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INTENTIONAL ACTIONS AND THE MEANING OF OBJECT: A REPLY TO RICHARD MCCORMICK

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IN HIS ARTICLE, "Some Early Reactions to *Veritatis Splendor*,"¹ Richard McCormick discusses my article on *Veritatis Splendor* and its teaching about intrinsically evil acts.² He challenges my defence of the encyclical's views and poses some concrete questions for me. At the same time, McCormick complains once more about what he calls the encyclical's misrepresentation of the proportionalists' views, as well as about a general misunderstanding on the part of critics of what proportionalism, consequentialism, and their teleological approach are really about.

To begin with, I find it somewhat surprising that McCormick presents intentional understanding of human acts and their objects as something discovered by proportionalists. By this he obscures the fact that most critics of proportionalism, consequentialism, and so-called "teleological ethics" (I will not further distinguish these different labels) work with what is precisely an intentional conception of moral objects.³ For example, my own

¹ *Theological Studies* 55(1994): 481-506; see 500-502; 504.

² Martin Rhonheimer, "'Intrinsically Evil Acts' and the Moral Viewpoint: Clarifying a Central Teaching of *Veritatis Splendor*," *The Thomist* 58 (1994): 1-39.

³ There may be some exceptions, for example, Russell Hittinger; see his article, "The Pope and the Theorists," *Crisis* 11 (December 1993) : 31-36. G.E. M. Anscombe, one of the first and most incisive critics of consequentialism, attacked it on the grounds of an intentional concept of action, developed in her famous study *Intention* (Oxford: Basil Blackwell, 1957; 2nd ed. 1963). Cf. Anscombe, *Contraception and Chastity* (London: Catholic Truth Society, 1975).

position, situated in the context of virtue ethics,⁴ is one in which an intentional conception action plays a crucial role. McCormick seems to evade this level of argument, however, and in this way appears to beg the question about one of the central issues in the debate.

At the same, it is not entirely surprising that McCormick had some difficulty in dealing with the central point of my argument (and of similar arguments),⁵ because his methodology is so entangled in the categories of the strongly legalistic and casuistic manual tradition.⁶ In my article, I explicitly dealt with the difficulty of understanding a virtue and first-person-centered view from the perspective of the manual tradition:

It will, however, never be possible to render intelligible this moral methodology on the grounds of an ethic which from the beginning is concerned with justifying “moral norms.” This is so because in such an approach the *distinction* between “object” and *further* intentions necessarily drops out of view. The only thing which a norm ethic can produce in the way of an action theory are the particular “occurrences” (“actions”) on the one hand, and the consequences

4 See Martin Rhonheimer, “‘Ethics of Norms’ and the Lost Virtues. Searching the Roots of the Crisis of Ethical Reasoning,” *Anthropotes* IX, 2 (1993) : 231-243; *La prospettiva della morale. Fondamenti dell’etica filosofica* (Rome: Armando, 1994) ; *Praktische Vernunft und Vernünftigkeit der Praxis. Handlungstheorie bei Thomas von Aquin in ihrer Entstehung aus dem Problemkontext der aristotelischen Ethik* (Berlin: Akademie Verlag, 1994). Contrary to the impression which McCormick gives in his article, I do not share the Grisez-Finnis theory about basic goods and practical reason, nor do I argue on its grounds, in spite of many important common views.

5 See William E. May, *Moral Absolutes. Catholic Tradition, Current Trends, and the Truth* (Milwaukee, Wis: Marquette University Press, 1989) John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, D.C.: The Catholic University of America Press, 1991) ; Alasdair MacIntyre, “How Can We Learn What *Veritatis Splendor* Has To Teach?” *The Thomist* 58 (1994) :171-195. See also Robert P. George’s and Hadley’s Arkes’s contributions to “The Splendor of Truth: A Symposium,” published in *First Things* (January 1994) and rather unfairly criticized in McCormick’s article.

6 This is also the case with Bruno Schüller and his disciples; see the recent paper by Werner Wolbert, “Die ‘in sich schlechten’ Handlungen und der Konsequentialismus,” *Moraltheologie im Abseits? Antwort auf die Enzyklika “Veritatis Splendor,”* ed. Dietmar Mieth (Freiburg: Herder, 1994), 88-109.

brought about by them, on the other. If an agent *intends* the best consequences, then it is these which come to be designated the “object” of his “act.” (21-22)

McCormick’s article thus confirms this assertion, since the author finally arrives at the conclusion that talking about “objects” and wrongness *ex obiecto* is not a helpful terminology and should be abandoned.⁷ I shall return to this point.

The questions put to me by McCormick, and which I shall try to answer, deal with the following issues: 1) The meaning of “object” (which is, as he rightly states, the central point) ; 2) the closely related “question of intentionality”; and 3) what is according to McCormick “a key question” for my position: “Why in choosing to kill a person or deceive a person, does one necessarily ‘take a position with his will with regard to good “and “evil” ‘?”⁸ Finally, I shall also have to say something about what McCormick falsely calls the encyclical’s misrepresentation of proportionalism, because this is intimately connected with all the rest.

“Object” in *Veritatis Splendor*: Not Just a
“Kind of Behavior”

Let me start by specifying some points about *Veritatis Splendor*’s teaching. In his presentation of the encyclical’s understanding of the “object,” McCormick says that according to the encyclical (and presumably also to me) an object simply is “a freely chosen kind of behavior.” But it seems that he fails to grasp what the encyclical’s text wants to stress in this passage. Its intention is not to tell the reader that objects are “kinds of behavior,” but that objects are to be understood as something related to the acting person’s *choices*. Therefore, the point made by the encyclical is about intention involved in choice of kinds of behavior and not about “kinds of behavior” as such.

⁷ He had already drawn the same conclusion in his article, “Document Begs Many Legitimate Moral Questions,” *National Catholic Reporter* (October 15, 1993): 17.

⁸ McCormick, “Some Early Reactions to *Veritatis Splendor*,” 501.

The entire text (which I quoted at the very beginning of my article) runs as follows:

In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person* (VSm n. 78).

What *Veritatis Splendor* is saying is this: Do not look at human acts “from outside”; do not focus only on what happens, what is the case, and on the state of affairs brought about by a behavioral performance; but rather put yourself in the perspective of the acting subject, for whom “actions” or “behaviors are objects of choice, informed by reason, as immediate goals of the will. Thus the encyclical continues:

The object of the act of willing is in fact a freely chosen kind of behaviour By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person. (VS, n. 78, emphasis added)

In his reading of this passage, McCormick’s attention seems to be entirely conditioned by *his own* methodology--which adopts the standpoint of the observer, as is typical for norm-ethics and casuistry--and by the argumentative problems that logically arise in *this* perspective. Therefore he does not enter at all into the rather sophisticated argument set forth by the encyclical.

