Natural Law, the Object of the Act, and Double Effect: Moral Methodology for Catholic Health Care Ethics

Travis Stephens

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NATURAL LAW, THE OBJECT OF THE ACT, AND DOUBLE EFFECT: MORAL METHODOLOGY FOR CATHOLIC HEALTH CARE ETHICS

A Dissertation
Submitted to McAnulty College and Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for
the degree of Doctor of Philosophy

By
Travis R. Stephens

December 2019
NATURAL LAW, THE OBJECT OF THE ACT, AND DOUBLE EFFECT: MORAL METHODOLOGY FOR CATHOLIC HEALTH CARE ETHICS

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iii
ABSTRACT

NATURAL LAW, THE OBJECT OF THE ACT, AND DOUBLE EFFECT: MORAL METHODOLOGY FOR CATHOLIC HEALTH CARE ETHICS

By

Travis R. Stephens

December 2019

Dissertation supervised by Dr. Gerard Magill

Pope John Paul II’s Encyclical Veritatis Splendor is the first and only magisterial document that systematically articulates a moral methodology for Catholic moral theology. This dissertation makes explicit the methodological connection between Vatican teaching and the United States Bishops’ Ethical and Religious Directives for Catholic Health Care Services. The thesis of the dissertation explains the systematic connection between Natural Law, the Moral Object of the Act, and the Principle of Double Effect and by extension the ethical Principle of Cooperation. Second, the thesis applies this complex moral method of official teaching to health care ethics.

Following the introduction, chapter two discusses the moral method of Natural Law and the Moral Object. Chapter 3 relates this explanation to the Principle of Double Effect. The subsequent chapters apply this moral method of official Catholic teaching to Catholic health care
ethics, focusing on several emerging topics to emphasize the relevance of the theoretical approach. Chapter 4 discusses Health Care Ethics Consultations, especially engaging the Principle of Cooperation (enlightened by the Principle of Double Effect) with regard to prohibited health care services in Catholic health care. Chapter 5 considers the use of the Principle of Double Effect to justify bilateral salpingo-oophorectomies for BRCA mutation carriers and the uses of contraception for victims of sexual assault. Chapter 6 discusses the use of sex reassignment therapies for gender dysphoria and the use of contraceptive methods for non-contraceptive benefits.
DEDICATION

I dedicate this dissertation to my mother Kathy Jean Stephens, and to my father David Rae Stephens.
ACKNOWLEDGEMENT

I am grateful to my parents for instilling in me a determined work ethic and a longing for knowledge. I am also thankful to my brothers Aaron and Kyle for their inspiration and support. I am indebted to all the teachers who have taught me throughout my years of learning. I am especially grateful to those who wrote letters of recommendation on my behalf from Saint Meinrad Seminary and School of Theology for entrance to Duquesne’s doctoral program in Healthcare Ethics, including Dr. Keith Lemna, Dr. Robert Alvis, and Fr. Denis Robinson. I am appreciative to Bishop Timothy Doherty for introducing me to the field of Healthcare Ethics and allowing me to work as a liaison for the Diocese of Lafayette-in-Indiana. I am ever grateful to Dr. Elliott Bedford for being both a mentor and a colleague in the field of Healthcare Ethics. I am appreciative of the prayerful support that the priests of the Diocese of Lafayette-in-Indiana provided throughout these years of studying and writing. I am especially indebted to Fr. Pat Click, my pastor during these years of study, who was especially encouraging and supportive. I am also grateful to the parishioners of Saint Louis de Montfort, especially the Seven Sisters who prayed countless hours for my successful completion of the dissertation.

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# TABLE OF CONTENTS

Abstract..............................................................................................................................................iv

Dedications........................................................................................................................................vi

Acknowledgment.............................................................................................................................vii

Table of Contents.............................................................................................................................viii

CHAPTER ONE – INTRODUCTION...................................................................................................1

CHAPTER TWO – NATURAL LAW AND THE MORAL OBJECT......................................................45

2A. Natural Law..................................................................................................................................45

i. Natural Law.....................................................................................................................................46

   a. Law.............................................................................................................................................46

   b. Eternal Law and Natural Law.................................................................................................47

   c. Self-Evidence of Practical Reason..........................................................................................48

   d. Happiness, Natural Inclinations, and Reason........................................................................51

   e. Principles of Natural Law and Basic Human Goods..............................................................55

ii. Naturalistic Fallacy and Natural Law..........................................................................................56

   a. Ergon Argument......................................................................................................................57

   b. Essentialist Understanding of Morality..................................................................................60

iii. Natural Law and the Perspective of the Acting Person............................................................61

   a. The Primacy of the First-Person Perspective.........................................................................61

   b. First-Person Perspective in Veritatis Splendor......................................................................64

iv. Contraception and Natural Law..................................................................................................66

   a. Inseparability Principle.............................................................................................................67


b. Responsible Parenthood and Chastity.............................................68

2B. Moral Object.................................................................................69

i. Aquinas’s Action Theory.................................................................70
   a. Intrinsically Evil Acts...............................................................70
   b. Intention to Action.................................................................71
   c. External Act: Materia Circa Quam and Proximate End..............74

ii. Naturalistic Fallacy......................................................................78
   a. Genus Moris Versus Genus Naturae..........................................79
   b. Manualism and Proportionalism..............................................80

iii. Moral Object and the Perspective of the Acting Person..............82
   a. Avoiding Eventism.................................................................83
   b. The Socratic Principle............................................................84
   c. Personalism in Veritatis Splendor............................................86

iv. Object of Contraception.............................................................89
   a. Manualism..............................................................................89
   b. Proportionalism.................................................................91
   c. Rhonheimer..........................................................................91

CHAPTER THREE – PRINCIPLE OF DOUBLE EFFECT..............................113

3A. Double Effect from Aquinas to Knauer..............................................113

i. Aquinas and Double-Effect Reasoning.......................................113

ii. Antoninus to Gury.................................................................116

iii. Jean Pierre Gury.................................................................124

iv. Peter Knauer.........................................................................128
3B. Contemporary Formulations of the Principle of Double Effect

i. Finnis, Grisez, and Boyle: Defending Craniotomy
   a. Eight Cases that Illustrate Intention
   b. Perspective of the Acting Person
   c. Debunking Unsound Arguments against Craniotomies
   d. Defending Craniotomies

ii. A Thomistic Response to Finnis, Grisez, and Boyle

iii. Intended and Foreseen in T. A. Cavanaugh
   a. Double-Effect Terminology
   b. Intention/Foreseen Distinction

iv. Euthanasia Versus Terminal Sedation
   a. The Catholic Church: Euthanasia and Terminal Sedation
   b. Joseph Boyle: Euthanasia and Terminal Sedation
   c. Intention/Foreseen Distinction: Euthanasia and Terminal Sedation

v. Hysterectomy Versus Craniotomy
   a. Direct Killing in Abortion
   b. Defending Craniotomies
   c. Craniotomies and Hysterectomies

vi. Terror Bombing Versus Tactical Bombing
   a. Traditional Just War Theory
   b. Just War, Terrorism, and Nuclear Deterrence
   c. Terror Bombing and Tactical Bombing
CHAPTER FOUR – HEALTH CARE ETHICS CONSULTATIONS AND COOPERATION.................................................................175

4A. Health Care Ethics Consultations .................................................................175

i. Health Care Ethics Consultations .................................................................175
   a. Proficiencies ..........................................................................................177
   b. Veterans Health Administration .........................................................181

ii. Principles and Topics for Health Care Ethics Consultations ..........185
   a. Autonomy ............................................................................................186
   b. Non-Maleficence and Beneficence .....................................................190
   c. Justice .................................................................................................193

4B. Principle of Cooperation ...........................................................................197

i. Principle of Cooperation .............................................................................198
   a. Cooperation and Double Effect .........................................................198

ii. Cooperation and Sterilization .................................................................202
   a. Sterilization ..........................................................................................203
   b. United States Bishops’ and Cooperation ...........................................205
   c. The Object of the Cooperator ..............................................................207
   d. The United States Bishops’ 2018 Articulation of Cooperation ....212

iii. Contemporary Contributions to Cooperation ........................................213
   a. Rejecting the ‘No Difference Argument’ ...........................................213
   b. M. Cathleen Kaveny’s Appropriation of Evil ....................................215
   c. Double Effect and Appropriation .......................................................218
   d. Appropriation and Fetal Tissue Remains of Elective Abortion .....219
5A. Risk Reducing Bilateral Salpingo-Oophorectomies

i. Clinical Explanation

- Discovering BRCA1 and BRCA2
- Cancer Inhibition
- Prophylactic Treatments

ii. Double-Effect Reasoning

- Totality
- Double-Effect Reasoning
- Object of the Act

iii. Health Care Ethics Consultations

- Genetic Testing
- Genetic Discrimination
- Confidentiality

iv. Catholic Health Care Policy

- Prohibiting Sterilization
- Non-BRCA Mutation Carriers

5B. Emergency Contraceptive for Victims of Sexual Assault

i. Clinical Analysis

- Menstrual-Ovulatory Cycle
- Physiology of Contraceptives

ii. Principle of Double Effect

- Object of the Act
b. Nominalism, Manualism, and Proportionalism ……………………………275

c. The Object: Contraception and Self-Defense …………………………279

d. Genus Moris …………………………………………………………………282

CHAPTER SIX – SEX REASSIGNMENT SURGERY AND CONTRACEPTION …………307

6A. Sex Reassignment Surgery for Gender Dysphoria ……………………307

i. Sex, Gender, and Gender Dysphoria …………………………………307

a. Defining Sex ………………………………………………………………308

b. Defining Gender ……………………………………………………….310

c. Gender Dysphoria ……………………………………………………..312

d. Sex Reassignment Therapies ………………………………………..314

ii. Objections to Sex Reassignment Therapies ……………………….315

a. Medical …………………………………………………………………315

b. Philosophical …………………………………………………………..319

c. Theological ……………………………………………………………323

iii. Totality and Double Effect ……………………………………………328

a. The Principle of Totality and Integrity …………………………….328

b. Principle of Double Effect …………………………………………..331

6B. Non-Contraceptive Benefits of Contraceptives ……………………..336

i. Clinical Analysis ………………………………………………………..336

a. Intrauterine Devices as a Contraceptive ……………………………336

b. Long-Acting Contraceptives ………………………………………….338

c. Non-Contraceptive Benefits of Contraceptives …………………..341

ii. Object ……………………………………………………………………..345
a. Contraception, Casti Cannubii and the Manualist……………………345
b. Proportionalistic Reformation of the Moral Object…………………348
c. Keeping the Object of the Act in the Genus Naturae………………349
d. The Object of Contraception……………………………………352
e. The Object of Using Contraceptives for Non-Contraceptive
   Benefits…………………………………………………………………353

iii. Principle of Double Effect………………………………………………354
   a. Thomistic Formulation of Double-Effect Reasoning………………354
   b. Intention…………………………………………………………………356
   c. Proportionality and Abortifacient Risk……………………………..357

CHAPTER SEVEN – CONCLUSION………………………………………………380

BIBLIOGRAPHY……………………………………………………………………385
CHAPTER ONE – INTRODUCTION

There is longstanding discourse in Catholic moral theology regarding the relation between Natural Law, the Moral Object of an act, and the Principle of Double Effect and Cooperation. Thomas Aquinas produces the first comprehensive and systematic account of Natural Law and the Moral Object of the act in his *Summa Theologica*.¹ In accord with Aquinas, official Catholic teaching holds that certain Moral Objects are intrinsically evil.² In addition, Aquinas also introduces the first formulation of the Principle of Double Effect, which combines discourse on Natural Law and the Moral Object of an act to explain the legitimacy of an action with a good and bad effect.³ Similar to the Principle of Double Effect, the Catholic moral tradition uses the Principle of Cooperation to determine when and to what extent one’s actions may contribute to the immoral action of another. Not surprisingly, robust debate continues over the meaning and relevance for morality of each of these concepts.

The most comprehensive account in Catholic official teaching of Natural Law, the Moral Object of an act, and their relevance for the Principle of Double Effect and the Principle of Cooperation can be found in Pope John Paul II’s encyclical *Veritatis Splendor*. This is the first and only Papal encyclical that explores moral theology from a systematic perspective. As a result, Pope John Paul II reaffirms the existence of intrinsically evil acts,⁴ yet continues to approve the complex ethical principles of double effect and of cooperation.

The Catholic Church in the United States adopts this stance of Pope John Paul II to articulate its official teaching on health care ethics in the *Ethical and Religious Directives for Catholic Health Care Services*.⁵ Surprisingly, however, the United States Bishops do not adopt the moral method Pope John Paul II articulates in *Veritatis Splendor*. This dissertation discusses
the connection between the method of *Veritatis Splendor* and the United States bishops’ Ethical and Religious Directives.

The thesis of the dissertation has two related goals. First, the thesis explains the systematic connection between Natural Law, the Moral Object of the Act, and the Principle of Double Effect and by extension the ethical Principle of Cooperation. Insofar as cooperation effectively adopts the standards of double effect reasoning, the thesis title only lists the Principle of Double Effect. Second, the thesis applies this complex moral method of official teaching to health care ethics.

Insofar as the Ethical and Religious Directives apply this approach to many well-known issues, a consideration of the relevance of the Church’s moral method for emerging issues (referred to in the analysis), in health care is undertaken. A major emerging issue deals with ethics consultations that, although commonly undertaken in Catholic health systems, is not addressed at length in the Ethical and Religious Directives. The dissertation relates this topic with the ethical Principle of Cooperation that is adopted to resolve disputes in ethics consultations regarding the provision (or not) of particular commonly accessible health services. Another two major emerging issues are becoming increasingly problematic for Catholic health systems, yet are not addressed explicitly in Ethical and Religious Directives: oophorectomies and sex reassignment surgeries, each related to issues regarding contraception. Each of these emerging issues are discussed in the applied chapters of the dissertation.

The sequence of the analysis in the chapters of the dissertation is as follows. Chapter 1 provides an Introduction. Chapter 2 discusses the moral method of Natural Law and the Moral Object of the Act. Chapter 3 relates this explanation to the Principle of Double Effect. The subsequent chapters apply this moral method of official Catholic teaching to Catholic health care
ethics, focusing on several emerging topics to emphasize the relevance of the theoretical approach. Chapter 4 discusses Health Care Ethics Consultations, especially engaging the Principle of Cooperation (enlightened by the Principle of Double Effect) with regard to prohibited health care services in Catholic health care. Chapter 5 considers the use of the Principle of Double Effect to justify bilateral salpingo-oophorectomies for BRCA mutation carriers and the uses of contraception for victims of sexual assault. Chapter 6 discusses the use of sex reassignment therapies for gender dysphoria and the use of contraceptive methods for non-contraceptive benefits.

CHAPTER TWO – NATURAL LAW AND THE MORAL OBJECT

Chapter two explains the role of Natural Law and the Moral Object of the Act in the moral method of Catholic teaching. Each section focuses on the scholarship of two contemporary ethicists—John Finnis and Martin Rhonheimer—who have made a pivotal contribution to the debate on this approach.

2A. Natural Law

The first section addresses the role of Natural Law in Catholic moral theology including divergent formulations.

i. Natural Law

a. Law

In the Summa Theologica, Aquinas discusses Natural Law in the context of law. This subsubsection analyzes Aquinas’s understanding of law, from the perspective of Martin Rhonheimer’s Natural Law and Practical Reason: A Thomistic View of Moral Autonomy. Most importantly, for Rhonheimer, the precept of reason is an act of the will expressed not in word,
but action. One derives the normative principles of Natural Law, which are speculative in nature, by reflecting on the process of practical reason in action.

b. Eternal Law and Natural Law

Natural law is the eternal law of God written on the heart of each human person. All creatures participate in the law which God promulgates, but humans participate in the law uniquely insofar as they also providentially govern. John Finnis explains Aquinas’s understanding of participatio in his Natural Law and Natural Rights.

c. Self-Evidence of Practical Reason

Just as the first principle of metaphysics is self-evident, so the first principle of practical reason is self-evident. R. A. Armstrong in Primary and Secondary Precepts in Thomistic Natural Law Teaching identifies what Aquinas means by self-evident. Using Kevin L. Flannery’s Acts Amid Precepts, I highlight a parallel between the ordering of theoretical knowing and practical knowing in Aquinas. For Grisez, in “The First Principles of Practical Reason: A Commentary on the Summa theologiae, 1-2, Question 94, Article 2,” self-evident principles are not mere tautologies, that is, restatements of what is already given. Finnis relates the concept of the self-evidence of principles or precepts of Natural Law to the rationality of the notion that any state of affairs may exist without further explanation.

d. Happiness, Natural Inclinations and Reason

In The Perspective of Morality: Philosophical Foundations of Thomistic Virtue Ethics, Rhonheimer highlights the difference between an authentic eudemonistic ethic and one that only seems oriented toward happiness, but really constitutes hedonism. For Rhonheimer, action concerns appetition, that is, striving for a good that corresponds to the substantive form of the human person, which is both body and soul. The inclinations for the good correspond to each
aspect of the human condition—inanimate, animate, and rational. Insofar as the soul consists of both intellect and will, happiness is that which one rationally wills for its own sake.

e. Principles of Natural Law and Basic Human Goods

Each principle of Natural Law corresponds to the natural inclinations in humans, which corresponds to all three of the above-mentioned classes of inclinations. Armstrong relates the principles of practical reason to human inclinations, while Finnis relates it to basic human values. Perspectives diverge on the above depending on one’s perspective regarding the Naturalistic Fallacy.

ii. Naturalistic Fallacy and Natural Law

The Naturalistic Fallacy originates in G. E. Moore’s *Principia Ethica*, where, building on David Hume’s assertion that “ought statements” do not derive from “is statements,” he argues that moral good is not physical good.

a. Ergon Argument

In *Fundamentals of Ethics*, Finnis takes issue with Aristotle’s “ergon argument,” in the *Nicomachean Ethics* that is, where he argues that insofar as the human person’s function is to reason, they ought to act in accord with reason. Finnis insists that since this argument is theoretical, not practical in nature it contributes nothing substantial to Aristotle’s ethics. Ralph McInerny and Martin Rhonheimer both take issue with Finnis’s dismissal of Aristotle’s function argument, which I further elucidate here.

b. Essentialist Understanding of Morality

Rhonheimer rejects what he calls an essentialist understanding of morality, of which Heinrich Rommen, Joseph Pieper, Ralph McInerny, Steven Jensen, R. Hittinger, and Steven A. Long are leading proponents. They conflate metaphysics with morality, contending
that morality perfects being. Their methodology is no different than that of the proportionalists they reject including: Peter Knauer,38 Josef Fuchs,39 Louis Janssens,40 Bruno Schuller,41 and Richard McCormick.42 Avoiding the Naturalistic Fallacy places moral decision making in the first-person perspective.

iii. Natural Law and the Perspective of the Acting Person

a. The Primacy of the First-Person Perspective

Rhonheimer, in “The Cognitive Structure of the Natural Law and the Truth of Subjectivity,” upholds the subjective primacy of the Natural Law.43 Rhonheimer rebuts critics such as Jean Porter who assert that he falls into spiritualism,44 rooting actions in the human person that is a substantial union of body and soul.45

b. First-Person Perspective in Veritatis Splendor

John Paul II, following Aquinas, understands Natural Law to be a divine light of reason, which God imprints on humanity in creation.46 This subsubsection follows John Paul II’s articulation of the subjective nature of the Natural Law in Veritatis Splendor. A first-person perspective on the Natural Law best explains the Catholic Church’s argument concerning the immorality of contraception.

iv. Contraception and Natural Law

a. Inseparability Principle

Paul VI, in Humanae Vitae establishes the inseparable connection between the unitive and procreative significance of the marital act in Natural Law.47 Rhonheimer, in Ethics of Procreation and the Defense of Human Life: Contraception, Artificial Fertilization and Abortion establishes this connection between the Natural Law and the Inseparability Principle.48

b. Responsible Parenthood and Chastity
Following Paul VI’s lead, Rhonheimer connects the Church’s prohibition against contraception to the virtue of chastity, insisting that periodic continence, a substantive part of responsible parenthood, is the inherent means for growth in it. This line of reasoning concurs with John Paul II in *Man and Woman He Created Them: A Theology of the Body*.

The Natural Law is foundational to how the practical intellect formulates the good in the Object of the Act, which the following section elucidates.

**2B. Moral Object**

This section addresses the role of the Object of the Act for Catholic Morality.

**i. Aquinas’s Action Theory**

*a. Intrinsically Evil Acts*

This subsubsection follows the development of the concept of intrinsically evil acts, which Servais Pinckaers, in “A Historical Perspective on Intrinsically Evil Acts,” traces beginning with Augustine and continuing through Peter Abelard, Peter Lombard, and culminating in Aquinas.

*b. Intention to Action*

This subsubsection follows Finnis’s interpretation of Aquinas’s action theory in Question 11-20 of the *Prima Secundae* of the *Summa Theologiae*, in his *Aquinas: Moral, Political and Legal Theory*. Above all, Finnis highlights the distinction between choosing (*electio*) and intending (*intentio*), which correspond to distinct aspects of willing, the proximate end and the ultimate end, respectively. In concert with the will, Rhonheimer observes that the intellect acts in extension when engaging in practical reason. The proximate end corresponds to the Object of the Act.

*c. External Act: Materia Circa Quam and Proximate End*
Joseph Pilsner, in *The Specification of Human Actions in Saint Thomas Aquinas* holds that Aquinas uses the relationship between form and matter in a substantial being to illustrate the analogous relationship that ends have for action. Once again, the identification of the Object of the Act with the proximate end and the *materia circa quam*, which Sousa-Lara illustrates is helpful for understanding the distinct properties of the external act. Just as one’s position on the Naturalistic Fallacy affects the formulation of the Natural Law, so it affects the formulation of the Object of the Act.

**ii. Naturalistic Fallacy**

*a. Genus Moris Versus Genus Naturae*

According to Rhonheimer, the greatest mistake of consequentialists is the presumption that morality is reducible to technical decision making, which, for Finnis, amounts to reducing doing to making. In this regard, many Thomistic ethicists mistakenly presume that morality derives from metaphysics, which constitutes the Naturalistic Fallacy.

*b. Manualism and Proportionalism*

Precisely insofar as the manualists and proportionalists subscribe to the Naturalistic Fallacy—presuming that ethics derives from nature—they constitute two sides of the same consequentialist coin. Servais Pinckaers, in *The Sources of Christian Ethics* demonstrates that Ockham’s nominalism is the source of the Naturalistic Fallacy, rather than authentic Thomism. Proportionalists, such as, Peter Knauer reduce moral evil to causing evil in the world, which constitutes eventism for Rhonheimer and Finnis. Failing to avoid the Naturalistic Fallacy precludes a first-person perspective for morality. The following subsection addresses these deficiencies.

**iii. Moral Object and the Perspective of the Acting Person**
a. Avoiding Eventism

Rhonheimer, in “‘Intrinsically Evil Acts’ and the Moral Viewpoint: Clarifying a Central Teaching of Veritatis Splendor,” argues that eventistic morality reduces the Object of the Act to intention, rendering choice insignificant.65

b. The Socratic Principle

The Socratic Principle contends that it is better to suffer evil than to do.66 Insofar as proportionalism does not pass the test of the Socratic Principle, Finnis and Rhonheimer reject it.67

c. Personalism in Veritatis Splendor

This subsubsection follows the personalistic approach to morality in John Paul II’s Veritatis Splendor.68 John Paul II rejects the proportionalistic approach precisely because it denies a personalistic approach.69 Accordingly, he reaffirms the existence of intrinsically evil acts.70 Only a first-person account of the Object of the Act provides an adequate perspective for defining the Object of the Act of contraception.

iv. Object of Contraception

a. Manualism

John T. Noonan Jr., in Contraception: A History of Its Treatment by the Catholic Theologians and Canonists demonstrates that the manualists reject contraception on the physicalistic objection that the Object of the Act constitutes onanism.71 Pius XI’s rejection of contraception follows similar lines of reasoning.72

b. Proportionalism

Proportionalists such as Peter Knauer have no problem with contraception so long as a commensurate reason exists for intending it in the physical world.73
c. Rhonheimer

Rhonheimer contends that *Humanae Vitae* only makes sense according to a personalistic approach to morality, that is, one that grounds morality in the human person, a composite of body and soul.\(^7^4\) Accordingly, Rhonheimer defines the Object of the Act of marital union as loving bodily union.\(^7^5\) With reference to chastity, he defines the Object of the Act of contraception as a choice against the natural means for growth in chastity, which periodic continence, a constitutive part of responsible parenthood affords.\(^7^6\) The Object of the Act is an important criteria of the Principle of Double Effect, which the following chapter examines.

CHAPTER THREE – PRINCIPLE OF DOUBLE EFFECT

This chapter analyzes the Principle of the Double Effect in light of the preceding articulation of the Natural Law and the Object of the Act.

3A. Double Effect from Aquinas to Knauer

This section traces the historical development of the Principle of Double Effect beginning with Thomas Aquinas and concluding with the proportionalist Peter Knauer.

i. Aquinas and Double-Effect Reasoning

The first subsection explicates Thomas Aquinas’s use of Double-Effect Reasoning in the *Summa Theologiae* where he uses it to explain killing in self-defense.\(^7^7\) In accord with Augustine, Aquinas objects to one intending to kill another person, for any reason, since this violates an exceptionless moral norm.\(^7^8\) For Aquinas, the death of an assailant is *praeter intentionem*, that is, beside the intention of the agent, which in this case is self-defense.\(^7^9\) Aquinas’s formulation concerns proportionality, which reflects one’s intention both in terms of the proximate end and ultimate end. In addition, Aquinas uses Double-Effect Reasoning in his
discussion of scandal\textsuperscript{80} and adorning dress.\textsuperscript{81} Commentators on Aquinas develop divergent interpretations of the Principle of Double Effect.

\textbf{ii. Antoninus to Gury}

The second subsection of this paper follows the development of the Principle of Double Effect through the commentaries of theologians that follow Aquinas up to Jean Pierre Gury. The analysis begins with Antoninus’s development of Double-Effect Reasoning concerning scandal and alluring dress in his \textit{Summa Theologica Moralis}.\textsuperscript{82} Following Joseph T. Mangan’s influential analysis of the Principle of Double Effect, “An Historical Analysis of the Principle of Double Effect,”\textsuperscript{83} I consider Cajetan’s contribution.\textsuperscript{84} The Dominican Vitoria restricts Aquinas’s understanding of intention in the passage pertaining to killing in self-defense, contradicting the broad interpretation of intention that includes the proximate end—Object of the Act—as well as the ultimate end.\textsuperscript{85} Suarez neglects any discussion of the proximate end altogether.\textsuperscript{86} J. Ghoos, in “L’Act a Double Effet \textae{}tude de Théologie Positive,” holds that John of Saint Thomas is the first to put the Principle of Double Effect into its modern form.\textsuperscript{87} Many of the adaptations in the Principle of Double Effect from the Thomistic commentators influence Gury’s formulation.

\textbf{iii. Jean Pierre Gury}

Jean Pierre Gury, in his \textit{Compendium theologiae moralis} is the first to apply the Principle of Double Effect to the rest of moral theology.\textsuperscript{88} Christopher Kaczor observes that for Aquinas the proportionality criterion consists of weighing acts, while for Gury it involves weighing effects.\textsuperscript{89} This demonstrates the casuistic devolution of the Principle of Double Effect up to Gury. Proportionalists such as Peter Knauer adopt Gury’s formulation of the Principle of Double Effect.

\textbf{iv. Peter Knauer}
The final section analyzes Peter Knauer’s use of the Principle of Double Effect in “The Hermeneutic Function of the Principle of Double Effect.” In accord with the casuistic formulation of Gury, Knauer understands the proportion criteria to involve weighing effects. In addition, however, Knauer understands the proximate end to be the effect, that is, the ultimate end. To justify an action which causes a negative effect, one must have “commensurate reason.” John Paul II, in Veritatis Splendor rejects the proportionalistic articulation of the Object of the Act. In part, this motivates ethicists to formulate non-consequentialist versions of the Principle of Double Effect, which the following section explores.

3B. Contemporary Formulations of the Principle of Double Effect

This section analyzes the use of the Principle of Double Effect by contemporary ethicists.

i. Finnis, Grisez, and Boyle: Defending Craniotomy

a. Eight Cases that Illustrate Intention

John Finnis, Germain Grisez, and Joseph Boyle, in “‘Direct’ and ‘indirect’: A Reply to Critics of Our Action Theory,” offer eight cases that illustrate the complexity of the first-person perspective of action in their action theory. These eight examples highlight the distinct roles of intention regarding the first person perspective, notwithstanding the tendency to conflate its role in ethics and law, especially under the influence of Jeremy Bentham. Moreover, these examples highlight errors in the precise formulation of the Object of the Act, the first criteria for the Principle of Double Effect.

b. Perspective of the Acting Person

Finnis, in Aquinas: Moral, Political and Legal Theory, demonstrates the distinction that Aquinas highlights in his On Evil between the broad and narrow sense of intention. Broadly speaking, intention includes the Object of the Act, which one can only know from the
perspective of the acting person. In accord with Augustine in his *Contra mendacium*, Finnis, in *Moral Absolutes: Tradition, Revision, and Truth* contends that exceptionless moral norms do exist that one ought never to violate.

c. Debunking Unsound Arguments against Craniotomies

Finnis et al. reject seven unsound arguments against craniotomies that reduce morality to cause-effect reasoning. Put another way, these arguments reduce the *genus moris* to the *genus naturae*. In addition, they reaffirm their acceptance of the Church’s prohibition against direct killing.

d. Defending Craniotomies

Finnis et al., reject Kevin F. Flannery’s argument that the means of a craniotomy contains the death of a child. In addition, they refute Jean Porter’s argument in “‘Direct’ and ‘Indirect’ in Grisez’s Moral Theory,” that their theory depends on the indivisibility of performance. The physical circumstances of an act, including its consequences are not negligible to the determination of the Object of the Act. The following subsection accounts for this without relegating the derivation of the Object of the Act to the physical.

ii. A Thomistic Response to Finnis, Grisez, and Boyle

Cavanaugh argues that Finnis et al.’s argument relegates moral decision making to the conceptual. For Cavanaugh one communicates intention not only by words, but actions as well. Duarte Sousa Lara, in “Aquinas on Interior and Exterior Acts: Clarifying a Key Aspect of His Action Theory,” articulates a distinction within the exterior act that accounts for the connection between the physical act and that which the agent chooses, the latter corresponding to the Object of the Act. Another way to distinguish the physical from the moral is the distinction between intending and foreseeing.
iii. Intended and Foreseen in T. A. Cavanaugh

a. Double-Effect Terminology

Although several formulations of the Principle of Double Effect exist to distinguish what one intends versus what one does not intend, Cavanaugh contends that the intended and foreseen distinction is the best, because it they avoid confusions that others do not.\(^{108}\)

b. Intention/Foreseen Distinction

For Cavanaugh, it is impossible to conceive of certain actions without an evil intention, for example euthanasia, terror bombing, and craniotomies.\(^ {109}\) To determine intent for actions that do not necessarily include an evil intent, James Sterba recommends asking if the foreseen negative effect helps explain why one is choosing a particular action, thus connecting intention to the Object of the Act.\(^ {110}\) Following the distinction that G. E. M. Anscombe makes between practical and speculative knowledge,\(^ {111}\) Cavanaugh holds that intention is practical, while foreseen effects are speculative.\(^ {112}\) The following subsections apply the intending/foreseeing distinction to concrete ethical dilemmas, beginning with the distinction between euthanasia and terminal sedation.

iv. Euthanasia Versus Terminal Sedation

a. The Catholic Church: Euthanasia and Terminal Sedation

Ethicists often use the Principle of Double Effect to differentiate in health care ethics between euthanasia and terminal sedation. In *Declaration on Euthanasia*, the Congregation for the Doctrine of the Faith condemns intentionally killing another person by an act of omission or commission to relieve pain or suffering.\(^ {113}\) At the same time, the Church acknowledges that circumstances exist where pain relievers that medical clinicians use to treat pain, foreseeably, but unintentionally, expedite the dying process by depressing the respiratory system.\(^ {114}\) More current
research indicates that when done properly, continuous, deep sedation does not shorten life. Insofar as the Church prefers for patients to be awake to spiritually prepare for death, Double Effect justifies sedation when the patient experiences great distress.

b. Joseph Boyle: Euthanasia and Terminal Sedation

In “On Killing and Letting Die,” Joseph M. Boyle, Jr. formulates an argument defending the moral distinction attributable to the Object of the Act and the Principle of Double Effect between killing and letting die. Boyle rejects claims by Michael Tooley in “A Defense of Abortion and Infanticide,” that there is no moral distinction between killing and letting die, insisting that the distinction centers on intention. When killing in euthanasia, one intends the death of the person to relieve pain, whereas by allowing one to die, one does not necessarily intend the person’s death, even if one foresees it.

c. Intention/Foreseen Distinction: Euthanasia and Terminal Sedation

Using the intention/foreseen distinction, Cavanaugh emphasizes that in euthanasia, the physician chooses the death of the patient as a means to relieving pain. Relieving the patient’s pain does not suffice—as it does in terminal sedation. Thus, in euthanasia, the Object of the Act is murder, whereas in terminal sedation it is relieving pain. The following subsection highlights the connection between circumstances (including consequences) for the Object of the Act.

v. Hysterectomy Versus Craniotomy

a. Direct Killing in Abortion

The Church clearly prohibits direct abortion, that is, killing an unborn child either as a means or an end to one’s action. At the same time, circumstances arise where, for proportionate reasons, a physician may perform an indirect abortion, for example by performing
a hysterectomy on a woman with a gravid cancerous uterus. This is a classic application of the Principle of Double Effect.

b. Defending Craniotomies

According to four criteria, Grisez and Boyle argue that craniotomies do not constitute direct killing. This position, they argue is consistent with that of H. L. A. Hart’s. Cavanaugh asserts that Boyle and Grisez so narrowly define craniotomy that it excludes the death of a child, however, R. A. Duff insists that it is impossible to define craniotomy without the death of a child.

c. Craniotomies and Hysterectomies

Using the Intention/Foreseen distinction, Cavanaugh holds that the craniotomy, unlike the hysterectomy of a gravid cancerous uterus, inexorably entails the death of the child, which means that one cannot avoid intending the death of the child by intentionally performing a craniotomy. Thus, Cavanaugh objects to their narrow, conceptual definition of the Object of the Act for a craniotomy. The distinction between terror bombing provides another opportunity to clarify the distinction between intending/foreseeing.

vi. Terror Bombing Versus Tactical Bombing

a. Traditional Just War Theory

Here, I explicate the criteria for just war theory according to James F. Childress in “Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria,” which has recourse to the Principle of Double Effect to justify collateral damage.

b. Just War, Terrorism and Nuclear Deterrence

Finnis et al., in Nuclear Deterrence, Morality and Realism argue that the United States ought to abandon the nuclear arms proliferation race for the common good of the people of the
Soviet Union, even though they are not likely to reciprocate. This is because deterrence involves the retaliatory killing of innocent civilians, which violates an exceptionless moral norm, the Object of the Act of mass murder.

\[\text {c. Terror Bombing and Tactical Bombing}\]

Cavanaugh uses the intention/foreseen distinction to further highlight the immorality of terror bombing in contrast to discriminate tactical bombing. The terror bomber intends to maim civilians as a means to achieving the end of victory, whereas the tactical bomber destroys an enemy’s ability to wage war by strategically targeting combat installations, foreseeing, but not intending to harm non-combatants. Thus, the Principle of Double Effect justifies the unintended, yet foreseen death of non-combatants.

The preceding chapters provide a theoretical foundation in Catholic moral method to discuss applied topics emerging in health care ethics, which in turn further elucidate the abovementioned theory. The next chapter examines the ethical principles that guide health care ethics consultations. Then, it correlates the implications of this chapter’s definition of the Principle of Double Effect with the similar Principle of Cooperation.

CHAPTER FOUR – HEALTH CARE ETHICS CONSULTATIONS AND COOPERATION

Chapters five and six of this dissertation apply the normative theory discussed in chapters two and three. This chapter provides a procedural bridge between the normative and applied chapters. The discussion concerning health care ethics consultations explains the procedure or process of decision making that connects theory to application. Although normative, given its link to the Principle of Double Effect, the Principle of Cooperation analogously applies theory to practice, providing an opportunity for organizations with conflicting missions to work together.

4A. Health Care Ethics Consultations
This section evaluates the ethical method that guides health care ethics consultations.

i. Health Care Ethics Consultations

In accord with the American Society for Bioethics and Humanities$^{132}$ and the Veterans Health Administration,$^{133}$ this subsection delineates health care ethics consultations that are case based and non-case based. American Society for Bioethics and Humanities advocates a facilitation approach to health care ethics consultations, since it empowers people to act on well-articulated values.$^{134}$ The size and nature of the health care ethics consultations depends on various factors that I further articulate here.$^{135}$

a. Proficiencies

American Society for Bioethics and Humanities and the Veterans Health Administration provide proficiencies, which I enunciate here.$^{136}$ These consist of knowledge, skills, and attributes.$^{137}$

b. Veterans Health Administration

This subsubsection first elucidates practical skills for leading health care ethics consultations according to the American Society for Bioethics and Humanities.$^{138}$ Next, it explains the Veterans Health Administration approach for leading ethics consultations.$^{139}$ I use Albert R. Jonsen et al.’s *Clinical Ethics: A Practical Approach to Ethical Decisions in Clinical Medicine* to illuminate the Veterans Health Administration’s approach.$^{140}$ The next subsection explores the moral method of principlism that is foundational for health care ethics consultations and its implications for Catholic health care.

ii. Principles and Topics for Health Care Ethics Consultations
This subsection uses Tom L. Beauchamp and James F. Childress’s book *Principles of Biomedical Ethics* and Jonsen et al.’s above mentioned text to explicate the four foundational principles of health care ethics: autonomy, beneficence, non-maleficence, and justice.

**a. Autonomy**

For Beauchamp et al., autonomy consists of liberty and agency. I discuss three concepts that depend on autonomy: competence, informed consent, and confidentiality.

**b. Non-Maleficence and Beneficence**

Beauchamp et al., offer four norms that proceed from the two principles of non-maleficence—do no harm—corresponds to beneficence—act helpfully, which I elucidate in this subsection. Questions relating to quality of life, associated with non-maleficence, sometimes lead to support for euthanasia. Following May, I explain the anthropology that underlies such reasoning and defend the Congregation for the Doctrine of the Faith’s prohibition against euthanasia.

**c. Justice**

In this subsection, I discuss four rules that Beauchamp et al. correlates with beneficence; which inexorably relates to justice. Next, I elucidate ten questions pertaining to justice. Having discussed the correlation between principles of health care ethics and the moral method of Catholic health care ethics, the following section discusses the principle of cooperation, which helps ethicists in establishing health care alliances.

**4B. Principle of Cooperation**

This section explicates the role of the Principle of Cooperation for Catholic health care ethics.

**i. Principle of Cooperation**
a. Cooperation and Double Effect

Ethicists often highlight the similarities between the Principle of Double Effect and the Principle of Cooperation.\textsuperscript{149} Traditional formulations of the Principle of Double Effect have four or five conditions that correspond to similar conditions in the Principle of Cooperation.\textsuperscript{150} Beginning with Alphonsus Liguori’s articulation, this section outlines the parallels between the two principles.\textsuperscript{151} Just as one’s understanding of the Natural Law and the Object of the Act influence one’s construct of the Principle of Double Effect, so they affect how one uses the Principle of Cooperation.

ii. Cooperation and Sterilization

a. Sterilization

In the face of pressure to perform procedures such as sterilizations and abortions, which the Church argues violates exceptionless moral norms,\textsuperscript{152} that is, an immoral Object of the Act, they use the Principle of Cooperation to delineate degrees of cooperation.\textsuperscript{153} This subsection traces this history of the Church’s use of the Principle of Cooperation to address cooperation with institutions that perform sterilizations.

b. The United States Bishops’ and Cooperation

This subsection explores the development of United States bishops’ use of the Principle of Cooperation, in particular, in the various editions of the \textit{Ethical and Religious Directives for Catholic Health Care Services}.\textsuperscript{154} In particular, I use Kevin O’Rourke’s insightful article to shed light on the changes that occur in the Ethical and Religious Directives.\textsuperscript{155}

c. The Object of the Cooperator

O’Rourke contends that the Congregation for the Doctrine of the Faith finds fault with the United States bishops’ formulation of Cooperation.\textsuperscript{156} I contend that this is because they fail
to maintain the distinction between the Object of the Act of the cooperator and that of the principal agent. Peter J. Cataldo in “Models of Health Care Collaboration” offers four characteristics for licit collaboration between Catholic and non-Catholic health care entities, which I also elucidate.\textsuperscript{157}

d) The United States 2018 Articulation of Cooperation

This subsubsection discusses the changes to the Unites States Bishops’ sixth edition of the Ethical and Religious Directives in which they articulate a less consequentialist version of Cooperation.\textsuperscript{158} The following subsection demonstrates that a consequentialist definition of the Object of the Act makes it difficult to maintain the difference between the Object of the cooperator and that of the principal agent. Moreover, the Principle of Appropriation further clarifies this difference.

iii. Contemporary Contributions to Cooperation

a. Rejecting the ‘No Difference Argument’

Christopher Kutz, in \textit{Complicity: Ethics and Law for a Collective Age} demonstrates how consequentialists’ emphasis on outcome results in problematic dilemmas,\textsuperscript{159} which Luke Gormally calls the “‘no difference’ argument.”\textsuperscript{160} This subsection reveals the connection this has to the Principle of Cooperation.

b. M. Cathleen Kaveny’s Appropriation of Evil

In “Appropriation of Evil: Cooperation’s Mirror Image,” M. Cathleen Kaveny argues for a mirror principle to the Principle of Cooperation, appropriation of evil, what I call the Principle of Appropriation.\textsuperscript{161} This subsection unveils the connection between the two principles.

c. Double Effect and Appropriation
Just as a tenuous parallel exists between the Principle of Double Effect and the Principle of Cooperation, so one exists between the Principle of Double Effect and the Principle of Appropriation.\textsuperscript{162} This subsection highlights the connection between the two.

\textit{d. Appropriation and Fetal Tissue Remains of Elective Abortion}

The United States Bishops forbid material cooperation in abortion.\textsuperscript{163} In accord with Kaveny’s contention, I demonstrate that the Principle of Appropriation proscribes appropriation of aborted fetuses for research.\textsuperscript{164} Having discussed health care ethics consultations and the Principle of Cooperation, the next chapter analyzes two other applied topics: oophorectomies and emergency contraception.

CHAPTER FIVE – OOPHORECTOMIES AND EMERGENCY CONTRACEPTION

This chapter uses Natural Law, the Object of the Act and the Principle of Double Effect to justify procedures that physically-defined are sterilizing and contraceptive, respectively.

\textbf{5A. Risk Reducing Bilateral Salpingo-oophorectomies}

This section applies the above-mentioned moral method to a prophylactic procedure to prevent cancer in women that foreseeably renders them sterile.

\textbf{i. Clinical Explanation}

\textit{a. Discovering BRCA1 and BRCA2}

Both BRCA1 and BRCA2 are tumor suppressor genes, some mutations of which significantly increase one’s risk for developing breast, ovarian, or prostate cancer.\textsuperscript{165} This subsection explores the milestones in research that lead to the discovery of these genes, especially highlighting the work of Mary-Claire King.\textsuperscript{166}

\textit{b. Cancer Inhibition}
Especially using Kiyotsugu Yoshida and Yoshio Miki review article, “Role of BRCA1 and BRCA2 as Regulators of DNA Repair, Transcription, and Cell Cycle in Response to DNA Damage,” I elaborate on the respective roles that BRCA1 and BRCA2 play in DNA repair, transcriptional response to DNA damage and cell cycle checkpointing.\(^\text{167}\)

c. **Prophylactic Treatments**

55 to 65 percent of women with a deleterious BRCA1 mutation and 45 percent of women with a harmful BRCA2 mutation develop breast cancer by the age of 70,\(^\text{168}\) 39 percent of women who inherit the BRCA1 mutation and 11 to 17 percent of women who inherit the BRCA2 mutation develop ovarian cancer by the age of 70.\(^\text{169}\) This subsection discusses the risks and benefits of risk-reducing bilateral mastectomies and risk-reducing bilateral salpingo-oophorectomies—the removal of the ovaries and Fallopian tubes.\(^\text{170}\) Having an accurate understanding of the physical circumstances that concern this ethical decision, the discussion focuses on the moral method, especially focusing on the Principle of Double Effect and the Object of the Act.

**ii. Double-Effect Reasoning**

a. **Totality**

Despite the Church’s teaching against sterilization,\(^\text{171}\) this subsection demonstrates that the Principle of Totality, which Aquinas first articulates in the *Summa Theologica*,\(^\text{172}\) and Pius XII further develops,\(^\text{173}\) justifies the use of bilateral salpingo-oophorectomies for BRCA1 and 2 mutation carriers.

b. **Double-Effect Reasoning**

This subsection discusses Aquinas’s use of Double-Effect Reasoning in the *Summa Theologica*,\(^\text{174}\) with particular focus on the broad meaning of intention that Finnis attributes to
his articulation. In addition, this subsection further elucidates a non-consequentialist understanding of *praeter intentionem* for the Principle of Double Effect.

c. Object of the Act

With a clear understanding of the distinction between the proximate end and the ulterior end, I delineate the precise Object of the Act of using bilateral salpingo-oophorectomies for BRCA mutation carriers. In particular, I emphasize the importance of maintaining the distinction between the *genus moris* and the *genus naturae*, which is important because the latter does not differ for an act of sterilization. Keeping the Object of the Act in the *genus moris* enables one to differentiate the foreseen physical act which sterilizes from the intentional moral act that prevents cancer. The following subsection raises other ethical issues that concern this topic.

iii. Health Care Ethics Consultations

a. Genetic Testing

Antonella Surbone, in “Social and Ethical Implications of BRCA Testing,” defines genetic testing as “any analysis to detect genotypes, genetic mutations or chromosomal changes, not including analysis of proteins or metabolites directly related to a manifest disease,” which can lead to genetic exceptionalism, that is, treating patients with genetic disorders differently than patients with other diseases. This subsection highlights the complexity of identifying mutations, but also the implications of those mutations for patients.

b. Genetic Discrimination

Some women are reluctant to get genetic testing, not only because of the ambiguity regarding results, but also because of fear of discrimination by insurance companies or health care providers. This subsection discusses this dilemma in greater detail including the implications of the 2008 Genetic Information Non-discrimination Act.
c. Confidentiality

In the United States, the Health Insurance Portability and Accountability Act of 1996 delimits confidentiality in healthcare.\textsuperscript{180} This subsection weighs the principles of confidentiality against that of non-maleficence, especially concerning implications for family members that may share genetic similarities.\textsuperscript{181} This subsection highlights ethical concerns that genetically-based prophylactic procedures raise. The following subsection demonstrates the difference between contraception and this risk reducing procedure.

iv. Catholic Health Care Policy

a. Prohibiting Sterilization

Although bilateral salpingo-oophorectomies for BRCA mutation carriers renders patients sterile, the Object of the Act and the purpose are distinctly different from a contraceptive choice. In accord with Rhonheimer’s definition of contraception,\textsuperscript{182} this subsection defines the Object the Act of using bilateral salpingo-oophorectomies for BRCA mutation carriers as unique.

b. Non-BRCA Mutation Carriers

Although some ethicists advocate for bilateral salpingo-oophorectomies for non-BRCA mutation carriers,\textsuperscript{183} I concur with the National Catholic Bioethics Center that the situation does not warrant such practice,\textsuperscript{184} since this is not medically indicated.\textsuperscript{185} The prophylactic procedure discussed in this chapter needs recourse to the Principle of Double Effect, because it must justify the negative effect of sterilization; however, the following section discusses the use of emergency contraception to prevent conception after sexual assault. A non-consequentialist definition of the Object of the Act does not need further recourse to the Principle of Double Effect.

5B. Emergency Contraceptive for Victims of Sexual Assault
The United States Conference of Catholic Bishops, in the Ethical and Religious Directives assert that women have the right to defend themselves from conception in cases of sexual assault. Because of the Church’s strict prohibition of abortion, which begins from the moment of fertilization, the United States Bishops insists that the method must not remove, destroy, or interfere with a conceptus.

i. Clinical Analysis

a. Menstrual-Ovulatory Cycle

Contraceptives interfere with the menstrual-ovulatory cycle, thereby preventing conception from occurring. This subsection explores the complex physiology of this cycle to better understand the impact that contraceptives have on it. In particular, it follows the articulation that Marc A. Fritz and Leon Speroff provide in Clinical Gynecologic Endocrinology and Infertility, 8th edition.

b. Physiology of Contraceptives

This subsection explicates the mechanism of action for commonly prescribed emergency contraceptives, including copper intrauterine device, oral contraceptive pills combining estrogen and progestin, ulipristal acetate, and progestin-only levonorgestrel. In particular, it highlights controversy over the precise mechanism of action for levonorgestrel and its ethical implications.

ii. Principle of Double Effect

a. Object of the Act

This subsection defines the object of the act from a non-consequentialist perspective as the proximate end, formulated by practical reason, thus of the genus moris, which the will chooses (electio). This subsection delves deeply into the development of Aquinas’s
understanding regarding the role of the will in action, especially as it relates to intending (intentio) and choosing.  

b. Nominalism, Manualism, and Proportionalism

This subsection reveals the impact that William of Ockham’s nominalism has on manualism and proportionalism. In particular, it highlights the extrinsic nature of morality for them.  

c. The Object: Contraception and Self-Defense

In accord with Rhonheimer’s non-consequentialist definition of the Object of the Act of contraception, this subsection defines the use of emergency contraception as an act of self-defense, which he articulates in Ethics of Procreation. 

d. Genus Moris

A consequentialist articulation of the object of the act, which conflates the genus moris with the genus naturae gives the impression that one must use the Principle of Double Effect to justify emergency contraception to defend against sexual assault. However, as I demonstrate in this subsection, a non-consequentialist description of the object of the act precludes the necessity of recourse to the Principle of Double Effect. The following chapter discusses two other topics that ethicists use the Principle of Double Effect to justify.

CHAPTER SIX – SEX REASSIGNMENT SURGERY AND CONTRACEPTION

This chapter discusses the application of the Principle of Double Effect to two procedures that render the patient sterile or infertile. In both cases the intention is not to sterilize; however, this constitutes an unintended, yet foreseen consequence.

6A. Sex Reassignment Surgery for Gender Dysphoria
Some ethicists argue that the Principle of Double Effect and the Principle of Totality and Integrity justify the use of sex reassignment surgery in patients diagnosed with gender dysphoria. In accord with Church teaching, I argue against gender ideology and sex reassignment therapies.

i. Sex, Gender, and Gender Dysphoria

This first subsection uses contemporary medical literature to define sex, gender, gender dysphoria, and sex reassignment therapies.

a. Defining Sex

Defining sex biologically as male or female is not as easy as it may at first appear. In accord with the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition*, I analyze the physiological criteria that define sex, including: genetic, gonadal, ductal, and phenotypic or genital. In addition, I explicate the variety of intersex conditions.

b. Defining Gender

In this subsection, I enunciate the definition of gender. In addition, I discuss the social constructionist origins of gender ideology, first attributable to Simon de Bouvoir, Ann Oakley, Suzaane J. Kessler and Wendy McKenna, Gayle Rubin and Judith Butler.

c. Gender Dysphoria

Here, I reveal the evolution of the concept of gender dysphoria, especially as the *Diagnostic and Statistical Manual of Mental Disorders, 4th Edition* and *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition* articulate it.

d. Sex Reassignment Therapies

Some advocate for sex reassignment therapies to address gender dysphoria. This subsection briefly expounds on these treatment options. The definitions in this subsection
contrasts with the medical, philosophical, and theological positions of Catholic health care that the following subsection explains.

**ii. Objections to Sex Reassignment Therapies**

United States Conference of Catholic Bishops’ Committee on Doctrine objects to sex reassignment therapies on three grounds that I explicate further in this section: medical, philosophical, and theological.²⁰⁹

*a. Medical*

Lawrence S. Mayer and Paul R. McHugh in “Gender Identity” examine scientific research and find little to no evidence that medical procedures to change gender have any psychological benefit.²¹⁰ They contest the plasticity of gender that social constructionists advocate. At the same time, they counter contradictory arguments that suggest gender is biological. Carl Elliott in “A New Way to Be Mad,” finds similarities between body dysmorphic disorder and gender dysphoria.²¹¹

*b. Philosophical*

In this subsection, I attribute the ideology of gender to three philosophical trends that I expound: anthropological dualism, physicalistic determinism, and existential voluntarism. Anthropological dualism I connect with Rene Descartes’ “Cogito, ergo sum.”²¹² Physicalistic determinism I attribute to British Empiricism.²¹³ Existential voluntarism I link to Scotus,²¹⁴ Schopenhauer,²¹⁵ and Nietzsche.²¹⁶

*c. Theological*

Contrary to Enlightenment philosophy, Christian anthropology presumes ontological and epistemic realism. This subsection articulates Christian anthropology with the presumption that the human person is a substantial unity of body and soul.²¹⁷ At the same time, it avoids
essentialism, which contends that sexual difference abides in the soul. The illumination of Catholic medicine, philosophy, and theology informs its objection to the use of the Principle of Totality or the Principle of Double Effect to justify sex reassignment therapies.

iii. Totality and Double Effect

a. The Principle of Totality and Integrity

Becket Gremmels argues in “Sex Reassignment Surgery and the Catholic Moral Tradition: Insight from Pope Pius XII on the Principle of Totality,” that one struggling with gender dysphoria may meet the three criteria for the Principle of Totality and Integrity that Pius XII proposes to justify sex reassignment surgery. In this subsection, I elucidate Pius XII’s version of the Principle of Totality and Integrity, and contend with John Brehany that Totality does not justify sex reassignment surgery.

b. Principle of Double Effect

Carol Bayley, in “Transgender Persons and Catholic Healthcare,” argues that the Principle of Double Effect justifies the use of sex reassignment surgery in persons with gender dysphoria. After articulating the Object of the Act of sex reassignment surgery for gender dysphoria I demonstrate how it is contrary to Catholic anthropology. It is not merely because sex reassignment surgery renders the person sterile that Catholic ethicists object to its use, but because it contradicts the Christian understanding of the sexual human person. The following section discusses the use of another physically contraceptive procedure.

6B. Non-Contraceptive Benefits of Contraceptives

This section analyzes the ethical use of physically contraceptive methods for non-contraceptive benefits.

i. Clinical Analysis
a. **Intrauterine Devices as a Contraceptive**

This subsubsection begins by providing the historical development of intrauterine devices,\(^2\) including stem pessaries, metallic rings,\(^3\) copper intrauterine devices,\(^4\) and the levonorgestrel-releasing intrauterine system, marketed as Mirena® and manufactured by Schering-Oy.\(^5\)

b. **Long-Acting Contraceptives**

There are two unique long-acting contraceptives available for market in the United States: implants and depot-medroxyprogesterone (Depo-Provera).\(^6\) In this subsubsection, I discuss the history and contraceptive mechanism of these two contraceptives.

c. **Non-Contraceptive Benefits of Contraceptives**

In this subsubsection, I discuss the non-contraceptive side effects of both intrauterine devices and long-acting contraceptives. In particular, I focus on their use to treat endometriosis\(^7\) and abnormal uterine bleeding.\(^8\) Having an awareness of the physical circumstances of the act, the next subsection explores the Moral Object of the Act of contraception.

ii. **Object**

a. **Contraception, Casti Cannubii and the Manualist**

This subsubsection briefly outlines the historical development of the Church’s precarious relationship with contraception.\(^9\) In particular, it demonstrates the physicalistic definition of the Object of the Act according to Jean Pierre Gury,\(^0\) which influences the rejection of contraception in Pius XI *Casti Cannubii*.\(^1\)

b. **Proportionalistic Reformation of the Moral Object**
Here I demonstrate the methodological continuity between the manualists and the proportionalists in such authors as Louis Janssens\(^{233}\) and Peter Knauer.\(^{234}\) More precisely, their physical definition of the Object of the Act.

c. *Keeping the Object of the Act in the Genus Naturae*

In this subsubsection, I demonstrate how the action theory of Finnis\(^{235}\) and Rhonheimer,\(^{236}\) true to Aquinas, keeps the Object of the Act in the *genus moris*, which is not derivable from the *genus naturae*, thereby avoiding the Naturalistic Fallacy. This is contrary not only to the action theory of the proportionalists, but Ralph McInerny as well.\(^{237}\)

d. *The Object of Contraception*

In accord with Aquinas, Rhonheimer contends that Paul VI presumes that the Object of the Act of contraception is in the *genus moris*.\(^{238}\) At the same time, insofar as it constitutes an intrinsically evil act, it violates the norm of Natural Law, the Inseparability Principle.\(^{239}\) Situating his definition of the Object of the Act of contraception in the context of virtue, Rhonheimer describes it as a circumvention of chastity.\(^{240}\)

e. *The Object of Using Contraceptives for Non-Contraceptive Benefits*

Since the Object of the Act exists on the moral order, not the physical order, one must take the first-person perspective to determine what the person chooses in using a contraceptive method. It is possible to formulate a practical syllogism that includes the choice to use a contraceptive for non-contraceptive benefits.\(^{241}\) Although using contraceptives for non-contraceptive benefits does not constitute an immoral Object of the Act, it does have at least one evil consequence—infertility—which necessitates recourse to the Principle of Double Effect.

iii. *Principle of Double Effect*

a. *Thomistic Formulation of Double-Effect Reasoning*
This subsubsection articulates a non-consequentialist formulation of the Principle of Double Effect. Even if one cannot rule the use of contraceptives for non-contraceptive benefits, it may still be possible to rule out its use based on the disproportionate evil associated with such a choice.

b. Intention

The first-person perspective of intention gives clarity not only to the Object of the Act, but also the ulterior end, that is, the reason why one chooses a particular act. This section highlights the importance of not only having an ethically sound intention concerning the proximate end of the act, but also concerning the ulterior end.

c. Proportionality and Abortifacient Risk

Grisez weighs the non-contraceptive benefits of contraceptives against the injustice of abortifacient activity consequent to an embryo should breakthrough ovulation and conception occur. Although some authors conclude that levonorgestrel-releasing intrauterine systems definitely do not have abortifacient properties, Edward Furton demonstrates that this debate remains open. Thus, Grisez concludes that one must have a very serious reason to choose a contraceptive for non-contraceptive benefits. A contraceptive that acts as an abortifacient is likely disproportionate to the benefit, however, one that does not act as an abortifacient is proportionate. The two preceding chapters apply the aforementioned moral method for Catholic health care ethics.

CHAPTER SEVEN – CONCLUSION

This chapter is a brief summary of the implications of the abovementioned theory and application.
46 John Paul II, *Veritatis Splendor*, 12, 42.


64 Finnis, *Fundamentals of Ethics*, 118.


68 John Paul II, *Veritatis Splendor*.


72 Pius XI, *Casti Connubii*, (December 31, 1930), https://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19301231_casti-connubii.pdf, 53-7


Rhonheimer, Ethics of Procreation, 83.

Rhonheimer, Ethics of Procreation, 99ff.

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CHAPTER TWO – NATURAL LAW AND THE MORAL OBJECT

This chapter analyzes the concepts of Natural Law and the Moral Object of the Act that Aquinas provides a comprehensive and systematic formulation of in his *Summa Theologica*. Each section focuses on the scholarship of two contemporary ethicists—John Finnis and Martin Rhonheimer.

2A: Natural Law

Thomas Aquinas articulates his understanding of Natural Law in the context of his discussion of law itself, which he identifies as a measure and rule of reason. Unlike the laws of nature, which constitute a passive participation in the eternal law of God, Natural Law properly speaking involves an active participation of the human person in formulating norms according to practical reason. Since the human person formulates the dictates of Natural Law, one must adequately account for the distinct aspects of human nature, without over or underemphasizing the physical or spiritual dimension. Thus, an adequate account avoids the pitfalls of either physicalism or spiritualism.

This section articulates Finnis and Rhonheimer’s interpretation of Aquinas’s Natural Law avoiding the abovementioned pitfalls. The first subsection describes the various components of Natural Law. The second addresses the Naturalistic Fallacy, which presumes that the *genus moris* derives from the *genus naturae*. The third subsection highlights the uniquely personal dimension of Natural Law, without falling into spiritualism. Finally, the last subsection illustrates the contribution that such a deep understanding of Natural Law makes to the controversial prohibition of contraception.
i. Natural Law

For Rhonheimer, it is essential to maintain the distinction between the concrete working of practical reason and one’s reflection upon it, which constitutes moral philosophy.\(^2\) Natural Law does not first consist of normative statements that one discovers and then applies to one’s life.\(^3\) Rather, first, on the level of action, one follows precepts in accord with or conceived of by practical reason.\(^4\) Afterwards, or even in the midst of the whole complex process of acting through practical reasoning, one may reflect upon this and formulate so-called ought statements.\(^5\) The reflection on the process of practical reasoning is not practical in nature itself, but theoretical or speculative.\(^6\) At the same time, one may apply the product of one’s theoretical reflection—which Rhonheimer identifies with the activity of moral philosophy—to practical decision making.\(^7\) In this sense, the prescriptive formulations of moral philosophy become practical insofar as they guide one’s conscience in practical matters.\(^8\)

a. Law

Aquinas discusses Natural Law in the context of law.\(^9\) Law relates to the dictates of reason.\(^10\) In fact, laws are the measure and rule of action.\(^11\) Insofar as the word law originates from *ligare*, which means to bind, it conveys the notion of compelling action.\(^12\) In other words, laws govern action. Aquinas relates this concept of reason to human nature, insisting that it directs one to his or her end or ends.\(^13\) Rhonheimer, following Aquinas, understands law to be the ordering of reason to action.\(^14\) Moreover, Aquinas understands law to be a proposition (*propositio*), not however in the theoretical sense, but in the logical sense insofar as it constitutes a judgment, rather than a statement, therefore, leading to a command or precept (*praeceptum*).\(^15\) In addition, law is not merely a judgment, but also constitutes a dictate of reason (*dictamen rationis*).\(^16\) Ultimately, for Rhonheimer, the precept of reason is an act of the will expressed not
in word, but action. Only in reflection on practical reason in act is one able to formulate theoretically a normative statement in words. For Rhonheimer, it is only with this distinction between theoretical and practical in mind that one can understand properly Aquinas’s statement: “the Natural Law is something constituted by reason, just as the propositio is a work of the reason.” With this important distinction in mind, one avoids the tendency toward spiritualistic dualism or the Naturalistic Fallacy.

