious person somehow to know what is right in every situation, without the help of rules and principles, cuts away the possibility of reason and

communal reflection in moral judgment. One can seek the counsel of a trusted adviser, and those who believe in God naturally pray to Him for guidance. But knowing whom to ask, and knowing when one has received appropriate counsel from God or man, also requires a judgment of conscience.

Nonetheless, it sometimes clear what one ought to do, even in a situation others find difficult. We can adduce reasons for our judgments in such cases, though the force of these reasons, and their capacity to cut short reflection and demand action, goes beyond their argumentative force. And those who find support for their consciences in moral rules taught as absolute cannot be dismissed as unreasonable. When conscience does speak, Socrates puts the result to Crito, "these are the words that I seem to hear, as the Corybants hear the music of the flutes, and the echo of these words resounds in me, and makes it impossible for me to hear anything else."^{xxxix}

NOTES

ⁱ "The Value of the Canon," *Debating P.C.*, Paul Berman ed. (New York: Laurel, 1992), ch. 6, esp. pp. 153-7.

ⁱⁱ For a sustained critique of the cultural Left from the standpoint of the political Left, see Gerald Graff, *Literature Against Itself* (Chicago: University of Chicago Press, 1979), esp. ch. 3.

ⁱⁱⁱ See Alasdair MacIntyre, *After Virtue*, 2nd. ed. (Notre Dame: University of Notre Dame Press, 1984), ch. 17.

^{iv} *What is Neostructuralism?* (Minneapolis: University of Minnesota Press, 1989), p. 427.

^v E.g., Thomas Pynchon, *Vineland* (New York: Penguin, 1991), pp. 134-5: "So that when they came and kidnapped her in the Pizza Hut parking lot and took her back to Japan, she wasn't sure right away that being sold into white slavery would turn out to be at all beneficial as a career step."

^{vi} September 16, 1993. Examples could be multiplied indefinitely.

^{vii} Many neoconservative writers, for example, propose to abandon the concept of social justice as opposed to justice among individual human beings. See Irving Kristol, "A Capitalist Conception of Justice," *Ethics, Free Enterprise, and Public Policy*, Richard T. De George and Joseph Pichler eds. (New York: Oxford University Press, 1978), ch. 4; and Roger Scruton, *The Meaning of Conservatism* (Totowa, N.J.: Barnes & Noble, 1980).

^{viii} See my *Relativism, Nihilism, and God* (Notre Dame: University of Notre Dame Press, 1989).

^{ix} For example, James Miller, *The Passion of Michel Foucault* (New York: Simon and Schuster, 1993).

^x E.g., *Bribes* (Berkeley: University of California Press, 1987); quotation, p. 684. See ch. 19 for the fine line between bribes and campaign contributions, and ch. 21 for Noonan's moral arguments.

^{xi} *Modernity on Endless Trial* (Chicago: University of Chicago Press, 1990), pp. 71-2.

^{xii} *Ibid.*, p. 70.

^{xiii} Human need -- or so a persistent strand in our moral tradition holds -- may require us to override or modify property rights. But St. Thomas Aquinas argues that in extremity all property is in common, and consequently that, strictly speaking, such actions and policies do not infringe property rights.

^{xiv} "Absolutism and the Good Life," in *Absolutism and its Consequentialist Critics* (Lanham, Md.: Rowman and Littlefield, 1994), Joram Graf Haber, ed., p. 121. My argument in this chapter owes a great deal to Hampshire.

^{xv} People also use the word *sanctity*, but for reasons I shall be exploring shortly, the connotations of this word are less pertinent to the issue of moral absolutes than those of *sacredness*.

^{xvi} I am here agreeing in part and disagreeing in part with Jenny Teichman, "Is Anything Sacred?" *Providence: Studies in Western Civilization*, 2 (Fall, 1993), 27-34. I am grateful to Leonard Hindsley, O.P. for letting me see a copy of this article before publication. See also Teichman's articles, "What is Sacred?" *New Criterion*, Nov. 1993, pp. 8-15; and "The False Philosophy of Peter Singer," *New Criterion*, April 1993, pp. 25-30.