It is significant that immediately after this statement *Veritatis Splendor* quotes n. 1761 of the *Catechism of the Catholic Church* (which also focuses on choice). “There are certain specific kinds of behavior that are always wrong to choose, because choosing them involves a disorder of the will, that is, a moral evil.” In n. 1755, the Catechism gives an example, fornication, to illustrate its teaching. Clearly, “fornication” is not simply a material behavioral pattern (this would be “sexual intercourse between male and female”). The encyclical’s verdict about moral evil is not about *this* pattern, but about the *choice* of it, that is, *about a specific case of this choice*, called “fornication,” that is describable

in universal terms (as a “species “of human act), a description that applies to a multiplicity of particular acts independently from further circumstances or consequences. Notice that the description of an (observable) behavioral pattern as such and the description of the *choice* of this behavior may be two quite different things.⁹

Let me spell this out in more detail. When Jim chooses to have sexual intercourse with Jane, Jim actually not only chooses a behavioral pattern (to have intercourse with a female, or with Jane), because Jane either is or is not his wife. This is a circumstance relevant for practical reason that judges about the corresponding behavior as a practical good to be either pursued or avoided. It is a circumstance that, in this specific situation, is given and is thus prior to choice. It is not, however, inherent in the behavioral pattern as such; it is recognizable only by reason and it confers on the chosen behavior an inherent, though not simply naturally given, “form.” The behavior could not be chosen at all *apart from this “form.”* ¹⁰ Therefore, provided Jim and Jane are not married, Jim necessarily chooses, not just “intercourse with a female,” but “fornication.” ¹¹

Accordingly, the concrete behavior considered as an object of choice is much more than merely a material behavioral pattern. In choosing a concrete behavioral pattern, one necessarily chooses it “under a description,” which is precisely the description of an intent formed by reason. Sexual intercourse, as a chosen kind of behavior, is the object of a judgment of reason of the following sort: “Having sexual intercourse with Jane, who is

⁹ The problem is that in common speech the choice and the corresponding act tend to be lumped together under a common designation derived from some characteristic behavioral aspects of the act. In reality, however, the two can never be equated one with the other. Here, as John Finnis has pointed out, “common speech . . . is not a safe guide” (*Moral Absolutes*, 72).

¹⁰ That is why (as I pointed out in sections four and six of my article) Aquinas calls objects “forms conceived by reason.

¹¹ If Jim or Jane is (or both are) married, but not with each other, Jim and Jane choose what one calls “adultery.” That is the classic example mentioned by Aquinas (*Sum ma theologiae*, I-II, q. 18, a. 5 ad 3); it illustrates well the difference between *genus naturae* and *genus moris*.

not my wife (or even is another's wife, etc.), is a good here and now to be pursued." This precisely indicates an intention that *defines* the act in question. If there were no intention--which is impossible--there would be no reason, nor would there be a perceived good to be pursued. There would exist nothing but an observable behavioral pattern, not a human act. Thus the chosen act is precisely what *Veritatis Splendor* calls the "proximate end of the [choosing] will." As such, *the very act includes an intention, formed by reason, without which it could not be described as a human act.* This intention (choice) of Jim to have intercourse with somebody who is not his spouse is perfectly describable and morally qualifiable *independently* from further intentions (e.g., the intention of doing it for the sake of obtaining some information necessary to save the lives of others).

The encyclical's understanding of the object of a human act explains the formulation in n. 79, which I quoted in the opening section of my article. This sentence, which contains the key formulation, is, however, mostly ignored by revisionists. The verdict here concerns "*choice* of certain kinds of behavior." In *VS*, n. 80, "intrinsic evil" is referred to the object, and this again means: to kinds of behavior, insofar as they are objects of choice. What is called "intrinsically evil," therefore, is concrete choice, describable in behavioral terms, that cannot be reduced to simple "behavior," however, because every choice includes an intention of the will and a corresponding judgment of reason. That is also the reason why the encyclical speaks here about *ulterior* intentions, and not about intention as such: because "object" and intention are not mutually exclusive terms. There is some intentionality required so that an object of a human act can be constituted.¹²

12 If it is said that the "object is a *chosen* act, describable only by referring to an intention, one might wonder how one can then simultaneously affirm--as does *Veritatis Splendor*, along with traditional moral theology--that the goodness of the (choosing) will *depends* on the object. Someone might claim that we should be able to describe the object as something "given" and without *immediate* reference to an intention. The solution of this apparent puzzle, how-

McCormick affirmed in his article that proportionalism makes precisely this point, imputing to *Veritatis Splendor*, and to critics of proportionalism generally, a different view, one rather easy for him to criticize. In this way he avoids the real issue and conceals the weakness of proportionalism and consequentialism. This weakness, however, is that a consequentialist refuses to speak about “actions” or about intention involved in the choice of concrete actions; he or she only talks about intentions as related to foreseeable consequences, thereby describing, and continuously redescribing, “actions” from the standpoint of a value-balancing observer; in this way he arrives at what he calls the “expanded notion of object.” When McCormick says, “Intention tells us what is going on,” he is perfectly right. But he neglects to ask: How are intentions shaped? Upon what do they depend? and, finally, What is, not intention and intentionality, but intentional *action*?

Intentionality and “Intentional Actions “:
The Implicit Physicalism of Proportionalism

Perhaps the reader of my article on *Veritatis Splendor* will remember the example of “arm rising,” “greeting,” and so on. It was a simple example--inspired by Wittgenstein and Anscombe--of showing how intentional actions are structured. I asserted:

ever, is easy: The object, its intentional element included, is *first* an object of reason, and in this sense it is prior to choice, insofar as choice is an act of the will shaped by reason. That is the point of Aquinas’s teaching. See the following statements from the *Prima seeundae*: *bonum per rationem repraesentatur voluntati ut obiectum; et in quantum cadit sub ordine rationis, pertinet ad genus moris, et causat bonitatem moralem in actu voluntatis* (q. 19, a. 1, ad 3); *bonitas voluntatis dependet a ratione, eo modo quo dependet ab obiecto* (q. 19, a. 3); *actus exterior est obiectum voluntatis, in quantum proponitur voluntati a ratione ut quoddam bonum apprehensum et ordinatur per rationem* (q. 20, a. 1, ad 1). Again, the object, like the “species,” is a *forma a ratione concepta* which includes the cognitive or rational element of intention, purpose. For more details, see Rhonheimer, *Natur als Grundlage der Moral: Eine Auseinandersetzung mit autonomer Moral und teleo logischer Ethik* (Innsbruck-Wien: Tyrolia, 1987), 317 ff., and also *Praktische Vernunft und Vernünftigkeit der Praxis*.

The so-called “absolute prohibitions,” that is normative propositions which indicate that certain, describable actions may *never* be licitly chosen and willingly performed, therefore relate to actions described *intentionally*. It is impossible to do this independently from the content of the acts of choice which relate to such actions. (32)

I have always conceded that proportionalism and consequentialism in Catholic moral theology have aspired to overcome the limitations and flaws of a traditional physicalist understanding of the “moral object.”¹³ At the same time, however, I have contended that they have not succeeded because they have overlooked, and thus conserved, the basic error inherent in this tradition: to fail to understand human acts as embedded in an intentional process, that is, to fail to understand them from the perspective of the acting person.

This can be seen very well in the case of Josef Fuchs (one of McCormick’s chief witnesses for the proportionalists’ innocence). According to my judgment, Fuchs speaks about “intentions,” but he does not seem to have a notion of what an intentional *action* is. He speaks only of (pre-moral) “physical acts “or behavioral patterns (realized, performed, etc.) to which he *adds* intentions (as a “pre-moral element!). What Fuchs calls the “act” in itself or the “act as such” has no moral identity. Only the combination of the three pre-moral elements “act,” “circumstances,” and “intentions” becomes for him a moral whole.

