

April 2012

Bioethics, Culture and Collaboration

Nicholas Tonti-Filippini

John Paul II Institute, ntonti-filippini@jp2institute.org

Follow this and additional works at: <https://researchonline.nd.edu.au/solidarity>

ISSN: 1839-0366

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been copied and communicated to you by or on behalf of the University of Notre Dame Australia pursuant to part VB of the Copyright Act 1969 (the Act).

The material in this communication may be subject to copyright under the Act. Any further copying or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

Recommended Citation

Tonti-Filippini, Nicholas (2012) "Bioethics, Culture and Collaboration," *Solidarity: The Journal of Catholic Social Thought and Secular Ethics*: Vol. 2 : Iss. 1 , Article 5.

Available at: <https://researchonline.nd.edu.au/solidarity/vol2/iss1/5>

This Article is brought to you by ResearchOnline@ND. It has been accepted for inclusion in *Solidarity: The Journal of Catholic Social Thought and Secular Ethics* by an authorized administrator of ResearchOnline@ND. For more information, please contact researchonline@nd.edu.au.



Bioethics, Culture and Collaboration

Abstract

The practical problem of how to conduct oneself as a Christian and a Philosopher or Bioethicist in public debate and when asked to be engaged in government committees is difficult. One solution that has had some support has been to approach the issues on the grounds of our natural law tradition but understood anthropocentrically – the ultimate end is not communion with God by integral human development. This is often called New Natural Law (NNL)

This separation of Philosophy and Theology has had its critics and most notably the current Poe and his immediate predecessor. In their own writing addressed to people of goodwill, they took a different approach that was essentially Christocentric and involving a close partnership between Philosophy and Theology.

In my own experience over thirty years of public involvement in Bioethics, I have discovered that the NNL approach has two overwhelming problems. What is offered to the secular dialogue, as an anthropocentric natural law, often sounds false to secular others because we propose something guided by our beliefs, but failing to acknowledge that contribution. However something that I have discovered latterly in that approach is in fact false by our own standards. By the strictures we impose on our contribution we in fact ignore the New Law instituted by Christ, the law of love. The New Natural Law (NNL) Project has proved to be a failure where it has been tried, and, I know realize, was doomed from the outset, because in being anthropocentric it was essentially lacking and the answers that it gave to problems were often unsatisfactory because lacking love and the particular demand of needing to be capable of being oriented towards God, the God of love. The NNL approach tended to produce a casuistry that was too liberal and too lacking in understanding of the essential role that affectivity plays in our lives, created as we are in the *imago dei*, in the image and likeness of the God of love. Such a morality demands much more than anthropocentrism can demand.

In recognizing these difficulties I propose instead a more pragmatic approach that reflects a partnership between Philosophy and Theology as espoused by the Second Vatican Council, and by Pope's Benedict XVI and Pope John Paul II, and which engages the work of Alasdair MacIntyre and Servais Pinckaers. An approach that I have tried with some success in chairing government committees.

Bioethics, Culture and Collaboration

Nicholas Tonti-Filippini

The New Natural Law and Anthropocentrism

There are very practical matters to resolve about how to conduct oneself as a Catholic Bioethicist, Philosopher or Theologian in the public forum in which much of Bioethics is conducted. An approach to take has been to explain the issues as a matter of pure reason and of natural law and to seek to win support for an anthropocentric natural law approach without expecting an audience to listen to claims made from a faith perspective, or even that admit of the existence of a deity.¹

It seems to me that, as a matter of recent history, that approach is a failure. The UK is probably the clearest example of a concerted effort to take that approach by Catholic intellectuals, and the UK probably leads the way in the Western World in terms of adopting evil public policies that are aggressively bigoted in the active exclusion of religious views and of natural law concepts, particularly the rejection of the Pauline Principle and moral absolutes. The latter are at the core of natural law explanations, and in rejecting them, UK public ethics has rejected any notion of sexual ethics other than that there be consent.

A problem with an anthropocentric natural law approach for a Christian is that we can be seen to be fraudulent in not admitting our religious beliefs and their influence upon our understanding of anthropology. A second problem is the very personal issue of presenting something that is not adequate, given that the approach would exclude the person of Christ and the New Law. In other words the approach lacks all that we have been taught by Christ and, in particular, the nature of Christian love and the foundation belief that human happiness is found only in outreach to others and making a gift of oneself in love. The marriage analogies made for the relationship between God and the Church and Christ and the Church, give a particular meaning to human love that is quite different from normatively from the outcomes that derive from an exclusive focus on human flourishing. Without that meaning, without the New Law, our responses and our solutions to moral questions are quite inadequate. So what is offered to the secular dialogue, as an anthropocentric natural law, may sound false to secular others and, in fact, is false, by our own standards. The New Natural Law (NNL) Project has proved to be a failure and was doomed from the outset.

Pope Benedict XVI and NNL

The present Pope, writing then as Professor of Theology at the University of Regensburg, wrote a critique of the treatment of the relationship between Philosophy and Theology in the Second Vatican Council document *Gaudium et Spes*. He referred to there not being a radical enough rejection of a doctrine of man divided into philosophy and

¹ This is an approach that has been taken by Germain Grisez and John Finnis amongst others.

theology and the tendency for a schematic representation of nature and the supernatural being merely juxtaposed.²

He described as a fictional starting point the claim that it is possible to construct a rational philosophical picture of man intelligible to all and on which all men of goodwill can agree, “the actual Christian doctrines being added to this as a sort of crowning conclusion”.³

The approach in *Gaudium et Spes* to Philosophy and Theology that seems to merely juxtapose them is evident in the following passage (GS n. 62):

Although the Church has contributed much to the development of culture, experience shows that, for circumstantial reasons, it is sometimes difficult to harmonize culture with Christian teaching. These difficulties do not necessarily harm the life of faith; rather they can stimulate the mind to a deeper and more accurate understanding of the faith. The recent studies and findings of science, history and philosophy raise new questions which effect life and which demand new theological investigations. Furthermore, theologians, within the requirements and methods proper to theology, are invited to seek continually for more suitable ways of communicating doctrine to the men of their times; for the deposit of Faith or the truths are one thing and the manner in which they are enunciated, in the same meaning and understanding, is another.

In the same article, Ratzinger was highly critical of some Thomists saying that it can hardly be disputed that as a consequence of the division between philosophy and theology established by the Thomists, a juxtaposition has gradually been established which no longer appears adequate. “There is, and must be, a human reason *in* faith, yet conversely, every human reason is conditioned by historical standpoint so that reason pure and simple does not exist”.⁴ It should be noted that a debate rages between Thomists over whether a pure reason model or a more Augustinian Thomism properly represents St Thomas⁵.

Arguably the recent document from the Congregation of the Faith *Dignitas Personae* is to be contrasted to *Gaudium et Spes* in this respect when in referring to the mysteries of creation and the incarnation, it seems to express a view more consistent with Cardinal Ratzinger. His view would seem to be reflected in *Dignitatis Personae* (n.7) which, quoting John Paul II in *Veritatis Splendor* (n. 45) states:

The respect for the individual human being, which reason requires, is further enhanced and strengthened in the light of these truths of faith: thus, we see that there is no contradiction between the affirmation of the dignity and the affirmation of the sacredness of human life. “The different ways in which God, acting in history, cares for the world and for mankind are not mutually exclusive; on the contrary, they support each other and intersect. They have their origin and goal in the eternal, wise

² Joseph Ratzinger, ‘The Dignity of the Human Person’, in Herbert Vorgrimler (ed), *Commentary on the Documents of Vatican II Vol V*, Burns & Oates, London, 1969, pp. 115-163 I am grateful to my colleague Prof. Tracey Rowland for identifying the quotations from Cardinal Ratzinger.

³ *Ibid.*

⁴ *Ibid.*

⁵ I am grateful to my colleague Prof Tracey Rowland for drawing my attention to the Thomists’ differences of opinion.

and loving counsel whereby God predestines men and women ‘to be conformed to the image of his Son’ (*Rom 8:29*)”⁶.

Pope John Paul II and St Paul on Philosophy

This issue is reflected in the debate over what is sometimes disparagingly called the “Hellenization of the early tradition” which may also be attributed to the influence of St Paul based on his background and philosophical education as a Roman citizen and the Hellenic influences on Roman culture. In relation to natural law the scriptural text most often quoted is St Paul’s letter to the Romans:

When Gentiles, who do not have the law, do instinctively things required by the law, they are a law for themselves, even though they do not have the law, since they show that the requirements of the law are written on their hearts, to which their conscience also bears witness, and their conflicting thoughts will accuse or perhaps excuse them on the day when, according to my gospel, God, through Jesus Christ, will judge the secret thoughts of all.⁷

St Paul’s attitude to philosophy is confusing. He is negative about philosophy but evidently used the language of philosophy of the period and locality in which the Stoics had much influence and he would have been familiar with Aristotle of whose works the Stoics made free use. His reasoning reflects Aristotle, of an earlier period, and Stoics of the day – Seneca, Epictetus, Marcus Aurelius and Cicero.