^{xvii} New York: Farrar, Straus, and Giroux, 1987.

^{xviii} Kai Nielsen, "Against Moral Conservatism," Haber ed., 172.

^{xix} "The Authority of the Moral Agent," in Samuel D. Scheffler ed., *Consequentialism and its Critics* (Oxford: Oxford University Press, 1988), p. 270. I do not ascribe the argument in the text to Johnson.

^{xx} On minimalism and its relationship to the extremism implied by consequentialism, see Shelly Kagan, *The Limits of Morality* (Oxford: Clarendon Press, 1989), pp. 5-6, 386-90.

^{xxi} "Love, Situations, and Rules," *Norm and Context in Christian Ethics*, Gene H. Outka and Paul Ramsey eds. (New York: Charles Scribner's Sons, 1968), p. 413.

^{xxii} See Immanuel Kant, "On A Supposed Right to Lie from Altruistic Motives," Alan Donagan, "Cases of Necessity," and Alan Gewirth, "Are There Any Absolute Rights?" all in Haber ed., chs. 1, 4, and 10.

^{xxiii} Frances Howard-Snyder, "Rule Consequentialism is a Rubber Duck," *American Philosophical Quarterly*, 30 (July, 1993), 271-77, argues that rule consequentialism is in fact a form of deontology, since its principle makes essential reference to what the agent does. We may classify the theory as we wish, so long as we remember that rule consequentialists consider consequences of the same sort as considered by stock utilitarians.

^{xxiv} "Against Moral Conservatism," p. 161.

^{xxv} Here I depart from *The Ethics of Homicide* (Ithaca: Cornell University Press, 1978) (paperback ed.; Notre Dame: University of Notre Dame Press, 1990), p. 206; but see p. 209.

^{xxvi} *After Virtue*, p. 69.

^{xxvii} "What is Sacred?" p. 14.

^{xxviii} As Baruch Brody does; see his "The Problem of Exceptions in Medical Ethics," *Doing Evil to Achieve Good*, Richard A. McCormick, S.J., and Paul Ramsey, eds. (Chicago: Loyola University Press, 1978), ch. 2.

^{xxix} Jurisprudents such as Robert Bork, who attempt to constrain constitutional interpretation by the historically discoverable intentions of the document's authors, and treat other schools of

interpretation as morally corrupt. But they neglect the important political advantages that result from the document's flexibility.

^{xxx}For detailed discussion, see my anthology with Celia Wolf-Devine, *Sex and Gender* (Australia: Wadsworth Thompson, 2003).

^{xxxi}Schopenhauer welcomed this possibility, but views such as his can be safely neglected in real life moral discourse.

^{xxxii}For possible ways of developing this line of thought, see Christopher Derrick, *Sex and Sacredness* (San Francisco: Ignatius, 1982).

^{xxxiii}Other possible danger zones include the use of psychoactive drugs and damage to the natural environment. Some people would separate private property from the rest of the civil order that defines and protects it, but I am very dubious about this approach.

^{xxxiv}These two possibilities differ only verbally. It does not matter whether we say, "Thou shalt not kill," and admit an exception for self-defense, or "Thou shalt do no murder," where murder is understood as excluding self-defense.

^{xxxv}Many moralists have converged on such a conclusion. I.M. Crombie expresses roughly the point made here, though he makes too many concessions to consequentialism, when he writes: "I cannot dispute that in principle even a definite action rule may on some occasion enjoin the wrong action, but I can nevertheless decide that I will uphold certain of such rules without qualification on the grounds that it is better to do so." ("Moral Principles," *Christian Ethics and Contemporary Philosophy*, Ian T. Ramsey ed. [New York: Macmillan, 1966], p. 258.) John Finnis, on the other hand, rejects virtual absolutes as insufficient to the demands of the Tradition. (*Moral Absolutes* [Washington, D.C.: Catholic University of America Press, 1991], p. 5.)