The problem is that “physical act” plus “intention” (defined by some “reason”) will never result in an “intentional action.” “Intentional action” is a concept belonging to action theory, not to moral casuistry. It is not part of a theory about how to combine “reasons” and “intentions” in order to justify an action normatively (that is, to know whether it is “allowed” and right or “illicit” and wrong). The concept of “intentional action” expresses the very nature of human acting. So one has to talk about the acting person and about what is going on in his or her will when he or she acts. The discourse will be about choice and

¹³ See Rhonheimer, “Intrinsically Evil Acts; and the Moral Viewpoint,” 27, and the Introduction to *Natur als Grundlage der Moral*.

about intention *involved* in human acts, that is, in chosen acts (or behaviors, to use the encyclical's term).

Let us have a look at Fuchs's well-known article, "The Absoluteness of Moral Terms." 14 In this article, Fuchs argues that human acts" are composed of three elements: the (physical) act; special circumstances; and the intention. He first points out correctly that: " Morality, in the true (not transferred or analogous) sense, is expressible only by a human action, by an action which originates in the deliberate and free decision of a human person." 15 So a human action, Fuchs continues, must be performed "with the intention of the agent." He then adds the following example:

One may not say, therefore, that killing as a realization of a human evil may be morally good or morally bad; for killing as such, since it implies nothing about the intention of the agent, cannot, purely as such, constitute a human act.16

The problem here is that "killing as such" is not an act, not even an "act as such," because "as such" it is not described as a *chosen* act, that is, as an act that is the object of choice. Of course, "killing" as behavioral pattern (putting another person to death) could also be the performance of a robot. Considered on this level, "killing" is nothing but a behavioral pattern defined by a specific outcome. But, we should ask, what is going on when John chooses to kill Harry (for whatever reason: either because John simply wants Harry to be dead; or because John wants his uncle Harry to be dead *for the sake of* getting an inheritance, or for the sake of revenge, or for the sake of marrying I-larry's wife) ?

The point is that "killing as such" is not conceivable as a describable action, as if this could be understood apart from intention. If John kills Harry, he already has, in *choosing* the kill-

14 *Gregorionum* 52 (1971) ; reprinted in *Readings in Moral Theology No. I: Moral Norms and Catholic Tradition*, ed. Charles E. Curran and Richard McCormick (New York: Paulist Press, 1979), 94-137.

15 Fuchs, "The Absoluteness of Moral Terms," in *Readings in Moral Theology No. 1*, 19.

16 *Ibid.*

ing, an intention: he wants Harry to be dead (this independently of whether he chooses “killing Harry” for its own sake or as a means to a further end). Fuchs, however, falling into the trap of dealing with acts as if they were pure events (“realizations of goods and evils”)’ continues:

The conclusion in definitive terms is: 1) An action cannot be judged morally in its materiality (killing, wounding, going to the moon) without reference to the intention of the agent; without this, we are not dealing with a human action, and only with respect to a human action may one say in a true sense whether it is morally good or bad.¹⁷

From this it obviously follows that, *prima facie*, any “act” (in his sense of performing a behavioral pattern) can be justified, even if it brings about a (pre-moral) evil (e.g., “death”). This brings us to Fuchs’ second criterion:

2) The evil (in a pre-moral sense) effected by a human agent, must not be intended as such, and must be justified in terms of the totality of the action by appropriate reasons.¹⁸

Therefore, if I do not kill just for killing--without further reason besides the victim’s death itself --, then *any* killing *could* be, on principle, morally justified, provided there are “appropriate reasons.” Or do I somehow grossly misunderstand Fuchs?

In this way, we are presented with an action analysis in which “acts” are simply physical events (“realizations of goods and evils “or of “lesser evils “) to be given a moral character by intentions that justify these performances on the ground of “appropriate” (commensurate) reason. The acting subject focuses exclusively on the overall outcome of his or her doings, not on what he or she concretely does. The acting subject disappears as a subject that *chooses* and thus willingly performs concrete acts, acts that are not simply events causing consequences, but proximate ends of a choosing will.¹⁹

¹⁷ Ibid., 120.

¹⁸ Ibid.

¹⁹ Of course, I have never said that proportionalists *explicitly hold* such a causal-eventistic concept of action (since it is obviously absurd). Rather, my criticism was based on showing that they hold such a concept *implicitly--be-*

Fuchs sums up his argument by asserting:

A moral judgement is legitimately found only under a *simultaneous* consideration of the three elements (actions, circumstance, purpose), premoral in themselves; for the actualization of the three elements (taking money from another, who is very poor, to be able to give pleasure to a friend) is not a combination of three human actions that are morally judged on an individual basis, but a single human action.²⁰

The example given by Fuchs, of course, is revealing and confirms what I reproach. The problem is that “taking money from another” is not a good description of a “chosen kind of behavior.” A better description would be: “Appropriating money, taking it from its legitimate owner, against his will.” This is an intentional description of an action called “theft.” It has its moral form independently from whether the acting person has this or another “purpose” (intention), and from whether the outraged person is poor or not. Provided he or she in fact is poor, then the theft may be more condemnable and called “mean.” If the purpose is frivolous (“to give pleasure to a friend”), then the whole theft will be a frivolous action in addition. Such a theft, however, will not only be a frivolous one, but also, *by its very object*, an unjust one! If the purpose (“further intention”) is laudable, the intention remains laudable, but not the action as such, which remains unjust, though it probably will be, despite its wrongness, more understandable. In any case, on the whole it will be an evil action, *malum ex quocumque defectu*. On the grounds of Fuchs’s and McCormick’s methodology, however, these kinds of differentiations are completely ruled out in favor of a uniform overall judgement about “rightness” or “wrongness” of the act.

To sum up, this methodology has three main characteristics. First, it confounds the intentionality involved in actions with the

cause otherwise their position would not be coherent--and that this demonstrates that their position is erroneous. Consequently I argued that they should pay more attention to action theory. See Rhonheimer, “Intrinsically Evil Acts’ and the Moral Viewpoint,” 27 *ff*.

²⁰ Fuchs, “The Absoluteness of Moral Terms,” 121.

reasons one might have to judge certain outcomes as desirable. Proportionalism, of course, does not forget intention or intentionality, but it reduces “action” to “intending” and to “having appropriate reasons.” What is lacking is an intentional concept of *action itself*. For proportionalists, action remains a purely physical event that realizes the state of affairs one has a “reason” to bring about. Splitting up human acts into “acts as such,” on one side, and “reasons” and “intentions related to foreseeable consequences,” on the other, proportionalists seem to assert that choice proceeds on a double track: One first chooses, on the grounds of appropriate reasons, the state of affairs to be brought about, and afterwards the physical “act as such” that will cause it (e.g. “killing as such”) is chosen. The second choice—according to the theory—receives its moral species exclusively from the first (“as such,” it has none); it has a purely instrumental relation to the first. That is precisely what I would call an “eventistic” and thus non-intentional notion of action.

The second characteristic derives from this: The “basic action,” the concrete act or behavior immediately chosen and then referred to whatever end, is not conceived as an intentional action. This is a very important point, because I take the “object of a moral act to be precisely the content of what I have called an “intentional basic”²¹ which itself can be distinguished from *further* intentions. This inability to isolate the *basic intentional content* of actions in relation to further intentions leads to the third feature of proportionalism, what McCormick calls the “expanded notion of object,” an “object” that is to be understood as being already the *result* of a process of weighing and “commensurating” all foreseeable consequences. The “expanded object” thus contains the intentions that define what in a morally significant sense the acting person is doing (and so, *prima facie* everything becomes morally possible, provided there is an ap-

21 See Rhonheimer, *La prospettiva della morale*, 39, 85 ff., 239 ff. The term “basic action” was first introduced by A. C. Danto (“Basic Actions,” *American Philosophical Quarterly* 2 [1965]:141-148), but in quite another sense, i.e. not referring to *intentional* action.

propriate reason). The expanded notion of object, however, in reality is equivalent to the abolition of the notion of object altogether, for the very notion of “object” necessarily implies a distinction between the *basic* intention that characterizes the object and *further* intentions.