Historically St Paul would have had a Greek philosophical training as a Roman citizen and clearly used Stoic arguments. He clearly believed that knowledge can be attained through reason and that ethics is constituted by knowledge. That is to say, he was a cognitivist. In relation to the Stoic Naturalist Ethics of the period, it is worth mentioning that they adopted the cardinal virtues (wisdom, justice, courage and temperance) and believed in inherent the goodness and purposefulness of human nature, and that the end of human beings was in community. St Paul would not have shared their belief that all people are manifestations of the one universal spirit (pantheism), but he clearly had adopted the view that the Stoics share with Christ that we should live in brotherly love and readily help one another.⁸

In his interesting account of the influence of Stoic philosophy on St Paul, Troels Engber-Perdersen suggests that St Paul adopts the same logic of their reasoning and simply substitutes *Christ* for *Reason* in explaining righteousness in terms of love and *communio*.⁹

Comparing St Paul to the Stoics, they both claim that goodness is knowable. For the Stoics that is through reason, but for St Paul it is through Christ (Gal 1:16, 2Cor 4:6). In *Corinthians* he makes the revealing comment: “Jews demand signs, Greeks desire wisdom but we proclaim Christ crucified” (1Cor 1:22-25). Also in the same letter he seems to embrace communitarianism using language of the Stoics (1 Cor 1:10-11) and elsewhere he

⁶ *Dignitas Personae* n. 7

⁷ Romans 2:14-16

⁸ Joseph A. Fitzmeyer SJ, *Paul and his Theology: A Brief Sketch*, Prentice Hall, New Jersey, 1989, pp. 27-34; also Troels Engber-Perdersen *Paul and the Stoics* T&T Clark, Edinburgh 2000.

⁹ Troels Engber-Perdersen, *ibid*.

shares the dominance of will and reason over pain and suffering (Gal 5:24) and concludes that joy is the proper response to suffering (Phil 2:17, 1:17-18), both Stoic claims.¹⁰

St Paul had of course been a Pharisee and trained under the major Jewish scholar Gamaliel (*Acts* 22:3) but his teaching in relation to Pharasaic Law seems to differ depending on the audience. He addresses Gentiles, Jews and Greeks differently. The dominant motif in his teaching is, of course, not reason, natural law or Pharisaic Law, but the Christ event most evident in *Galatians*, and he claims authority on the basis of his “meeting” with Christ on the Road to Damascus.

In relation to claims about the Hellenisation of Christianity through St Paul, it is worth noting that Pope John Paul II says something that reinforces this view in his analysis of two difficult passages.

In the very familiar submission and headship passage of *1 Corinthians* (11:2-16), St Paul asserts that Christ is the head of every man, man is head of woman, and also that man is image of God’s glory but woman is a reflection of man’s glory, as woman came from him. He says also that man is not created for sake of woman, but woman is created for the sake of man. In his analysis of this passage and the related passage in *Ephesians*, Pope John Paul II asserts:

The motif of “head” and of “body” is not of biblical derivation, but is probably Hellenistic (Stoic?). In *Ephesians* this theme is utilized in the context of marriage (while in *First Corinthians* the theme of the “body” serves to demonstrate the order which reigns in society). From the biblical point of view the introduction of this motif is an absolute novelty.¹¹

Developing the submission and headship theme in *Ephesians* 5: 22-33, St Paul writes that husband and wife should defer to one another in obedience to Christ, and that wives should regard their husbands as they regard the Lord: Christ is head of the Church and saves the whole body, so is husband head of his wife. Just as the Church submits to Christ, wives submit to their husbands. Husbands should love their wives as Christ loved Church and sacrificed himself for her.

On this passage Pope John Paul II writes in *Mulieres Dignitatem* (n 24) that St Paul was rooted in the customs of the time. Adapting the teaching, the Pope writes that there should be mutual subjection out of reverence for Christ, and that the husband “head” in order to give himself up for his wife. The Pope asserts that “subjection” is not one-sided but mutual. I mentioned these treatments of St Paul by Pope John Paul II to a Pauline Conference¹² recently and was greeted by what can only be regarded as a seething response by a recent convert from Lutheranism.

What is clear about St Paul’s treatment of Pharisaic Law is that he adapts to particular audiences but always asserts supremacy of the Christ event, and in relation to righteousness he says several seemingly inconsistent things:

¹⁰ *Ibid.*

¹¹ Pope John Paul II, *The Theology of the Body: Human Love in the Divine Plan*, Pauline Books & Media, 1997, p. 382

¹² *A Pauline Colloquium* conducted by the John Paul II Institute for Marriage and Family, Melbourne July 27-8, Accessed: <http://www.jp2institute.org/media/pauline-colloquium-programme-and-registration.pdf>

- He requires both following the Law but that Christ is the fulfilment of the Law (Gal 2:15-21, 3:15-24, 4:1-3, Rom 9-11);
- Following Christ, but neutral about the Law (Philippians 3:4-9);
- Following Christ but not the law (Philippians 3:49)
- Attributes Law to Christ (Gal 3:7-11, 2:19-20); and
- Asserts Christ (grace) necessary to follow the law (Romans 7:7-25, 2:12-25).¹³

In *Galatians*, he testifies to his own personal encounter with Christ from whom he learned the Gospel, not through encounter with the Apostles (1:11-18), disparages conformity with the Law: circumcision counts for nothing with Christ (5:2) and asserts that the whole of the law is summed up in commandment to love one another (5:15) - Christ the new creation: active faith through love (6)

In relation to the natural law, the Church usually refers to the *Romans* (2:14-16) passage. However it is not clear in the tradition that natural law is a matter of pure reason, rather it is seen as having a divine authorship. Pope Leo XIII, quoting St. Thomas, appealed to the "higher reason" of the divine Lawgiver:

“But this prescription of human reason could not have the force of law unless it were the voice and the interpreter of some higher reason to which our spirit and our freedom must be subject.” Indeed, the force of law consists in its authority to impose duties, to confer rights and to sanction certain behaviour: "Now all of this, clearly, could not exist in man if, as his own supreme legislator, he gave himself the rule of his own actions". And he concluded: "It follows that the natural law is *itself the eternal law*, implanted in beings endowed with reason, and inclining them *towards their right action and end*; it is none other than the eternal reason of the Creator and Ruler of the universe". St Thomas *Summa Theologiae* I-II, q. 91, a.2.¹⁴

However Pope John Paul II connected natural law directly to divine revelation when he wrote:

Man is able to recognize good and evil thanks to that discernment of good from evil which he himself carries out by his *reason, in particular by his reason enlightened by Divine Revelation and by faith*, through the law which God gave to the Chosen People, beginning with the commandments on Sinai. Israel was called to accept and to live out *God's law as a particular gift and sign of its election and of the divine Covenant*, and also as a pledge of God's blessing. Thus Moses could address the children of Israel and ask them: "What great nation is that that has a god so near to it as the Lord our God is to us, whenever we call upon him? And what great nation is there that has statutes and ordinances so righteous as all this law which I set before you this day?" (*Dt* 4:7-8).¹⁵

¹³ Troels Engber-Perdersen, *op. cit.*

¹⁴ Leo XIII, Encyclical *Libertas Praestantissimum*, 1888, n. 8 Accessed: http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_20061888_libertas_en.html

¹⁵ Pope John Paul II, *Veritatis Splendor*, 1993, n. 44, Accessed: http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html

Then we have the then Cardinal Ratzinger declaring that “Reason has a wax nose” and “Reason will not be saved without the faith, but the faith without reason will not be human.”¹⁶

On the other side of the coin, Pope John Paul II asserted:

“Every people has its own native and seminal wisdom which, as a true cultural treasure, tends to find voice and develop in forms which are genuinely philosophical. One example of this is the basic form of philosophical knowledge which is evident to this day in the postulates which inspire national and international legal systems in regulating the life of society.”¹⁷

In our own time, an example of that seminal wisdom is surely to be found in the International Human Rights Instruments which assert:

- “...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,...”
- “Recognizing that these rights derive from the inherent dignity of the human person...”¹⁸

An analysis of the texts of the covenants shows that “Dignity” in this context implies the inestimable worth of each member of the human family and “rights” presume to identify what is needed for human being to flourish. The International instruments therefore presume that human goodness is knowable and can be specified.¹⁹

Pope John Paul II encouraged philosophers, but again sought to connect their endeavours to Scripture:

“They should be open to the impelling questions which arise from the word of God and they should be strong enough to shape their thought and discussion in response to that challenge. Let them always strive for truth, alert to the good which truth contains. Then they will be able to formulate the genuine ethics which humanity needs so urgently at this particular time. The Church follows the work of philosophers with interest and appreciation; and they should rest assured of her respect for the rightful autonomy of their discipline. I would want especially to encourage believers working in the philosophical field to illumine the range of human activity by the exercise of a

¹⁶ Cardinal Joseph Ratzinger, ‘Current Situation of Faith and Theology’, An address to the Congregation of the Doctrine of the Faith, 1996, Accessed: <http://www.ourladyswarriors.org/dissent/ratzsitu596.htm> [18/6/2008]

¹⁷ Pope John Paul II, *Fides et Ratio*, 1998, n. 4
http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_15101998_fides-et-ratio_en.html

¹⁸ See the preambles of the *International Covenant on Civil and Political Rights*; <http://www2.ohchr.org/english/law/ccpr.htm>; or the *International Covenants on Economic Social and Cultural Rights*; <http://www2.ohchr.org/english/law/pdf/cescr.pdf>

¹⁹ See my doctoral thesis *Human Dignity: Autonomy and Sacredness in the International Human Rights Instruments* available from the University of Melbourne
http://dtl.unimelb.edu.au/view/action/singleViewer.do?dvs=1250825170935~58&locale=en_AU&search_terms=SYS%20=%20000008617&adjacency=N&application=DIGITool-3&frameId=1&usePid1=true&usePid2=true

reason which grows more penetrating and assured because of the support it receives from faith.”²⁰

The teaching of these three Popes at least, Leo XIII, John Paul II and Benedict XVI, would seem to suggest that there is to be no dichotomy between faith and reason. Rather the teaching would suggest that as philosophers we would be foolish to ignore Scripture and that our discipline should properly consider the nature of the Creator and the relationship between created and Creator, and seek to test theological propositions against reason and to seek justification rather than to accept them simply as a matter of faith. From a protestant perspective our humanity may be too “fallen” to be able to do that, but from a Catholic perspective we have trusted in the role of reason as an important contributor to our Tradition, but not in isolation from faith and the Scriptures.