^{xxxvi}*The Way of the Lord Jesus*, vol. 1 (Chicago: Franciscan Herald Press, 1983), p. 85.

^{xxxvii} *Unitatis Redintegratio* (1964), §6. Tr. in Walter M. Abbot and Joseph Gallagher eds., *The Documents of Vatican II* (New York: Guild/America/Association, 1966), p. 350. *Men* here is of course generic

^{xxxviii} I am here indebted to conversations with Augustine Thomson, O.P., of the University of Virginia. For an Evangelical perspective see David F. Wells, *No Place for Truth* (Grand Rapids: Eerdmans, 1993).

^{xxxix} *Crito*, 54e, G.M.A. Grube tr. *The Trial and Death of Socrates* (Indianapolis: Hackett, 1975), p. 54

APPENDIX

A NOTE ON JOHN PAUL II, *VERITATIS SPLENDOR* (1993)

The Encyclical is primarily a theological document, addressed to the Pope's fellow Roman Catholics rather than to men and women of good will generally. But the Pope makes no claim to be teaching infallibly, nor any attempt to cut off dialogue. He expresses the obligation of the faithful in moral matters in the language of the Second Vatican Council, to "give careful attention to the sacred and certain teaching of the church" (§ 64, citing Vatican Council II, *Dignitatis Humanae*, § 14).ⁱ I hope that these notes will be of interest, not only to Catholic theologians, but also to readers of whatever religious persuasion who believe that the working out of the implications of ethical ideas within concrete communities is of importance for morality.ⁱⁱ I consider the issue posed by the Encyclical as a philosopher,ⁱⁱⁱ engaged in discussion with reasonable men and women of all sorts rather than as a theologian elaborating the standards of a community.^{iv} The Encyclical is best understood as a critique of certain schools of moral theology, which, in the Pope's view, represent "an overall and systematic calling into question of traditional moral doctrine on the basis of certain anthropological and ethical presuppositions" (§ 4), rather than as advancing either concrete moral norms or some philosophical-theological system (see §29). Hence, for example, when he criticizes proportionalism (§ 75), he must be understood as rejecting it as the sole or sovereign method of moral reasoning, not as giving official approval to a moral system, such as that of Finnis and Grisez, that rejects proportionalist reasoning altogether.

The central teaching of the Encyclical is that moral questions are questions of truth and not mere individual or collective decision. A secondary teaching -- more to the point of the present book -- is the defense of the negative commandments (such as those prohibiting murder and adultery). They are "meant to safeguard the good of the person, the image of God, by protecting ...

human life, the communion of persons in marriage, private property, truthfulness, and people's good name" (§ 13).

Much of the Encyclical is devoted to a polemic against the belief -- common among those who think of themselves as modern -- that freedom means freedom from moral obligation, or from the claims of truth; in other words in the power of individuals or groups to create their own "values." The Pope endorses the "heightened sense of the dignity of the human person and his or her uniqueness, of the respect due to the journey of conscience [as] one of the positive achievements of modern culture" (§ 31). But he also affirms, with Newman, that "conscience has rights because it has duties," chief among them the duty "to seek the truth and adhere to it once known" (§ 34). The Pope's view of conscience reflects conclusions he first reached as a private philosopher.^v Conscience on this view is "not exempt from the possibility of error" (§ 62), but even when in error derives its dignity from truth, "if only what man subjectively considers to be true" (§60).^{vi} Evil done as a result of invincible ignorance is excusable, "but does not cease to be evil, a disorder in relation to the truth about the good" (§63). Moral teachings that at first appear harsh and external will, or so he hopes, point the way to an autonomous judgment, by following which an individual affirms his own understanding of how a human being should live (see § 64).