McCormick’s “Expanded Notion of Object”

The problem of the proportionalist “expanded notion of object” can be well illustrated with the case of Paul Touvier, a French Nazi collaborator in the Vichy regime, recently con-demned, who was ordered to shoot seven Jews on June 28, 1944. On trial fifty years later, Touvier argued that both he and the chief commander of the militia of Lyon knew that Gestapo chief Werner Knab was planning to execute a hundred Jews in reprisal for the Resistance’s killing of Philippe Henriot, the head of Vichy’s propaganda organization. By convincing Knab to execute only thirty, and then in fact executing seven Jews, Touvier argued that they had in fact prevented the execution of one hundred desired by the Gestapo Commander. The key point here is their argument that *what they did in reality (the morally relevant “object” of their doing) was not kill seven Jews, but save the lives of ninety-three of them.*

That is an argument based on an “expanded notion of object.”²² The corresponding reasoning that would, in proportionalist terms, justify such an action begins by affirming that killing as such “--that is “ without reference to the intention of the agent “--is neither good nor evil, but only the “ realization of a (pre-moral) human evil” that can be justified, provided one does not directly intend this evil as the goal of the action, and that there be a “commensurate reason.” Taking into account “the whole of the action,” circumstances and foreseeable consequences, Touvier came to the conclusion: If I do not kill the seven, then one hundred (these seven probably included) will be killed. Therefore, in killing the seven (which *as such* is beyond good and evil), I can save ninety-three Jews. Thus Touvier rea-

²² Or was it, mistakenly, not expanded enough?

soned: the morally relevant “object” of my action--that is, *what I am really doing--has* to be called meritorious or at least responsible and justified as life-saving.

Although a proportionalist can produce reasons why Touvier should have refrained from killing the seven Jews, this will be a consequentialist argument and will be accomplished by an even greater expansion of the object. For example, one could argue: “Acting in that manner could have foreseeably weakened consciousness of the criminal character of the Nazi Regime, which would have cost the lives of even more Jews in the long run.”

The problem here is not the *result* of the proportionalist reasoning, but rather its very *structure*. It is precisely the methodology of weighing the consequences, taking into account premoral “values”--in this case, lives of innocent human beings--so as to determine whether or not there is a “commensurate” reason for “realizing the premoral evil” of killing them. Why not simply admit that the intentional killing of innocent persons is immoral, unjust, criminal, that one is never allowed to do such a thing?

According to proportionalism, however, what one chooses are mainly the consequences of one’s actions (actions therefore conceived as simple behavioral performances), but not the actions themselves. As Fuchs put it:

The object of the ethical decision for an action is, therefore, not the basic (e.g. physical) act as such (in its ethical relevance, such as killing, speaking falsehood, taking property, sexual stimulation), but the entirety of the basic act, special circumstances, and the chosen or (more or less) foreseeable consequences.²³

A problem here is that everything depends on your preferences-- including the determination as to which reasons are commensurate and which are not. Yet is preference ever sufficient as a basis for moral judgement? Who would not prefer the killing of only

²³ Josef Fuchs, “Das Problem Todsünde,” *Stimmen der Zeit* 212 (February 1994) 83 (the English translation is that offered by McCormick in “Some Early Reaction to *Veritatis Splendor*,” 500). In this 1994 article about *Veritatis Splendor*, Fuchs restates the same basic position he had presented in his article written more than twenty years earlier.

seven, instead of a hundred innocent people? Who would not, to use McCormick's famous wording, prefer "to choose the lesser evil" ?²⁴

Of course, I prefer the lesser evil, too. I am happy when I learn that not one hundred but only seven innocents were killed, as I am happy to know that only seven instead of one hundred persons were killed in an air crash or by an earthquake. But I will not *choose* and willingly perform an evil action because I think it to be less evil than another and because otherwise foreseeably somebody else would commit the greater evil (I shall try to prevent that, of course). The proportionalist will rebut: "Sorry, you did not understand me. I meant that choosing the lesser evil signifies that this action was precisely the *good* one." I then would reply: "So you really think that when choosing and freely performing an action, nothing else happens than what happens in an air crash or an earthquake? Are the evil results of certain actions somehow simply given, beyond both my power to change and my responsibility? Or are they rather intrinsically bound up with the action that I perform?"

On the grounds of this and similar examples, we can better understand why *Veritatis Splendor*, n. 77 pronounces a very important warning, a warning overlooked, it seems, by most proportionalists:

The weighing of the goods and evils foreseeable as the consequence of an action is not an adequate method for determining whether the choice of that concrete kind of behavior is "according to its species," or "in itself," morally good or bad, licit or illicit.

Of course, in the light of the preceding example this statement is perfectly intelligible. The proportionalist "expanded notion of object," however, renders it meaningless because in proportion-

²⁴ Cf. John Finnis, *Fundamentals of Ethics* (Washington: Georgetown, 1983), 93 ff. For McCormick, choosing the lesser evil is simply a self-evident principle, "beyond debate: for the only alternative is that in conflict situations we should choose the greater evil, which is patently absurd" (*Doing Evil to Achieve Good*, ed. Richard McCormick and Paul Ramsey [Chicago: Loyola, 1978], 38). This of course also means that we choose and therefore are responsible for the foreseen consequences of our omissions.

alist terms there simply *is no possible choice of a concrete kind of behavior* that could be called morally bad “by its species” or “in itself” *before* the foreseeable consequences have been weighed--consequences that change from case to case--and *before* a judgment about commensurate reasons has been reached. The problem here is with what are called intrinsically *wrong* or *evil* actions; in such cases already the very object should serve as an indication that one should not persist along this line of action. McCormick avoids facing this problem directly by employing examples like “one takes a vacation trip in order to commit adultery” to maintain that only in such cases can one discern “an intention in addition to the object,” because “there are two distinguishable actions here, each with its own object.”²⁵ This is then a simple means-end relation. In the example, the basic action is perfectly indifferent or even good, but not the end. Yet is not the situation radically different in the case, for example, of one who commits adultery in order to rescue an innocent person and save his life and one who kills seven Jews in order to save the lives of ninety-three? Are there not also “two distinguishable actions here, each with its own object”? McCormick’s choice of examples serves to avoid the real issue.

Proportionalists thus describe and redescribe concrete chosen basic actions, without looking at what the acting person chooses on the level of action (or “means “); rather, they concentrate on what he or she chooses in the order of consequences and on the corresponding commensurate reasons, all of which finally constitute the “expanded object.” As we have seen, however, the expanded notion of object is in reality not a notion of “object” at all, but precisely its abolition, because “object” means the basic intentional content of a human act, distinguishable from *further* intentions.²⁶

To borrow an example from William May, it would be more truthful to say that Macbeth *killed* Duncan instead of saying that

²⁵ McCormick, “Some Early Reactions to *Veritatis Splendor*,” 498.

²⁶ These, of course, are also “objects” of the will. See John Finnis, “Object and Intention in Moral Judgments According to Aquinas,” *The Thomist* 55 (1991): 1-27.

