

DISCUSSANT II

**REFLECTIONS ON FUNDAMENTAL MORALITY,
CONSCIENCE, NORMS AND DISCERNMENT**

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I would first like to express my thanks to the Academy for the invitation to participate in this event on such important topics. What follows is focused not so much on the text – although I do include comments on it – but on explaining and arguing for a line of thought that I think needs to be in the forefront of a commemoration of EV. That is, I think the discussion needs to put in the forefront a renewed Thomistic perspective along the lines encouraged by VS, which aligns with the robust and ongoing renewal of Thomistic thought, and especially – for our purposes – the renewal in virtue ethics, which includes the recovery of appreciation of the light of reason that informs human action and measures it. This retrieval and rejuvenation of Thomistic virtue ethics, moreover, needs to be located at the service of the biblical renewal of moral theology encouraged by the Fathers of the second Vatican council,¹ which focused on “the loftiness of the calling of the faithful in Christ” to holiness, and “the obligation that is theirs of bearing fruit in charity for the life of the world”.

Of course, I also think that various other perspectives can accompany this thread of thought, so they complement each other, but for various reasons I think this one should be clearly in the forefront. These reasons include that the Thomistic tradition in general is a – if not the – common point of reference in our moral tradition, that VS reflects the fruit of careful Magisterial discernment on central topics of fundamental moral theology, that it wisely points us to key aspects of Aquinas’s thought, and that this discernment has contributed to potentially decisive points of

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¹ “Likewise let the other theological disciplines be renewed through a more living contact with the mystery of Christ and the history of salvation. Special care must be given to the perfecting of moral theology. Its scientific exposition, nourished more on the teaching of the Bible, should shed light on the loftiness of the calling of the faithful in Christ and the obligation that is theirs of bearing fruit in charity for the life of the world” OT 16.

renewal in Thomistic moral theory. I would argue that this ongoing renewal of Thomistic studies, moreover, needs the help of further Magisterial discernment and intervention if it is to align with the teaching office of the Church following a properly Catholic approach² rather than oppose or even undermine it. For these reasons, I think that this commemoration of EV should be taken as an occasion to reinforce and build upon this thread of Magisterial discernment.

To the extent that this commemoration can be grounded in a defensible trajectory of such discernment, it can both facilitate greater consensus and lessen the opportunity for potential critics. From my perspective in especially the English-speaking and American context, but influencing the broader Church, a significant challenge for Catholic moral theology is the level of criticism that has been directed at Pope Francis's pontificate in general, and his moral interventions in particular, which should be read as essentially calling for a less judgmental and moralistic, and a more pastoral, way of accompaniment. These criticisms, moreover, have been propagated through wide-reaching media by those at least indirectly influenced by dominant English-language readings of Aquinas that tend to insist on more stringent conclusions than the recent Papal Magisterium of not just Pope Francis, but also of Benedict XVI and St. John Paul II. Ideally, therefore, a commemorative document would not only avoid unnecessary provocation of such thinkers – i.e., by underplaying the place of Aquinas and VS in favor of other perspectives – but would place in the forefront a renewed and defensible Thomism that aligned as much as possible with Magisterial discernment since especially the second Vatican council and including VS.

I will, therefore, raise nine key points that outline a thread of thought that I think should be in the forefront of the document in fruitful dialogue with alternatives. These nine points key concern (1) charity, (2) anthropology, (3) right reason and virtue, (4) the object of the human act, (5) natural law as the light of reason, (6) conscience, (7) the species or kinds of human acts, (8) norms, and (9) discernment.

² Such an approach would align with the second Vatican council's *Dei verbum*, Dogmatic Constitution on Divine Revelation (DV). The relevant points include, first, the growth in understanding through time: "There is a growth in the understanding of the realities and the words which have been handed down. [...] as the centuries succeed one another, the Church constantly moves forward toward the fullness of divine truth until the words of God reach their complete fulfillment in her" (DV 8). Second, the role of the Magisterium: "...sacred tradition, Sacred Scripture and the teaching authority of the Church, in accord with God's most wise design, are so linked and joined together that one cannot stand without the others" (DV 10). Third, "Scripture is [...] the soul of sacred theology" (DV 24).

1. CHARITY

Even though our general focus is on “life ethics” and my specific topic is in fundamental morals, I will begin with some brief remarks on Christian charity which – in Aquinas’s classic account – is the form of the virtues, making them to be truly virtuous in attaining the rule of right reason that properly measures human action. And following the directives of the second Vatican council’s OT and VS on the renewal of moral theology, I will do so with attention to some key biblical priorities and texts, especially regarding the centrality of charity. From this conciliar decree, we should not only note the call for a biblical renewal of moral theology, but also the emphasis on this renewal being ordered to the “loftiness of the calling of the faithful in Christ”, the presumption that it requires a “scientific exposition”, and that this renewal is ordered to the faithful “bearing fruit in charity for the life of the world”. The centrality of charity is especially well-illustrated in the letters of St. Paul, and its key characteristics are given their perhaps most influential “scientific” articulation by St. Thomas Aquinas. Because our document is well-grounded in scripture, I will just note a few points that seem helpful to keep in mind for a renewed fundamental moral theology grounded in the whole tradition, one that aligns with Magisterial discernment from the conciliar era through the last several pontificates.