The NNL and the New Law of Christ

Two well respected proponents of New Natural Law incorporating and anthropocentric approach to natural law are Martin Rhonhemier and Germain Grisez.

The Dominican Servais Pinckaers OP has long been distinguished for his critique of what he calls the morality of obligation in place of the New Law. The morality of obligation, he claims, excludes the Decalogue and the Sermon on the Mount.²¹ In particular, Pinckaers claims:

The encyclical [*Veritatis Splendor*] introduces an important change in the interpretation of the Decalogue. The Ten Commandments are not reduced to a code of obligations imposed by God. Rather, they are presented as a gift of his wisdom and mercy, demanding a response of love. Since charity is grafted onto the natural love of what which we have just spoken, it remains the principle of the moral life, even before that a moral obligation. In other terms, the encyclical changes the cornerstone of moral life. Morality must be built upon the greatness of love rather than on a legalistic obedience, as was the case in the manuals of moral theology. It was left to spiritual theology to talk about the virtues growth and perfection.²²

The authority for the claim about the encyclical is the passage that states:

The statement that "There is only one who is good" thus brings us back to the "first tablet" of the commandments, which calls us to acknowledge God as the one Lord of all and to worship him alone for his infinite holiness (cf. *Ex* 20:2-11). *The good is belonging to God, obeying him*, walking humbly with him in doing justice and in loving kindness (cf. *Mic* 6:8). In the morality of the commandments the fact that the people of Israel belongs to the Lord is made evident, because God alone is the One who is good. Such is the witness of Sacred Scripture, imbued in every one of its pages with a lively perception of God's absolute holiness: "Holy, holy, holy is the Lord of hosts" (*Is* 6:3).

²⁰Pope John Paul II, *Fides et Ratio*, n. 106

²¹ Servais Pinckaers, "The Return of the New Law to Moral Theology" in John Berkman and Craig Steven Titus, *The Pinckaers Reader: Renewing Thomistic Moral Theology*, Catholic University of America Press, 2005 pp. 369-384

²² Pinckaers, 'Conscience and the Virtue of Prudence' in Berkman et al, *op. cit.* p. 346

But if God alone is the Good, no human effort, not even the most rigorous observance of the commandments, succeeds in "fulfilling" the Law, that is, acknowledging the Lord as God and rendering him the worship due to him alone (cf. *Mt* 4:10). *This "fulfilment" can come only from a gift of God:* the offer of a share in the divine Goodness revealed and communicated in Jesus, the one whom the rich young man addresses with the words "Good Teacher" (*Mk* 10:17; *Lk* 18:18). What the young man now perhaps only dimly perceives will in the end be fully revealed by Jesus himself in the invitation: "Come, follow me" (*Mt* 19:21).²³

The significance of this passage had been lost in my reading it until receiving Pinckaers' commentary. He connects it with the passage in *Gaudium et Spes*:

Deep within his conscience man discovers a law which he himself is not laid upon himself that which you must obey. Its voice, ever calling him to long to do what is good and to avoid evil, tells him inwardly at the right moment: do this, shunned that. For man has in his heart a law inscribed by God.²⁴

I had followed the discussion in *Veritatis Splendor*, synderecally connecting the Decalogue with human goods, viz.

The different commandments of the Decalogue are really only so many reflections of the one commandment about the good of the person, at the level of the many different goods which characterize his identity as a spiritual and bodily being in relationship with God, with his neighbour and with the material world. As we read in the *Catechism of the Catholic Church*, "the Ten Commandments are part of God's Revelation. At the same time, they teach us man's true humanity. They shed light on the essential duties, and so indirectly on the fundamental rights, inherent in the nature of the human person".

The commandments of which Jesus reminds the young man are meant to safeguard *the good* of the person, the image of God, by protecting his *goods*. "You shall not murder; You shall not commit adultery; You shall not steal; You shall not bear false witness" are moral rules formulated in terms of prohibitions. These negative precepts express with particular force the ever urgent need to protect human life, the communion of persons in marriage, private property, truthfulness and people's good name.²⁵

I had misunderstood this passage as allowing us to understand the commandments in terms of human goods interpreted in terms of integral social fulfilment and thus a law that had its own human autonomy. But the previous passage at n. 11, makes clear the central focus and dependency on acknowledging the Lord as God as the very core - the heart of the Law, from which the particular precepts flow and towards which they are ordered, and that no human effort ends up fulfilling the law. This "fulfilment" can come only from a gift of God: the offer of a share in the divine Goodness revealed and communicated in Jesus.

That significantly changes the role of what has been understood as natural law in twentieth century casuistry in giving direction to our understanding of the nature of the moral act. It is

²³ Pope John Paul II, *Veritatis Splendor*, n. 11

²⁴ Second Vatican Council, *Gaudium et Spes*, n. 16

²⁵ *Veritatis Splendor*, with n. 13

not enough that we provide moral analysis based upon human goods, intelligible as human goods only, rather than understanding the role and function of the New Law within our relationship to God that informs our relationship to neighbour.

Rhonheimer's Argument

By contrast, Ronheimer wishes to distinguish between the natural and the supernatural levels, between natural moral reason and the order of charity, or love. Within natural moral reason he sees a place for a specifically philosophical discourse without which moral theology would not be able to identify intrinsically evil action. He sees how the New Law, the law of love of God, is the fulfilment or perfection of morality rather than intrinsic to it from the outset. He wishes to rediscover the specific ethical rationality of the moral virtues which is precisely that rationality, which is capable of then being elevated, affected, fulfilled and informed by charity or love.²⁶

In other words, Rhonheimer postulates an intelligible human law that stands independently for the purpose of casuistry but which is elevated, fulfilled and informed by the love that is central to the New Law.

The article by Rhonheimer quoted above and his commentary on Pinckaers accurately identifies the point of difference, asserting a morality that is devoid of affectivity and the actual character of our relating to God and to each other as *imago dei* and what that demands. Rhonheimer seems to describe a morality that is open to God's grace and orientated towards fulfilment but which is dependant on a prior morality developed at the level of reason and human relating, with God only becoming relevant at some later level of fulfilment of what is initially the result of human synderesis. He seems to propose a separation of the two levels of morality for the purpose of resolving the basic issue of casuistry, uncomplicated by Christian love and the demands of Scripture. The latter can be added in later once the basic issues of justice between people have been resolved.

From my perspective, for which I draw support from Pinckaers, the fact remains that to give a Christian response, we cannot give an answer that is only at the level of the human and ignoring our ultimate end. Such an approach might help with discussion with non-believers, though I suspect not really, but it is not the complete answer to the morality of the object of an act. Further, I would argue that, as an approach, it is unrealistic because our culture and our very language of morality has a theological content. The division that Rhonheimer asserts does not exist in our experience. Considerations of justice are interrelated with considerations of love. A virtuous response will also be a loving response and not restricted to a narrowly human conception of justice alone. As Christians, our moral actions must be informed by the Beatitudes and by Jesus's treatment of the Decalogue.

Rhonheimer asserts that there are two levels which should be thought of as different sources, each with their proper and specific intelligibility, sources which in the end realise a mutual penetration and enrichment to form a new and unique moral spiritualism, the person in the image of Christ's. However, he claims that

²⁶Martin Rhonheimer, 'Christian Morality and Moral Reasonableness: Of What Is the Law of the Gospel of Fulfilment?', *Josephinum Journal of Theology*, Vol. 17, No. 2, 2010

...the moral rational requirements of the natural level, can never be deduced or inferred from the supernatural order of grace and charity. Just as in Christ the divine person assumed human nature. So these were a moral rational requirements must precisely the assumed, which is possible only if they possess a moral intelligibility that is proper and independent of the essential context of the new law we must therefore be aware of the danger of reducing morality to what is proper to the supernatural level.”