Macbeth *stabbed* Duncan and as a result Duncan died. Stabbing Duncan “as such” is not a sufficient description of a chosen kind of behavior or of an action. A description of the object must include, in Aquinas’s terminology, both the *materia circa quam*,²⁷ matter about which,” and the “form” of the action: Macbeth stabbed Duncan for the sake of causing his death, or, because he wanted him dead (that was precisely his *reason* and his intention or purpose). We rightly call this kind of act an act of “killing.” That is what he chose and what he did; that is the object of his action. In order to express our moral disapproval we also call it “murder.” It would not make any sense to say: Macbeth chose stabbing Duncan with the *further* intention of causing his death, of killing him. You cannot describe “stabbing Duncan” as a reasonable, freely chosen action without indicating an intention.

This way of describing an act by the intention involved in it is not always truthful. Thus it is not truthful to say that Touvier “saved ninety-three Jews “ instead of saying that “ Touvier killed seven innocent Jews, and as a result ninety-three were saved.” We cannot call this action an act of “life saving” merely because the foreseeable result (the sparing of the ninety-three) was a “commensurate reason” for shooting the seven, and thus “life itself” was “ better served.” We are not calculating with quantities of the “ good of life,” but relating to concrete *living persons*. To speak truthfully, Touvier killed seven innocent people (he shot at them with the intent of ending their lives) which is murder--with the *further* intention of preventing the killing of a hundred.

Thus it is not truthful to say that abortion, given that it means killing an innocent human being, is either an act of life saving when done for the sake of saving the mother’s life or an act of saving family stability in certain difficult family situations. Nor can the manipulation and sacrifice of human embryos for the sake of health research (considered as a commensurate reason) be taken as simply an act of health care by virtue of its (expanded)

²⁷ *Summa theol.*, I-II, q. 18, a. 2, ad 2.

object. The notion of expanded object does not work; or, better, it works for anything whatsoever. Again, everything depends on the preferences one has.²⁸

McCormick conceals the problem by adopting examples that, in themselves, are precisely *not* examples of “expanded objects” (and that I would call intentional basic actions). Let us take the example of masturbation.²⁵ Of course, stimulation of the genital organs “as such” is not a kind of behavior that can be chosen or willingly performed by a human person; a basic reason, intent, or purpose is needed.³⁰ That is why the *Catechism of the Catholic Church* very correctly writes in n. 2352: “By *masturbation* is to be understood the deliberate stimulation of the genital organs in order to derive sexual pleasure.” That seems very clear. If one chooses the same behavioral pattern (stimulating genital organs) in order to get semen for fertility analysis, then one simply chooses an action that is different by its object.

What happens, however, if one chooses to masturbate for the sake of psychological release? Is the action properly described by calling it “deliberate stimulation of the genital organs in order to have psychological release”? “I think not. Rather, what one deliberately chooses is “the stimulation of the genital organs in order to derive sexual pleasure” (= object), and this with the *further* intention of getting psychological release. The key here is that the release obviously does not derive from stimulating genital organs “as such,” but from the corresponding sexual pleasure. Thus what the intentional basic action (or its object) turns out to be is not simply a question of preference.

²⁸ In the proportionalist schema, one simply calls “object” what one concludes to be morally relevant, “what one wanted to condemn as wrong *ex objecto*” (McCormick, “Some Early Reactions to *Veritatis Splendor*,” 504). In this way, one can simply keep expanding the object of one’s action so as to justify one’s preferences and reach the result corresponding to one’s personal intuitions about what is morally relevant.

²⁹ Cf. his example of organ transplantation, as distinguished from “killing for world peace” (“Some Early Reactions to *Veritatis Splendor*,” 504).

³⁰ Likewise, one simply *cannot* choose to “remove a kidney from a living donor” purely “as such,” without *any* reason that constitutes it as a human act.

At the same time the behavioral pattern alone does not decide everything and is sometimes ambiguous. Consider the following situations. John, a college student, for the sake of forgetting his girl-friend troubles drinks lots of whisky in order to induce a temporary loss of consciousness; in other words, he gets drunk. This is an act of intemperance, drunkenness. On the other hand, Fred, a soldier, for the sake of avoiding the pain of an emergency operation, drinks the same amount of whisky in order to induce a temporary loss of consciousness; in other words, he undergoes anesthesia. The behavioral pattern may be exactly identical,³¹ but without indicating an intention (a “ Why?”), it is impossible to describe properly *what* John and Fred are doing, i.e., what, in a basic sense, they choose.³² If you remove *any* intention or purpose whatsoever, there is no action. Thus in every case you arrive at a basic level, which is the level of intentional basic actions.³³

There are also adherents of a non-intentional concept of object who fear that this consideration of intention opens the way to subjectivism: Any behavioral pattern, they object, could serve for any object whatsoever: “by shifting intention to and fro, the agent constitutes out of whole cloth the moral properties of his act.” Moreover, their concern is “ whether the *norm* of acts exists prior to human choice, or whether it only comes into being with our consideration of proportions, circumstances, and consequences. “³⁶ And finally: Is it possible to say that intention is so important; should we not hold “that the concrete nature of acts tells us whether an intention is morally good or bad”?

31 For an intentional notion of contraception, see Rhonheimer, “Contraception, Sexual Behavior, and Natural Law. Philosophical Foundation of the Norm of ‘*Humanae Vitae*,’” *The Linacre Quarterly* 56, 2 (1989) 20-57.

32 Cf. G. E. M. Anscombe, *Intention*, § 22.

33 The opposite is also possible, i.e., different or even contrary behavioral patterns, but the same intentional action, e.g., “the action of killing” and “the omission of a possible action of life saving.” The objects of both choices are identical.

34 E.g., Russell Hittinger; see his article, “ The Pope and the Theorists,” *Crisis* (December 1993) 31-36.

35 Hittinger, “The Pope and the Theorists,” 34.

36 *Ibid.*, 33-34.

37 *Ibid.*, 34.

These formulations are, however, somewhat misleading. First, the “nature of an act” necessarily *includes* an intention, because there *is* no human act without an intention formed by reason. And that is precisely why Aquinas calls the species of an act, which is determined by its object, a *forma a ratione concepta*, a “form conceived by reason”;³⁸ likewise, he defines the good that is by nature specific to each virtue as a good formed “*ex quadam commensuratione actus ad circumstantias et finem, quam ratio facit*,” “from a certain commensuration of the act to circumstances and to the end, a commensuration produced by reason.” Such formulations seem to justify the position of Fuchs and McCormick, but only seemingly, however, because the underlying understanding of human action is different. What Aquinas and the tradition say is: One cannot simply “choose” a (physical) act and additionally *order* it to *any* intention formed by commensurate reasons that would justify the act. To deny this does not mean, however, that a human act could be described *without* referring to intention altogether.

Secondly, we have quite an extended power to organize our actions intentionally, and thus in a sense to constitute the moral properties of our acts. But there are what I would call *naturally given limits* to this. *Therefore*, (provided sound perception) I cannot shoot at a person’s heart and truthfully say, “I love you,” meaning that I am doing this with the intent of doing good to this person. What is crucial to recognize is that not every behavioral pattern fits for *any* intention. For example, I cannot shoot at a person and, e.g., have the intention of healing his wound.

To have a human act one needs to have a basic intention; on this much we agree. But can one, as Hittinger fears, simply

shift intention to and fro”? Given a determined situation (which is precisely given and does not depend on the subject’s will or preferences), it is not simply up to me to decide whether my shooting at a person’s heart is or is not an action of punishment.