The key question is the relationship between human freedom and concrete acts. The Pope agrees with theorists of fundamental option that

Freedom is not only the choice for one or another particular action; it is also, within that choice, a decision about oneself and setting of one's life for or against the good, for or against the truth and ultimately for or against God (§ 65).

But he points out that "to separate the fundamental option from concrete kinds of behavior means to violate the substantial integrity or personal unity of the moral agent in his body and his soul" (§

67). It makes no sense to say that a person is good "deep down inside" when his every action evinces moral depravity.

At this point in the Pope reiterates some traditional Catholic doctrines:

Man does not suffer perdition only by being unfaithful to that fundamental option whereby he has made a "free self-commitment to God." With every freely committed mortal sin, he offends God as the giver of the law and as a result becomes guilty with regard to the entire law (cf. Jas. 2:8-11), even if he perseveres in faith, he loses "sanctifying grace," "charity," and "eternal happiness." As the Council of Trent teaches, "the grace of justification once received is lost not only by apostasy, by which faith itself is lost, but also by another mortal sin." (§ 68)

But the distinction between apostasy (betrayal of the faith) and other sins seems to disappear on this assumption. Hence some moral theologians

insist that the opposition to God's law which causes the loss of sanctifying grace -- and eternal damnation, when one dies in such a state of sin -- could only be the result of an act which engages the person in his totality, in other words, an act of fundamental option. (§69)

But the Pope responds to these theologians:

The statement of the Council of Trent does not only consider the "grave matter" of mortal sin; it also recalls that the its necessary condition is "full awareness and deliberate consent." ... "For mortal sin exists also when a person knowingly and wittingly, for whatever reason chooses something gravely disordered." (§ 70)

But it remains hard to understand how one can make such a choice, with full awareness and deliberate consent on Friday, and then sincerely repent of it on Saturday, as some forms of penitential practice appear to suppose.

The Pope then turns to the question, how particular moral issues are to be resolved within a Catholic framework. He rejects the claim that "in the moral life prohibitions are more important than the obligation to do good." Nonetheless, he insists the negative commandments "oblige everyone, regardless of the cost, never to offend in anyone, beginning with oneself, the personal dignity common to all" (§ 52). The answer to the question, what sorts of behavior offend the dignity of the human person, is found in "the moral commandments expressed in negative form in the Old and New Testaments" (§52). (He also cites Councils and Popes, as well as his earlier self.)

These commandments are always binding, but their precise application must be specified and determined ... in the light of historical circumstances by the church's magisterium, whose decision is preceded and accompanied by the work of interpretation and formation characteristic of the reason of individual believers and of theological reflection. (§ 53)

How much latitude of interpretation the magisterium, and the individual believers whose reflection informs it, may recognize is left unsettled.

The Pope rejects

Certain ethical theories, called *teleological*, [which] claim to be concerned for the conformity of human acts with the ends pursued by the agent and with the values intended by him. The criteria for evaluating the moral rightness of an action are drawn from the weighing of the nonmoral or premoral goods to be gained and the corresponding nonmoral and premoral values to be respected. (§ 74)

He criticizes such theories on two grounds:

[First,] some authors do not take into sufficient consideration the fact that the will is involved in the concrete choices that it makes. ... [Second,] others are inspired by a notion of freedom which prescind from the actual conditions of its exercise, from its objective reference to the truth about the good, and from its determination through choices of concrete kinds of behavior. (§ 75)

But the Pope's own approach to ethics is, in a broad sense, teleological: it affirms that the "true good of the person in view of his ultimate end" (§ 82) settles moral issues. And even a radically proportionalist theory of ethics can regard the rightness of actions as a question of truth, and include in its reckoning the fact that a person shapes himself through his choices.