Aquinas distinguishes between law that is essential and law that is by participation. Essential law constitutes reason alone, while law by participation is that which the law measures and rules. Put another way, law may be understood from two perspectives: the one ruling and the one whom the law measures and rules. Law is a work of reason, so strictly speaking, wherever reason does not exist law does not exist, except by similarity. Therefore, the law of reason acts upon irrational beings—inanimate and animate—insofar as behavior is in accord with reason. In this sense, they participate in the law.

Having established that law is an ordinance of reason, Aquinas further relates it to the common good. Just as every part relates to the whole in a body, so all the laws relate to the common good. For Aquinas, the common good is the common end of humanity, which is eternal happiness. In addition, legitimate authority must promulgate law. Legitimate authority constitutes one that has the common good of all in mind, whether a single person or a conglomerate of leaders. Authority must promulgate, that is, make the law known, otherwise it has no binding force.

b. Eternal Law and Natural Law

Natural Law is the eternal law of God written on the heart of each human person. Insofar as legitimate authority promulgates law, God, as the provident ruler of the universe
governs through the divine reason. The eternal, divine law is not distinct from God, because it has no other end than God. Insofar as all things have their origin in God, they participate in the eternal law of God. In other words, all creatures receive the eternal law insofar as the divine reason is a measure and rule for them. Humans, however, participate in the divine law in an even more excellent way insofar as they have a share in the providential role of God. The divine law not only measures and rules people like it does for all other creatures, but human persons also have a role in measuring and ruling.

Finnis explicates Aquinas’s understanding of participatio in his Natural Law and Natural Rights. Finnis explains that Aquinas means two things: one causality and similarity. Something causes a similar quality in one being when it has that quality in a more excellent and less dependent way. To illustrate, Finnis explains that humans have intelligence that is far inferior to what may be understood as a more superior and perfect intelligence in the separate intellect of God. As light illuminates the act of seeing, so the divine intellect illuminates the human intellect in understanding. As such, the divine law does not merely measure and rule humans as it does irrational creatures, but just as God measures and rules creatures according to the divine law, so humans in a less perfect way measure and rule nature according to Natural Law, which constitutes a quality of similarity to the divine law and caused by it.

c. Self-Evidence of Practical Reason

The first principle of practical reason is like the first principle of metaphysics insofar as it is self-evident truth. The statement itself suffices to demonstrate that it is true. R. A. Armstrong in Primary and Secondary Precepts in Thomistic Natural Law Teaching identifies what Aquinas means by self-evident. First, Armstrong outlines Aquinas’s argument in the
Commentary on the Sentences. The self-evident knowledge constitutes a substratum of knowledge for all subsequent knowledge.

In *Acts Amid Precepts*, Kevin L. Flannery highlights a parallel between the ordering of theoretical and practical knowledge in Aquinas. Both begin with apprehension: in theoretical knowing, the person apprehends being, while in practical knowing one apprehends good. Aquinas holds that regarding self-evident knowledge a *habitus* abides within the person. For speculative knowing, Aquinas calls this *intellectus principiorum*, while for practical knowing he calls this *synderesis*. For *habitus*, Armstrong uses the English word “capacity,” rather than skill or habit, because humans have this ability in virtue of their nature.

While Aquinas insists that these principles or precepts—practical principles for Flannery—are self-evident, he does not believe that they are innate, in the sense that one can know them without sensation or memory. To the contrary, one must have both in order to ascertain these principles or precepts. In *De Veritate*, Aquinas, using an argument by reductio ad absurdum, insists that some principles must be permanent and unchanging otherwise nothing could be known certainly. Moreover, Aquinas insists that there can be no err regarding *synderesis*.

Armstrong indicates that the self-evidence of the first precepts of Natural Law are analogous to the self-evidence of first principles of demonstration in speculative knowing, which implies some degree of difference. Aquinas highlights this difference in the *Prima Secundae* where he indicates that something may be self-evident in two ways: one, in itself and two, in relation to us. Armstrong and Flannery find the examples illustrative of the difference. What can be known in relation to us (*per se quoad nos*) constitutes an analytic proposition insofar as the predicate is contained in the subject. Put another way, so long as one understands the terms,
the truth of the statement is undeniably true. For example, the statement: “every whole is greater than its parts,” is knowable by all and constitutes an analytic statement known *per se quoad nos*.62

Germain Grisez in “The First Principles of Practical Reason: A Commentary on the *Summa theologiae*, 1-2, Question 94, Article 2,” insists that the dichotomous distinction between analytic and synthetic originating with Kant have no meaning for Aquinas.63 Rather, Aquinas understands the subject and predicate as complementary elements of unified knowledge of a single knowable reality.64 Put another way, the intelligibility of the predicate belongs to that of the subject.65 Grisez understands intelligibility to be all that is included in a word used correctly.66 Suffice it to say that for Aquinas, self-evident principles are not mere tautologies, that is, restatements of what is already given.67

Unlike the first set of self-evident principles that are knowable and undeniable to all so long as one understands the definition of the terms, the second set of self-evident principles are knowable only to a few—self-evident in itself (*per se secundum se*).68 In this class of self-evident principles, the terms are more complex, but so long as one understands the terms, their truth also becomes self-evident. To illustrate, Aquinas uses the example of “man is a rational animal.”69 Not everyone knows the truth of the proposition, because not everyone knows that the very meaning of man entails rational being, however, if one does know the definition of man, one knows the truth of the proposition.70

The principle of non-contradiction and the first principle of Natural Law are foundational, but not in the sense that one may deduce more particular principles or precepts from them as though they were general premises.71 Rather, both constitute directive principles insofar as one must formulate more particular principles and precepts in accord with them.72
Finnis relates the concept of the self-evidence of principles or precepts of Natural Law to the rationality of the notion that any state of affairs may exist without further explanation. Contrary to rationalists of the late seventeenth and eighteenth centuries, Finnis insists that it is possible for a state of affairs to exist that has no further explanation for its existence outside of itself. This he identifies as an uncaused cause. More precisely, it is not to say that this entity has no explanation, but that its explanation is itself.

For Finnis the self-evidence of practical principles means that they are indemonstrable, and un-inferable. The principles of practical reasoning do not stand in need of demonstration. Moreover, their validity is not a matter of convention or inferring from observation; rather, it is objective. While it is possible to deny them, it is not possible to be reasonable and deny them. Contrary to the modern criteria, feelings of certitude do not validate these truths. Although understanding a principle of practical reason is not like understanding a principle of logic or mathematics, it is no less true.

d. Happiness, Natural Inclinations, and Reason

In The Perspective of Morality: Philosophical Foundations of Thomistic Virtue Ethics, Rhonheimer highlights the difference between an authentic eudemonistic ethic and one that only seems oriented toward happiness, but really constitutes hedonism. Both ethical theorists argue that happiness is the end or goal of action; however, hedonism not only defines happiness more basely as a state of contentment, but also understands this as the motive for action. Rhonheimer recalls Augustine’s warning not to follow God for a reward, because God is the reward. Rhonheimer is most critical of Kant who ultimately advocates for hedonism, understanding God as a divine giver of pleasure, but not in this world; therefore, he evacuates all happiness as a motive for action in this life basing all morality on duty. While one may understand happiness
as the ultimate end of action, this never constitutes the motive for concrete acting. Rather, the good, which practical reason formulates as good to be done, motivates concrete action. It is only in this sense that one may say that the will strives for happiness.

For Rhonheimer, practical reason not only constitutes striving for happiness, but also “is the reasoning that cognitively directs intentional action.” Put another way, practical reasoning concerns the person’s intending of means and ends in action. Rhonheimer asserts that action is a phenomenon of appetition. Individuals act because they are seeking or striving for a good. Moreover these inclinations toward the good correspond to one’s substantial form. The substantial form of human beings is a rational soul; therefore, human appetition or striving corresponds to the rational soul. For humans the soul consists of the two faculties of the intellect and will. Accordingly, Rhonheimer explains that willing is an appetition guided by reason.

For Aristotle, happiness, as the ultimate goal, constitutes what one rationally wills for its own sake. This end does not take the form of a goal for the sake of which, but a goal through which. In other words, it is an activity that is unique to rational humans. This activity is also the activity, which the virtuous person delights in the most. Aristotle identifies this with life according to the intellect; at the highest level a life of contemplation; and at the next level a life lived according to virtue, according to reason.

Aquinas discusses natural inclinations in relationship to the classes of forms: 1) purely natural appetites constituting inanimate beings such as plants; 2) sensitive appetites corresponding to animate beings such as animals; and 3) rational appetites, such as humans. Moreover, each class of beings corresponds with a type of apprehension or knowledge of the good. Beings with natural appetites merely tend toward the good with no apprehension of it.
whatsoever. Beings with sensitive appetites apprehend the good only in particular things, but not in a general sense. Finally, rational beings such as humans apprehend the good not only in particular things, but also in a general sense, as in universals. Moreover, the rational apprehension of the good is intentional.

To each of these classes corresponds a degree of necessity regarding action. Inanimate beings follow natural inclinations of necessity. Animate beings follow natural inclinations when they perceive objects of desire as useful. And rational beings only desire the good in general by necessity, but not with necessity any particular good, enabling one to freely choose a particular good among options.

The good to which natural inclinations tend corresponds to the end of the being in question. Aquinas adapts Aristotle’s ‘ergon argument’ to make his point that the good for each being corresponds to the substantial form of the being in question. The ‘ergon argument,’ which I discuss in greater detail in the following subsection, determines that the primary function or activity of humans consists in the use of reason. Rhonheimer recalls that action is an agent of appetite or striving for an object that is good.

Reason formulates every human act, regardless of the origin of the desire—whether natural, sensitive, or rational. Germain Grisez understands Aquinas’s explanation for the diversity of Natural Law precepts to be precisely due to “the different inclinations objects, viewed by reason as ends for rationally guided efforts.” While inclinations, which originate from nature play an important role as raw datum, they themselves do not constitute the Natural Law. This corresponds with the dictum that laws of nature do not constitute Natural Law. Grisez explains that the tendencies of natural inclinations provide reason with the beginnings of proposed ends. The precepts that conform inclinations in action constitute the Natural Law.
Just as it is impossible for reason to err regarding *synderesis*, so it is impossible for reason to err regarding its judgment of the good.\textsuperscript{120} Saying that reason does not err, does not mean that people do not make mistakes, but that mistakes are not attributable to failure of the intellect’s perception of good, which subsequently measures action.\textsuperscript{121} In the *De Anima*, Aristotle holds that since err is not attributable to the intellect with regard to reason, it must reside in appetition or imagination.\textsuperscript{122} In addition, false opinions, emotions or passions, and the will may disturb reason.\textsuperscript{123} Sin occurs when these other factors inhibit reason’s measure of good and bad in action.\textsuperscript{124} Put another way, one sins when the lower, nonrational appetitions dominate the appetition of reason.\textsuperscript{125} Ultimately, this is because the freedom of reason “guarantees the an encounter with the good for man qua man.”\textsuperscript{126}

As a faculty, Rhonheimer explains that the will, not already rational by itself, pursues what the judgment of reason presents to it.\textsuperscript{127} Contrary to Kant’s formulation of the will, it is not pure spontaneity; rather, reason thoroughly determines it.\textsuperscript{128} Insofar as reason is able to reflect upon its own judgments, thereby becoming the object of an act of judgment, it is free.\textsuperscript{129} It can have multiple conceptions of the good.\textsuperscript{130} This Rhonheimer identifies as freedom of specification, which constitutes a freedom of the will due to reason.\textsuperscript{131}

However, the will may also be free in execution; that is, choosing or not choosing means that are in concert with one’s goal or intention.\textsuperscript{132} Freedom of execution is the source of freedom of choice.\textsuperscript{133} If one does not want to do something, it does not happen.\textsuperscript{134} Ultimately, reason alone does not suffice as a motivating principle for action; the will can pursue other motivating factors, such as feelings, or pure self-willing.\textsuperscript{135}

\textit{e. Principles of Natural Law and Basic Human Goods}
Each principle of Natural Law corresponds to the natural inclinations in humans, which corresponds to all three of the above-mentioned classes of inclinations. While the principles of Natural Law are not the inclinations themselves, they are nonetheless “an ordering of the reason in relation to or in the natural inclinations,” taking the form of a practical judgment ‘p is good.’ Finnis indicates that the principles of Natural Law are not moral judgments, but the substratum for moral judgments. Moreover, Natural Law concerns the acts of practical understanding in which one grasps the basic values of human existence.

Finnis understands the good not as a desirable objective, but as a form of good with an indefinite number of means or occasions for one to participate in or realize, which he uses value to identify. As such, unless one engages in reflection on the presuppositions of one’s practical reasoning, one is not likely to formulate these principles in one’s arguments concerning particular goods. Again, the self-evidence of these principles means not only that they are indemonstrably true, but also that they stand in no need of justification. These principles are not derivable or inferable.

Armstrong relates the principles of practical reason to human inclinations, while Finnis relates it to basic human values. To the first natural human inclination is that of self-preservation, which Armstrong formulates as: although a hierarchy of life exists, one ought to respect and preserve human life and where possible other life as well. This, Aquinas argues is self-evident in itself, but not to all. Finnis correlates the principle of self-preservation with the basic human value of life.

The second basic human inclination, shared by other animals is the inclination to sexual union and the rearing of offspring. Armstrong following Maritain, insists that certain limitations must exist for sexual union, considering how special a place it has in engendering
children. In addition, the family group ought to comply with a particular pattern. Finnis relates this principle to life also. At the same time, he recognizes that the education and rearing of children includes other basic human values, such as sociability and truth.

The third basic human inclination corresponds with rational nature. This, according to Aquinas, involves the inclination for relationship with God and to live in society. Insofar as humans need assistance from other people to exist, the principle to live in society following certain rules and prohibitions is self-evident. For Finnis, this corresponds to the basic human value of knowledge. In so far as this inclination extends to sociability and religion, it corresponds to these goods as well. In addition, the rational inclination relates to the basic human values of play, practical reasonableness, and the aesthetic experience.

Having introduced the concept of Natural Law, the following subsection highlights the importance of avoiding the critical error of the Naturalistic Fallacy.

ii. Naturalistic Fallacy and Natural Law

The concept of the Naturalistic Fallacy originates with G. E. Moore in *Principia Ethica*, in which he argues that the moral good is not merely a conglomeration of physical goods. He builds on the concept from David Hume that an ‘ought statement’ never derives from an ‘is statement.’ Unfortunately, Hume throws the baby out with the bath water, further insisting that morality has nothing to do with reason; instead, insisting that it depends on moral sense or feeling. While both Rhonheimer and Finnis concur with Hume that ‘ought statements’ do not derive from ‘is statements,’ they do not agree that this means that ethics is unreasonable. In fact, this merely demonstrates the underivability of ethics from metaphysics.

a. Ergon Argument
In *Fundamentals of Ethics*, John Finnis argues that Aristotle and Aquinas would agree with his thesis that reasoning concerning human goods is primarily practical, not theoretical.\(^{164}\) He offers four reasons why they are often misunderstood as proposing that practical knowledge is derivative of theoretical.\(^{165}\) One, Aristotle seeks a holistic explanation of biology with cosmology.\(^{166}\) Two, Aquinas utilizes analogies between different natures to elucidate concepts.\(^{167}\) Three, interpreters of Aristotle and Aquinas often over-simplify concepts in an effort to systematize.\(^{168}\) Four, Finnis takes issue with Aristotle’s so-called ‘*ergon* argument,’ which translates as function or activity that is proper to humans.\(^{169}\)

In the first book of the *Nicomachean Ethics* Aristotle argues that the unique function of humans is the activity of the soul in accord with reason, therefore, a good person acts in accord with reason.\(^{170}\) Aristotle argues that just as with a flute player or sculptor the good resides with the function, so the good of humans must reside in their function.\(^{171}\) Of course, humans share several functions with other organisms, such as, growth and sensation; however, the function that typifies human beings must be unique to them.\(^{172}\) For Aristotle, a rational principle characterizes human activity.\(^{173}\) In particular, it constitutes a function of the soul. Above all, for Aristotle, what sets humanity apart is its activity in conformity with reason.

Finnis insists that since this argument is theoretical, not practical in nature it contributes nothing substantial to Aristotle’s ethics.\(^{174}\) Moreover, because of this, Finnis argues that it is not only uncharacteristic of Aristotle, but does not properly belong to his ethics.\(^{175}\) Furthermore, it contributes to the mistaken notion that ethics derives from physics and metaphysics.\(^{176}\) Once again, Finnis holds that practical knowledge does not derive from theoretical knowledge.\(^{177}\) Insofar as the *genus moris* and the *genus naturae* differ, one’s grasp of the good in practical
reasoning—constitutive of the *genus moris*—does not depend on or derive from the *genus naturae*.

Ralph McInerny\(^{178}\) and Rhonheimer\(^{179}\) both take issue with Finnis’s dismissal of Aristotle’s function argument. McInerny disagrees with Finnis’s argument that practical knowledge is radically independent of theoretical knowledge.\(^{180}\) He reasons that since there is one intellect that knows both speculatively and practically (by extension)—knowing being speculatively before knowing the good practically—practical knowing depends on speculative knowing.\(^{181}\) Indeed, for him, practical knowing constitutes the knowing of a good being.\(^{182}\) In other words, for one to judge that ‘X is good for me,’ one must know what X is.\(^{183}\) Consequently, for McInerny, practical knowledge does derive from speculative knowledge.\(^{184}\)

Rhonheimer agrees with McInerny that Finnis should not discount the significance of Aristotle’s ‘ergon argument’ for ethics, but he does not think that this is because practical knowledge derives from speculative knowledge.\(^{185}\) For Rhonheimer, McInerny fails to distinguish between the initial grasp of first principles and the subsequent reflection upon action, which is substantially speculative.\(^{186}\) For Rhonheimer this is the content of moral philosophy, which gives rise to normative statements.\(^{187}\)

For Rhonheimer, it is essential to maintain the distinction between theoretical knowledge and practical knowledge, because their founding principles are unique.\(^{188}\) The object of practical knowledge is the good and constitutes the Natural Law.\(^{189}\) However, one’s reflection upon the act of practical reasoning is descriptive, also called theoretical. It is only in the latter that one discovers the Natural Law, which Rhonheimer identifies as moral philosophy.\(^{190}\) It is precisely by reflecting on the practical knowing that one derives normative statements or commands.\(^{191}\)
Although this appears to contradict what Rhonheimer says above, namely that ‘ought statements’ do not derive from ‘is statements’; it does not, because for Rhonheimer, one is observing human reason in action. In other words, moral philosophy is not merely a social science experiment or survey, but reflection on how the human person uses reason to act. Since one does not merely observe how one acts, but maintains the connection to practical reason, the commands that one formulates remain constitutive to practical reasoning.

Finnis and McInerny presume that the ‘ergon argument’ attempts to justify the foundation of practical reasoning through speculative knowledge. Consequently, Finnis rejects the argument altogether, while McInerny subscribes to it as a confirmation of his presumption that practical knowledge does derive from speculative knowledge. While Rhonheimer agrees with McInerny that Finnis should not reject the ‘ergon argument’ altogether, he does not agree with McInerny’s interpretation and conclusion. Rhonheimer understands McInerny to be rejecting a red herring insofar as McInerny creates or presumes a dilemma that does not really exist.

In Praktische Vernunft und Vernunftigkeit der Praxis: Handlungstheorie bei Thomas von Aquin in Ihrer Entstehung aus dem Problemkontext der Aristotelischen Ethik, Rhonheimer explains that Finnis fails to see that the ‘ergon argument’ relates to ethical reflection, not practical reasoning. Therefore, while the argument does nothing for the foundation of practical reasoning, it is indispensable for a metaphysical-anthropological interpretation and justification of the normative function of practical reason. Rhonheimer not only rejects McInerny’s conclusion that practical knowledge derives from speculative knowledge, he also insists that practical knowledge plays an essential role in elucidating human nature; in fact, one that cannot be merely chalked up to ethical reflection, that is speculative.
b. Essentialist Understanding of Morality

Rhonheimer rejects what he calls an essentialist understanding of morality, of which Heinrich Rommen, Joseph Pieper, Ralph McInerny, Steven Jensen, R. Hittinger, and Steven A. Long are leading proponents. Such proponents conflate metaphysics with morality insofar as they insist that actions perfect being. Although ethicists often attribute this to Aquinas, Rhonheimer insists that this is not what Aquinas proposes. Above all, for Rhonheimer, such a theory poses an epistemic contradiction: it is impossible to know what to do until one has perfected one’s being through action.

Essentialists fail to recognize an important distinction in Aquinas between moral being (esse morale) and essential being (esse essentiale), which he discusses in De Veritate. For Aquinas moral goodness constitutes the perfection of moral being, not essential being. Aquinas insists that creatures cannot fail to be good with regard to essential goodness, but when it comes to accidental goodness, it may or may not be good, by participation. Being is good in its essence insofar as it exists. However, with the exception of God, who is good in the absolute sense, creatures are morally good insofar as they participate in goodness in an accidental sense, that is, insofar as this goodness is super-added to the essential goodness of the individual. Put another way, creatures are morally good in relation to the one who is goodness itself, that is, God. Rhonheimer asserts that any attempt to ground morality in natural teleology is caught in a vicious circle.

Essentialism relates to another misconception held by proportionalists that moral evil merely constitutes the causing of physical evil. This is the position held by proportionalists such as Peter Knauer, Josef Fuchs, Louis Janssens, Bruno Schuller, and Richard
McCormick. Janssens, for instance, in “Ontic Evil and Moral Evil,” maintains that one commits moral evil whenever one causes ontic evil in the world. Following this understanding of moral evil, both Knauer and Janssens evacuate the Moral Object of its intentional content and reduce it to the material component of action.

Therefore, in one sense, proportionalists make the same mistake of essentialists, insofar as they constitute moral evil as the causing of physical evil. Once again, they fail to maintain the important distinction between orders of the genus naturae versus the genus moris. For the proportionalists, however, the moral is not merely derivative of the ontological, but constitutively the same. Ironically, this relative equivocation gives rise to a radical dualism that centers on the person. Since the Moral Object is materially constituted, morality centers on the intention as ends, without regard for the intentional content of the Moral Object. Moreover, as the next subsection highlights, proportionalist morality is eventistic, rather than personalistic, focusing more on consequences than the deliberate will.

iii. Natural Law and the Perspective of the Acting Person

a. The Primacy of the First-Person Perspective

In “The Cognitive Structure of the Natural Law and the Truth of Subjectivity,” Rhonheimer explains the dualistic fallacy as a deficient understanding of the Natural Law that presumes a dichotomy between the natural order (objective) and reason (subjective). Accordingly, the Natural Law consists of a pre-packaged normative statement in nature, which the soul simply identifies. Put another way, the Natural Law simply consists of a law of nature that one identifies. In contrast, Rhonheimer insists that Natural Law is primarily subjective since it originates within the person and constitutes the openness of the subject to true moral goodness. The whole process whereby one knows the good—to be pursued—and evil—to be
avoided—itself constitutes practical reason and is part of human nature. As such, it is impossible to know human nature before one knows the good through practical reason, which is a constitutive part of human nature itself. Consequently, for Rhonheimer, ethics and the Natural Law do not begin with human nature; rather, one knows human nature insofar as one knows the good through practical reason.229

One advantage to establishing the Natural Law on human nature is that it provides an objective foundation that does not vacillate, as a subjective foundation seems to do, at least from a modern perspective.230 Both Pope Leo XIII and Pope John Paul II avoid this whimsical basis by connecting it to God through the eternal law.231 Insofar as God creates rational beings and implants the light of reason within their heart, the Natural Law is the eternal law that guides humans to their ends, formulated by human reason.232 Not only is the Natural Law a reflection of the divine law, but also human autonomy is a participation in the divine autonomy, which Rhonheimer calls theonomy: “participation and self-possession of the eternal law.”233 For Rhonheimer, the participatory nature of the Natural Law in the eternal law may provide motivation for following its dictates, especially in difficult circumstances.234 Insofar as the eternal law is immutable, the Natural Law’s connection to the former provides an unequivocal foundation, and though subjective it remains unwavering.

Much criticism against Rhonheimer centers on the role of inclinations in relationship to human reason. In fact, critics often accuse him of connecting reason too closely to inclinations,235 falling victim of physicalism or so disjoining reason from the inclinations that he commits spiritualism.236 Jean Porter accuses Rhonheimer of the latter critique in “Review of Natural Law and Practical Reason by Martin Rhonheimer,”237 to which Rhonheimer responds in “The Moral Significance of Pre-Rational Nature in Aquinas: a Reply to Jean Porter (and Stanley
Essentially, Rhonheimer avoids both physicalism and spiritualism by rooting the acts of practical reason in the person as a substantial unity of body and soul rather than in either the body or the soul.\textsuperscript{239}

Rhonheimer rejects the notion that human persons are embodied souls, because such terminology implies a Cartesian dualism—the soul, equivalent to the person being trapped in the body.\textsuperscript{240} Instead, Rhonheimer reaffirms Boethius’s definition of the human person as a rational animal.\textsuperscript{241} Accordingly, the body contributes natural inclinations with proper goods and ends like its irrational counterparts. Moreover, these inclinations too participate in and reflect the eternal law, but in a passive, rather than active way.\textsuperscript{242} Natural inclinations follow an order determined by nature with proper operations and goals.\textsuperscript{243} Natural law presupposes that natural inclinations follow the natural order.\textsuperscript{244} The natural inclinations become properly human through the regulation of practical reason, which takes a uniquely active role in ordering goods and ends in accord with the eternal law.\textsuperscript{245}

Rhonheimer highlights three important points that Aquinas makes regarding the Natural Law.\textsuperscript{246} First, as a work of practical reason, Natural Law does not derive from speculative reason, which, as in the first principle of practical reason, the underivability of the practical copulas of—\textit{prosecutio} or \textit{fugo}—from the theoretical copulas—is or is not—demonstrates.\textsuperscript{247} Second, the person, using the intellect in extension, spontaneously understands the ends and goods of natural inclinations, and according to practical reason formulates practical precepts, which constitute Natural Law.\textsuperscript{248} Third, insofar as the human person as a substantial unity of body and soul regulates these goods and ends of natural inclinations, they constitute Natural Law.\textsuperscript{249}
Rhonheimer avoids the pitfalls of physicalism or spiritualism by placing the role of active agent not in the faculties of the soul or the body, but the human person, who constitutes a substantial unity of both. The human person utilizes the unique components of his or her one nature—body and soul—to formulate the Natural Law.

*b. First-Person Perspective of Natural Law in Veritatis Splendor*

John Paul II, following Aquinas, understands the Natural Law to be a divine light of reason, which God imprints on humanity in creation. This reason, which promulgates the Natural Law, is not merely part of irrational nature, but distinctly part of human nature. Humans do not merely read off the divine law immanently written on the human heart; rather, they have an active participation in the ordering function of the divine reason. In other words, God does not formulate and promulgate it, but human reason does. God does not externally impose the Natural Law; rather, insofar as humans use reason to formulate the dictates of reason, it is uniquely autonomous and internal. Humans, created in the image of God, are uniquely free and rational, which enables them to discern between good and evil.

At the same time that both Rhonheimer and John Paul II emphasize the role of human reason in formulating and promulgating Natural Law, they also hold that individuals do not do so with absolute freedom. John Paul II, in accord with Leo XIII, understands the Natural Law to be a mirror of a higher divine reason. Again, the Natural Law is the divine law implanted within rational beings inclining them to right action. Of course, people remain free to conform themselves to this law or not. Because it originates with the divine, Rhonheimer understands human autonomy to be a participated theonomy; formulating Natural Law according to human reason that God infuses.
John Paul II rejects dualistic understandings of the human person including both spiritualism and physicalism that emphasize the spiritual or corporal aspect of humanity over the other, respectively.\textsuperscript{260} The previous subsection demonstrates how important it is to avoid a naturalistic understanding of Natural Law and the human person. In “The Moral Significance of Pre-Rational Nature in Aquinas: A Reply to Jean Porter (and Stanley Hauerwas),” Rhonheimer not only explicitly denies that his theory is spiritualistic, but also shows the defects of such a theory.\textsuperscript{261} For John Paul II, humans are by nature body and soul.\textsuperscript{262} The soul constitutes the source of unity as the human form, but it is not exclusively the human person.\textsuperscript{263} Nor is the body raw matter for the soul to form.\textsuperscript{264} Rhonheimer insists that one’s corporality ought not to oppose one’s rational will as though the former is nature and the latter reason, rather, human nature constitutes a substantial unity of being that is both body and soul.\textsuperscript{265}

Thus human morality pertains to both the bodily and spiritual dimensions of the human person.\textsuperscript{266} Rhonheimer illustrates using the marital act.\textsuperscript{267} The body provides sexual attraction between the sexes that serves procreation, which human reason naturally receives.\textsuperscript{268} The light of reason reveals the marital act as love and communion between two persons making a gift of self to the other for transmission of life.\textsuperscript{269}

Insofar as the human person is a substantial unity of body and soul, both contribute to human morality.\textsuperscript{270} The body contributes natural inclinations that the soul regulates using human reason.\textsuperscript{271} Of course, the soul contributes inclinations to the good as well.\textsuperscript{272} To the extent that reason regulates these inclinations—of the body or the soul—they constitute Natural Law.\textsuperscript{273} Since the intellect, a faculty of the soul formulates these dictates of reason, an outside observer cannot see this; rather, one must have the perspective of the person.\textsuperscript{274} Rhonheimer reminds the reader that the formulation of Natural Law is properly a reflexive act of the soul.\textsuperscript{275} Therefore,
following Lehu and John Paul II, Rhonheimer insists that one does not know Natural Law through human nature, but one does come to know human nature through the Natural Law.\textsuperscript{276} The next subsection demonstrates the value of a personalistic conception of Natural Law.

\textbf{iv. Contraception and Natural Law}

The search for an explanation for the immorality of contraception in the twentieth century is a catalyst for a deeper understanding of the Natural Law. The material and superficial rejection of contraception on the basis that condoms—and other contraceptives—physically interrupt the natural process of the marital act, thereby preventing the possibility of conception does not account for anovulants as contraception.\textsuperscript{277} Put another way, the physical act of preventing conception does not provide sufficient grounds for deriving a proscription against the act of contraception. Pope Paul VI’s bases his prohibition of contraception on two important principles: 1) The Inseparability Principle and 2) responsible parenthood. Before articulating how Rhonheimer explains the role of Natural Law that avoids both physicalism and spiritualism, I highlight an important distinction between contraception and licit birth control.\textsuperscript{278}

In \textit{Humanae Vitae}, Paul VI prohibits “any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation—whether as an end or as a means.”\textsuperscript{279} This exclusion does not make any specific reference to the method, but rather to intention. Rhonheimer rejects the terminological distinction between artificial contraception and so-called natural methods of contraception, because Paul VI declares \textit{contraception} immoral, that is, the intention of preventing conception.\textsuperscript{280} This does not mean that he rejects responsible parenthood, which sometimes involves couples abstaining from the marital act as a means of avoiding pregnancy. To the contrary, as the following demonstrates, both Paul VI and Rhonheimer, assert that periodic continence, unlike contraception, respects and maintains the
inseparability of the procreative and unitive significance of the marital act, and provides a means for growth in chastity.  

a. Inseparability Principle

To understand the immorality of contraception, one must understand the good and end that it contradicts. In particular, Rhonheimer connects it to the precept of Natural Law relating to the marital act. For the sake of analysis he distinguishes between the spiritual and bodily contributions to human nature, beginning with the bodily, natural inclination common to other animals for male and female to join for the transmission of life. The connection of the soul to the human person—substantial unity—raises the physical act of copulation arising from the natural inclination to a new level when reason regulates it and it occurs between husband and wife, which Rhonheimer identifies as married love. He insists that one resist the temptation to neglect the role of the body, since doing so implies an anthropology that incarnates the soul within the body as though the two are different natures. This is spiritualism, which neglects the contribution that natural, bodily inclinations, ordered by nature, have for morality.  

The Church distinguishes between two goods of marriage: the unitive and procreative. The unitive significance includes the fidelity to total self-giving manifest in conjugal love. The procreative significance, which invariably connects with the unitive significance, manifest in the conjugal act, reflects one’s openness to fecundity. As such, the object of marital act includes both significances. Rhonheimer identifies it as the loving bodily union of husband and wife, which necessarily includes its procreative character. The inseparable connection between the unitive and procreative significance of the marital act, which Paul VI highlights in *Humanae Vitae* constitutes the Inseparability Principle.
Paul VI holds that each and every conjugal embrace must remain open to both significances.\textsuperscript{292} Rhonheimer distinguishes between function and meaning insisting that although one may not be functionally able to reproduce because of sterility or periodic incontinence, one ought nonetheless be open in meaning or, better said, in will to fruitfulness.\textsuperscript{293} In \textit{Man and Woman He Created Them}, John Paul II argues that the body speaks a language in truth that is reread each time a couple engages in the conjugal act.\textsuperscript{294} The truth spoken by the body in the conjugal act refers to its innermost structure, which includes the inseparable connection between the unitive and procreative meanings.\textsuperscript{295} Rhonheimer insists that referral to the inseparability principle is not sufficient to explain why each and every marital embrace must remain open to procreation, because it does not include the object of contraception.\textsuperscript{296} To explain, Rhonheimer has recourse to the virtue of chastity, which the Moral Object of contraception contradicts.\textsuperscript{297}

\textit{b. Responsible Parenthood and Chastity}

Reason makes the inclination toward bodily union in the marital act human.\textsuperscript{298} Insofar as it constitutes an act touched by reason, it is a truly personal act. Reason is the measure and rule of the natural inclination to husband and wife joining in the marital embrace, which makes the act both human and personal.\textsuperscript{299} Rhonheimer identifies the ordering of reason with responsible parenthood, which he relates to both the virtue of justice and chastity.\textsuperscript{300} In particular, he focuses on the role that chastity, as an ordering virtue of sexual inclinations, plays for responsible parenthood.\textsuperscript{301} Following Paul VI in \textit{Humanae Vitae},\textsuperscript{302} Rhonheimer argues that responsible parenthood necessitates periodic continence, which provides married couples means of growth in chastity, that is, the integration of sexual drives to the order of personal love.\textsuperscript{303} Contraception not only denies the procreative significance of the marital act, thereby denying its unitive significance, because of the Inseparability Principle, but it also robs the couple of a means to
growth in chastity, since it enables them to engage in the marital act without regard for the procreative consequences. Without the rational ordering that responsible parenthood places on sexual drives, the marital act loses its connection to what makes it an authentically human act of love oriented to one’s spouse. Consequently, contraception disrupts both the procreative and unitive significance of the marital act. This also accords with John Paul II’s interpretation.

Rhonheimer’s articulation of contraception eschews physicalism and spiritualism defining it as a vice that counters chastity. He shows that the natural, bodily inclination to sexual union contributes to morality and that practical reason regulates sexual desire with an orientation to responsible parenthood, that invariably relates to personal love, which a proper ordering of desire presumes.

This section demonstrates that an accurate account of Natural Law includes an adequate understanding of anthropology that avoids the pitfalls of physicalism and spiritualism, which ethicists that derive Natural Law from the physical order cannot avoid. The next section analyzes the related concept of the Moral Object of the Act.

2B. Moral Object

John Paul II, in Veritatis Splendor, rejects the teleological interpretation of action of consequentialism and proportionalism, while reaffirming the longstanding concept of the Moral Object attributable to Thomas Aquinas. Not excluding the role that intention—as ulterior end—and circumstances play in determining the morality of human acts, John Paul II maintains the primary and fundamental role that the Moral Object as rationally chosen by a deliberate will plays in determining the morality of human acts. John Paul II also retains the existence of intrinsically evil acts, a concept that teleological theorists eliminate. His defense of the Moral Object and intrinsically evil acts sparks renewed interest in Aquinas’s understanding of action.
In this section, I explicate the object of the act in the context of Aquinas’s complex virtue theory concerning action. Then, I demonstrate the erroneous understanding of the Moral Object of the manualists and proportionalists. One implication of the Naturalistic Fallacy is that one considers morality from the third-person perspective, rather than a first-person perspective. The third subsection not only illustrates the deficiency of the third-person perspective, but elucidates John Paul II’s restoration of the first-person perspective regarding the object in *Veritatis Splendor*. The final subsection addresses the topic of contraception that is a sticking point for the controversy regarding the Moral Object and intrinsically evil acts.

i. Aquinas’s Action Theory

In the following, I articulate Aquinas’s understanding of the Moral Object. First, I situate his discussion in the context of the debate on the role of intentions in relationship to action according to Peter Abelard and Peter Lombard. Then, I follow John Finnis’s interpretation of Aquinas’s meticulous situating of intention within the person.\(^{311}\)

a. Intrinsically Evil Acts

Servais Pinckaers, in “A Historical Perspective on Intrinsically Evil Acts,” articulates Aquinas’s development of Peter Abelard and Peter Lombard’s use of intention vis-à-vis intrinsically evil acts.\(^ {312}\) Although *intrinsece malum* does not appear in expression before the sixteenth century, the concept of deeds being evil in themselves originates in Scripture and Augustine explicates it in his *De mendacio* and *Contra mendacium ad consentium*.\(^ {313}\) Against the legalism of his day that focuses merely on the external act or the desires to commit sin, Abelard attempts a retrieval of Augustine’s morality rooted in reason and will.\(^ {314}\) Abelard places the source of evil solely in the intention of the agent; that is, his or her voluntary consent to a desire or action.\(^ {315}\) In other words, for Abelard, the evil of an action is neither in the desire to commit
an evil act, nor in the performance of it, rather, it resides in the agent’s intention. Pinckaers indicates that the main thrust of Abelard’s theory is positive, to reposition the focus of morality on intention and consent, however, the downside is that it eliminates any consideration of external action and desire for morality.\textsuperscript{316} Although this does not seem to be Abelard’s intention, his theory, in principle, excludes the possibility of intrinsically evil acts.\textsuperscript{317}

In distinction 40 of the second book of his Sentences, Peter Lombard addresses the question of intention and its relationship to external acts.\textsuperscript{318} First, he restates Abelard’s position that external works are neither good nor evil except insofar as an agent intents them as such.\textsuperscript{319} Then, Lombard presents the counter-position that some works are good or evil regardless of the intention of the agent.\textsuperscript{320} Lombard offers a \textit{via media} following Augustine’s direction in \textit{Contra mendacium ad consentium}.\textsuperscript{321} Augustine holds that some acts are good or evil depending on their \textit{causa} or reason, for instance a couple engaging in the marital act to conceive children, or to give food to the poor.\textsuperscript{322} So long as one does these acts for a good reason, they are good; however, should one do them for a bad reason, they are bad. For example, it is not good to give to the poor in order to look good; this is vanity.\textsuperscript{323} However, for Augustine, some acts are evil in themselves: theft, fornication, and blasphemy; and one may never do these even for a good reason.\textsuperscript{324} To illustrate, Augustine forbids one to steal from the rich to feed the poor.\textsuperscript{325}

\textit{b. Intention to Action}

Arguably no one reflects deeper on the inner workings of the person concerning action than Aquinas.\textsuperscript{326} Finnis indicates that many philosophers and theologians misunderstand his action theory, which in turn, leads to erroneous implications.\textsuperscript{327} In \textit{Aquinas: Moral, Political and Legal Theory (Founders of Modern Political and Social Thought)}, Finnis meticulously follows Aquinas’s articulation of his action theory from the internal perspective, which comes from
questions 11-20 of the *Prima Secundae* of the *Summa Theologica*. Understanding Aquinas’s action theory is essential to understanding the Moral Object.

Just like the Church Fathers, Aquinas reorients ethics from a legalistic reduction of external acts to its original purpose: virtue and beatitude. Moreover, like Abelard and Lombard, intention has a central role. Intentions concern the movement of the will to ends. To be sure, many ends may motivate or move people to act, but Aquinas denies any infinite regresses, insisting instead that the ultimate end for humanity is beatitude or contemplation of the Divine Essence. Regarding ends, Aquinas distinguishes between the order of intention and the order of execution. What is first in the order of intention is last in the order of execution. Thus, some end inclines the will to execute action. The end begins by motivating to action and concludes in execution. To illustrate, the experience of hunger and the past experience of satisfaction by eating, may motivate one to eat this cantaloupe here and now. On the order of intention, the satiation by eating constitutes an end. On the order of execution, the satiation of one’s hunger by eating a cantaloupe constitutes the end, and the final achievement—*fruitio*. Aquinas’s action theory concerns all the intervening steps beginning with an end on the order of intention and concluding with an action on the order of execution.

According to Finnis, for Aquinas, intention (*intentio*) and choice (*electio*) are the central acts of the will. Properly speaking, choice concerns means for accomplishing ends, while intention concerns ends. For example, if one intends to stay warm during the winter, one must heat the house and different means exist by which one may choose to achieve the end of heating one’s house: burning wood, electricity, or gas. The ability to conceive of means to achieve one’s end is practical understanding (*intellectus practicus*). The ability to relate various benefits to
each other and make a judgment about the value of one over another is practical reason (*ratio practica*).\(^{339}\) Therefore, practical decision-making involves the will and intellect.

Rhonheimer understands Aquinas to assert that the intellect, which ordinarily acts theoretically, perceiving and judging the world according to the speculative order of knowing, acts in extension (*extensio*) during practical reasoning.\(^{340}\) One way of distinguishing theoretical from practical is by the type of syllogism or mode of reasoning that one uses. Theoretical syllogisms only lead to theoretical conclusions that do not entail action.\(^{341}\) For instance, one may conclude that since one cat has four legs, all cats have four legs. Practical syllogisms, on the other hand, consist of practical premises that give rise to conclusions of action.\(^{342}\) For Rhonheimer, the practical syllogism is thinking that involves doing.\(^{343}\) For example, staying warm constitutes a necessity for life; therefore, one must choose some means for achieving the end of heating one's house during the winter.

Finnis identifies choice as the central event for action, but several internal processes involving both the intellect and the will lead up to and follow choice.\(^{344}\) Although each of these functions may belong to a particular faculty of the soul—intellect or will—ultimately, it is the person who acts.\(^{345}\) Thinking about the interesting proposals that the intellect offers is deliberation.\(^{346}\) Sometimes this involves taking counsel (*consilium*) with oneself or others.\(^{347}\)

After deliberating and taking counsel, one may determine that one option stands out as better than the rest.\(^{348}\) In this case, one reaches a consensus and although assent belongs properly to the intellect, Finnis says that one assents to the only eligible action.\(^{349}\) Put another way, since one does not prefer one truly eligible option to another, one simply assents rather than chooses.\(^{350}\) Aquinas also calls the assent of the will a sentence (*sententia*) or judgment (*iudicium*).\(^{351}\) If, however, one concludes the process of thinking with several viable options,
then one must make a final judgment (*iudicum electionis*) that does properly constitute a choice.\(^{352}\)

One commits to a final judgment as an action by the will choosing it.\(^{353}\) But choice is not enough for action; one must actually command (*imperium*) the act, using (*usus*) one’s bodily powers to physically actualize it.\(^{354}\) Finally, in the intellect one knows that the act is complete (*cogitio finis in actu*) and through the will one experiences satisfaction in it (*fruitio*).\(^{355}\)

c. *External Act: Materia Circa Quam and Proximate End*

For Aquinas, actions receive their species from ends.\(^{356}\) Joseph Pilsner holds that Aquinas uses the relationship between form and matter in a substantial being to illustrate the analogous relationship that ends have for action.\(^{357}\) This is particularly true because human actions cannot exist without an end.\(^{358}\) Therefore, just as form gives shape to substantial beings, so ends give form to action.\(^{359}\) Pilsner following Aquinas holds that acts of the will, itself a type of motion, like all motions, are specified by their end.\(^{360}\) Distinct from natural motions, so-called active principles do not determine the species of human acts.\(^{361}\) This is because humans are free, that is, not limited by instinct.\(^{362}\) To illustrate, eyes can only see color by means of light; they cannot hear or taste or feel, as such. Therefore, the active principle of seeing limits the function of eyes. In contrast to humans, active principles limit animals to particular physical behaviors in response to stimuli; however, because humans have a will and an intellect, they have a freedom regarding decisions and actions that do not characterize other animals.

Pilsner identifies three distinct meanings for object in Aquinas. First, object consists of that to which an action relates.\(^{363}\) This is what Rhonheimer calls the *res aliena*.\(^{364}\) Ralph McInerny offers a more sophisticated definition: “that which the agent sets out to do, to effect,” that is, the act itself.\(^{365}\) According to Pilsner and Rhonheimer, this limited understanding of
object does not constitute the meaning of the Moral Object for Aquinas. Second, object means a certain formal aspect that specifies a related action, habit or power. This notion of object has reference to qualities and the senses, which Aquinas discusses in his *Commentary on Aristotle’s De Anima*. Just as formal aspects of being correspond to the different senses, so formal aspects of the good rationally composed by the intellect attract human agents through the will. Therefore, in this sense, the *ratio* constitutes the formal aspect of the object of human action.

Finally, but most importantly, the object constitutes the proximate end of action, as opposed to the remote end. Working together, one may say that the remote end orders the specific act. For example, one may steal—an evil proximate end—for the purpose of giving money to the poor—a good remote end. However, for the act to be good, both the proximate end and the remote end must be good. Both ends relate to intention, but the proximate end constitutes the Moral Object, since it specifies the act, while the remote end acts as a circumstance of the act.

In article 18 of the *Prima Secundae* of the *Summa Theologica*, Aquinas addresses the sources of good or evil in action. He maintains that the goodness of an act depends on three distinct sources: Moral Object, end, and circumstance. To demonstrate how the Moral Object and the end affect the will, Aquinas uses the dichotomous terms of matter and form—analogous to the hylomorphic sense—in relationship to external and internal acts, and *materia ex qua* and *materia circa quam*. The Moral Object determines the species of an act just as form determines the species of natural things. The end configures the Moral Object, impacting the species as well. However, John Abraham Makdisi indicates that the end does not replace the Moral Object. The Moral Object is not the matter ‘of which’ (a thing is made) (*materia ex qua*), but the matter ‘about which’ (something is done) (*materia circa quam*) giving act its species like a form. In human acts, the intellect predicates good and evil Moral Objects in
reference to reason. Good Moral Objects conform to practical reason because they have suitable matter (materia debita) and evil Moral Objects do not conform to reason since they have unsuitable matter (materia indebita).

Aquinas insists that one consider the species of an act formally with regard to the end—the object of the internal act—and materially with regard to the object of the external act—that which is brought to bear. Regarding how ends impact species of acts, Aquinas makes an important distinction between external (exterior) and internal (interior) acts of the will, each having their own proper object: that which is brought to bear and the end, respectively. For Sousa-Lara, internal acts pertain to intention and ends, while external acts concern the choice/command and the Moral Object. This accords with Makdisi who indicates that the interior act is the very act of willing, while the exterior act is a voluntary act that the will commands. The end is formal because the agent chooses the Moral Object to attain it.

To illustrate, Aquinas says that he who steals that he may commit adultery is more an adulterer than a thief. The object of the interior act of the will, also the remote end, is adultery, which causes the agent to choose the Moral Object of theft. The end formally configures the species of the act of theft, which constitutes his means for achieving the end of adultery.

The Moral Object may be indifferent, but the end must be morally good. Driving a car is indifferent, but doing it to rob a bank is evil, while doing it to go to church is good. In action, there is always an end (finis operantis) with a rational good (ratio boni) that the will intends, otherwise nothing attracts the will to move. Therefore, it is possible to consider the morality of the object of the internal act of the will, that is, the object of intention (end), separately from the object of the external act of the will, which is the object of the choice (Moral Object).
Concerning the description of the order of practical reason from the subsection above, intention is formal to choice, just as choice is formal to command. In his *On Evil*, Aquinas asserts that exterior acts are part of the moral genus only insofar as they are voluntary, that is, proceeding from the will. By separating content of the exterior act from its voluntariness, one is left with the so-called *materia ex qua* of the human act. The will commands the *materia ex qua* of the external act through the other faculties, constituting merely the act’s material dimension. The choice is formal to the will’s command of the *materia ex qua* of the exterior act. Moreover, insofar as the exterior act—*materia ex qua*—is devoid of voluntariness, it receives its moral character solely from the choice.

In addition to speaking about the interior and exterior acts, one may speak of their respective objects as well. The will intends the object of the internal act of the will—the end, while it chooses the object of the external act of the will, and as the previous paragraph demonstrates, the former configures the latter like form to matter. Sousa-Lara understands Aquinas to equate the object of the external act with the *materia circa quam*, the Moral Object, and the proximate end. Aquinas identifies the object of the internal act with the remote end. Rhonheimer notes the confusion that identifying the object of the external act with the Moral Object presents. He indicates that the object of the external act “is the external act as a good understood and ordered by reason.” More precisely, the object of the exterior act is the matter and circumstances understood and ordered by reason, which present it to the will as good. Therefore, Rhonheimer, following Aquinas, asserts that the Moral Object is the exterior act. Rhonheimer is not considering the external act as prescinded from its voluntariness, that is, *materia ex qua*, but configured by reason *materia circa quam*. On the order of intention, the external act is the Moral Object insofar as the intellect forms it and presents it as a proposal for
Moreover, the Moral Object has the character of an end insofar as intention focuses on it.\textsuperscript{406} Thus it is also the proximate end. Since the interior act of the will is the very act of willing,\textsuperscript{408} it is possible for Rhonheimer to call the Moral Object the object of the interior act of the will.\textsuperscript{409} The intelligible proposal to take what does not belong to oneself—to steal—constitutes the means by which the adulterer accomplishes his end. In its voluntariness, that is, insofar as the will intends it as a choice, it constitutes an end, specifically a proximate end, chosen as configured by and for an ulterior end—adultery.\textsuperscript{410} On the order of execution, the will forms the goodness of the external act, which possesses a moral quality to the extent that one wills it.\textsuperscript{411}

Sousa-Lara notes that while Rhonheimer insists on introducing a new term to explain the intelligible content of the external act—what he calls basic intentional content—the necessity for this disappears if one understands the external act as both the object of choice (Moral Object) and that which one commands.\textsuperscript{412} On the order of intention, reason configures the external act and presents it to the will as a proposal, in which case it is \textit{materia circa quam}, and the Moral Object. On the order of execution, the will chooses and commands the external act. On the order of intention, the moral goodness of the act comes from reason, whereas on the order of execution, it comes from the will.\textsuperscript{413} As the will chooses and commands the external act, in the interior act of the will, the will intends the ends.\textsuperscript{414}

Having analyzed the concept of the Moral Object in the context of Aquinas’s action theory, the following subsection highlight the importance of maintaining the unique origin of the Moral Object in the moral order.

\textbf{ii. Naturalistic Fallacy}
a. Genus Moris Versus Genus Naturae

Finnis notes that Aquinas presents in his prologue to his commentary on Aristotle’s *Politics* four distinct orders that correspond to four distinct sciences. First, there is the natural order that corresponds to the natural sciences, math and metaphysics. Second, the order of the mind pertains to the science of logic. Third, the order of deliberating, choosing and acting pertains to the science of moral philosophy. Finally, a multitude of practical arts corresponds to an order that humans impose on external matter. The latter two categories constitute two distinct parts of the practical philosophy. Many interpreters of Aquinas mistakenly believe that moral laws derive from laws of nature.

In point of fact, however, Finnis insists that misappropriating human actions as any of the other three categories leads to its misunderstanding. Rhonheimer holds that the fundamental error of consequentialism is that it reduces morality to *poiesis*, technical decision making. In consequentialism, rather than answering what the right choices one should be doing, one uses reason to bring about through action as a cause the best possible consequences. Finnis says that this amounts to reducing a question of doing to one of making. In this sense, the concern of the consequentialist is bringing about states of affairs through action. Consequentialism derails moral decision making from its primary focus of freely choosing good act. Instead, human action focuses on how to create the best outcome by action. The right action for choice is relative. There is little concern about the goodness of the will regarding choices.

Finnis acknowledges that one may approach ethics from a speculative or theoretical perspective; that is, one may analyze how one comes to know practical truths, discuss and relate these to other truths, but ethics is primarily about practical truth.
because it is the study of human praxis, but because it concerns one’s acting on real and true goods. The Naturalistic Fallacy holds that the practicality of ethics derives from the physical; contending that the genus moris derives from the genus naturae. Rhonheimer calls this error physicalism or naturalism. It presumes that Natural Law and laws of nature are the same. It constitutes the primary error of manualists and the teleological theorists who oppose them. For Rhonheimer, they mistakenly believe that one discovers moral truths; when reason constitutes them as acts of practical understanding.

b. Manualism and Proportionalism

In The Sources of Christian Ethics, Servais Pinckaers describes the characteristics of manualism. The modern period of moral theology begins with the nominalism of Ockham, which focuses morality on obligation and the ideal law. A chasm develops between theology and pastoral concerns, which necessitates the development of manuals to guide parochial priests in confession. This corresponds with the counter-reformation and the formation of seminaries as institutions for preparing priests to minister in an increasingly pluralistic world. Under the influence of the Jesuits, the focus of moral theology becomes increasing pragmatic. They eliminate speculative content, such as the final end of man and grace altogether, emphasizing the commandments, sacraments, canonical censures and penalties, and states of life. The manuals use cases that illustrate concretely how to apply the commandments and moral obligations. The entire attention of morality theology focuses on individual cases of conscience.

The manuals generally have four different categories: human or free action, law, conscience and sin. Freedom is freedom of indifference with voluntaristic overtones that contrast with the limits of the law. In this sense, law does not incorporate one’s natural inclinations or direct one toward beatitude; rather, it simply constitutes an externally imposed
mandate. The law becomes an external imposition that obliges, but as G. E. M. Anscombe indicates in *Intention*, ought is a late addition to the practical syllogism. Casuistically, the conscience represents the person’s use of freedom of indifference to conform external acts to externally imposed laws. One sins when one fails to use one’s freedom to adequately apply laws in concrete action.

Just as Abelard and Lombard respond to contemporary legalism, proportionalists such as Peter Knauer, Josef Fuchs, Louis Janssens, Bruno Schuller, and Richard McCormick respond to the legalism of the manualist tradition. However, as Rhonheimer indicates, their rejection of manual legalism, rooted in physicalism, amounts to letting the Naturalistic Fallacy in through the back door. To illustrate, one need look no further than the first article that introduces the term proportionalism, that is, Peter Knauer’s “The Hermeneutic Function of the Principle of Double Effect,” where he says that moral evil consists in nothing more than causing physical evil. Using the Principle of Double Effect, Knauer argues that so long as a commensurate reason exists one may do any action. So long as the ends justify the means, one may commit any *finis operis*, which he identifies as the Moral Object. In fact, if the ends are satisfactory, then the commensurate reason changes the *finis operis* from a direct causing of evil to an indirect causing of evil. This is exactly what Richard McCormick means by the expanded notion of the object.

Louis Janssens, in “Ontic Evil and Moral Evil,” reduces moral evil to intending ontic evils, that is, physical evil. He reduces the means (Moral Object) to the material component of the act. In Thomistic terms, he reduces the Moral Object to the external act prescinded from its voluntariness, that is, *materia ex qua*. Consequently, Janssens falls victim to the same flaw that Rhonheimer accuses Josef Fuch of: reducing acts to pure events or behavior. According to
Rhonheimer, proportionalists reduce acting to intending failing to realize that acts themselves have intentional content.\(^{462}\) In other words, action for proportionalists involves causing the purely physical act or event for an end, which constitutes a state of affairs.\(^{463}\) For this reason, opponents accuse proportionalists of being consequentialists.

The main problem with the proportionalists’ approach to theology is that it evacuates reason from the intentional content of the Moral Object.\(^{464}\) Moreover, by making the genus moris derivative of the genus naturae, it establishes a dualism.\(^{465}\) Rhonheimer contends that the proper good (bona propria) toward which the natural inclinations tend are of the genus naturae, but not pre-moral in the sense that they are indifferent to the genus moris.\(^{466}\) Rather, for Rhonheimer, natural, human inclinations are always subject to the influence of practical reason insofar as this is a constitutive component of the human person.\(^{467}\) Once again, Rhonheimer affirms that for Aquinas, the Moral Object is not a matter out of which (materia ex qua), but a matter concerning which (materia circa quam).\(^{468}\) The Moral Object is the external act formed by reason and chosen by the will.\(^{469}\)

An important implication of not deriving the genus moris from the genus naturae is that the Moral Object can only be known from the first-person perspective, which the next subsection discusses.

iii: Moral Object and the Perspective of the Acting Person

Manualism is casuistic, using cases to teach. Unfortunately, the perspective of the acting person, which John Paul II reaffirms as of primary importance for moral theology, is lost.\(^{470}\) In fact, one can only know the Moral Object from the first-person perspective.\(^{471}\) This subsection addresses the deficiency of the third-person perspective of morality of the manualists and teleological theorists. First, following Finnis and Rhonheimer, I show how the naturalistic fallacy
reduces action and choice to events, devoid of intentional content. Second, I articulate Finnis’s
demonstration of the irrationality of a proportionalist utilizing the Socratic Principle. Finally, I
summarize John Paul II’s personalistic perspective to morality, which avoids the relativistic
pitfalls of proportionalism.

a. Avoiding Eventism

As morality during the manualist era focuses more on obligation, so theologians
increasingly define the object of the act in terms of the genus naturae. As the above
demonstrates, this corresponds to a dualism that renders action indifferent to natural inclination.
At the same time, as Rhonheimer points out, it makes objects of the genus moris derivative of the
genus naturae, which constitutes the Naturalistic Fallacy. Ultimately, this culminates in the
proportionalists equating the object with causing evil in the world, without commensurate
reason. Consequently, human acts are nothing more than events that give rise to states of
affairs. Finnis indicates that the proportionalists attempt to guide choice by assessing states of
affairs from a so-called objective standpoint; as such, they are guilty of eventism. Ultimately,
this renders choice insignificant, since it can only be known from the first-person perspective.

In fact, a consequence of an eventistic perspective for morality is that it reduces the
Moral Object to intention. According to an eventistic approach all acts in themselves lack
moral content. The only thing that morally specifies them is their reason for acting, that is, the
end or intention. Rhonheimer explains that the act of killing another person, according to an
eventistic perspective, lacks moral content, except for the intention or end that one has in view of
killing the person. Thus, if the commensurate reason suffices, one may kill another person.

For Rhonheimer, what is missing in this assessment is the intentional content that exists
in doing an act, prior to any consideration of the end, that is, why or for what purpose one is
doing this act.\textsuperscript{480} The intelligible content of ‘the what one is doing’ constitutes the Moral Object. This explains what one is choosing in doing a particular act. For example, in the act of killing another person, one is setting oneself against the other’s life—a fundamental good of that person.\textsuperscript{481} The act of killing another is, therefore, not inherently morally neutral as an earthquake, but intentionally and morally charged, even before one considers the ulterior end of action.\textsuperscript{482} Moreover, one can only know the Moral Object from the perspective of the acting person. Only the acting person knows if she intends to kill the other person or is practicing self-defense. Similarly, the outside observer cannot tell if a man and a woman copulating are committing adultery or engaging in the marital act.

\textit{b. The Socratic Principle}

Finnis and Rhonheimer reject the third-person perspective of morality because it does not pass the test of the Socratic Principle.\textsuperscript{483} The Socratic Principle, which hold that it is better to suffer wrong than to do it originates with Democritus.\textsuperscript{484} The Pauline Principle, ‘evil may not be done for the sake of good,’ is a corollary.\textsuperscript{485} Kant’s categorical imperative that ends do not justify the means also derives from this.\textsuperscript{486} The author of the Gospel of John also raises this question by placing it into the mouth of Caiaphas: “Is it not better that one innocent person be put to death than that the whole people perish?”\textsuperscript{487} For both John and Paul, the answer is clearly no.\textsuperscript{488} For Rhonheimer and Finnis, proportionalists clearly teach that one may indeed do evil that good may result, so long as the ends justify the means.\textsuperscript{489}

For Finnis the biggest difference between a proportionalists and a non-proportionalist is that the right choice resides in the outcome of action.\textsuperscript{490} Finnis illustrates the irrationality of proportionalism by demonstrating a contradiction that all eventistic ethics are subject to. Finnis offers two apparently similar propositions:
(1) It is true that every person x that x should act on the principle that ‘I ought not to do V.’

(2) It is true of every person x that x not doing V is a proportionately better state of affairs than x doing V.  

Finnis reformulates (1) to include the Socratic Principle: “(1a) It is true of every person x that x should act on the principle that ‘I ought to suffer wrong rather than do wrong.” Consequently, “(2a) It is true of every person x that x suffering wrong is a proportionately better state of affairs than x doing wrong.” However, Finnis demonstrates that (2a) contains a contradiction insofar as it implies that “(2b) It is true of any person x, y, z that x suffering wrong from y is a better state of affairs than x doing wrong to z.” In addition, one can derive: “(2c) a suffering wrong from b is a better state of affairs than a doing wrong to b” and “(2d) b suffering wrong from a is a better state of affairs than b doing wrong to a.” These radical contradictions are possible in an eventistic ethic because the acting subject disappears.