³⁸ *Summa theol.*, I-II, q. 18, a. 10.

³⁹ *In II Sent.*, d. 39, q. 2, a. 1. “Act” here means the physical or “material” part.

And John who drinks to forget his girl-friend troubles simply *cannot* reasonably intend his act to be an act of anesthesia. Fred, on the other hand, who “does the same thing” *cannot* intend that what he does be an act of drunkenness. There are given contexts (shaped by circumstances and recognizable, as a morally significant contextual unity, only by practical reason) that, *in a basic sense*, decide what kind of intentions we reasonably *can* have if we choose a determined “kind of behavior,” *independently* from *further* intentions.

From this it follows that even if there is no act (and no object) possible without an involved intention, *what* the intention reasonably can be does not depend on pure preferences, or decisions, or any other power of the subject. This is (in many cases, but not always) simply *given*.⁴⁰

Thus Paul Touvier had no power to decide what would be his basic intention in killing seven innocent people. To describe his action properly, one must include the purpose or the intention, “wanting them to be dead” (even if he would *regret* it; that is only a motivational side-feature, but not the very intention of his acting). Touvier clearly *wanted* the seven to be killed; he chose their deaths for the sake of some greater benefit.⁴¹

If someone should wonder why “intention” should be included in the “object” or in the “intrinsic nature of an act,” he also should wonder why generally things like “will,” “intellect,”

reason,” etc., should be included in human nature. It seems rather obvious that the very “nature” of the acts of a spiritual being--moral acts--includes spiritual elements as “purposes or “intentions” of the will, shaped by reason, and not only observable behavioral patterns. Is this not precisely the constant teach-

⁴⁰ It belongs to the virtue of prudence to *understand* the contexts in which we act; see my *Natural als Grundlage der Moral*, 346 ff., and *La prospettiva della morale*, 288 ff.

⁴¹ This is precisely what does not occur in the case of capital punishment (the argument applies also if one is for other reasons opposed to capital punishment), nor in that of legitimate self-defense, nor in that of killing in a just war (which must always have a defensive, anti-aggression character).

ing of Aquinas? 42 Why should “realizing the evil of death” as such be taken as the adequate description of the object of a human act or express its “intrinsic nature,” when exactly the same thing could be brought about by an earthquake or by a robot? Why should simple “solitary stimulation of genital organs as such” be the definition of the object and the intrinsic nature of a human act, when this contains absolutely no indication as to *why* one would do such a thing?

One can therefore describe concrete choices of kinds of behavior as wrong or evil independently from further intentions. Such descriptions, however, always *include* a basic intention, an intention that itself presupposes a given ethically relevant context without which no intention, formed by reason, could come into being. This has nothing to do with the “expanded notion of object.” But it includes a certain complexity that is due to the plurality and multiplicity of virtues that in turn reflect human life and its richness in relations between persons, including the differences of ethically relevant practical contexts.

The Shaping of Intentional Basic Actions and the Virtues:
Some “Manual Cases”

To explain accurately what I have just said at the end of the preceding section, I should explain how practical principles are generated in a moral theory based on the “ends of virtues.”⁴³ While my approach grows out of a tradition rooted in classical virtue ethics, proportionalism is entirely situated in the context of the manualistic tradition.” In opposition to this classical tradi-

42 See *Summa theol.*, I-II, q .1, a. 3 ad 3: Fines morales accidunt rei naturali; et e converso ratio naturalis finis accidit morali.

43 See *La prospettiva delta morale*, chapter five.

44 In order to understand correctly the Catholic tradition of moral teaching, however, one must recover the classical standpoint of virtue ethics. From this standpoint, actions are not considered from the outside--as processes that cause, by combining (pre-moral) goods and evils, foreseeable states of affairs--but rather in terms of “my” intentional relating to good and evil in different ethical contexts (relations between persons, to community and communities, to

tion, proportionalism provides, on the basis of modern consequentialism, a relatively uniform theory of decision making, one that can be summed up in some very simple key principles:

“What one does, considered *as such*, is not yet morally decisive; whatever one does, however, one ought never directly to intend premoral evil; rather, one should always act with a commensurate reason, so as to maximize benefit and/or to minimize harm or evil.”

In order to justify his position, McCormick adduces a whole range of classical examples, self-defence, masturbation, lying, contraception, sterilization, theft.⁴⁵ Insofar as he deals with these problems as a proportionalist, however, he simply begs the question. By affirming that to describe a moral human action an intentional element is required, McCormick asserts what nearly all hold. There is more, however, to the proportionalist position. McCormick affirms that proportionalists “are saying that an action cannot be judged morally wrong simply by looking at the material happening, or at its object in a very narrow and restricted sense.”⁴⁶ Yet by identifying the “object in a very narrow and restricted sense” with the “material happening,” he has already accepted the physicalist fallacy.⁴⁷ So he is necessarily unable to understand how an intentional basic content can be formed. Like Fuchs, Knauer, et al., he will only look at material happenings (the act “as such”) and then at *all* the intentions (among

myself and my body, to God etc.), so that in choosing certain concrete acts or behaviors my will becomes an evil will, whatever the consequences. Only in this perspective can one understand the shaping of “intentional basic actions” (which correspond to different “moral species” of acts and “moral objects”).

45 See also his article, “Killing the patient,” *The Tablet* (October 30, 1993): 1410-11.

46 McCormick, “Killing the patient,” 1411.

47 McCormick commits the same error, even more explicitly, in his article, “Geburtenregelung als Testfall der Enzyklika,” where he asserts that the “object in a narrower sense” is identical with the Thomistic *materia circa quam* (*Moraltheologie im Abseits?* 271-284). This is clearly false and shows a physicalist reading of the tradition.

which those that will be morally decisive will be those for which one is able to adduce commensurate reasons).⁴⁸

What I maintain is that it is possible both not to be a proportionalist and simultaneously to assert that there is a difference in basic intentional content, i.e., the object, in the case of the following actions:

- simple killing for any end whatsoever (an action against justice), even if the ulterior end is saving one's life (this is illicit murder)
- (legitimate) killing in self-defense (killing *praeter intentionem*)
- (carrying out of) capital punishment (an act of punishment, which *may* be regarded as unjust, but which is by its object different from simple killing for any further end whatsoever);
- killing of combatants in war, on the battlefield.

These are not actions to be defined differently only because of different "reasons" one might have for realizing them. Not only their intentional *content*, but also their very intentional *structure* is very different in each case. Since they represent different intentional basic actions, they also are different by their object. Take for example the difference between "self-defence" and "the choice of killing in order to save one's life." On the level of "reasons" regarding the *further* end, both cases are identical: the reason for acting is to save one's life. But if you look at the action not from outside, but from the acting person's perspective, you will notice that there is a different choice (and so there is a different object, too). In legitimate self-defence, what engenders my action is not a will or a choice for the aggressor's death. A sign of this is that I only use violence proportionate to stop his aggression. This may lead me to kill him (*praeter intentionem*), but the reason for my action is not wanting him to be dead (for the sake of saving my life); rather it is wanting to stop his aggression. Thus there is a difference of intention on the level of

⁴⁸ We have already seen in the Touvier case that this methodology does not work. Nor did it work in the case of masturbation, or drunkenness. The problem with killing is that there are some apparent "exceptions," like capital punishment, killing in war, and killing the aggressor in self-defense.

concrete chosen behavior, and that means, on the level of the object.⁴⁹

Or, take “killing on a battle-field”: Am I a murderer or simply a soldier who is fighting against an aggressor? Provided the war is what one calls a just war (*ultima ratio--defence* against an aggression), it entirely depends on what is going on in my heart, i.e., whether I want the enemy soldier to be dead, or simply to stop his aggression and to win the battle. Therefore, if as a soldier you do not want to be a murderer, you must care for wounded enemy soldiers. This shows that the object of your acting--the intention involved in your action--obviously was not wanting them to be dead, not even in the moment of battle, even if killing them in the moment was the foreseeable and necessary physical outcome of violence proportionate to stop their aggression.