At this point the Pope's argument becomes very difficult to follow. The consideration of consequences and intentions, he tells us, "is not sufficient for judging the moral quality of a concrete choice" (§ 77). There is also something further: "the 'object' rationally chosen by the deliberate will, [namely] a freely chosen kind of behavior" (§ 78). Perhaps there are dimensions other than murderous intentions and lethal results, to which one might appeal to warrant describing an act as one of murder. But we still need to know what these are, and how they contribute to the resolution of moral issues.

The Pope observes in conclusion,

Acts whose objects are "not capable of being ordered to God" and "unworthy of the human person" are always in every case in conflict with that good. Consequently, respect for norms which prohibit such acts and oblige *semper and pro semper*, that is, without any exception, not only does not inhibit a good intention, but actually represents its basic expression. (§ 82)

Once it is granted that a certain act is "not capable of being ordered to God" all believers must avoid it. And all men and women, believers or not, who attempt to live with dignity must avoid acts "unworthy of the human person." But the question, how one is to ascertain, in theory or in practice, what acts fall into these classes, continues to present many perplexities.

Moral issues are questions of truth, not to be settled by public opinion or the private fantasies of philosophers. Freedom properly understood is the freedom to search for truth and conduct one's life in accordance with what one believes to be true. That the relationship between truth and freedom in moral matters is left something of a mystery is not, in a theological context, an objection, however much philosophers may crave greater clarity. But the notion of an object of action, distinct from both its intentions and its consequences, needs much more explication if we are to have a persuasive way of linking these important truths to the resolution of hard cases in morals. We need further discussion of these points, especially among Catholics and others who are neither relativists nor believers in the project of founding moral discourse anew.

Hence the Pope's treatment of dissent in moral theology requires further development and refinement. "Moral teaching" we may agree, "certainly cannot depend simply on respect for a process; indeed it is in no way established by following the rules and deliberative procedures characteristic of a democracy," let alone by "carefully orchestrated protests and polemics carried on in the media" (§ 113). But it is not established by top-down hierarchical methods either, however much a centralized authority may contribute to the health of a community in which it is present. The Pope appeals to reason and tradition rather than his own brute judgments. But insofar as he does so, the reason of all people, and the judgments of other persons formed in the Catholic tradition, cannot be just dismissed.

NOTES

ⁱ All citations are to the text of *Veritatis Splendor* published in *Origins* 23 (Oct. 14, 1993), 297-336.

ⁱⁱ For commentaries, see the contributions of Richard John Neuhaus and Russell Hittinger to the symposium, "The Splendor of Truth," *First Things*, 39 (January 1994), 14-18; and, in a more critical vein, Gerard J. Hughes, S.J., "Veritatis Splendor: The Issues," *The Month*, 265 (Nov. 1993), 483-487; and John Finnis, "Beyond the Encyclical," *The Tablet*, 8 Jan. 1994, 9-10. A steeply theological commentary is Angelo Scola, "Following Christ," *Communio*, 20 (Winter 1993), 719-722.

ⁱⁱⁱ Alasdair MacIntyre's commentary, "How Can We Learn what *Veritatis Splendor* Has to Teach?" *Thomist*, 58 (2) (April, 1994), 177-195, is chiefly of interest for its explanation of why its author is not a relativist (pp. 187-8), and for forging closer links between virtue and rule-observance than he has hitherto done (*passim*). But it also includes an attempt -- I am afraid a question-begging attempt -- to explain how one can make consequentialist arguments in some contexts while excluding them in others (pp. 192-3).

^{iv} At least as a private person, Karol Wojtyła holds that the distinctive Christian element in ethics arises from the acceptance of God's revealed plan for human beings rather than any special normative or evaluative premise. See his *Person and Community*, Theresa Sandok, OSM, tr. (New York: Peter Lang, 1993), pp. 105-6.

^v *Ibid.*, p. 234.

^{vi} *Man* here (translating the Latin *homo*) is of course to be understood as including women.