Regarding St. Paul on the centrality of charity, it is hardly necessary to say anything, as we are all familiar with key texts like 1 *Cor* 13, its shorter parallel in *Rom* 12:9-13, and other texts throughout his corpus. In encouraging a virtue-oriented ethic in support of the universal call to holiness in the perfection of charity, I think it is also helpful to highlight Paul’s understanding of the transformation by the renewal of the mind, which in a pivotal text in *Rom* 12:1-2 provides the hinge between God’s gracious work of salvation in Christ and our ability to live out the Christian moral life. This renewal involves a transformation in Christ, which is a transformation in virtue as we see in later Pauline texts like *Col* 3:1-17 about the life of those raised up in Christ, who put off vices and put on the virtues culminating in Charity. To the extent that we have undergone such transformation, Christians are enabled participate in the pattern of Christ’s self-sacrificial love to build up the Church, which is made manifest in Paul’s ministry so that he can say “imitate me as I imitate Christ” (1 *Cor* 11:1).³

³ All biblical citations are from the Revised Standard Version.

This configuration to Christ enables Paul to ground his pastoral ministry, including his mode of moral exhortation, in his personal example. For Paul, although our darkened minds have some access to truths about God's existence (*Rom* 1:20) and the moral order (2:14-15), such ongoing renewal is the required so we "might know what is good, acceptable and perfect" (*Rom* 12:2) in our action. This renewing transformation culminates in having "the mind of Christ" (1 *Cor* 2:16), which is ordered to sacrificial love as Paul illustrates throughout his *First Letter to the Corinthians*, providing the most detailed account of his pastoral approach in dealing with a range of moral challenges. Although – with trusted sources like St. Thomas Aquinas – we want to affirm the human ability to attain truth about moral questions, we should also recognize with Aquinas – and with contemporary thought as we will discuss below – that our reason is hindered by vice and other factors, as Paul shows in his own way, such as his distinction between living by "the flesh" versus "the spirit".

I begin with these important New Testament teachings to situate Pope Francis's pastoral priorities in light of the broader tradition. As I read him, he would agree with the broad recognition that our contemporary situation is marked by today's predominantly post-Christian cultural contexts, including the breakdown of family and community, the sexual revolution and "gender ideology". On the other hand, he would differ with those who would take a more aggressive public stance on culture war issues as many in the United States have done in recent decades as part of a conservative⁴ movement. Francis instead discerns that a more appropriate response to "signs of the times" is a fraternal collaboration to address key challenges such as the systemic injustices that favor the rich over the poor and vulnerable, and environmental devastation that poses an existential threat to the human family and planet. In responding to this situation, he calls the Church to a missionary stance as disciples walking together with Jesus in a more "synodal" manner, rooted in the joy of the Gospel, looking to all with an attitude of friendship, solidarity and accompaniment, clearly emphasizing God's mercy over judgment about intrinsic evils, siding especially with the vulnerable and oppressed, and calling Catholics to live out the "integral and solidary hu-

⁴ In describing "conservative" Catholics in the United States, I refer to a widespread self-description that I think should be eschewed, especially given the increasingly radical nature of contemporary conservatism, which requires critical discernment of excesses. A much better approach, I think, is to heed the wise warnings of St. Paul VI regarding the ambiguous nature of ideologies as found in nos. 26-37 and 41 of his Apostolic Letter *Octogesima adveniens*.

manism” of our social tradition,⁵ working with those of good will to address the key challenges of our day.

In support of the contemporary emphasis on “accompanying” those in discernment about moral questions, I think it is helpful to note Paul’s mode of pastoral exhortation employing the genre of epideictic rhetoric, which is encouragement to continue a path already undertaken. We see such persuasion best illustrated in texts like 1 *Thess* 4:1: “[...] just as you are doing, you do so all the more”.⁶ It seems to me that the Church of our time would do well to deeply appropriate this wise staple of Paul’s pastoral ministry, which builds on his priority on exemplifying – and participating in the redemptive pattern of – Christ’s sacrificial love. Employing this mode of pastoral exhortation can be understood as recognizing God’s grace already at work in those drawing near to the Church. It does not imply a denial of the traditional understanding that there are kinds of acts that are never to be done, but instead focuses on exhorting us to live consistent with our high calling in Christ as the Fathers of the second Vatican council wisely advised. It is certainly part of our tradition to teach – at appropriate times and in appropriate ways – about what the Church has discerned about kinds of good and evil acts, and to offer sound catechesis in appropriate venues, and fraternal correction of our erring brothers and sisters. If we accept Pope Francis’s pastoral discernment that contemporary pastoral situations increasingly call i) for a community of missionary disciples radiating the joy of the Gospel, ii) for a basic stance of friendship and accompaniment, and iii) for attention to the signs of the times, this acceptance should not be understood to imply there is no place for sound moral teaching and fraternal correction. But it would arguably provide a context more conducive to helping people towards healing and growth.

Regarding St. Thomas’s account of charity, although we may all be familiar with it, I think it is also helpful to reiterate some key points. These include that charity is the form of the virtues in that it makes acts of the various virtues – like courage – to truly meet the mark of virtue, which is the measure of right reason. This means that an act is never fully conformed to right reason unless it is informed by charity. Also worthy of note is Thomas’s elucidation – with the help

⁵ This phrase – corresponding to Francis’s emphasis on friendship, solidarity and social charity – is the heading under which Catholic social teaching is introduced in the 2005 *Compendium of the Social Doctrine of the Church*.

⁶ See also 4,9-10 “But concerning love of the brethren you have no need to have any one write to you, for you yourselves have been taught by God to love one another; and indeed you do love all the brethren throughout Macedonia. But we exhort you, brethren, to do so more and more...”.

of Aristotle – of charity as a form of friendship whereby we act out of benevolence for our friends, building them up in the ultimate good of loving communion in God. It seems to me that we do well to keep in mind that all rightly ordered human action will be informed by this rationality of friendship, ordered to the good of the other, an emphasis that aligns well with Pope Francis’s insistence on a basic stance of social friendship and solidarity.