This distinction between the natural law as a law of human nature is thus seemingly linked in Rhonheimer’s mind to the human and divine natures of Christ. This then provides some link to what Austriaco referred to as the distinction between hylomorphic and intentional understandings of the nature of the moral act, even though, Rhonheimer’s position is not strictly the intentional thesis of Grisez, Finnis and Boyle. Rhonheimer insists on a level of morality that is exclusively human with the Divine entering into consideration as an addition, but being nonetheless separate. That raises doubts about whether his approach is Nestorian²⁷. When Christ as a man walked this earth and lived with the feet-on-the-ground detail of making decisions, He was also God and he never ceased to be both God and man. The New Law is not a specifically human law but a Divine law given to us and requiring from us a very full response to that Divine law with, of course, the grace to assist us do so.

Rhonheimer at least, seems to be alive to these issues in a way in which Grisez seems not to be, so the discussion has been fruitful. It is interesting that he finds solace in St Thomas and *Veritatis Splendor* n. 79, but that seems to be a highly strained reading of VS and not at all consistent with the role and function of the Decalogue which places God first in human relating. I find it fascinating not only that the first three commandments are about our relationship to God, but that our relationship to our parents comes ahead of killing. I do not find Rhonhemier’s argument based on VS to be at all persuasive for that reason.

VS n. 79 states:

The primary and decisive element for moral judgment is the object of the human act, which establishes whether it is *capable of being ordered to the good and to the ultimate end, which is God*. This capability is grasped by reason in the very being of man, considered in his integral truth, and therefore in his natural inclinations, his motivations and his finalities, which always have a spiritual dimension as well. It is precisely these which are the contents of the natural law and hence that ordered complex of "personal goods" which serve the "good of the person": the good which is the person himself and his perfection. These are the goods safeguarded by the commandments, which, according to Saint Thomas, contain the whole natural law

The passage cites St Thomas *Summa Theologiae*, I-II, q. 100, a. 1 in which he says,

“It is therefore evident that since the moral precepts are about matters which concern good morals; and since good morals are those which are in accord with reason; and since also every judgment of human reason must needs be derived in some way from natural reason; it follows, of necessity, that all the moral precepts belong to the law of nature; but not all in the same way.

²⁷ Nestorianism refers to that view that Jesus did not just have a human and a divine nature, he was in fact two separate personalities, a human personality and a divine personality. It may be claiming too much to assert this belief on the part of Rhonheimer. I simply want to indicate that it is a risk of his position on separating the two levels of morality that he may be implying two personalities of Christ.

But this needs to be understood in the light of the following passage in the *Summa Theologica* where he says:

But the community for which the Divine law is ordained, is that of men in relation to God, either in this life or in the life to come. And therefore the Divine law proposes precepts about all those matters whereby men are well ordered in their relations to God. Now man is united to God by his reason or mind, in which is God's image. Wherefore the Divine law proposes precepts about all those matters whereby human reason is well ordered. But this is effected by the acts of all the virtues: since the intellectual virtues set in good order the acts of the reason in themselves: while the moral virtues set in good order the acts of the reason in reference to the interior passions and exterior actions. It is therefore evident that the Divine law fittingly proposes precepts about the acts of all the virtues: yet so that certain matters, without which the order of virtue, which is the order of reason, cannot even exist, come under an obligation of precept; while other matters, which pertain to the well-being of perfect virtue, come under an admonition of counsel.²⁸

Importantly St Thomas, in response to the objections that the law is not about all the acts of virtue but about justice alone, quoting Ambrose, asserts “a sin is a transgression of the Divine law, and a disobedience to the commandments of heaven. But there are sins contrary to all the acts of virtue. Therefore it belongs to Divine law to direct all the acts of virtue.”²⁹

This is quite important to Rhonheimer’s analysis of vital conflict in the craniotomy case in which he wishes to restrict the casuistry about killing to the virtue of justice alone. This seems to be explicitly excluded by St Thomas. There can be no ethico-philosophical discourse that is properly reflective of Christian morality but that is separate from moral theology. Nor can the New Law be held to be somehow dependant on this separate philosophical morality. The New Law, the law of love, that comes to us in the life, death and suffering of Christ is game changing, and much more demanding.

In a recent case involving a hospital in Phoenix³⁰ seemingly permitting direct abortion, Rhonhemier’s arguments have been invoked. Declaring that that the only issue is one of justice, he acknowledges that the mother is almost certain to die without intervention and the child cannot be saved. Thus killing the child, who would die anyway, to rescue the mother involves no injustice to the child. Rhonheimer’s argument, against the seemingly settled position of the Church on craniotomy, is unconvincing on this point precisely because he tries to narrow the consideration to a matter of justice narrowly construed and leaves out the significance of the child dying at the hand of the doctor and what that may mean for each of those directly involved, beginning with the choice that the mother makes in her request to the doctor.

The difficult reality of the craniotomy case is in fact whether the woman would have her doctor make a choice between damage to her, including life risk, of caesarean section or the damage of symphysiotomy, on the one hand, or craniotomy resulting in the certain death of the child. With contemporary attitudes to pregnancy and the unborn, such choices are likely

²⁸ St Thomas Aquinas, *Summa Theologica*, I-II, q 100, art. 2

²⁹ *Ibid.*

³⁰ See the defence of the hospital decision in M. Therese Lysaught, ‘Moral Analysis of a Procedure at Phoenix Hospital’, *Origins*, January 27th 2011, Vol. 40, No. 33

to protect the mother first with the child as patient coming second in the considerations. However, contemporary attitudes do not reflect what ought to be the witness of a Catholic hospital to respect the life of both and the obligation to recognise both patients. If a woman elected otherwise, then it would be a question of facilitating transfer to where she could have the obstetric management more consistent with her choosing. But a Catholic hospital could not be Catholic if it endorsed direct killing.

Grisez's Argument

The defence of the Phoenix Hospital also invoked Grisez in its defence. Germain Grisez rejects St Thomas's claim that the ultimate end of man is communion with God, the beatific vision. Grisez instead argues that our ultimate end is integral human fulfilment. Thus Grisez's natural law, like Rhonheimer's, is anthropocentric rather than theocentric and this has grave consequences for his casuistry. It is my view that Grisez's analysis of the moral act, and hence his casuistry, suffers from the position that he takes on the ultimate end in which he disagrees that the ultimate end of human acts is God alone.³¹ In this Grisez not only disagrees with St Thomas, but he is also at odds with *Veritatis Splendor* firstly in terms of the nature of the Decalogue and secondly in terms of the specification of the nature of the object of the moral act.

Rather than explore the use of Grisez's approach of the hospital, a use I am not sure he would accept, I think it is worth exploring the use of the distinction in St Thomas between the interior and the exterior act that has been invoked in this context. In particular it is worth exploring the nature of the moral act in relation to our ultimate end.

In relation to the Decalogue and the Beatitudes, Pope John Paul II says:

The Beatitudes are not specifically concerned with certain particular rules of behaviour. Rather, they speak of basic attitudes and dispositions in life and therefore they *do not coincide exactly with the commandments*. On the other hand, *there is no separation or opposition* between the Beatitudes and the commandments: both refer to the good, to eternal life. The Sermon on the Mount begins with the proclamation of the Beatitudes, but also refers to the commandments (cf. *Mt* 5:20-48). At the same time, the Sermon on the Mount demonstrates the openness of the commandments and their orientation towards the horizon of the perfection proper to the Beatitudes. These latter are above all *promises*, from which there also indirectly flow *normative indications* for the moral life. In their originality and profundity they are a sort of *self-portrait of Christ*, and for this very reason are *invitations to discipleship and to communion of life with Christ*.³²

In relation to the object of the act the Pope stated:

The reason why a good intention is not itself sufficient, but a correct choice of actions is also needed, is that the human act depends on its object, whether that object is *capable or not of being ordered* to God, to the One who "alone is good", and thus brings about the perfection of the person. An act is therefore good if its object is in

³¹ Germain Grisez, 'Natural Law, God, Religion, and Human Fulfillment', *American Journal of Jurisprudence*, Vol. 46, 2001, pp.3-36; 'The Ultimate End of Human Beings: The Kingdom, not God Alone', *Theological Studies*, Vol. 69, 2008, pp. 38-61

³² Pope John Paul II, *Veritatis Splendor*, n. 16

conformity with the good of the person with respect for the goods morally relevant for him. Christian ethics, which pays particular attention to the moral object, does not refuse to consider the inner "teleology" of acting, inasmuch as it is directed to promoting the true good of the person; but it recognizes that it is really pursued only when the essential elements of human nature are respected. The human act, good according to its object, is also *capable of being ordered* to its ultimate end. That same act then attains its ultimate and decisive perfection when the will *actually does order* it to God through charity. As the Patron of moral theologians and confessors teaches: "It is not enough to do good works; they need to be done well. For our works to be good and perfect, they must be done for the sole purpose of pleasing God".³³

It is my contention that by not requiring the object of the act to be capable of being ordered by the will to God as an act of love, Grisez significantly shifts the grounds for determining the specification of the moral act and this has grave implications for his casuistry, particularly in relation to double effect reasoning. This is not to say that he adopts the position of the proportionalists in which the intended end can override evil in the object of the act if it is proportionate. Rather Grisez's position is due to the specification of the object itself and how the concept of direct intention is applied. If the specification is determined by the ultimate end, and the ultimate end is not God alone, but includes integral human fulfilment, then that changes the way in which the object is specified. He writes:

Since the self-evident principles of practical reasoning direct us indiscriminately toward the well-being and flourishing of ourselves and everyone else, we reasonably take as our ultimate end an inclusive community of human persons along with other intelligent creatures and God—insofar as we know other intelligent creatures and God and can somehow cooperate with them and/or act for their good.