Rhonheimer explains that the implication of the Socratic Principle is that one cannot simply compare two separate individuals to determine which action is correct. Sometimes the right action is to abstain from acting. To illustrate, Rhonheimer uses the extreme example of the French Nazi collaborator Paul Touvier who claims that he killed seven innocent people to rescue 93 innocent people. According to Rhonheimer and Finnis, nothing—no matter how good the ends—justifies one willing the death of innocent people. Another example includes the scenario of an assailant coercing a hostage to kill another hostage, lest the attacker kill all the hostages. In an eventistic ethic one simply weighs the consequences, without any consideration of the morality of choosing the death of an innocent person. For a non-proportionalist, it is better to suffer the evil of another person’s decision, than to commit evil so as to prevent it. Of course, this example has the mistaken logic that one person’s decision to abstain from an evil act causes
an even greater evil state of affairs. In fact, the assailant freely chooses to murder the innocent hostages. The hostage does not commit a greater evil, by failing to commit an evil that purportedly rescues others from death. After all, there is nothing that prevents the assailant from violating his word and killing the other hostages anyway.

c. Personalism in Veritatis Splendor

In *Veritatis Splendor*, John Paul II affirms the traditional personalistic perspective of morality that characterizes authentic Thomistic moral theology. This is not to say that he embraces a relativistic approach to morality, which he clearly rejects. Nor does it mean denying its objective and universal application. It is, however, to say that the Natural Law, which governs morality, is not extrinsic to the human person, but constitutive of it. In other words, God does not arbitrarily dictate commands that have nothing to do with the human condition. Rather, the Natural Law, reflective of the eternal and divine law, abides in the human person through creation. It is precisely its connection to the eternal and divine that renders it universal.

In action, the Natural Law manifests itself as practical reason, which guides, but does not determine the truly autonomous person in moral decision making. John Paul II avoids the trappings of reducing moral decision making to biological processes; rather, he insists that humans are truly free, though not in an absolute sense that treats human nature as raw datum. Thus, he avoids the trappings of dualism that reduces the human person to either the bodily or spiritual component. Rather, the human person constitutes a unity of both body and soul, reducible to neither. By rooting morality in the human person, John Paul II, not only avoids conflicts between nature and freedom, which a dualistic understanding of human nature lends
itself to, he also further establishes its universal and immutable character. This is what provides the foundation for moral norms that transcend culture or time.

For John Paul II, the voice of reason speaks within the depth of one’s heart on practical matters through one’s conscience. While norms both negative and positive may be universal and immutable, the human person must still apply these in concrete actions. In this regard, the personal perspective for morality is invaluable and primary, not because one decides what is good to do in an absolute sense, but because one appropriates the truth in action by means of one’s conscience. Therefore, the conscience stands as a witness to the law and constitutes a dialogue between the person and God.

In opposition to proportionalists and teleological theorists, in general, John Paul II both rejects the fundamental option and reaffirms the existence of intrinsically evil acts, which meeting the appropriate criteria constitute mortal sin. John Paul II concurs that one may fundamentally orient one’s life toward God, but this does not mean that one’s concrete actions do not matter, nor that they have little to no impact on one’s commitment to God. It is precisely through one’s acts that one reveals one’s commitment. Separating concrete acts from one’s fundamental orientation represents a dualism rooted in human nature. Therefore, following the longstanding teaching of the Church, John Paul II reaffirms that mortal sin is possible, when one’s act constitutes grave matter; one has full knowledge, and gives deliberate consent of the will. Indeed, for John Paul II, an appropriate teleology regarding morality understands the human person as attaining one’s ultimate end through concrete acts.

Ultimately, John Paul II takes issue with teleological theorists—consequentialists and proportionalists—for their rejection of the traditional understanding of the Moral Object. The next subsection illustrates how proportionalists conceive of the Moral Object as intention. As
Rhonheimer illustrates in the above subsection, proportionalists evacuate the Moral Object of its own intentional content.\textsuperscript{523} They make the Moral Object equivalent to intention—hence the identification as teleologists—while Thomists, such as Finnis, Rhonheimer, and John Paul II defend a notion of the Moral Object as having an intentional content of its own.\textsuperscript{524} John Paul II retains the traditional distinction regarding the three sources of morality—Moral Object, intention, and circumstances—of which Moral Object is primary.\textsuperscript{525}

John Paul II defines the Moral Object as that which the will deliberately and rationally chooses.\textsuperscript{526} The human person, through a deliberate act of the will, chooses a rationally configured type of behavior.\textsuperscript{527} The person constitutes the active agent; as such, one can only know the Moral Object from the perspective of the acting human person.\textsuperscript{528} The intellect rationally configures it, which the will deliberately intends, bestowing moral content upon the so-called behavior.\textsuperscript{529} Insofar as certain types of rationally configured behavior conform or fail to conform to the suppositum of human nature, that is, truly lead to one’s ultimate end—good or evil—intrinsically evil acts do exist.\textsuperscript{530} As such, each particular human act—freely and deliberately chosen—not only builds character—either contributing to growth in virtue or vice—but also draws the acting human person closer to one’s ultimate end. Moreover, the primacy of the Moral Object means that no intention or circumstance can change the Moral Object, making an intrinsically evil act good.\textsuperscript{531}

In reaffirming the primacy of the Moral Object, John Paul II also demonstrates the importance of returning to the perspective of the acting human person when evaluating action. At the same time, he rejects any tendency to relativize morality, by rooting the Natural Law in the divine law, which God bestows on humanity in creation. Moreover, he understands the human person as a composite that avoids the dualistic trappings of teleological theories. Above all, he
re-establishes the primary role of the Moral Object for morality. Insofar as this constitutes a rationally configured type of behavior, which the will deliberately chooses, it manifests itself in particular acts that have teleological import regarding an one’s ultimate end.

Having demonstrated the importance of the first-person perspective for Moral Object, the next subsection identifies the Moral Object of contraception.

**iv. Object of Contraception**

The meaning of the Moral Object centers on the debate as to whether or not contraception is an intrinsically evil act. John Paul II reorients the understanding and significance of the Moral Object as the deliberate act of the will in *Veritatis Splendor*. Before this encyclical, theologians arrive at differing conclusions based on their divergent understandings of the Moral Object. The following subsection considers the perspectives of the manualists, proportionalists and virtue ethicists, especially Rhonheimer concerning the topic of contraception.

*a. Manualism*

John T. Noonan Jr. in *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* traces the historical approach of theologians throughout the centuries of the Church regarding their treatment of the pastoral issue of contraception. As Pinckaers indicates, the manuals are tools for pastoral formation of priests in seminary. Consequently, the focus is physical and external. Regarding the variety of manual authors, Noonan follows the perspective of four: John Gury’s *Compendium of Moral Theology*, Thomas Gousset’s *Justification de la theologie morale de St. Alphonse de Liguori*, John Baptist Bouvier’s *Dissertation on the Sixth Commandment of the Decalogue and Supplement to the Treatise on Marriage*, and Francis P. Kenrick’s *Theologia moralis*.
Noonan indicates that manual authors eliminate recourse to Augustine in favor of the more tolerant Liguori to extinguish the Jansenist influence. They equate contraception with Onanism or *coitus interruptus*, that is, the act of withdrawing the penis and ejaculating extravaginally. Rome’s approach to contraception in the nineteenth century is surprisingly tolerant, encouraging priests “not to destroy the good faith without any fruit for souls,” that is, not to mention the issue if it is not brought up, but to speak the truth if nonetheless pressed. Equating contraception with Onanism makes it odious and ugly, and a quick, yet superficial rejection. Of the four manuals that Noonan analyzes, only Bouvier’s has an argument against contraception that does not merely constitute a rejection of Onanism. Although he argues that contraception violates the primary end of marriage, procreation, he nonetheless contends that the punishment is due to its equivalence with Onanism.

As the birth control movement spreads in the Western world during the late nineteenth and early twentieth century, the need for a more sophisticated, if not nuanced approach to the onslaught becomes apparent. Short and sweet arguments with recourse to Old Testament retributive justice—divine or not—no longer suffice. For this reason, Pope Pius XI writes *Casti Cannubii*, an encyclical that addresses the nature of marriage and modern threats to it. Pius XI after articulating the three ends of marriage according to Augustine, condemns the practice of frustrating the marital act to avoid having children, but nonetheless intending to gratify desires without the so-called consequent burden of having children. He unequivocally condemns as unnatural, intrinsically vicious, and gravely evil any contraceptive act, which is disruptive of the primary end of the marital act of begetting children. He admits of no exception to this rule, the violation of which constitutes an intrinsically evil act.
b. Proportionalism

Proportionalists offer a nuanced approach to contraception, one that allows for exceptions to the exceptionless. Knauer’s argument, which has recourse to the Principle of Double Effect, rejects too narrow an understanding of Pius XI’s pronouncement in *Casti Cannubii*, which he perceives as ambiguous. It is ambiguous for Knauer because it does not specify whether one’s intention to physically interfere with the fertility of the procreative act is psychological or moral. He indicates that the purely physical evil of losing procreative power does not constitute a moral evil, without further content, in particular, intention in the moral sense.

Recall that Knauer’s definition of moral evil constitutes the causing of a physical evil without a commensurate reason. He insists that without intentional content in the moral sense, the act of preventing pregnancy does not yet constitute the Moral Object; therefore, it is impossible to make a moral assessment of it. It must have a commensurate reason. Insofar as one can use periodic continence for an evil end of preventing children, Knauer sees no difference between using periodic continence or contraception either for good or immoral reasons. For Knauer, if periodic continence is not realistic for preventing pregnancy, where a couple ought not to get pregnant, for a commensurate reason, such as, a lack of resources for fulfilling the responsibilities of parenthood in education and rearing, then a couple may use contraception. Moreover, if utilizing contraception, instead of periodic continence, improves the love between the couple, then they ought to use it.

c. Rhonheimer

In 1968, Paul VI publishes *Humanae Vitae*, reaffirming the Church’s condemnation of contraception. Paul VI bases his rejection of contraception on the Inseparability Principle,
which constitutes the notion that the procreative and unitive dimension of the marital act are inseparable. One cannot have one without the other; if one denies or violates the procreative dimension of the marital act, then one also denies or violates the unitive dimension. Insofar as contraception interrupts the procreative significance of the marital act, it also interrupts the unitive significance. Moreover, Paul VI rejects any argument that attempts to justify the use of contraception based on either its means or end, reaffirming the truth of the Socratic Principle: “it is never lawful, even for the gravest reasons, to do evil that good may come of it.”

Rhonheimer argues that the Moral Object of the contraceptive act violates chastity, rooted in the Inseparability Principle. He bases his argument in anthropology, that is, human nature. Human acts are always of a human person, which constitutes both a body and spirit. Rhonheimer rejects any dualistic anthropology that separates acts of the body from the soul. Dualists usually equate the soul with the person and relegate the body to mechanistic determinism. For Rhonheimer, freedom is a constitutive part of the human act of love, which the marital act speaks as the language of the body.

Rhonheimer defends Paul VI’s teaching on the Inseparability Principle, making an important distinction between meaning and function. To say that every instance of the marital act must have the procreative and unitive meaning, or the procreative to have the unitive and visa versa, is not to say that each and every act must be functionally procreative, that is giving rise to conception. For this reason, a couple practicing periodic continence respects and maintains the openness to the procreative meaning, even if they know or expect the act not to functionally lead to conception. The same may be said of a couple that is unable to conceive because of age or sterility. Rhonheimer accuses Noonan of misunderstanding this conceptual distinction, which leads Noonan to make room for exceptions.
For Rhonheimer, the Moral Object concerns choices pertaining to action, which the will deliberately chooses.\textsuperscript{572} In particular, the Moral Object constitutes what one does in an intentional sense.\textsuperscript{573} For this reason, Rhonheimer, following Aquinas, understands the Moral Object to be *formae a ratione conceptae*—a form of a rational concept, that is, a proposal that the intellect forms according to reason and presents to the will as a choice.\textsuperscript{574} Therefore, for Rhonheimer the description with intentional content, that is, the Moral Object of the marital act is: for a married couple to give themselves with their whole spiritual, affective, emotional, and sexual being to loving union, which physically manifests itself in copulation.\textsuperscript{575} Intentionally, this includes openness to the meaning, not necessarily, function of procreation.\textsuperscript{576} Moreover, conceptually, the ends of marriage are unique to the Moral Object of the conjugal act. However, in the object of the marital act, the aspect of loving union is the fundamental aspect, which implies the procreative meaning, not in a secondary way, but as inseparably connected.\textsuperscript{577}

For Rhonheimer, recourse to the Inseparability Principle does not suffice to answer why one may not utilize contraception in a particular instance, if as the proportionalists say one is fundamentally open to life.\textsuperscript{578} To explain why each and every instantiation of the marital act must be open to the procreative meaning, Rhonheimer correlates responsible parenthood to chastity, that is, the virtuous integration of sexual drives into the dominion of reason and will.\textsuperscript{579} This is not a matter of repelling or suppressing sensual appetites, rather it means impressing or modifying them with the seal of reason.\textsuperscript{580} For Rhonheimer, responsible parents practicing periodic continence to avoid conception do not just commit an act of omission by avoiding sexual intercourse during fertile times, but commit a deliberate human act; and therefore, bodily and sexual act of loving union that is open to procreation.\textsuperscript{581} Though their act of refrain does not entail sexual intercourse, it nonetheless is sexual and a personal expression of mutual love.
In contrast to periodic continence, contraception enables a couple to avoid pregnancy without modifying sexual behavior.\textsuperscript{582} More precisely, contraception constitutes choosing an act that impedes the possible procreative consequences of the sexual act.\textsuperscript{583} For Rhonheimer, contraceptive acts are immoral not merely because they physically impede the possibility of procreation, but because they render “needless a specific sexual behavior informed by procreative responsibility.”\textsuperscript{584} Moreover, it constitutes a choice against chastity, insofar as they are no longer procreative and need to be under the domain of reason and the will.\textsuperscript{585} Therefore, the Moral Object of contraception constitutes a vice against the virtue of chastity.\textsuperscript{586}

Having demonstrated the impact that a personalistic conception of both the Natural Law and the Moral Object have for the Catholic Church’s official teaching against contraception, the following chapter connects this chapter’s insights on the Moral Object to the Principle of Double Effect.

\textsuperscript{1} Thomas Aquinas, \textit{The Summa Theologica}, (Chicago: Benzinger Brothers, 1947), \url{http://dhspriory.org/thomas/summa/index.html}, I-II, q. 90, a. 1.
\textsuperscript{3} Rhonheimer, \textit{Natural Law and Practical Reason}, 61.
\textsuperscript{4} Rhonheimer, \textit{Natural Law and Practical Reason}, 61.
\textsuperscript{5} Rhonheimer, \textit{Natural Law and Practical Reason}, 59.
\textsuperscript{6} Rhonheimer, \textit{Natural Law and Practical Reason}, 58-61.
\textsuperscript{7} Rhonheimer, \textit{Natural Law and Practical Reason}, 58-61.
\textsuperscript{8} Rhonheimer, \textit{Natural Law and Practical Reason}, 60-1.
\textsuperscript{9} Aquinas, \textit{Summa Theologica}, I-II, q. 90-94.
\textsuperscript{10} Aquinas, \textit{Summa Theologica}, I-II, q. 90, a. 1, r.
\textsuperscript{11} Aquinas, \textit{Summa Theologica}, I-II, q. 90, a. 1, r.
\textsuperscript{12} Aquinas, \textit{Summa Theologica}, I-II, q. 90, a. 1, r.
\textsuperscript{13} Aquinas, \textit{Summa Theologica}, I-II, q. 90, a. 1, r.; Aquinas, \textit{Summa Theologica}, I-II, q. 1, a. 1, r.
\textsuperscript{14} Rhonheimer, \textit{Natural Law and Practical Reason}; Aquinas, \textit{Summa Theologica}, I-II, q. 90, a. 4, ad. 2.
\textsuperscript{15} Rhonheimer, \textit{Natural Law and Practical Reason}, 62.
\textsuperscript{17} Rhonheimer, \textit{Natural Law and Practical Reason}, 63.


20 Rhonheimer, *Natural Law and Practical Reason*, 64.


23 Aquinas, *Summa Theologica*, I-II, q. 90, a. 1, reply 1; q. 91, a. 2, r.


26 Aquinas, *Summa Theologica*, I-II, q. 90, a. 2, r.

27 Aquinas, *Summa Theologica*, I-II, q. 90, a. 2, r.


29 Aquinas, *Summa Theologica*, I-II, q. 90, a. 3-4.

30 Aquinas, *Summa Theologica*, I-II, q. 90, a. 3, r.

31 Aquinas, *Summa Theologica*, I-II, q. 90, a. 4, r.

32 Aquinas, *Summa Theologica*, I-II, q. 91, a. 2, r.

33 Aquinas, *Summa Theologica*, I-II, q. 91, a. 1, r.

34 Aquinas, *Summa Theologica*, I-II, q. 91, a. 1, reply 3.


36 Aquinas, *Summa Theologica*, I-II, q. 90, a. 2, r.

37 Aquinas, *Summa Theologica*, I-II, q. 90, a. 2, r.


40 Finnis, *Natural Law and Natural Rights*, 399.

41 Finnis, *Natural Law and Natural Rights*, 400; Aquinas, *Summa Theologica*, I, q. 79, a. 4c.


Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching*, 30; Finnis, *Natural Laws and Natural Rights*, 32, footnote 27; Aquinas, *Summa Theologica*, I-II, q. 94, a. 2c, q. 66, a. 5 and 4, I, q. 79, a. 2c; Aquinas, *De Veritate*, q. 16, a. 1c.


Aquinas, *De Veritate*, q. 16, a. 2, reply.

Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching*, 35.


Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching*, 35.

Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching*, 35.


Finnis, *Natural Law and Natural Rights*, 70.

Finnis, *Natural Law and Natural Rights*, 69.

Finnis, *Natural Law and Natural Rights*, 69.

Finnis, *Natural Law and Natural Rights*, 69.

Finnis, *Natural Law and Natural Rights*, 69.

Finnis, *Natural Law and Natural Rights*, 69.

Finnis, *Natural Law and Natural Rights*, 69.

Finnis, *Natural Law and Natural Rights*, 71-2.


Rhonheimer, *The Perspective of Morality*, 100.


92 Rhonheimer, *The Perspective of Morality*, 162.
93 Rhonheimer, *The Perspective of Morality*, 162.
94 Rhonheimer, *The Perspective of Morality*, 146; Aquinas, *Summa Theologica*, q. 18, a. 5; q. 71, a. 2.
95 Rhonheimer, *The Perspective of Morality*, 146; Aquinas, *Summa Theologica*, q. 18, a. 5; q. 71, a. 2.
96 Rhonheimer, *The Perspective of Morality*, 68.
100 Rhonheimer, *The Perspective of Morality*, 73.
106 Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching*, 44.
107 Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching*, 44.
111 Rhonheimer, *The Perspective of Morality*, 146; following Aquinas, *Summa Theologica*, I-II, q. 18, a. 5; q. 71, a. 2.
113 Rhonheimer, *The Perspective of Morality*, 162.
120 Rhonheimer, *The Perspective of Morality*, 164.

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CHAPTER THREE – PRINCIPLE OF DOUBLE EFFECT

In light of the preceding chapter’s insights on the Natural Law and the Moral Object, this chapter analyzes the Principle of Double Effect. The first section traces the Double-Effect Reasoning from Thomas Aquinas to Peter Knauer. The second section contrasts a teleological construct of Double Effect with non-consequentialist versions.

3A. Double Effect from Aquinas to Knauer

i. Aquinas and Double Effect Reasoning

Aquinas uses Double-Effect Reasoning in two places in the Summa Theologica. First, he explains killing in self-defense. Second, he shows how one may unintentionally scandalize others by alluring dress or spiritual acts. In the following, I elucidate several criteria that derive from Aquinas’s Double-Effect Reasoning.

In the first objection to article seven, Aquinas quotes Augustine’s objection to killing another, even in self-defense, except for a soldier or official exercising public office. The objector implies that one may only kill if one exercises public authority. The following objection and the response both qualify the meaning of Augustine’s statement. Moreover, the proper meaning of intention gives further weight to Aquinas’s explanation.

Intention has several means for Aquinas. Understanding his parsing of the terms in the explanation of human action clarifies his use of it in the context of Double-Effect Reasoning. In the Prima Secundae of the Summa Theologiae, he distinguishes between intending a remote end (finis operantis) versus choosing a proximate end (finis proximus or finis operis). The proximate end is the Moral Object, while the remote end is the reason one does an act.

In agreement with Augustine, Aquinas objects to civilians intending to kill a person either as a means or an end. One may not intend to kill another even in self-defense. This is because he
objects to doing evil for a good result. This constitutes at least two criteria in the Principle of Double Effect. One, the Moral Object of the act must be morally good or neutral. Two, one must not intend any evil effects.

Aquinas uses praefer intentionem to explain the unintended consequences of an act. Returning to his answer on killing in self-defense, he says that an act may have more than one effect not all of which one intends. Moreover, actions get their species from intention, not from what is beside (praefer intentionem) intention, which is accidental. Praeter intentionem is a multivalent concept that has several meanings in Aquinas’s corpus. Duarte Sousa-Lara elucidates three ways Aquinas uses praeter intentionem, which I explicate in the following.

First, regarding moral actions and intention, he insists that the agent never intends evil per se, but praeter intentionem or per accidens. Whenever one commits sin, one chooses a good with a privation. The will intends the good per se, but the privation accompanies the good, praeter intentionem. Aquinas uses the example of one eating unto death as an analogy for one who sins intending a good with an associated evil. Just as the diner chooses, and therefore, intends the good pleasure associated with eating, not the premature death due to poor health, so he chooses and intends some good in the sin, not the evil. The premature death and damage due to sin are praeter intentionem. It is only in this sense that one chooses to sin.

Second, praeter intentionem refers to an unforeseen effect or a causally chance occurrence. Intelligible agents choose what they apprehend. If one errs in apprehension, then one errs in choosing and intending. For example, if one chooses to drink fruit punch, but instead drinks poison, the evil of consuming poison is not chosen per se, since it is outside of both one’s apprehension and intention. The consumption of poison is praeter intentionem. Nonetheless, the
evil consequences of consuming poison ensue. The agent did not foresee this. Here, *praeter intentionem* refers to an accidental event in that it is both unforeseen and occurs by chance.

Third, *praeter intentionem*, refers to the foreseeable, yet unintended effects of actions. This concerns Double-Effect Reasoning. More specifically, it concerns intention’s moral specification of the act. An act receives its species precisely from what the agent intends, not from its effects.\(^1\) As it pertains to Double-Effect Reasoning and self-defense, one may intend to preserve one’s life; however, one’s action may kill the assailant. Insofar as one does not intend the latter, it is beside (*praeter intentionem*) the Moral Object.

In addition to the negative effect being *praeter intentionem*, Aquinas also insists that the act of self-defense must be proportionate to the attack.\(^2\) By proportionate, Aquinas does not mean that the ends must justify the means. He is not saying, weighing all possible outcomes, if the remote end is good enough, one may have a proximate end that is immoral. For instance, in a hypothetical scenario where a captor threatens to kill five hostages, if one does not kill one person in exchange for the five, one may not licitly acquiesce. No matter how many people may be saved—five or a hundred—or how menacing the foe one may not justifiably commit an intrinsically disordered act. No positive outcome can ever justify one intending an intrinsically evil act. For Aquinas, proportionality does not mean a change in intention or the Moral Object.

Indirectly, however, the amount of force one uses in self-defense reflects intention, and therefore, the Moral Object. In this regard, proportionality is a litmus test for Aquinas. For him, if one uses more force than necessary, this indicates that one’s intention is not one of self-defense, but murder. The proportionality criterion necessitates that the defender not use more force than necessary to resist the assailant’s attack. If an assailant attacks with a pillow, it is not proportionate to resist with a gun.
Aquinas, following Jerome’s interpretation of Matthew 15:12, asserts that one commits scandal when one’s actions or words cause another’s spiritual downfall. He distinguishes between active and passive scandal. Active scandal occurs in the one who commits a sin that leads another into sin. Passive scandal occurs in the one led into sin. Ordinarily, active scandal leads to passive scandal, but one may resist the temptation to scandal, thereby not sinning. In such a case, active scandal exists without passive scandal. It is also possible to have passive scandal without active scandal, such as when one’s good deeds are the occasion for another’s sin. For instance, one moved to envy by another’s charity, is an occasion of passive scandal without active scandal.

Aquinas divides active scandal into two types: direct and accidental. Direct active scandal occurs when one intentionally leads another into sin by one’s sinful actions. Accidental active scandal occurs when one’s sinful actions unintentionally leads another into sin. In this accidental case, the scandal is beside the sinful act. In the following article, Aquinas further clarifies that one may commit active scandal by “doing something that has the appearance of evil.”

Aquinas uses Double-Effect Reasoning again in his discussion about women wearing adorning dress. He acknowledges that women’s dress lead some men to lust; however, he allows women to adorn themselves if they intend to please their husbands. He says “those women who have no husband nor wish to have one, or who are in a state of life inconsistent with marriage,” sin if they intend to insight lust in another by their dress. Intention is central.

Having elucidated Aquinas’s version of Double-Effect Reasoning, the following subsection traces its development in his successors.

ii. Antoninus to Gury
Double-Effect Reasoning evolves through the centuries in articulation and prominence. Ironically, as it becomes more prominent, it also diverges more from the principles that undergird it. As the role of the Moral Object diminishes, a causal system replaces it. The focus shifts from choosing proximate ends to causing effects. This subsection follows the chronological development of these trends in the following: Antoninus, Cajetan, Vitoria, Suarez, John of Saint Thomas, and Domingo of Saint Teresa.

According to T. A. Cavanaugh, Antoninus is the first to advance Aquinas’s use of Double Effect. In his *Summa theologiae moralis*, Antoninus returns to scandal and alluring dress. Antoninus makes explicit Aquinas’s implicit use of Double Effect to justify women wearing alluring dress to please their husbands, but unintentionally scandalizing others. For Cavanaugh, Antoninus does with Aquinas’s discussion of revealing dress, what Aquinas does with Augustine’s killing by self-defense. Just as Aquinas permits killing by self-defense under the umbrella of Double Effect, so Antoninus permits alluring dress, even if it scandalizes another, so long as she only intends to please her husband or to follow the custom of her status or country. Scandal and alluring dress is a hallmark example for discussions on Double-Effect Reasoning.

Another Dominican, Tommaso de Vio Gaetani (Cajetan) writes a comprehensive and influential commentary on Aquinas’s *Summa Theologica* in the sixteenth century. Joseph T. Mangan, in “An Historical Analysis of the Principle of Double Effect,” says that for the first 200 years after Aquinas, no significant development occurs for Double-Effect Reasoning until Cajetan’s commentary on the *Summa Theologica*. Cajetan interprets Aquinas’s Double-Effect Reasoning in line with contemporary formulations of the Principle of Double Effect. Mangan interprets Cajetan’s understanding of both the means (*finis proximus*) and the remote end (*finis operantis*) to simultaneously fall under one intention. But he distinguishes the end from the
necessary effects of the end. While the end falls under the intention, its effects do not. For killing in self-defense, the death of the assailant proceeds from the defensive act necessarily as an effect but does not fall under intention either as a means or an end.  

Cajetan maintains the distinction in Aquinas between one who intends to kill to save one’s life and one who intends self-defense but kills. An important development, however, is the awareness of the necessary, causal relationship between the act of self-defense and the death of the assailant. In I-II, q. 20, a. 5, Aquinas argues that foreseen consequences do increase the goodness or badness of an act. Thus one might conclude that it is only when consequences are not foreseen that one may refer to them as praeter intentionem. Cajetan contests this view in his commentary. He has no qualms about knowing or foreseeing the death of the attacker in self-defense. This does not change the scope of intention over the Moral Object. For Cajetan, even though one may know that the act of self-defense is fatal, one may still not intend to kill, either as a means or an end.

Next, Cajetan broadens the application of Double Effect to include not only self-defense, but also defense of temporal possessions and spiritual welfare. Just as one has a right to self-defense, so one has a right to defend necessities of life, if no other means exist. Again, the act is one of defense, with the effect of the death of a thief. Moreover, if one can defend physical life and property (to the death), then it is all the more important to defend one’s spiritual vitality (even to death), especially in light of eternal implications.

Cajetan also argues that a judge—personally knowing a man to be innocent—ought to condemn him to death, if the public evidence convicts him. Aquinas argues that a judge, acting as a public person may only use the knowledge available to her as a public person. She does not intend to kill, but acting in the confines of the office, she sentences him to death.
Cajetan’s monumental commentary on Aquinas’s *Summa Theologica* transfers the hermeneutic of theology from commentary on Peter Lombard’s *Sentences* to Aquinas’s *Summa Theologica*. The Dominican, Francisco de Vitoria, follows Cajetan’s lead as department chair of theology at the University of Salamanca. With regard to foreknowledge of the death of an assailant, Vitoria applies a distinction between choosing and intending to Double Effect, which Aquinas and Cajetan avoid. Mangan emphasizes the importance of a correct understanding of intention for a proper interpretation of Aquinas’s Double Effect. He argues that his Jesuit counterpart, Vincente M. Alonso, limits the scope of intention solely to the reach of the remote end, whereas Aquinas utilizes a broader sense for intention that includes the proximate end as well. John Finnis, in *Aquinas: Moral, Political and Legal Theory*, highlights the difference between the narrow and broad sense of intention. Generally speaking, the object of choice corresponds to the means, while the object of intention corresponds to the remote end, but for II-II, q. 64, a. 7, Aquinas uses the broader sense of intention. In the footnote, Finnis points the reader to Aquinas’s *De Malo* to illustrate this broader sense of intention, which Aquinas applies to Double-Effect Reasoning. In *De Malo*, Aquinas offers a hypothetical scenario of one choosing to steal from the rich to give to the poor. He argues that while the person may intend good, he wills evil. Thus, he concludes, “if we should understand the will by intention, so that we call the whole, both the end intended and the deed willed, the intention, the intention also will be evil.” For this reason, Aquinas specifically denies one the possibility of intending to kill another, even for the purpose of self-defense.

Since Vitoria maintains the distinction between choice and intention, he argues that one may will to kill an attacker in self-defense, but one may not intend to kill him as an end for one’s action. Analogously Vitoria uses the example of a sick man amputating his arm to save his life.
The man intends to save his life choosing to amputate his arm as a means to good health. The analogy, however, does not hold, because amputating one’s arm is a neutral act. Choosing to kill another, either as a means or an end is not neutral, but intrinsically immoral. Aquinas’s broader sense of intention that includes both the means and the end precludes Vitoria’s move to justify the means by the ends. What exempts the death of an assailant from moral guilt is that it is beyond the scope of the intention and will altogether, which is precisely what *praeter intentionem* means.

Twenty years after Vitoria’s death in 1546, Francisco Suarez begins studies in theology at the University of Salamanca. Whereas Vitoria neglects the morality of the proximate end for sake of the ultimate end, permitting one to choose to kill an assailant, Suarez eliminates discussion of the proximate end altogether. In addition, he introduces vocabulary that opens the door further to causal morality. Sousa-Lara translates Suarez’s words. Suarez concedes that if one kills another unintentionally, then one is not guilty of *per se* direct, voluntary homicide, which means the act is not voluntary in the absolute sense. However, as to the cause-effect relationship, that is, insofar as it is known that one’s action causes the death of another, Suarez asserts that it is indirectly voluntary, which remains true even if the effect follows *per se* from the cause. Where the death is accidental, in that it is not foreseen, he argues that it is not voluntary.

Suarez’s use of ‘indirect voluntary’ is not consistent with Aquinas, who uses indirect voluntary to describe willing by omission. For instance, if one willfully chooses not to save a person’s life when it is within one’s power to do so, then one kills by omission. The inactive willing is what Aquinas means by indirect voluntary, but this is not what Suarez means. In fact, Suarez and other commentators develop Aquinas’s notion of indirect willing to include positive
acts as well as acts of omission. Afterwards, they apply indirect willing to cases of Double Effect, with the implication that indirect willing is synonymous with *praeter intentionem*.

In Aquinas, indirect voluntary connotes culpability, since it is by means of the will choosing not to act that one commits a sin. However, Suarez and others remove culpability, but maintain an extrinsic connection to the will. What he says regarding the unintended killing of another in self-defense illustrates this point: “It is confirmed, on the other hand, that it is voluntary only in its cause, it is only indirectly voluntary, even if the effect follows necessarily (*per se*) from that cause.”50 For Aquinas, however, so long as the will connects with the act, culpability abides. *Praeter intentionem* means that the will in no way intends or chooses the evil effect; thus removing moral culpability.

In addition to substituting indirect voluntary for *praeter intentionem* and maintaining a connection of the will to the effect, Suarez also eliminates discussion of the proximate end. Without any consideration for the proximate end, the first-person perspective of choice that constitutes an action as voluntary, is lost. The movement of the will as intention and choice give an external act its moral character. The movement of the will is by definition an internal act, which can only be known from within the person. By eliminating consideration of the proximate end, Suarez pushes morality outside the soul into the natural sphere. Consequently, acts are merely causes chosen for their effects.

According to Aquinas, one may consider one act in two ways: the natural order and the moral order. Insofar as an act causes an effect that has a corresponding order or disorder in the natural order it is good or evil on that level. However, for an act to be evil on the moral level, one must will it as such.51 Recall the above example of unknowingly, and unwillingly consuming poison. An evil on the natural order occurs, but since one does not will it, it is not a moral evil.
Recall from the previous chapter that Aquinas considers two movements of the will: intending and choosing. By intending, the will has as its object an end. Intention guides choosing. By choosing, the will selects a particular Moral Object, and then commands a specific external act. Rationally ordered to its end, the will commands external acts by means of the choice. The object of the choice is the proximate end that intention and the remote end formally configure, as form to matter in such a way that the will commits one act through intention and choice.

By way of example, if one kills an assailant, as an outside observer, one does not necessarily know the agent’s intention. The external act of self-defense in its purely natural sense—materia ex qua—may look no different than one choosing to kill the assailant. Only the perspective of the acting person reveals the will. By means of self-revelation, various scenarios may arise. One, it may become apparent that the agent fully intends to kill the assailant, regardless of self-defense. Two, the agent may intend to kill the agent, as a means to self-defense, something which Vitoria and many other commentators have no problem with, but that Aquinas detests as immoral. Three, the agent may intend to protect one’s self using proportionate means, that one may or may not foresee leading to the death of the assailant. The first example differs from the latter two in that the proximate end is murder, not self-defense. Without an appreciation for the proximate end, the difference between scenarios two and three obfuscates. Only the first-person perspective reveals the proximate end.

J. Ghoos, in “L’Act a Double Effet Ètude de Théologie Positive,” insists that John of Saint Thomas (John Poinsot) is the first to put the full version of Double Effect into written form in his treatise on the fundamentals of moral theology, published posthumously in 1645. Poinsot restricts morality to
the realm of freedom, both of which he limits to the internal act of intention that he defines as an act of the will. Unlike Aquinas, however, he argues that external acts have no intrinsic freedom, since the will does not govern them. As such, external acts are also devoid of intrinsic moral quality, but only have it by analogy, in virtue of intention. With so much focus on intention, which includes the ultimate end, morality becomes more about causing acts for their effects. Ghoos illustrates this inclination by explicating the inchoate criteria of Double Effect in Poinsot’s writing. First, one must not intend the harmful consequences. Two, the bad effect cannot be the proper effect of the intentional object. Three, the good effect must offset the negative. As with Suarez, Poinsot has no account for the distinction between the proximate and remote end. Acts are about causing effects. Like his predecessors, he applies Double Effect to new and old examples: a butcher selling meat to a Jew who uses it for idolatrous worship; a priest who distributes communion to one having made a sacrilegious confession; and killing in self-defense.

Mangan, argues that Domingo de Saint Teresa writes the most important articulation of the Principle of Double Effect in his Treatise on Sin in the 1647 Carmelite publication of *Cursus Theologicus*. The Salmanticenses use four criteria of Double Effect to justify situations of illicit sensual pleasure. Domingo maintains the causal language dividing the principles between causes *per se* and causes *per accidens*. The first assertion prohibits causes *per se* that have only unlawful effects or bring about good effects only as a consequence of the unlawful effect. The second assertion permits causes *per se* that have an evil effect, if and only if, the good effect is either simultaneous to or precedes the evil effect. Third, there must be a proportionately good reason for performing the act that cannot otherwise be avoided and one must not be able to prevent the evil effect. Finally, they advise one to weigh the act in relationship to the virtues
that it opposes. Not all virtues oblige in the same way. If act conforms to a virtue higher than the evil effect it opposes, one may commit it.

Aquinas’s successors broaden the application of Double Effect; eliminate the distinction between the proximate and remote end; and externalize moral deliberation. The following subsection examines a manualist’s construct of the Principle of Double Effect.

iii. Jean Pierre Gury

Mangan argues that Jean Pierre Gury is the first to articulate the Principle of Double Effect as a theory applicable to the rest of moral theology in his *Compendium theologiae moralis*. Christopher Kaczor, in “Double Effect Reasoning from Jean Pierre to Peter Knauer,” indicates that many consider Gury to be the leading casuist of the 19th century. Because of his important role in Catholic moral theology, and his development of the Principle of Double Effect, this subsection explicates his version. In particular, it highlights the implications of Gury’s cause-effect morality in contrasts to Aquinas’s intention-focused morality. Gury publishes the first of 17 editions in his lifetime of the *Compendium* in 1850. I use the 17th edition since it presumably represents his most mature formulation.

In the first tractatus, *De Actibus Humanis*, Gury discusses human acts and willing. Here, he explicates the Principle of Double Effect in number nine of chapter 2. First, recalling Aquinas’s Summa II-II, q. 64, a. 7, he argues that it is morally permissible for there to be a situation where two effects follow immediately from a good or indifferent cause, one good and the other truly bad, if there is a grave reason, and the end of the agent is honorable. Unlike Aquinas, but very much like his causal predecessors, Gury identifies human acts as posited or actualized causes. This concise statement says a lot in just a few words. First, if one concedes that positing causes is at least analogous to intending ends, then like Aquinas, Gury argues that
some causes are good or indifferent in themselves—and conversely, some are intrinsically evil—
independent of the end of the agent. Given the complexity of the world, he, like Aquinas
recognizes that multiple effects may proceed from any given cause (or act), some good and some
bad. Third, not all of these are intended equally. Indeed, for Aquinas, some may not be intended
at all. Fourth, the immediate following of the effects indicates that the good and bad effects are
causally independent. In other words, the bad effect does not cause the good effect. Fifth, he
holds that a grave reason must proportionately justify positing the cause in light of the evil effect.
Put another way, the good effect needs to outweigh the bad effect. Finally, he insists that the
agent must not intend the bad, but the good effect.

Similar to an argument reductio ad absurdum, Gury logically reasons that the above
statement must be true, otherwise one would be sinning by: one, intending the bad effect; two, by
posing the cause itself; or three, by foreseeing the evil effect. Regardless of how good the end
is for which one acts, the act would be unlawful simply because of the evil effect. Two,
regardless of the intrinsic moral quality of the act, the evil effect means that one sins simply by
posing it. Three, if one foresees that an evil effect will occur, then the act is definitely sinful.
All of these absurd conclusions are true if the criteria of the Principle of Double Effect are not
true. Therefore, in order to avoid this absurd reduction to sin, they must be true.

Notice that the above conditions essentially reduce morality to a form of
consequentialism. Consequentialist ethical theories run aground of rendering all of the above
conditions true. If one only considers consequences, then only effects matter. Such ethical
theories externalize acts rooting moral quality in consequences. If an action leads to a negative
consequence, then it is sinful and ought not to be done. This is truer if one foresees evil effect.
The only thing that saves a consequentialist theory from absurdity is the criteria of
proportionality that capriciously weighs effects against effects. This is the basis of Gury’s fourth
criterion.

Gury explains why each of the absurd conclusions is false in the first of two etenim. One,
since the end is good, it is not on account of it that the act is unlawful. Two, since the cause is
good or indifferent, positing it does not render the act unlawful. Gury relies on more than
effects to justify his ethical theory. Three, foreseeing the evil effect does not render it immoral,
because it is at least offset by the good. Mangan, following the fifth German edition translates
this as “not on account of the foreseeing of the evil effect, because in the hypothesis the evil
effect is not intended but merely permitted.” Apparently, later editors alter this third criterion
according to a distinction between permitting evil versus intending evil. Permitting still has a
connotation of willing. Aquinas’s praeter intentionem is completely separate from the will,
thereby exonerating the agent of any culpability. Fourth, where the bad does not overpower the
good, one has a right to obtain a good end from the honorable cause. In summary, he insists
that all four of the above conditions of Double Effect must hold: 1) the end of the agent must be
honorable; 2) the cause of the effects must be good or at least indifferent; 3) the evil effect must
not be the means to the good effect; and 4) there must be a proportionately serious reason for
positing the cause that does not contradict an obligation of virtue such as justice or charity.

Finally, in the second entenim, Gury explains each of the four conditions in greater detail.
First, the end of the agent must be good; one must not intend the bad effect, otherwise one sins.
As with Vitoria and Suarez, the broader sense of intention, that includes the proximate end, is
lost. The proximate end is entirely assumed into the remote end.

Second, Gury insists that the cause must be good or at least indifferent, that is as an act it
must not oppose any law. Obviously, if the cause is evil in itself, the action is imputable to the
agent as a fault. Gury replaces this with the positing of external causes. The causes externally imposed laws. There is no sense that the will chooses rationally ordered object of the moral order; rather, one posits a cause in natural order. While intrinsically evil acts may exist, they exist externally to the soul. Understood as causes, acts follow laws on the natural order discoverable through trial and error. Constituting moral theology externally, he lays the foundation for teleological ethical theories.

Third, the bad effect must not be the means to the good effect, since this is causing an evil effect for the sake of a good effect. For Gury, actions involve causing effects. Sometimes effects cause other effects. As such, one must not cause an evil effect for the good effect that results. Gury’s causal expression fails to encapsulate Aquinas’s prohibition of choosing evil means for a good end. This is because, for Aquinas, the Moral Object is not merely an external effect, but an object of the moral order that the will deliberately chooses.

Fourth, Gury argues that the positive effects must proportionately outweigh the negative to justify actuating the cause. Kaczor astutely notes that for Aquinas the law of proportion regarding Double Effect weighs the act in relationship to the end, while Gury weighs effects to effects. Recall that for killing in self-defense, the question is about the means chosen to repel an attacker. If the attacker is using deadly force, then one may justifiably choose deadly means for self-defense; not, however, to justify choosing the evil of murdering an assailant. According to Gury, the implication is that so long as the good effect (staying alive) outweighs the negative effect (death of the assailant), one may justifiably kill the attacker.

Gury’s formulation of the Principle of Double Effect is the culmination of his predecessors’ casuistic and causal morality. Like Suarez, he abandons the distinction between the
proximate ends and ultimate end. His construct maintains the cause-effect terminology of Domingo de St. Teresa. Since willing is about positing causes, he inadvertently equals laws of morality with laws of nature and shifts the focus of moral decision making to the perspective of the outside observer. Finally, his understanding of proportionality, which constitutes the weighing of effects paves the way for Peter Knauer’s proportionalism, which the following subsection discusses.

iv. Peter Knauer

Peter Knauer, in “The Hermeneutic Function of the Principle of Double Effect,” says that the Principle of Double Effect is not only an important principle for morality, but also the most fundamental of all the principles of moral theology. His paper is groundbreaking because it represents the inauguration of proportionalism, an important movement in moral theology that peaks in the late twentieth century under the advocacy of the American theologian Richard McCormick, before Pope John Paul II condemns it in *Veritatis Splendor*. This subsection elucidates Knauer’s articulation of Double Effect and its subsequent role in proportionalism.

Knauer argues that the ‘simply good’ or a physical goodness desirable in itself is precisely what is morally good too. He holds that the will intends the ‘simply good,’ distinct from any evil. Obviously, evil constitutes part of reality, but one does not will evil directly, but only in association with some good. Like his predecessors, he explains human action in terms of cause and effect. Similar to Gury, he also uses the concept of permitting evil effects. Since actions cause good or evil, Double Effect aids one in justifying the causing of evil effects.

Knauer, attempting to avoid modernist tendencies of relativism that subjective arbitration risks, attributes an objective morality to Aquinas. He sees a direct correlation between what one intends and the external world in which acts produce effects. For this reason, he argues that the
Moral Object (proximate end) is ‘the end of the work’ (*finis operis*), also the effect of the act in the world. KNauer equates the effect with the Moral Object.

KNauer realizes that for an action to be moral there must be some connection between it and the will or intention, otherwise one simply identifies the effect with the external, physical act. Intention morally qualifies act. But it must be objectively grounded; so, he roots the good (or evil) of an intention in the physical, external world. He says, “all physical evils which are not justified, and which arise in pursuit of a value, are in the moral sense *eo ipso* morally intended and belong to the *finis operis* itself.” In other words, the will intends physical evil in the world.

KNauer maintains this position, not only to objectively ground morality, but also because he believes that a consistent reading of Aquinas demands it. He refers the reader to I-II, q. 1, a. 3 and to I-II, q. 18. In I-II, q. 1, a. 3, Aquinas says that acts receive their species from their end. He further indicates that only acts proceeding from a deliberate will are human. In addition, the object of the will is the good and the end, but the end is the principle of human acts.

In the answer, Aquinas does not explicitly specify the nature of the end. Since the discussion of passions and heat immediately precedes his discussion of human acts, it is understandable how one could interpret ends physically. But Aquinas, referring the reader to the first article, clearly distinguishes purely physical, involuntary acts from distinctly human acts that proceed from the deliberate will. If this is not enough, he eliminates further confusion in his response to the second objection, when he says, “the end, insofar as it pre-exists in the intention, pertains to the will.” That is, the ends of human acts originate in the will. Therefore, the disorder of an intrinsically evil act corresponds more to a privation in the deliberate act of the will, than any evil effect in the world. Basing morality in the subject person does not detract from the objectivity of Aquinas’ ethical theory, since he roots it both in Natural Law and the
human person. It does, however, mean that the moral order is not the same as, nor derivative of the natural order.

Regarding the role of the remote end (*finis operantis*), Knauer insists that it too must not merely be in the will, but must correspond to the external end. What has been said above in this subsection regarding ends of the will and the broad sense of intention in response to Vitoria in the second subsection, suffices to clarify that moral ends are not derivative of the natural order, but the moral order. Moreover, moral ends do not depend so much on their external effects as the orientation of the will.

Because of the strong correlation between the effects of an act and the intention of the will, Knauer equates the proportion of the intention of the act to the end in Aquinas to the contemporary formulation of commensurate reason. Since Knauer equates the object of intention with effects, he like Gury considers the criterion of proportion to be about the weighing of effects, not the proportioning of intention to a remote end, as a good rationally ordered by the intellect and intended by the will. Knauer asserts “that an evil effect is not ‘directly intended’ only if there is a ‘commensurate reason’ for the act.” Put another way, one may cause an evil effect if there is a commensurate reason.

Knauer links his distinction between direct and indirect to three other aspects of traditional moral theology: 1) formal and material cooperation in evil; 2) intrinsic and extrinsic acts; and 3) negative and affirmative laws. He argues that once one applies the Principle of Double Effect to the formal and material cooperation in evil the distinction between the two becomes the same as direct and indirect, respectively. While formal cooperation in evil always constitutes a direct willing of evil, where commensurate reason abides material cooperation in evil constitutes indirect willing of evil.
Knauer makes a distinction between intrinsically evil acts and extrinsically evil acts. He claims that intrinsically evil acts are always forbidden, while he permits extrinsically evil acts where there is commensurate reason.\(^\text{107}\) By intrinsically evil acts, Knauer does not mean the same thing as Aquinas. For Aquinas, intrinsically evil reflects a disorder in the will’s intending of a proximate end that can never be rationally ordered to the good. For Knauer, the only difference between the two is that an intrinsically evil act constitutes an extrinsically evil act without a commensurate reason.\(^\text{108}\) With the application of Double Effect or commensurate reason, the distinction between the two reduces to the difference between direct and indirect causing of effects.

Finally, Knauer argues that the difference between a negative law and an affirmative law consists in its obligation to the agent. He insists that negative laws are always obligatory, no matter what, whereas, affirmative laws are obligatory, unless one has a commensurate reason not to obey them.\(^\text{109}\) Relating these to causality, he asserts whenever one violates a negative law, one directly causes evil, which is always prohibited.\(^\text{110}\) However, one may licitly violate the affirmative law causing evil indirectly, if one has a commensurate reason.\(^\text{111}\) Regarding natural law, he argues that the only unchanging norm is the obligation “to seek the best possible solutions in their total existential entirety.”\(^\text{112}\) This clearly links Natural Law and morality to the natural order through effects.

Ultimately, for Knauer, the Principle of Double Effect “means that to cause or permit an evil without commensurate reason is a morally bad act.”\(^\text{113}\) Without a commensurate reason, the evil is no longer accidental to the intention of the person, but becomes the Moral Object.\(^\text{114}\) Whenever a commensurate reason exists, it occupies the place of the Moral Object and alone determines the moral quality of the act.\(^\text{115}\) To illustrate he argues that when killing in self-
defense, the commensurate reason constitutes self-defense. Knauer insists that a commensurate reason is not just any reason whatsoever, but must outweigh the evil in exchange for the good in such a way that it is not contrary to nature. Whenever one wills evil directly, that is without a commensurate reason, one intends something in such a way that it cannot be achieved according to nature. This is precisely what constitutes sin as being contrary to nature. In other words, one permits or causes a physical evil, without a commensurate reason.

Several things are apparent from the above discussion regarding Double Effect and commensurate reason. According to Knauer, moral quality derives from the natural order as an effect, which constitutes the Moral Object. Furthermore, whenever a commensurate reason exists, evil is accidental or caused indirectly, which is what he means by *praeter intentionem*. This is contrary to Aquinas’s understanding of *praeter intentionem* that means outside the will altogether. For Aquinas, one does not will the evil at all, either directly or indirectly.

By rooting moral quality exclusively in the end, either as effect or commensurate reason, he affirms that ends do justify means. This is the hallmark of proportionalism. So long as one has a sufficient reason, one may use any means to achieve one’s end. Indeed, he rejects ethical theories that render an act evil merely because of means. If the means are not good enough, it is simply because one does not have a commensurate reason. With sufficient commensurate reason, one can justify the causing of virtually any evil. For this reason, proportionalists, like Knauer deny Aquinas’s version of intrinsically evil acts.

In summary, like his predecessors, Knauer maintains the external orientation of the action with a focus on direct and indirect causing/permitting of effects. Moreover, to maintain objectivity, he grounds morality in the natural order. He dissolves the distinction between the proximate and the remote end with his proportionality criterion that justifies the any means for a
good end. The following section contrasts the proportionalist’s version of the Principle of Double Effect with that of non-consequentialists.

3B. Contemporary Formulations of the Principle of Double Effect

In Veritatis Splendor, Pope John Paul II rejects components of teleological ethical theories including proportionalism. This section explores contemporary formulations and applications of Double Effect by several authors. First, it explicates John Finnis, Germain Grisez and Joseph Boyle’s use of Double Effect in defense of craniotomy in “‘Direct’ and ‘Indirect’: A Reply to Critics of our Action Theory.” Second, it highlights the distinction between intending and foreseeing, which T. A. Cavanaugh, following G. E. M. Anscombe argues is a difference between practical and speculative knowledge, respectively. Third, it explores several practical applications including: euthanasia/terminal sedation, terror bombing/tactical bombing, and craniotomy/hysterectomy.

i. Finnis, Grisez and Boyle: Defending Craniotomy

Finnis et al., in “‘Direct’ and ‘indirect’: a Reply to Critics of Our Action Theory,” offer eight cases that illustrate the intuitive veracity of their action theory, which incorporates the perspective of the acting person, in common language. Next, they offer a proper account for the role of intention with regard to the perspective of the acting person. Finally, they demonstrate how this perspective may justify a physician performing a craniotomy.

a. Eight Cases that Illustrate Intention

Finnis et al. use eight cases to show that intention, and therefore, the perspective of the acting human person is important for moral determination. The first case consists of a boy who decides to forgo his lunch, choosing instead, to buy a toy airplane with his lunch money. This first case demonstrates that action consists of a choice for a particular proposal among several
options. Here, the boy, both intends to carry out the chosen proposal, and to attain the purpose of the act. By choosing to buy the airplane instead of lunch, he experiences hunger. But he does not intend the hunger; rather, he tolerates it as an unintended side effect. This shows that actions often have unintended consequences.

In the second case, a patient succumbs to a rare, but fatal side effect of his blood pressure medication. This illustrates that one does not necessarily intend bad side effects, even when one foresees and causes them through one’s actions. In the third case, a man chooses to drive home drunk, rather than to take a cab or stay at his friend’s house; consequently, he hits and kills a bystander. This demonstrates that even though one may not intend negative side effects, one can still be morally responsible for them. The fourth case, a stuttering witness testifying on behalf of a defendant, demonstrates that one’s behavior in acting may constitute a side effect preceding both one’s intended action and purpose.

The fifth example, a farmer castrating bulls to fatten them up, shows that observable context is not enough to determine what a person is actually intending to do. As an outside observer, one may conclude that the farmer is sterilizing the bulls for the purpose of making them infertile. Only the perspective of the acting person determines whether a consequence constitutes a side effect or the purpose for one’s action. The sixth case, upsetting the minority by commending an unpopular outgoing president, shows that even when one’s behavior constitutes the choosing, doing and purpose of an act, there may be side effects distinct from it.

The seventh example consists of a company director choosing when to halt production to retool, based on both a slight financial gain and the ability to undermine unionization. This shows that foreseen effects may not be the reason one chooses, even when doing so looks no
different from the outside.\textsuperscript{141} Finally, the eighth case is a spy who kills his beloved guest for the purpose of silencing her.\textsuperscript{142} Although the spy kills the guest for the purpose of silencing her, this ulterior motive does not detract from the fact that he intends and chooses to kill her. This highlights the important perspective of the acting person, which indicates what the person intends by an action.\textsuperscript{143}

Finnis et al. conclude that the above examples demonstrate the important role of intention from the first-person perspective. Moreover, although the emphasis in ethics and law denigrates its significances as of late, it remains, as it has throughout history, an important component for moral decision-making.\textsuperscript{144} Unfortunately, Bentham’s utilitarianism conflates what one foresees with what one intends.\textsuperscript{145} Finnis et al. refer the reader to contemporary jurisprudence that maintains a distinction between intended and unintended actions.\textsuperscript{146} That is not the same as saying that there are no consequences for one’s actions, if the consequences are not intended. The third case of the drunk driver killing a pedestrian proves this.\textsuperscript{147}

\textit{b. Perspective of the Acting Person}

Finnis et al. demonstrate the importance of the perspective of the acting human person for an adequate account of Aquinas’s action theory that also conforms to John Paul II’s critique of proportionalism and defense of the Moral Object in \textit{Veritatis Splendor}.\textsuperscript{148} Following the perspective of the manualists and Enlightenment philosophers, proportionalists continue to focus on the third-person perspective regarding morality.\textsuperscript{149} As the above cases demonstrate, the observer’s perspective does not adequately account for intention, especially regarding the Moral Object. In the previous section, I highlight a distinction between the broad and narrow sense for intention that Finnis elucidates in his reading of Aquinas’s \textit{De Malo}.\textsuperscript{150} The broad sense of intention includes both the proximate end and the ultimate end; however, more narrowly
understood, it constitutes only the ultimate end.\textsuperscript{151} Much confusion arises from the failure to distinguish between the broad and narrow understanding of intention. Finnis et al. indicate that in *Veritatis Splendor*, John Paul II uses the term intention in the narrow sense.\textsuperscript{152}

In the broad sense of the interpretation, intention is important insofar as the Moral Object constitutes the willing or intending of a means for an end. The Moral Object that one wills is what the person chooses through a deliberate will.\textsuperscript{153} Only the perspective of the acting person enables one to identify the Moral Object, which is the primary determinant of an acts morality.\textsuperscript{154} Actions that have a Moral Object contrary to the good constitute intrinsically evil acts or exceptionless, non-tautological negative norms.\textsuperscript{155}

Finnis, in *Moral Absolutes: Tradition, Revision, and Truth* explains Aquinas’s defense of exceptionless moral norms.\textsuperscript{156} Augustine, in *Contra mendacium* argues that there are at least two exceptionless moral norms: lying about the faith—even to catch heretics—and adultery.\textsuperscript{157} In response to this, Peter Abelard argues that the moral quality of an act depends entirely on intention.\textsuperscript{158} Perhaps inadvertently, readers accuse him of denying the existence of intrinsically evil acts.\textsuperscript{159} For instance, Peter Lombard, in his *Sentences* argues that certain acts are wrong in themselves (*mala in se*) precisely because they do not depend on the purpose, will, intention or motivation of the acting person.\textsuperscript{160} In his commentary on the *Sentences*, Aquinas argues that intrinsically evil acts are wrong precisely because of the acting person’s will, intention and purpose.\textsuperscript{161} Even if the intentions and circumstances are good, the object can be wrong insofar as the will’s choosing of it is wrong.\textsuperscript{162} For instance, lying to catch a thief is wrong because one cannot deliberately will or choose to lie in a good way.

Intention, understood in the broad sense, includes both, the choosing of a Moral Object (proximate end), and the intending of an end (remote end); the difference being one of proximity
to the acting agent.\textsuperscript{163} Insofar as one chooses a particular action for a given end, the former constitutes the proximate end, while the latter is the ulterior (or remote) end.\textsuperscript{164} Although there may be no chronological distinction between an agent’s choosing a proximate end and intending an ulterior end, the former has greater proximity to the agent, insofar as the will deliberately chooses that action.\textsuperscript{165} In this sense, the proximate end acts as a means to the ulterior end.\textsuperscript{166} If the proximate end violates an exceptionless moral norm, then it’s object is immoral and ought not to be done. Moreover, the quality of the ulterior end or circumstances cannot change this.

c. Debunking Unsound Arguments against Craniotomies

Having established the use of intention according to their action theory, Finnis et al. utilize it to debunk so-called unsound arguments against craniotomies.\textsuperscript{167} In particular, they reject the cause-effect approach to morality that presumes a third-person perspective.\textsuperscript{168} To this end, they reject seven traditional arguments against craniotomies.\textsuperscript{169} First, they rebuff the argument that a craniotomy just is killing a baby, precisely because this presumes an outsider’s perspective, constitutive of the cause-effect approach to morality.\textsuperscript{170} Such an argument presumes that the species of the act consists of the natural order; however, Aquinas specifically places the character of the moral act in the moral order.\textsuperscript{171} Second, they reject any claim that “since the procedure alone does not help the mother, it may not be done,” since such an assertion, once again, restricts morality to the physical domain.\textsuperscript{172} Third, the physical dissimilarity to removing a gravid uterus is not enough to constitute an ethical difference.\textsuperscript{173} Alternatively, the physical similarity to partial-birth abortion, does not render the proposal the same.\textsuperscript{174} The permissibility of an alternate procedure that squeezes the skull without crushing it, points to the fact that the physical act alone does not characterize the object.\textsuperscript{175} While alternatives, allowing the mother and child both to die and the death of the child through craniotomy are repugnant; Finnis et al.
argue that the exceptionless moral norm prohibiting the killing of the innocent does not exclude craniotomies.\textsuperscript{176}

Finally, Finnis et al. assert that just because a procedure cannot be safely taught or done does not mean that it is immoral.\textsuperscript{177} For clarity, however, they accept the Church’s teaching against the direct killing of the unborn.\textsuperscript{178} They argue, however, that a craniotomy does not constitute direct killing.\textsuperscript{179} Moreover, one may assert that craniotomies are immoral, but they insist, not because it constitutes direct killing.\textsuperscript{180}

d. Defending Craniotomies

Next, Finnis et al. rebut an argument which Kevin F. Flannery makes asserting two physical differences between a hysterectomy of a pregnant woman with uterine cancer versus a craniotomy.\textsuperscript{181} First, the physician performs the hysterectomy on the woman, and the craniotomy on the child.\textsuperscript{182} Second, descriptively, the hysterectomy does not necessitate the death of the child according to its definition, while the craniotomy does. To the first objection, Finnis et al. argue that direct physical action does not entail direct killing of the innocent, as countless examples indicate.\textsuperscript{183} For instance, in self-defense, the defendant may kill the assailant using direct physical means, but this does not equate to direct killing of the innocent as the adopted moral proposal. Regarding the second, they insist that what counts for moral analysis is content of the proposal the agent actually adopts, not what an outside observer may ascribe to it.\textsuperscript{184} Accordingly, they assert that their description of a craniotomy does not include killing a baby.\textsuperscript{185}

In “Natural Law mens rea versus the Benthamite Tradition,” Flannery says that performing a hysterectomy on a pregnant woman’s cancerous womb needlessly early changes the act to direct killing.\textsuperscript{186} Finnis et al., however, insist that although failing to wait a few weeks to save the baby constitutes an injustice to the baby and homicide, it does not then become direct
killing. Similarly, a bomber proposing to explode an aircraft in flight to collect insurance on the aircraft kills the passengers only indirectly. They contend that asserting that neither case constitutes direct killing does not detract from the grave moral wrongness of the acts.