2. ANTHROPOLOGY

Although Aquinas’s anthropology is grounded in Aristotle’s ancient philosophical synthesis which builds on his primitive but perceptive biological observations, it offers perhaps surprisingly durable insights into the animality within human nature, how this “sensate nature” influences our behavior and how we need to shape our passions in virtue to behave well with consistency, promptness, ease and joy. It would seem invaluable for a contemporary Catholic moral theology centered in Thomistic virtue ethics to be in similar dialogue with the best relevant insights of modern sciences regarding broadly “biological” and sociological influences on human behavior. This would have obvious benefits, both *ad intra* and *ad extra*.

A particularly promising resource in this regard is Robert Sapolsky’s 2017 *New York Times* bestseller *Behave: The Biology of Humans at Our Best and Worst*. Although we obviously don’t want to accept everything in any work – such as Sapolsky’s materialism, for example – his *magnum opus* is the culmination of many years of labor drawing on disciplines ranging from neurobiology (brain function), to endocrinology (hormones), to genetics, to the influence of childhood stresses on brain development, to evolutionary biology and sociobiology, to various branches of social science and psychology, to history, with occasional reference to the philosophical tradition.

For those of us familiar with the Aristotelian/Thomistic understanding of the rational soul as a “potential whole” that includes lower vegetative and sensate souls, Sapolsky appropriates – as a conceptual metaphor – the neurobiologist Paul MacLean’s “triune brain” proposal that conceptualizes it as having “three functional domains” that interact extensively. In brief, the first deals properly with automatic, regulatory functions (overlapping with the Aristotelian/Thomistic vegetative soul), the second with emotions (overlapping with Aquinas’s sensate soul) and the third (the cerebral cortex) for higher mental functions (corresponding to

Aquinas's rational soul). Since Sapolsky's conceptual metaphor roughly parallels the Aristotelian/Thomistic model, it facilitates placing this important resource from the Catholic tradition in dialogue with wide swaths of contemporary science with relevance to human behavior.

I think such dialogue could give us deeper insights into the influences of various factors on human behavior, both good and bad. These include Sapolsky's treatment of the "us vs them" tribalism that so dominates contemporary society and influences many in the Church, as can be seen in the viciousness of ideological attacks on the internet. Significantly for our purposes, this work gives considerable attention to the various factors that influence not only the most irrational and thus morally evil behavior, but what Sapolsky calls "altruism", the exemplar of desirable human behavior that has surprising analogues in lower animals. It seems to me that this moral highlight from the animal world complements a discussion of Christian morality that is ultimately measured by the charity that can be seen as a form of friendship.

Bringing such multi-disciplinary insights into dialogue with moral theology could be helpful in various ways. *Ad intra*, we could gain greater insight into the various factors that influence human behavior. Such insights could be conducive to reducing the temptation to rash judgment, and to fostering greater empathy for and mercy towards our fellow human failings. More positively, such broader insights should contribute to the pastoral work of healing fallen sinners and fostering their growth in virtue. Considering broader social questions, such dialogue could provide insights into the need to cultivate stable families and communities because of the wounds caused by the lack thereof, and to ensure the provision of basic social services (quality education, childhood nutrition, health care, psychological services, etc.) because of their importance to human flourishing. *Ad extra*, a Catholic moral theology in greater dialogue with the relevant discussions in the various sciences offers the potential to show the Catholic harmony between faith and reason, which is crucial for dialogue with, and evangelization, of the modern world.

3. RIGHT REASON AND THE RATIONALITY OF THE VIRTUES

It seems to me that an often-overlooked question in fundamental moral theology concerns the order of reason that measures human action. As far as I know, all Catholic moralists would agree with Aquinas that God's eternal law is the ulti-

mate measure of right reason, and that the natural law – though understood in somewhat different ways by different thinkers – involves the way humans participate in that eternal law through our reason. Drawing on the manualist and more naturalistic streams of the tradition, some moralists seek to ground moral objectivity in the physical realm, and therefore emphasize the order of natural inclinations and the order of caused effects. It seems to me, however, that it is important to have a greater appreciation for how Aquinas unfolds the order measuring human acts in his *Secunda Secundae* through his elaboration of the virtues. Here the order of the natural law, the order of right reason, the order of the moral virtues, and the order of charity all reflect the eternal law as it measures human acts. This understanding of the order of reason measuring human acts can help us to appreciate how the natural inclinations fit into Thomas's broader schema. They do not do so as the "rule and measure" of human acts, which is at least implicit in Aquinas's clear statement that "the relation to a natural end is accidental to morality".⁷ Instead, the inclinations function as what Thomas calls "the seeds of the virtues" where it is the virtues that manifest the order of right reason and natural law.