With theft it is slightly different. Theft refers to property. Property is not a natural or physical entity, but a moral and legal one. Property is not simply “what I have in my hands,” but “that to which I am entitled” or “that to which I have a right.” Such entitlement and rights, in a given situation, do or do not exist (and this precisely does not depend on consequentialist reasoning). But situations may change: they are contingent. Unlike a person’s life, property is not an unchangeable matter. It is a contingent matter, relativized by higher principles of justice. So there are situations of extreme necessity in which no one is reasonably entitled to say to the starving: “This is my property; you have no right to it.” If the starving one takes what he needs

⁴⁹ This corresponds to the traditional distinction between “direct” and “indirect” killing, a distinction that reflects the easily misleading ambiguity of the word “killing.” This is precisely what Aquinas very explicitly explains in the famous article 7 of *Summa theol.*, II-II, q. 64. What proportionalists never understand in their reading of this article is that Aquinas here not only maintains that actions are morally shaped by *id quod intenditur*, but also that the shaping of intentions depends *on what you are doing*, in this case--on the amount of violence you use to stop the aggression. But in any case he says: *illicitum est quod homo intendat occidere hominem\ ut seipsum defendat*. It is not a question of “proportionate reason,” but of intention involved in action.

to survive, it will simply not be the action we call “theft,” meaning an action that is contrary to justice.

Therefore one has to analyze intentional contents as belonging to the structure of virtues. Admittedly, the traditional manuals were not very careful in this. Their methodology was rather legalistic, focusing on the external features of actions, referring them to positive law, and only secondarily applying some corrections to recuperate important intentional aspects.⁵⁰

In any event, it seems clear that justice related to property and related to life are two quite different matters. Notice that my arguments adopted so far have nothing in common with a proportionalist reasoning. The question was not whether there was a commensurate reason to realize the premoral evil of appropriating another’s property, so that the act would not be “theft” anymore. Rather, the question was whether or not in a given practical context there existed a title of property (this certainly is not a question of commensurate reason or of utility). Once the question of rights is settled, however, these rights may not be overruled by consequentialist reasoning.⁵¹

If one applies the proportionalist methodology of decision-making to these questions, one will never discern the differences, even though in certain more simply structured cases one will probably arrive at the same result. As a consequentialist, one arrives at this result by speaking only in terms of physical acts, foreseen consequences, and commensurate reasons, a level of discourse that will prove profoundly misleading in more serious questions, as

⁵⁰ Thus St. Alphonsus de Liguori treated natural law as if it were a positive legal codex, teaching that *epieikeia* could be applied to it; this meant, however, not negative precepts but those positive precepts that Aquinas describes as valid only *ut in pluribus* (as *deposita sunt reddenda*). Alphonsus’ spirit is absolutely correct, but his methodology is of course misleading (he tries to argue within a legalistic framework). St. Alphonsus is today abused by authors who are nevertheless interested in maintaining the “legalistic” approach, so as to apply *epieikeia* even to *negative* precepts, without however noting the enormous difference. See Gunter Virt, “Epikie und sittliche Selbstbestimmung,” *Moraltheologie im Abseits?* 203-220.

⁵¹ See MacIntyre, “How can we learn what *Veritatis Splendor* has to teach?” 179-182.

illustrated by the Touvier case. Moreover, that is not how upright people really act and live. We act in given circumstances and personal relationships that form basic intentional contexts and corresponding intentional basic actions. Some of them are simply evil by their basic content. They divert the acting person from human good, and make the will and the heart evil.

The “Key Question” and the Encyclical’s Alleged
“Misrepresentation” of Proportionalism

At this point we finally arrive at what McCormick calls the “key question.” Why, he asks me, in choosing to kill a person or deceive a person, does one necessarily “take a position with one’s will with regard to ‘ good ‘ and ‘ evil ‘ “? While some elements of my answer are contained already in what I have explained in the foregoing sections, to answer the question systematically I would have to repeat all that I have said about the misleading distinction, fundamental for proportionalists, between “rightness” and “wrongness” of actions, on the one hand, and the “goodness” and “wickedness” of persons and their actions, on the other. I invite the reader to have a second glance at the original article. Let me add, however, the following.

Proportionalists say that an action is *right* if what one does is justified by commensurate reason. In this view, a person is a *good* person if he or she does not directly intend to realize a premoral evil, but intends to act so as to maximize goods or to minimize evils (“in the long run,” Knauer would add), meaning to act responsibly by commensurate reasons.

I consider this to be simply erroneous. In my article I wrote:

It is one of the most important assertions of classical virtue ethics that there exist conditions for the fundamental rightness of actions which depend on basic structures of the “rightness of desire” and that it is therefore possible to describe particular types of actions, the *choice* of which always involves wrong desire. (20)

With regard to proportionalist decision-making theories (and their characteristic as “rule ethics”) I then added that these theories

may not, on the level of the concrete performance of actions, include in their reflection the acting subject and his willingly “taking a position” with regard to “good” and “evil” in choosing this or that particular action.

So, if I choose to kill P, I simply set my will against a fundamental right of P, which is moral evil; if I choose to have intercourse with O, to whom I am not married, I act against the truth of sexuality, harming my own integrity (in the case of simple fornication), or, in the case of adultery, I moreover violate faithfulness due to the person to whom I am married. This implies disorder of my free will, and exactly this we commonly call an *evil will*. If I choose to utter falsehood to a person, given a practical context in which speech acts are meant to be acts of communicative justice (which is not the case in war situations, aggression, etc.), then I am lying to my fellow man. This means setting my will against social ties due to this person, and this is disorder in my will, moral evil. The same, obviously, applies to theft. At the same time, the one who carries out a capital punishment does not do what he does because he wants the executed to be dead (this could be a further motive, but a condemnable one); he may even do it after having done everything to liberate him. This is an act of punishment, that is, of retributive justice.⁸²

Following proportionalist methodology, one will not see, or not concede, the point because one omits focusing on what is going on in the acting and choosing person, precisely where moral evil comes about. Proportionalists are concerned with the reasons one might have to bring about certain state of affairs as the consequences of one’s doings; and only this allows a judgement about “right” and “wrong.” That is why consequentialists discuss for example the question of whether it could be right to execute the innocent, instead of simply asserting: to execute an innocent per-

⁵² See Rhonheimer, *La prospettiva della morale*, 283; also, the helpful analysis by Agnes Heller, *Beyond Justice* (Oxford: Basil Blackwell, 1987), 156 ff. I want to repeat that my argument does not yet settle the question whether capital punishment is a good or proportionate, and in this sense, just punishment; it only settles the *basic* objective meaning of the corresponding acts as actions of *punishment* or retributive justice.

son for whatever reason is *evil by its object*. Thus precisely what proportionalists do not want to acknowledge is that, according to the encyclical's quotation of n. 1761 of the *Catechism of the Catholic Church*

there are certain specific kinds of behavior that are always wrong to choose, *because choosing them involves a disorder of the will, that is, moral evil,*

and that, according to *Veritatis Splendor's* key sentence in n. 79,

one must therefore reject the thesis, characteristic of teleological and proportionalist theories, which holds that it is impossible *to qualify as morally evil* according to its species--its "object"--the deliberate *choice of certain kinds of behavior or specific acts*) apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned.