... our ultimate end should include all the benefits that can be realized by protecting and promoting all the fundamental goods of persons in every way compatible with loving all of them and all aspects of their well-being and flourishing.³⁴

An important aspect of Grisez's analysis of the ultimate end is that he claims that God alone is not sufficient, but that we must consider all the aspects of human fulfilment and not just our relationship to God. This is quite different from St Thomas's position in which God is the ultimate end, and love of neighbour (and thus the goods of human flourishing) is integral to that love of God. In Grisez's analysis, love of God is part of human fulfilment and not its sole end. Placing human fulfilment first in this way has consequences for specifying the nature of the object of the moral act because it affects the interior meaning of the act and hence the application of double effect reasoning. Instead of a participative theonomy³⁵, as proposed by Pope John Paul II in *Veritatis Splendor*, Grisez proposes anthropocentrism.

I shall argue that double effect reasoning in assessing the object of the act must not treat humanity as though we existed in isolation and did not depend on God, or that our good is not inextricably bound to our ultimate end of communion with him. It was significant that in the analysis of the Decalogue in the Sermon on the Mount, Jesus gave so much more meaning to them, such as, extending the fifth commandment to include anger, and the sixth commandment to include adultery of the heart. The New Law was a law of love and not just

³³ *Veritatis Splendor*, n. 78

³⁴ Grisez, *op. cit.*, 2008, p. 55

³⁵ *Veritatis Splendor*, n. 41

a law of obligation³⁶. To follow Jesus, demands so much more of us than the narrow treatment of the object of the act in terms of human fulfilment would suggest. The theological virtues are relevant, and not just the cardinal virtues (which are anthropocentric), because the ultimate end is God alone and our love for Him should inform every act. What kind of morality is it that lacks the virtue of love?

St Thomas Aquinas and the Moral Act

Central to an analysis of the moral act is the concept of intention, which St Thomas is careful to explain, not in terms of the action itself, but in terms of the mind or will which moves to the end. The intention is an act of the will.³⁷ Second he argues that the will longs to the intellect whose object is universal "being" and "truth". He describes the intellect as moving the will, presenting its object to it.³⁸

In explaining what is specific to human actions, St Thomas accounts for free will as "the faculty and will of reason." Therefore those actions are properly called human which proceed from a deliberate will and in the actions of man the object of the will is the end and the good. He concludes by claiming that all human actions must be for an end.³⁹

Following Ambrose he asserts that moral acts properly speaking receive their species from the end, for moral acts are the same as human acts.⁴⁰

Finally he asserts that the ultimate end is God: "...we speak of man's last end as of the thing which is the end, thus all other things concur in man's last end, since God is the last end of man and of all other things."⁴¹

That analysis of intention and the intentional acts provides the basis for the distinction between interior and exterior acts. Referring to the above analysis he writes:

"Certain actions are called human, inasmuch as they are voluntary..... Now, in a voluntary action, there is a twofold action, viz. the interior action of the will, and the external action: and each of these actions has its object. The end is properly the object of the interior act of the will: while the object of the external action is that on which the action is brought to bear. Therefore just as the external action takes its species from the object on which it bears; so the interior act of the will takes its species from the end, as from its own proper object.

Now that which is on the part of the will is formal in regard to that which is on the part of the external action: because the will uses the limbs to act as instruments; nor have external actions any measure of morality, save in so far as they are voluntary. Consequently the species of a human act is considered formally with regard to the end, but materially with regard to the object of the external action. Hence the

³⁶ Servais Pinckaers, 'The Return of the New Law to Moral Theology' in John Berkman and Craig Steven Titus, *op. cit.*, pp. 369-384

³⁷ *Summa Theologica*, I-II, 12,1

³⁸ *Summa Theologica*, I-II, 9, 1

³⁹ *Summa Theologica*, I-II, 1, 1

⁴⁰ *Summa Theologica*, I-II, 1, 3

⁴¹ *Summa Theologica*, I-II, 1, 8

Philosopher says (Ethic. v, 2) that "he who steals that he may commit adultery, is strictly speaking, more adulterer than thief."⁴²

This paragraph is important for it qualifies the distinction between interior and exterior acts, referring to the species of the act as both formal and material. It would not be true to claim that the exterior act is irrelevant to the species of the act. The latter is the application of the distinction that has been made in defence of the Phoenix hospital, claiming that the act can be determined by the interior act alone. That would suggest no morally significant relationship between the exterior act and the interior act. However, referring to the above passage, St Thomas has more to say about the specification of the act. He writes,

... a fourfold goodness may be considered in a human action. First, that which, as an action, it derives from its genus; because as much as it has of action and being so much has it of goodness,... Secondly, it has goodness according to its species; which is derived from its suitable object. Thirdly, it has goodness from its circumstances, in respect, as it were, of its accidents. Fourthly, it has goodness from its end, to which it is compared as to the cause of its goodness.⁴³

Later in the same article he writes,

... thus it may happen that an action which is good in its species or in its circumstances is ordained to an evil end, or vice versa. However, an action is not good simply, unless it is good in all those ways: since "evil results from any single defect, but good from the complete cause," as Dionysius says (Div. Nom. iv).

The above references to St Thomas precede and are connected to what he says about double effect and the latter needs to be understood in the general context of his theory of the moral act. About double effect he says:

It is written (Exodus 22:2): "If a thief be found breaking into a house or undermining it, and be wounded so as to die; he that slew him shall not be guilty of blood." Now it is much more lawful to defend one's life than one's house. Therefore neither is a man guilty of murder if he kill another in defense of his own life.

.... Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental... Accordingly the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in "being," as far as possible. And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defense will be lawful, because according to the jurists ... "it is lawful to repel force by force, provided one does not exceed the limits of a blameless defense." Nor is it necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other

⁴² *Summa Theologica*, I-II, 18, 6

⁴³ *Summa Theologica*, I-II, 18, 4

man, since one is bound to take more care of one's own life than of another's. But as it is unlawful to take a man's life, except for the public authority acting for the common good, as stated above (Article 3), it is not lawful for a man to intend killing a man in self-defense, except for such as have public authority, who while intending to kill a man in self-defense, refer this to the public good, as in the case of a soldier fighting against the foe, and in the minister of the judge struggling with robbers, although even these sin if they be moved by private animosity.⁴⁴

In *Quaestiones Quodlibetales*, Aquinas writes that some kinds of human acts that "have deformity inseparably annexed to them, such as fornication, adultery, and others of this sort."⁴⁵ Aquinas thus explicitly affirms that some actions are intrinsically evil, and corresponding to them are absolute moral norms.⁴⁶ In this Pope John Paul II would seem to have concurred when he wrote,

If acts are intrinsically evil, a good intention or particular circumstances can diminish their evil, but they cannot remove it. They remain "irremediably" evil acts; *per se* and in themselves they are not capable of being ordered to God and to the good of the person. "As for acts which are themselves sins (*cum iam opera ipsa peccata sunt*), Saint Augustine writes, like theft, fornication, blasphemy, who would dare affirm that, by doing them for good motives (*causis bonis*), they would no longer be sins, or, what is even more absurd, that they would be sins that are justified?"⁴⁷

He also writes in the same document,

Reason attests that there are objects of the human act which are by their nature "incapable of being ordered" to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church's moral tradition, have been termed "intrinsically evil" (*intrinsece malum*): they are such *always and per se*, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances. Consequently, without in the least denying the influence on morality exercised by circumstances and especially by intentions, the Church teaches that "there exist acts which *per se* and in themselves, independently of circumstances, are always seriously wrong by reason of their object".⁴⁸

What is important here is that the objects are incapable of being ordered towards God, not because they are a destruction of human goods and thus hostile to integral human fulfilment, but rather because they radically contradict the good of the person made in his image. The consideration of one's neighbour stems from one's ordering towards God. The first part of the Decalogue importantly informs the second part⁴⁹. Love of God informs love of neighbour. The function of our reason in seeking to assess the moral act begins with our love of God, with God alone as our ultimate end.

⁴⁴ *Summa Theologica* II-II, q. 64, 7

⁴⁵ "Quaedam enim sunt quae habent deformitatem inseparabiliter annexam, ut fornicatio, adulterium, et aliae huiusmodi, quae nullo modo bene fieri possunt." St. Thomas Aquinas, *Quaestiones Quodlibetales*, 9, q. 7, a. 2.

⁴⁶ *Ibid.*

⁴⁷ *Veritatis Splendor* n. 81

⁴⁸ *Veritatis Splendor* n. 80

⁴⁹ I am grateful to my colleague at the John Paul II Institute in Melbourne, Adam Cooper, for this insight, December 2011.