Following the principle that something is more intelligible when it is actualized than when it is in potency, we can look at the greater intelligibility of the virtue to understand the moral relevance of its seed in a given inclination. Thus, for example, we look at the virtue of conjugal chastity to understand the moral relevance of the sexual inclination. This can be contrasted with an alternative approach that locates the essence of conjugal morality in respecting the natural end of depositing semen into what Aquinas called the *vas debitum* or appropriate vessel. Such an emphasis is not, I would argue, conducive to a robust account of sexual ethics but instead suggests an unbalanced one. If, on the other hand, one develops an account of sexual ethics based on the virtue of conjugal chastity understood in light of the full truth about marriage as the developing tradition has come to understand it, this provides the foundation for a more coherent and compelling vision of sexual ethics. Drawing on St. Augustine's goods of marriage, for example, we would look for the rationality that governs sexuality in light of the fact that it should be faithful, permanent and have special task at the service of the transmission of human life. Following the more mature reflection of the tradition on this transmission of human life, moreover, we would note that it must be done responsibly, considering all the relevant factors as we see in HV 10, including moral ones. We can also recognize that the full truth of marriage includes a special

⁷ THOMAS AQUINAS, *Summa theol.*, I-II, q.1, a.3, ad 3.

kind of friendship, and a conjugal covenant of life and love. Such an approach to the virtue of conjugal chastity based on the full truth of marriage provides, I would hope, a broad foundation for consensus, although disagreements will arise as we get into the details. My point here is not to get into those particulars, but to illustrate that the right reason that governs morality is best understood not at the level of the physical world, the lower nature we share with animals or our inclinations, but at the level of our rational nature, which is the rationality of the virtues.

This conviction about the rationality of the virtues underlies Aquinas's *Secunda Secundae* in which – as he says in the prologue – he brings together all of morality under the headings of the virtues. On the one hand, many moralists working from the Thomistic tradition have tended to read Aquinas according to certain presuppositions from the manualist tradition that overlook a proper understanding of his account of reason and virtue. Such interpreters would tend to read Aquinas in a “physicalist” way that implies a deficient account of the reason that measures human acts by failing to see it as the rationality of the virtues. Or they might read Aquinas through the poles of law and conscience as in many manuals. Or they might focus on caused effects and a physical understanding of directness, resulting in a physical understanding of direct killing of the innocent. This would be to miss a properly moral understanding of this prohibition that aligns with the account of direct killing in EV 57 where direct is understood in a properly moral sense as that done “as an end in itself or as a means to a good end”. In general, these manualist tendencies toward physicalism err in overlooking the first-person and intentional perspective of the moral agent whose acts are directed by reason and will towards ends or goals, as VS rightly highlighted, and which is the perspective of virtue ethics.

On the other hand, there seems to be significant moves toward an appreciation of the importance of (i) reason and (ii) the virtues in Thomistic ethics, which I think indicate two of the most promising points of potential consensus in recent decades.⁸ It seems to me that it would be helpful to both build upon this potential area of growing consensus – to reiterate, that regarding the centrality of reason and virtue building on the interventions of VS – by affirming it explicitly in a commemorative document. It also seems to me that a reinforced consensus in

⁸ See, for example, K. FLANNERY, *Cooperation with Evil: Thomistic Tools of Analysis*, Washington 2019. In it, the author considers the notion of cooperation with evil as passed down through the manualist tradition to be inadequate and he illustrates the superiority of Aquinas's treatment in terms of reason and the virtue of justice. I will revisit this in subsection (H) below.

this regard might provide a basis for a more “synodal” path in moral theology, where we try to build mutual understanding of what we can say about the rationality of various kinds of acts in light of the relevant virtues.

4. THE OBJECT THAT PRIMARILY AND FUNDAMENTALLY DETERMINES THE MORALITY OF A HUMAN ACT

This section will make up the bulk of my paper and will include several subsections addressing (1) the Magisterial discernment of VS regarding the moral object; (2) whether that is an obstacle to the needs of pastoral ministry; (3) whether it implies a social ethic centered on combatting intrinsic evil; (4) how a recognition of moral objectivity does not deny the reality of moral disagreement and unresolved questions; (5) A first example of Magisterial discernment, the disease preventative use of condoms; (6) A second example of extreme vital conflict in medical ethics; (7) a third example of certain cases of hysterectomy; (8) a sign of growing consensus for a methodology centered in reason and virtue.

1. *The Magisterial Discernment of Veritatis splendor regarding the Moral Object*

As the product of long deliberation regarding the post conciliar debate about the good and evil of human action, it seems important to reiterate the directions indicated by VS 78 on the object of the human act. One can identify at least six key affirmations in the text. These include the following: (i) “*The morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will*”;⁹ (ii) “In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*”; (iii) “the object is a freely chosen kind of behavior”; (iv) the object is not “a process or an event of the merely physical order”; (v) the “object is the proximate end of a deliberate decision which determines the act of willing on the part

⁹ The sentence cited concludes, “as is borne out by the insightful analysis, still valid today, made by Saint Thomas”, and includes a citation to his *Summa theologiae*, I-II, q.18, aa. 2, 6. For all *Summa theol.* citations, I rely upon the Christian Classics edition (Westminster, 1981), which is based on the English Dominican Translations of 1911 and 1920.

of the acting person”; and (vi) the morality of the object depends upon its “conformity with the order of reason”.¹⁰ With its denial that the object is merely of the physical order and reference to the proximate end and perspective of the acting person, this approach signals a departure from a typical manualist approach that the post conciliar revisionists had rejected as physicalism and biologism, a rejection shared even by more conservative moralists like Germain Grisez.

Skipping through all the exegesis and debate, but basically in line with the approach articulated by scholars including Martin Rhonheimer in support of VS,¹¹ I think this object can be understood as what Aquinas calls the “exterior act” understood precisely as it is ordered by reason to the proximate end of the agent. It has a form/matter constitution with the form being the idea or rationality that makes the object to be the kind that it is. From the perspective of reason, this specifying moral object is a form conceived by reason. From the perspective of the will, it is the proximate end of the will. From the perspective of the relevant matter and circumstances, it is these precisely as they are understood by reason and ordered by it to the end. It seems to me that such an approach to moral objectivity centered in the Magisterial discernment reflected in VS is defensible with respect to interlocutors, both *ad intra* and *ad extra*. As I will discuss below, I also think that it provides a foundation for upholding what I think are the reasonable and moderate positions of the Magisterium against some contemporary tendencies to insist on more rigorist conclusions.