Finnis et al. refute the allegation that their moral theory depends on the criterion of the indivisibility of performance, which Jean Porter concludes is of central importance for them in “‘Direct’ and ‘Indirect’ in Grisez’s Moral Theory.” Recalling the rebuttal to the second illusory argument in section III—crushing the skull alone does not suffice, but that removal of the body must follow—they reiterate the insignificance of the inseparability of the primitive or physical act. Again, what matters for the moral determination of the act is what one actually proposes as a means to one’s end, not what one could propose. Porter argues that the weakness of their action theory is the inability to actually know what the agent is, in fact, choosing. Indeed, such a weakness, she argues, enables one to substitute motives after the fact. For Finnis et al., the apparent lack of objective from the third-person perspective, does not equate to an actual lack of objectivity. Regardless of what may be ascribed by one’s self or an outside observer after the fact, the means chosen at the time of deliberation objectively are what they are; and the conscience of the agent testifies to this. Moreover, in contrast to what Porter infers on Grisez, namely that the intention be understood psychologically and logically, they assert that both are irrelevant since the object chosen constitutes a proposition rationally configured to some intended good end. While emotions motivate, they do not constitute what one actually does, which is a product of practical reason.

Using the example of killing in self-defense and euthanasia, Porter reveals her inability to distinguish between the intended end and the accepted side effects. Indeed, the statement regarding self-defense, “attempt to kill again,” and the example of a physician’s botched attempt
to euthanize a patient, indicate that the respective agents actually chose an immoral means from the beginning, namely to kill. What makes killing in self-defense permissible is precisely the agent’s intent not to kill, but defend one’s self, even if one foresees the death of the agent. Likewise, intention distinguishes euthanasia from sedation to relieve pain that expedites the dying process. In both cases, death constitutes an unintended side effect, not the end for one’s action.

Finnis et al., utilizing an action theory based on perspective of the acting person, defend their view that the object of the act in performing a craniotomy does not constitute direct killing, but the reducing the dimensions of the cranium, of the child, which indirectly or unintentionally leads to the death of the child. They contend that their opponents’ failure to grasp the soundness of their argument constitutes an inability to understand the complexity of their theory. Two errors stand out, one, they reduce the means to the external, physical act alone, or two, they fail to differentiate the object from the unintended side effects. The following explores the intended versus the foreseen in greater deal from the perspective of T. A. Cavanaugh.

ii. A Thomistic Response to Finnis, Grisez, and Boyle

T. A. Cavanaugh in, Double-Effect Reasoning: Doing Good and Avoiding Evil, addresses Finnis et al.’s perspective on craniotomies. Essentially, Cavanaugh argues that their inability to arrive at the conclusion that craniotomies constitute direct killing amounts to relegating the moral realm to the conceptual realm to such a degree that not only is each person’s moral deliberation incommunicable, but a disconnect exists between the mind and the external world. Cavanaugh asserts that they fall victim to H. L. A. Hart’s critique of rendering what constitutes a contingent connection merely conceptual. In his discussion regarding self-defense, Aquinas says, “An act may be rendered unlawful, if it be out of proportion to the
By implication, if the means chosen is not proportionate to the end, one may correctly conclude that the Moral Object is immoral. For instance, if one intentionally uses more force than necessary to repulse an assailant’s attack, this may indicate a Moral Object of murder, not self-defense. Moreover, it is not necessary to conclude this merely from the first-person perspective. In other words, a third-person perspective on action does say something about an agent’s intention.

Finnis et al., utilizing the writings of John Paul II, argue against using the third-person perspective to determine another’s intention: “the truth about what is intended and being done is available, primarily if not exclusively to the acting person in that acting.” Ostensibly this is because it caves to the teleological tendencies that John Paul II condemns. Such a subjectively grounded method risks relativism. While it may be true that what one actually deliberates, chooses and carries out in choice is known primarily, if not exclusively by the acting person, if one cannot communicate this in words or behavior, then nothing prevents one from covering one’s actions with lies. Cavanaugh indicates that language constitutes one means of communicating intention, but the body, in its behavior does so too. For instance, regarding adultery, John Paul II in *Man and Woman He Created Them: A Theology of the Body* says, “The body tells the truth through faithfulness and conjugal love, and, when it commits ‘adultery’ it tells a lie, it commits falsehood.” Not with standing differences, confusion and ambiguity in language and behavior, an objective truth, whether of the moral order or the natural order is certainly communicable.

The dilemma seems to abide between the role of the Moral Object and its relation the exterior act. Duarte Sousa-Lara discusses the relationship between the interior (internal) act and the exterior (external) act in relationship to the proximate end in “Aquinas on Interior and
Exterior Acts: Clarifying a Key Aspect of His Action Theory.” Following Aquinas’s articulation of exterior acts in *De Malo*, Sousa-Lara indicates, “exterior acts belong to the *genus moris* [Moral order] only insofar as they are voluntary.” Conceptually, one may abstract the voluntariness from the exterior act, which constitutes the *materia ex qua*, also called the material element of the human act or the primitive act. Alternatively, the *materia circa quam* is the proximate end (Moral Object) and the object of choice. Sousa-Lara, following Martin Rhonheimer and Finnis et al., argues that the *materia circa quam*, links the soul of the act (proximate end) to the body of the act (*materia ex qua*). Moreover, in this regard, the *materia circa quam* already has a formal element, a rational good able to move the will.

Manualists, proportionalists and many Thomists interpret exterior acts merely as the physical acts commanded by the will. Such an interpretation renders the exterior act devoid of rational configuration to the good, in which case the connection between the physical act in natural order and the moral act in the moral order is tenuous at best. The third-person perspective, being speculative in nature, only reveals the natural order. For this reason, many Thomists insist that one needs more than a third-person perspective to determine intention. Sousa-Lara takes Aquinas to relate the interior act with intention and the remote end. In addition, the exterior act refers to the choice, the proximate end, and the commanded act. Thus, a connection occurs between the natural and moral order in the exterior act.

For intrinsically evil acts, Aquinas insists that an inappropriate or unsuitable matter abides, which the will chooses. This matter is the Moral Object, suitable or unsuitable in relationship to reason and the human person. Insofar as the will deliberately chooses the inappropriate matter, a disorder abides within the will itself. The will externalizes the disordered choice by commanding the act. Again, insofar as the external act is voluntary, it
As a commanded act, the exterior act manifests in the natural order. Thus, a connection abides between the practical and ontological. In “‘Materia ex qua’ and ‘Materia circa quam’ in Aquinas,” Sousa-Lara indicates that the physical act limits the range of possible Moral Objects. For example, there are only three possible Moral objects for coitus: marital love, fornication, or adultery. While an outsider’s perspective can limit the options, only the first-person perspective indicates which Moral Object one chooses.

Practical reason does not formulate the Moral Object in a conceptual vacuum. John Abraham Makdisi in his dissertation, “The Object of the Moral Act: Understanding St. Thomas Aquinas Through the Work of Steven Long and Martin Rhonheimer,” following Aquinas shows how circumstances on the natural order can impact the moral order. As the third criteria for determining the morality of an act, circumstances are of the natural order that add to or detract from the morality of an act only accidentally, but do not change the Moral Object. However, if one chooses that which is a circumstance in another act as the reason for acting, then it determines the Moral Object. For example, if one chooses lethal means to rebuff a non-lethal attack, then the Moral Object is not self-defense, but murder. In addition, if a couple engaging in the sexual act are not married in natural order, then the act cannot be one of marital love. So long as both freely choose it, the Moral Object must be either fornication or adultery.

That the natural order limits the range of possible Moral Objects does not detract from the primacy of the first-person perspective in morality. Indeed, the above demonstrates the unique importance this plays for Thomistic action theory. It does; however, mean that since some external behaviors correspond with certain intentions, one may attain a closer awareness, even if not perfect, about what the acting agent intends. Though he does not word it in such terms, Cavanaugh rightly demonstrates that the conceptual disconnect between the practical choice and
the contingent physical behavior of crushing a child’s skull in a craniotomy clearly and unambiguously manifests a direct intent to kill.\textsuperscript{229} As a subsection demonstrates below, while one may make a conceptual distinction between crushing the skull of a child and killing it, the effect so intimately connects with the act it is a constitutive part of the intent, not a foreseen effect.\textsuperscript{230} The following subsection differentiates terminology for the Principle of Double Effect.

\textbf{iii. Intended and Foreseen in T. A. Cavanaugh}

This subsection elucidates Cavanaugh’s distinction between intending and foreseeing.

\textit{a. Double-Effect Terminology}

In \textit{Double-Effect Reasoning: Doing Good and Avoiding Evil}, Cavanaugh argues for the distinction between intended and foreseen, as opposed to alternative formulations: intended/side effect, direct/indirect, or intended/unintended.\textsuperscript{231} Cavanaugh dislikes the use of side effect because it implies that it has no ethical significance.\textsuperscript{232} Moreover, he asserts that proponents often insinuate that bad side effects are less bad, and therefore, permissible to allow.\textsuperscript{233} This is precisely what foreseen avoids.\textsuperscript{234}

In addition, the direct/indirect distinction is ambiguous and leads to confusion.\textsuperscript{235} The confusion arises because one may use direct or indirect in reference to intention or cause, which mean very different things.\textsuperscript{236} For instance, in self-defense, one may use force, that directly causes harm to one’s assailant, but one does not intend it directly, but indirectly. In contrast, one may directly intend to harm another through an action that only does so causally indirectly.

Cavanaugh insists that permitting, allowing and accepting do not suffice to describe the foreseen, yet unintended.\textsuperscript{237} Once again, it fails to capture the distinction between intending and causing. For instance, in passive euthanasia, one intentionally omits action, causally permitting, allowing, and accepting the patient to succumb to the dying process to relieve suffering.\textsuperscript{238}
Causally, the agent does nothing, allowing, permitting, accepting, the process of dying to proceed unhindered. However, intentionally, the agent intends for the patient to die.

Cavanaugh dislikes the intended/unintended distinction as well, because as Finnis indicates unintentional implies accidental or lack of foresight. Logically, unintended is not necessarily the contrary of intended insofar as it may mean both intending-not-to-x and not-intending-to-x. Only the latter is the contrary to intending. Ultimately, Cavanaugh concludes that an important distinction for Double Effect is intended/foreseen, where the latter is not intended.

b. Intention/Foreseen Distinction

Cavanaugh argues that certain actions inexorably have a malevolent intention attached to them: euthanasia, terror bombing, and craniotomy. One cannot commit these actions without intending harm. At the same time, this does not mean that agents cannot intend harm by actions that do not necessarily have evil intentions linked to them, such as, terminal sedation, tactical bombing and hysterectomies. Put another way, one cannot choose euthanasia, terror bombing or a craniotomy as a means to an end without intending harm. Though malicious intent is not inexorably linked to terminal sedation, tactical bombing and hysterectomies, one may nonetheless intend harm choosing them as a means to an end—good or bad.

Cavanaugh asserts, with G. E. M. Anscombe that changing the direction of intention does not thereby render one’s act devoid of intention. In other words, one cannot simply redirect one’s intention in such a way that one’s act is not intentional. Moreover, one cannot add secondary intentions to cover for primary intentions. According to Cavanaugh, such an approach to foreseen effects is a non-starter.
Cavanaugh demonstrates the deficiency of the counter-factual test that Charles Fried offers. Fried asserts that one may determine whether one intends the bad effect, by answering the question: would one commence without the foreseen negative effect? According to Fried, a negative response indicates that the agent intends the evil, while a positive answer indicates one does not intend the malevolent effect. Following James Sterba, such a test does not suffice to conclude that the agent does not maliciously intend the foreseen means. To establish intent, Sterba recommends asking if the foreseen bad effects help to explain why one chose a particular action. If the answer is yes, then one may tie it to intention.

Next, Cavanaugh addresses closeness and conceptual necessity to determine if an effect constitutes intention or foreseen effect. According to Cavanaugh, certain actions have a conceptual necessity attached to them. For example, it is impossible to conceive of assassinating someone without killing. Intending to assassinate conceptually necessitates intending to kill. Likewise, for Cavanaugh, intending to perform a craniotomy inexorably entails killing a child, even if one can conceptually distinguish the act of crushing the skull and the child dying. Accordingly, Cavanaugh asserts, “if one’s intent conceptually includes the effect, then one intends that effect.”

Next, Cavanaugh defines the nature of intention and distinguishes it from foreseen effects. To begin with, he observes that intentions concern that which is desirable. Unfortunately, desirable has several references, including reason and feelings. Regarding intention, desirable concerns that which one determines to be rationally good to effect, something that may be affectively undesirable. As such, it is clear that intention is different from emotional feelings.
For Cavanaugh, intention also has a volitional content oriented to achieving a particular good in action. More than simply wanting or desiring a good, one wills to act according to plan by intending. In fact, what distinguishes wanting from intending is the plan for action. To achieve one’s goal, one both intends the end in sight and the means to achieving the end. In contrast, foresight lacks the volitional content of intention; rather, it consists of an awareness of causal relations. Knowing causal relations does not amount to having a plan of action and acting accordingly. When one acts with foresight, however, it does reveal one’s intention.

Deliberation is the process whereby one formulates an intentional plan of action. To intend is for an agent to tend toward some end, the intervening space of which constitutes the means. It is precisely through deliberation that reason discovers means to achieving ends. In deliberation, the end answers the question why and the means answer the question how. Committing one’s plan to action, Cavanaugh logically induces that one may say “end x by means y.” An important distinction between intention and foresight is that the former causes deliberation, while latter does not.

It is important for Cavanaugh to avoid any consequentialist tendency, which reduces means to causes and ends to effects. The difference between means/ends and causes/effects is that means relate to ends as through an agent’s deliberation. An agent deliberates over possible causes to achieve specific effects and insofar as the agent intends causes for effects they are means for ends. As an example, a cue ball may hit an eight ball into a corner pocket, such that an observer says that the cue ball causes the eight ball to going into the pocket. But a qualitative difference occurs when an agent intentionally hits the cue ball so that this constitutes a means to attaining the end of putting the eight ball in the corner pocket.
Recall that for Aquinas there are four irreducible orders—order of nature, logical order, moral order, and practical arts—that correspond to four irreducible sciences—natural sciences (math and metaphysics), logic, morality, and technical sciences. Following Anscombe’s lead, Cavanaugh highlights the epistemic difference between intention and foreseen effects that corresponds to the difference in orders. Intention corresponds to practical knowledge; therefore, it consists of knowing by doing without observation; while foreseeing effects corresponds to speculative knowledge—knowing by observing. As such, both have different directions of fit. Foreseen effects, insofar as they constitute speculative knowledge are true insofar as what one knows corresponds to the truth that is. Intentions, on the other hand, are true when one’s execution of action achieves its end. Therefore, intentions give rise to actions, while foreseen effects correspond to events or happenings. Moreover, since foresight constitutes a different order from intention, it does not define one’s act or inform one’s behavior, as the latter does.

While intent may at times be difficult to observe, different intentions give rise to different behaviors that although subtle and sometimes ambiguous, are nonetheless often discernible. Cavanaugh illustrates by showing how different intentions inform the same behavior, with differences, as for example, blinking to send a message looks quite different from blinking to remove an irritant from one’s eye.

To eliminate confusion and correct error, Cavanaugh advocates for the adoption the intention/foreseen distinction in Double Effect. The above demonstrates that this lexicon offers several advantages for highlighting important distinctions between what one intends and the foreseen effects. The next subsections apply this distinction to three contrasting topics: euthanasia/terminal sedation; craniotomy/hysterectomy; and terror/tactical bombing.
iv. Euthanasia Versus Terminal Sedation

This subsection discusses the distinction between euthanasia and terminal sedation.

a. The Catholic Church: Euthanasia and Terminal Sedation

In the *Declaration on Euthanasia*, the Congregation for the Doctrine of the Faith defines euthanasia as “an action or omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated.”289 Intention plays a vital role in determining whether an act constitutes euthanasia. In *Catholic Bioethics and the Gift of Human Life*, William May highlight a distinction between active and passive euthanasia that relates to intention.290 Active euthanasia constitutes an act of commission whereas passive euthanasia is an act of omission, both for the end of eliminating suffering by killing.291 He further delineates, taking into account the will of the patient: voluntary—the patient agrees, non-voluntary—the patient is unaware and involuntary—the patient refuses.292 Few question the immorality of nonvoluntary or involuntary euthanasia, since it violates the patient’s autonomy; however, voluntary active or passive are finding increasing acceptance among ethicists.293

Pope John Paul II, in *Evangelium Vitae*, contends that insofar as euthanasia entails the intentionally terminating human life, it violates the exceptionless moral norm to respect the inviolable dignity of the human person.294 At the same time, this does not mean that physicians may not use treatments at their disposal to relieve pain and as an unintended, yet foreseen effect expedites the dying process by depressing respiratory function.295 Moreover, while one is obliged to accept proportionate or ordinary treatment, one may refuse disproportionate or extraordinary treatment.296 Since the treatments and methods chosen to euthanize—actively or passively—or to relieve pain are often identical, the first-person perspective is crucial for determining intent.
Many physicians contend that continuous, deep sedation, when done properly, does not shorten a patient’s life. If true, this renders obsolete recourse to the Principle of Double Effect to justify the unintended, but foreseen expedited death of the patient. However, insofar as the Church encourages patients to maintain consciousness to prepare themselves for death as they near the end of life, the Principle of Double Effect justifies sedation for patients experiencing intense pain or anxiety. Thus, even if painkillers do not hasten death, ethicists rely on Double Effect to vindicate rendering a patient unconscious at the end of life.

b. Joseph Boyle: Euthanasia and Terminal Sedation

In “On Killing and Letting Die,” Joseph M. Boyle, Jr. formulates an argument defending the moral distinction between killing and letting die. First, he indicates that it is possible to wrongly let someone die. He holds that such an act of omission is just as morally reprehensible as killing a person by commission. He acknowledges that not all cases of letting die are morally wrong. However, he insists that “most cases of killing—and all case of directly killing the innocent—are morally wrong.” If the abovementioned premises are true, then two converse conclusions are true: 1) not all cases of deciding to let someone die simply constitutes the application of the judgment that it is wrong to kill; 2) the moral decision to kill someone is not merely the application of the decision that it would be wrong to let this person die. Boyle highlights that for traditional ethics the proscription for killing the innocent includes killing via euthanasia, because the patient is innocent in the relevant sense, that is, innocent as non-combatants in war. Moreover, killing in euthanasia constitutes direct killing, rather than indirect killing—a foreseen, yet unintended effect of an action—since one intends the death of the patient, usually as a means to bring about an end to suffering. In active euthanasia, the patient’s death constitutes the means for ending pain.
Boyle raises an objection that opponents such as James Rachels often level against the moral significance thesis, namely, that it is sometimes worse to let someone die, than to relieve their suffering quickly by killing them. To illustrate, Rachels argues that parents who let their Down syndrome child die by starvation, neglecting to repair an intestinal blockage, should have simply acknowledged their intention—not to raise a child with Down syndrome—and killed the child via active euthanasia to forgo the painful death of starvation. Boyle indicates that Rachels’ inference does not justify his wholesale rejection of the thesis, but merely shows that one can abuse it. Indeed, as Boyle illustrates there are many cases where one determines that treatment is futile or burdensome, and therefore, one ceases treatment, allowing the patient to die, but this does not necessarily mean that one intends the death of the patient, as one clearly does in active and passive euthanasia. The moral significance of the distinction between passive euthanasia and allowing one to die, without necessarily intending death, depends on two assumptions: 1) that there is a difference between what one intends and what one foresees, but does not intend as a side effect; and 2) that this distinction has moral significance. Boyle demonstrates that Rachels’s rejection of a distinction between euthanasia and letting die, presumes falsely that all decisions for the latter entails a decision to end the patient’s suffering by death, which is patently not true. Others such as Michael Tooley contest the moral significance thesis with the so-called moral symmetry principle, which asserts that there is no moral difference between killing and letting die, but is only supportable by example.

Michael Tooley offers two examples in which one intends the death of the other, but the physical difference consists in Jones letting Smith die by a bomb (by not warning him), as opposed to Jones killing Smith by shooting him. Daniel Dinello counters using an example of
two patients desperately in need of the other’s organ to survive: Jones needs a heart transplant or will die in two hours and Smith needs a kidney transplant or will die in four hours—each are the only possible donor candidate for the other.\textsuperscript{318} Boyle indicates that this counterexample does not suffice to disprove the symmetry principle, because there may indeed be a difference of intention.\textsuperscript{319} Clearly it is wrong to kill Smith, but this does not entail the decision to will Jones’s death.\textsuperscript{320} As such, the symmetry principle still remains valid for some cases, but this does not invalidate Boyle’s thesis.\textsuperscript{321} In turn, Boyle concludes that while there are certainly cases where one may intend another’s death by letting her die, this does not constitute a logical necessity, since it is possible to allow her to die without intending her death.

In the abovementioned paper, Boyle demonstrates that a physician’s intention may not always include the death of the patient, but when it comes to terminal sedation, intent—an important factor for resolving legal disputes—is precisely what one must prove. In “Medical Ethics and Double Effect: The Case of Terminal Sedation,” Joseph Boyle argues that the Principle of Double Effect is transferable to medical ethics.\textsuperscript{322} In particular, by analyzing documentation and dosage, Boyle argues one can determine the physician’s intention.\textsuperscript{323} Following Aquinas and Gury, Boyle articulates the four criteria of Double Effect.\textsuperscript{324} First, the act in question must be good or indifferent, which he indicates prescribing and administering analgesics to be.\textsuperscript{325} Second, the bad effect must not be the cause of the good.\textsuperscript{326} Again, in this case, the bad effect—the death of the patient—is not necessarily the cause of relieving the patient’s pain. Third, the bad effect must not be intended.\textsuperscript{327} Fourth, Boyle highlights the condition of proportionality, which necessitates a grave enough reason to justify the accepted, yet unintended effects.\textsuperscript{328}
c. Intention/Foreseen Distinction: Euthanasia and Terminal Sedation

Using the intention/foreseen distinction, Cavanaugh explains the difference between voluntary active euthanasia and terminal sedation. In the case of euthanasia, the physician deliberates over how to achieve the intended end of ceasing the patient’s pain and concludes that killing the patient is a good solution. Consequently, the physician deliberates further about how to terminate the patient’s life. Arriving at a practical action, the physician administers a lethal dose of a drug. Since the physician intends to end the patient’s pain by means of death, pain relief alone does not qualify as success; the patient must die. In the case of terminal sedation, having the goal of ending the patient’s pain, the physician deliberates that a barbiturate drip is the best solution, even though he foresees this causing a premature death. Unlike in the case of euthanasia, the foresight that the barbiturate-drip causes death, does not invoke further deliberation in the physician about utilizing it for that purpose. Put more simply, the foresight does not provoke further deliberation, whereas the intent to kill does; which stands out as a defining difference between foresight and intent. Moreover, regarding terminal sedation, although the physician expects the patient to die using the barbiturate-drip, if death does not ensue, he does not fail in achieving his goal. Failure occurs if the barbiturate-drip does not relieve the patient’s pain. Thus, Cavanaugh concludes that the distinction between euthanasia and terminal sedation contrasts as “necessarily-intended-death versus foreseen-not-necessarily-intended-death.”

v. Hysterectomy Versus Craniotomy

This subsection explicates the distinction between a hysterectomy and a craniotomy.
a. Direct Killing in Abortion

In *Evangelium Vitae*, Pope John Paul II points to the *Didache* as testimony for the Church’s unbroken teaching against direct abortion: “you shall not put a child to death by abortion nor kill it once it is born.”\(^{340}\) Direct abortion occurs whenever one wills the death of the unborn child either as a means or an end to one’s action.\(^{341}\) He recapitulates what the Congregation for the Doctrine of the Faith articulates as the Magisterial Teaching of the Church that this prohibition against killing begins at the moment of conception, which corresponds to the inviolable dignity of the human person.\(^{342}\) The Church does not prohibit indirect abortion for proportionate reasons.\(^{343}\) Indirect abortion means that one does not will the death of the child.\(^{344}\) The classic scenario is a woman with a gravid (pregnant), cancerous uterus who undergoes a hysterectomy to save the mother’s life.\(^{345}\) The foreseen, yet unintended effect is the death of the child.

b. Defending Craniotomies

As the above demonstrates, Finnis et al. argue that the same line of reasoning justifies craniotomies, since for them it is nothing more than cutting the cranium.\(^{346}\) Germain Grisez defends craniotomies in *Living a Christian Life*.\(^{347}\) First, he insists that four criteria must exist: 1) some pathology threatens both mother and child; 2) it is not safe to wait; 3) there is no way to save the child; 4) the procedure that saves the mother’s life results in the child’s death.\(^{348}\) In “Double Effect and a Certain Type of Embryotomy,” Joseph M. Boyle argues in favor of craniotomy, under the circumstances given by Grisez, rejecting the traditional belief that it constitutes direct killing.\(^{349}\) Boyle understands direct killing “as that killing in which the resulting death either is intended or is immediate or is the effect of a cause which may not morally be posited.”\(^{350}\) Boyle defends H. L. A. Hart’s assertion that the craniotomy is not direct
killing, holding that it is no different than the indirect killing that occurs when removing a gravid, cancerous uterus via hysterectomy.\textsuperscript{351} Hart insists that in both cases the fetus’s body must be removed from the woman’s body.\textsuperscript{352} In fact, however, for the hysterectomy the body of the fetus does not pose the threat, so properly speaking, this is not what the surgeon removes; rather, she removes the uterus that carries the child. Even if the woman were not pregnant, the physician must remove the cancerous uterus. In the case necessitating a craniotomy, however, the condition of the child being stuck constitutes the pathology.

Following Hart, Boyle insists that if there is no conceptual connection between a side effect and what one intends in action then the side effect is outside of one’s intention—\textit{praeter intentionem}.\textsuperscript{353} Boyle argues that since the craniotomy has no conceptual connection to the death of the child,\textsuperscript{354} it does not constitute direct killing.\textsuperscript{355} Rather, he argues that the conceptual content of a craniotomy is merely the altering of the dimensions of the fetus’s skull.\textsuperscript{356} Boyle continues the argument asserting that the fetus’s death is neither the means nor the end of saving the mother’s life, for which the physician performs a craniotomy.\textsuperscript{357}

Cavanaugh indicates that common language points to an awareness of a correspondence between the conceptual and causal.\textsuperscript{358} For Cavanaugh, Finnis et al. so narrowly define craniotomy that it conceptually excludes the death of the child.\textsuperscript{359} As such, their conceptual definition excludes what is causally necessary to craniotomy, the death of the child.\textsuperscript{360} In fact, the causal necessity is so strong; it is virtually impossible to conceive of even the possibility of a craniotomy that does not also entail the death of the child.\textsuperscript{361} Moreover, R. A. Duff argues that this connection is so strong that it is even logically impossible to define craniotomy without including the death of the child.\textsuperscript{362} Duff offers two examples which he proposes are analogous to saying that a craniotomy does not logically entail the death of the fetus: 1) a man decapitating his
wife to see her surprise in the morning; and 2) a man intentionally colliding his car with a police officer’s, but only intending to knock him off, but not cause injury.\textsuperscript{363} Boyle rejects the first, insisting that the stated claim cannot possibly be the intention of one’s act.\textsuperscript{364} The second he rejects because he argues that a stunt man may indeed intend such a consequence without injury.\textsuperscript{365} Just because Duff’s two examples do not hold up to Boyle’s criticism does not suffice to negate his argument altogether.\textsuperscript{366} The fact that one cannot conceive of a child surviving a craniotomy suffices to prove Duff’s point.

\textit{c. Craniotomies and Hysterectomies}

As Cavanaugh indicates, the procedure of crushing the skull, by its definition entails the death of the child, and therefore, one cannot practically distinguish killing the child from a craniotomy.\textsuperscript{367} He utilizes the intention/foreseen distinction to shed further light on this situation.\textsuperscript{368} In both cases, the physician desires to save the mother’s life, which leads to further deliberation about means.\textsuperscript{369} In the case of the gravid, cancerous uterus, he concludes that its removal is the only viable solution.\textsuperscript{370} The death of the child is foreseen as causally necessary, but the success of the procedure does not depend on this.\textsuperscript{371} Moreover, the definition of the procedure does not depend on the death of the child; it is possible to perform a hysterectomy on a woman who is not pregnant.\textsuperscript{372}

In the case of the craniotomy, however, the physician after deliberation concludes that intentionally crushing the baby’s skull and extracting its body from the birth canal is the means to saving the mother’s life.\textsuperscript{373} In a craniotomy, she is not using forceps to maneuver the child’s head and body through the cervix, in which case one may argue that the intention is to remove the child’s head and body from the cervix without necessarily killing the child.\textsuperscript{374} Rather, she is cutting the skull, and removing the brains, essentially beheading the child, which by definition
not only causes the death of the child, but also intends it.\textsuperscript{375} Therefore, Finnis et al.’s objection to the fifth argument against craniotomies, namely that it is never done to help the child, does not hold.\textsuperscript{376} Most importantly, however, Cavanaugh argues that the craniotomy is direct killing, since the intentional content necessitates the removal of the contents of the child’s head, which inexorably links to the child’s death.\textsuperscript{377} While she succeeds in saving the mother’s life, should the child somehow survive the procedure, she has not succeeded in doing a craniotomy.\textsuperscript{378} The next subsection considers the difference between terror bombing and tactical bombing.

vi. Terror Bombing Versus Tactical Bombing

This subsection highlights the distinction between terror bombing and tactical bombing.

a. Traditional Just War Theory

The American Civil War constitutes the most devastating war on United States’ soil and the tactic of “Total War” not only represents a fundamental change in approach, but also shapes the nature of war for the twentieth century and beyond. William Tecumseh Sherman’s unforgettable words, “war is cruelty” and his further argument that the “crueler it is, the sooner it will be over” seems to resonate with many theorists.\textsuperscript{379} As oxymoronic as it may seem, philosophical tradition does advocate for rules of war and just war theory. While Augustine first gives voice to just war, it is Aquinas that articulates its conditions.\textsuperscript{380} Today, just war theorists often distinguish between \textit{jus ad bellum} and \textit{jus in bello}; that is, just reasons to go to war and just action in war, respectively.\textsuperscript{381} In general, the latter qualifies questions pertaining to bombing.

James F. Childress, in “Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria,” says that the primary goal of war is not to kill or injure, but to incapacitate the enemy’s ability to wage war, which informs the rules in war.\textsuperscript{382} This constitutes an exceptionless moral norm of war that for Childress provides a foundation for the criteria of
justice in war: 1) enemies that surrender deserve protection and medical care; 2) one ought not to
target non-combatants; 3) one should use proportionate force; and 4) avoiding weapons or
practices that inflict unnecessary suffering. Childress further indicates that should one foresee
that an attack poses a risk to civilians, due proportion ought to inform one’s decision making.
These criteria alone should discourage any legitimate military authority from utilizing terror
bombing.

b. Just War, Terrorism, and Nuclear Deterrence

In 1987, Finnis et al., in Nuclear Deterrence, Morality and Realism, reject the use of
nuclear weapons as a deterrent, calling for an immediate abandonment of this policy by Western
governments, in spite of the fact that the Soviet Union would likely not reciprocate. They base
this decision on the threat that it poses to the human lives of the Soviet Union. Their line of
reasoning stands on appreciation for the basic human goods, of which human life—not only the
condition for realizing other human goods—is itself. Finnis et al. formulate the first principle
of morality in terms that integrate both human goods and the first principle of natural law: one
ought to choose and will acts in favor of human good and avoid those that are not. This gives
rise to the universal Golden Rule: treat others, as one would like to be treated. The
Democritean Principle is another intermediate principle: “do not do evil that good may come.”

After affirming that human life is not only the means to enjoy other basic human goods,
but a basic human good itself, Finnis et al. use the three abovementioned principles to defend
their thesis that “it is always wrong to choose to kill a human being.” Although their theory
restricts violence greatly, they do not advocate pacifism. They permit the killing of the non-
innocent in just wars, but only as a means to defend or halt serious attacks that cannot be
otherwise stopped. One’s use of force in war is justified, if and only if, one chooses it to
defend or stop the unjust enemy’s aggression, but not if one intends to kill the enemy. Consequently, they reject wars of aggression for any reason altogether. Finnis et al. argue that killing an offender out of retribution or retaliation consists of choosing a bad means for a good end. Although one may accidentally kill innocent people in combat, it is never morally permissible to kill the innocent intentionally. Therefore, since the use of nuclear weapons in the context of deterrence entails retaliatory action and the intentional murder of innocent non-combatants, it constitutes an intrinsically evil act. Moreover, since keeping nuclear weapons, as a deterrent is only effective if one is actually willing to use them, this act also constitutes an intrinsically evil act. Furthermore, recalling the Socratic Principle, that “it is better to suffer wrong than to do it,” Finnis et al. advise all Western nations to immediately disarm their nuclear weapons, for the welfare of the citizens of the Soviet Union.

In “Catholic Teaching on War and Peace: Its Application to American Foreign Policy after 9/11,” Joseph Boyle revisits the topic of nuclear deterrence, arguing that it constitutes a form of terrorism. In an earlier paper, “Just War Doctrine and Military Response to Terrorism,” however, Boyle maintains a distinct difference between terrorism and deterrence. Terrorism consists in the use of violent actions for the purpose of influencing decision-making in its survivors. By definition, deterrence entails the threat of either just or unjust response to criminal acts, and therefore, does not necessarily exclude the threat of using terrorism. For instance, Boyle argues that nuclear deterrence during the Cold War constitutes the threat of terrorism. In the later paper, however, Boyle conflates the two acts, deterrence and terrorism, insisting that nuclear deterrence constitutes a form of terrorism, not merely an act of terrorism.

Boyle’s conflation of the two distinct acts is another instance of failing to see how the physical act itself influences and contributes to the definition of the act. It is one thing for one to
threaten terrorism in an act of deterrence, but quite another for one to actually commit a violent act of terrorism.\textsuperscript{408} Boyle is correct in asserting that nuclear deterrence constitutes the threat of terrorism, but not in saying that the act of deterrence itself is terrorism.\textsuperscript{409} Certainly an analogy exists insofar as the threat of terrorism attempts to persuade, but a true difference abides between a threat and a violent act, which terrorism by definition entails.

c. Terror Bombing and Tactical Bombing

Cavanaugh uses the intention/foreseen distinction to further highlight the immorality of terror bombing in contrast to discriminate tactical bombing.\textsuperscript{410} In both cases, the agent desires victory, but uses different means to achieve this end.\textsuperscript{411} The terror bomber, by definition intends harm to non-combatants, maiming, or killing in an attempt to demoralize the enemy.\textsuperscript{412} While the ultimate end is victory, the terror bomber seeks to achieve this end by means of killing or maiming non-combatants.\textsuperscript{413} Such behavior necessarily coincides with the terror bomber’s intention. If one achieves victory without killing or maiming non-combatants, one has attained one’s ultimate goal, but failed to achieve one’s proximate means.\textsuperscript{414} Not only does terror bombing violate the exceptionless norm to not intentionally kill, but it violates at least three of the abovementioned criteria, possibly excepting only the norm to do no harm to surrendering combatants.

In contrast to terror bombing, tactical bombing entails the intent of destroying an enemy’s ability to wage war by attacking installations of war.\textsuperscript{415} The tactical bomber foresees that bombing a combatants’ installation causally necessitates the death of enemy combatants and even non-combatants.\textsuperscript{416} While the tactical bomber is aware of this, it does not determine the outcome of deliberation.\textsuperscript{417} Moreover, since the death of the non-combatants does not constitute the intention of one’s action, it also does not define success.\textsuperscript{418} In other words, if no non-
combatants die in the bombing of military installations, the tactical bomber may still claim
success, so long as it damages the installations.\textsuperscript{419} So long as the tactical bomber uses due
proportion in determining which targets to hit in relationship to potential harm to non-
combatants, he or she does not violate any of the abovementioned criteria.

The three contrasting cases above distinguish between intrinsically evil acts and those
that have causally foreseen effects, but do not violate exceptionless moral norms.\textsuperscript{420} In each case,
Cavanaugh demonstrates that where one violates an exceptionless moral norm the harm not only
constitutes a causally necessary effect, but the agent also intends it as a means to one’s end. As a
volitional act, one must do more than answer “would one pursue the action were the evil not
brought about?”; but “is one successful in accomplishing the intended act without the harm being
done?”\textsuperscript{421} In each of the cases that violate an exceptionless moral norm the answer is negative,
while in the permissible cases, the answer is positive. In other words, doing the harm in the
permissible cases does not define the act, whereas in the impermissible cases it does.

The first subsection of this section presents Finnis et al.’s argument in favor of
craniotomies arguing that from the perspective of the acting person they do not constitute
intentional killing.\textsuperscript{422} Next, based on the work of Sousa-Lara’s understanding of the external act
constituting the choice and the commanded physical act, I argue that a certain degree of
predictability regarding primitive physical acts enables one to observe and determine moral
intention with a limited degree of potential.\textsuperscript{423} Cavanaugh’s distinction between intended means
and foreseen effects not only provides an adequate terminology, but also enables one to
sufficiently distinguish acts that violate exceptionless moral norms from those that Double-Effect
Reasoning justifies.\textsuperscript{424} The three subsequent subsections present the Church’s traditional
teaching regarding three different ethical dilemmas including: euthanasia/terminal sedation,
craniotomies/hysterectomies, and terror bombing/tactical bombing. In addition, these respective subsections account for Finnis et al.’s perspective on the aforementioned topics. Finally, the three contrasting examples illustrate the veracity of Cavanaugh’s theory.425

The following chapter applies the theory of this and the preceding chapter first to health care ethics consultations, and then, to the Principle of Cooperation.

3 Aquinas, *Summa Theologica*, II-II q.43 a.1 and 4 and II-II q.169 a.2
4 Aquinas, *Summa Theologica*, II-II, q.64 a.7 obj.1
5 Aquinas, *Summa Theologica*, I-II q.12 a.4
7 Aquinas, *Summa Theologica*, II-II, q.64 a.7
8 Aquinas, *Summa Theologica*, II-II, q.64 a.7
lib. 2, d. 35, q. 1, a. 5, ad 4; [http://www.corpusthomisticum.org/snp2035.html](http://www.corpusthomisticum.org/snp2035.html)
11 Aquinas, *Summa Theologiae*, II-II, q. 64, a. 7. c.
12 Aquinas, *Summa Theologiae*, II-II, q. 64, a. 7. c.
13 Aquinas, *Summa Theologiae*, II-II, q. 43, a. 1, *sed contra*.
14 Aquinas, *Summa Theologiae*, II-II, q. 43, a. 1, reply to obj. 4.
15 Aquinas, *Summa Theologiae*, II-II, q. 43, a. 2, c.
16 Aquinas, *Summa Theologiae*, II-II, q. 43, a. 3, c.
17 Aquinas, *Summa Theologiae*, II-II, q. 43, a. 4, c.
22 Cavanaugh, Double-Effect Reasoning, 16.
23 Cavanaugh, *Double-Effect Reasoning*, 16.
30 Aquinas, *Summa Theologiae*, I-II, q. 20, a. 5, answer.
31 Aquinas, *Summa Theologiae*, I-II, q. 20, a. 5, answer.
34 Aquinas, *Summa Theologiae*, II-II, q. 67, a. 2, pp. 100. http://archive.org/stream/operaomniaiusssi09thom#page/100/mode/2up
35 T. A. Cavanaugh, *Double-Effect Reasoning*, 18-9
40 John Finnis, *Aquinas*, 64, footnote 17.
42 Aquinas, *On Evil*, Q. 2, a. 2, ad 8, 100.
45 Sousa-Lara, “*Per Se and Praeter Intentionem* in Aquinas,” 433-5
48 Aquinas, *Summa Theologica*, I-II, q. 6, a. 3.
50 Aquinas, *Super Sent.*, lib. 2, d. 40, q. 1, a. 1, c
52 Cavanaugh, Double-Effect Reasoning, 20.
55 J. Ghoos, “L’Act a Double Effet,” 49.

58 J. Ghoos, “L’Act a Double Effet,” 50. “cette conséquence néfaste ne peut pas être l’effet propre de l’objet intentionné, mais elle doit découler d’une façon purement accidentelle (per accidens), c’est-à-dire: elle doit être l’effet propre d’une autre cause que celle directement intentionnée (élément objectif).”

59 J. Ghoos, “L’Act a Double Effet,” 50. “la valeur de l’effet bon doit compenser les conséquences néfastes; cette proportionnalité est réglée par la hiérarchie des vertus.”

60 J. Ghoos, “L’Act a Double Effet,” 51.


71 Gury, Compendium Theologiae Moralis, c. 2, no. 9, pp. 9-10.

72 Gury, Compendium Theologiae Moralis, c. 2, no. 9, pp. 9. “Licet ponere causam bonam aut indifferentem ex qua immediate sequitur duplex effectus, unus bonus, alter vero malus, si adsit causa gravis, et finis agentis sit honestus.”


74 Gury, Compendium Theologiae Moralis, c. 2, no. 9, pp. 9. “Ratio huius principia est, quia, si id non liceret, agens peccaret, vel ex intentione pravi effectus, vel ex positione causae, vel ex praevisione effectus mali.”

75 Gury, Compendium Theologiae Moralis, c. 2, no. 9, pp. 9. Hoc illicitum esse non potest ratione finis, quipped qui supponitur honestus, 

76 Gury, Compendium Theologiae Moralis, c. 2, no. 9, pp. 9. “Neque ratione appositionis causae, siquidem supponitur bona, vel saltem indifferentem.”

77 Gury, Compendium Theologiae Moralis, c. 2, no. 9, pp. 9. “Neque ex praevisione pravi effectus, nam, in hypothesi, malus effectus saltem per bonum compensatur.”


79 Gury, Compendium Theologiae Moralis, c. 2, no. 9, pp. 9-10. “Porro quisque ius habet ad bonum finem obtinendum ex causa honesta, ubi malo bonum non superatur.”
“Quatuor autem conditions in hoc principio enuntiatae omnino requiruntur, scilicet: ut honestus sit finis agentis, ut causa sit bona, vel saltem indifferens, ut effectus bonus sit immediatus, et adsit ratio gravis ponendi causam, nec teneatur agens ex iustitia, aut ex officio, aut ex caritate eam omittere.”

“Requiritur finis bonus, idest agens malum effectum intendere non debet, quia secus quid inordinatum intenderet, et proinde peccaret. Ergo in pravo effectu nullo modo sibi complacere debet.”

“Requiritur causa bona, vel saltem indifferens, scilicet ut actus nulli legi opponatur.”

“Ratio evidens est. Etenim, si causa in se mala foret, per se reatum induceret.”


Aquinas, Summa Theologiae, I-II, q. 1, a. 3.

Aquinas, Summa Theologiae, I-II, q. 1, a. 3.

Aquinas, Summa Theologiae, I-II, q. 1, a. 3.

Aquinas, Summa Theologiae, I-II, q. 1, a. 3.

Aquinas, Summa Theologiae, I-II, q. 1, a. 3, response 2, “ad secundum dicendum quod finis secundum quod est prior in intentione, ut dictum est, secundum hoc pertinent ad voluntatem.”


Knauer, “The Hermeneutic Function of the Principle of Double Effect,” 141

Knauer, “The Hermeneutic Function of the Principle of Double Effect,” 141
121 Cavanaugh, *Double-Effect Reasoning*.
122 Finnis et al., “‘Direct’ and ‘Indirect,’” 3-8.
123 Finnis et al., “‘Direct’ and ‘Indirect,’” 12-19.
124 Finnis et al., “‘Direct’ and ‘Indirect,’” 19ff.
125 Finnis et al., “‘Direct’ and ‘Indirect,’” 3-8.
126 Finnis et al., “‘Direct’ and ‘Indirect,’” 3-4.
127 Finnis et al., “‘Direct’ and ‘Indirect,’” 7.
128 Finnis et al., “‘Direct’ and ‘Indirect,’” 7.
129 Finnis et al., “‘Direct’ and ‘Indirect,’” 3-4.
130 Finnis et al., “‘Direct’ and ‘Indirect,’” 3-4, 7.
131 Finnis et al., “‘Direct’ and ‘Indirect,’” 7.
132 Finnis et al., “‘Direct’ and ‘Indirect,’” 4.
133 Finnis et al., “‘Direct’ and ‘Indirect,’” 7.
134 Finnis et al., “‘Direct’ and ‘Indirect,’” 4.
135 Finnis et al., “‘Direct’ and ‘Indirect,’” 7.
136 Finnis et al., “‘Direct’ and ‘Indirect,’” 4, 7.
137 Finnis et al., “‘Direct’ and ‘Indirect,’” 4, 7.
138 Finnis et al., “‘Direct’ and ‘Indirect,’” 5, 7.
139 Finnis et al., “‘Direct’ and ‘Indirect,’” 7.
140 Finnis et al., “‘Direct’ and ‘Indirect,’” 7-8.
141 Finnis et al., “‘Direct’ and ‘Indirect,’” 5-6.
142 Finnis et al., “‘Direct’ and ‘Indirect,’” 8.
143 Finnis et al., “‘Direct’ and ‘Indirect,’” 6.
144 Finnis et al., “‘Direct’ and ‘Indirect,’” 8.
145 Finnis et al., “‘Direct’ and ‘Indirect,’” 9-10.
146 Finnis et al., “‘Direct’ and ‘Indirect,’” 10.
147 Finnis et al., “‘Direct’ and ‘Indirect,’” 11.
148 Finnis et al., “‘Direct’ and ‘Indirect,’” 11.
149 Finnis et al., “‘Direct’ and ‘Indirect,’” 12.
151 Finnis et al., “‘Direct’ and ‘Indirect,’” 17.
152 Finnis et al., “‘Direct’ and ‘Indirect,’” 17.
153 John Paul II, *Veritatis Splendor*, 78.
154 Finnis et al., “‘Direct’ and ‘Indirect,’” 14; John Paul II, *Veritatis Splendor*, 78.
155 Finnis et al., “‘Direct’ and ‘Indirect,’” 15; John Paul II, *Veritatis Splendor*, 79.


Finnis et al., “‘Direct’ and ‘Indirect,’” 16.

Finnis et al., “‘Direct’ and ‘Indirect,’” 17.

Finnis et al., “‘Direct’ and ‘Indirect,’” 17; Finnis, *Aquinas*, 64.


Finnis, *Aquinas*, 64.

Finnis et al., “‘Direct’ and ‘Indirect,’” 22.

Finnis et al., “‘Direct’ and ‘Indirect,’” 22.

Finnis et al., “‘Direct’ and ‘Indirect,’” 21-2.

Finnis et al., “‘Direct’ and ‘Indirect,’” 21-3.

Finnis et al., “‘Direct’ and ‘Indirect,’” 23.

Finnis et al., “‘Direct’ and ‘Indirect,’” 23-4.

Finnis et al., “‘Direct’ and ‘Indirect,’” 24.

Finnis et al., “‘Direct’ and ‘Indirect,’” 24-5.

Finnis et al., “‘Direct’ and ‘Indirect,’” 25.

Finnis et al., “‘Direct’ and ‘Indirect,’” 25-6.

Finnis et al., “‘Direct’ and ‘Indirect,’” 26-7.

Finnis et al., “‘Direct’ and ‘Indirect,’” 27.

Finnis et al., “‘Direct’ and ‘Indirect,’” 27.

Finnis et al., “‘Direct’ and ‘Indirect,’” 27, footnote 42.


Finnis et al., “‘Direct’ and ‘Indirect,’” 28.

Finnis et al., “‘Direct’ and ‘Indirect,’” 28.

Finnis et al., “‘Direct’ and ‘Indirect,’” 29.

Finnis et al., “‘Direct’ and ‘Indirect,’” 29.


Finnis et al., “‘Direct’ and ‘Indirect,’” 30.

Finnis et al., “‘Direct’ and ‘Indirect,’” 30.

Finnis et al., “‘Direct’ and ‘Indirect,’” 30-1.


Finnis et al., “‘Direct’ and ‘Indirect,’” 32.

Finnis et al., “‘Direct’ and ‘Indirect,’” 41.

Finnis et al., “‘Direct’ and ‘Indirect,’” 33-4.

Finnis et al., “‘Direct’ and ‘Indirect,’” 23-4; Porter, “‘Direct’ and ‘Indirect’ in Grisez’s Moral Theory,” 620.

Finnis et al., “‘Direct’ and ‘Indirect,’” 34.

Finnis et al., “‘Direct’ and ‘Indirect,’” 34-6.
197 Finnis et al., “‘Direct’ and ‘Indirect,’” 36-8; see Porter, “‘Direct’ and ‘Indirect’ in Grisez’s Moral Theory,” 623.
198 Finnis et al, “‘Direct’ and ‘Indirect,’” 37.
200 Finnis et al., “‘Direct’ and ‘Indirect,’” 38-9; Porter, “‘Direct’ and ‘Indirect’ in Grisez’s Moral Theory,” 624-5.
201 Cavanaugh, Double-Effect Reasoning, 66ff.
204 Aquinas, Summa Theologica, II-II, q. 64, a. 7, c. “Potest tamen aliquis actus ex bona intentione proveniens illicitus redid si non sit proportionatus fini.”
205 Finnis et al., “‘Direct’ and ‘Indirect,’” 34.
207 Cavanaugh, Double-Effect Reasoning, 68.
219 Aquinas, Summa Theologica, I-II, q. 18, a. 5.
220 Aquinas, Summa Theologica, I-II, q. 54, a. 3.
223 Duarte Sousa-Lara, “‘Materia ex qua’ and ‘Materia circa quam’ in Aquinas,” (2008)
225 Aquinas, Summa Theologica, I-II, q. 18, a. 2-4.
226 Aquinas, Summa Theologica, I-II, q. 7, a. 1.
227 Aquinas, Summa Theologica, I-II, q. 18, a. 10.
228 Finnis et al., “‘Direct’ and ‘Indirect,’” 12ff.
229 Cavanaugh, Double-Effect Reasoning, 69-70, 90.
230 Cavanaugh, Double-Effect Reasoning, 90.
231 Cavanaugh, Double-Effect Reasoning, 73ff.

168
Cavanaugh, *Double-Effect Reasoning*, 75.

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Cavanaugh, *Double-Effect Reasoning*, 90.


Cavanaugh, *Double-Effect Reasoning*, 93.

Cavanaugh, *Double-Effect Reasoning*, 93.

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Cavanaugh, *Double-Effect Reasoning*, 100.

Cavanaugh, *Double-Effect Reasoning*, 100.

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Boyle, “Medical Ethics and Double Effect,” 51-2.

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Boyle, “Medical Ethics and Double Effect,” 55.


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May, *Catholic Bioethics*, 163.


May, Catholic Bioethics, 163.
May, Catholic Bioethics, 164.
Finnis et al, “‘Direct’ and ‘Indirect,’” 21ff.
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Boyle, “Double Effect and a Certain Type of Embryotomy,” 306, 309.
Cavanaugh, Double-Effect Reasoning, 69.
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Cavanaugh, Double-Effect Reasoning, 69.
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386 Finnis et al., *Nuclear Deterrence*, 329.
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388 Finnis et al., *Nuclear Deterrence*, 283.
389 Finnis et al., *Nuclear Deterrence*, 284.
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394 Finnis et al., *Nuclear Deterrence*, 315.
395 Finnis et al., *Nuclear Deterrence*, 315.
396 Finnis et al., *Nuclear Deterrence*, 316.
397 Finnis et al., *Nuclear Deterrence*, 318.
399 Finnis et al., *Nuclear Deterrence*, 324.
404 Boyle, “Just War Doctrine,” 156.
405 Boyle, “Just War Doctrine,” 156.
406 Boyle, “Just War Doctrine,” 156.
408 Boyle, “Just War Doctrine,” 156.
409 Boyle, “The Catholic Teaching on War and Peace,” 256.
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CHAPTER FOUR – HEALTH CARE ETHICS CONSULTATIONS AND COOPERATION

Having explained the function of the Principle of Double Effect for Catholic health care ethics, this chapter assesses the role of two separate, but related tools, health care ethics consultations and the Principle of Cooperation.

4A. Health Care Ethics Consultations

This section highlights several features for health care ethics consultations. Using the Ethical and Religious Directives for Catholic Health Care Services, it offers a unique approach that incorporates aspects of the Core Competencies of the American Society for Bioethics and Humanities, the Veterans Health Administration, and other literature.

i. Health Care Ethics Consultation

The American Society for Bioethics and Humanities indicates that health care ethics consultations respond to ethical dilemmas in the clinical setting. In particular, they facilitate the resolution of conflicts between values that inhibit decision-making regarding clinical action. Ultimately, they should improve the quality of health care by helping participants to resolve ethical dilemmas. This is also how health care ethics consultations differ from other consultation services. Both the Veterans Health Administration and the American Society for Bioethics and Humanities distinguish between case consultations and non-case consultations. Case consultations pertain to a particular clinical case, whereas, non-case consultations refer to other types of consultation, such as, answering general ethical questions, policy review, organizational, and professional questions. The American Society for Bioethics and Humanities focuses its competencies on case consultations, though the scope of application is not necessarily limited to such.
While there are several approaches to health care ethics consultations, including: authoritarian, pure consensus, and facilitation, the American Society for Bioethics and Humanities argues that the facilitation approach works best. In the authoritarian approach, the ethicist usurps the decision-making authority of the patient or surrogate and makes decisions for them. This is problematic because the ethicist fails to respect the autonomy of the patient and care team. The consensus approach is faulty because it does not necessarily incorporate values and norms, but rather bases decision-making entirely on an agreed upon consensus. The American Society for Bioethics and Humanities offers a twofold explanation in favor of the facilitation approach. One, ethicists help identify values; and two, they assist in formulating an ethical resolution.

In principle, because of its integration of relevant sources, the facilitation approach avoids sliding into moral relativism. For Catholic hospitals, this includes the use of the Ethical and Religious Directives. As a facilitator, ethicists utilize a broad spectrum of skills that surpass the role of philosopher or theologian. They develop strong interpersonal skills, such as listening, coordinating meetings so that all voices are heard, helping people articulate their values, and helping to resolve conflicts. At the same time, consultants need to avoid manipulating patients or clinicians into adopting their personal preferences. This does not mean refraining from educating or pointing out unethical practices. Ultimately, the facilitation approach is desirable because it empowers patients, surrogates, and clinicians to act on well-articulated values.

One size does not necessarily fit all, when it comes to how many individuals to include in an ethics consult. The American Society for Bioethics and Humanities and the Veterans Health Administration differentiate three sizes: 1) individual, 2) consultation team, and 3) Ethics committee. Necessity determines the size of the consultation. The American Society for
Bioethics and Humanities recommends individual consultation when the need for information is urgent. In addition to time constraints, all parties may not feel comfortable communicating in large groups. Ethicists should meet with patients and clinicians before the formal meeting to make sure all the relevant information is shared. Even where time is not necessarily a constraint, the efficient use of personnel may preclude a formal meeting of the entire ethics board. The disadvantage of an individual consultant is that one must have all the relevant competencies and there is no way to guard against biases.

The advantage of a larger group of consultants is the multidisciplinary perspective and the representation of more competencies and experience. A team consult is smaller than a whole committee. Members should be chosen for complementary competencies. Although they are not as efficient as an individual consults they are quicker than committees. According to the Veterans Health Administration, the team consultation is the most commonly used model for health care ethics consultations. The full ethics board meeting presumably engages the widest variety of expertise and competencies ensuring collective proficiency. Although it utilizes the greatest personnel hours, it helps for evaluating quality of a consult and policy-making, not to mention the avoidance of legal repercussions. For this reason, the American Society for Bioethics and Humanities recommends using it for potentially high profile clinical cases.

a. Proficiencies

Before discussing the mechanisms for health care ethics consultations, I discuss proficiencies for handling them. The Veterans Health Administration and the American Society for Bioethics and Humanities divide proficiencies into three classes: 1) knowledge; 2) skills; and 3) attributes, attitudes, and behaviors. Knowledge consists of the information that ethicists ought to master for consultations. Skills consist of practical techniques important for running
them. The American Society for Bioethics and Humanities divides these skills into three categories: 1) ethical assessment and analysis skills; 2) process skills; and 3) interpersonal skills. The American Society for Bioethics and Humanities and the Veterans Health Administration list attributes, attitudes, and behaviors that an ethicist ought to have and develop. While it may not be necessary to have advanced proficiency in all these areas, it is important to have at least some basic proficiency in each. In the following, I discuss each proficiency in greater detail.

First, I discuss knowledge that ethicists and board members ought to attain. The fewer the number of members participating in a consultation, the greater amount of knowledge that single individuals must have. To begin with, it is important for consultants to be familiar with the field of ethics. This includes knowing various ethical theories and how to apply them. The American Society for Bioethics and Humanities encourages proficiency in consequentialism, deontology, virtue-based ethics, natural law, communitarian, and feminist theories. As an applied science, it is important to be familiar with casuistic approaches as well. An ethicist for a Catholic hospital should be familiar with the Catholic theological tradition and the Ethical and Religious Directives.

In addition to familiarity with the philosophical and theological theories, it is important to be familiar with the common issues and scenarios that arise necessitating its application. This includes, but is not limited to: confidentiality, patient rights, end-of-life decision-making, beginning-of-life decision-making, surrogate decision-making, competency, conflict of interest, competency of minors, and organ donation. It is important to know institutional policies, along with federal and local laws pertaining to healthcare. Even though an ethicist may not be a
practicing clinician, it is nonetheless important to be familiar with the clinical literature, practice, and terminology.  

As an applied field, health care ethicists need to develop certain practical skills. First, ethicists must be able to assess and analyze information ethically. To begin with, one must determine what the uncertainty or conflict of values consists of. In order to achieve this goal, one must gather all relevant information from the patient, surrogate, family, clinicians, attorneys, and administrators. At the same time, one must be mindful of power relations, ethnic, cultural, and religious influences. It is important to maintain the scope of the consultation to ethics. Moreover, one must identify, articulate, and clarify the ethical concerns, values, and beliefs held by all including oneself.

In terms of analysis, the ethicist has to access relevant information to clarify the relevant ethical concepts to facilitate ethical decision-making. Sometimes this means clarifying whom the appropriate decision-maker is. Success in analyzing involves being able to integrate all relevant information from many different sources including practical and theoretical. One must also be able to identify personal biases and limitations so that one can seek assistance.

Next, both the American Society for Bioethics and Humanities and the Veterans Health Administration consider processing skills. To begin with, the ethicist needs to determine if a request actually constitutes an ethical dilemma or another type of problem that needs to be referred elsewhere. Next, the ethicist needs to decide which type of consultation model to utilize: individual, team, or committee, and who needs to be involved: patient, surrogate, family, and clinicians. Before having a formal meeting, the ethicist should speak to the patient, and other parties to collect information and get an idea of what the situation entails.
also entails documentation in the patient’s health records. The ethicist must also be able to run an effective ethics consultation, which necessitates the development of good interpersonal skills.

Perhaps the most important interpersonal skill that an ethicist must have is listening. While listening may seem like a passive activity, it involves lots of work, if it is done well. Listening begins with respecting each person and being able to empathize with his or her perspective. Effective health care depends on hierarchical structures, but these can lead to moral distress for subordinate clinicians, especially when they identify inappropriate behavior or practice in their superiors. An ethicist must be attentive to the power dynamics at work and attend to concomitant moral distress of subordinates and helping superiors to hear their concerns without feeling overthrown or betrayed. The American Society for Bioethics and Humanities calls this leveling the playing field.

Good listening includes active listening. This means helping others articulate their views without adding to or taking away from the content of their message. Ethicists have an important role to educate others on ethics and to help others express their views in ethical terms. Being able to recapitulate another’s view in such a way that others can understand it better, sometimes including the one espousing it, is an important tool of communication for ethicists, especially since ethics is not the expertise of everyone. By using this skill with each respective party, an ethicist ensures that all are heard helping to bring about effective resolutions amenable to all.

Finally, the American Society for Bioethics and Humanities and the Veterans Health Administration discuss attributes, attitudes and behaviors that they believe are requisite for an ethics consultant. First, the American Society for Bioethics and Humanities says that ethicists should be tolerant, patient, and compassionate. The healthcare world is high-stress and when ethical dilemmas arise, tensions and emotions are high. An ethicist brings a sense of calm and
understanding, working constructively even in situations of duress. Next on the list are honesty, forthrightness, and self-knowledge. These virtues help one address uncomfortable issues that most prefer to avoid. Ethical dilemmas are often messy; people are vulnerable. These virtues help the ethicist to avoid tendencies toward quick resolution through manipulation.

Courage is another important virtue that helps one raise the red flag and address unethical behavior, especially when doing so is not popular. Humility and prudence are two virtues that aid one in choosing the right battles and not over-stepping one’s bounds. Ethicists need to be good leaders, acting decisively, but also having restraint at times. Above all, they need to be people of integrity, which means that their words match their behavior and beliefs.

b. Veterans Health Administration

Both the American Society for Bioethics and Humanities and the Veterans Health Administration offer a method for running consultations. However, before discussing this, I mention two topics related to the above proficiencies that ethicists need when leading health care ethics consultations, that is, skills for facilitating consultations, and evaluative, quality improvement skills. To facilitate an effective meeting, one first introduces the participants, their roles and expectations. It is always a good idea to begin a meeting by emphasizing the importance of confidentiality. Next, one lays the ground rules and clearly defines the goal and timeframe for meeting it. The ethicist should run the meeting so that each party has an opportunity to speak, but making sure that the team stays focused. To facilitate this, it may be helpful to have an agenda drafted before the meeting. Finally, the ethicist needs to determine what type of follow up is necessary, including whether to have another formal meeting.

It is important for ethicists to also do prep work before the meeting, including picking appropriate members that complement and represent different competencies. Furthermore, one
must mentor and offer further training to members. In addition, one must maintain a good rapport with the leadership of the institution and be familiar with procedures and policies. Finally, ethicists should inform staff and patients about access to health care ethics consultations.

No service is complete without some means of evaluation and quality assurance. This involves evaluation of the access, process, and implications to the organization and policies of a health care ethics consultations. The ethicist needs to provide means for collecting and analyzing relevant data to determine not only the effectiveness of the consultation in terms of outcome, but also in how it is accessed and run. Being self-reflective and not afraid to critique one’s approach is key to success in this arena. Looking for patterns in the content of consultation may lead one to discern the need for change in practice or policies within the organization. Having positive relationships with the administration can make this more effective.