Returning to Grisez (and Finnis and Boyle)

Grisez's analysis is complex, but if his intentionality thesis had succeeded, then it would seem to have had application to the Phoenix case. The issue centres upon an issue that was addressed by Pope John Paul II in *Veritatis Splendor* - the nature of what can be considered the object of a moral act and what makes that object good.

The defence of the Phoenix case has quoted Pope John Paul in the encyclical *Veritatis Splendor* and engaged the treatment of double effect reasoning offered by Grisez to interpret the encyclical. There are of course, many others who have taken a contrary view, and in quoting Rhonheimer and Grisez, there is a lack of balance, in that she has ignored the many criticisms of their views.

Grisez's argument is an application to the craniotomy case. He claims that craniotomy in the circumstances of arrested labour is not direct killing.

In times past complications of delivery raised serious problems. Now where medical facilities are available such difficulties are rare, most difficult cases are prevented by timely surgery. However, if it were impossible to prevent the mother's death (or, worse, the death of both) except by cutting up and removing the child piecemeal, it seems to me that this death-dealing deed could be done without the killing itself coming within the scope of the intention. The very deed which deals death also (by hypothesis) initiates a unified and humanly indivisible physical human process which saves life.⁵⁰

Originally Grisez's argument appears to have been based on an action theory that analyses an act as being an indivisible set of constituent parts.⁵¹ In this case, according to Grisez, the surgeon performing craniotomy performs just one human act to save the life of the mother, but that act has a number of identifiable physical acts. He argued that it is only the human act, saving the life of the mother, that is subject to scrutiny. This chosen human act has an end, an intended end, namely, the preservation of the mother's life. The individual physical acts are not human acts and therefore do not fall under the scope of the intention. Therefore the act of dismembering the foetus is not a human act, rather it is part of the indivisible series of physical acts of saving the life of the mother. He held that it is therefore not a direct killing, because the death of the child is not required in order to save the life.⁵²

On revisiting the issue, however, Finnis, Grisez and Boyle⁵³ appear to have repudiated that approach, but without changing their view about craniotomy. They say that the concept of indivisibility has not been used since 1970 and that it was a false step caused by the failure to appreciate the decisive significance of the perspective of the acting person.⁵⁴

Grisez is a strong critic of proportionalism, but one could be forgiven for wondering how his original account of the indivisibility of the moral act essentially differs from Richard

⁵⁰ Germain Grisez, *Abortion: The myths, the realities, and the arguments*, Corpus Books, New York, 1970, p. 370

⁵¹ Jean Porter, 'Direct' and 'Indirect' in Grisez's Moral Theory', *Theological Studies*, Vol. 57, 1996 p. 612

⁵² Grisez, *op. cit.*, pp. 333, 340, 341

⁵³ John M. Finnis, Germain G. Grisez, & Joseph M. Boyle, 'Direct' and 'Indirect': A Reply to Critics of Our Action Theory', *Thomist*, Vol. 65, No. 1, 2001, pp. 1-44

⁵⁴ *Ibid.*

McCormick's claim that "an act cannot be classified morally simply by looking at its *material circa quam*, or at its object in a very narrow and restricted sense," and we must look at the intersubjectivity of the act in order to determine whether it is a moral evil⁵⁵. More to the point, why is Grisez's current analysis of the subjectivity of the human act not open to the same criticism that he made of proportionalists: that it involves separating moral intent from psychological intent?

A concern I have with the Finnis, Boyle and Grisez analysis of the account of the moral act in *Veritatis Splendor* is that they seem to interpret the document in a way that provides a strained interpretation of both St Thomas and *Veritatis Splendor*. The latter states:

By the object of a given moral act, one cannot mean a process or an event of the merely physical order, to be assessed on its ability to bring about a given state of affairs in the world.⁵⁶

They say of this passage, referring to St Thomas, that the species of the moral act as good or bad is not in its species *in genere naturae* but in its species *in genere moris*. They argue that it is necessary to get beyond common-sense accounts of what is being done and factors such as causal sequences, to which they give an unreflective priority over the perspective of the acting person.⁵⁷

However, they seem to deny any role at all for the physical reality in determining the psychological reality. The issue is certainly to assess the act from the perspective of the acting person, but the latter cannot be completely unrelated to the reality of what he or she does. My concern is that in claiming that the narrowing of the child's head is the immediate object in order to save the life of the mother, the description omits a large part of what would be in the mind of the surgeon. "Narrowing the baby's head" is only one aspect of this and is not an adequate description of what the surgeon intends to do. Bear in mind what the surgeon does – he or she thrusts an instrument into the head of the child and evacuates the child's brain. Finnis *et al* assert that a surgeon performing craniotomy "resisting the undue influence of physical and causal factors that would dominate the perception of observers, could rightly say "No way do I intend to kill the baby" and "It is no part of my purpose to kill the baby." They say that the killing in this case is not brought about as a chosen means and thus is not the immediate object in the sense defined in *Veritatis Splendor*.⁵⁸

I cannot see that there can be a separation between the moral description of the act and the clear psychological intent, which is to dismember the head in a way that is death dealing in itself not as a side effect. They argue that the death is not necessary and therefore is not intended. The doctor would do the same if the baby were already dead. But the fact that the death is not needed does not make the act any less an act that directly kills. There is a false distinction being made between moral and psychological intent. The major problem in the Finnis *et al* analysis is that they permit a moral narrative that is psychologically strained, so strained as to be totally implausible as a way in which anyone would actually reason. The acting person who reasoned like that could only be self-deceiving. The act of penetrating the

⁵⁵ Richard McCormick, 'Classification Through Dialogue', in Richard McCormick and Charles Curran, *The Historical Development of Moral Theology in the United States*, Paulist Press, New Jersey, 1999, pp.193-4

⁵⁶ *Veritatis Splendor*, n. 78

⁵⁷ Finnis *et al*, *op. cit.*, p 22-3

⁵⁸ *Ibid.*, p. 23

head of the child and drawing out the contents cannot realistically be an act that is not perceived as an act of killing by the acting person. It so dramatically is an act of killing.

According to FGB, the morally relevant description of the act is narrowing the head of the child by dismembering it. That object they claim is to facilitate delivery and save the life of the mother. However the direct object is the dismembering, and that is synonymous with the death of the child. Note that Finnis *et al* are not claiming that the surgeon attempts forceps delivery and in so doing causes dismemberment. That would be quite different. They are proposing a separate procedure, the primary function of which is to dismember the head of the child. That would involve a very different set of instruments from those normally used to deliver a child.

This is not like St Thomas's example of seeking to stop a thief and the injury causing death. The dismemberment intends death. There is no other outcome possible.

There is a difference between this case and the types of cases for which double-effect reasoning ordinarily applies, where the death is clearly a side effect, such as bombing a military installation and killing citizens who happen to be in the vicinity, or removing a gravid cancerous uterus resulting in the loss of life of the child. In the case of dismembering a child to save the life of the mother, the death is integral to what is chosen rather than beside it. The death is synonymous with the act that is necessary to achieve the end of saving life. Someone who dismembers a child but describes their act according to the preferred consequence of saving life and not as a killing is deceiving themselves as to the nature of the act. A morally relevant feature is that the desired consequence is only part of the reality of what is deliberately chosen. To say that in dismembering the child, which is clearly the immediate object, I did not intend the death is just plainly untrue. This case, it seems to me, is quite unlike removing the gravid but cancerous uterus. In the latter case the act results in death, but the act is clearly separable from the death in that the latter is a side effect and therefore beside the intention. Death is not a side effect of dismembering a baby, it is the main event.

There is a difference between attempting to remove the child by forceps delivery and causing the child's death in the process, on the one hand, and, on the other hand, deliberately dismembering the child, as Grisez has described it, in order to achieve removal. The difference is between what is the immediate object and what is truly a side effect. Thus I can accept dismembering the head of the child (and death) if it happens as a side effect of attempts to remove, but not where the procedure in the first instance involves dismembering the head as a step on the way to removal.

I disagree with Finnis *et al* when, in response to Kevin Flannery, they say that the relevant description of the act of dismembering the head would not involve killing the baby. Psychologically, killing the baby would stand foremost as what the surgeon is doing in dismembering the head. On the other hand, if the surgeon attempted a forceps delivery in these circumstances and that resulted, or was likely or even certain to result, in dismemberment while trying to remove the child, that would be different from going in with a procedure to dismember the head of the child. The surgeon could consider the dismemberment to be a side effect of forceps delivery, but not if the dismemberment was the immediate goal of the procedure, presumably with instruments designed to dismember rather than forceps. In the latter case the dismemberment is a *pre-emptive strike* against the child in order to later affect delivery.

Finnis *et al* analyse a case that would seem to bear upon this problem. In their case E⁵⁹, they refer to a farmer who castrates male calves in order to effect hormonal changes that will make them fatter and calmer. The authors say sterilizing is not a means or an end and hence is not part of the proposal to fatten the calves. The case, they argue, makes it clear that, depending on what one proposes to do and what one only accepts as a side effect, one can be doing either of two acts different in kind even though everything about one's behaviour and the observable context is the same. The point seems to turn on their claim that sterilization is not essential to the goal of fattening the calves but is a side effect.