2. *An Obstacle for the Needs of Pastoral Ministry?*

To follow the directions encouraged by VS regarding the good and evil of human acts – that they are specified primarily and fundamentally by their object,

¹⁰ The sentence cited notes that only human acts in conformity with this order of reason cause “the goodness of the will”. Following these affirmations, the first paragraph of no. 78 concludes with three authorities from the tradition (*The Catechism of the Catholic Church*, St. Thomas, and St. Paul) who uphold the truth that the good intentions [actually “ulterior” or “further” intentions, if we read no. 78 in harmony with no. 80] do not justify the free choice of intrinsically evil actions. Here I draw upon my «A Reading of Aquinas in Support of *Veritatis Splendor* on the Moral Object» in *Logos: A Journal of Catholic Thought and Culture*, 11, 1, Winter 2008.

¹¹ For the most developed articulation of this perspective in dialogue with its critics who tend to read Aquinas with a greater emphasis on sub-rational nature, see MARTIN RHONHEIMER, *The Moral Object of Human Acts and the Role of Reason: A Restatement and Defense of My View*, *Josephinum Journal of Theology*, 18 (2011), 454-506.

that they can be “intrinsically evil” according to that object,¹² and that negative precepts of the natural law can proscribe them universally and permanently – need not be understood as contrary to the needs of effective pastoral ministry that are rightly a priority for Pope Francis. In a ministry governed by pastoral prudence and charity, these traditional teachings can find their proper place in a broader context of proclaiming the good news with joy, leading and witnessing through personal example, and – as St. Paul did in his epistles – using rhetorically effective means of exhorting people to realize their most high calling in Christ. Nor does a proper appreciation of VS’s treatment of this topic prevent us from accompanying people, and avoiding rash judgment, as Pope Francis wisely encourages.

3. *A Social Ethic Centered on Combatting Intrinsic Evil?*

To embrace the pastorally prudent appeal to the directions encouraged by VS on human action and natural law does not entail, moreover, an approach to social morality centered on the public opposition to “intrinsically evil acts”. Although such an approach has been advocated by some American Bishops and even by distinguished Catholic scholars like John Finnis,¹³ this does not follow from the articulation of intrinsically evil acts in VS. Rather, it is better explained as a reflection of a long tradition of socially conservative resistance to the more fraternal approach of especially post conciliar Catholic Social Teaching in the English-speaking world over the last several decades. Such an approach that traces to the conservative movement and “culture war” politics of the United States is quite distinct from the “integral and solidary humanism” of the *Compendium of the Social Doctrine of the Church* which aligns nicely with all the postwar social encyclicals. It is also contrary to Pope Francis’s emphasis on approaching the social realm in a spirit of fraternity, solidarity, dialogue and social charity, which is easily aligned with his last several predecessors.

¹² This doctrine is distinct from the question of the gravity of certain kinds of action. In other words, to say that acts falling into different species or types are evil by their object – that is intrinsically evil – does not speak to their gravity. For example, a lie is considered intrinsically evil, that is evil by its object regardless of intention and circumstances. But the particular intentions and circumstances can determine that some lies are light matter whereas others are gravely evil, for example, those done with malicious intent and causing grave harm.

¹³ See, for example, Finnis’s *A Radical Critique of Catholic Social Teaching* in Gerard V. Bradley, E. Christian Brugger (edd.), *Catholic Social Teaching: A Volume of Scholarly Essays*, Cambridge 2019, 548-84.

This employment of the notion of “intrinsic evil” in Catholic social ethics, therefore, needs to be carefully scrutinized for various reasons. These include not only that it uproots this important notion from its proper context in the evaluation of human action. It is also part of a combative social stance that contradicts the discernment of the Magisterium over the last several decades for a more fraternal one, following the questionable influence of conservative ideology and partisan politics in the United States, and resulting in a social ethic that does not address the great challenges of our day.¹⁴ As recently treated by the historian James Chappel,¹⁵ the shift to a more “fraternal” style of social engagement by the postwar Magisterium – as reflected in the integral and solidary humanism of the *Compendium* – was the fruit of a recognition of the failings of a more “paternalistic” approach before the war, in which the upholding of public morality was a central concern and Catholics throughout Europe too often allied with emerging fascist elements to achieve such ends.¹⁶ The shift to a more fraternal mode of social engagement after the war seemed necessary given the way the former approach had left the Church vulnerable to critique for not sufficiently opposing the rise of fascist regimes before the war. Given this historical experience, it is frightening to see that the more paternalistic approach of especially American conservative Catholics has made them perhaps the intellectual backbone of a political party that is increasingly authoritarian and antidemocratic. But even this political misuse of “intrinsically evil acts” is not a good reason to discard the helpful articulation of them in VS.

¹⁴ I address these issues at greater length in my *Liberalism, Conservatism and Social Catholicism for the 21st Century?*, online at *Chicago Studies* (60:1): 3-26. For a discussion of the political maneuvering through which white southern Evangelicals – who were originally pro-choice and primarily wanted to defend the tax-exempt status of their segregated schools – gained political power by forging an alliance with conservative Catholics on the issue of abortion, see Randall Balmer’s *The Real Origins of the Religious Right* published in *Politico Magazine*, May 27, 2014 (www.politico.com/magazine/story/2014/05/religious-right-real-origins-107133).