For the procedure of running health care ethics consultations, the Veterans Health Administration recommends the five step approach: clarify, assemble, synthesize, explain, and support. They intend the step-by-step procedure to be analogous to a clinician’s physical exam or history of a patient. In this sense, the ethicist should follow it precisely when performing an ethics consult for an active patient case. This also provides an outline for documenting in the patient’s records. In the following, I discuss each of these steps in detail.

According to the Veterans Health Administration’s approach, one must first clarify the consultation request. They indicate that ethical problems concern values and/or conflict of values. The ethicist helps the requester articulate the issue or concern at hand. Often, ethical concerns accompany dilemmas that require expertise in other fields, such as, legal, medical, psychological, spiritual, or administrative, in which case referral is necessary, in addition to addressing the ethical concern. Having determined that the case involves an ethical concern,
one determines if it is an active patient case; if it is, then one follows the procedure in the Veterans Health Administration and records it in the patient’s records. \(^87\) Next, one obtains preliminary information, such as, contact info, date, time, urgency, requester’s role, brief description, assistance desired, and care setting. \(^88\) Then the ethicist should share realistic expectations for about the process with the requester. \(^89\)

Finally, regarding clarifying the request, the Veterans Health Administration asks the ethicist to formulate the ethics question, for which they offer a five-step process. \(^90\) First, the requester describes the situation ethically as she understands it. \(^91\) Second, the ethicist identifies value labels for strongly held beliefs, ideals, principles, or standards, such as honesty, equality, rights, justice, etc. \(^92\) Third, having identified values, the ethicist then describes them from the perspective of respective parties. \(^93\) Next, of all the values mentioned, the ethicist identifies the “central value perspective,” that is what constitutes the value or values in conflict. \(^94\) Fifth, the ethicist formulates the main ethical concern. \(^95\) Finally, the Veterans Health Administration recommends formulating this concern according to the format of one of three questions:

1. Given that \(1^{\text{st}}\) central value, but \(2^{\text{nd}}\) central value, what decisions or actions are ethically justified?
2. Given that \(1^{\text{st}}\) central value, but \(2^{\text{nd}}\) central value, is it ethically justifiable to [decision or action]?
3. What ethical concerns are raised by [name of document], and what should be done to resolve them? \(^96\)

Second, the ethicist must assemble all the relevant information. \(^97\) The Veterans Health Administration reformulates Jonsen, Siegler, and Winslade’s four topics—medical indications, patient preferences, quality of life, and contextual features \(^98\)—into three categories: 1) medical facts, 2) patient preferences and interests, and 3) other parties’ preferences and interests. \(^99\) In addition, they insist that ethicists gather relevant ethical information for the case. \(^100\) Although it is not the ethicist’s job to make recommendations regarding medical decisions, the medical facts
are important, and where the ethicist lacks clinical knowledge, he ought to ask more questions. Sources for information include: patient, health records, staff, family members, and friend.

Third, the ethicist needs to synthesize the information such that it addresses the ethical concerns. Because many may feel reluctant to share in a formal meeting, it is important to gather information prior to determining whether to convene a formal meeting. Before a formal meeting, the ethicist should formulate the problem in words, meet with all parties, and bring relevant literature. During the meeting, the ethicist should work to level the playing field and engage the group in creative problem solving.

One of the most important roles of an ethicist is ethical analysis, which involves formulating and weighing arguments and counterarguments based on ethical principles and theoretical perspectives. The Veterans Health Administration recommends that ethicists use more than one ethical perspective, such as, casuistry, consequentialism, utilitarianism, principlism, deontology, and virtue ethics, to name a few. Performing quality ethical analysis involves not only formulating arguments and counterarguments, but also weighing them to determine a conclusive response to the dilemma. In addition, it is important to determine who the appropriate decision maker is. This is not always easy. Often it is the patient, but if the patient is incapacitated or a minor, then a surrogate decision maker takes over. I discuss this topic in greater detail below. Finally, when there are multiple competing ethically sound options, the ethicist facilitates deliberation avoiding manipulation by imposing personal preferences.

The decision having been made by the appropriate decision maker, the ethicist now has the responsibility of explaining this to the other participants. This involves contacting the requester, clinicians, family members, and other relevant participants personally to share the outcome of the consultation, giving them an idea for the plan going forward. Sometimes, this
involves educating participants about ethics, policy, law, or medical practices. It also involves documenting both in the patient’s health records and the consultation records, for which the Veterans Health Administration offers a procedure.

The final step is supporting the consultation process. The consultant should follow up with participants to determine the effectiveness of the consult, resolve further issues, offer an empathetic ear, and educate further, if necessary. This provide an opportunity to evaluate the effectiveness of the service, and if necessary, to make adjustments to the process. This is also how one may identify underlying systems issues.

The Veterans Health Administration’s approach to health care ethics consultations is a tried and true process that enables ethicists to provide effective services to patients, surrogates, and clinicians. So long as an ethicist incorporates the Ethical and Religious Directives into this approach, especially regarding ethical analysis, there is no reason Catholic Health care systems should not embrace and follow them.

ii. Principles and Topics for Health Care Ethics Consultations

Today, much of biomedical ethics depends on principlism, an ethical theory originating in Tom L. Beauchamp and James F. Childress’s book *Principles of Biomedical Ethics*. The authors establish a foundation for biomedical ethics based on a common morality, which consists of four foundational principles: autonomy, beneficence, non-maleficence, and justice. In the following, I discuss these four principles, relating them to health care ethics consultations. I also integrate recommendations from Jonsen et al.’s text, *Clinical Ethics: A Practical Approach to Ethical Decisions in Clinical Medicine*. 
a. Autonomy

The first principle is autonomy, which Beauchamp et al. discuss in the fourth chapter of their text. Contrary to common misconceptions, Beauchamp et al. do not believe that respect for autonomy trumps all other ethical principles, nor is it excessively individualistic, excessively rational, or overly legalistic. While there are many definitions for autonomy, it at least means that one has the capacity for self-rule that is free from interference and limitations or inadequate understanding. More explicitly, autonomy consists of two conditions: liberty (freedom from compelling influences) and agency (ability to intend action). Beauchamp et al. argue for a three-condition theory within reach of competent agents: 1) intentionality, 2) understanding, and 3) non-control. For an act to be intentional, the agent must conceptualize and plan for it, but consequences do not necessarily have to go according to plan. An agent only needs a “substantial degree of understanding and freedom from constraint” for one to be autonomous. To be non-controlling, it must be free from forces internally or externally coercive or manipulative. While acts are either intentional or non-intentional, they may be more or less autonomous according to degrees of understanding and control, the threshold of which determines whether an action is substantially autonomous.

There are a number of important concepts that depend on autonomy, including: determination of competence, informed consent, and confidentiality. Jonsen et al. also base patient preferences on autonomy. In addition, autonomy plays an important role for quality of life determination from the patient’s perspective. I begin by discussing informed consent.

Regarding patient preferences, Jonsen et al. ask six questions, the first of which pertains to informed consent. To the patient, the physician describes the diagnosis, the recommended course of treatment, and its reasons, along with alternative treatments, explaining benefits, and
risks to each, to which the patient either accepts or declines the recommendation. Although legal standards regarding quality of disclosure once depended on the perspective of the physician, today they are patient-centered. The minimum legal standard is “the reasonable or prudent patient standard,” while Jonsen et al. encourage movement toward a “subjective standard,” disclosure uniquely conformed to the individual patient.

Jonsen et al. offer four criteria that constitute appropriate disclosure: 1) medical status; 2) potentially helpful interventions, including risks and benefits; 3) professional opinion regarding alternatives; and 4) a recommendation based on the physician’s best clinical judgment. In conveying this information, physicians ought to communicate it in such a way that it avoids technical terminology, and presents statistics in common, easy to understand examples. Jonsen et al. assert that physicians ought to disclose professional experience regarding outcomes of procedures, especially when the risks are high or the treatment is elective. It is one thing to provide patients with information, but quite another to ensure understanding. Jonsen et al. say, “Physicians have an ethical obligation to make reasonable efforts to ensure comprehension.” Clinicians may facilitate comprehension by not only allowing patients to ask questions, but by asking questions of the patient to test understanding. Since nothing in healthcare should happen without documentation, the clinician ought to document the conversation regarding informed consent, including the patient’s concerns and demonstrated comprehension, which constitutes more than a mere signature. Although it is true that physicians are often pressed for time, and bad news may be difficult to explain, initially misunderstood, or induce anxiety in the patient, taking the time to inform consent not only promotes patient shared decision-making, but strengthens the physician-patient relationship, and engenders a better therapeutic outcome.
Unfortunately, not all patients are mentally capable or legally competent to receive and process information to make a reasonably informed decision concerning care. As such, clinicians need to establish the capacity of a patient for decision-making. Legally, only a judge can make a determination that one is incompetent to make personal decisions regarding finances and healthcare; however, clinically, sickness, anxiety, or drugs may compromise one’s decisional capacity. Clinically, mental capacity to give consent entails the ability to receive and process information, understanding the consequences of decisions, being able to communicate and think rationally about one’s values and goals in relationship to the physician’s recommendation. Obvious situations where this capacity is lacking include: comatose, unconscious, or severely demented, in which case a surrogate acts as the decision-maker. However, ethical dilemmas arise when mental capacity to give consent is questionable, for instance, under the influence of drugs, fear, trauma, or severe illness. In life-threatening situations, where mental capacity is doubtful, a physician has the right to intervene; otherwise, it is necessary to determine decisional capacity. 

If a physician determines that a patient does not have decision making capacity, then the following must be done: 1) determine if the patient has any written advance directives; and 2) determine if and whom the surrogate decision-maker is. Jonsen et al. list several methods of advance planning including, but not limited to: 1) a durable power of attorney for healthcare, 2) directive to physicians, and 3) living will. Today healthcare institutions are required to ask for advance directives and to offer assistance in completing them, if lacking upon admission. The simplest advance planning is to appoint a durable power of attorney for healthcare, which makes decisions regarding one’s healthcare in the event that one becomes incapacitated.
ought to know the surrogate and she ought to know the patient’s values and desires regarding healthcare decisions.\textsuperscript{152}

It may also be helpful to have an advance directive or directive to physicians.\textsuperscript{153} This constitutes a legal document expressing to the physician one’s wishes if one is incapacitated.\textsuperscript{154} Often this contains a provision appointing a designated decision maker.\textsuperscript{155} A living will expresses one’s wishes in a less formal way, but may provide more guidance regarding quality of care or specific conditions.\textsuperscript{156}

If healthcare decision-making falls to a surrogate, because of the patient’s incapacity, and one is not designated, legislative statutes dictate an order of priority based on relation: 1) spouse, 2) parents, 3) children, 4) siblings, etc.\textsuperscript{157} Conflicts may arise because of surrogate incapacity or financial interests. Jonsen et al. identify two standards that guide surrogate decision-making: 1) substituted judgment and 2) the best interest standard.\textsuperscript{158} Substituted judgment occurs when the patient either expresses preferences explicitly or the surrogate may reasonably infer from the patient’s past statements or known values.\textsuperscript{159} Whenever the patient’s preferences are not known, the surrogate ought to makes decisions in the best interest of the patient.\textsuperscript{160} Needless to say, this is not always easy, but ought to be according to known beliefs and values of the patient.\textsuperscript{161}

Jonsen et al. identify incapacitated patients without a surrogate or next of kin as an “unbefriended or unrepresented patient.”\textsuperscript{162} Without representation, these patients are highly vulnerable. Under such circumstances, the physician team often makes decisions for the patient.\textsuperscript{163} To reduce conflict, Jonsen et al. recommend that hospitals institute policies that allow for outside consultation.\textsuperscript{164}

Regarding minors, Jonsen et al. indicate that in general, physicians need the consent of a parent or guardian to offer treatment; however, there are some exceptions.\textsuperscript{165} In emergencies,
minors, those below the age of 18, may be treated without permission according to presumed consent. In addition, certain procedures or drugs may be administered without parental consent, including treatment for sexually transmitted infections, contraception, drug addiction, and abortion (though the latter is sometimes explicitly excluded by law in certain states). Moreover, emancipated minors may be treated without parental consent; and under specific conditions, mature minors (15 years or older) may be treated. Regarding the mentally ill, only a psychiatrist may hold a patient against his will for the sole purpose of treating the mental illness, however, not other comorbidities, without consent.

Conscientious objection concerns the autonomy of the clinician, sometimes limiting that of the patient. Ideally, healthcare decision-making takes place within the physician-patient relationship as a shared enterprise. If conflicts arise, however, physicians are not always obliged to simply do whatever patients want. Physicians should not perform procedures or prescribe medicine that is contrary to the goals of medicine. In addition, a clinician may object to participating in a treatment or procedure that she believes to be immoral. For instance, a nurse may refuse to assist in an abortion or a pharmacist may refuse to fill a prescription for the RU486. While existing laws support conscientious objection, there are limits to its ethical practice. For instance, it is unethical to refuse to treat a patient out of prejudice or for immoral notoriety. Conscientious objection is a serious moral decision that a clinician must give great consideration to, which includes the legal ramifications and potential harm to patients.

b. Non-Maleficence and Beneficence

Non-maleficence consists of the principle to do no harm. Beauchamp et al. present non-maleficence in conjunction with beneficence, according to four distinct non-hierarchical norms: “1) one ought not to inflict evil or harm; 2) One ought to prevent evil and harm; 3) one
ought to remove evil or harm; and 4) One ought to do or promote good.”\textsuperscript{178} The first requires one to intentionally avoid actions, which cause harm, while the latter three, associated with beneficence, require one to act helpfully.\textsuperscript{179} They contrast harm from wronging another.\textsuperscript{180} Specifically, harming for them means thwarting, defeating, or setting back a party’s interest.\textsuperscript{181} One who is harmed is not necessarily wronged.\textsuperscript{182} A surgeon may amputate a diseased limb that harms a patient, but does not wrong the patient.\textsuperscript{183} Nor is one necessarily harmed when wronged.\textsuperscript{184} For example, when an insurance company unjustly refuses to pay a patient’s hospital bill.\textsuperscript{185} 

Questions concerning non-maleficence inexorably link to questions on quality of life. William May asserts that allowing quality of life and autonomy to either determine or trump the dignity of the human person underlies arguments condoning intrinsically evil acts such as active voluntary euthanasia and physician-assisted suicide.\textsuperscript{186} Under the guise of mercy and respect for autonomy proponents defend patients’ and physicians’ rights to such acts.\textsuperscript{187} Following the Catholic tradition, based in Natural Law, May defends the dignity of every human person, inexorably part of human nature, and therefore, constituting the basis for the principle of autonomy.\textsuperscript{188} For May, autonomy exists for the purpose of achieving the flourishing of the human person as a human person—body and soul.\textsuperscript{189} According to May, lines of reasoning defending euthanasia or physician-assisted suicide, presume a dualism that differentiates the human person from the human body.\textsuperscript{190} Moreover, quality of life constitutes the litmus test for the dignity or worth of a person’s life, since below an arbitrary threshold life may be justifiably terminated.\textsuperscript{191} This threshold is arbitrary because it depends on the subjective judgment of the individual making the determination. May argues that insofar as autonomy and respect for it
issues from the dignity of the human person, using it to violate the dignity of the human person, under the guise of respect for it, is inconsistent.\textsuperscript{192}

Some argue that the slippery slope trajectory of quality of life arguments render it untenable for any ethical consideration whatsoever.\textsuperscript{193} However, May, following the Congregation for the Doctrine of the Faith’s reasoning in its \textit{Declaration on Euthanasia}, insists that quality of life does have an important role to play for utilizing treatments.\textsuperscript{194} One may classify treatments, including procedures, medicines, or interventions, as proportionate (ordinary) or disproportionate (extraordinary).\textsuperscript{195} Proportionate treatment consists of any treatment that has a reasonable hope of benefit with an acceptable amount of burdensomeness.\textsuperscript{196} Disproportionate treatment consists of treatment that the patient or proxy determines to be excessively burdensome or futile.\textsuperscript{197} According to May, respect for the dignity of the human person obliges one to accept proportionate treatment, whereas, it permits one to reject disproportionate treatment, even when doing so hastens death.\textsuperscript{198} Quality of life is an important factor for determining both the burdensomeness and usefulness of a treatment; as such, it maintains an important role for biomedical ethics in the Catholic tradition.\textsuperscript{199} According to the Catholic tradition, one does not use quality of life to make a judgment about the value of one’s life in the absolute sense as to whether one should live or die; rather, one makes a judgment about treatment.\textsuperscript{200}

Beauchamp et al. indicate that patients and families often experience significantly more moral distress at the thought of discontinuing treatment, once commenced, than simply foregoing it from the beginning.\textsuperscript{201} This is particularly controversial when it comes to life sustaining devices such as cardiovascular implantable electronic devices.\textsuperscript{202} It is quite distressing because deactivation of such devices sometimes leads to immediate death.\textsuperscript{203} Despite controversy and
frequent concomitant moral distress, the difference between foregoing treatment and withdrawing does not limit one’s right to reject disproportionate treatment.\footnote{204}

The principle of non-maleficence obliges clinicians to do no harm.\footnote{205} Insofar as it is a negative norm, obliging one to refrain from action, non-maleficence accordingly obliges no one to do any positive act, which active euthanasia or physician-assisted suicide constitutes.\footnote{206} Therefore, alone it cannot justify such acts. Even with other principles, however, insofar as non-maleficence is a more stringent obligation, it ought to overrule any further consideration of such acts.\footnote{207} Regardless, most medical interventions have some concomitant harm. In all cases, however, non-maleficence, in addition to respect for autonomy, limited by respect for the dignity of the human person from which autonomy proceeds, demands that one demure from requests to kill patients or aiding them in any suicidal act. This exceptionless moral norm, however, does not mean that one may not utilize quality of life, along with other factors to determine whether a treatment is proportionate, even when one knows that its cessation accelerates death.\footnote{208}

c. Justice

Unlike non-maleficence, the principle of beneficence places a positive obligation, rather than, a negative obligation on the clinician to care for a patient.\footnote{209} Beauchamp et al. list five \textit{prima facie} rules which beneficence obliges: “1) protect and defend the rights of others; 2) prevent harm from occurring to others; 3) remove conditions that will cause harm to others; 4) help persons with disabilities; and 5) Rescue persons in danger.”\footnote{210} In particular, however, the contractual relationship between physician and patient carries specific obligations on the part of the physician, which demand a high degree of professionalism.\footnote{211}

According to Jonsen et al., beneficence demands that clinicians always keep the wellbeing of the patient above any personal goals.\footnote{212} Moreover, integral to professionalism is
honesty with the patient, collaboration with other caregivers, and respectability.\textsuperscript{213} Above all, physicians ought to avoid exploiting patients for personal gain—financial or otherwise.\textsuperscript{214} This important obligation to avoid exploitation, relates not only to beneficence, but justice and fairness as well.\textsuperscript{215} In particular, it relates to the avoidance of conflicting interests.\textsuperscript{216}

Jonsen et al. consider conflicts of interest in detail in the chapter pertaining to contextual features.\textsuperscript{217} Factors such as profession, family, religion, financial, legal, and institution, influence the physician-patient relationship, and therefore, require ethical consideration regarding their importance in clinical cases.\textsuperscript{218} Justice, the virtue that pertains to the social distribution of benefits and burdens in a fair and equitable manner, is the primary ethical principle for this topic.\textsuperscript{219} Jonsen et al. narrow the focus to fairness, which delineates to participants that which each deserves and can reasonably expect in a relationship or transaction.\textsuperscript{220} In particular, Jonsen et al. apply fairness to conflicts of interest; situations where one’s professional role makes it possible to take advantage of another.\textsuperscript{221} Jonsen et al. consider ten questions pertaining to contextual features.\textsuperscript{222}

First, Jonsen et al. address conflicts of interest in relation to professionalism and professional relationships to which he connects to three principles: primacy of patient welfare, patient autonomy, and social justice.\textsuperscript{223} Today physicians have multiple loyalties or allegiances, but the principle of primacy of the patient, based on altruism, that is, doing what’s best for another, means that whenever conflicts arise, the patient’s priorities take precedence.\textsuperscript{224} In addition to loyalty to patients, physicians have relationships with other medical staff, which may give rise to moral distress, when subordinates observe unethical practices of superiors.\textsuperscript{225} This is precisely an issue that Jonsen et al. say ethics consultations ideally resolve.\textsuperscript{226} To avoid unethical practices in physicians’ relationships with business, Jonsen et al. recommend transparency and
compliance with the law and recommendations of the American Medical Association Council on Ethics and Legal Affairs.\textsuperscript{227} Finally, Jonsen et al. acknowledge the importance of taking time for family, which improves physicians’ health and performance.\textsuperscript{228}

Next, Jonsen et al. address the interests of third parties for patient care including: family, government, hospital, insurance company, lawyers, employers, etc.\textsuperscript{229} Family members may be a source of aide for the patient or tension and conflict. Whenever family members act as obstacles to care, Jonsen et al. recommend attempting to determine the source of conflict and realigning cooperation in treatment.\textsuperscript{230} Often confidentiality, rooted in respect for autonomy of the patient, limits the amount of information that physicians can share with family members. However, when personal information impacts a third party, confidentiality may be breached.\textsuperscript{231}

In 1996, congress passed the Health Insurance Portability and Accountability Act, which regulates confidentiality in healthcare legally on the federal level.\textsuperscript{232} According to the Health Insurance Portability and Accountability Act, physicians may share medical information when it helps the patient or prevents harm to a third party.\textsuperscript{233} For instance, if a patient has a sexually transmitted infection, the physician may inform known sexual partners, if the patient refuses.\textsuperscript{234} Furthermore, clinicians have a duty to report suspected cases of physical or sexual abuse and when patients intend to harm themselves or others.\textsuperscript{235}

Genetic conditions introduce a whole new consideration for confidentiality and its impact on third parties, such as, spouses and family planning, and children. Not only do genetic tests vary in accuracy, but genetic conditions vary in impact and levels of predisposition.\textsuperscript{236} In other words, testing positive for a particular genetic mutation does not always result in developing the pathological condition. In some cases, however, such as Huntington’s disease, genetic testing accurately predicts future onset, but not necessarily time or degree of onset. In general, where
there is greater accuracy and the pathology more serious, Jonsen et al. recommend that physicians encourage patients to share information, especially, if it is likely to have an impact on others.\textsuperscript{237} The Ethical and Religious Directives encourage families to seek genetic counseling, and to allow it to inform designs regarding family planning, so long as one follows the Church’s teachings regarding the transmission of life.\textsuperscript{238}

Fourth, Jonsen et al. address financial conflicts of interest.\textsuperscript{239} Because of the increasing costs relegated to the patient in copays and deductibles, physicians must take into account the cost of prescriptions and procedures.\textsuperscript{240} Moreover, physicians are obliged to inform patients of alternative treatment options, even though it may result in a financial loss.\textsuperscript{241} Regarding transfers in emergency departments, Jonsen et al. say that they ought to be made based on medical indication, rather than financial incentive.\textsuperscript{242} Indeed, all medical recommendations should be based clinical effectiveness, rather than cost.\textsuperscript{243}

Fifth, Jonsen et al. considers the impact of allocating scarce resources on patients.\textsuperscript{244} While physicians should not waste resources on futile treatments, they should avoid bedside rationing, which is allowing societal efficiency to influence clinical treatment of patients.\textsuperscript{245} Catastrophic events may necessitate triaging, the limitation of resources to rescue workers, or the most likely to survive, before treating terminal patients. Outside of these extreme circumstances, physicians should make decisions based on medical indication on the clinical level, rather than consideration for the use of societal resources.\textsuperscript{246}

Sixth, Jonsen et al. address the role of religion in the clinical setting.\textsuperscript{247} Both physicians and patient find great meaning in religion. For patients, this is especially true when they are sick, suffering or nearing death. Jonsen et al. encourage mutual respect regarding religious views, but not neglect or exclusion from a discussion, especially insofar as it may impact a patient’s
openness to and compliance with treatment. For this reason, Jonsen et al. encourage physicians to discuss religious views with patients in an understanding way and to seek accurate information from appropriate resources such as chaplains.

Seventh, Jonsen et al. consider the legal issues that may affect clinical decision-making. Eighth, Jonsen et al. speak to the influence that research and education may play in clinical decisions. A physician has conflicting interests whenever he or she is both a clinician and researcher. Clinical research involves intervention or observation on patients or normal volunteers for the purpose of gaining scientific knowledge. It is essential to appropriately inform participants and to receive consent, without coercion. Institutional review boards assure that experiments follow ethical procedures, inform participants of risks/benefits, receive consent, compensate participants fairly, do no harm, or take advantage of vulnerable populations.

This section analyzes proficiencies for health care ethics consultations from the perspective of the American Society for Bioethics and Humanities and the Veterans Health Administration. Then discusses the impact that principlism and the Ethical and Religious Directive have on health care ethics consultations. The following section examines another important principle of health care ethics from the perspective of the Ethical and Religious Directives.

4B. Principle of Cooperation

This section explores the development of cooperation, beginning with its origin in Thomistic action theory and Liguori’s moral theology. It also considers the development of Cooperation in the Ethical and Religious Directives for Catholic Health Care Services of the United States Catholic Bishops. Then, it articulates two contemporary formulations of the
Principle of Cooperation, one that addresses the impact of proportionalism and another that considers the mirror Principle of Appropriation.

**i. Principle of Cooperation**

Just as acts may have more than one effect, so one’s acts may contribute to another’s bad act. The Principle of Double Effect accounts for the former, while the Principle of Cooperation accounts for the latter. This section compares Cooperation with Double Effect.

*a. Cooperation and Double Effect:*

Ethicists highlight the similarities between Double Effect and Cooperation. The former elucidates when an act with both a good and evil effect may occur, just as the latter illuminates when and how much one’s act may licitly contribute to the evil of another. Contrary to the Principle of Tolerance, in Double Effect and Cooperation, an agent commits an act. While Double Effect considers the morality of one’s act in relationship to two effects: one evil, the other good, Cooperation considers the morality of two distinct acts attributable to two distinct agents: one agent’s act contributing to another’s immoral act. Traditional formulations of Double Effect have four or five conditions that correspond to similar conditions in Cooperation. First, regarding Double Effect, the object of the act must be good or indifferent. Consequently, the first condition of Cooperation insists that the act of the cooperator must be good or indifferent.

Next, Double Effect insists that the agent must not intend the evil effect, but the good effect. Put another way, one may only foresee the evil effect, but one must not intend it. As such, the next condition for Cooperation concerns the intent of the cooperator. The agent must not intend the evil that the principal agent intends. Formal cooperation in evil exists when the cooperator agrees with the evil intent of the primary agent. The cooperator is guilty insofar as the will conforms to the evil intent of the principal agent.
Clearly, intention—broadly speaking—plays a primary role for both principles. First, intention determines the proximate end of the act, which constitutes the Moral Object. Second, intention determines the remote end that the agent intends. Therefore, the intention of the will is the primary means for determining the sinfulness of a cooperator’s act in the aid of another’s sin. The first two conditions of Cooperation rule out formal cooperation.

In Double Effect, the third condition insists that the evil effect must not be the means to or cause of the good effect. Therefore, correspondingly, the condition for Cooperation insists that the principal agent must be the cause of the evil, not the cooperator’s act. Thus, the cooperator’s act must be sufficiently distant from that of the primary agent. Insofar as the cooperator does not agree with the evil intent of the principal agent, it is material. However, regarding distance, one must first determine whether an act constitutes immediate or mediate material cooperation. Immediate material cooperation occurs when one cooperates in the act itself in such a way that one’s participation is indispensable to the act’s completion. For instance, a nurse assisting a physician in a sterilization constitutes immediate material cooperation. According to traditional formulates, immediate material cooperation is always immoral, and therefore, forbidden, which this third condition rules out ethically.

On the other hand, mediate material cooperation is more distant from the principal agent’s act. This occurs when one performs an act that paves the way for the immoral act to occur. For instance, the nurse prepping the patient for sterilization or doing post-operative care, both constitute mediate material cooperation. Therefore, the difference between immediate and mediate cooperation concerns the level of participation, the former comprising the joining of the principal agent in the act, while the latter is distant enough that the principal agent does not depend so much on the cooperator’s act that without it the evil deed could not be done.
While formal cooperation in evil and immediate cooperation in evil are always morally forbidden, mediate material cooperation in evil may be permissible if the appropriate criteria exist.\textsuperscript{279} Alphonsus Liguori first articulates a rudimentary version of Cooperation in his \textit{Moral Theology}.\textsuperscript{280} He observes that servants, in particular, often find themselves in precarious situations, whereby they contribute in some way to the sinful actions of their masters.\textsuperscript{281} For example, masters may expect a servant to saddle a horse in anticipation of visiting a brothel or accompanying the master thereto.\textsuperscript{282} Insofar as refusing to offer assistance places the servant in jeopardy of losing his job, thus posing a grave inconvenience, Liguori argues that the servant may comply with the expectations of the master to the extent that one’s actions remain remote to the master’s sin.\textsuperscript{283} Liguori offers two criteria that if met satisfy his Principle of Legitimate Material Cooperation: \textsuperscript{284}1) the act in question must be morally good or indifferent itself; and 2) there must be a proportionately good reason for committing the act.\textsuperscript{285} The first two conditions of Cooperation address Liguori’s first criteria, as the above demonstrates. His second criterion, however, corresponds to the fourth condition. In Double Effect, the good effect must be proportionate to the evil effect.\textsuperscript{286} For instance, in the removal of a cancerous, gravid uterus, saving the mother’s life is proportionate to the evil of the child’s death. For Cooperation, the cooperator’s decision to act must be proportionate to either the evil avoided or the good promoted.\textsuperscript{287}

Based on the condition of proportionality, Liguori indicates that the obligation of charity does not extend to the point of gravely inconveniencing the cooperator.\textsuperscript{288} For instance, Liguori argues that for grave reason, such as fear of losing one’s job, a servant could saddle a horse or accompany a master to a brothel.\textsuperscript{289} Moreover, a nurse may decide to cooperate in a mediate
material way in the sterilization of a patient by prepping or caring for the patient post-operatively, because failing to do so means losing one’s job or harms the patient.

Therefore, according to the fourth condition of Cooperation, ethicists further differentiate mediate material cooperation utilizing: distance and dispensability. Regarding distance one may further distinguish between proximate and remote cooperation. If the cooperator’s act is causally close to that of the primary agent’s act, then it is proximate. If causally further away, then the act is remote. For instance, the nurse prepping a patient for sterilization proximately cooperates, while the administrative assistant at the front desk remotely cooperates. In both cases of mediate material cooperation, the agent performs a good or indifferent act that the primary agent uses as an occasion for sin. However, the closer one is to the primary agent’s act, the more serious one’s justification must be.

In addition to considering how closely one’s act relates to the primary agent’s act, one may also consider how indispensable one’s mediate material cooperation is. To be clear, one is not answering whether one’s act inexorably connects to the principal agent’s act—the affirmative constituting immediate material cooperation (always forbidden) and the negative making it mediate material cooperation (sometimes permitted)—but how indispensable one’s already constituted mediate material cooperating act is to supporting the principal agent’s act. If one’s participation is necessary, that is, if one refuses to perform one’s job, thereby preventing the occurrence of the immoral procedure, then one needs a more serious reason not to object; for instance, if one is the only nurse that can prep a patient for an immoral procedure. On the other hand, if one is more dispensable or free, then one needs a less serious reason to object; for instance, if another nurse could simply step in and fill the role.
At first glance, this may seem counterintuitive. One may object, for instance, insisting that since in the second scenario other nurses could perform the objectionable task one is freer, and therefore, more obliged to object than in the first scenario, where the nurse is seemingly less free to object without graver consequences. The rationale is that the more indispensable one is, the greater one’s duty to object. In other words, because other nurses could just as easily step in and complete the task in the second scenario, it is more efficacious for one to object.

Orville N. Griese in *Catholic Identity and Health Care: Principles and Practice* highlights a corollary condition to the proportionality condition in these principles. Just as there ought not to be any legitimate alternative to the act in question for Double Effect, so one may perform an act that cooperates with another’s evil, if and only if, a legitimate alternative does not exist. This constitutes the fifth condition in both principles. For example, if a nurse could excuse oneself from assisting in immoral procedures without fear of retribution, he ought to do so.

The above demonstrates a connection between these principles that ethicists traditionally maintain. Intention plays a primary role, both in characterizing the proximate end and the remote end in the first two conditions. In addition, sufficient separation from the principal agent’s action also has a vital role for justifying mediate material cooperation. The following subsection elucidates Cooperation through its application to sterilizations in Catholic health care facilities.

**ii. Cooperation and Sterilization**

This subsection closely scrutinizes the United States Bishops’ use of Cooperation to mitigate relationships between Catholic hospitals and secular hospitals.
a. Sterilization

Catholic hospitals receive pressure to perform intrinsically evil procedures such as abortions and sterilizations in their facilities. Moreover, economic advantages also coerce Catholic institutions to form joint ventures with non-Catholic hospitals that do perform procedures that violate exceptionless moral norms. J. F. Keenan and Thomas R. Kopfensteiner in “The Principle of Cooperation: Theologians Explain Material and Formal Cooperation,” defend the use of Cooperation not only by individuals, but also by institutions. Gerard Magill in “Organizational Ethics” indicates that while one applies moral responsibility to institutions, this is only done analogously, since moral responsibility ultimately belongs to individual persons.

Because so much is on the line when considering such enterprises—including the closing of facilities—bishops use Cooperation to justify joint ventures where possible. The wide availability, high public acceptability, and high utilization of contraceptive services, including sterilization makes this a particularly precarious sticking point for Catholic hospitals considering joint ventures.

In 1975, the Congregation for the Doctrine of the Faith responds to a request for clarification on the Church’s stance on sterilization in Catholic health care facilities. It categorically rejects any Catholic hospitals formally cooperating in—giving approval or consent to—procedures that are “directed to a contraceptive end,” including sterilizations that deliberately impede “the natural effects of sexual actions.” It also affirms the traditional doctrine regarding material cooperation “to be applied with the utmost prudence, if the case warrants.” In addition, it advises, “great care must be taken against scandal and the danger of any misunderstanding by an appropriate explanation of what is really being done.”
In 1977, the National Conference of Catholic Bishops offers commentary on the above mentioned document. After restating the three principles that the Congregation offers verbatim, the United States Bishops present six guidelines for hospital policy. First, citing the Congregation’s document, it affirms that Catholic hospitals may not approve sterilization procedures that are directly contraceptive, even for medical reasons, for instance, to prevent pregnancy in women in which pregnancy foreseeably aggravates a serious condition. Two, the United States Bishops acknowledge that Catholic hospitals have both the responsibility and legal right to choose which procedures it will or will not perform. However, in the extraordinary circumstance where hospitals are under duress or pressure, and “when it will do more harm than good,” hospitals may materially cooperate in such procedures. Three, since this may only happen in extraordinary circumstances, the decision making must involve the bishop or his representative, to allay scandal. Fourth, they insists that after carefully weighing the evidence, hospitals must cooperate only in a material sense, not a formal sense. In other words, the hospital must not agree to the sterilization procedure because of medical reasons, which constitute formal cooperation, but because of pressure to cooperate that results in more harm than good. Fifth, because of the extraordinary nature of such circumstances, the Bishops insist that hospitals consider each situation on a case-by-case basis, not presuming that the same decision applies to all cases. Finally, to diminish scandal, the Bishops recommend that hospitals explain their decision, reaffirming their disapproval for sterilization, of which material cooperation does not constitute.

In 1980, the United States Bishops promulgate another document on the topic of sterilization, focusing more specifically on tubal ligations. After reaffirming the prohibition on sterilization in the two previously mentioned documents, they further emphasize that the
reasoning for justification must be extrinsic to the case in consideration. Thus, one must avoid formal cooperation with evil, which choosing sterilization for medical reasons constitutes. An extrinsic example that they offer in their commentary on the Congregation’s document is the greater evil of closing a hospital by, for instance, exhausting the financial resources of the hospital on litigation. Moreover, they recommend increased and continued collaboration between the local ordinary, the health care facility, and the sponsoring religious community. The reemphasis on the extrinsic nature of the justification for material cooperation in Catholic health care facilities foreshadows the vacillation on presenting the Church’s teaching on material cooperation in future editions of the Ethical and Religious Directives.

b. The United States Bishops’ and Cooperation

The third edition of the Ethical and Religious Directives contains an articulation of the Principle of Cooperation in its appendix that diverges slightly from traditional versions, which later gives rise to conflict with the Congregation for the Doctrine of the Faith. First, it highlights the distinction between formal and material cooperation, emphasizing that in formal cooperation the cooperator intends the same object as the principal agent. In addition, based on an argument that intention not only constitutes an explicit act of the will, they argue that implicit formal cooperation occurs when the object of the cooperator’s action is indistinguishable from that of the principal agent’s, regardless of what she says. Next, they distinguish between immediate and mediate material cooperation. Immediate material cooperation, like implicit formal cooperation has the same object as the principal agent, but acts under duress or pressure, some of which, but not all may morally justify one’s acting. Alternatively, if the cooperator’s object remains distinct from the principal agent’s, then it constitutes mediate material cooperation, “and can be morally licit.” The United States Bishops also mention the role that
distance and proportion play in characterizing and justifying mediate material cooperation. Finally, they mention the virtue of prudence, the factor of scandal, and the prophetic role of the Church in the world.

Only six years later, in the fourth edition of the Ethical and Religious Directives, the newly formed United States Conference of Catholic Bishops eliminate the appendix on “The Principles Governing Cooperation,” indicating in the introduction to the sixth part on “Forming New Partnerships with Health Care Organizations and Providers,” that the brief summary did not forestall misinterpretations and even gave rise to problems in application. Kevin D. O’Rourke et al. offer some explanation for the change in their article “A Brief History: A Summary of the Development of the Ethical and Religious Directives for Catholic Health Care Services.”

First, O’Rourke explains that the need for a more authoritative set of directives for Catholic health care systems in the United States, one that overcomes so-called “geographical morality,” first arose in the late 1960s because of the rise in proportionalism and its use to justify intrinsically evil acts such as sterilizations in Catholic hospitals. Because of the poor reception among proportionalist ethicists, the Bishops submit the matter to the Congregation for the Doctrine of the Faith. Which, in turn, leads to the above mentioned response on sterilization by the Congregation to the United States Bishops.

O’Rourke explains that the third edition of the Ethical and Religious Directives results from the necessity to provide a theological basis for the legalistic pronouncements of the previous two editions, and to address new issues that arise since its first two promulgations, including, consent in research, advance directives, and cooperation with non-Catholic facilities. Contrary to what Keenan and Kopfenstein hold, O’Rourke contends that the United States Bishops did not have approval from the Congregation for the Doctrine of the Faith.
for the appendix on Cooperation, before its vote approving the third edition, which includes the appendix, in November of 1994. In the spring of 1999, the Congregation for the Doctrine of the Faith asks Bishop Joseph A. Fiorenza, the president of the National Conference of Catholic Bishops to revisit the sixth part of the third edition of the Ethical and Religious Directives, the appendix on cooperation and the 1977 commentary on the Congregation’s document on sterilization, insisting that these documents contribute to misapplication of cooperation and the principle of partnerships. The fourth edition incorporates four changes to the sixth part of the third edition of the Ethical and Religious Directives: 1) a new directive, 70 forbids Catholic health care institutions from engaging in immediate material cooperation in intrinsically evil acts such as sterilization, 2) they eliminate the appendix on cooperation altogether, 3) a footnote indicates that the directive 70 supersedes the 1977 commentary on Quaecumque Sterilizatio, and 4) they give a definition for scandal that coincides more with the Catechism’s definition.

c. The Object of the Cooperator

O’Rourke’s article implies that the United States Bishops took liberty in their interpretation on Cooperation not consistent with traditional articulations and the Congregation for the Doctrine of the Faith calls them to task on this. I argue that this misinterpretation by the United States Bishops centers on a misunderstanding of the Moral Object and its relationship to Cooperation. First, the appendix says that formal cooperation exists when the cooperator intends the same object as the principal agent. Second, the appendix distinguishes between implicit and explicit formal cooperation, suggesting that the difference consists in the spoken intention of the agent, while, once again, the commonality is in the Moral Object.

By definition, however, Cooperation always has two distinct agents and two distinct actions. In formal cooperation, the cooperator agrees with the intention of the principal agent,
but his act always remains distinct, contributing nonetheless to the principal agent’s act. Otherwise it does not constitute a case of Cooperation at all, but of two people choosing the same object, which amounts to the same act, which amounts to two co-principal agents. As such, it is one thing to agree with another’s Moral Object, and to aid him in completion, and quite another to intend the same Moral Object in act. This is because, by definition, the Moral Object is the species of the act itself.  

Shedding more light on intention gives greater clarity. Aquinas indicates that intention is an act of the will towards an end. Broadly speaking, intending may refer to the remote end or the proximate end (Moral Object). In act, however, one always chooses a specific means to one’s end, the means constituting a Moral Object. Conceptually, one may distinguish the end from the means, in act they constitute a single act of the will. Therefore, if one intends the same Moral Object as another, then one no longer merely cooperates, but commits the same act, which constitutes co-principal agents, and Cooperation does not apply. In Compromise and Complicity, Chiara Lepora and Robert E. Goodin distinguish ‘complicity simpliciter’ from other colloquial uses that involve co-principalship: full joint wrongdoing, co-operation, conspiracy, and collusion. In complicity simpliciter, the secondary agent contributes causally to the principal agent’s wrongdoing, as opposed to merely doing wrong together.

Another important distinction is that between the physical act itself—prescinded from its voluntariness—and the act as moral, which also clarifies that choosing the same Moral Object is choosing the same act. Acts are moral insofar as they are voluntary, and therefore on the moral order, not the natural order. Consequently, two distinct physical acts may indeed constitute a common Moral Object; however, insofar as they do, they also constitute the same moral act. For instance, if one chooses to kill someone, it does not matter how one does it in the physical sense,
that is, whether one uses a gun or a knife, the Moral Object remains the same, a choice to kill another person. As such, insofar as two individuals have the same Moral Object, they also have the same act, even if, in manifestation, they commit unique physical acts. Therefore, once again, insofar as they commit the same act, Cooperation does not apply.

As such, the appendix on Cooperation in the third edition of the Ethical and Religious Directives should maintain the distinction between agreeing with another’s action—regardless of whether it is object or remote end—and having the same object as the principal agent. Although Cooperation necessitates that the cooperator’s object be distinct from the principal agent’s, formal cooperation, by definition also means that the cooperator’s act is immoral.\textsuperscript{358} For instance, the getaway driver in a bank robbery plays a distinctly different role in the activity, but nonetheless, agrees with the principal agent’s object of stealing money and provides an invaluable role as the getaway driver. An inexorable link between the two actions exists, but the objects remain distinct. The principal agent, the bank robber steals believing that the getaway driver will provide a necessary means of escape. Likewise, the getaway driver provides the means of escape to the robber agreeing with the Moral Object of the principal agent’s act, probably presuming a share in the loot.

The premise that intention consists of something more than an explicit act of the will, which specifies the distinction between explicit and implicit formal cooperation is ambiguous, if not misleading, and therefore, in need of greater clarification. The above demonstrates that intention abstracted from its voluntariness consists of the physical act alone (\textit{genus naturae}).\textsuperscript{359} To be sure, one may speak as though there is a difference between intending the proximate end or remote end, but in action there is one act of the will.\textsuperscript{360} The ethicists of the National Catholic Bioethics Center offer a definition for explicit and implicit formal cooperation in evil that
accounts for this difference in Moral Objects that the Cooperation necessitates. For them, explicit formal cooperation occurs when one agrees with the evil acts of the principal agent and intentionally chooses acts, which make it possible for the agent to do them.\textsuperscript{361} Alternatively, implicit formal cooperation occurs when one “intentionally contributes to the principal agent’s act not for the sake of the evil act itself, but as a means to some other end of the cooperator.”\textsuperscript{362}

For example, a Catholic hospital may agree with a non-Catholic hospital’s intention to provide sterilizations, making the process for obtaining these within the joint venture more attainable. On the other hand, the Catholic hospital may actually not agree with the practice of sterilizations, but nonetheless expedite the process for obtaining them in the non-Catholic portion of the facility, because doing so increases the bottom line. The former constitutes explicit cooperation, because the cooperator agrees with the principal agent, while the latter constitutes implicit cooperation, because although they disagree with the principal agent’s intention, they nonetheless choose means which contribute both to the attainment of the principal agent’s means and goal—providing sterilizations—and the goal of making more money. In implicit cooperation, the act of the principal agent becomes a means to the goal of the cooperator. Regardless, in no way does this definition fit the United States Bishops’ definition, which maintains that the agent intends the same Moral Object as the principal agent.\textsuperscript{363}

In addition to agreeing with the evil intention of the principal agent, formal cooperation also has the cooperator committing an immoral act, that is, choosing a distinct, but nonetheless immoral object.\textsuperscript{364} On the other hand, in material cooperation, the cooperator both disagrees with the intention of the principal agent and commits an act that is morally good or indifferent.\textsuperscript{365}

While ethicists unequivocally forbid any form of formal cooperation, if sufficient distance exists
between the cooperator’s act and the principal agent’s act and a proportionate reason exists, then ethicists permit, at least, mediate material cooperation.\textsuperscript{366}

In contrast, the appendix asserts that both immediate material cooperation and implicit formal cooperation have the same object as the principal agent and that the only difference between the former and the latter is that the cooperator experiences duress in immediate material cooperation, but not in implicit formal cooperation.\textsuperscript{367} Again, if the cooperator and the agent have the same object, then they are co-principal agents and Cooperation does not apply.\textsuperscript{368}

Following the traditional formulation of the Principle of Cooperation, the ethicists of the National Catholic Bioethics Center maintain that immediate material cooperation “occurs when the cooperator assists in or contributes to the essential circumstances of the immoral act.”\textsuperscript{369} Mediate material cooperation, on the other hand, “occurs when the cooperator assists in or contributes to the nonessential circumstances of an immoral act.”\textsuperscript{370} Since one assists in a derivative sense in bringing about an intrinsically evil act in immediate material cooperation, this constitutes an immoral act that one must always avoid.\textsuperscript{371}

Peter J. Cataldo in “Models of Health Care Collaboration” offers four characteristics for licit collaboration between Catholic and non-Catholic health care entities.\textsuperscript{372} First, Cataldo insists that collaborations must avoid institutional integration of governance, management, or finances.\textsuperscript{373} Second, certain powers must be reserved for institutional integrity and independence.\textsuperscript{374} Third, each institution must maintain its own assets and liabilities.\textsuperscript{375} Finally, any and all joint activities must be incompliance with the Ethical and Religious Directives.\textsuperscript{376} Consequently, Catholic health care institutions commit formal cooperation if the management of the non-Catholic entity that performs immoral procedures falls under the Catholic executive management, if one does not adequately delineate the earnings from immoral procedures or if the
Catholic entity provides space or support for the non-Catholic entity to perform these procedures.\textsuperscript{377}

The above mentioned changes to the Ethical and Religious Directives and the retraction of what the United States Bishops say in its commentary on the Congregation for the Doctrine of the Faith’s document on sterilization point to a faulty interpretation of Cooperation, which connects to its poor use of the object of the act in the appendix to the third edition of the Ethical and Religious Directives. Though not an explicitly written teaching, the Congregation for the Doctrine of the Faith simply reaffirms a traditional interpretation of Cooperation, based on a Thomistic understanding of the object of the act, one that forbids both formal cooperation and immediate material cooperation in intrinsically evil acts.

\textit{d. The United States Bishops’ 2018 Articulation of Cooperation}

In 2018, the United States Conference of Catholic Bishops published the sixth edition of the \textit{Ethical and Religious for Catholic Health Care Services}, which offers new directives for collaborative arrangements, and a new introduction to the Principle of Cooperation. This subsubsection briefly illuminates this.

To begin with, the United States Bishops define formal cooperation quoting Pope John Paul II’s definition in \textit{Evangelium Vitae}, “Formal cooperation ‘occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an [immoral] act…or a sharing in the immoral intention of the person committing it.’”\textsuperscript{378} Moreover, they insist that formal cooperation not only includes holding the same intention as the principal agent, but also participating directly in the immoral act.\textsuperscript{379} In addition, they contend that one formally cooperates even if one does agree with the intention of the
principal agent, but simply uses one’s participation as a means to some other end.\textsuperscript{380} The above discussion identifies this as implicit formal cooperation.\textsuperscript{381}

In contrast, they define material cooperation as disagreeing with the principal agent’s intention, not participating directly in the immoral act (including as a means to another end), but contributing causally, not essentially.\textsuperscript{382} In addition, they hold that some instances of this are morally wrong, while others are justifiable. Then, they delineate factors for consideration: moral object of the cooperator; how much the cooperator’s act causally contributes to the evil act, and how important the goods are to be preserved or harms to be avoided.

Importantly, the United States Bishops, in contrast to the articulation of Cooperation in the third edition of the Ethical and Religious Directives replace object with intention.\textsuperscript{383} Moreover, in accord with editions following the third, they continue to prohibit immediate material cooperation and uniquely any material cooperation with abortion.\textsuperscript{384} The following subsection considers contemporary authors on Cooperation.

\textbf{iii. Contemporary Contributions to Cooperation}

This subsection discusses two contributions to the development of Cooperation. Luke Gormally highlights important differences between a consequentialist interpretation of Cooperation and one that is consistent with Thomistic virtue ethics. M. Cathleen Kaveny offers a mirror principle to Cooperation, that accounts for appropriation of evil.

\textit{a. Rejecting the ‘No Difference Argument’}

Christopher Kutz in \textit{Complicity: Ethics and Law for a Collective Age} highlights an important deficiency in consequentialism, which bases the determination of right action on the consequences of one’s act.\textsuperscript{385} According to Kutz, consequentialism does not account for wrongdoing, where choosing otherwise does not have an impact on the outcome of a scenario.\textsuperscript{386}
For example, since one pilot’s decision to not drop his bombs in an air raid does not change the outcome for innocent civilians, consequentialism does not account for such an ethical decision.Luke Gormally in “Why Not Dirty Your Hands? Or: on the Supposed Rightness of (Sometimes) Intentionally Cooperating in Wrongdoing,” attributes the latter form of reasoning, which he calls the “‘no difference’ argument,” to consequentialism. Contrary to the implication of the title of his paper, which makes use of a common cliché for complicity, he subscribes to a Thomistic virtue ethic that emphasizes intention and affirms the existence of absolute moral norms determined by Natural Law. Gormally rejects the above mentioned line of reasoning by revealing the faulty logic issuing from consequentialism. Second, he affirms the traditional Christian position that actions form character, and therefore, one intention in cooperation is primary. The following articulates the Thomistic action theory that underlies Gormally’s critique of consequentialism’s version of Cooperation.

First, Gormally connects human dignity with the good through the first principle of Natural Law: Insofar as the good leads to human flourishing it ought to be sought and evil, leading to diminution, ought to be avoided. Insofar as connaturality abides between the good and flourishing human nature, objective moral absolutes that guide human action also exist. Moral absolutes, such as the prohibition of killing innocent people and exclusion of adultery, correspond to respect for the good in each and every human person due to their dignity. Most importantly, Gormally indicates that moral absolutes constitute types of action that have reference to practical reason issuing as proposals for choice. Proposals, as reasons for action constitute the Moral Object. While virtue ethicists often make a distinction between the Moral Object and the remote end, both incorporate intention, which consists of an act of the will as choice for a particular proposal configured by reason.
Gormally uses Thomistic action theory to debunk four erroneous propositions that consequentialism engenders. First, consequentialism perpetuates a myth that one is equally responsible for the foreseeable consequences of refusing to cooperate as one is for cooperating. Second, the right choice depends on a calculation of utility and disutility based on foreseeable consequences. Third, there are no moral absolutes; the right circumstances or goals can justify any action. Fourth, all effects are important for calculating the utility of action. By implication, Double Effect and Cooperation do not matter.

In a consequentialist framework, the right action gives rise to the best state of affairs, regardless of intention as means or end. It presumes that humans have more control than they actually do; for instance, not only to control outcomes, but also to judge what the best outcome in fact is. Moreover, consequentialism neglects the formative nature of acts. One becomes virtuous by choosing virtuous acts; conversely, one becomes vicious by choosing vicious acts.

Gormally defends a Thomistic action theory as foundational for Cooperation. In articulating the errors of consequentialism, he demonstrates the formative role of intention.

b. M. Cathleen Kaveny’s Appropriation of Evil

In *Evangelium Vitae*, Pope John Paul II insists that it is immoral to support intrinsically unjust laws that permit immoral acts such as abortion or euthanasia. However, Gerard Magill recalls in “Complicity of Catholic Healthcare Institutions with Immoral Laws,” John Paul II permits politicians to support laws that restrict immoral procedures in societies where overturning permissive laws entirely is not possible, a notion that John Finnis articulates in “Helping Enact Unjust Laws without Complicity in Injustice.” In “Voting and Complicity in Wrongdoing,” M. Cathleen Kaveny notes that Joseph Ratzinger, unlike several United States Bishops and clergy, with moderation applies Cooperation to citizens voting for politicians who
support laws that permit immoral acts. She contends that individuals who highjack Cooperation to mobilize for pro-life politicians misuse the principle, which traditionally helps one identify and avoid sinful acts that support other sinful acts. Just like the lack of integrity in the analogy between slavery and abortion, so the lack of integrity in the use of material cooperation to mobilize voters to support pro-life politicians does more damage to the cause than good.

In “Appropriation of Evil: Cooperation’s Mirror Image,” Kaveny argues for a mirror principle to Cooperation, appropriation of evil, what I call the Principle of Appropriation that accounts for dilemmas where agents must decide whether or not to utilize the fruits or byproducts of another’s evil act. In Cooperation, the morally conscientious cooperator deliberates to what extent one’s acts may licitly contribute to a principal agent’s evil act. Alternatively, in Appropriation the morally conscientious agent (the appropriator) considers whether one may appropriate the evil results of another agent’s (auxiliary agent) evil act to complete one’s end. Kaveny indicates that the similarity between the two consists in an auxiliary agent performing an action that facilitates or supports the principal agent’s efforts in performing his or her own act.

In short, Kaveny sees the development of Appropriation as consistent with the reemergence of a Thomistic virtue theory that focuses on morality of action from the first-person perspective since it proceeds from intention and forms character. Intent on forming well-equipped confessors, under the manualists, morality becomes increasingly extrinsic with increasing emphasis on the objective causality of action and less attention to how intention forms character. With such a prospective focus, manualists simply do not adequately account for how the appropriation of other’s evil acts impact character. The retrieval of the first-person
perspective of morality, true to Aquinas, opens the door to considering not only how one’s actions may contribute to another’s evil actions or goals, as in Cooperation, but also how another’s evil may contribute to one’s own actions or goals, as in Appropriation. Essentially, Kaveny identifies an irreducible difference between Cooperation and Appropriation that is the difference between the first-person perspective of the auxiliary agent and the first-person perspective of the principal agent, respectively.

In practice, moral analysis consists of a snapshot of a scenario. For Kaveny, Cooperation and Appropriation constitute two unique perspectives for moral analysis that explain some dilemmas. Their irreducibility means that one or the other is a better fit for a given situation, the determination of which boils down to whether the decision maker is using or contributing to another’s bad action. To illustrate, Kaveny deconstructs Russell E. Smith’s use of Cooperation to explain why researchers ought not to use aborted fetuses in research. Although Smith identifies the use of electively aborted fetuses for research as proximate, mediate, contingent, material cooperation, his objection to their use in research has to do with the further denigration of the lives of the aborted children insofar as researchers treat them merely as instruments for medical progress. Moreover, he argues that research on electively aborted fetuses gives scandal insofar as it gives the impression of formal cooperation in evil. For Kaveny, the weakness of Smith’s argument is that the primary ethical dilemma is a problem of appropriation, not cooperation.

Kaveny holds that the difference between intention—purposeful causality, wishing—desire uncoupled from causation, and prediction—a judgment that an event will happen, illustrates exactly who is morally culpable for which action. Agents are responsible for the means that they intend, less for what they wish, and not at all for what they predict.
exemplifies the uniqueness regarding the moral scrutiny for wishing by explaining that parents wishing for an organ for their dying child do not necessarily wish for the death of a would-be donor. In wishing, one may pick and choose which means lead to desired ends, without regard for causation. Intending, on the other hand, according to Kaveny includes the choosing of specific causal means to achieve one’s end. Unlike intending or wishing, predicting only involves the intellect, which judges based on evidence the likelihood that a particular event may happen.

In light of these distinctions, Kaveny illustrates the dilemma of using electively aborted fetuses for research. First, she insists that the problem is one of appropriation, not cooperation. Second, although the researchers predict the availability of the fetuses for research, they do not necessarily intend the abortion. Moreover, she asserts that they certainly wish for and predict a successful outcome for their research, which depends on a steady supply of fetal tissue, but this does not constitute intending the fetuses’ death, since wishing is uncoupled with causality.

Kaveny presents two other concepts for Cooperation and Appropriation that account for contamination: seepage and self-deception. Seepage occurs when the description of one’s act by another influences the self-concept of one’s own acting. For instance, if an abortionist presumes that a researcher making use of fetal tissue approves of his immoral act, and the researcher begins to approve of abortion. Self-deception occurs when one deceives oneself into accepting the immoral intentions of the other. For example, if a researcher begins to intend more abortions to increase the stock of fetal tissue for research.

c. Double Effect and Appropriation

If Appropriation is similar to Cooperation, then the conditions of Double Effect that apply analogously to Cooperation should apply to Appropriation.
The first two conditions of Double Effect and Cooperation pertain to intention, as Moral Object and remote end. First, for Double Effect the Moral Object in question must be either good or indifferent. For Cooperation, the cooperator’s act must be morally good or indifferent. Therefore, for Appropriation the appropriator’s act must be morally good or indifferent. Second, for Double Effect the agent must intend the good effect and not the bad effect. For Cooperation, the cooperator must not intend the evil of the principal agent. For Appropriation, the principal agent must not intend or ratify the act of the auxiliary agent. In Cooperation, a cooperator intending the evil of the principal agent constitutes formal cooperation, just as an appropriator ratifying the evil act of an auxiliary agent constitutes formal appropriation, both of which are unquestionably immoral.

The third condition of Double Effect is that the bad effect must not cause (or be the means to) the good effect. In Cooperation, the principal agent, not the cooperator, must be the primary cause of the evil act, which she appropriates from the cooperator. In Appropriation the principal agent utilizes the evil act or byproduct to accomplish one’s goal. Accordingly, the principal agent must not depend on the auxiliary’s evil act in an inexorable way to accomplish his task. Just as the third condition for Cooperation rules out immediate material cooperation, so it should rule out immediate material appropriation.

The fourth condition for Double Effect necessitates that one have a proportionate reason to permit the foreseen, yet unintended evil effect. Similarly, for Cooperation, the more serious the evil of the principal agent, the more serious the justification for accepting the mediate material cooperation, of which distance and dispensability play a crucial role in determining. Consequently, for Appropriation, the principal agent must have a proportionate reason for
appropriating the immoral act of an auxiliary agent. Just as distance and dispensability play a role in justifying cooperation, it ought to play a role in appropriation.

**d. Appropriation Fetal Tissue Remains of Elective Abortion**

Insofar as the bishops unequivocally forbid any form of material cooperation in abortion, it is very likely that they would forbid any form of appropriation as well, including the use of fetal tissue remains of electively aborted children. Regardless, the topic illustrates how Appropriation works. First, in principle, doing research on fetal tissue is a morally indifferent act. Second, so long as the researchers do not intend the evil of the auxiliary agent, that is, the death of the child, they are not guilty of formal appropriation. Third, so long as the auxiliary agent’s act of abortion does not connect inexorably to the object or goal of the researcher, the principal agent avoids both formal cooperation and immediate material appropriation. Finally, the researcher must have a proportionately justifiable reason to use electively aborted fetuses for research, such as a severe shortage of other sources or an extremely high cost. Moreover, the foreseeable good must be great as well, such as a cure for the flu. Practically speaking, however, I agree with Kaveny that such a justifiable scenario is most unlikely.

This section articulates the Principle of Cooperation, comparing, yet differentiating it from Double Effect. This chapter discusses proficiencies in health care ethics consultations, the benefits and limitations of principlism, and the complexities of the Principle of Cooperation. The following chapter applies the preceding to the use of prophylactic, sterilizing procedures and emergency contraception in victims of sexual assault.

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CHAPTER FIVE – OOPHORECTOMIES AND EMERGENCY CONTRACEPTION

This chapter uses Natural Law, the Moral Object, and the Principle of Double Effect to ethically justify procedures that physically defined are sterilizing and contraceptive, respectively.