The removing of the testes, which is what the sterilization procedure involves, results in the loss of a source of hormones and that loss causes fattening and calmness. The loss of fertility is also an effect of the loss of the testes as they produce sperm. Finnis *et al* would claim that the loss of capacity to produce sperm (sterilization) is a side effect because it is not part of the proposal but foreseen or permitted. I struggle with this. I am unable to separate conceptually removing testes and removing the capacity to produce sperm. Generating sperm is what testes do. Psychologically it would seem to me that the procedure is to sterilize, because sterilizing causes fattening and calming. Unmanageable stallions are gelded for similar reasons. But the gelding could not be considered a side effect. Gelding is the event that usually produces the manageability and anyone who told a farmer that gelding was not sterilization would risk being laughed at or pitied.

Finnis *et al* argue that their account differs from previous accounts that have led the Magisterium to find teaching that supports craniotomy to be unsafe. The difference lies in their rejection of the position that they attribute to Henry Davis SJ and which appears in most accounts of double-effect reasoning:⁶⁰ that the good effect must follow at least as immediately and directly as the evil effect. It seems that this principle is an attempt to capture, in part, how it is that the evil in the act is indirect. It is a notion that extends beyond direct lines of causality; that is, the Davis principle does not claim that the impermissible evil is a means to the good, but rather that it precedes or is more immediate than the good.

This is, of course, the case with craniotomy. The dismembering and thus the death precede and are more immediate than the removal of the child that results in the saving of life. The latter is secondary to the procedure to dismember. Finnis *et al* argue that the traditional principle (the Davis principle) is a mistake, referring to the soldier who throws himself on a grenade to save others. We applaud his heroism they argue, but his body being destroyed is more immediate than the grenade not doing injury or as much injury to his fellows.

The soldier's case is different from the craniotomy case both because it is his life and not someone else's that is lost if the grenade explodes, but also because the loss of life and the saving of life are in fact synonymous. His object is to shield the others, when he does so shield them he saves their lives when the grenade explodes and at the same time loses his. His life is not lost until the grenade explodes, and that is precisely when lives are saved. In the craniotomy case we have a dismembering of the child, and then the removal made possible by the dismembering and thus the resolution of the problem. It is a pre-emptive strike to effect removal.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, pp. 19-20

As examples of this reasoning, Finnis *et al* then cite the mention in *Evangelium Vitae* of double-effect reasoning in relation to pain relief and refusal of burdensome life support where death is a side effect. *EV* says that in those cases the death is not willed or sought. But both of those cases are quite different from Finnis *et al*'s account in which the evil is more immediate than the good. In the *EV* instances, the pain relief and the lessening of the burden of treatment are more immediate than the death. If in fact the death was expected to precede lessening of the burden or the relief of pain, then death would appear psychologically to be the immediate object (rather than the lessening of the burden). Rather than demonstrating their narrative of the moral act, the *EV* text would seem to indicate difference from it.

There is something of a connection between the Finnis *et al* account and proportionalism in that both seem to override the significance of direct killing. In Finnis *et al*, the moral narrative overrides the psychological narrative of direct killing. In the case of McCormick, the evil of direct killing is overridden by a commensurate reason. It seems to me that Finnis *et al*'s account strengthens McCormick's position by substituting a moral narrative in place of the psychological narrative. In both narratives, what is psychologically direct killing is not considered to be morally relevant.

Importantly in referring to VS n. 78 and William Murphy's analysis of it, Lysaught has not referred to VS n. 79, which is a section that seems to have been designed to clarify the type of confusion that has been generated by the view taken by Grisez and others.

In n. 79, Pope John Paul II rejects as erroneous any theory

..which holds that it is impossible to qualify as morally evil according to its species – its 'object' – the deliberate choice of certain kinds of behaviour 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.⁶¹

The Pope then goes on in the next paragraph to say;

“The primary and decisive element for moral judgment is the object of the human act, which establishes whether it is *capable of being ordered to the good and to the ultimate end, which is God.*”

In rejecting judging the morality of the object an act by the totality of foreseeable consequences, the Pope seems to be rejecting proportionalism of the kind espoused by such writers as Richard McCormick. However in rejecting judging the morality of the object of an act by its intention only, the Pope would seem to have been addressing the type of treatment of double effect reasoning espoused at that time by Grisez and others in which they in effect separate moral intention from psychological intention.

Part of the reason for being able to classify the object in that way is Grisez's anthropocentrism. The question being asked is not whether this act is capable of being oriented towards God, (whether it expresses love for God), but whether it is consistent with or aimed towards integral human fulfilment. Significant in the analysis is that the case is presented as the child being unable to survive, whether or not there is intervention in this way. It is implied that nothing changes with respect to the integral fulfilment of the child, but it is possible by intervening to save the mother and act for the benefit of her integral

⁶¹ Pope John Paul II, *Veritatis Splendor*, n 79

fulfilment. Missing in that analysis is the meaning of the intervention in the context of the love of God and the ultimate aim of God alone. The theological virtues of faith, hope and love imply a relationship to God in which we accept our inferiority as creatures and the source of all meaning in God alone.

When I reflect on these cases of what Rhonheimer calls “vital conflict”, the very definition of vital conflict implies the agent assuming an assessment of the consequences that leaves no room for doubt about outcomes. That does not fit my experience of medicine in which there are probabilities but they are usually given as a range of probabilities based on the different reported experiences and different treatment options employed. There is always some degree of uncertainty about diagnosis and, particularly about prognosis. Further can I say that there is absolutely no place for providence? In the acting person (the mother or the surgeon) choosing an interpretation of likely events, as the basis for acting, the decision is handled as of human relevance only. The analysis that Grisez offers is anthropocentric. The choice is an understandable choice, saving the only life that can be saved according to the advice, but is the decision to plunge an instrument into the child’s brain and extract the contents one that is consistent with seeing the child as made in the image and likeness of God? Those are not questions that are posed in the FGB analysis which treats the matter as a matter of a type of natural law or practical reason that is anthropocentric and not focussed first and foremost and ultimately on God as the ultimate end.

NNL and Evangelism

This critique of the anthropocentric approaches taken by Rhonheimer and Grisez, and the defence of the latter by Finnis and Boyle, suggests that as Bioethicists we should participate in public debate openly as Christians rather than try to engage in an exercise of pure reason. I would suggest that we should be open about our faith because subterfuge is beneath dignity and would only breed suspicion, in any case. But more than that, I think that the answers given without the New Law of Christ must be inadequate.

In a pluralist society we can approach this by insisting on being willing to listen to others and to encourage their contribution from their own cultural beliefs and to test our own Christian concepts, and in that way seek common ground by seeking to identify human goodness and the virtues. That provides a mutually respectful pathway towards seeking human transcendence together in recognition of our differences but also our commonalities. Second, if we engage in public debate as an exercise in pure reason we find ourselves dissatisfied because we will have excluded the New Law.

In this respect I have been greatly encouraged by finding links between Alasdair MacIntyre and both Pope John Paul II and Benedict XVI in

- MacIntyre’s emphasis on culture and tradition and the historical development of ideas and his rebuttal of the notion of pure reason building a morality from the ground up without the benefit of culture⁶²;
- John Paul II’s recognition of native and seminal wisdom and his encouragement to philosophers to consider questions from the Word of God; and finally,
- Benedict XVI’s insistence on the connectedness of philosophy and theology.

⁶² Alasdair MacIntyre, *After Virtue*, University of Notre Dame Press, 1981

In that way a Catholic Philosopher has much to contribute to Bioethics from our traditional exploration of human nature and identifying doctrines that are good for mankind and justified in human terms, and our acceptance that we are formed by faith but willing to test propositions from Revelation, knowing that God loves us and wants what is good for us.

However, I do think that a response is needed to Cardinal Ratzinger's "wax nose" assertion and would conclude that reason may not be saved without faith BUT goodness is a property that is recognisable even by those who are unfamiliar with the Gospels, and that in a pluralist society we can mutually seek to identify a common understanding of human goodness.

It is relevant that in making a distinction between cardinal and theological virtues, St Thomas Aquinas claimed that all virtues other than the theological are in us by nature, according to aptitude and inchoation, but not according to perfection, and the theological virtues are from without.

"Sic ergo patet quod virtutes in nobis sunt a natura secundum aptitudinem et inchoationem, non autem secundum perfectionem: prater virtutes theologicas, quae sunt totaliter ab extrinseco"⁶³

By "from without" I understand him to mean that the theological virtues are revealed to us by God rather than the product of our own reasoning.