¹⁵ For an excellent discussion of the postwar shift from more paternalistic to fraternal approaches to public morality, see his *Catholic Modern: The Challenge of Totalitarianism and the Remaking of the Church*, Cambridge 2018.

¹⁶ See, for example, John Hellman, *The Road to Vichy: Yves R. Simon’s Lonely Fight Against Fascism*, *Crisis Magazine*, May 1, 1988 (www.crisismagazine.com/1988/the-road-to-vichy-yves-r-simons-lonely-fight-against-fascism).

4. *Moral Objectivity, Moral Dispute and Ambiguity*

If one wants to follow and deepen the discernment of VS regarding the moral object, intrinsically evil acts and the corresponding teaching that we can articulate precepts of the natural law that are universal and permanent, it would seem helpful to also admit frankly that there is considerable disagreement and even ambiguity about various moral cases and kinds of human acts. This indeterminacy reflects the complexity of human behavior and its evaluation, the different moral approaches employed, and the human condition that limits not only the moralists in their second order work of analyzing human action but also the fallen moral agents seeking – in the perspective of the acting person – to achieve ends through deliberation of means. A frank recognition of indeterminacy, debate, disagreement and open questions in moral theology can complement a pastoral emphasis on accompanying those drawing near to the Church and avoiding rash judgment.

Given the years of lively debate surrounding VS and the relevance of its interventions to some important disputed questions – a debate that intensified in 2004 and continued for the better part of a decade – it is helpful to review how the Roman Congregation for the Doctrine of the Faith (Cdf) intervened into these debates, which sheds light on the ongoing moral discernment of the instruments of the Magisterium, and how this relates to different approaches to the good and evil of the human acts.

5. *Example 1: The Disease Preventative Use of Condoms*

The first example concerns the disease preventative use of condoms, regarding which a vigorous debate broke out in 2004 in response to an article by Martin Rhonheimer entitled *The Truth About Condoms*,¹⁷ which attempted to clarify Catholic teaching in light of conflicting statements by European Cardinals and a resulting media critique.¹⁸ Those who held what might be called a more “traditionally naturalistic”¹⁹ view reacted strongly against this article, in ways that more than occa-

¹⁷ Published in *The Tablet*, July 10, 2004, 10-11.

¹⁸ For a more detailed discussion of this case, see WILLIAM F. MURPHY, *The Disease Preventative Use of Condoms: Why it is not Forbidden According to Catholic Doctrine* in JASON T. EBERL ed., *Contemporary Controversies in Catholic Bioethics, Philosophy and Medicine*, 127, Cham 2017, 269-88.

¹⁹ I discuss this in my *Veritatis Splendor and Traditionally Naturalistic Thomisms: The Object as Proximate End of the Acting Person as a Test Case*, *Studia Moralia*, 45, December 2007, 185-216.

sionally reflected the culture war style in American politics that was increasingly influencing the behavior of conservative Catholics. Regarding this case, they tended to insist on the following. First, they held that the practice was forbidden because the natural pattern of semination into the vagina was an inviolable reflection of the natural law, which made it more like what Aquinas called a “sin against nature”, a category that included acts like bestiality and masturbation as distinguished from “marital acts” of intercourse between a man and woman. Second, they typically held that the teaching of HV reflected this “traditionally naturalistic” understanding of natural law and sexual ethics. Third, they held that HV, therefore, excluded the disease preventative use of condoms. And fourth, they seemed to hold that the stakes were high, and they must fight to defend the objective moral order and the credibility of the Church. They therefore demanded that the Magisterium under Pope Benedict XVI intervene to condemn the alternative view, which Benedict himself had seemed to echo in a 2010 interview.²⁰ In this we saw some of the early indications of an overly influential American Catholicism that was adopting the combative style of the increasingly radicalized conservative movement in the United States with whom they were increasingly aligned.²¹

This alternative that Benedict seemed to approve, at least implicitly, held the following views that seemed to align with those that had been articulated by Martin Rhonheimer in his 2004 *The Truth About Condoms* and against which American

²⁰ Those most strident opponents of Benedict’s remarks included John M. Hass, then President of the *National Catholic Bioethics Center*, Luke Gormally of *The Linacre Center*, and his former student Joseph Fessio, S.I. of *Ignatius Press*. Haas was quoted in the November 24, 2010 *The New York Times* as saying that, upon seeing an early copy of the book, “I told the publisher [Joseph Fessio, S.I.], ‘Don’t publish this; it’s going to create such a mess’”. Taken from *The New York Times* website, *After Condom Remarks, Vatican Confirms Shift*, October 24, 2010 (www.nytimes.com/2010/11/24/world/europe/24pope.html?_r=0).

²¹ In the political realm, this style was exemplified and propagated by Newt Gingrich, who was Speaker of the House from 1995 to 1999, and later joined the ranks of conservative Catholics. Since then, he has been a frequent presence on both Fox News and the Eternal Word Television Network (EWTN) which has grown increasingly close to the former in philosophical and partisan alignment, and even in the frequent appearance of lead EWTN host Raymond Arroyo on one of the most partisan opinion shows on Fox, even filling in as guest host. Gingrich’s propagation of a vicious style of partisan warfare rooted the use of inflammatory and derogatory language is widely recognized as a decisive factor in the polarization of American society, which has certainly damaged the unity of the Church and coarsened even theological discourse. For an enlightening profile that traces Gingrich’s mode of political engagement to his fascination with the violence that marks communal relations in the animal world, see M. COPPINS, *The Man Who Broke Politics, The Atlantic*, November 2018 (www.theatlantic.com/magazine/archive/2018/11/newt-gingrich-says-youre-welcome/570832/?gclid=EAIaIQobChMIwt-PYmjac7AIVEL7ACh3BkQCMEAAAYASAAEgJ6E_D_BwE).