5A. Risk Reducing Bilateral Salpingo-Oophorectomies

This section explores the ethical decision-making regarding prophylactic operations that both preempt the development of cancer in patients carrying the breast-cancer susceptibility gene 1 (BRCA1) or BRCA2 mutations, and has an unintended, yet foreseen sterilizing effect. The first subsection explores the history, clinical context, and medically indicated procedures for BRCA1 and BRCA2 mutation carriers. The second subsection uses the Principle of Totality and the Principle of Double Effect to justify risk-reducing bilateral salpingo-oophorectomies in BRCA mutation carriers. The third subsection explores factors that health care ethics consultants may encounter concerning confidentiality and genetic discrimination, especially in light of the complexity of genetic testing. Finally, the fourth subsection utilizes the organizational ethics paradigm to elucidate how Catholic health care institutions that prohibit sterilizations may nonetheless permit bilateral salpingo-oophorectomies for BRCA mutation carriers.

i. Clinical Explanation

Both BRCA1 and BRCA2 are tumor suppressor genes, some mutations of which significantly increase one’s risk for developing breast, ovarian, or prostate cancer.¹ Not all mutations of these genes have the same effect; some are more deleterious than others.² The following subsection elucidates the history of identifying the BRCA1 and BRCA2 genes responsible for increasing one’s susceptibility to the abovementioned cancers. Then, it articulates its physiological role. Finally, it explains various options for addressing the condition.
Discovering BRCA1 and BRCA2

According to Joi L. Morris et al., physicians knew as early as the mid-nineteenth century that breast cancer had a heritable connection because of its devastating impact on certain families. In the 1970s Mary-Claire King began researching heritable links in breast cancer. By the 1980s, she uses statistical analysis of women with breast cancer to demonstrate an autosomal dominant link to some cases, which counters the dominant theory at the time, namely that multiple genes and environment cause cancer. She focuses on discovering one gene responsible for engendering breast cancer, which she dubs BRCA1 for breast cancer gene 1. Using Southern blotting, King’s team genotyped 173 different markers from family members of breast cancer patients. By 1990, she narrows the location of BRCA1 to chromosome 17—an enormous accomplishment before the completion of the Human Genome Project.

After King announces this achievement, scientists throughout the world set out to discover BRCA1’s precise location on the chromosome and to sequence the gene. In 1994, Mark Skolnick and his team of researchers at Myriad Genetics and the National Institute of Health successfully sequenced BRCA1. In the early 1990s, scientists know that BRCA1 explains some cases of breast cancer, but not all, which sparks another race to discover the BRCA2 gene. In September 1994, Michael Stratton and Richard Wooster narrow its location to chromosome 13. In October 1994, Yoshio Miki identifies several mutations that engender breast cancer in its carriers. In 1996, Myriad Genetics begins providing genetic testing for which it receives a patent in 1998. In 2013, however, the United States Supreme Court overturns this patent.
b. Cancer Inhibition

In the abstract of their review article, “Role of BRCA1 and BRCA2 as Regulators of DNA Repair, Transcription, and Cell Cycle in Response to DNA Damage,” Kiyotsugu Yoshida and Yoshio Miki explain that for one to understand the damaging role mutations to the BRCA1 and BRCA2 gene, it is important first to know what these respective proteins do as tumor suppressors. They elaborate on the respective functions that BRCA1 and BRCA2 play in DNA repair, transcriptional response to DNA damage and cell cycle check pointing. Many types of damage occur to DNA, but one of the most destructive to life is Double Strand Breaks, which consists of a complete break in both chains of a helical strand of DNA. This poses a serious risk, since no template remains to guide either end’s repair process. When this occurs, DNA-damage binding protein triggers a protein kinase cascade that initiates several processes to correct the error. In mammals, the protein kinase ATM phosphorylates (adds a phosphate) several substrates including BRCA1 that initiates homologous recombination, which is one of two mechanisms for repairing the DNA. According to Yoshida and Miki, evidence indicates that BRCA1 plays an important role in regulating the Rad50-Mre11-NBS1 complex, while BRCA2 regulates the Rad51 protein, both of which play an important role in homologous recombination.

In addition, BRCA1 and BRCA2 regulate transcription when DNA damage occurs. Transcription consists of the complex process whereby RNA polymerase uses a DNA template to produce a strand of messenger RNA, which functions as a template for protein synthesis. When DNA damage occurs, it is important to limit the transcription of messenger RNA so that the cell does not produce faulty proteins. When DNA damage occurs, BRCA1 regulates the activity of RNA polymerase II, the complex responsible for messenger RNA transcription.
addition, BRCA1 is a co-activator of the cell cycle inhibitor p53. BRCA2’s role is less clear, but nonetheless present, and important.

Finally, BRCA1 and BRCA2 provide checkpoints for cellular responses to DNA damage during the cell cycle. The cell cycle consists of the entire process of DNA replication and mitotic cellular division. DNA replication occurs during the S-phase of interphase. The G2-phase consists of a repair phase for mistakes that occur during replication. When DNA damage occurs, the ATM phosphorylation of BRCA1 plays an important role in arresting the cell cycle during the G2-phase just before mitosis begins. Again, BRCA2’s role is less direct, but still important for the arresting the cell cycle when DNA damage occurs.

Yoshida and Miki indicate that scientists identify over 200 deleterious germ line mutations to the BRCA1 gene alone. The three-abovementioned functions represent only a few of the roles that such mutations may interrupt giving rise to cancer in its carriers. Undoubtedly more processes remain to be discovered.

c. Prophylactic Treatments

In the general population, 12 percent of women develop breast cancer in their lifetime, while 55 to 65 percent of women with a deleterious BRCA1 mutation and 45 percent of women with a harmful BRCA2 mutation develop breast cancer by the age of 70. Moreover, studies suggest that while 1.3 percent of women in the general population develop ovarian cancer in their lifetime, 39 percent of women who inherit a BRCA1 mutation and 11 to 17 percent of women who inherit a BRCA2 mutation develop ovarian cancer by the age of 70. With such an increase in risk, some physicians perform risk-reducing bilateral mastectomies and risk-reducing bilateral salpingo-oophorectomies—the removal of the ovaries and Fallopian tubes. While such operations reduce the risk of developing breast and ovarian cancers, they do not eliminate the it
altogether. It is still possible for cancer to originate in the scar tissue or the remaining primary peritoneal. This section explores the effectiveness of a variety of prophylactic options.

In 2007, the American Cancer Society recommends that women with BRCA1 or BRCA2 mutations begin a surveillance regimen of alternating breast magnetic resonance imaging and mammograms every six months. The American Cancer Institute recommends that women testing positive for the abovementioned mutations begin this surveillance regime at 25 years of age. Some suggest women begin ten years before the age of a diagnosed family member, but no earlier than age 20. Even surveillance comes with a risk, since mammograms utilize X-rays that expose women to radiation. Because of this, some recommend using mammograms at 35, utilizing magnetic resonance images only until then. Unfortunately, surveillance is not 100% accurate in catching and preventing lethal cases of breast cancer; as such, many physicians recommend other means of risk-reduction.

Women with the BRCA1 or BRCA2 mutation who get breast cancer have a 30% chance of developing cancer in the other breast—contralateral breast cancer—in the ten years following the initial diagnosis. Yet not all carriers with breast cancer opt for bilateral mastectomy or even unilateral mastectomy for the affected breast. In fact, only 50% of North American carriers opt for bilateral mastectomy when diagnosed with breast cancer, even though it reduces one’s risk of developing breast cancer by 97% in the other breast. Morris et al, indicates that the decision to remove one’s breasts is highly personal, and depends on many factors.

The BRCA1 mutation not only increases one’s chance of getting cancer, but of acquiring a higher-grade as well. For instance, 75% of cancers in BRCA1 carriers are estrogen-receptor-negative, and 69% are triple negative or estrogen receptor-negative, progesterone-receptor-negative and human epidermal growth factor receptor 2-negative. BRCA2 carriers, on the other
hand, have the increased risk of developing cancer, but not the higher proportion of high-grade cancers; rather, their proportion is comparable to the general population (77% ER-positive and 16% triple negative).49

Surveillance and risk-reducing surgery are not the only options for reducing cancer risk. It is also possible for one to take tamoxifen, which when digested by the cytochrome P450 enzymes isoform CYP2D6 and CYP3A4, produces high affinity metabolites, afimoxifene and endoxifen, for the estrogen receptor,50 to which it antagonistically binds, inhibiting the transcription of genes.51 Since tamoxifen reduces one’s risk of developing estrogen receptor-positive cancer, it is medically-indicated for BRCA2 mutation carriers, but not for BRCA1 mutation carriers.52 Still, it only reduces one’s risk of getting estrogen receptor-positive breast cancer by 50% in BRCA2 mutation carriers.53 In addition, oral contraceptive use for five years reduces one’s risk of developing ovarian cancer by at least 40%.54 Current research does not indicate that oral contraception either reduces or increases one’s chances of getting breast cancer.55

For BRCA-mutation carriers, as the abovementioned statistics indicate, the number one risk factor for cancer is age.56 Consequently, current guidelines recommend risk-reducing bilateral salpingo-oophorectomies for BRCA-mutation carriers between the ages of 35 and 40 after completing childbearing.57 In an effort to stave off surgical menopause, and in light of the serous origin of ovarian cancer in the Fallopian tubes, some physicians are opting for bilateral salpingectomies alone, followed later by oophorectomies.58 This practices is not, however, considered standard of care by the National Comprehensive Cancer Network.59 Lynn M. Hartmann and Noralane M. Lindor in “The Role of Risk-Reducing Surgery in Hereditary Breast
and Ovarian Cancer,” say the jury is out as to whether or not bilateral salpingo-oophorectomies before menopause actually reduces BRCA-mutation carriers’ risk for breast cancer.\textsuperscript{60}

According to the United States Preventative Services Task Force risk-reducing bilateral mastectomies decreases a mutation carrier’s chances of getting breast cancer by 85-100% and breast cancer mortality by 81-100%.\textsuperscript{61} Bilateral salpingo-oophorectomies reduce a mutation carrier’s chance of getting ovarian cancer by 69-100% and of getting breast cancer by 37-100%.\textsuperscript{62} While no option is perfect, clearly the risk-reducing bilateral mastectomy and bilateral salpingo-oophorectomies have the best statistical results. The following subsection considers the ethics surrounding such prophylactic procedures.

**ii. Double-Effect Reasoning**

Ethically, bilateral salpingo-oophorectomies pose several dilemmas. The surgeon not only removes healthy organs, but also renders the patient sterile; both of which seems to violate important Catholic ethical principles—the Principle of Totality and prohibition against direct sterilization.\textsuperscript{63} The following demonstrates that Totality justifies bilateral salpingo-oophorectomies for BRCA mutation carriers. Moreover, Double Effect justifies bilateral salpingo-oophorectomies for BRCA mutation carriers, even though it renders the patient sterile. This justification depends on Pope John Paul II’s understanding of intention and the Moral Object in \textit{Veritatis Splendor}.\textsuperscript{64}

a. Totality

In his \textit{Summa Theologica}, Thomas Aquinas articulates his formulation of the Principle of Totality in response to the question as to whether or not it is ever possible to maim or mutilate another person.\textsuperscript{65} He argues that certain conditions warrant maiming the body, but this is permissible since the parts of the body are for the sake of the whole.\textsuperscript{66} To explicate, he uses an
example from a previous question concerning members of a state. Just as it may be necessary to remove a person from a community for the good of the whole—keeping that individual from sinning and harming others—so it may be necessary to remove a decaying bodily member for the good of the whole person. This justifies amputation of diseased limbs, but not health organs.

Pope Pius XII develops Aquinas’s articulation of Totality. In his “Address to the First International Congress on the Histopathology of the Nervous System,” he highlights an important distinction between the analogy of the community and the physical human person. In “Pope Pius XII and the Principle of Totality,” Gerald Kelly observes that Pius XII distances himself from Aquinas’s analogy of the community, because he does not support the totalitarian governments that subjugate the individual for the whole. Unlike living organisms, communities do not have a unity subsisting in them; therefore, Pius XII argues that they constitute moral entities, rather than, physical entities. Therefore, in deference to their natural finality, physical entities that possess a subsisting unity may dispose of their members, integral parts, and organs immediately and directly. This, however, is not true for authority regarding members of state.

In 1953, Pius XII addresses the 26th assembly of Italian Urologists defending the removal of healthy organs that exacerbates an unhealthy condition. He argues that three conditions must exist for one to justifiably remove a healthy organ that aggravates another condition: 1) the healthy organ’s presence causes harm or threat to the whole person; 2) the damage or threat can only be avoided by removing the healthy organ and its effectiveness is certain; and 3) one can reasonably expect the benefit to compensate for the negative effect. He emphasizes that the healthy organ does not constitute the threat, but its functioning directly or indirectly causes for the whole body a serious threat. For such cases, he advances the application of Totality not
only for the removal of diseased organs that threaten the whole, but also the removal of healthy organs that harm or threaten the whole.

To illustrate, Pius XII argues that a surgeon may licitly remove healthy testicles from a man suffering with prostate cancer, even though it renders him sterile, because the removal of the testicles indirectly slows the growth of cancer by reducing the presence testosterone, which accelerates the cancer’s growth. This case meets the three-abovementioned criteria. First, the presence of the healthy testicles accelerates the growth of prostate cancer by producing testosterone. Second, the only effective way to remove the threatening presence of testosterone—at that time—was to perform an orchiectomy, removing the testosterone producing testicles. Third, the positive effects—slowing the growth of life-threatening cancer—outweigh the negative, sterilizing effects of losing one’s testicles.

In contrast, Pius XII argues that the abovementioned criteria do not justify a surgeon removing a woman’s oviducts to prevent pregnancy in one who has a condition that worsens during pregnancy. First, the healthy Fallopian tubes do not contribute either directly or indirectly to the condition in question. Second, removing the Fallopian tubes is not the only way to prevent the dangerous condition of pregnancy from occurring. Third, although one may argue that one’s life is more important than one’s openness to life in the marital act, the inability to satisfy the first two criteria renders this point feeble for defending the act by Totality.

Bilateral salpingo-oophorectomies for BRCA mutation carriers meets the three criteria that Pius XII offers in his address to the urologists. Even though one may argue that the organ is cancer free and healthy at the moment, the statistical likelihood of it becoming cancerous in BRCA mutation carriers constitutes a genuine threat to the whole person, especially considering how deadly ovarian cancer is. Because of the significant, increased risk of developing ovarian
cancer and the lack of reliable surveillance, following the recommended guidelines of having bilateral salpingo-oophorectomies between the age of 35 and 40 constitutes the best method of preventing ovarian cancer.\textsuperscript{80} Although bilateral salpingo-oophorectomies render patients sterile, the lifesaving positive certainly outweighs the negative.

\textit{b. Double-Effect Reasoning}

Aquinas is the first to formulate an argument using Double-Effect Reasoning in his \textit{Summa Theologica}.\textsuperscript{81} In II-II, q. 64, a. 7, he explains how one may justifiably kill another person in self-defense.\textsuperscript{82} He begins with the premise that an act may have more than one effect, not all of which one intends.\textsuperscript{83} In morally licit, lethal self-defense, he maintains with Augustine that one must not actually intend to kill one’s assailant; rather, one must intend self-defense.\textsuperscript{84} The death of the assailant is \textit{praeter intentionem}, beside intention.\textsuperscript{85} In addition, he contends that one’s action must be proportionate to the assailant’s assault.\textsuperscript{86}

From an appropriate understanding of several key terms one may derive a set of criteria that configures a contemporary formulation of the Principle of Double Effect. First, one must understand what Aquinas means by intention. In \textit{Aquinas: Moral, Political, and Legal Theory}, John Finnis indicates that Aquinas uses intention in both a broad sense and a narrow sense.\textsuperscript{87} Broadly speaking, intention concerns ends.\textsuperscript{88} In \textit{On Evil}, Aquinas makes a distinction between intending something as a remote (ulterior) end (\textit{finis operantis}) versus as a proximate end (\textit{finis proximus}).\textsuperscript{89} Intention, as the proximate end forms the act’s species, which Aquinas identifies as the Moral Object.\textsuperscript{90} In the \textit{Prima Secundae} of the \textit{Summa Theologica}, he highlights an important distinction between the proximate end (means) and the remote end, namely that one chooses (\textit{electio}) a means for an end,\textsuperscript{91} while one intends (\textit{intentio}) a remote end.\textsuperscript{92} The latter constitutes the narrower sense of intention, while the broader sense includes intention as choice of the will.\textsuperscript{93}
To illustrate, Finnis refers the reader to Aquinas’s *On Evil*, where Aquinas offers the example of one wanting to steal in order to give alms.\(^94\) Narrowly speaking, the person has a good intention, to give to the poor, but the act is evil because the means chosen is evil—stealing; therefore, broadly speaking, the intention is evil. Finnis insists that Aquinas is using the broad sense of intention in his discourse on self-defense.\(^95\) As such, both the proximate end and the ulterior end must be good for the act to be good.

Another important concept for Aquinas that relates to intention is *praeter intentionem*.\(^96\) In “*Per se* and *Praeter Intentionem* in Aquinas,” Duarte Sousa-Lara identifies three distinct uses of *praeter intentionem* in Aquinas’s works: 1) to indicate that one does not will a moral evil *per se*; 2) to identify unforeseen outcomes that may affect an action; and 3) to refer to foreseen, but unintended effects of action that, in turn, do not specify the act.\(^97\) Sousa-Lara contends that Aquinas uses the third form for Double-Effect Reasoning in his discussion of killing in self-defense.\(^98\) Insofar as the agent does not intend to kill the assailant, but merely to defend oneself from an unjust aggressor using lethal force, the evil effect of the death of the attacker remains outside one’s intention. Foreseeing the death of the assailant by means of lethal defense does not change the Moral Object. It does not affect the species of the act since it remains outside of intention. This builds on the principle that knowing (foreseeing) does not entail causing.

Concerning Aquinas’s understanding of intention, one may derive two or three of the conditions of Double Effect. First, the Moral Object of the Act must be good or neutral.\(^99\) Second, one must not intend the evil effect, but the good effect.\(^100\) Third, from a casuistic perspective, for instance, following that of Jean Pierre Gury, the bad effect must not cause the good effect.\(^101\) From a Thomistic perspective, however, the third is simply a restatement of the first, namely, that one must not choose evil means for a good end.
Finally, Aquinas has a proportionality clause in his argument for self-defense: one’s use of self-defense ought to be proportionate to the force that the attacker uses in the assault. Double Effect does not justify the use of lethal force to counter non-lethal threats. Causally, one must have a serious reason for causing the evil effect; that is, the good must outweigh the bad.

Having summarized an account of Principle of Double Effect that adequately accounts for intention from a Thomistic perspective, I now apply it to bilateral salpingo-oophorectomies for BRCA mutation carriers. First, I argue that this procedure is not evil in its species but depends on the broad interpretation of intention of the will that includes both the proximate end and the ulterior end. Accordingly, it meets the first three conditions of Double Effect. Finally, the lifesaving risk-reduction satisfies the proportionality condition of Double Effect.

c. Object of the Act

The first, and arguably most important condition for the Principle of Double Effect is that the Moral Object of the Act must be good or indifferent. Using the broad sense of intention, Aquinas maintains that the intention morally specifies an act. Recall that the proximate end of an act determines the Moral Object. Therefore, above all, one must determine whether the means chosen in the act is good or evil.

For Aquinas, morality centers on the will. In particular, the will intends goods that the intellect rationally configures. Regarding species of acts, it is possible to consider actions from the perspective of their voluntariness, that is, on the moral order (genus moris); and independently thereof, that is, purely as physical acts on the metaphysical order (genus naturae). Insofar as the orders differ, so the ends differ, and consequently, the objects differ. As such, one act may have two species, one of the moral order and the other of the physical order. For example, on the physical order, an act may be killing, but on the moral order, that
is, in its voluntariness, the act is one of self-defense. The physical species of the act is evil insofar as it results in the death of another, but morally, the act is good insofar as the agent intends something good, self-defense. Although distinct in nature from the ontological order, human actions, constitutive of the moral order, by analogy have a fullness of being that corresponds both to reason and being. It is precisely the Moral Object’s correspondence to reason, or the lack thereof, which renders it good or evil. In self-defense, the agent intends (intentio) a good end—preservation of one’s life. At the same time, regarding the proximate end, the will chooses (electio) a particular means to this end, hitting an attacker on the head with a bat. The intellect rationally configures the good such that the will may choose and then command (praeeptum) a particular action. Consequently, a human action is only good or evil insofar as reason configures it; otherwise it is morally indifferent.

Purely from the perspective of the physical order, bilateral salpingo-oophorectomies constitute the removal of organs, which renders the patient sterile. If one conflates the moral and the physical order, one may conclude that bilateral salpingo-oophorectomies under any circumstance are immoral insofar as they render patients sterile. This reduction of orders constitutes the Naturalistic Fallacy. The above demonstrates that a morality true to the Thomistic tradition maintains the distinction of orders. As such, morally, it is not enough to merely consider the physical act alone. Rather, one must take into account the will and more specifically intention, both as the ulterior end and proximate end. For BRCA mutation carriers, the ulterior end is the preservation of one’s life. The means chosen (finis proximus) is the removal of organs that have a high likelihood of becoming cancerous—the Fallopian tube and the ovaries. As such, ethically, from the perspective of the proximate end chosen, bilateral salpingo-oophorectomies are good because they constitute a means that greatly diminishes one’s
chance of getting ovarian cancer.\textsuperscript{119} Furthermore, this satisfies the first condition of Double Effect, which necessitates that the Moral Object is either good or neutral.\textsuperscript{120}

The ulterior end—the preservation of one’s life—is good, and with the addition of a corollary—one does not intend the evil of sterilization—this satisfies the second condition, that one intends the good effect and not the bad.\textsuperscript{121} In other words, so long as one does not intend the bad effect, it is outside of one’s intention, even if foreseen.\textsuperscript{122} Bilateral salpingo-oophorectomies for BRCA mutation carriers satisfies the third requirement that the bad effect not cause the good, since it is not the sterilization that diminishes one’s risk of getting cancer, rather, it is the removal of the potentially cancerous organs that causes both. Finally, it meets the fourth condition of proportionality insofar as the good of foreseeably preserving one’s life from the likelihood of developing deadly ovarian cancer outweighs the negative effect of sterilization. Moreover, since no viable alternative exists for either preventing ovarian cancer or catching it early, it is not only the best, but also the only medically- indicated option.\textsuperscript{123}

This subsection demonstrates that the Principle of Double Effect does justify bilateral salpingo-oophorectomies in BRCA mutation carriers. The next subsection considers other ethical challenges for BRCA mutation carriers and their clinicians.

\textbf{iii. Health Care Ethics Consultations}

Genetic testing is a relatively new development in medicine with several important ethical implications. Antonella Surbone, in “Social and Ethical Implications of BRCA Testing,” defines genetic testing as “any analysis to detect genotypes, genetic mutations, or chromosomal changes, not including analysis of proteins or metabolites directly related to a manifest disease,” which can lead to genetic exceptionalism, that is, treating patients with genetic disorders differently than patients with other diseases.\textsuperscript{124} As the above demonstrates, genetic testing for
BRCA mutations plays an important role in testing for heritable cancer mutations. At the same time, it raises questions about reliability of testing, genetic discrimination, and sharing of information with third parties, including family members. The following addresses these ethical issues.

a. Genetic Testing

Genetic testing, even for a well-known and relatively straightforward condition like BRCA1 or BRCA2 mutations does not always provide a simple answer. In fact, testing for genetic mutations is quite complex. In 2004, Kiyotsugu Yoshida and Yoshio Miki, in their review article, “Role of BRCA1 and BRCA2 as Regulators of DNA Repair, Transcription, and Cell Cycle in Response to DNA Damage,” identify no less than 200 possible mutations that have potentially deleterious effects in BRCA1 alone. In 2010, Ake Borg et al., in “Characterization of BRCA1 and BRCA2 Deleterious Mutations and Variants of Unknown Clinical Significance in Unilateral and Bilateral Breast Cancer: The WECARE Study,” detect 470 unique sequence variants in both unilateral and contralateral breast cancer patients, of which they contend 113 are deleterious, 57 on BRCA1 and 56 on BRCA2, reducing the estimate significantly. Borg et al. categorizes the 357 other variants as variants of unknown clinical significance. These account for some of the ambiguous results that 10% of test-patients receive, but not all. Although patients with negative results tend to develop cancer at the same frequency as those with ambiguous results, the latter tend to experience greater frustration and anxiety. Genetic counseling fills a void for those seeking guidance, especially with unclear results.

b. Genetic Discrimination

More than a lack of clarity concerning results and their implications, genetic discrimination deters some women with a family history of breast cancer from receiving genetic
testing, especially when they plan on using insurance to cover the cost. Women fear discrimination from employers or insurance companies, because of implications of a pre-existing condition for insurance acceptance. In addition, some women fear living with the looming risk of getting cancer, or being seen as less than ideal marital partners. This not only puts many at-risk women at greater risk, because they are not engaging in meticulous surveillance or prophylactic treatments, but this hurts research too, since fewer women are willing to participate in studies.

In 2008, the United States Congress passed the Genetic Information Non-discrimination Act. This law specifically addresses discrimination from health insurance companies and employers. Title I, concerning insurance companies, prohibits insurers using genetic information to make decisions about eligibility, coverage, underwriting, or premiums. In addition, insurers may not request or require individuals or family members to provide genetic information. Title II, concerning employment, prohibits employers from using genetic information to make decisions regarding hiring, firing, promotions, pay, or job assignments. While legislation addresses some discrimination, it does not deal with social discrimination or the spiritual or psychological impact. In fact, because of the deep impact such personal knowledge may have on individuals’ self-concept, and because of little that can be done clinically before the age of 25, many experts advice not performing genetic testing on minors or sharing one’s genetic status until later.

c. Confidentiality

This raises an important issue regarding confidentiality and the ethical dilemma of sharing important information that may impact other family members, especially regarding genetic information. Legally, in the United States, the Health Insurance Portability and
Accountability Act of 1996 delimits confidentiality in healthcare.\textsuperscript{140} If healthcare workers do not respect patient’s confidentiality, the trust between patient and caregiver will undoubtedly erode. Confidentiality is important and strict, but not unlimited.\textsuperscript{141} Albert Jonsen \textit{et al}, in \textit{Clinical Ethics: A Practical Approach to Ethical Decisions in Clinical Medicine} maintains that when the patient’s health depends on sharing information, the principle of beneficence justifies an exception to confidentiality.\textsuperscript{142} In addition, the principle of non-maleficence demands that if withholding information poses a threat or harms to a third party, one must not withhold it.\textsuperscript{143}

Clint Parker, in “Disclosing Information about the Risk of Inherited Disease,” presents a vignette of a physician in an ethical dilemma with two sisters, one of whom has been diagnosed with a BRCA mutation and the other who has an increased risk.\textsuperscript{144} Mrs. Durham, the sister diagnosed with the BRCA mutation is estranged from her sister, Mrs. Weir, and does not want to tell her sister that she has cancer.\textsuperscript{145} Parker insists that the physician must not violate confidentiality, by telling Mrs. Weir about Mrs. Durham’s diagnosis, nor should he do nothing.\textsuperscript{146} Instead, if after persistently trying to convince Mrs. Durham to disclose the information to her sister does not work, Parker contends that the physician should advise Mrs. Weir that it is in her best interest to have genetic testing for a BRCA mutation.\textsuperscript{147} He contends that this approach maintains the confidentiality of Mrs. Durham, and also provides for the needs of her estranged sister, Mrs. Weir.\textsuperscript{148}

Parker blurs the lines of confidentiality to solve a dilemma between confidentiality and the potential threat to a third party. If this were the sacrament of reconciliation, such an act would constitute an indirect violation of the seal—using confidential information outside the confessor-penitent relationship. Needless to say, the patient-physician relationship is qualitatively different, but the example nonetheless highlights the use of confidential information
from one patient for another does constitute an exception to confidentiality. The principle of non-maleficence demands such an exception for the third party. To be sure, the threat that exceptions to patient-physician confidentiality poses means that sharing personal information will always be tenuous.

While this subsection highlights the complexity of ethical implications of genetic testing, the following explains the ethical consistency of a Catholic hospital that prohibits sterilizations, but allows prophylactic, but physically sterilizing procedures.

iv. Catholic Health Care Policy

Gerard Magill and Lawrence Prybil, in *Governance Ethics in Healthcare*, develop a paradigm for organizational ethics rooted in skills for health care ethics consultations and professionalism. The first component is foundational, embodying the concept of identity, it focuses on the organizational stewardship of the mission of the organization answering the leitmotif question: “Who are we?” The second component is process, focusing on decision-making that is participative deliberation and in the executive oversight context, answers the leitmotif question: “How we function?,” which concerns the concept of accountability. The third component is practical, focusing on best practices for standards of conduct, in the context of organizational culture, it answers the question, “What we do?,” thereby embodying the concept of quality. In the following, I utilize the three-abovementioned components of organizational ethics to articulate a consistent application of the prohibition on sterilizations and the use of bilateral salpingo-oophorectomies for BRCA mutation carriers in Catholic Health Care Institutions.
a. Prohibiting Sterilization

Again, the first component of the organizational ethics paradigm concerns the institution’s identity. The United States Conference of Catholic Bishops’ *Ethical and Religious Directives for Catholic Health Care Services*, defines mission of every Catholic health care institution in the United States. For the Church, health care is a constitutive part of the healing mission of Christ. The Ethical and Religious Directives “reaffirm the ethical standards of behavior that flow from the Church’s teaching about the dignity of the human person.” The United States Bishops base these ethical standards on the Revelation of Jesus Christ and the Natural Law, which the Church authoritatively interprets.

The Catholic Church deeply roots its prohibition on sterilization in its teaching on marriage and the human person that corresponds to the prohibition on contraception. Many conflate the Church’s prohibition of contraception with its prohibition of abortion, attempting to identify both as violations of the fifth commandment “thou shall not kill.” Martin Rhonheimer, in *Ethics of Procreation and the Defense of Human Life: Contraception, Artificial Fertilization, and Abortion*, argues that contraception primarily violates the virtue of chastity. He attributes the misconception to John Paul II’s connection of contraception with abortion in *Evangelium Vitae*, where he notes that abortion acts as a failsafe for contraception, both of which thereby contribute to the so-called culture of death.

In the same paragraph, however, John Paul II says that contraception “contradicts the full truth of the sexual act as the proper expression of conjugal love…[and] is opposed to the virtue of chastity in marriage.” This is precisely what Rhonheimer, argues Pope Paul VI teaches in *Humanae Vitae*. Although Paul VI connects the Church’s prohibition to contraception with the Inseparability Principle—that the unitive and procreative significance of marriage are
inseparable and ought to remain so in every act—this alone does not suffice.\textsuperscript{165} Rhonheimer insists that periodic continence, a constitutive part of responsible parenthood, also provides a means for growing in chastity; that is, virtuously integrating the sexual drives under the domain of reason and will.\textsuperscript{166} This integration of the bodily with the spiritual is precisely what raises sexual drive to the order of personal love.\textsuperscript{167} Insofar as contraception eliminates the need for periodic continence—a natural means for growing in chastity—it violates the virtue of chastity.\textsuperscript{168} This explanation avoids the reduction of contraception to merely the physical act of taking an anovulant. Rather, it takes into account intention, the human person, and virtue.

Therefore, for Paul VI, John Paul II and Rhonheimer, the use of contraception is wrong insofar as the intention, understood as the Moral Object, consists in a vicious choice against chastity.\textsuperscript{169} When, however, the agent’s intention changes, for example, a victim of sexual assault preventing conception, the Moral object changes to one of self-defense, which is clearly not a means to circumventing chastity.\textsuperscript{170} Although the physical act of taking an anovulant is the same, the intention—as the proximate end—is very different. One is to circumvent chastity, the other to defend oneself from conceiving through an unjust sexual assault.

That the same physical act can have two different Moral Object demonstrates the importance of intention for determining the morality of the act, both as proximate end and ulterior end. As the above indicates, there are exceptions to the rule prohibiting operations that render one sterile.\textsuperscript{171} For this reason, the United States Bishops, in the Ethical and Religious Directives while prohibiting direct sterilization, permit procedures that induce sterility “when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available.”\textsuperscript{172} One must go beyond the mere physical act to the intention of the person. As the above demonstrates, when physicians use bilateral salpingo-oophorectomies in
BRCA mutation carriers to remove organs that will very likely become cancerous, they intend to maintain the health of the patients, not to sterilize for the purpose of responsible parenthood.

b. Non-BRCA Mutation Carriers

Becket Gremmels et al., in “Opportunistic Salpingectomy to Reduce the Risk of Ovarian Cancer,” argue that a patient and physician may opt for bilateral salpingectomies, even though the risk of developing ovarian cancer is low in non-BRCA mutation carriers, because the screening options for ovarian cancer are so poor. On June 7, 2016, the National Catholic Bioethics Center, the publishers of the article, released a statement indicating their disagreement with the views of the authors on this topic. They argue that without a heightened risk for cancer, the average risk of developing ovarian cancer is not proportionate to the irreversible loss of fertility. Such a statement does not limit the use of bilateral salpingectomies or bilateral salpingo-oophorectomies for BRCA mutation carriers only; in fact, they admit that genetic testing, family history, and other means may justify such a decision to pursue bilateral salpingectomies, but average risk does not suffice. I concur with their statement for two reasons. First, current medical guidelines do not medically-indicate bilateral salpingectomies or bilateral salpingo-oophorectomies for women with an average risk for developing ovarian cancer. Second, physicians and patients may use this procedure as a means to circumvent the Church’s prohibition on sterilizations. Using bilateral salpingectomies to sterilize women not only violates the mission of a Catholic hospital, it defies medically-indicated guidelines. Moreover, such an abuse gives scandal and renders institutions vulnerable to lawsuits of malpractice and discrimination.

The Church’s teaching against sterilization relates deeply to its mission, but is also a source of conflict with other providers that see contraceptive services as a vital part of women’s
Moreover, opponents level seemingly countless lawsuits against Catholic healthcare institutions, claiming that they do not provide adequate care by denying contraception, including sterilization to its patients. Rather than caving to popular opinion, I suggest that Catholic institutions use this as an opportunity to re-evangelize regarding its teaching. In fact, one of the benefits of health care ethics boards is the education of hospital directors and staff. Paul VI indicates that the prohibition against contraception is not a prohibition against responsible parenthood. For this reason, Catholic Healthcare Institutions ought to provide effective alternatives to contraception as a means for responsible parenthood that includes training for staff, patients and the community in acceptable methods for responsible parenthood. For some opponents, no alternative to contraceptive services suffices, but failing to offer any alternative renders one vulnerable to false criticism, namely, that the Church is against all forms of birth control.

This section orients the use of bilateral salpingo-oophorectomies in BRCA mutation carriers in the context of the Church’s prohibition of sterilization, advising against the use of bilateral salpingectomies for women with an average risk for ovarian cancer, since it contradicts current medical guidelines and may be subject to abuse. In the face of opposition, I contend that Catholic health care providers ought to use ethics boards to re-evangelize staff and directors and to implement practices amenable to Church teaching regarding responsible parenthood.

Using the ethical Principle of Totality and Double Effect, this section evaluates the use of risk reducing bilateral salpingo-oophorectomies in BRCA mutation carriers. Keeping the Moral Object in the moral order, this section demonstrates the liceity of such procedures. The following section holds that a non-consequentialist definition of the Moral Object of self-defense from conception after sexual assault precludes recourse to the Principle of Double Effect.
5B. Emergency Contraceptive for Victims of Sexual Assault

In the Ethical and Religious Directives for Catholic Health Care Services, 6th edition, the United States Conference of Catholic Bishops assert that women have the right to defend themselves from conception in cases of sexual assault. Because of the Church’s strict prohibition of abortion, which begins from the moment of fertilization, the United States Bishops insists that the method must not remove, destroy, or interfere with a conceptus. This section explores the ethical principles that justify such a position. In particular, it articulates the Moral Object of self-defense, of which the use of emergency contraception constitutes for victims of sexual assault. Second, it illustrates how the Principle of Double Effect is not necessary to defend such a stance, so long as one does not define the object consequentially.

i. Clinical Analysis

This subsection elucidates the complex physiological events that constitute the ovulatory cycle in women and the impact that emergency contraceptives such as levonorgestrel have on it.

a. Menstrual-Ovulatory Cycle

The ovulatory cycle consists of the recurrent process whereby the female body undergoes physiological changes in anticipation of fertilization and implantation. This involves three primary organs, 1) the brain—hypothalamus and the pituitary gland, 2) the uterus, and 3) the ovaries, in response to complex interactions of hormones. Marc A. Fritz and Leon Speroff, in Clinical Gynecologic Endocrinology and Infertility, articulate the process in three phases: 1) follicular, 2) ovulation, and 3) luteal. Similarly, they breakdown the events in the uterus to five phases: 1) menstrual endometrium, 2) proliferative, 3) secretory, 4) anticipation of implantation, and 5) endometrial breakdown. This subsection discusses each of these in detail.
Ovulation begins in the ovaries when females reach puberty. At puberty, the germ cell mass consists of between 300,000 to 500,000 cells, of which only 400 to 500 ovulate. Apoptosis or programmed cell death in follicles, also called atresia, begins even before birth, when the number of follicles exceeds 6 million and continues until menopause. The body rescues a few follicles from atresia, which mature to ovulation. Although several follicles grow only one dominant follicle matures to ovulation per cycle in a process called folliculogenesis, that is, the development of a primary follicle into a mature oocyte, which takes 85 days. The development of a primordial follicle right up to the point of ovulation is the follicular phase of ovulation in the ovaries.

Within the brain, the hypothalamus releases gonadotropin releasing hormone in a pulsating manner. With a half-life of just 2-4 minutes, the body can regulate gonadotropin releasing hormone with a high degree of specificity. Gonadotropin releasing hormone induces the anterior pituitary to release both luteinizing hormone and follicle stimulating hormone. Under the influence of follicle stimulating hormone, the number of granulosa cells around primordial follicles increases and form an intra-granulosa cavity, which Emma Call and Sigmund Exner discover and name Call-Exner bodies.

The primordial follicle becomes a primary follicle when the granulosa cells, that is, the cells which surround and nourish the oocyte become cuboidal and multiply to at least 15 in number. The basal layer separates the granulosa cells from the stromal cells that differentiate into theca interna and theca externa depending on their proximity to the oocyte. Once the intra-granulosa cavity, also called an antrum appears, the follicle enters the antral phase. During the preantral phase, however, follicle stimulating hormone induces the production of an aromatase enzyme system that converts androgen to estrogen in granulosa cells.
Synergistically, follicle stimulating hormone and estrogen increase the production of follicle stimulating hormone receptors in granulosa cells that increase the number of granulosa cells and the production of estrogen.\textsuperscript{199} This increases the production of follicular fluid, which generates the production of the antrum, thereby pushing the follicle from the preantral phase to the antral phase.\textsuperscript{200}

Early in the antral phase, the granulosa cells only have follicle stimulating hormone receptors and luteinizing hormone receptors are only on the theca interna cells.\textsuperscript{201} There, luteinizing hormone induces the production of androgen, which feeds the production of estrogen by aromatase in the granulosa cells, thus producing a higher proportion of estrogen.\textsuperscript{202} All follicles do not develop, because there is a tendency for granulosa cells to produce a more potent molecule, $5\alpha$ reduced androgen, which inhibits aromatase’s activity, thus reducing the presence of estrogen and inhibiting follicular development.\textsuperscript{203} Another inhibiting factor is estrogen that provides a negative feedback loop with the hypothalamic-pituitary gland, reducing the amount of follicle stimulating hormone available to other follicles.\textsuperscript{204} Consequently, only the follicle that has the most number of follicle stimulating hormone receptors and the highest amount of estrogen matures to ovulation. Eventually, the granulosa cells of the mature antral follicle acquire luteinizing hormone receptors, which enables the corpus luteum to function after ovulation.\textsuperscript{205} In fact, follicle stimulating hormone induces the growth of luteinizing hormone receptors in the granulosa cells.\textsuperscript{206}

Primates regulate folliculogenesis through peptide members of the transforming growth factor-β family, including activin and inhibin, which the granulosa cells produce.\textsuperscript{207} Inhibin inhibits follicle stimulating hormone, but not luteinizing hormone secretion, while activin increases the secretion of follicle stimulating hormone.\textsuperscript{208} In theca cells, inhibin and activin
regulate androgen synthesis.\textsuperscript{209} Activin increases the activity of aromatase in granulosa cells.\textsuperscript{210} Follistatin, a peptide secreted by the pituitary cells, suppresses follicle stimulating hormone synthesis and secretion.\textsuperscript{211} Moreover, it binds to activin, decreasing its activity.\textsuperscript{212} Researchers have yet to complete the full picture regarding the impact that these and other growth factors have on ovulation in humans.

In the late follicular phase, estrogen increases according to an exponential growth curve—slow at first then rapid—peaking at 24-36 hours before ovulation.\textsuperscript{213} The elevation in estradiol triggers the luteinizing hormone surge.\textsuperscript{214} The average luteinizing hormone surge lasts 48-50 hours, but 14-27 hours suffice to fully mature the oocyte.\textsuperscript{215} Ovulation typically occurs 10-12 hours after the luteinizing hormone peak.\textsuperscript{216} Luteinizing hormone, not estrogen, stimulates both the production of progesterone and the expression of progesterone receptors in the granulosa cells of the dominant follicle.\textsuperscript{217} In addition, luteinizing hormone instigates luteinization, that is the process by which the postovulatory follicle differentiates and becomes the corpus luteum.\textsuperscript{218} Additionally, luteinizing hormone stimulates the resumption of meiosis in the oocyte.\textsuperscript{219} Progesterone levels have to be just right in order for the luteinizing hormone surge to occur. If the progesterone levels, which originate endogenously from the adrenal gland before the luteinizing hormone surge,\textsuperscript{220} are too high before the estrogen surge, the luteinizing hormone surge does not occur.\textsuperscript{221} This is how the administration of exogenous progesterone prevents ovulation and works as a contraceptive.

Follicle stimulating hormone, luteinizing hormone, and progesterone instigate activity of proteolytic enzymes in the follicular fluid that degrade the collagen in the follicular wall, thus enabling the oocyte along with the cumulus oophorus to escape the ovary.\textsuperscript{222} Stimulated by the gonadotropin surge, granulosa and theca cells produce two plasminogen activators, of which
unique inhibitors regulate.\textsuperscript{223} These plasminogen activators activate plasminogen in the follicular fluid to produce plasmin, which generates active collagenase that breaks down the follicular wall.\textsuperscript{224} Inhibitors prevent the activators from being active except at the precise moment of ovulation.\textsuperscript{225} Prostaglandins activate plasminogen activators.\textsuperscript{226} In addition, they cause smooth muscle contractions of the ovary that aid in expelling the oocyte-cumulus cell mass.\textsuperscript{227} The follicle stimulating hormone surge in mice induce granulosa cells in the cumulus mass to release hyaluronic acid, which separates the cumulus from the basement membrane of the follicle.\textsuperscript{228} In addition, follicle stimulating hormone stimulates the production of luteinizing hormone receptors in the granulosa layer that differentiates into the corpus luteum.\textsuperscript{229}

In terms of timing, the luteinizing hormone surge generally occurs on day 14 of the ovulatory cycle and ovulation commences between 12 and 36 hours later.\textsuperscript{230} In general, there is a six-day window in which fertilization may occur.\textsuperscript{231} This is because sperm may survive up to five days in the female reproductive tract,\textsuperscript{232} and the oocyte is fertile for only 24 hours after ovulation.\textsuperscript{233} The extreme window is six days prior and 3 days after ovulation, which makes for a nine-day window.\textsuperscript{234} However, the majority of conceptions happen when coitus occurs within three days before ovulation.\textsuperscript{235} It takes about 3 to 4 days for an ovum to traverse the fallopian tube and enter the uterus and implantation ensues about 2-3 days after entering the uterus.\textsuperscript{236} Implantation follows as soon as 6 and as late as 12 days after ovulation.\textsuperscript{237}

The luteal phase lasts between 11 and 17 days.\textsuperscript{238} Even before ovulation, granulosa cells increase in size developing vacuoles that contain lutein. After ovulation, theca and stroma cells become theca lutein cells, even as granulosa cell continue to enlarge, and angiogenesis, that is, vascularization of the surrounding tissue occurs.\textsuperscript{239} The luteinized granulosa cells, in response to luteinizing hormone produce vascular endothelial growth factor and angiopoietins, which induce
angiogenesis. Vascularization, which peaks by day 8 or 9,\(^{240}\) is essential for transporting low-density lipoprotein cholesterol to the luteal cells that use it to produce progesterone.\(^{241}\) Progesterone levels peak 8 days after the luteinizing hormone surge.\(^{242}\)

The corpus luteum rapidly declines 9-11 days after ovulation, if pregnancy does not occur.\(^{243}\) In humans, nitric oxide acts as a luteolytic factor, activating the production of prostaglandin F\(_{2\alpha}\).\(^{244}\) Matrix metalloproteinases act as proteolytic enzymes and degrade the corpus luteum. Pervasively present throughout luteal phase, tissue inhibitors of metalloproteinases keep matrix metalloproteinases inactive. Activin-A eventually blocks tissue inhibitors of metalloproteinases’ activity, allowing the matrix metalloproteinases to degrade the corpus luteum.\(^{245}\) When pregnancy does occur, the blastocyst, even before implantation produces human chorionic gonadotropin, which rescues the corpus luteum from luteolytic demise.\(^{246}\)

Human chorionic gonadotropin inhibits the expression of matrix metalloproteinases by increasing the production of follistatin, a glycopeptide that binds to activin-A.\(^{247}\)

Once the corpus luteum deteriorates, steroidogenesis of estrogen and progesterone diminishes along with the decrease in inhibin, which permits an increase in follicle stimulating hormone in the pituitary.\(^{248}\) This constitutes the luteal-follicular transition. The decrease in steroids estrogen and progesterone, remove the negative feedback suppression of gonadotropin releasing hormone in the pituitary, thus allowing for an increase in gonadotropin releasing hormone.\(^{249}\) The consequent elevation in follicle stimulating hormone saves a dominant follicle from atresia.\(^{250}\)

Concomitant to activity in the ovaries is activity in the uterus. In particular, the most active portion of the uterus constitutes the endometrium. The withdrawal of progesterone, due to the demise of the corpus luteum triggers menses.\(^{251}\) Upon the completion of menses, the

260
endometrium enters the phase of menstrual endometrium that constitutes a phase of regeneration originating in both epithelial and stromal stem cells.\textsuperscript{252} After 5-6 days the entire uterine cavity is re-epithelialized over a stromal fibroblast layer.\textsuperscript{253}

Next, the uterus enters the proliferative phase, which correlates with the ovarian follicle grow and an increase in estrogen production.\textsuperscript{254} Although estrogen is not necessary for the early proliferative phase, it contributes to the increase in vascular endothelial growth factor, which induces angiogenesis in the stromal cells.\textsuperscript{255} In addition to growth in size, microvillous and ciliated cells appear around the openings of glands and aid the distribution of secretions during the secretory phase.\textsuperscript{256} Finally, lymphocytes and macrophages accumulate in the stroma cells.\textsuperscript{257}

After ovulation, the endometrium no longer increases in height, but glands and spiral vessels continue to grow, increasing the tortuosity of the endometrium.\textsuperscript{258} Consequently, the endometrium secretes glycoproteins, peptides, immunoglobulins, and plasma into the endometrial cavity, reaching a peak 7 days after the midcycle gonadotropin surge, just in for blastocyst implantation.\textsuperscript{259}

During the implantation phase, the endometrium consists of three layers: 1) the basalis, 2) the stratum spongiosum, and stratum compactum.\textsuperscript{260} Endometrial stromal cells, originating from primitive uterine mesenchymal stem cells, differentiate into decidual cells, beginning during the luteal phase under the influence of progesterone and other factors.\textsuperscript{261} They have the potential to aid the blastocyst in implantation or to breakdown the endometrium with the withdrawal of estrogen and progesterone support.\textsuperscript{262}

If implantation does not occur, then estrogen and progesterone support wanes with the demise of the corpus luteum.\textsuperscript{263} Lysosomes are ubiquitous in the endometrium and the integrity of their membranes depends on progesterone.\textsuperscript{264} So, when it declines, the lysosomes release
enzymes that degrade the endometrium. Vascular endothelial growth factor increases the blood flow to the endometrium releasing influencing the expression of matrix metalloproteinases and releasing white blood cells.265 Just as tissue inhibitors of metalloproteinases keep the matrix metalloproteinases inactive while progesterone is high in the corpus luteum, so it does so in the endometrium.266 The breakdown of the endometrium by enzymes and the increase blood flow induces menstrual bleeding.267 At the same time, however, vasoconstrictors and estrogen promote healing of the remaining tissue in anticipation of the next cycle.268

This subsubsection elucidates the complex network of hormones, transcription factors, and enzymes emanating from the hypothalamic-pituitary plexus of the brain, ovaries, and endometrium to regulate the menstrual-ovulatory cycle.

b. Physiology of Contraceptives

This subsection analyzes methods of emergency contraception. Today, there are four contraceptive methods available for emergency contraception: copper intrauterine device, oral contraceptive pills combining estrogen and progestin, ulipristal acetate, and progestin-only levonorgestrel.269 All methods impact the physiological dynamics of the menstrual-ovulatory cycle, thereby impeding conception. In addition, copper intrauterine devices unquestionably act as an abortifacient by preventing implantation of blastocysts.270

In 1984, the United States Food and Drug Administration approves the TCu-380A intrauterine device contraceptive.271 Today, CooperSurgical markets the copper intrauterine device as Paragard TCu-380A intrauterine device.272 As foreign bodies, non-medicated intrauterine devices induce a sterile inflammatory response that causes minor tissue injury to the endometrium.273 Copper intrauterine devices release free copper and copper salts that have an additional biochemical impact on the endometrium, its secretions and the cervical mucus inhibit
the mobility of sperm. Martti Ämmäla et al. suggest that an increase in cytokine production that copper intrauterine devices induce may account for its antifertility effects.

Maria Elena Ortiz and Horacio B. Croxatto, in “Copper-T Intrauterine Devices and Levonorgestrel Intrauterine System: Biological Bases of Their Mechanism of Action,” indicate that the ordinary mechanism of action associated with chronic use, is not necessarily the same as post-coital insertion. Thus it is important to distinguish the usual mechanism of preventing pregnancy, which I illustrate in the above paragraph, versus the exceptional, which constitutes its mechanism for preventing pregnancy as an emergency contraception inserted post-coitally. Their research indicates that chronic use of copper intrauterine devices prevents fertilization from ever occurring by creating an environment that is hostile to both sperm and oocytes. However, as an emergency contraception, copper intrauterine devices prevent implantation, if fertilization occurs. Although current recommendations restrict insertion of copper intrauterine devices to 5 days after implantation, Norman D. Goldstuck insists that this recommendation is faulty, because evidence indicates that copper intrauterine device are just as effective at preventing pregnancy after implantation occurs. He insists that researchers base the recommendation on the philosophical position that pregnancy begins with implantation, not its clinical effectiveness at preventing or halting pregnancy. The indisputable abortifacient quality of copper intrauterine device and their prolonged contraceptive function preclude its use in Catholic hospitals as an option for emergency contraception.

There are three pill options for emergency contraception: 1) combined pills containing both estrogen and progestin, 2) ulipristal acetate, and levonorgestrel. Using combined pills for emergency contraception is obsolete, however, it involves taking one dose followed by a second dose in twelve hours within 120 hours postcoital. Ulipristal acetate is a progesterone receptor...
modulator that suppresses follicular growth and delays endometrial maturation.\textsuperscript{283} The United States Food and Drug Administration approved Ella for emergency contraception in 2010.\textsuperscript{284} Another antiprogestin is mifepristone, however, it works as a first trimester abortifacient, and is not approved for use as an emergency contraception in the United States.\textsuperscript{285}

Today, the most commonly prescribed emergency contraception is the progestin only pill containing levonorgestrel.\textsuperscript{286} The original formulation consists of two .75mg pills of levonorgestrel taken 12 hours apart within 120 hours after unprotected sex.\textsuperscript{287} Studies, however, indicate that a single 1.5mg dose is just as effective as two doses of .75mg taken with a 12 hour internal.\textsuperscript{288} Consequently, two-dose levonorgestrel emergency contraception pills are no longer available in the United States.\textsuperscript{289} The United States Food and Drug Administration approved Plan B One-Step in 2009.\textsuperscript{290} Generic forms include Next Choice One Dose, My Way, Take Action and AfterPill.\textsuperscript{291}

Evidence indicates that levonorgestrel works “primarily by preventing or delaying ovulation and by preventing fertilization.”\textsuperscript{292} Lena Marions et al., in “Emergency Contraception with Mifepristone and Levonorgestrel: Mechanism of Action,” conclude that the increase in progestin inhibits the luteinizing hormone peak prior to ovulation, thus inhibiting or delaying ovulation.\textsuperscript{293} Donald C. Young et al., in “Emergency Contraception Alters Progesterone-Associated Endometrial Protein in Serum and Uterine Luminal Fluid,” concludes that at high levels progestin alters protein synthesis in the endometrium, lowering the secretory proteins in the uterus, thereby affecting sperm mobility.\textsuperscript{294} After ovulation, progestin appears to have little effect on the endometrium.\textsuperscript{295} When administered before the luteinizing hormone peak, progestin levels affect the maturation of glandular and stromal components of the endometrium.\textsuperscript{296} Insofar
as the administration of levonorgestrel after ovulation has little effect on both the ovaries and the endometrium, it prevents pregnancy less effectively when administered after ovulation. Fritz and Speroff, in Clinical Gynecologic Endocrinology and Infertility, assert that levonorgestrel does not act as an abortifacient. At the same time, they admit that levonorgestrel may prevent implantation. Norman D. Goldstick highlights the ambiguity regarding the definition of pregnancy and thus the definition of abortifacient versus emergency contraception. He attributes this to the definition of an emergency contraception by the Centre for Disease Control and the World Health Organization as anything that acts before implantation. Goldstick argues that since it is difficult to epistemically determine when pregnancy occurs or which stage it is in during the first trimester, he sees no inconsistency in using an abortifacient like Mifepristone (RU 486) and calling it an emergency contraception. The Church’s understanding of an abortifacient includes anything that deliberately and directly kills the human being from conception to birth, which clearly includes the time before implantation. Consequently, the United States Bishops in their Ethical and Religious Directives, prohibit any treatments that directly interfere with implantation. Kathleen Mary Raviele, in “Levonorgestrel in Cases of Rape: How Does It Work?,” holds a distinction between three distinct actions: 1) contraceptive—preventing conception, 2) interceptive—preventing implantation, and 3) contragestive—reversing implantation. The latter two constitute abortifacient actions insofar as they interrupt a conceptus’s normal progression.

Consistent with the Church’s understanding of an abortifacient, Marie T. Hilliard, in “Moral Certitude and Emergency Contraception,” argues that clinicians ought to administer a test for the luteinizing hormone surge to ensure with moral certitude—as opposed to statistical probability or absolute proof—that levonorgestrel acts as an anovulant, not an abortifacient.
She bases this on the premise that once the luteinizing hormone surge occurs emergency contraception alone cannot prevent ovulation. For this reason, she insists that one ought to administer levonorgestrel only before the luteinizing hormone surge occurs.

Although more precise means exist for determining the exact day of ovulation, such as administering a serum progesterone test, Hilliard contends that these are not practical because many emergency departments do not have them readily available and it does not provide sufficient certitude to ensure that fertilization cannot occur. She acknowledges one study that indicates that administering meloxicam, a cyclooxygenase-2 inhibitor with levonorgestrel prevents ovulation after the luteinizing hormone surge. More information is available today regarding the use of cyclooxygenase-2 inhibitors as an anovulant, including Nicole C. McCann et al.’s “The COX-2 Inhibitor Meloxicam Prevents Pregnancy When Administered as an Emergency Contraceptive to Nonhuman Primates.” McCann et al., determine that meloxicam alone is effective at preventing pregnancy when administered to breeding macaques for 5 days prior to ovulation. They conclude that meloxicam delays, but does not prevent ovulation.

Raviele highlights evidence from Durand et al.’s study on levonorgestrel, which suggests that it does not effectively prevent ovulation when given 4 days before ovulation. Consequently, levonorgestrel, as an emergency contraception, does not primarily act as an anovulant. In another study, Durand et al. determine that levonorgestrel given before the luteinizing hormone surge, alters the pattern of luteal phase secretion of glycodelin-A, a natural killer cell inhibitor, thus providing a hostile environment for blastocysts attempting to implant in the endometrium. They conclude that levonorgestrel acts primarily as an abortifacient, or an interceptor. Both Durand et al. and Palomino et al. determine that levonorgestrel given on the
day of the luteinizing hormone surge does not prevent ovulation or affect progesterone receptors, plasma levels of glycolcin-A or L-selectin ligand or integrin.\textsuperscript{318}

Regarding sperm, Raviele cites several studies including Yeung et al.\textsuperscript{319} and Brito et al.\textsuperscript{320} The acrosome reaction is necessary for the spermatozoa to attach to the zona pellucida of the egg.\textsuperscript{321} If the acrosome reaction occurs early, before it reaches the egg, then the sperm loses its fertilizing capacity.\textsuperscript{322} At high concentrations, levonorgestrel acts as a weak agonists to progesterone receptors and at high concentrations (200-800ng/ml) it induces the acrosome reaction in sperm.\textsuperscript{323} Yeung et al. determine that levonorgestrel only affects sperm at high concentrations.\textsuperscript{324} Brito et al.’s results verify those of Yeung et al.\textsuperscript{325} In light of this information, Raviele recommends re-evaluating the use of levonorgestrel as an emergency contraception.\textsuperscript{326} She advises that clinicians should not give levonorgestrel as an emergency contraception from days -4 to -2, because of its probable interceptive impact on the conceptus.\textsuperscript{327}

Although against using levonorgestrel as an emergency contraceptive, Raviele contends that one could administer meloxicam as an emergency contraception.\textsuperscript{328} Raviele bases her conclusion on evidence that meloxicam prevents ovulation in women even after the luteinizing hormone surge.\textsuperscript{329} As such, the primary concern is ovulation, that one can rule out with a progesterone test. If the result is less than or equal to 2.0ng/ml, then one can administer meloxicam with the assurance that it acts as an anovulant.\textsuperscript{330} A. Patrick Schneider II et al., in “Appreciation for Analysis of How Levonorgestrel Works and Reservations with the Use of Meloxicam as Emergency Contraception,” point out the practical challenge of attaining a progesterone level, which could take as long as four days.\textsuperscript{331} They contend that because evidence indicates meloxicam could act as an abortifacient, an absolute protection for the human embryo
from the moment of conception, precludes its use as an emergency contraception. I contend that Hilliard’s argument invoking moral certitude suffices to supplant this position.

In 2010, Ron Hamel declares the notion that levonorgestrel acts as an abortifacient a lie. To which Edward J. Furton responds that the debate is not closed; evidence points in both directions. The above discussion demonstrates that the debate continues. While several methods exist, levonorgestrel remains the standard emergency contraception. However, the above suggests that meloxicam may be a better emergency contraception in the future since it acts as an effective anovulant, even when given on or after the luteinizing hormone surge. With the presumption of moral certitude that the contraceptive acts as a contraceptive and not as an abortifacient, the following subsection examines the use of the Principle of Double Effect to justify such an act.

ii. Principle of Double Effect

After addressing the clinical use of emergency contraception, I now consider its use ethically. Some ethicists use the Principle of Double Effect to justify using contraception to prevent conception after sexual assault. However, the following subsection demonstrates that an accurate articulation of the Moral Object dissolves any need for recourse to Double Effect. Ethical objections to contraception necessitate a clear delineation between it and defending oneself from conception. Since the two acts are physically indistinguishable, it is all the more important to provide an adequate account of the difference in Moral Objects of the Acts.

a. Object of the Act

In the *Summa Theologica*, Thomas Aquinas, in his explanation for killing in self-defense, first devises three criteria that evolve into the Principle of Double Effect. Of the three, the first, which contemporary ethicists reformulate as a prohibition against willing an act with an
evil Moral Object, is by far the most complex and deserving of attention, to which I devote this entire subsection.\textsuperscript{340} The bulk of the argument depends on the precise meaning of the Moral Object, the importance of which Pope John Paul II re-emphasizes in \textit{Veritatis Splendor}.\textsuperscript{341} In accord with Aquinas, John Paul II reaffirms that “the morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will.”\textsuperscript{342} Consequently, having an accurate understanding of the Moral Object and its relationship to the will is essential.

Aquinas observes that acts sometimes have two effects, one intended the other unintended.\textsuperscript{343} He describes the unintended effect as \textit{praeter intentionem}, which literally means beside the intention of the act.\textsuperscript{344} In other words, it is outside the realm of intention. To illustrate, using force, one may intend to protect oneself from an assailant, but at the same time unintentionally kill the attacker. Even though one may foresee the death of an assailant in one’s act of self-defense, in accord with Augustine,\textsuperscript{345} Aquinas insists that one ought never to intend to kill another person.\textsuperscript{346} Cavanaugh highlights the centrality of not intending to kill for both Augustine and Aquinas.\textsuperscript{347} Both object to intending to kill because it violates an exceptionless moral norm.\textsuperscript{348}

Finnis in \textit{Moral Absolutes: Tradition, Revision, and Truth}, explains that Augustine is against any action that violates an exceptionless moral norm;\textsuperscript{349} a view which he articulates in two works concerning lying: \textit{De mendacio}\textsuperscript{350} and \textit{Contra mendacium}.\textsuperscript{351} In \textit{De mendacio}, Augustine says that it is worse to steal than to suffer murder.\textsuperscript{352} Finnis calls this an early formulation of the Socratic Principle, which Augustine solidifies in the later \textit{Contra mendacium}, contending that it is better to suffer wrong than to do it.\textsuperscript{353} Democritus of Abdera first formulates the argument that it is better to suffer evil than to do it.\textsuperscript{354} However, Plato attributes this dictum
to Socrates, who not only teaches it, but also lives by it.\textsuperscript{355} Finnis holds that Paul’s maxim from Romans 3:8, that one may not do evil that good may come from it, is a reformulation of the Socratic Principle.\textsuperscript{356} Thus Augustine contends that no amount of good justifies performing an evil act.\textsuperscript{357}

Peter Abelard in his \textit{Ethics} contends that external physical acts do not constitute sin; rather, sin abides in voluntary consent.\textsuperscript{358} Consequently, for Abelard, the goodness of an act depends entirely on intention.\textsuperscript{359} Accordingly, the physical works that proceed from one’s intention are indifferent.\textsuperscript{360} Abelard is not a relativist; he holds that intention is right or wrong according to its conformity with God’s will.\textsuperscript{361} Servais Pinckaers in “A Historical Perspective on Intrinsically Evil Acts,” cautions against accusing Abelard of denying intrinsically evil acts.\textsuperscript{362} For Pinckaers, Abelard is responding to the legalism of his time and placing the essence of sin back in reason and the will, rather than external action or desires.\textsuperscript{363} Unfortunately, in accord with his famous dictum \textit{sic et non}, Abelard rejects too completely his adversaries, throwing out desire and consequences altogether.\textsuperscript{364}

Peter Lombard, in his \textit{Sentences} responds to Abelard in an attempt to safeguard Augustine’s prohibition against certain intrinsically evil acts.\textsuperscript{365} In most cases, Lombard agrees with Abelard that intention is the cause of evil in an action.\textsuperscript{366} However, he makes an exception regarding the \textit{per se mala}, that is, acts which are evil in themselves including: stealing from the poor; falsifying a will; or adultery to save another’s life.\textsuperscript{367} These acts, which are evil in themselves, cannot be done without some transgression; regardless of the disposition of the intention.\textsuperscript{368}

In his \textit{Scriptum super sententiis}, Aquinas disagrees with Lombard’s conclusion that \textit{per se mala} are not wrong according to the will, intention, or purpose (\textit{finis}).\textsuperscript{369} To the contrary, he
says an external act is good or bad according to the will, but not only because of the intention of the will (\textit{intentio}), but also because of the choice of the will (\textit{electio}). The distinction between intending and choosing is of supreme importance for Aquinas, but it is not always clear. Recall, Finnis indicates that Aquinas speaks of intention broadly and narrowly. Broadly speaking, intending simply means willing that includes intending and choosing. Finnis argues that this is how Aquinas uses intention in his discussion regarding Double-Effect Reasoning. Narrowly speaking, however, Aquinas contrasts intending with choosing. In the narrow sense, intentions concern ends, while choices concern means—which are actions—ordered to ends.