That does raise questions about many of the issues that have been developed in *Dignitas Personae* in relation to the emphasis placed on Trinitarian Love:

By taking the interrelationship of these two dimensions, *the human and the divine*, as the starting point, one understands better why it is that man has unassailable value: *he possesses an eternal vocation and is called to share in the trinitarian love of the living God.* (n. 8)

and

These two dimensions of life, the natural and the supernatural, allow us to understand better the sense in which *the acts that permit a new human being to come into existence*, in which a man and a woman give themselves to each other, *are a reflection of trinitarian love.* "God, who is love and life, has inscribed in man and woman the vocation to share in a special way in his mystery of personal communion and in his work as Creator and Father" (n.9)

These passages raise something of a challenge to a new natural law approach because the Trinitarian mystery is only known through Divine Revelation and these passages suggest that we should understand human love in marriage in imitation of the love between the divine persons, and hence that the truth of that Divine communion of persons informs our human relationships because the *imago dei* is not of single person but of a Trinity. That then suggests that human nature being understood relationally through the relationship of the Divine Persons, together with the nuptial mystery and *communio* can only be fully understood through Divine Revelation.

⁶³ Aquinas, *Summa Theologica*, I-II, Q. 63, Art I

This does however seem to be consistent with St Thomas's view about the theological virtues being understood only through Divine Revelation.

Supporting the Pauline Principle

One of the most difficult aspects for us to argue as Catholic Bioethicists in a pluralist context, particularly a bigoted secularist context, is the Pauline Principle that underlies our morality, and the related claim that there are absolute moral norms.

We generally take the Pauline Principle from the passage in *Romans* (3:8):

Why not say--as we are being slanderously reported as saying and as some claim that we say--"Let us do evil that good may result"? Their condemnation is deserved.

From which we draw the conclusion that one must not do evil in order that good may come.

In *Veritatis Splendor*, Pope John Paul II gave expression to this principle in his analysis of the moral act in terms that identified the need for the object of the act to be capable of being orientated towards God, represented in the following excerpts:

"Activity is morally good when it attests to and expresses the voluntary ordering of the person to his ultimate end and the conformity of a concrete action with the human good as it is acknowledged in its truth by reason. If the object of the concrete action is not in harmony with the true good of the person, the choice of that action make our will and ourselves morally evil, thus putting us in conflict with our ultimate end, the supreme good, God himself" (n.72)

"... the moral life ...consists in the deliberate ordering of human acts to God, the supreme good and ultimate end (telos) of man. ... But this ordering to one's ultimate end is not something subjective, dependent solely upon one's intention. It presupposes that such acts are in themselves capable of being ordered to this end, in so far as they are in conformity with the authentic moral good of man, safeguarded by the commandments." (n.73)

"The morality of the human act depends primarily and fundamentally on the 'object' rationally chosen by the deliberate will ..." (n. 78)

"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. The object of the act of willing is in fact a freely chosen kind of behaviour." (n.78)

"By the object of a given moral act, then, one cannot mean a process or 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." (n.78)

Expressed in these terms of a teleology that involves the Creator, it is difficult to understand the Pauline Principle expressed in terms of the object of the act unless one invokes the

relationship to the Creator and in so doing, invokes that set of beliefs about the Creator that we can only know through Divine Revelation.

I would suggest that the Pauline principle can be understood in terms of loving relationship as a desire to preserve authenticity of love. When one discusses the nature of the moral act, the notion of an absolute does emerge in the context of understanding moral acts as expressive of human love of another. Doing evil then contradicts that loving relationship but especially so when we understand love in the sense that Christ's gift of self on the Cross gave to the meaning of love.

There does seem to be a gap in anthropocentric natural law accounts based on reason alone when it comes to explaining absolute moral norms and the Pauline Principle. This is of course the central issue in relation to proportionalism, situation ethics and the fundamental option. What they lack is an adequate account of authentic human love. However it would seem that we cannot achieve an adequate account of authentic human love from reason alone. As St Thomas expresses it, the theological virtues come from without.

Basically because the moral act is to be understood in terms of communion with God, it would seem difficult to posit communion with God as our natural ultimate end, as a matter of pure reason, unless reason predicates existence of creator who creates us for love of us (agape) and wants our love (eros) in return⁶⁴, and this notion of God seems to be peculiar to the Christian faith. It is also the case that the theological virtues (faith, hope and love), depend on both the *agapeic* and *erotic* notion of the Creator's love. In our understanding of that love we rely on the grace of God in revealing Divine Nature to us, and we rely on Christ and his sacrifice on the Cross for our understanding of the authenticity of love as complete gift.

I am sympathetic to the task of new natural law which seeks to engage the secular world in argument based on pure reason and without assistance from revelation. It would be wonderful if with reason alone we could lead others to a position that did not contradict the moral truths of our faith. However when it comes to the true nature of love and hence the existence of moral absolutes and the Pauline Principle, I doubt that it is achievable.

Some Conclusions

From my experience in chairing government committees I am convinced that there is a better way in which we may encourage people to seek ideal solutions to ethical problems, based on their own personal and cultural beliefs. In that respect I do not see two distinct projects in being both Christian and a philosopher. Rather I am a Christian who is willing to both listen to others and to subject my beliefs to philosophical scrutiny alongside theirs, and to ask the question, whether living according to these beliefs is a more coherent, consistent, happier and more fulfilling way to be, by the latter I mean living according to the aim to give of myself to others and thus to strive to be like my Lord and Saviour.

In this respect I disagree with the double life mentality proposed by German Grisez, whom I nevertheless much admire, when he wrote:

⁶⁴ Benedict XVI *Deus Caritas Est* 2005 n.3-8
http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html

“Similarly, I consider it the responsibility of the person who is both a Christian and a philosopher to remain faithful to both ways of life, to resist all demands from either side to choose between them, to deny nothing for the sake of lessening the tension, and thus to become a bridge between the gathering of those sons and daughters of the Church who believe and those men and women who philosophize.”⁶⁵

There should be no such division. On the other hand I agree with Grisez when he says in the same article,

“.. I do not think that philosophy can begin with universal doubt. In fact, philosophers who imagine that their thinking is altogether presuppositionless have not managed to set aside all presuppositions, the better to keep them unaware of their presuppositions, the better to keep them without subjecting them to critical scrutiny.”

In western culture, the greatest divide between a Catholic understanding and secularism occurs at the level of understanding conjugality. We do need a conceptual framework to build a bridge by achieving a philosophical analysis of affectivity, of the communion of persons, and of the radical oneness of human and divine love (agape, erotic and filial), but the content for that analysis will be from Revelation.

There are different models of philosophical analysis in Western culture. Firstly there is the dominant secular view which undertakes philosophical analysis as the splintering and deconstruction of reality. In that context we can assess a philosophical work by the number of distinctions made and defended! This popular philosophical approach reduces the role of reason to narrative only. There is no objective reality and goodness is not knowable.

From a Catholic perspective what we have to offer is an alternative approach to philosophical analysis that constructively builds upon shared understanding, mutually seeking the transcendent. In that we can accept our cultures as raw data and can work to identify goodness as a common ground and knowable. That then permits us, in a culturally inclusive way, to transcend differences between religions and cultures while still founded upon those differences. That approach is especially open to the Christian notion of love, asking simply that it be considered as an alternative and asking the very practical question, whether a civilisation based on a notion of love as gift of self is a better civilisation than the alternatives.

In that way we can seek to lead public reason towards accepting the propositions of *Dignitas Personae* (n .9), such as:

Respect for ... dignity is owed to every human being because each one carries in an indelible way his own dignity and value. *The origin of human life has its authentic context in marriage and in the family*, where it is generated through an act which expresses the reciprocal love between a man and a woman. Procreation which is truly responsible vis-à-vis the child to be born “must be the fruit of marriage”.⁶⁶

and that:

⁶⁵ Germain Grisez, ‘Faith, Philosophy and Fidelity’, *Fidelity*, Vol 3, No. 8, July 1984 pp. 18-23. In an email exchange Grisez recently referred me to this article as representative of a view that he still holds.

⁶⁶ Congregation for the Doctrine of the Faith, *Instruction Donum Vitae*, II, A, 1: AAS 80, 1988, 87.

Christian marriage is rooted “in the natural complementarity that exists between man and woman, and is nurtured through the personal willingness of the spouses to share their entire life-project, what they have and what they are: for this reason such communion is the fruit and the sign of a profoundly human need. But in Christ the Lord, God takes up this human need, confirms it, purifies it and elevates it, leading it to perfection through the sacrament of matrimony: the Holy Spirit who is poured out in the sacramental celebration offers Christian couples the gift of a new communion of love that is the living and real image of that unique unity which makes of the Church the indivisible Mystical Body of the Lord Jesus”.(n. 9)

Basically I am claiming that Christian Philosophy has much to contribute to Bioethics from a tradition of exploration of human nature and identifying doctrines from the New Law for whether they genuinely and according to experience are good for mankind and justified in those human terms. As a Christian Philosopher I am informed by faith but willing to test propositions, knowing that God loves us and wants what is good for us. In other word my faith and my reason are a partnership and I am unafraid to present as a believer, having first invited others to include their own cultural background so I am not alone in offering my cultural contribution for evaluation. On Government Committees I chaired, I began by inviting members to introduce themselves and the culture from which they cam, the culture of their parents. That was sufficiently removed to not have the vulnerability of outlining their own beliefs, but enough for us to understand them and their use of language through their often religious antecedents. The approach left me free to offer my own cultural background and thus to introduce propositions that had their genesis in Christ and the New Law. By listening to others I gained an equal opportunity to evangelise.