conservatives – increasingly self-described as “orthodox Catholics” – had reacted strongly. First, that the more stringent view was based on a physicalist misunderstanding of natural law that should be discarded. Second, that the Church needed a more robust account of the virtue of conjugal chastity – along the lines of that sketched above – which entailed moving beyond the older approach based on the inviolability of the natural pattern of semination. Third, that the definition of contraception in HV 14 was about the morality of certain acts within marriage, namely those that were specifically intended to prevent the procreative consequences of marital intercourse. Fourth, that the disease preventative use of condoms is a different species or kind of human act so it does not fall under the prohibition of HV. Fifth, that although there might be good reasons (i.e., the risk of infection) to advise couples with discordant status regarding HIV (Human Immunodeficiency Virus) to abstain from intercourse – there was no Catholic teaching against the disease-preventative use of condoms. Sixth, that such use by promiscuous persons – i.e., infected prostitutes, sexually active homosexuals – for example, at least showed a sense of responsibility, but that it made no sense for the Church to articulate norms about how to perform intrinsically immoral acts like fornication (i.e., with or without a condom).

The CDF intervened on December 20, 2010 with a doctrinal *Note on the Banalization of Sexuality Regarding Certain Interpretations of “Light of the World”*.²² For our purposes, the key points include the following. First, that – against the understanding of HV entailed by the more rigorist position – the Note affirmed the interpretation of the less rigorist one based on the intentional description of the contraceptive act from HV 14, which is also the definition in the *Catechism of the Catholic Church* (CCC 2370). This intentional description of human acts aligns with the intentional approach to the moral object in VS no.78, which is our main concern here. The Note also affirmed – corresponding with the second view – Pope Benedict’s remarks that the use of a condom “with the intention of reducing the risk of infection, can be a first step in a movement towards a different way, a more human way, of living sexuality”.²³ The intervention rejected the conservative call to reinforce a physicalist account of sexual ethics and moral theory; it thereby encouraged further work along the lines indicated by VS in the context of a renewed

²² www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20101221_luce-del-mondo_en.html

²³ Benedict XVI, *Light of The World: The Pope, the Church, and the Signs of the Times*, tr. Michael J. Miller and Adrian J. Walker, San Francisco 2010, 119.

Thomistic virtue ethics. Because this intervention under Pope Benedict XVI clearly disfavored the views of previous members of this Academy who had failed to understand the significance of VS, and because it simultaneously encouraged work consistent the directions encouraged by VS, I think it reflects important lessons for this academy.²⁴

6. Example 2: Extreme Vital Conflicts in Medical Ethics

The second example – what we might call another “test case” for moral theory and magisterial discernment in the wake of VS – concerned the disputed question of what can be called a situation of extreme “vital conflict” in medical ethics.²⁵ This is the case where a woman is pregnant, there is no possibility of saving the child whose ongoing presence presents an immediate threat to the life of the mother, and both the mother and unborn child will soon die unless the child is promptly removed through a procedure that would be a physically direct abortion. This case does not involve a preferential choice for one over the other but is a question of whether a procedure that causes the death of the child can be used to save the savable mother, or whether she must be left to die. The classic example is when the skull of the unborn child is unable to pass through the birth canal and a caesarian section is not available; a craniotomy is, therefore, performed through which the skull of the child is crushed to remove it and save the mother. These cases have been debated since especially the late nineteenth century, which resulted in interventions by the Holy Office that were generally interpreted to forbid procedures like the craniotomy. For moralists who had been trained in more physicalist approaches to moral theory, these conclusions were considered correct and final.

²⁴ For a good summary of the aftermath of this situation, see Austen Ivereigh, *Aids and condoms: what the clarification clarifies* in *America Magazine*, December 22, 2010 (online at www.americamagazine.org/content/all-things/aids-and-condoms-what-clarification-clarifies). Ivereigh draws the appropriate conclusion that the Congregation clearly came down against what he calls the conservative “ultras” some of whom were then associated with the Pontifical Academy for Life. He continues that the congregation essentially declared “the Rhonheimer view to be the one that is in conformity with the Catholic moral tradition”. He goes on to write that “What the CDF has rejected, it seems to me, is a serious misrepresentation of Church teaching promoted by some organisations and pro-life theologians”.

²⁵ For a more detailed discussion of these cases, see WILLIAM F. MURPHY, JR. – MARTIN RHONHEIMER, *Saving the Savable Mother: Why the Physician is Not Culpable of (Morally) Directly Killing* in Jason T. Eberl (ed.), *Contemporary Controversies in Catholic Bioethics*, New York 2017, 91-104.

Although the increasing availability of caesarian sections in recent generations has greatly decreased the relevance of the craniotomy case for those with access to modern medical services, the recognition that the same moral evaluation would apply to commonly performed procedures like the salpingectomy or salpingostomy to resolve ectopic pregnancy makes the general category of “vital conflict” of serious ongoing concern. The importance of the issue is manifest when the stricter position is enforced before a medical intervention is made to save the mother, thus allowing her to die. It can also be seen in situations where the doctor has intervened to save her, but the bishop – for example – is advised that a “direct abortion” has taken place and declares those involved to be excommunicated. In both cases, the result is at least a public relations disaster for the Church, especially because public opinion would strongly favor saving the savable mother, consistent with the basic ethos of the medical profession.