Obviously, the encyclical goes right to the point, and McCormick's reaction, along with similar reactions, confirms that the Pope was right.

This relates to that for which McCormick most reproaches *Veritatis Splendor*, its "misrepresentation" of proportionalism,⁵³ namely, the encyclical's assertion in n. 76: "Such theories however are not faithful to the Church's teaching, when they believe they can justify, as morally good, deliberate choices of kinds of behavior contrary to the commandments of the divine and the natural law." McCormick repeatedly says that with this the encyclical gravely misrepresents the proportionalists' views, reproaching them falsely "that [the proportionalist position] attempts to justify *morally wrong actions* by a good intention."

This is simply not true. McCormick's complaint would be justified if the Pope held the same understanding of the nature of natural and divine law that is proper to revisionist moral theology. Unlike proportionalists, however, the encyclical holds that in natural and divine law there are included certain negative precepts that precisely refer *universally* to certain kinds of behavior that one never may choose. The encyclical does not reproach

⁵³ McCormick, "Some Early Reactions to *Veritatis Splendor*," 490 ff., 497; "Killing the Patient," 1411.

proportionalist theologians for wanting to justify by good intentions what is already determined to be morally wrong. The reproach is that proportionalism is a theory by which, in concrete cases, you can justify as morally right what the Church teaches to be universally, *sem per et pro sem per*, wrong. The Pope therefore reproaches proportionalism for denying that there are certain negative precepts that refer *universally* to certain kinds of behavior that one may never choose (killing the innocent, adultery, fornication, theft, contraception, abortion, lying, etc.).

In fact, what the encyclical rejects is the proportionalist notion of expanded object that allows one *in every concrete case* to “redescribe” concrete actions, reducing the commandments of law simply to forbid certain immoral *attitudes*, but not choices of determined and intentionally describable *behaviors* or *acts*.

Therefore *Veritatis Splendor* does not here affirm something about the *formal* structure of proportionalist moral judgement (imputing to proportionalists a theory that seeks to justify the principle, “One may do good evil that good come about”); the reproach is a *material* one, that is, that proportionalism is a theory according to which such universal negative norms *cannot* exist, so that, according to this theory, one comes to declare to be morally right what natural and divine law, according to the Church’s teaching, declares to be morally wrong and evil. Thus *Veritatis Splendor’s* assertion in n. 76 does not characterize proportionalism as a theory, but it characterizes the *result* of this theory, its *material* implications, as leading to moral judgments explicitly contrary to what the Church teaches as morally wrong and evil.

As evidence for this judgement, I refer again to the example of Fuchs, who wrote in 1971: “What value do our norms have with respect to the morality of the action as such, prior, that is, to the consideration of the circumstances and intention? We answer: They cannot be moral norms, unless circumstances and intention are taken into account.”⁵⁴ Some pages later, referring to norms related to actions that “could never be objectively justified,” he concludes:

⁵⁴ Fuchs, “The Absolutness of Moral Terms,” 121.

Viewed theoretically, there seems to be no possibility of norms of this kind for human action in the inner-worldly realm. The reason is that an action cannot be judged morally at all, considered purely in itself, but only together with all the “circumstances” and the “intention.” Consequently, a behavioral norm, universally valid in the full sense, would presuppose that those who arrive at it could know or foresee *all the possible combinations* of the action concerned with circumstances and intentions, with (pre-moral) values and non-values (*bona and mala ‘physica’*).⁵⁵

Of course, Fuchs--like others--neglects to distinguish here between negative (prohibitive) and affirmative norms, which would make all the difference. And so, in a recent paper, he even speculates that in a future, yet unknown time, the command “you shall not commit adultery” could change and no longer be valid without exceptions; there could be imaginable “rare exceptions, on the grounds of highly important reasons and with mutual consent.”⁵⁶

Similarly, it is not surprising that with regard to “murder, adultery, stealing, genocide, torture, prostitution, slavery, etc.” McCormick cites with approval the argument of Lisa Sowle Cahill: “These phrases, Cahill correctly notes, do not define acts in the abstract, ‘but acts (like intercourse or homicide) *together with the conditions or circumstances* in which they become immoral.’ “In their view, precisely because these “conditions or circumstances “can be discerned only in each particular case, the general norm indicating a *species* or *kind* of behavior tells us nothing definitive about whether the act is right or wrong, but merely provides us with a *name* for something of which we disapprove. Yet McCormick misses the point when he complains that Robert P. George “misrepresents proportionalists as maintaining that rape, murder, and adultery could be justified by a

⁵⁵ Ibid., 124.

⁵⁶ Fuchs, “Die sittliche Handlung: das intrinsece malum,” *Moraltheologie im Abseits?* 183. Of course, for Fuchs this should not be called “adultery” any more; one would have to devise another name for it.

⁵⁷ McCormick, “Some Early Reactions to *Veritatis Splendor*,” 492; the quotation is from Cahill’s article, “Accent on the Masculine,” *The Tablet* 247 (December 11, 1993): 1618-19.

proportionate reason,” 58 for what the critics of proportionalism are arguing is that the acts that proportionalists would not designate as “adultery” or “murder” because of the “conditions or circumstances are in fact precisely acts of “adultery” or “murder,” regardless of the new names given to such acts by the proportionalists. McCormick’s complaint simply begs the question.

The notion of “expanded object” requires that any universally formulated norm be open to exception because of a “commensurate reason” that redescribes the act in question. Proportionalism thus teaches that *precisely on the grounds of intention*, determined behaviors that are held by the Church’s teaching to be *sem per et pro sem per* immoral, evil, and wrong according to divine and natural law may become “right,” *here and now*-- when the “expanded object” is taken into consideration.⁵⁹ The trick is precisely to affirm this by a theory that is immune against the reproach, “you are trying to justify evil means by good intentions,” since the very theory eliminates even the *possibility* of doing such a thing, for it argues that only evil intentions render an act evil and that a well-intentioned act is necessarily good. And that is why this theory is not only erroneous, but moreover dangerously confusing moral reasoning. Proportionalism is a methodology by which one in fact always can *with good conscience* act according to the principle “let us do evil so that good come about,” because the methodology gives one the conviction that, provided good comes foreseeably about, what you did was not evil at all, but just the morally right thing, so that the ominous principle does not apply in your case. Whoever nevertheless reproaches you for trying to justify, on the grounds of “good reasons,” what in reality is morally evil, will be “misrepresenting” your position.

58 McCormick, “Some Early Reactions to *Veritatis Splendor*,” 487.

59 This is clearly seen in *Veritatis Splendor*, n. 56, where the encyclical points out that according to the methodology that it rejects “a certain concrete existential consideration . . . could legitimately be the basis of certain *exceptions to the general rule* and thus permit one to do in practice and in good conscience what is qualified as intrinsically evil by the moral law.”

McCormick said that the reason for what he sees as my error was probably that I had “taken one general description of consequentialism and applied it indiscriminately to all recent revisionist analyses.” I do not think this is the case. But even if it were true, McCormick’s position is still included in what I criticized in my article. And I also think that his position is one of those reasonably rejected by *Veritatis Splendor*.