To distinguish the object of intending from the object of choosing, Aquinas uses the proximate end (\textit{finis proximus}), which he associates with the choice of the will (\textit{electio}) and the ultimate end (\textit{finis ultimus}), which he associates with the intention (\textit{intentio}). Concerning actions, there may be more than one end, hence the distinction between proximate and ultimate end. However many ends exist, the ultimate end co-ordinates the proximate end. The goodness of an external act depends on both the goodness of the proximate end or that which the will chooses and the goodness of the ultimate end, the purpose that one chooses an act.

In the same commentary, Aquinas identifies the proximate end with the Moral Object of the Act. Terminologically, he equates the ultimate end with the remote end. In addition, he insists that the object gives the species to acts. Again, in \textit{On Evil}, Aquinas holds that acts receive their species from the object, not the remote end. The more precise meaning of object becomes increasingly difficult to pin down not only in the later writings of Aquinas, but especially in the commentators that follow, as Duarte Sousa-Lara demonstrates in “Aquinas on the Object of the Human Act: A Reading in Light of the Texts and Commentators.” In particular, a distinction that Aquinas makes between the material and formal \textit{element} of the
object leads some commentators, such as John of Saint Thomas to conclude that the Moral Object is a physical object. \(^{385}\) Sousa-Lara demonstrates that for Aquinas, the Moral Object of a human act is not a physical effect or thing, but a single object of choice with a quasi-material and formal element. \(^{386}\)

In this case, Aquinas uses the Aristotelian description of matter and form as an analogy for the relationship between the object of intention (\textit{finis ultimus} or \textit{finis operantis}) and the object of the act, that is the object of choice (\textit{finis proximus} or \textit{finis operis}). Sousa-Lara, in “Aquinas on Interior and Exterior Acts: Clarifying a Key Aspect of His Action Theory,” explains that Aquinas differentiates the object of intention from the object of choice by the distinction between interior act of the will and external act of the will, respectively. \(^{387}\) Thus, Aquinas considers the moral species of the act formally with regard to the object of the interior act. \(^{388}\) For example, one who steals for the purpose of committing adultery is more an adulterer than a thief. \(^{389}\) Thus, according to the analogy of form and matter, just as form gives shape to matter, so the ultimate end qualifies the Moral Object.

In using this analogy, Aquinas is not saying that the proximate end is material. Nor is he saying that the Moral Object receives its entire intentional content from the ultimate end. Indeed, Aquinas is very clear that exterior acts, insofar as they are voluntary not only abide in the moral order, but also have their own intentional content. Martin Rhonheimer, in 	extit{Natural Law and Practical Reason: A Thomistic View of Moral Autonomy}, shows that for Aquinas this intentional content is rational insofar as he attributes this to reason. \(^{390}\) The moral quality of the Moral Object depends on its conformity to its proper matter (\textit{materia debita}) or proper circumstances (\textit{materia circumstantiae}), which reason derives. \(^{391}\) In 	extit{The Perspective of Morality: Philosophical Foundations of Thomistic Virtue Ethics}, Rhonheimer explains at great length the intelligible
nature of the Moral Object, which he calls basic intentional content.\textsuperscript{392} As a quick aside, the proximate end does not always have to have an intelligible or intentional content associated with it, in which case the proximate end is purely instrumental and receives all of it from the ultimate end only.\textsuperscript{393} It is essential to understand that for Aquinas, a practical concept is different than a speculative or theoretical concept.

To highlight the distinct quality of a moral act, Finnis draws attention to an important distinction that Aquinas makes concerning orders in the prologue to his \textit{Commentary on Aristotle’s Politics}\.\textsuperscript{394} Aquinas argues that there are four irreducibly distinct orders: natural, logical, moral, and technical\.\textsuperscript{395} These orders correspond to exclusive sciences or methods of knowing: 1) physics and metaphysics; 2) logic and mathematics; 3) moral philosophy; and 4) artistic and technical\.\textsuperscript{396} Finnis asserts that the irreducibility of these orders means that principles apply uniquely, even if analogically to the respective orders.\textsuperscript{397} Moreover, each order has a distinct object or end.\textsuperscript{398}

Knowledge pertaining to the natural order is speculative, while knowledge pertaining to action, either moral or technical, is practical.\textsuperscript{399} David Hume famously formulates the argument that ought-statements are not derivative of is-statements.\textsuperscript{400} This is a way of saying that practical knowledge is different from speculative knowledge. This, however, does not mean that ought-statements are irrational.\textsuperscript{401} Moreover, it is not a different faculty that formulates practical reason, but the same intellect that formulates speculative arguments devises practical arguments, but the intellect acts in a distinct manner, by extension.\textsuperscript{402} Since moral acts are in a different order, reason formulates them according to practical syllogisms, rather than theoretical syllogisms.\textsuperscript{403} Practical syllogisms may contain theoretical premises, but the conclusion is a statement, or better an act of striving or doing.\textsuperscript{404}
The failure to maintain the distinction between practical knowledge and speculative knowledge results in the Naturalistic Fallacy, which asserts that the Natural Law is derivative of laws of nature. Rhonheimer identifies the Naturalistic Fallacy as a physicalism. He attributes this to the manualist tradition of moral theology, which is casuistic, that is, taught using cases. Hermeneutically, this approach presumes a third-person perspective regarding morality. In other words, it presumes that an observer can identify the Moral Object of the Act simply by viewing the person’s external action. Prima facie, this seems to jive with Aquinas’s action theory; after all, he does identify the external act with the Moral Object. However, if one can observe the Moral Object from the third-person perspective, then it is no longer in the moral order, but the natural order.

In ‘‘Materias ex qua’ and ‘Materias circa quam’ in Aquinas,’’ Sousa-Lara observes that Aquinas connects the Moral Object with materia circa quam, not materia ex qua. In addition, in De Veritate, Aquinas identifies the Moral Object with the materia circa quam. Sousa-Lara equates the materia ex qua as the physical dimension of an act. For example, in the natural order, the act of marital love is indistinguishable from adultery or fornication. For Sousa-Lara, the materia ex qua is the physical act of coitus. The materia circa quam, that is, the Moral Object, according to the moral order, determines the species of the act. The coital act, considered materia ex qua has restricted potency for receiving form from the materia circa quam. In fact, he observes that the act has potential to be of three different forms specifically: conjugal love, fornication, or adultery. Thus, from the third-person perspective, although one cannot necessarily know the Moral Object or remote end, it nonetheless limits the options. After all, a person buying flowers is not driving a car.
Just as Aquinas uses the hylomorphic phenomenon of form and matter to illustrate the relationship between the ultimate end and the proximate end,\(^{416}\) so he uses such an analogy to illustrate the formal role of the *materia circa quam* with regard to the material role of the *materia ex qua*.\(^{417}\) Sousa-Lara associates both the *materia circa quam* and the *materia ex qua* with the external act; however, each signifies something different regarding the external act.\(^{418}\) Recall, that for Aquinas, the external act is part of the moral order only insofar as it is voluntary, that is, the will configures it.\(^{419}\) Since Sousa-Lara associates the *materia circa quam* with the Moral Object, this constitutes what the will chooses.\(^{420}\) The *materia ex qua*, on the other hand, regarding the external act, constitutes the physical content of the act, which the will commands.\(^{421}\) Thus, the *materia circa quam*, that is, Moral Object in the moral order, morally configures the *materia ex qua*, that is, the object of the commanded act in the natural order.

This subsection demonstrates how an accurate account of Aquinas’s Moral Object of an Act keeps it in the moral order, rationally formulated and proceeding from the will. The Moral Object is clearly distinct from the ultimate end (object of intention) insofar as he understands it as the proximate end (Moral Object of a choice). Moreover, regarding the external act he uses *materia circa quam* to identify and distinguish the Moral Object in the moral order, from the external act in the physical order that the will commands—the *materia ex qua*.

\textit{b. Nominalism, Manualism, and Proportionalism}

After Aquinas, a divide arises between the Dominican emphasis of the experience of beatitude through the intellect and the Franciscan emphasis of beatitude through the will in love.\(^{422}\) In the wake of this divide William of Ockham introduces nominalism, which rejects universals.\(^{423}\) This subsubsection demonstrates the influence that nominalism has on the methodology of moral theology, especially regarding manualism and proportionalism.
For Ockham, the only thing that exists is the reality of individual beings. Forms or natures exist in name only. In the Platonic sense universals are forms. In the Aristotelian sense, the form inheres in beings. In turn, the universal constitutes the nature of individual beings. Regarding action, natures influence inclinations. In humans, the object of practical reason is the good that they naturally incline to. Because human nature is universal—shared by all individuals of the same species—it is possible to formulate Natural Laws that articulate good for human behavior.

Insofar as God creates and providentially governs humanity according to the eternal law, the natural law constitutes a human participation in the eternal law. Finnis, in *Natural Law and Natural Rights* explains that for Aquinas participation conjoins two concepts: causality and similarity. God causes humans to share in the light of reason, in a manner that is similar to the divine. In this regard there is a difference between the intelligible nature of other animals and the intelligent nature of humans. Animals participate in the divine law passively insofar as they follow their inclinations, whereas humans take an active role in the divine providence insofar as they use reason to formulate ends and their will to achieve them. Since law itself constitutes a measure according to reason for action, only rational beings truly participate in law. The illuminating power of reason enables one to grasp the good in actions, including desires and inclinations. Moreover, the voluntary nature of human action entails freedom and the possibility for self-mastery. Thus, Rhonheimer describes this participatory role of the humans in the eternal law as participated autonomy. Accordingly, Pinckaers indicates that for Aquinas, freedom proceeds from both reason and the will. Consequently, nature, which includes the restrictions of inclinations, desires, bodily nature itself, and reason limit freedom.
Contrary to Aquinas’s limited autonomy, Ockham argues for a freedom of indifference.\textsuperscript{437} Again, influenced by the Franciscan emphasis on the will, Ockham understands freedom to proceed entirely from the will.\textsuperscript{438} Since there are no universals, for Ockham, each individual stands in absolute freedom from the influence of natures.\textsuperscript{439} Since each choice stands in complete freedom, there is no longer any need to stress growth in virtue.\textsuperscript{440} Just as human freedom is absolute, so God’s freedom is omnipotent.\textsuperscript{441} In fact, for Ockham, the veracity of all laws depends on nothing other than its divine command.\textsuperscript{442} No rational foundation grounds them. The absolute freedom of God means that God could change them at any moment. Consequently, under the influence of Ockham, the emphasis of moral theology becomes law and obligation.\textsuperscript{443} Moreover, Natural Law is no longer based on human nature and its inclinations, but entirely on divine command.\textsuperscript{444} In this sense, it is entirely extrinsic to the human person.

Ockham’s nominalism continues to influence moral theology right up to the present day. In the manualist tradition of the seventeenth through the early twentieth century, the hermeneutical method is casuistic, that is, case-based.\textsuperscript{445} The conscience has a central role in discerning proper courses of action that stand in the void between freedom of indifference and moral obligation that God externally imposes.\textsuperscript{446} The manualists not only blur the line between the internal and external act, but seem to eliminate any real consideration for the internal at all in favor of a morality that is entirely discernable from the third-person perspective.\textsuperscript{447} Thomas Petri in \textit{Aquinas and the Theology of the Body: The Thomistic Foundation of John Paul II’s Anthropology}, quotes John McHugh and Charles Callan’s manual highlighting the extrinsic nature of morality.\textsuperscript{448} McHugh and Callan hold that morality is “the agreement or disagreement of a human act with the norms that regulate human conduct with reference to man’s last end.”\textsuperscript{449}
The casuistic approach of the manuals to morality is underequipped to deal with the complex dilemma of contraception. For example, John T. Noonan, Jr., in *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists*, observes that the most popular manual, Jean-Pierre Gury’s *Compendium of Moral Theology*, addresses contraception purely from the physical dimension, objecting to it merely on the basis that it violates the prohibition of onanism—extra-vaginal ejaculation.\(^{450}\)

Peter Knauer attempts to breathe new life into moral theology with his article, “The Hermeneutic Function of the Principle of Double Effect.”\(^{451}\) Like Abelard and Aquinas, Knauer refocuses moral theology on intention and the will. Unfortunately, he identifies moral evil with intending or causing physical evil, without a commensurate reason.\(^{452}\) Josef Fuchs calls this physical evil pre-moral evil\(^{453}\) and Louis Janssens calls it ontic evil.\(^{454}\) In part, because moral acting involves causing physical evil, Knauer uses the criteria of proportionality in the Principle of Double Effect to argue for what Richard McCormick calls an “extended notion of the object.”\(^{455}\) Knauer, understands both the *finis operis* and the *finis operantis* as ends, however, he understands the first to have a causal relationship to the second.\(^{456}\) In other words, the Moral Object of the Act (*finis operis*) causes the remote end (*finis operantis*). Moreover, the Moral object is good if there is commensurate reason to justify it, that is, if the remote end is good enough.\(^{457}\) For Knauer, such a statement is not the same as saying the ends justify an evil means, because presumably one has not yet determined that the means is good or evil yet, since one cannot know this without a consideration of the end.\(^{458}\)

Rhonheimer in “Intentional Actions and the Meaning of Object: A Reply to Richard McCormick,” objects to the proportionalist methodology, because it weighs the consequences of actions, not actions themselves.\(^{459}\) Put another way, proportionalism reduces moral decision-
making to discerning whether or not to cause certain effects. This makes morality eventistic, since an action’s value rests on its effect and has no use for the perspective of the acting person. The object of intention swallows the Moral Object, totally neglecting its inherent intentional character, which Rhonheimer calls the basic intentional content. Rhonheimer explains that the Moral Object has an intention, formed by reason, which he and Aquinas describe as the object of choice. For Rhonheimer, the basic intentional content of the Moral Object is precisely what keeps it in the realm of the moral order.

In accord with a proportionalistic understanding of the Moral Object, Knauer contends that a couple might discern that using contraception is a viable option for them, so long as they have a commensurate reason, such as economic or health reasons. Since the Moral Object has no rational or intentional value itself, choosing to contracept is indistinguishable for Knauer from choosing to periodically abstain. Accordingly, the expanded notion of the object, essentially amounts to saying that the intentional content of the object comes from the remote end (object of intention). Unfortunately, as Rhonheimer indicates, this relegates moral decision-making to the purely physical realm, rendering it eventistic. So, moral decision-making has little to nothing to do with a deliberate will choosing a certain kind of behavior, that is, a human action with a basic intentional content, what Aquinas calls the forma a ratione a concepta.

c. The Object: Contraception and Self-Defense

In accord with Aquinas’s action theory, John Paul II’s understanding of the Moral Object, and Paul VI’s argument against contraception, Rhonheimer carefully identifies the Moral Object of contraception. This subsubsection follows Rhonheimer’s articulation of the Moral Object of contraception and how he distinguishes it from one of self-defense, which using emergency contraception to prevent conception after sexual assault constitutes.
First, Rhonheimer explains Paul VI’s argument in *Humanae Vitae* that the contraceptive choice violates the natural law. According to the Natural Law, the two fundamental meanings of human sexuality, the unitive and the procreative, are inseparable. This is the Inseparability Principle, which Paul VI refers to in *Humanae Vitae*. In other words, humans, on their own initiative may not break this connection, which contraception does. The Inseparability Principle builds on an adequate anthropology, one that accounts for the bodily and spiritual dimensions of the human person. Consequently, for Rhonheimer, the human body is not merely the object of human action, but part of the subject. Therefore, the bodily reality of procreation receives its full human specification from spiritual love. Moreover, the spiritual love specifies the procreative dimension of the body.

Precisely because this concerns a choice, which abides on the moral order, each choice for the marital act must be open to the procreative significance, not its procreative functionality, that is, physically intending to conceive. Consequently, sterile couples may engage in the marital act and still be open to the procreative dimension of the marital act. Likewise, fertile couples, in accord with the call to responsible parenthood, may choose to practice periodic continence, abstaining from the conjugal act, except during the infertile times, without violating the Inseparability Principle. Thus, Rhonheimer identifies the Moral Object of the marital act as loving bodily union, which serves procreation by its very nature.

To identify the Moral Object of contraception, Rhonheimer does not have recourse to the Inseparability Principle, but the virtue of chastity. He argues that periodic continence is a constitutive means for growth in chastity for married couples insofar as it helps them to grow in self-mastery. This is what Pius XI says in *Casti Cannubii* and Paul VI says in *Humanae Vitae*. By implication, not only a couple’s engagement in the marital act constitutes a conjugal
act, but their intentional abstinence also forms a conjugal act, that is an act of mutual love. The contraceptive choice, on the other hand, renders needless the specific sexual behavior—periodic continence—that responsible parenthood entails. Moreover, it is a choice against virtuous self-control by abstaining from the sexual act.

Precisely because Rhonheimer places the contraceptive choice in the moral order, he is able to morally qualify its use as an emergency contraceptive in an act of self-defense, in cases of sexual assault. Rhonheimer recalls the response of three theologians regarding whether or not a woman could have recourse to contraception in the face of rape, including for example Congolese nuns in the war-torn Congo. Rhonheimer finds their arguments tending toward physicalism insofar as they focus the debate on the physical effect of contraception, namely, temporary sterilization. According to Rhonheimer, Francesco Hürth considers the physical act one of sterilization in the absolute sense, but on the moral level, that is, in the relative sense, it is not an act of contraception, but self-defense, since the woman does not both freely and deliberately desire or will sexual intercourse and to deprive the act of its reproductive potential. Palazzini and Lambruschini use Double Effect and Totality to justify the woman’s recourse to contraception. Rhonheimer objects to this, because of its casuistic formulation. Just like Knauer, they are formulating the argument in such a way that one needs sufficient reason to choose an immoral act—contraception.

Rhonheimer, however, insists that since the act in question is not merely on the natural order, it is not a question of finding sufficient reason to choose an act that is per se immoral, but a matter of accurately formulating the Moral Object as one of self-defense on the moral order. Again, the proportionalists’ expanded notion of the object amounts to rendering the intentionality of the object indistinguishable from the ulterior intentions. Consequently, the formulation of
the object by proportionalists is just as casuistic as that of the manualists. In particular, the eventistic and physicalistic formulation of the object demonstrates this. Insofar as force removes the sexual act, on the woman’s part, from the realm of freedom, the choice to use contraception constitutes an act of self-defense from the unwanted effect of conceiving.

\textit{d. Genus Moris}

I now discuss the derivation of the other criteria of Double Effect. Just as Ockham’s nominalism and the casuistic methodology of the manualists and the proportionalists obscures the Thomistic meaning of the Moral Object, so it obfuscates Double Effect. This subsubsection demonstrates this. Moreover, it contrasts the consequentialist and Thomistic formulation in its application to emergency contraception for sexual assault victims.

In the \textit{Secunda Secundae} of the \textit{Summa Theologica} Aquinas uses Double-Effect Reasoning to explain how one may use self-defense to unintentionally kill an assailant. An action may have two effects one intended and the other unintended (\textit{praeter intentionem}). \textit{Praeter intentionem} means accidental. Sousa-Lara explains that Aquinas is asserting that the evil effect must not constitute the Moral Object. This jives with Aquinas’s agreement with Augustine that one must not intend to kill the assailant. Moreover, this agrees with Finnis’s assertion that Aquinas is using the broad sense of intention here, which includes both intending as choosing the Moral Object (proximate end) and intending the ultimate end.

Ethicists often use the example of performing a hysterectomy on a pregnant woman with a cancerous uterus. Insofar as cancer constitutes a grave threat to the mother’s life, the situation necessitates a hysterectomy. Ethically, this procedure entails a choice to save the mother’s life, by removing a grave threat. Unfortunately, the surgery foreseeably results in the
death of the child. Using this example, I illustrate the difference between the consequentialist and the non-consequentialist formulation of Double Effect.

Cavanaugh contends that Gury’s version of Double Effect,⁵¹⁰ which Joseph T. Mangan reproduces in his “An Historical Analysis of the Principle of Double Effect,”⁵¹¹ represents a contemporary formulation.⁵¹² Under the influence of nominalism and the casuistic hermeneutic, Gury adopts a cause-effect articulation of Double Effect.⁵¹³ For Gury, the criterion pertaining to the Moral Object identifies it as a cause.⁵¹⁴ Thus, he indicates that the cause itself must be good or indifferent.⁵¹⁵ In non-consequentialist terms, the Moral Object must be good.⁵¹⁶ Put another way, the Moral Object must not be an intrinsically evil act.

In the case of a pregnant woman with a cancerous uterus, the procedure in question is the hysterectomy. Using cause-effect terminology, it is difficult to distinguish the physical act of the hysterectomy from the Moral Object that one chooses in performing a hysterectomy. For this reason, Rhonheimer claims that by using causal language consequentialists reduce actions to events.⁵¹⁷ Understanding the Moral Object as a cause removes the personal perspective.⁵¹⁸ Consequently, one is simply performing a physical procedure: a hysterectomy. In purely physical terms, one is removing a cancerous, gravid uterus.

A non-consequentialist formulation of the Moral Object takes into account the perspective of the acting person.⁵¹⁹ In other words, it describes in terms of striving or willing what the acting person chooses.⁵²⁰ At the same time, it avoids the pitfalls of so narrowly defining the Moral Object that it does not account for its physical consequences.⁵²¹ For example, Cavanaugh accuses John Finnis, Germain Grisez and Joseph Boyle in “‘Direct’ and ‘Indirect’: A Reply to Critics of our Action Theory,”⁵²² of so narrowly defining the object of a craniotomy that it conceptually excludes the death of a child.⁵²³ Cavanaugh contends, however, that it is
impossible to define a craniotomy without the death of a child.\textsuperscript{524} Therefore, taking into account the consequences of the act, which include the unintended, yet foreseen death of a child, one may say that the physician and patient choose to remove the grave threat of a cancerous, gravid uterus using a hysterectomy, foreseeing, but not intending the death of a child. This non-consequential formulation accounts for what the acting person chooses with due regard for the foreseen, but unintended consequences.

The next two criteria derive from the same statement. Since Aquinas uses intention in the broad sense, one may conclude that he not only prohibits intending the evil effect as a means, but also as a remote end. Casuistically, one must only intend the good effect, not the bad.\textsuperscript{525} Non-consequentially, this means that the evil effect must not be the ultimate end of one’s intention.\textsuperscript{526} Moreover, insofar as \textit{praeter intentionem} means accidental, it does not mean unforeseen as in a mishap.\textsuperscript{527} To the contrary, Aquinas presumes that one foresees the unintended evil. For this reason, Cavanaugh stresses the intended/foreseen distinction.\textsuperscript{528} Concerning the abovementioned example, one must not intend the death of the child. Rather, foreseeing the death of the child, one intends the restoration of health to the mother.

The third criterion, casuistically, insists that the evil effect must not cause the good effect.\textsuperscript{529} This articulation highlights the non-personalistic formulation of action, which Rhonheimer criticizes as being physicalistic and eventistic.\textsuperscript{530} According to such a construction, effects cause effects. Since Aquinas only understands morality in terms of persons in action, he has no analogous criterion. However, Thomistic ethicists often describe this criterion as one must not choose an evil means to attain a good end.\textsuperscript{531} This, however, is indistinguishable from the first criterion that insists one’s Moral Object must not be evil.
Consequentially, ethicists often maintain that a hysterectomy is distinct from a direct abortion, because one performs the physical procedure on the uterus, rather than the child. The above discussion concerning the definition of contraception demonstrates that a physicalistic definition of the Moral Object does not suffice. Rhonheimer, for example, observes that although the physical act of a female athlete taking an anovulant to prevent menstruation to compete in a sporting event is the same as a woman taking an anovulant to prevent conception, the Moral Objects differ. The former is indifferent, while the latter is immoral, because it constitutes an alternative to an act of continence, which is constitutive of responsible parenthood and an inherent means to growth in chastity.

Finally, Aquinas insists that one’s means must be proportionate to one’s end. Once again, the consequentialists use cause-effect language to articulate this criterion. Therefore, in consequential terms, the final criterion insists that one must have a proportionately serious reason to cause an evil effect. Insofar as removing the cancerous uterus saves the mother’s life, this is proportionate to the negative effect, the death of the child.

For Aquinas, disproportionate means imply a change in the Moral Object. For example, if one uses deadly force to repel an attacker who clearly does not use deadly force, it is difficult to say that one is really defending oneself, rather than intending to kill another person. A corollary to the fourth criteria is that one must have no alternative. Presumably, the only medically indicated procedure is a hysterectomy for a woman with a gravid, cancerous uterus.

Thus, a casuistic argument in favor of using a contraceptive is as follows. First, the act in question must be either good or indifferent. Rhonheimer indicates that unless one maintains the moral character of the Moral Object, it is impossible, to distinguish it from a contraceptive choice, physically defined. Thus, Palazzini and Lambruschini cannot get past the physicalistic
notion that the choice is inexorably one to sterilization. As such, it is difficult to avoid the proportionalistic trap of finding commensurate reason to justify one’s means. In this sense, the whole argument stands or falls on the re-defined proportionate criteria. Regarding the second and third criteria, it is hard to see how the evil effect does not cause the good effect—no conception, or that the one does not intend the evil effect—physically defined as sterilization.

Rhonheimer’s definition of the Moral Object as self-defense resolves the tension in the argument and renders it unnecessary to use Double Effect. By defining the Moral Object as self-defense, one avoids the need to justify evil. One is simply using the means available to prevent conception from taking place without a loving bodily union. Only when one does not clearly differentiate the Moral Object from a physical event, does it become difficult to justify or find a commensurate reason to use a contraceptive method to prevent conception.

This section shows that a non-consequentialist description of the Moral Object—one that clearly distinguishes the object of choice from intention and keeps it in the moral order—of self-defense from sexual assault excludes any necessity of recourse to Double Effect.

This chapter uses a non-consequentialist definition of the Moral Object and the Principle of Double Effect to justify risk reducing bilateral salpingo-oophorectomies in BRCA mutation carriers and the use of emergency contraception to prevent conception in victims of sexual assault. The following chapter considers ethical justifications for sex reassignment surgery in patients with gender dysphoria and using contraception for non-contraceptive benefits.

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534 Rhonheimer, Ethics of Procreation, 144.
535 Aquinas, Summa Theologica, II-II, q. 64, a. 7, answer.
536 Cavanaugh, Double-Effect Reasoning, 26.
537 Aquinas, Summa Theologica, II-II, q. 64, a. 7, answer.
538 Cavanaugh, Double-Effect Reasoning, 160.
539 Rhonheimer, Ethics of Procreation, 136.
CHAPTER SIX – SEX REASSIGNMENT SURGERY AND CONTRACEPTION

This chapter considers the ethics surrounding sex reassignment surgery for gender dysphoria and the use of contraceptives in Catholic hospitals for non-contraceptive benefits.

6A. Sex Reassignment Surgery for Gender Dysphoria

Two recent articles in *Health Care Ethics USA: A Quarterly Resource for the Catholic Health Ministry* argue that the Principle of Double Effect and the Principle of Totality and Integrity justify the use of sex reassignment surgery in patients diagnosed with gender dysphoria.¹ This section demonstrates how Catholic theological anthropology not only precludes the so-called ideology of gender—that underlies justifications for sex reassignment therapies—which Pope Francis along with his predecessors condemn,² but also does not admit justification for sex reassignment surgery by means of Double Effect or Totality, especially in light of an accurate articulation of the Moral Object.

The first subsection explicates the definition of sex, gender, gender dysphoria, and current therapies. The second subsection examines three categories that the Church uses to reject gender ideology: medical, philosophical, and theological. The third subsection demonstrates how an accurate understanding of Totality and Double Effect, which includes a Thomistic understanding of the Moral Object, excludes the possibility of sex reassignment surgery for gender dysphoria.

i. Sex, Gender, and Gender Dysphoria

This subsection explains the complex categories of sex, gender, and gender dysphoria. The first subsubsection explicates the multivariable definition of biological sex utilizing intersex conditions to clarify and highlight its complexity. The second subsubsection discusses the origins and development of the concept of gender. The third subsubsection reveals the evolution of the
concept of gender dysphoria, especially as the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition\textsuperscript{3} and Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition\textsuperscript{4} reflect it. Finally, the fourth subsubsection briefly discusses sex reassignment therapies.

\textit{a. Defining Sex}

Defining sex biologically as male or female is not as easy as it may at first appear. This is true not only because of the variance of terminology, but also because of the many factors that contribute to even a somatic definition. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition identifies sex with the biological indicators of male and female, which I further elucidate in this subsubsection, whereas it identifies the lived experience of man or woman as gender, which I discuss in the following subsubsection.\textsuperscript{5}

Several physiological criteria exist for defining sex, including: genetic, gonadal, ductal, and phenotypic or genital.\textsuperscript{6} Genetically, in its most unambiguous form, the male and female karyotypes consist of 46,XY and 46,XX, respectively. There may, however, be several unique combinations of sex chromosomes including, but not limited to: 45,X (Turner Syndrome), 47,XXX, 47,XXY (Klinefelter Syndrome), 47,XXY. In addition, early in embryonic development, mitotic errors may give rise to cell populations with unique chromosomal complements, called mosaicism.\textsuperscript{7} For instance, it is possible to have a 46,XX/46,XY karyotype, which constitutes 50\% of cases of true hermaphroditism.\textsuperscript{8} Strictly speaking, however, one is genetically male if one has a Y chromosome and female if one does not, regardless of the number of X chromosomes one may have additionally.\textsuperscript{9}

The variety of genotypes, including mosaics, gives rise to the various expressions. Klinefelter syndrome, for instance consists genetically of one or more Y chromosomes in combination with one or more X chromosomes, which results in male hypogonadism
Turner syndrome is a partial or complete monosomy of the X chromosome that engenders hypogonadism in phenotypic females. In both Klinefelter syndrome and Turner syndrome, the sexual identity is less ambiguous, but simply underdeveloped.

Alternatively, there are forms of hermaphroditism—true and pseudo—that make sexual identity externally more difficult to pinpoint. The gonads refer to the germ cells that migrate, becoming testes in males and ovaries in females. Although initially neutral, the gonads have an inherent tendency to develop femininely, “unless influenced by Y chromosome-dependent masculinizing factors.” In terms of ductal development, females develop Müllerian ducts and males develop Wolffian ducts. Phenotypic or genital sex refers to the respective external sex organs. Hermaphroditism consists of a combination of almost any variety of the above-mentioned structures.

True hermaphroditism occurs when one has both testicular and ovarian tissue. This phenomenon is very rare. Genetically, half are mosaics, while the other half have a 46,XX karyotype with an active SRY gene that has either translocated to an autosomal chromosome, or one of the sex chromosomes has a cryptic chimerism. Pseudo-hermaphroditism, on the other hand, occurs when one has sexually the opposite genitals of the gonads. For instance, a female pseudo-hermaphrodite has ovaries, but male genitalia; and a male pseudo-hermaphrodite has testes and female genitalia. Female pseudo-hermaphrodites are genetically female, 46,XX, but have ambiguous or virilized (masculinized) genitalia caused by excessive exposure to androgen steroid during gestation, which originates from congenital adrenal hyperplasia. Male pseudo-hermaphrodites are genetically male, but due to problems with either androgen synthesis or androgen insensitivity, the male ducts and/or external genitalia do not fully develop.
As complex as disorders of sex development are, there is less disagreement about its treatment than conditions relating to gender, despite the variety of historical approaches. Perhaps this is because it is evident that these conditions are largely somatic, rather than, psychosocial. In 2006, several groups wrote “Consensus Statement on Management of Intersex Disorders.” The move is to classify intersex conditions genetically, even though they present somatically differently. The above analysis demonstrates that while intersex conditions manifest in the gonads, ducts, and genitals, they originate genetically. Thus, even in intersex conditions, the genetic classification of individuals according to a binary sexual classification is possible.

b. Defining Gender

Much more complex, not only because of the divergence in terminology, but also because of the underlying theories is the definition of gender. The following largely represents an elucidation of the understanding of gender in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition and the social constructionist perspective that underlies it.

Sex or sexual refers to the biological indicators of male or female, including chromosomes, gonads, and genitalia. However, it is precisely because of the intersex condition that the need arose for another term to denote the lived experience of a person as a man or woman. John Money is the first to use the term gender to highlight such a difference. Gender denotes the lived role of an individual as a boy or girl, man or woman. The American Psychological Association defines gender as a social construct that one attributes to male and female individuals. One’s natal gender—the gender assigned at birth—may not constitute one’s gender identity. One may, therefore, reassign one’s gender. Gender identity, though often in coordination with traditional masculine and feminine roles, may constitute neither, in which case
one identifies as non-binary. Transgender refers to those who “transiently or persistently identify with a gender different from their natal gender.” Transsexual, on the other hand, refers to those who have undergone a social transition from male to female, or female to male, that may include somatic transition with cross-sex hormone treatment and/or sex reassignment surgery.

Sociologist, Linda L. Lindsey, argues that society and culture largely construct gender roles. In “Gender Identity,” Lawrence S. Mayer and Paul R. McHugh attribute the concept of gender as a social construct to feminist writers such as Simon de Bouvoir, Ann Oakley, Suzanee J. Kessler and Wendy McKenna, Gayle Rubin, and Judith Butler. In “On the Construction of Gender, Sex and Sexualities,” Jeanne Marecek et al., hold that knowledge is a collaborative product of society. Marecek et al. indicate that social constructionists do not mean to say that gender, sex, and sexuality are inherently built by society as opposed to biology, environment, or innate, but that society constructs the terms and concepts they represent. Moreover, these linguistic constructs influence how one understands gender and sex. Social constructionists are interested in processes; for example, how terms change in meaning over time. Judith Butler, for instance, understands gender according to a performativity theory of doing. In other words, gender is not being, but doing. In addition, they do not understand the human person as distinct from society, insofar as both are mutually dependent upon each other. Consequently, social constructionists understand gender, not as a personality trait, but as a social process. Additionally, they understand the concepts and terms that reflect biology and sex and sexual to be social constructs as well, which also falls under the purview of social processes. Marecek et al. dedicate the remainder of the paper to demonstrating the relativism of both biology and gender.
According to such a constructionist understanding of sex, sexuality, and gender, the concept of transexualism arises, which not only implies the possibility of changing one’s gender in a binary sense, but in a non-binary sense as well. As Margaret H. McCarthy indicates in “Gender Ideology and the Humanum,” many contemporary theorists attempt to raze any notion that gender is attributable to sex or the body. Inherent in the constructionists view is the notion of a disembodied will and the dictatorship of relativism. Although Merecek et al. deny that they are asserting that gender, sex, etc. is socially constructed as opposed to being nature-determined, in practice, this is what social constructionism does. Such a relativistic disposition not only presumes that the authentic person is the soul, but that the body is a tabula rasa. Both anthropological theories contrast with the Catholic understanding of the human person and have origins in Enlightenment philosophy as I demonstrate in the next subsection.

c. Gender Dysphoria

Here, I follow the development of the clinical understanding of gender dysphoria as relevant diagnostic texts articulate. Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition identifies gender dysphoria as a disorder concerning identity, whereas Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, no longer views the condition as such. Rather, it identifies the clinical problem with the experience of dysphoria, that is, the distressing experience of identifying as transgender, which one may presumably resolve by changing the individual’s sex. It no longer considers the transgender condition pathological. The respective approaches inform the increasing affinity for sex reassignment therapies.

According to Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, gender identity disorders “are characterized by strong and persistent cross-gender identification
accompanied by persistent discomfort with one’s assigned sex.” The name for the condition suggests that the pathology consists in having the experience of a gender different from one’s natal birth. Accordingly, one may not have an intersex condition, increasingly called a disorder of sexual development in the literature (Criteria C). At the same time, one must have a persistent discomfort with one’s natal sex or the gender role assigned to it (Criteria B), and a strong identification with the opposite gender (Criteria A). In other words, one must not only experience discomfort with one’s given gender, but one must identify with the opposite gender. Finally, there must be evident distress or impairment of social, occupational, or other areas of life (Criteria D).

The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, in changing the name to gender dysphoria removes the pathology from the incongruent experience of having a gender unique to one’s natal sex and places it on the distress that such an experience causes. By de-pathologizing the transgender experience, they open the door to transsexual therapies. Alice Dreger, in “Why Gender Dysphoria Should No Longer Be Considered a Medical Disorder,” highlights the intentional motivation behind this change of approach. It further delineates criteria for diagnosis in two subgroups based on age—children and adolescents and adults. It defines gender dysphoria more concretely for children, having more criteria that must be met (six instead of two). In both cases, the patient must experience the incongruence for at least six months. Children must present with either a strong desire to be the opposite gender or the insistence of being the opposite gender. Moreover, they must present with five more distinct behavioral patterns, such as cross-dressing, a strong preference for: playing the opposite gender role in make-believe, opposite gender toys, opposite gender playmates, rejection of same-sex playmates, a strong dislike of one’s sexual anatomy, and strong desire for primary/secondary
sexual characteristics that match one’s experienced gender. Finally, this experience must impair the child’s functioning socially or in school, for instance.

In adolescents and adults, patients present with marked incongruence between one’s experienced gender and the assigned gender, with a strong desire to be rid of primary and secondary sex characteristics of one’s natal gender and a strong desire to have the primary and secondary sex characteristics of the opposite gender. In addition, there may be a strong desire to be treated as opposite of one’s natal gender and a conviction that one has the typical feelings or reactions of the other gender. As with children, the experience of dysphoria must interfere with one’s social, occupational, or other areas of one’s life.

Prevalence varies, but overall, more natal males experience gender dysphoria than natal females. Rates of persistence from childhood to adolescence or adulthood vary between 2.2% and 30%. Until 1923, when Magnus Hirschfeld argues to the contrary, clinicians did not distinguish gender dysphoria from homosexuality. There is, however, a strong correlation between gender dysphoria and same sex attraction. Sexual attraction among individuals varies, especially in men, however, most experience sexual attraction to one’s natal sex. Natal males who present later in life with gender dysphoria tend to be attracted to natal females. Differential diagnoses include nonconformity to gender roles, transvestic disorder, body dysmorphic disorder, psychotic disorders including schizophrenia, and other clinical presentations. Comorbidities include emotional and behavioral problems most commonly anxiety, disruptive impulsive control, and depression.

d. Sex Reassignment Therapies

Expert opinions diverge on appropriate treatment for gender dysphoria. Some encourage the pursuit of counseling that helps one identify with one’s natal sex. Others encourage people
struggling with gender dysphoria to change the body to match the so-called inside. The latter advocate the use of hormone replacement therapies and sex reassignment surgeries to facilitate the transition. There are multiple types of sex reassignment surgery. These include male-to-female and female-to-male operations that consist of genital reconstruction, breast augmentation, chest reconstruction, and hysterectomy. In addition, less invasive procedures include facial feminization surgery, vocal cord surgery, and Adam’s apple shaving. Some delineate between top or bottom procedures. Top sex reassignment surgeries refer to procedures that address the secondary sexual characteristics from the chest up to the face, while bottom sex reassignment surgeries refer to procedures that change the genitals.

This subsection addresses the complex definitions of sex, gender, gender dysphoria, and possible treatments. The following subsection analyzes three categories which the Catholic Church uses to preclude sex reassignment therapies.

ii. Objections to Sex Reassignment Therapies

On December 12, 2016, the Committee on Doctrine of the United States Conference of Catholic Bishops sent a memorandum to bishops addressing the rapid increase in people identifying as transgender. The committee highlights its concern that the Affordable Care Act recognizes gender identity as a protected category for antidiscrimination and the implications that this may have for Catholic Healthcare Services. The committee objects to sex reassignment therapies on three grounds: medical, philosophical, and theological. This subsection illuminates these three categories.

a. Medical

To be sure, researchers in the field face many challenges when it comes to data for gender dysphoria patients and outcomes of procedures. In part, this is due to the relatively small
number of individuals presenting with gender dysphoria (0.005% to 0.014% in adult males and 0.002% to 0.003% in adult females).\textsuperscript{77} But it may also be due to limited responses to surveys and poor therapeutic outcomes.\textsuperscript{78} Lawrence S. Mayer and Paul R. McHugh in “Gender Identity” examine scientific research and find little to no evidence that medical procedures to change gender have any psychological benefit.\textsuperscript{79} Moreover, in spite of the predominant view that gender identity originates at birth, they find no scientific evidence to support this belief.\textsuperscript{80}

Mayer and McHugh offer two well-documented cases that contradict the plasticity of gender that social constructionists advocate.\textsuperscript{81} First, John Money’s most famous patient is David Reimer.\textsuperscript{82} After a botched circumcision, physicians used both surgical and hormonal intervention attempting to raise Reimer as a girl.\textsuperscript{83} In spite of attempts to conceal the truth, Reimer self-identified as a boy.\textsuperscript{84}

Second, Mayer and McHugh offer a follow up study by William G. Reiner and John P. Gearhart of 16 genetic males with cloacal extrophy—deformed bladders and genitalia—which underwent surgical procedures to construct female genitalia and were to be raised as girls.\textsuperscript{85} According to the article, two subjects were raised as male, 8 of the 14 others self-identified as male during the course of the study, five persistently declared themselves female and one refused to respond.\textsuperscript{86} In addition, all showed moderate-to-marked male-typical behavior.\textsuperscript{87}

Mayer and McHugh argue that the abovementioned findings indicate that biological sex is clear, binary, and stable from almost all humans.\textsuperscript{88} Moreover, exceptions to sex-typical behavior do not contradict this biological reality, nor can surgery or social conditioning change it.\textsuperscript{89} Mayer, speaking on behalf of Johns Hopkins Psychiatry Department, concludes that human sexual identity is mostly built into one’s constitution by both genetics and embryogenesis.\textsuperscript{90}
Even if gender lacks the plasticity that constructionists defend, perhaps the incongruence lies in biology itself. For example, Robert Sapolsky suggests a neurobiological derivation for cross-gender identification.\textsuperscript{91} He suggests that people with cross-gender identification have a brain that is opposite their biological sex.\textsuperscript{92} Other researchers presume a similar line of thinking as they develop experiments to confirm biological differences between transgender and cis-gender brains including Nancy Segal,\textsuperscript{93} Michael Bostwick and Kari A. Martin,\textsuperscript{94} Giuseppina Rametti et al.,\textsuperscript{95} Emiliano Santarnecchi,\textsuperscript{96} Hsaio-Lun Ku et al.,\textsuperscript{97} and Hans Berglund et al.\textsuperscript{98}

Mayer and McHugh find the above-mentioned studies inconclusive and mixed.\textsuperscript{99} Even if studies could demonstrate conclusively that neurological differences exist in cross-gender individuals, this does not necessarily imply that these differences are biological or innate; rather, one could just as easily implicate environment or psychology.\textsuperscript{100} Accordingly, the only way to unequivocally establish biological causality is to “conduct prospective, longitudinal, preferably randomly sampled and population-based studies.”\textsuperscript{101} Unfortunately, to attain statistical significance, many of these studies would need to be larger than is realistically possible to achieve.\textsuperscript{102} To the contrary of the above-mentioned studies and a constructionist understanding of gender, Meyer and McHugh show that scientific evidence overwhelmingly supports the position that biological development and sex corresponds with gender identity.\textsuperscript{103} Consequently, research ought to look for social and psychological origins for cross-gender identification.\textsuperscript{104}

Paul W. Hruz, in Experimental Approaches to Alleviating Gender Dysphoria in Children, highlights that current research indicates that gender dysphoria is a multifactorial condition with genetic and environmental origins.\textsuperscript{105} He faults the rapid transition to non-psychiatric interventions for gender dysphoria to the strong ideological agenda that redefines the meaning and purpose of human sexuality.\textsuperscript{106} In addition, he attributes the rise in children presenting with
gender dysphoria to social affirmation. His article also raises challenges that research and treatment for gender dysphoria faces. Insofar as interventions supportive of gender transition contrast with Catholic anthropology, doing so, even for research purposes, may constitute proximate material cooperation with evil.\textsuperscript{107} In addition, Hruz underlines that children and adolescents do not have the maturity to give informed consent to procedures that have lifelong consequences.\textsuperscript{108} For Hruz, the high rate of spontaneous remission supports a cautious psychological approach that is antithetical to prevailing medical practice.\textsuperscript{109} Positively, he contends that Catholic hospitals stand in a unique position to occupy the void of reason, by treating patients in a manner consistent with their dignity and integrity.\textsuperscript{110}

Body dysmorphic disorder is similar to gender dysphoria with some pronounced differences.\textsuperscript{111} Suffers obsess or fixate on an aspect of one’s body that one believes to be disproportionate with the rest of the body.\textsuperscript{112} In body dysmorphic disorder individuals exhibit preoccupation with physical appearance not attributable to concern with body fat or weight.\textsuperscript{113} This may involve fixation over a body part, such as one’s nose, hairline, or genitalia, or it may pertain to one’s perception of musculature.\textsuperscript{114} As with gender dysphoria, individuals experience social anxiety and functional impairment.\textsuperscript{115} Comorbidities include anxiety, depression, and obsessive-compulsive disorder.\textsuperscript{116} They often seek cosmetic surgery, but experience dissatisfaction with results.\textsuperscript{117} They are high risk for suicide, especially in adolescents.\textsuperscript{118}

In “A New Way to Be Mad,” Carl Elliott explores the phenomenon of patients presenting with an obsessive desire to live as an amputee, which John Money calls apotemnophilia and relates to gender dysphoria.\textsuperscript{119} Apotemnophilia is distinct from acrotomophilia, which is a sexual attraction to amputees. Elliott highlights the similarity between gender dysphoria regarding
identity and selfhood. He speculates that cultural fixation on self explains why so many describe desires using reference to self and identity.

Elliott argues that apotemnophilia is more like gender dysphoria, because suffers tie amputation more closely to their identity than in body dysmorphic disorder, where the individual simply believes that an aspect of one’s body is disproportionate. He argues that just as culture creates apotemnophilia so it creates the transsexual by introducing the terminology and offering sex reassignment surgery as a solution. Ian Hacking uses the phrase semantic hacking to describe this phenomenon. Elliott points to the less than controversial relationship between psychiatry and surgery throughout its history including clitoridectomies for excessive masturbation and frontal lobotomies, as evidence for questioning the use of sex reassignment surgery as a remedy for gender dysphoria or amputations as a cure for apotemnophilia.

b. Philosophical

There are a number of philosophical tendencies that predominate in the ideology of gender, including, but not limited to: anthropological dualism, physicalistic determinism, and existential voluntarism. This subsubsection elucidates these tendencies and their disagreement with Christian anthropology.

Advocates of the ideology of gender presume an anthropology that relegates sexuality to choice, at best, largely rooted in anthropological dualism that originates in Rene Descartes’ *Meditations on First Philosophy*. Anthropological dualism emphasizes the separation between the body and the soul and the superiority of the latter, which Martin Rhonheimer calls spiritualism. Although historically present in various heterodox doctrines such as Gnosticism and Manichaeism, it is especially pronounced in the Rationalism. Descartes advocates radical dualism whereby two unique substances exist, yet abide in a tenuous relationship.
Descartes methodically questions everything from his sense perception to his own existence and even the existence of God.\textsuperscript{131} He ultimately concludes that the only thing certain is “Cogito, ergo sum.”\textsuperscript{132} This dictum becomes the subjective foundation for all knowledge and being.\textsuperscript{133} In this process, he divorces the spiritual from the corporeal establishing two mutually opposing substances.\textsuperscript{134} The mind becomes the sole principle of truth and being, whereas, he relegates the body to the unintelligible.\textsuperscript{135} Since the mind or soul exists independently of the body, Descartes conceives of the human person merely as the soul, trapped, so-to-speak, within the body.\textsuperscript{136} Hence he rejects Boethius’s definition of the human person as a rational animal.\textsuperscript{137}

Similarly, Rhonheimer attributes such an anthropological dualism to Karl Rahner’s definition of the human person as a spirit in the world.\textsuperscript{138} Rather, Rhonheimer, following Aquinas insists that the human person constitutes a substantial unity of body-soul composite.\textsuperscript{139} The soul is not the human person; rather, the human person is a composite of these two sub-personal entities.\textsuperscript{140} The body with its natural inclinations and desires contribute more than just neutrally to morality.

Concomitant to the development of continental rationalism is the expansion of British Empiricism, with its emphasis on knowledge derived from physical evidence.\textsuperscript{141} Empiricism, which originates with Francis Bacon, corresponds with the Scientific Revolution that emphasizes experimentation, induction, and material and efficient causality over formal and final causality.\textsuperscript{142} Science describes and predicts interactions between physical objects, which become the basis for the laws of physics.\textsuperscript{143} The nature of matter itself and its inherent purpose are of little consequence. Not only is sense knowledge of primary importance, it becomes the sole source of truth. The universal laws of physics govern not only the inanimate objects of the world, but also the more complex animate beings, which constitute merely a complex conglomeration of
the former. While Rationalism emphasizes the division between the body and the soul, the superiority of the soul, and the denigration of the body, Empiricism reduces the body to the interaction between its constitutive parts. For both, the body is only a slightly more complex combination of parts than a cotton gin, which the laws of physics govern. Hence, on the one hand, the body is undifferentiated matter and on the other, physicalistic or biological mechanisms determine it.

However, the Empiricist David Hume calls into question even the apparent cause-effect relationships between material bodies, insisting that they too originate from sense experience, and are therefore, *a posteriori*, not *a priori*. In other words, the laws of physics, for Hume, constitute synthetic rather than analytic propositions. Put another way, the laws of physics depend on sense experience for their confirmation and formulation and are not self-evidently true merely according to the formulation of the terms as if analytic.

Immanuel Kant further severs the divide between the mind—noumenon—and the external world or thing-in-itself—phenomenon—by responding to Hume in his *Critique of Pure Reason*. Kant argues that synthetic *a priori* knowledge is possible through reason. Unlike the dogmatic idealism of Berkeley, which denies the existence of the material world external to that of ideas, or the problematic idealism of Descartes, which doubts the existence of an external world, Kant knows the world through a transcendental idealism, which uses sense experience and reason to formulate the synthetic *a priori*.

Although Kant attempts to resolve the anthropological, dualistic divide that Rationalism and Empiricism creates, he only succeeds in solidifying it in his metaphysics. In Kant’s ethics, the divide is between the person and action, since the right action depends on a good will configured by the duty to an externally formulated moral law. Rhonheimer, in *The Perspective*
of Morality: Philosophical Foundations of Thomistic Virtue Ethics criticizes Kant’s ethics because it takes it away from the first-person perspective. In “Karol Wojtyla, Sex Reassignment Surgery, and the Body-Soul Union,” Jacob Harrison indicates that Wojtyla dislikes the evacuation of bodily, human experience from morality in Kant’s ethics. Wojtyla finds a synthesis for this division between bodily human experience and duty in Aquinas.

In addition to being dualistic and deterministic, the ideology of gender builds on an existential voluntarism. The problematic idealism of Descartes renders the body insignificant, at best, and deceptive or burdensome, at worst. Since the body lacks meaning, it becomes the role of the mind to give it meaning and definition. Consequently, constructionists utilize what I call an existential voluntarism to define the person and the body. It is existential insofar as the individual gives definition to the body, just as in contemporary existentialism the individual defines his or her purpose for existing. It is voluntaristic insofar as such an act presumes absolute freedom. Theological voluntarism, which emphasizes the omnipotent will of God over the omniscient intellect, originates with Duns Scotus. In Schopenhauer and Nietzsche the will provides the content of intelligibility. Speaking to this tendency, John Paul II, in Veritatis Splendor says, “a freedom which claims to be absolute ends up treating the human body as a raw datum, devoid of any meaning and moral values until freedom has shaped it in accordance with its design.” Not only is the body relative, but the ethics that govern the body are relative too. Each individual is free to ascribe meaning to the unintelligible body. It is in this philosophical milieu that Bruce Jenner tells Diane Sawyer that he feels like a woman trapped in a man’s body.

In Amoris Laetitia Pope Francis, denies the omnipotent freedom which the ideology of gender presumes insisting that as creatures humans must receive creation as a gift. Francis
challenges the faithful to help young people accept their bodies as created—male and female.\textsuperscript{160} In a General Audience on Man and Woman, Francis speculates that people attempt to cancel out sexual difference because they do not know how to confront it.\textsuperscript{161} However, he warns that removing difference only creates problems.\textsuperscript{162} Instead, he recommends listening to others as means to understanding the other.\textsuperscript{163}

c. Theological

While Descartes builds his philosophy on doubt, Christian anthropology builds on a foundation of trust. It presumes ontological and epistemic realism; namely, that the human person, beginning with the bodily senses, accurately perceives the world. Implicitly, this means that God is trustworthy. Because God creates according to an intelligible and immutable order, humans are able to engage with the world and even perceive God’s handiwork in creation.

Furthermore, Christian anthropology is holistic; the human person is not merely a soul trapped in a body. Following the proceedings of the Fifth Lateran Council, John Paul II asserts that for the human person, “the rational soul is \textit{per se et essentialiter} the form of the body.”\textsuperscript{164} The human person is not merely the soul; rather, the human person constitutes the substantial unity of body and soul.\textsuperscript{165} The unity between the body and the soul is so strong that the very definition and existence of the human person depends on it. Indeed, Aquinas holds that in death—the separation of the body from the soul—the human person dies.\textsuperscript{166} In an address to the 18\textsuperscript{th} International Congress of the Transplant Society, John Paul II defines death of the person as a single event, which consists of the total disintegration of the unitary and integrated whole that is the personal self.\textsuperscript{167}

John Paul II addresses human sexuality in his \textit{Theology of the Body}, which is largely an extended theological commentary on Scripture passages that form the foundation for Christian
theological anthropology beginning with Genesis 1-3.\textsuperscript{168} Far from a literalist account of how God creates the world, Genesis 1-3 is a theological explication of the human condition.\textsuperscript{169} God creates everything from nothing. Humans, however, are unique in that God creates them in His own image and likeness.\textsuperscript{170} God gives humans stewardship over the rest of creation.\textsuperscript{171} God also creates humans, male and female.\textsuperscript{172} It is precisely in this difference between male and female, which manifests a difference in the human person, that it is possible for humans to mirror the communion of persons in the Triune God.\textsuperscript{173} Concretely, this is actualized in the marital act, which is also the means for fulfilling the command to be fruitful and multiply.\textsuperscript{174}

In chapter 5 of his book, \textit{Sex and Virtue}, John S. Grabowski highlights the challenges that sexual difference poses for an adequate philosophy of human nature.\textsuperscript{175} Equality and difference are two important Scriptural features that one must preserve.\textsuperscript{176} Grabowski distinguishes between essentialists and constructionists.\textsuperscript{177} This is analogous to the divide between biology or nature and environment or nurture. Essentialists point to biological difference and emphasize that sex is part of nature.\textsuperscript{178} As the above articulation demonstrates, constructionists argue that one largely constructs gender and sexuality through culture and society.\textsuperscript{179} Extreme essentialism tends toward determinism, which clashes with human freedom, while extreme constructivism—reflective of a dualistic separation of the person from the body—denies the integral impact the body has on the human person.\textsuperscript{180}

Grabowski holds that human sexuality is not a difference of essence, since such a difference implies a difference of natures. If natures are different, then equality is also lost. Neither does he argue that human sexuality is merely a cultural construct. Rather, he argues that human sexuality is based on the person. Just as the relations between persons in the Trinity
account for the respective persons therein, so relations give definition to human persons. Of course, for humans, the capacity for communion is reflected in the body by sexual difference.

Elliott Bedford and Jason Eberl, in “Is the Soul Sexed? Anthropology, Transgenderism, and Disorders of Sex Development,” hold that sexual difference transcends even the level of the body to the soul as well. They contend that strictly speaking, the soul is not sexed since it is immaterial; however, insofar as it connects from the moment of creation with a sexed body it constitutes an inseparable accidental quality of the human being. Therefore, they hold that the soul is sexed. Edward Furton, in “The Soul Is Not Sexed,” argues that Bedford and Eberl’s perspective not only diverges from traditional Thomistic anthropology, but that it also introduces undesirable possibilities, such as, the possibility that God places the wrong soul in the wrong body. In addition, according to such a formulation, it runs aground of dualistic tendencies insofar as it connects sexual difference to the soul.

Bedford and Eberl respond to Furton’s critique in “Actual Human Persons Are Sexed, Unified Beings,” asserting that the soul in abstract—logically without reference to the body—is not sexed, however, in accord with Aquinas, just as the soul is individuated after creation by its connection to the body, so the soul is sexed, so-to-speak, after its connection to the body. Therefore, insofar as the soul and the body do not exist ontologically or temporally before each other and the so-called sexing of the soul takes place precisely because of its connection to a sexed body, it is impossible for God to put the wrong soul in the wrong body. In particular, Bedford and Eberl are concerned about the individuation and sex of the soul during the time after death—when the soul is separated from the body—and before the resurrection. Although the human person dies, they contend that the inseparable, accidental quality of sex that the body confers on the soul abides. By asserting that the sexing of the soul is not an essential
characteristic of the soul, he successfully avoids Furton’s critique that God or some other entity
could mistakenly place the sexed soul in the wrong body.

In addition to arguing that the soul is sexed by the body, so-to-speak, they assert that
intersex conditions and disorders of sexual development do not pose issues regarding ontology,
but merely epistemology.\(^{189}\) In other words, while intersex conditions may render it difficult for
one to determine one’s biological sex, it does not mean that one cannot determine which binary
sex one belongs to ontologically or biologically. In fact, as the first subsubsubsection in the previous
subsection demonstrates, genetic determination of biological sex does support such a view.

Consequently, the sexual body influences the human person and contributes to one’s
fulfillment.\(^{190}\) In other words, every human person is a sexual human person, which also relates
to the human vocation of love.\(^{191}\) For Grabowski, and John Paul II, human persons are unique
precisely because they are created in the image and likeness of God. In \textit{Mulieris Dignitatem},
John Paul II explains that having been endowed with a rational intellect and a free will, humans
have the capacity to love in their nature, which entails the capacity for relationship.\(^{192}\) They are
able to relate to God and one another. Humans relate to one another as a community of
persons.\(^{193}\) But the primary form of human relations is the communion of persons physically
manifest by the marital act, whereby husband and wife become one flesh.\(^{194}\) This is possible
precisely because of the physical differences between the sexes, which also manifests the
inherent complementarity and speaks to the longing for communion that every person
experiences.\(^{195}\)

Analogously, just as the eternal love between the Father and the Son engenders the
spiration of the Holy Spirit, so the communion of persons manifest in the marital act engenders
human life by giving rise to offspring. For this reason, marriage and the family constitute a
primordial cell for larger communities. Whenever a husband and a wife engender a child through the marital act, they are cooperating in the sacred act of creation of a new human person. While the mother and father contribute the biological seeds for creation, God creates the human soul.

God does not create arbitrarily; rather each individual has a particular calling or vocation that has eternal implications. Charity is the form of all vocations. In other words, God calls everyone to make a sincere gift of oneself for the sake of others. This form of love is self-sacrificial, in that it considers the wellbeing of the other before oneself. It constitutes the agape love, which Christ demonstrates by his death on the Cross. While most are called to the married life, some are called to a vocation of charity that entails celibacy. Regardless, one’s sexuality is foundational for forging one’s life of charity. Put another way, everyone lives out his or her vocation through his or her sexuality.

In the married life this entails the marital act, while in celibate vocations it does not.

While society focuses on conjugal relations as the ultimate expression of one’s sexuality, for the Church, sexuality has a deeper meaning. John Paul II argues for a spousal meaning of the body, which corresponds to the masculinity and femininity of the human person. Insofar as sexuality characterizes the human person it also forms how one lives out one’s vocation to Christian charity. Every man has a vocation to fatherhood, while every woman has a vocation to motherhood. This is not restricted to mere physical parenthood. Indeed, some are called to spiritual fatherhood or motherhood, as is the case with priests and religious. Essentially, a woman’s femininity shapes how she loves just as a man’s masculinity shapes how he loves.

This subsection demonstrates the incompatibility of the ideology of gender, which underlies arguments in favor of sex reassignment therapies, on the basis of three categories:
medical, philosophical, and theological. The following subsection considers sex reassignment surgery in light of the Principle of Totality and Double Effect.

**iii. Totality and Double Effect**

This subsection shows that the Principle of Totality and the Principle of Double Effect do not justify sex reassignment surgery in patients with gender dysphoria, especially in light of the above-discussed implications for anthropology.

*a. The Principle of Totality and Integrity*

In general, respect for the human person precludes the mutilation of one’s body. Whenever something causes harm to even the smallest part of one’s body, it harms the whole person. Theologians argue that the human body belongs to God. As such, no one is unequivocally free to harm oneself or another. However, circumstances arise when it is necessary to perform operations that harm the body but benefits the whole person. The Principle of Totality and Integrity justifies such acts.\(^{209}\) The United States Conference of Catholic Bishops’ *Ethical and Religious Directives for Catholic Health Care Services*, insists that everyone has a right and duty to protect and preserve the body and its functional integrity; however, one may sacrifice the latter to maintain the health or life of the person, if no other permissible means exists.\(^{210}\) The following constitutes an articulation of the Principle of Totality as Aquinas and Pius XII articulate it and theologians apply it to sex reassignment surgery.

In the *Summa Theologica*, Aquinas addresses circumstances that may warrant maiming the body.\(^{211}\) He argues that removing a healthy member of a person’s body does harm to the whole person, and therefore, is unlawful.\(^{212}\) However, one may lawfully remove a diseased body part, if doing so benefits the whole person.\(^{213}\) This line of reasoning justifies the amputation of diseased limbs. This constitutes a rudimentary form of the Principle of Totality.
In 1735, Claudius Amyand performed the first successful appendectomy on an 11-year-old boy. While Aquinas’s articulation justifies the removal of diseased limbs or organs, it does not yet address circumstances whereby one may need to surgically damage healthy tissue to get to and extract diseased organs or remove healthy organs that exacerbate medical conditions. Pius XII develops the Principle of Totality in an “Address to the Delegates at the 26th Congress of Urology,” that covers such circumstances. Although it renders the patient sterile, Pius XII argues that one may remove a prostate cancer-sufferer’s testicles (bilateral orchiectomy), since male hormones—that the testicles produce—speed the growth of prostate cancer.

He offers three conditions that must be met to justify the removal of a healthy organ that exacerbates another condition. First, the continuing function of the organ in question must cause serious damage or constitute a threat. Second, the only way to avoid this damage or threat is to mutilate (remove) this organ, and that the effectiveness of doing so it well assured. Finally, the positive effect of removing the organ must outweigh any negative effects.

Becket Gremmels argues in “Sex Reassignment Surgery and the Catholic Moral Tradition: Insight from Pope Pius XII on the Principle of Totality,” that one struggling with gender dysphoria may meet the three criteria for the Principle of Totality and Integrity that Pius XII proposes to justify sex reassignment surgery. First, he acknowledges that theologians traditionally argue against sex reassignment surgery because it renders the patient sterile. Gremmels insists that for one struggling with gender dysphoria, his or her genitalia contribute to and exacerbate gender dysphoria, thereby meeting the first criteria and the first part of the second criteria. However, Gremmels is unsure if sex reassignment surgery meets the second criteria—well-assured effectiveness—and the third criterion.
Gremmels argues that although the Principle of Totality normally refers to parts of the body for the sake of the whole, one may envision sacrificing body parts for the sake of other parts of the person. To explain, he introduces a Cartesian, dualistic understanding of the human person. In “The Principle of Totality Does Not Justify Sex Reassignment Surgery,” I explain the incongruence between the Cartesian, dualistic understanding of the human person and the integral understanding of the human person as body-soul unity. Similarly, John F. Brehany, in “Pope Pius XII and Justifications for Sex Reassignment Surgery,” indicates that the first criteria could never be met since a real disjunction between the body and the soul cannot exist.

Brehany insists that Natural Law limits the scope of application for the Principle of Totality. He refers to a previous statement by Pius XII regarding immanent teleology of human nature and a hierarchy of values, which he argues contextualizes and limits the use of the Principle of Totality. Brehany observes that Pius XII offers two instances that fail to respect the hierarchy and teleology due to Natural Law: one, destroying one’s freedom to relieve a psychological disorder, and two, “overcoming sexual repression through immoral behavior,” both of which sex reassignment surgery attempts to do. E. Christian Brugger, in “Catholic Hospitals and Sex Reassignment Surgery: A Reply to Bayley and Gremmels,” argues that this same statement by Pius XII places a duty upon health care workers to affirm each person in the sex that nature determines. Finally, Brehany understands Pius XII’s third criterion for the Principle of Totality to only apply in circumstances that constitute life and death, which gender dysphoria does not include.
b. The Principle of Double Effect

Carol Bayley, in “Transgender Persons and Catholic Healthcare,” argues that the Principle of Double Effect justifies the use of sex reassignment surgery in persons with gender dysphoria.\textsuperscript{234} This subsubsection articulates the Principle of Double Effect and demonstrates how in the context of Catholic anthropology sex reassignment surgery is not morally permissible. First, I elucidate the Principle of Double Effect. Second, I summarize Bayley’s argument. Third, I pinpoint the Moral Object of the Act for sex reassignment surgery.

Like the Principle of Totality, Aquinas is the first to introduce Double-Effect Reasoning in the \textit{Summa Theologica}.\textsuperscript{235} In response to the question of killing in self-defense, Aquinas observes that some actions have a good and a bad effect, one intended and the other unintended.\textsuperscript{236} For example, in self-defense, one may intend to save one’s life by an action that has an unintended effect of killing an assailant.\textsuperscript{237} Self-defense, however, is not a veil for an immoral intention. Aquinas agrees with Augustine that one should never intend to kill another person, even for a good ulterior motive—saving one’s life.\textsuperscript{238} Consequently, Aquinas insists that one’s defensive act must be proportionate to the assailant’s attack.\textsuperscript{239}

T. A. Cavanaugh, in \textit{Double-Effect Reasoning: Doing Good and Avoiding Evil}, offers a contemporary formulation of the Principle of Double Effect.\textsuperscript{240} First, the act in question must be good in itself, or at least indifferent.\textsuperscript{241} In other words, the Moral Object must be good or neutral. Second, the agent must intend the good effect, and not the bad effect.\textsuperscript{242} In Thomistic terms, the bad effect must be \textit{praeter intentionem}—beside the good effect.\textsuperscript{243} Cavanaugh argues that foreseen is the best way to describe the will’s relationship to the bad effect.\textsuperscript{244}

Third, the bad effect must not cause the good effect.\textsuperscript{245} This third criterion arises from a casuistic approach to ethics, that is, a third-person approach.\textsuperscript{246} During the manualist period of
ethics, that is, when instructors taught ethics from manuals, ethicists focus on the perspective of the outside observer, as opposed to the first-person perspective.\textsuperscript{247} From the perspective of the acting person one may reword this third criterion as no good end justifies an evil means (Moral Object).\textsuperscript{248} Fourth, there must be a proportionately grave reason for performing the act with such a negative consequence.\textsuperscript{249} This corresponds to Aquinas’s concept of using proportionate means to repel an attack, for instance.\textsuperscript{250} One corollary to the fourth criterion is that no legitimate alternative may exist.\textsuperscript{251}

Bayley argues that one may justify sex reassignment surgery for patients presenting with gender dysphoria. First, in accord with the first criterion of Double Effect, she insists that sex reassignment surgery is morally neutral.\textsuperscript{252} Second, Bayley asserts that the good effect is that the inside experience matches the outside of the person.\textsuperscript{253} The sterilization does not cause the good effect, but merely constitutes an unintended, yet foreseen consequence of correcting a birth defect.\textsuperscript{254} Although not stated explicitly, presumably sex reassignment surgery is not only proportionate to the pathology, but the only legitimate alternative.

Bayley’s line of reasoning contends that transgenderism is analogous to disorders of sexual development.\textsuperscript{255} She holds that hormonal delivery and brain structure influence gender dysphoria.\textsuperscript{256} Consequently, since physicians are willing to utilize the whole gamut of procedures to correct anomalies associated with mastectomies or so-called bottom correcting surgeries on patients recovering from cancer or disorders of sexual development, respectively, then they ought to perform them on patients with the pathology of gender dysphoria.\textsuperscript{257} The problem with this line of reasoning lies in the faulty anthropology, which Bayley utilizes to formulate her argument. Bedford and Eberl argue that there is an essential difference between procedures that treat disorders of sexual development and sex reassignment surgery, which reflects an
anthropological difference. Accordingly, disorders of sexual development do not challenge the binary sexual complementarity, but only make sense in the context of such a binary milieu.

As the above section demonstrates, advocates for sex reassignment surgery hold three anthropological positions that are contrary to Catholic anthropology: Cartesian dualism, materialistic determinism, and existential voluntarism. Bayley, holds that the internal sex of the person may differ from one’s natal sex. Bedford and Eberl refer to this as the subconscious sex or the sex of the mind. Cartesian dualism is inherent in this position, because it presumes a dichotomous relationship between one’s internal experience and the external body. In addition, advocates hold the mutually exclusive positions that culture and society construct gender and that biology determines it. Presumably, if biology determines the subconscious sex of the mind, then the transgender experience merely constitutes a birth defect that one ought to correct with sex reassignment surgery. Contrarywise, if gender is merely constitutive of social or cultural construction, then it does not depend on biology at all; rather, one is free to change one’s biology to accord with one’s socially-constructed subconscious sex, which reflects existential voluntarism. As the above demonstrates, advocates of gender ideology use both arguments to justify sex reassignment surgery. Both contradictory positions cannot be correct; however, both can be wrong.

Bayley intimates that sex reassignment surgery is no different than a surgical procedure in patients with disorders of sexual development and therefore, the act itself is neutral. The action itself refers to the Moral Object, which constitutes one of the three criteria that determine the morality of the act according to the Catechism of the Catholic Church: object, end, and circumstances. For Bedford and Eberl, the difference between therapies to treat disorders of sexual development and sex reassignment surgery not only reflects a difference in anthropology,
but also a difference in the Moral Object.\textsuperscript{266} The following elucidates the Moral Object, in general, and in particular, for sex reassignment surgery.

For Aquinas, all actions have ends.\textsuperscript{267} Properly speaking, human actions proceed from a deliberate will, that is, reason configures an action such that the will chooses it as a good end.\textsuperscript{268} What is last on the order of execution is first on the order of intention; therefore, actions begin with intention.\textsuperscript{269} In other words, whenever one sets out to do something, one has a purpose in mind for doing it. The purpose is what Aquinas identifies as the intention or end of the act—the second of the three above-mentioned criteria that determine the morality of an act.\textsuperscript{270}

In contrast, the Moral Object constitutes a means chosen for an end, which constitutes an action.\textsuperscript{271} Insofar as the Moral Object is an action, which the will chooses and executes, Aquinas distinguishes between the internal and external act; the former concerns intention/end, while the latter concerns choice/Moral Object.\textsuperscript{272} Concerning the exterior act, Aquinas insists that \textit{materia circa quam} identifies the Moral Object which reason configures and presents to the will as an object of choice.\textsuperscript{273} The external act, \textit{materia ex qua}, on the other hand, identifies the physical act itself, devoid of intention.\textsuperscript{274} Because the Moral Object has intentional content, Aquinas uses proximate end to distinguish the Moral Object from the ulterior end.\textsuperscript{275}

Ethicists get into trouble when they equate the Moral Object with either the physical act devoid of intentional content, that is, the external act \textit{materia ex qua}, or when they equate it with the intention, that is, the purpose of the act. Both tendencies occur when one approaches moral decision making from a third-person perspective, rather than a first-person perspective. Manualists, for example, tend to equate the Moral Object with merely the physical act itself. By way of illustration, manualists define the sin of contraception as \textit{coitus interruptus}.\textsuperscript{276} Conversely, proportionalists such as Peter Knauer, equate the Moral Object with intention.\textsuperscript{277}
Knauer establishes proportionalism in opposition to the manualists, but he retains the physicalistic methodology, defining moral evil as the causing of evil in the world.\textsuperscript{278} Both commit the Naturalistic Fallacy. They assume that the moral order derives from the natural order.\textsuperscript{279} To avoid this ethical pitfall, one must maintain the first-person perspective of ethics, not defining moral evil in purely physical terms. Consequently, Gremmels moral intuition is correct to reject an ethical objection against sex reassignment surgery merely because it results in the physical condition of sterilization.\textsuperscript{280}

In accord with the above-mentioned philosophical theories, Bedford and Eberl determine that the immediate (or proximate) end, that is, the Moral Object in question, sex reassignment surgery for patients experiencing gender dysphoria is bodily or personal integration.\textsuperscript{281} Insofar as Catholic theological anthropology denies such a dualistic understanding of the body-soul composite of the human person, such a presumptive Moral Object is immoral.\textsuperscript{282} At the same time, they reject a reductive materialistic concept that presumes a divide between the sex of the mind and the sex of the body.\textsuperscript{283}

Therefore, strictly speaking, sex reassignment surgery is not immoral because of the physical consequence of sterility which it unequivocally induces, but because it presumes to correct a problem that cannot exist—an internal sexual identity that diverges from one’s so-called external sex. Of course, as Brugger suggests, such a line of reasoning not only calls into question sex reassignment surgery, but any therapies that collude with the patient in such a way that one presumes to alter another’s biological sex so as to accord with one’s internal gender.\textsuperscript{284} In a culture where action—especially physical intervention—seems to outweigh apparent inactivity, the appropriate response to gender dysphoria is accompaniment, which the Ethicists of The National Catholic Bioethics Center advise.\textsuperscript{285} By accompanying individuals suffering with
gender dysphoria one not only avoids causing irreparable harm, but also aides them in achieving authentic human flourishing.

This section reveals that a Thomistic understanding of the Moral Object steeped in the context of Catholic anthropology, prohibits an argument in favor of sex reassignment surgery for patients presenting with gender dysphoria either with recourse to either the Principle of Totality or Double Effect. The following section examines the use of contraceptives for non-contraceptive benefits.

6B. Non-Contraceptive Benefits of Contraceptives

This section analyzes the clinical mechanism of several contraceptive methods focusing on intrauterine devices and implants, because of the complexity of their physiological mechanism of action and the longevity of their use. Second, I articulate a Thomistic understanding of the Moral Object so as to distinguish utilizing a contraceptive medication as a contraceptive versus using it for its non-contraceptive benefits. Third, in light of the negative side effects, including potential abortifacient activity, I use the Principle of Double Effect to further analyze and justify the potential use of contraceptive medications for non-contraceptive benefits.

i. Clinical Analysis

This subsection analyzes the clinical use of intrauterine devices as a contraceptive. Then, it explores the use of implants as contraceptives. Finally, it considers the non-contraceptive benefits of both.

a. Intrauterine Devices as a Contraceptive

According to Marc A. Fritz and Leon Speroff, historically, the first intrauterine devices are stem pessaries, that is, small button-like structures with stems that cover the opening of the
cervix. Carl Hollweg is the first physician to patent such a device, which he originally intended to support the uterus, not, however, to act as a contraceptive. According to Lazar Margulies in “History of Intrauterine Devices,” Richard Richter is the first physician to patent an intrauterine device as a contraceptive, utilizing silkworm, catgut, and a wire that extends through the cervix. Karl Pust replaces the wire with a catgut string. In the late 1920s, Ernest Graefenberg experiments with metallic rings of various alloys of gold, silver, copper, nickel, and zinc. Great Britain, Canada, and Australia use these early intrauterine devices, while the United States and continental Europe largely reject them because of high rates of expulsion and infection.

In 1960, Margulies develops the first plastic intrauterine device called Margulies Coil. The turgid plastic tail proves precarious for sexual partners. In response, Jack Lippes offers the first intrauterine device with a filament thread at the first international conference on intrauterine devices in 1962. In subsequent years entrepreneurs develop alternate devises, which lead to wide utilization during the 1960s and 1970s. However, the Dalkon Shield proves dangerous because its multifilament plastic-covered tail transmits bacteria giving rise to many cases of pelvic inflammatory disease. Subsequent lawsuits and negative publicity—from the lawsuits and allegations that intrauterine devices cause infertility—lead to a bad rap for all intrauterine devices and their use diminishes during the 1980s and 1990s. In 2009, only 2% of women who use contraceptives in the United States choose an intrauterine device.

In the late 1960s, Jaime A. Zipper and Howard J. Tatum develop the first intrauterine device that uses copper. Although there is no consensus, Fritz and Speroff hold that copper prevents implantation of a fertilized ovum. Daniel R. Mishell in “Intrauterine Devices,” argues that copper-bearing intrauterine devices disrupt the ability of sperm to survive and move into the cervix.
Mishell holds that the low number of ectopic pregnancies indicates that fertilization rarely occurs. The ESHRE Capri Workshop Group in “Intrauterine Devices and Intrauterine Systems,” argues that since insertion of a copper intrauterine device in early luteal phase is highly effective as an emergency contraceptive, it must perform some post-fertilization action, producing an embryotoxic environment. In the United States, TCu-380A, also called ParaGard represents the copper intrauterine device still in use today. While it is only approved to prevent pregnancy for 10 years, wearing it for 20 years carries a small risk for pregnancy.

The levonorgestrel-releasing intrauterine system, marketed as Mirena® and manufactured by Schering-Oy, has been available in Europe since 1990 and the United States since 2000. This device prevents pregnancy for at least 5 years by releasing 20μg of levonorgestrel per day, in the first year, and 11μg by the end of the fifth year. Similar to copper intrauterine devices, it induces an immunological response as a foreign body causing the endometrium to release leukocytes and prostaglandins. In addition, the levonorgestrel thickens the cervical mucus preventing the transport of sperm through the cervical canal. As Mishell, indicates both copper intrauterine devices and levonorgestrel-releasing intrauterine systems induce an inflammatory response, which causes leukocytes to phagocytize the sperm. In addition, levonorgestrel-releasing intrauterine systems act as abortifacients by thinning the endometrium, preventing implantation should fertilization occur.

b. Long-Acting Contraceptives

There are two unique, long-acting contraceptives available for market in the United States: implants and depot-medroxyprogesterone (Depo-Provera). As with intrauterine devices, the advantage for long-acting contraceptives is that they do not require a high degree of
user compliance in order to get a high degree of contraceptive efficiency. This subsubsection
discusses the history and mechanism of these two contraceptives.

The Population Council develops the first implant, which they market as Norplant and
receives approval for use in Finland in 1983.312 The United States Food and Drug Administration
approves it for use in the US in 1991; however, because of profit and liability disputes, the
United States market withdraws it in 2002.313 Norplant consists of six small capsules
containing levonorgestrel, which leach 39μg into the body per day elevating plasma
progesterone levels providing at least five years of pregnancy prevention.314 Norplant’s primary
mechanism of action is anovulation.315 In addition, the elevated levels of progesterone impair
sperm ascent to the fallopian tubes.316 It also appears to inhibit endometrial development, thereby
preventing implantation, should fertilization occur.317 However, Sheldon et al. argue that it is
very unlikely that fertilization occurs, since they did not observe elevations in human chorionic
gonadotropin, which the trophoblast produces in order to maintain the function of the corpus
luteum, for which survival of the pregnancy depends.318

There are two United States Food and Drug Administration-approved contraceptive
implants in the United States: Implanon and Jadelle.319 The United States Food and Drug
Administration approves Organon-manufactured Implanon in July 18, 2006.320 Implanon is an
etonogestrel 65mg single-rod implant that a physician implants under skin of the woman’s
underarm.321 It constitutes a slow-release progestin that last for at least three years.322 Note that
progestin refers to synthetic progesterone analogues.323 Jadelle, United States Food and Drug
Administration-approved in 1996, similar to Implanon, consists of two thin rods each containing
75mg of levonorgestrel, wrapped in steroid-permeable silastic tubing.324 Fritz and Speroff say
that implants are a good method of contraceptive for women of reproductive age that are sexually active and want to stave off pregnancy for 2 to 3 years.\textsuperscript{325}

There are three primary mechanisms for implants. First, progestin suppresses luteinizing hormone at both the pituitary and hypothalamus, which is necessary to induce ovulation.\textsuperscript{326} In some women ovulation does occur toward the end of five years, but the luteal is insufficient.\textsuperscript{327} In addition, progestin affects cervical mucus causing it to thicken and decrease, which inhibits sperm penetration.\textsuperscript{328} Finally, progestin suppresses the estradiol-induced cyclic maturation of the endometrium.\textsuperscript{329} Consequently, if fertilization does occur—of which there is no evidence—implantation will not ensue.\textsuperscript{330}

The last contraceptive to consider is depot-methoxyprogesterone acetate marketed as Depo-Provera. Historically, Searle and Upjohn simultaneously discover depot-methoxyprogesterone acetate in 1956.\textsuperscript{331} The United States Food and Drug Administration first approves Upjohn’s medroxyprogesterone acetate, the active ingredient in Depo-Provera, in 1959 to treat amenorrhea—the absence of menstruation—irregular uterine bleeding and miscarriages.\textsuperscript{332} In 1960, the United States Food and Drug Administration approves Depo-Provera to treat endometriosis—the growth of endometrial tissue outside the uterus.\textsuperscript{333} In 1974, the United States Food and Drug Administration rescinds its approval of Depo-Provera for treating miscarriages and endometriosis.\textsuperscript{334} In 1972, the United States Food and Drug Administration approves it for treating inoperable and metastatic endometrial and renal cancer.\textsuperscript{335} Although the United States Food and Drug Administration notes the effectiveness of 150mg injections at preventing pregnancy, it repetitively questions its safety because of two long-term animal studies in which beagles develop breast cancer and monkeys develop endometrial cancer.\textsuperscript{336} In \textit{Contraceptive Risk: The FDA, Depo-Provera, and The Politics of Experimental
Medicine, William Green follows, in detail, the chronological development of the United States Food and Drug Administration’s eventual approval of Depo-Provera in 1992. The current prescribed dosage remains a 150mg injection every three months. The mechanism is slightly different from the abovementioned implants insofar as the progestin level are high enough to completely block luteinizing hormone surges, thereby completely preventing ovulation. In addition, the cervical mucus thickens and the endometrium changes. Depot-methoxyprogesterone acetate does not inhibit follicular stimulating hormone, so follicular growth continues, consequently, estrogen levels remain normal.

c. Non-Contraceptive Benefits of Contraceptives

Each of the abovementioned contraceptive methods has both positive and negative side effects. Some argue that the negative side effects suffice for a wholesale rejection of these methods for any beneficial use. This subsubsubsection highlights the clinical side effects of each of the abovementioned methods, focusing especially on the positive. In particular, it focuses on the use of these medications to treat amenorrhea and pain associated with endometriosis.

In his medical glossary in Contraceptive Risk: The FDA, Depo-Provera, and the Politics of Experimental Medicine, William Green defines endometriosis as a painful condition in which the tissue that lines the inside of the uterus grows outside of it. Like ordinary endometrial tissue, it thickens, breaks down, and bleeds with each menstrual cycle; with nowhere to go, it irritates surrounding tissue and eventually gives rise to cysts. Although there is no generally accepted explanation for the pathogenesis of endometriosis there are several working theories. John Sampson, the first gynecologist to use the term to describe cysts associated with endometriosis, develops the first theory to explain its pathogenesis called retrograde menstruation and implantation. Essentially, he argues that during menstruation endometrial
tissue transfers through the Fallopian tubes into the peritoneal cavity, where it implants on pelvic organs. The coelomic metaplasia theory holds that coelomic epithelial cells in the peritoneum and the pleura that differentiate into mesothelial cells experience spontaneous metaplastic change. The induction theory holds that such change occurs because of exposure to menstrual effluent. Although other theories exist, these constitute the most obvious explanations.

Immunologically, ectopic endometrial cells in women with endometriosis are less vulnerable to macrophages-mediated immune surveillance and clearance. In addition, endometrial cells are resistant to apoptosis—gene-regulated programed cell death. Estrogen overproduction occurs in endometriotic—ectopic endometrial cells—stromal cells—cells pertaining to connective tissue—because of the presence of steroidogenic factor 1, which combines to induce the expression of steroidogenic acute regulatory protein and CYP19A1. Women with endometriosis also seem to have resistance to progesterone, which may be attributable to progesterone receptor deficiency in endometrial and endometriotic stromal cells. Progesterone activates the retinoic acid pathway in normal endometrial stromal cells, which gives rise to differentiation and apoptosis.

Treatment for endometriosis depends largely on the extent of the disease and severity of symptoms. Physicians treat more severe cases with surgery. Medical treatment consists of estrogen-progestin contraceptives, progestin, gonadotropin-releasing hormone agonists, danazol, and aromatase inhibitors. All of these treatments inhibit fertility insofar as they prevent ovulation. Estrogen-progestin contraceptives mimic the hormonal environment of pregnancy and may improve apoptosis in eutopic endometrial tissue. At the same time, estrogen has been shown to activate endometrial growth, exacerbating the condition and symptoms. Moreover, the withdrawal of estrogen reverses endometrial cell viability. Joon Song holds that estrogen
acts as a survival factor inhibiting apoptosis. Progesterone, on the other hand, induces apoptosis. Hence many physicians find progestin-releasing contraceptives particularly effective for treating endometriosis, which includes all of the methods in the first subsubsection. Unfortunately, in women with endometriosis, the endometrial and endometriotic cells are more sensitive to estrogen and resistant to progesterone, limiting the effectiveness of progestin-releasing contraceptives for treating endometriosis and its symptoms.

Gonadotropin-releasing hormone agonists induce pseudomenopause preventing the ovaries from receiving gonadotropin stimulation, thereby depriving the body of estrogen support and inducing amenorrhea—the absence of menstruation, which prevents further seeding in the peritoneal. Unfortunately, gonadotropin-releasing hormone causes significant decrease in bone density in patients with endometriosis. Danazol, the first drug United States Food and Drug Administration approved specifically to treat endometriosis prevents the luteinizing hormone surge; therefore, inducing a state of indefinite anovulation. Unfortunately, the many androgenic and hypoestrogenic side effects limit its utility. Finally, Aromatase inhibitors have had very limited outcomes, but warrant further research, especially in combination with other medications.

Another common condition that affects women is abnormal uterine bleeding sometimes called menorrhagia, which may be associated with any number of underlying conditions including: pregnancy, anovulation, uterine pathology, or coagulopathies. Bleeding is common with menses, that is, menstruation, which is part of the normal ovarian cycle. During the follicular phase, estrogen levels rise in an exponential fashion causing the functional layer of the endometrium to grow. After ovulation—the release of a mature ovum—the remaining corpus
luteum continues to produce estrogen, but also begins producing progesterone. Both hormones rise with the maturation of the corpus luteum, causing further development of the endometrium in anticipation of implantation should fertilization occur.

If fertilization does not occur, then the corpus luteum spontaneously dies in apoptosis, causing levels of both estrogen and progesterone to fall. The steady decrease in these hormones induces an inflammatory response, whereby lysosomes release enzymes into the cytoplasm of epithelial, stromal, and endothelial cells of the endometrium and the intercellular spaces, which, in turn, digest these cells and their constituents. The enzymatic activity on the endometrium eventually reaches the subsurface capillaries and veins causing interstitial hemorrhaging, the components of which escape into the endometrial cavity. Vasocostrictors halt menstrual bleeding in the exposed spiral arterioles of the basal layer endometrium. Once re-epithelialization concludes bleeding halts completely.

Since the presence or absence of estrogen and progesterone has such an important role in regulating menstruation, these hormones are also instrumental in helping to reduce bleeding in women with heavy bleeding during menses. At the same time, the exogenous addition or subtraction of estrogen and progesterone (or progestin) can cause breakthrough bleeding—bleeding before menses—or estrogen/progestogen withdrawal bleeding—primarily due to the disproportionate presence of these hormones. In spite of this risk, estrogen-progestin contraceptive and levonorgestrel-releasing intrauterine system are common medicinal treatments for heavy menstrual bleeding, since the progestin, the dominant hormone, inhibits menses.

In addition, these medications are effective at preventing anovulatory bleeding. Anovulation amounts to a perpetual state of follicular phase, since ovulation does not occur. Consequently, the body only releases estrogen, which causes the endometrium to grow without
the limiting effect of progesterone. The endometrium lacks sufficient stromal support cells giving rise to focal breakdowns that bleed.\textsuperscript{382} For women with anovulatory bleeding, the addition of exogenous progestin restores the natural mechanism whereby the endometrium sheds through regular menses.\textsuperscript{383}

This subsection demonstrates that the physiological mechanisms of contraceptives have positive effects on endometriosis and heavy bleeding. The following subsection delineates the Moral Object of using contraceptives for non-contraceptive benefits.

ii. Object

This subsection analyzes the development of the Catholic Church’s teaching concerning the use of contraceptives as a means of birth control, especially focusing on identifying its Moral Object. Then, it identifies the Moral Object of utilizing the abovementioned contraceptive methods for their non-contraceptive benefits.

a. Contraception, Casti Cannubii, and the Manualist

In \textit{Contraception: A History of Its Treatment by the Catholic Theologians and Canonists}, John T. Noonan, Jr. meticulously follows the precarious relationship between the Catholic Church and contraception.\textsuperscript{384} Noonan correlates the sharp decline in birth rate in Catholic France during the nineteenth century to the increased use of contraception.\textsuperscript{385} He attributes the acceptability of contraception to the rationalist malaise that sets in after the Revolution.\textsuperscript{386} In direct opposition to Catholic teaching, the anti-clerical French embrace the individualistic and radical ideals of rationalism, which instigates the Revolution. Consequently, they embrace the concept that the human body is merely a machine, the parts of which one may manipulate to achieve one’s ends.\textsuperscript{387} Noonan adds that the prospect of economic success also motivates the French working class to diminish their obligations, by reducing the number of progeny.\textsuperscript{388}
Noonan concludes that the initial motivation for the spread of contraception is irreligious, calculating, and egoistic.\textsuperscript{389}

Noonan stresses that moral theology was at a nadir during the nineteenth century, essentially amounting to seminary courses based on manuals, such as Jean Pierre Gury’s \textit{Compendium of Moral Theology}.\textsuperscript{390} In contrast to the rigidity of French Jansenism, Alphonsus Liguori’s approach is more tolerant and guides Rome’s initial response to contraceptive acts, which until the 1900s is indistinguishable from onanism or \textit{coitus interruptus}.\textsuperscript{391} During the second half of the nineteenth century, the use of contraception spreads as a social reform and gains acceptance from medical, scientific, and religious authorities.\textsuperscript{392} At the Lambeth Conference of 1930, Anglican bishops adopt a resolution that permits couples to use contraceptive methods where they deem it morally expedient to avoid pregnancy.\textsuperscript{393}

On December 31, 1930, Pope Pius XI responds with his encyclical \textit{Casti Connubii}.\textsuperscript{394} Noonan describes this as an excellent distillation of past doctrinal statements.\textsuperscript{395} After recapitulating the goods of marriage according to the Augustinian triad—offspring, fidelity, and sacrament\textsuperscript{396}—Pius XI reaffirms the necessity of growth in chastity with recourse to God’s grace; rather than, circumventing such efforts by means of biology.\textsuperscript{397} Thus, Pius XI builds his argument against contraception on two pillars: Natural Law and growth in chastity.

After enumerating several of the reasons couples give for avoiding children, Pius XI argues that no reason justifies acts that are intrinsically contrary to nature, namely, anything which frustrates the natural power for begetting children.\textsuperscript{398} He, with recourse to Augustine and Scripture—recalling Onan—solemnly defends the Catholic Church’s position that any frustration of the natural power of matrimony to generate life not only offends God, but also nature.\textsuperscript{399} Moreover, he chastises confessors who lead penitents into sin by approving of such acts, either
by silence or in words. For him, the chief obstacle to couples fulfilling the law of matrimony is unbridled lust that one can only overcome by subjecting oneself to God. Recourse to biology and science to curb one’s carnal desires cannot establish chastity. Pius XI recommends humble reflection on the sound wisdom of Church teaching concerning marriage, a steadfast determination of will to observe God’s sacred law, and recourse to the grace of the sacrament.

Until Paul VI publishes *Humanae Vitae*, *Casti Cannubii* constitutes the Church’s most solemn pronouncement on contraception. Much of the debate following *Casti Cannubii* centers on the meaning of Natural Law, since this constitutes the foundation of Pius XI’s philosophical objection. Pius XI focuses on physical acts that interfere with or frustrate the generative potential of the marital act. At the same time, Pius XI’s words in *Casti Cannubii* implicitly permit couples desiring to postpone or space children to reserve the marital act for times of natural infertility, even if this is not what he originally intends. Of course, so-called rhythm methods lack the reliability of barrier methods at the time. Since so much of the debate focuses on the physical frustration of the act, when birth control pills arise in the 1950s, moral theologians lack unanimity in their response. In fact, one of the pioneer physicians utilizing progesterone, John Rock, insists that it conforms well to the theological expectations of Catholic morality. In 1958, Louis Janssens writes “L’inhibition de l’ovulation, est-elle moralement licite?,” in which he argues in favor of women taking progesterone to inhibit ovulation. Progesterone appeals to Janssens because it only temporarily prevents ovulation and does not kill any eggs.

For Thomas Petri, much of the opposition after *Casti Cannubii* centers on objections to the methodology of moral theology, which overly focuses on physical action and strict obedience to the law. These characteristics of the manualist approach, Petri, in accord with Servais
Pinckaers, \(^{411}\) John Mahoney, \(^{412}\) John A Gallagher, \(^{413}\) and Albert R. Jonsen and Stephen Toulmin, \(^{414}\) attributes more to the nominalism of William of Ockham, than to Thomas Aquinas. \(^{415}\) Ockham’s nominalism begins with the denial that universal forms exist independently of human reason. \(^{416}\) Regarding morality, Ockham emphasizes freedom of indifference over inclinations. \(^{417}\) For him, freedom constitutes one’s ability to choose actions without persuasion from inclinations. \(^{418}\) Consequently, the sole cause of human action is self-determination. \(^{419}\) Moreover, just as no universal forms exist independently of the human mind, so moral truths depend exclusively on divine command. \(^{420}\) Hence, the morality of the manuals emphasizes divine command and mere physical adherence to laws.

\textit{b. Proportionalistic Reformulation of the Moral Object}

In turn, so-called proportionalists such as Louis Janssens attempt to retrieve the authentic teaching of Aquinas to counter the impersonal and physicalistic inclinations of the manualist tradition. In “Ontic Evil and Moral Evil,” Janssens attributes his distinction between ontic evil—physical evil—and moral evil—the intending of physical evil in the world—to Aquinas. \(^{421}\) According to Janssens’s interpretation of Aquinas, there is a distinction between the means and the end of an action. The means corresponds to the external action or the material element of an act. \(^{422}\) Alternatively, the end corresponds to the internal act of the will, which constitutes the formal act. \(^{423}\) Just as Knauer uses his interpretation of Aquinas’s proportion criterion for Double Effect to explain how a commensurate reason may justify one choosing a means that causes physical evil in the world, \(^{424}\) so Janssens argues that so long as the ends justify the means one may indeed choose to cause ontic evil. \(^{425}\)

More precisely, the \textit{debita proportio} must suffice to justify the means chosen. \(^{426}\) Put another way, Janssens argues that there must be no intrinsic contradiction between the means and
the end. To illustrate, he uses the example of stealing. If one chooses to steal something from another person as a means to affirming one’s right to ownership, the means do not justify the end since one attempts to affirm the value of one’s own ownership at the cost of one’s neighbor’s ownership. In this case, one is using a means that constituted as a value, contradicts the value that one affirms as one’s end. Janssens applies this line of reasoning to responsible parenthood. He argues that parents who know they do not have sufficient resources to raise more children by engaging in the marital act during the fertile periods. Therefore, insofar as both the so-called rhythm method and contraception do not obstruct conjugal love or responsible parenthood, they constitute acceptable means of achieving responsible parenthood.

c. Keeping the Object of the Act in the Genus Naturae

For Rhonheimer and John Finnis, maintaining the distinction between the moral order and the natural order is essential for any authentic ethical methodology and failure to do so constitutes the Naturalistic Fallacy. Hume first articulates the un-derivability of the moral order from the natural order by asserting that one cannot derive ought-statements from is-statements. Put another way, there is an irreducible difference between practical and speculative reason. For Aquinas, the same intellect acts by extension in practical knowing. Although practical knowing of the self-evident principles of the Natural Law depends one first knowing being speculatively, contrary to what Ralph McInerny says in *Aquinas on Human Action: A Theory of Practice*, this does not mean the former derives from the latter. Indeed, the formulations of practical syllogisms versus speculative syllogisms demonstrate this.

At the same time, this does not mean that one must sacrifice objectivity or universality in Natural Law. Finnis, in *Moral Absolutes: Tradition, Revision, and Truth*, contends that exceptionless moral norms do exist. Ethicists call them intrinsically evil acts and formulate
them as prohibitions. In *Humanae Vitae*, Pope Paul VI argues that contraception is an intrinsically evil act. An intrinsically evil act constitutes an act whose Moral Object is immoral, that is, contrary to reason. Intrinsically evil acts bear undue matter (*indebitam materiam*). Unfortunately, as the above discussion demonstrates, manualism, under the influence of nominalism, falls into the Naturalistic Fallacy insofar as it focuses on external physical acts being in or out of conformity with the divine law, regardless of intent. John Paul II, in *Veritatis Splendor*, insists that insofar as these acts are inherently contrary to reason, there is no exception to their prohibition. No amount of good intention or plight of circumstances justifies one deliberately choosing such an act. Janssens, however, argues that intrinsically evil acts do not exist; sufficient intention can justify any means. While John Paul II’s argument constitutes the traditional position of the Catholic Church against contraception, its methodology is unique.

By refocusing the discussion of ethics on intention, proportionalists attempt to correct the defective approach of the manualists; however, according to Rhonheimer, they fall victim to the same Naturalistic Fallacy they rebuke. Just as the manualists mistakenly identify the Moral Object as the physical content of an act, so proportionalists do the same. For Knauer, as well as Janssens, the Moral Object constitutes the causing of physical good or evil in the world. In method, this is no different than the manualist’s external conformity to divine law.

Janssens, Knauer, and Richard McCormick’s Moral Object diverges from Aquinas. Rhonheimer accuses McCormick of expanding the notion of the object by placing the sole source of intentional content in the remote end. Like McCormick, Janssens understands the external act, which he and Aquinas equate with the Moral Object to be a material entity—completely devoid of voluntariness. In one respect this is true. For example, Janssens understands the act
commanded by the will—the external act—to be the physical act. This agrees with what Aquinas says concerning the external act in *On Evil*.

However, Aquinas also attributes intentional content to the external act, independent of the remote end, what Rhonheimer calls intentional basic action. Thus, the external act is part of the moral order. Regarding the will commanding (*imperium*) an act, Finnis insists that the intellect constitutes the primary active faculty insofar as before one commands an action through the will, one discerns and chooses a particular course of action as the means for achieving one’s end. Moreover, insofar as one’s chosen means contain an intelligible content, they have an aspect of an end, which is what Aquinas says multiple times regarding the Moral Object. This, of course, is not to say that the will has nothing to do with commanding; rather, as Rhonheimer says that the will commands an act that reason configures.

In “‘Materia ex qua’ and ‘Materia circa quam’ in Aquinas,” Duarte Sousa-Lara shows how Aquinas uses *materia circa quam* (matter concerning which) and *materia ex qua* (matter out of which) to distinguish important elements of a human act. Aquinas says that *materia ex qua* is not the Moral Object, but *materia circa quam* is the Moral Object. In “Aquinas on Interior and Exterior Acts: Clarifying a Key Aspect of His Action Theory,” Sousa-Lara demonstrates that Aquinas uses this distinction to differentiate when Aquinas is speaking of the external act constitutive of the Moral Object versus the external act merely as the material, physical act alone. *Materia circa quam* denotes the inherent voluntariness of the external act, which constitutes it as the Moral Object (in the moral order). *Materia ex qua* connotes the external act prescinding from its voluntariness, thereby constituting it as part of the natural order.

Sousa-Lara illustrates the distinction between *materia circa quam* and *materia ex qua* using the sexual act. The physical act of sexual intercourse—whether it is adultery,
fornication, or marital love—constitutes a single external act *materia ex qua* according to the natural order. In the moral order, the *materia circa quam* differs insofar as adultery and fornication differ from marital love. So, the *materia circa quam* corresponds to the Moral Object in the moral order.

d. The Object of Contraception

In *Humanae Vitae*, Paul VI reaffirms the Church’s prohibition of contraceptive acts, that is “any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation.” Contrary to the opinion of most critics, Rhonheimer insists that *Humanae Vitae* is not merely a defense of Natural Law according to a naturalistic understanding. Rather, Paul VI’s argument conforms with a Thomistic articulation of Natural Law that constitutes the Moral Object in the moral order, precisely because it places its prohibition on the level of intention, not the physical or biological. On the order of intention, Rhonheimer defines the Moral Object of contraception. However, before doing so, he first explains the principle that it violates and then situates it within the framework of virtue and vice.

Rhonheimer, in accord with Aquinas, and John Paul II in *Veritatis Splendor*, insists that Natural Law is nothing but the light of reason aiding one in discernment of good and evil in action. One derives statements of Natural Law through speculative reflection on natural reason in action. Hence, ethicists often articulate the universal precepts of Natural Law as normative statements such as “do good and avoid evil.” However, the content of Natural Law is practical, thus in concrete action it takes the form of a command or precept. While Natural Law does not constitute a law of nature, it nonetheless works within the metaphysical and physical confines of nature, specifically human nature. Consequently, Paul VI explains how contraception violates the Inseparability Principle, which, in accord with human nature, holds that the unitive
significance of the marital act is inseparable from its procreative significance. However, the violation of this principle does not suffice for an ethical argument against contraception.

Rhonheimer situates his definition of the Moral Object of contraception in the context of virtue. First, he explains that the Moral Object of marital love consists of loving bodily union, which as mutual self-giving is naturally open to procreation. Insofar as marital love involves self-donation, it presumes self-possession, which is constitutive of temperance regarding sexual inclination, that is, chastity. Indeed, for Paul VI, responsible parenthood is also an essential component of marital love. In fact, for Paul VI and Rhonheimer, procreative responsibility is a means to growth in chastity, because it entails periodic continence, which is an expression of love that maintains the inseparable connection between the procreative and unitive meaning.

Against the backdrop of this understanding of the Moral Object of the marital act in reference to chastity, Rhonheimer explains that contraceptive acts eliminate the need to regulate sexual behavior through periodic continence by dismantling its procreative potential. It is a choice against chastity, since one contracepts to avoid procreative responsibility, which inherently entails the need for periodic continence. Consequently, Rhonheimer connects contraceptive intention to the vice of lust, since it circumvents a couple’s means to growth in chastity by eliminating the need for periodic continence. This formulation keeps Moral Object on the level of intention and in the moral order.

e. The Object of Using Contraceptives for Non-Contraceptive Benefits

The above discussion demonstrates several key factors for determining the Moral Object. First, the Moral Object is in the moral order, not the natural order. Consequently, one cannot determine it merely by observing external, physical behavior. Just because a woman takes a contraceptive pill or has an intrauterine device, does not necessarily mean that she intends to
contracept. Without reducing the Moral Object to the remote end, one must enter the moral order to determine it. As a proximate end, the Moral Object has intentional content, that is, an inherent rationality that makes it a viable choice as a means to an end.

The above clinical analysis indicates that sufficient medical benefit exists to justify the use of any of the abovementioned contraceptives solely for the purpose of their non-contraceptive benefits. Thus, just as one takes Tylenol or Advil for a headache, it is conceivable to formulate a practical syllogism that involves one choosing a contraceptive method for its non-contraceptive benefit. Accordingly, one may begin with the practical premise: “1) I want to have good health.” Next, one may observe a theoretical truth that 2) “increasing progesterone reduces bleeding for women with heavy bleeding during menses.” Presuming that one experiences heavy menstrual bleeding, one may conclude: “3) it is good for me to choose a means to increase my exogenous progestin to reduce my bleeding.” One could make a similar argument regarding the benefits of progestin for endometriosis.

This subsection identifies the Moral Object of using contraception for its non-contraceptive benefits. The following subsection uses the Principle of Double Effect to further justify it.

iii. The Principle of Double Effect

Because of the negative side effects of the above-mentioned contraceptive methods—especially sterilization, one must pursue further ethical analysis to determine its moral permissibility. Simply determining that the Moral Object is licit does not necessarily justify its use for non-contraceptive benefits. The Principle of Double Effect justifies acts with bad effects.

a. Thomistic Formulation of Double-Effect Reasoning

Aquinas, in the *Summa Theologica*, is the first to formulate criteria that eventually gives rise to the Principle of Double Effect. He devises these conditions concerning killing in self-
defense. First, he observes that some actions have two effects, one good, and the other bad. Moreover, one may not intend both effects. For example, in self-defense, one may unintentionally kill an assailant. Here, there are two effects: self-protection and death of the aggressor. One intends self-defense, not killing the assailant. Since one does not intend to kill the attacker, it is *praeter intentionem*—beside the intention of the agent.

In contemporary formulations of Double Effect, the first two criteria concern intention. Joseph T. Mangan, in “An Historical Analysis of the Principle of Double Effect,” says that the first criterion is that the act itself must be good or indifferent. For Edward Furton and Albert S. Moraczewski in “Double Effect,” this first criterion excludes intrinsically evil acts, that is, any act that has an immoral object. The second criterion is that one must intend the good effect, and not the bad. While the first criterion addresses the proximate end, the second addresses the ulterior end. Not only must the means chosen be good, but the purpose for choosing it must be good as well.

Aquinas uses *praeter intentionem* to identify the unintended bad effect. Cavanaugh, explains that *praeter intentionem* conveys the notion of accidental in that it is outside the realm of intention, even though one may foresee it. Thus, knowing or foreseeing is not necessarily intending. The defender may foresee that one’s act of self-defense will inexorably kill the assailant. Similarly, a physician may foresee that removing a cancerous, gravid uterus results in the death of the child. Foreseeing the invariable consequences does not change intention: self-defense or the preservation of a mother’s life by removing a cancerous organ. Insofar as the bad effect is *praeter intentionem*—foreseen, but unintended, it does not ethically preclude the act.

Aquinas does, however, introduce a proportionality criterion that may render an act unjust. To illustrate, he insists that one ought not to use more force than necessary to ward off
an assailant; otherwise, though one’s intention is good, the act may nonetheless be immoral. Thus, in casuistic tradition, one must weigh the effects. Regarding self-defense, one uses deadly force only if the assailant attacks with deadly force. Concerning the removal of a cancerous, gravid uterus, one weighs the life of the mother in relationship to the life of the child.

Under the influence of nominalism, manualists add a fourth physicalistic criterion: the negative effect must not cause the good effect. With due regard for the role of the Moral Object as the proximate end, Furton and Moraczewski reword this criterion asserting that one may not choose an evil means for a good end. Put this way, one is just a restating the first principle, that the Moral Object must be good. Arguably, this redundancy is why Aquinas does not include it in his formulation of Double-Effect Reasoning.

b. Intention

Using the Principle of Double Effect as an instrument of ethical analysis, I further elucidate intention concerning contraception for non-contraceptive benefits. Insofar as ethical decision-making takes place from the perspective of the acting person, one must discern one’s intention—as a proximate end and ulterior end—for using a contraceptive method. In the above analysis, I determine that the Moral Object of using contraceptive methods for non-contraceptive benefits is not immoral. Ethically, choosing to use a contraceptive method for its contraceptive function is immoral according to its Moral Object—proximate end, because, as Rhonheimer indicates, it not only violates the Inseparability Principle, but also constitutes a choice to subvert one’s procreative responsibility to avoid periodic continence, a constitutive part of responsible parenthood and a means for growth in chastity, which as a virtue concerns marital love. Insofar as the Moral Object of contraception constitutes an intrinsically evil act, one must not vacillate. For example, one should not say, “I take progestin for heavy menstrual
bleeding, but I also like the contraceptive benefits.” In such a case, one clearly intends both, regarding the proximate end.

Concerning the second criterion, one’s intention as ulterior end of avoiding pregnancy may be bad or good. A couple may exclude or limit the number of children for selfish reasons, such as to have a luxurious lifestyle. Alternatively, for ethically sound reasons, a couple may discern that they cannot afford to have more children or that pregnancy is too risky for the mother. Even so, the Inseparability Principle demands that couples remain open to the possibility of transmitting life in the marital act, which one can do by observing periodic abstinence. Rhonheimer explains that periodic continence constitutes a form of birth control that remains open to the procreative significance of the marital act, even though one avoids its procreative function. What separates this from a contraceptive act, however, is intention; thus it is not merely a physical difference. The use of a contraceptive method includes the intention to render procreation impossible. The above demonstrates the immorality of such an act chosen as a proximate end, but one’s ulterior end also configures the morality of the act. Thus, one must also have a good intention, as ulterior motive.

c. Proportionality and Abortifacient Risk

Next, one must use the proportionality criterion to weigh the non-contraceptive benefits against the negative contraceptive effect. In Difficult Moral Questions, Germain Grisez provides circumstances under which a physician may prescribe contraceptives for therapeutic reasons. First, he highlights that for women who are sterile or fertile, but not engaging in the marital act, prescribing a contraceptive for non-contraceptive benefits is no more controversial, ethically, than prescribing any other medication. For fertile women engaging in the marital act, Grisez’s primary concern is the possible unfairness to an embryonic individual, should fertilization occur
after an unlikely breakthrough ovulation and the method acts as an abortifacient by preventing implantation.\textsuperscript{508}

Mark Yavarone in “Do Anovulants and IUDs Kill Early Human Embryos?: A Question of Conscience,” indicates that part of the ambiguity of classifying a drug’s effect as an abortifacient depends on the divergent definition of pregnancy, which some argue only occurs after implantation.\textsuperscript{509} If true, Yavarone’s statistics concerning the number of unintended intrauterine device or oral contraceptive-induced abortions is alarming.\textsuperscript{510} In light of the abortifacient properties of contraceptive methods, Grisez insists that one must have significant benefit to outweigh the possible risk to a third person embryo.\textsuperscript{511}

To remedy this, Grisez suggests that women who can estimate breakthrough ovulation could practice periodic abstinence to minimize the risk of an unintended abortion.\textsuperscript{512} At the same time, Grisez advises physicians not to prescribe contraceptive for non-contraceptive benefits, if withholding it does not constitute malpractice by omission.\textsuperscript{513} He even recommends surgery over using a contraceptive.\textsuperscript{514} This, however, is problematic because it may mean forgoing medically indicated treatment or choosing a more invasive procedure over a more conservative option. Ethically, this violates the principle of beneficence and non-maleficence.\textsuperscript{515} If one does not inform the patient this violates respect for autonomy as a form of paternalism.\textsuperscript{516}

Regarding the question of levonorgestrel acting as an abortifacient, Edward J. Furton observes that some authors, such as Ron Hamel,\textsuperscript{517} have come to the conclusion that the debate is settled and it does not act in such a way.\textsuperscript{518} To the contrary, Furton indicates that it is not a settled question; evidence points in both directions.\textsuperscript{519} Thus, he cautiously counsels health care workers to follow Marie T. Hilliard’s recommendation to perform a blood test checking for the luteinizing hormone surge, which accompanies ovulation, before administering levonorgestrel as
an emergency contraceptive. According to Hilliard and Furton, only then does one have moral certitude—as opposed to absolute certitude—that fertilization will not occur and that the contraceptive does not act as an abortifacient. This stipulation concurs with the bishops’ directive regarding the administration of emergency contraceptive for rape victims, that appropriate testing rule out conception and that it “not interfere with the implantation of a fertilized ovum.”

In 2009, the Congregation for the Doctrine of the Faith publish Instruction Dignitas Personae on Certain Bioethical Questions, in which they insist that anyone—patient or clinician—who “seeks to prevent the implantation of an embryo which may possibly have been conceived and who therefore either requests or prescribes such a pharmaceutical, generally intends abortion.” Thus, Kathleen Mary Raviele in “Levonorgestrel in Cases of Rape: How Does It Work?” objects to the use of contraceptive methods such as levonorgestrel that may act as an abortifacient, preventing implantation, should conception occur.

While there are similarities, using an emergency contraception, as a contraceptive is not the same as using contraception as a medication for non-contraceptive benefits. The difference centers on intention. Giving contraception to a rape victim is an act of defense, against conception. Following Hilliard and Furton’s advice, ensures with moral certitude that it is not a defense against implantation. Although the external act materia ex qua is the same—taking levonorgestrel—the external act differs regarding its materia circa quam, that is, its proximate end. As an emergency contraceptive it constitutes an act of defense against conception; however, once fertilization occurs, or for Hilliard and Furton, could occur, it becomes an act of defense against implantation, or an abortifacient.
Regarding the use of contraception for non-contraceptive benefits, as long as one rules out intention as the proximate end and ulterior end, one in no way intends the medication to act as a contraceptive or an abortifacient. This may be easier said than done, however, because the very same physical mechanisms that the medication induces, which make it a good contraceptive, also make it a good remedy for endometriosis and heavy menstrual bleeding. Thus, on the level of the external act *materia ex qua*, it is impossible to differentiate. Moreover, the better the drug is, as a contraceptive, the less likely breakthrough ovulation and fertilization will occur. Thus, theoretically, the better the medication is at preventing conception, the less likely unintended fertilization occurs.

It is important to remember that all medications have risks of side effects; sometimes these risks include death. Just as it is important for a patient to work with the physician to determine and weigh risks, so patients must do so regarding the unlikely and unintended risk of a contraceptive taken for non-contraceptive benefits, acting as an abortifacient. Leaving this to the deliberation of the conscience of the patient is not diminishing the seriousness of the side effect, nor is it relativizing the ethical significance of a medication’s potential risk. Rather, it is referring the decision to its proper place, the perspective of the acting person, concerning a side effect that is *praeter intentionem*. Thus, insofar as one does not seek to prevent implantation, one does not intend abortion.

The fourth condition of the Principle of Double Effect insists that the negative side effect does not cause the positive effect. In intentional terms, one must not will the negative effect as a means to the good effect. As I indicate above, insofar as the physiological mechanism of action is the same, the external act *materia ex qua* is the same, but the intentionally, that is, the external act *materia circa quam* differs. Thus, so long as one clearly uses the medication for non-
contraceptive benefits, one has a good proximate end and avoids any violation of the fourth criteria.

After articulating the physiological mechanisms of various contraceptive medications, both in terms of their contraceptive qualities and their non-contraceptive benefits, this section differentiates the Moral Object for each, respectively. Then, it uses the Principle of Double Effect to further justify the non-contraceptive benefits over the ethically negative side effects of contraceptives, including their potentially abortifacient qualities.

This chapter identifies the Moral Object of sex reassignment surgery and using contraceptives for non-contraceptive benefits and analyzes them further in light of the Principle of Double Effect. The following chapter concludes the dissertation.

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CHAPTER SEVEN – CONCLUSION

This dissertation elucidates the moral methodology for Catholic health care ethics, focusing especially on the relationship between Natural Law, the Moral Object of an act, and the ethical Principles of Double Effect and Cooperation. Although Augustine and Thomas Aquinas introduce these concepts, Pope John Paul II not only identifies them as official teaching of the Catholic Church, he also provides the most systematic articulation of them in his encyclical *Veritatis Splendor*. This dissertation offers a methodological bridge between *Veritatis Splendor* and the United States bishops’ Ethical and Religious Directives for Catholic Health Care Services, and then applies these concepts to emerging issues in health care ethics.

Chapter two explicates the concepts of Natural Law and the Moral Object that Aquinas first introduces in the *Summa Theologica*. Avoiding the Naturalistic Fallacy, which maintains that the moral genus derives from the natural genus, this chapter demonstrates the former’s unique origin. Moreover, defining the human person as a composite of body and soul, it dodges two dualistic vulnerabilities of the Naturalistic Fallacy: physicalism and spiritualism. In turn, this provides a conceptual framework for the Church’s prohibition on contraception.

Chapter three shows that a non-consequentialist understanding of Natural Law and the Moral Object is consistent with Aquinas’s articulation of Double Effect Reasoning. After discussing Aquinas’s use of Double Effect, this chapter further elucidates the interpretation of subsequent commentators that culminates in Jean Pierre Gury’s manualist formulation. In an effort to make moral theology more teachable, commentators externalize the Moral Object, identifying it as positing external causes. Peter Knauer uses Gury’s version of Double Effect to devise proportionalism, which contends that one may posit any cause to achieve a good end so long as one has commensurate reason. Insofar as Gury’s Double Effect and Knauer’s
proportionalism externalize the Moral Object, their theories fall victim to the same pitfalls of the Naturalistic Fallacy discussed in the second chapter.

The third chapter also contrasts non-consequentialist versions of Double Effect. First, it enunciates a defense of craniotomies by John Finnis, Germain Grisez and Joseph Boyle. In accord with T. A. Cavanaugh’s critique, however, it demonstrates that they too narrowly define the Moral Object of craniotomy, such that it excludes an inexorable component, the direct killing of the child. This highlights that physical consequences influence the definition of the Moral Object, even if the latter is not constituted of the former. Finally, this chapter contrasts the Moral Objects of three distinct applications: euthanasia/terminal sedation, terror bombing/tactical bombing, and craniotomy/hysterectomy. It uses Cavanaugh’s distinction between intention and foreseen to further illuminate the Principle of Double Effect.

Chapter four is the procedural bridge between the theoretical chapters two and three and the applied chapters five and six. First, the chapter explains health care ethics consultations. Then, it explicates the process in the context of the core principles of health care ethics: autonomy, beneficence, non-maleficence, and justice.

Foreseeing organizations with conflicting missions working together, the second section illuminates the Principle of Cooperation, a related principle to Double Effect. This section follows the development of the United States Catholic Bishops’ response to sterilization and their articulation of Cooperation in succeeding editions of their Ethical and Religious Directives. The third edition follows the consequentialist methodology of conflating the Moral Object with the remote end. In addition, they permit mediate material cooperation, something that Cooperation traditionally forbids. However, in future editions, they correct these mistakes. Further analysis in this section reveals that such a conflation makes it difficult to explain why
certain moral absolutes are inviolable. Finally, this section explicates the Principle of Appropriation, a mirror principle to Cooperation that attempts to justify the use of or product of another’s immoral act.

Using the above discussion regarding Natural Law, the Moral Object, and the Principle of Double Effect, chapter five argues that given certain conditions one may legitimately choose a procedure that are physically sterilizing or contraceptive. When one keeps the Moral Object in the moral genus, one is no longer limited to defining the Moral Object of contraception or sterilization in purely physical terms. The first section shows that the significant increased risk of developing ovarian cancer in BRCA1 and BRCA2 mutation carriers justifies them choosing the physically sterilizing procedure of a bilateral salpingo-oophorectomy, so long as they choose it for its prophylactic benefits, not its sterilizing effect. Delimiting the Moral Object of contraception to the moral genus, Martin Rhonheimer defines it as a choice against chastity, insofar as one circumvents the need for periodic continence, a constitutive part of responsible parenthood that provides a means to growth in chastity. Accordingly, the Moral Object of a BRCA mutation carrier using a bilateral salpingo-oophorectomy is a choice to prevent cancer. Insofar as the negative effect of sterilization is beyond intention—either as remote end or proximate end—the Principle of Double Effect justifies one’s tolerance of it, especially in light of the life-threatening risk of developing ovarian cancer.

The second section discusses the use of the contraceptive levonorgestrel to prevent conception in victims of sexual assault. First, this section explicates the function of various contraceptives in the context of the menstrual-ovulatory cycle. Although certain contraceptives clearly have abortifacient properties, the literature remains inconclusive and heavily debated regarding levonorgestrel’s role at preventing pregnancy by forestalling ovulation. There is,
however, persuasive evidence that meloxicam does prevent ovulation. Presuming that one uses a means that acts as an effective contraceptive, rather than an abortifacient, this section demonstrates that a properly formulated Moral Object and a non-consequentialist understanding of Double Effect dissolves any need for recourse to the latter principle. Avoiding a physical definition of the Moral Object of using a contraceptive to prevent pregnancy in a victim of sexual assault, one may understand it as an act of self-defense. Although the physiological mechanism of action is the same, the Moral Object, defined according to the moral order, differs between an act of contraception or an act of self-defense. Moreover, since the use of contraceptive is an act of self-defense when a woman uses it to prevent conception after sexual assault, there is no negative side effect justify using the Principle of Double Effect. Only a definition of the Moral Object that fails to keep it in the moral order runs into the error of presuming the need to justify the physically conceived evil of avoiding conception.

The sixth chapter further explicates the use of Double Effect applying it to sex reassignment surgery and using contraception for non-contraceptive benefits. The first section considers the justification of Double Effect to justify sex reassignment surgery. First, it highlights the challenges of defining sex, gender, gender dysphoria, and sex reassignment therapies. Next, building on Natural Law, this section elucidates three grounds by which the Catholic Church objects to sex reassignment therapies: medical, philosophical, and theological. Finally, this section shows that although some theologians use the Principle of Totality or Double Effect to justify sex reassignment surgery, this is a non-sequitur, since Catholic anthropology precludes the dualistic understanding of the human person.

The second section analyzes the use of physically contraceptive means for their non-contraceptive benefits. First, it examines the contraceptive function of intrauterine devices and
long-acting contraceptive. Next, it explores their non-contraceptive benefits specifically highlighting their treatment for endometriosis and menorrhagia. The next subsection traces the historical development of consequentialist methodology of the manualists and the proportionalist especially highlighting the influence of William of Ockham’s nominalism. The final subsection uses Double Effect to justify the negative effect of sterilization when using long-acting contraceptive methods. In particular, it emphasizes that Double Effect excludes intending sterilization both as a Moral Object or a remote end. This subsection illuminates the debate on the potential abortifacient properties of contraceptive, but contends that since this is beyond intention—Moral Object and remote end—it, like sterilization, is an evil that one tolerates.


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