In the post conciliar decades, even reputedly conservative moralists like Germain Grisez had argued for the permissibility of procedures like the craniotomy. Similarly, the 1995 German Adult Catechism²⁶ drew similar conclusions and had been approved by the Roman Congregation for the Clergy, although the moral analysis was hard to reconcile with the 1993 encyclical VS. In an attempt to clarify this situation, Martin Rhonheimer submitted a study to the Congregation for the Doctrine of the Faith in 2000; “the congregation, in turn, asked that it be published, so that the theses it contains could be discussed by specialists”.²⁷

As we would expect, his analysis followed from the renewal of Thomistic virtue ethics centered on a robust account of how reason informs and measures properly human acts, consistent with the key directions indicated by VS, and the understanding of the norm against the direct killing of the innocent consistent with EV 57, which saw it as doing so “[...] as an end in itself or as a means to a good end”.²⁸ For cases of vital conflict, the virtue at stake is justice, namely whether the doctor is committing the injustice of the “direct killing of the innocent” against the unborn child when he removes it to save the mother through a procedure that is lethal to the unborn child. The analysis turned on taking into

²⁶ *Katholischer Erwachsenencatechismus*, vol. 2: *Leben aus dem Glauben*, Freiburg 1995, 292.

²⁷ MARTIN RHONHEIMER, *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies*, ed. William F. Murphy, Jr., Washington 2009, xiii.

²⁸ The broader context includes EV 57.4 where it reads “...I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral”. Then number 57.5 builds on this to say “The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end”.

account the “objective configuration of circumstances”²⁹ of the case or “the objective (and tragic) constellation of the case”³⁰ in relation to the reason that informs and measures human action. Careful analysis as contained in the cited sources leads to the conclusion that the physician who saves the mother through such a procedure has not violated the norm against the direct killing of the innocent.³¹ The “golden rule” or “silver rule”³² – of not doing unto others what we would not want done to us – is a principle reflecting the virtue of justice, which can be employed in a thought experiment to further illumine the question of whether the injustice of the direct killing of the innocent has been committed. If I were the unborn and unsavable child, would I have wanted my mother to forsake the intervention and sacrifice her life so I could live a short time longer? Of course not!

The original publication of this study in German was uncontroversial,³³ as it was generally agreed that – for example – one should save the savable mother, and most German speaking moralists were satisfied with the supporting argumentation. The 2009 publication of the English translation, however, under the title of *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies*, provoked a vigorous and concerted opposition, especially in the United States and centered in the *National Catholic Bioethics Quarterly* (NCBQ), but echoed in several conservative journals in the United States.

This determination of this opposition was even greater than that regarding the previous debate on the disease-preventative use of condoms for several reasons. First, as in the prior case, the opponents wanted to defend a more physicalist reading of Thomistic ethics in general, which was predominant in the United States. It similarly allowed those working in medical ethics to avoid the challenge of updating their discipline in light of VS and continue relying primarily on traditional casuist tools such as the principles of double effect and cooperation with evil. Second, the physicalist interpretation of the norm against the “direct killing of the innocent” and the resulting assessment of the case of vital conflict had been widely propagated in the United States by conservative moralists and the

²⁹ RHONHEIMER, *Vital Conflicts in Medical Ethics*, *op. cit.*, 124, n. 43.

³⁰ M. RHONHEIMER, “Colloquy”, *National Catholic Bioethics Quarterly* 12, 1 Spring 2012, 10.

³¹ Rather than arguing for a norm that a procedure like the craniotomy was permissible in these cases, it was basically a very cautious argument by exculpation.

³² That is, the golden rule put negatively as in this case.

³³ M. RHONHEIMER, *Abtreibung und Lebensschutz. Tötungsverbot und Recht auf Leben in der politischen und medizinischen Ethik*, Paderborn 2003.

National Catholic Bioethics Center, which had led to considerable public controversy regarding Catholic hospitals, including the declaration of excommunication. This significantly raised the stakes of a potential reversal. Third, if Rhonheimer's conclusions were to prevail in yet another key test case, this would give considerable weight to the view that his line of interpretation of VS was the one that best aligned with Magisterial discernment, which in turn gave considerable weight to his reading of the renewal of Thomistic virtue ethics centered in reason and virtue. Fourth, this outcome would also undermine the reading of Catholic social ethics advanced by many conservative Catholics in the United States, who focused on the "preeminent" issue of abortion. Rather than a proper catechesis on the morality of voting based on a judgment about which candidates for office would best advance the common good, this was recognized by many Catholics as a blatant attempt to align Catholics with the conservative movement and Republican party around broader culture war issues. Many powerful factors, therefore, including those that touch deeply on one's identity and perceived place in society – help to elucidate why this case was such a point of contention.

These high stakes help to explain how excess zeal for the conservative position resulted in a letter from then CDF prefect William Levada written at the request of the Holy Father, Pope Benedict XVI, affirming that Rhonheimer's study on *Vital Conflicts* had indeed been published with the encouragement of the CDF as he had claimed, and encouraging Rhonheimer to participate in the ongoing debate on the topic.³⁴ In this case, however, the CDF didn't further support Rhonheimer's conclusions but made clear that it considered the cases to be open and under discussion, which was an improvement but was not sufficient for a breakthrough in fundamental moral theology in a context where more conservative approaches were predominant.³⁵

³⁴ RHONHEIMER, "Colloquy", *op. cit.*

³⁵ Leaving the case open, however, allowed the more rigorist approaches to morality in general to maintain their dominance, which made it difficult to present or publish on views more aligned with Magisterial discernment, especially with the increasing influence of the conservative movement on the Church in the U.S. This influence became even more problematic as the conservative movement was radicalizing under the influence of Donald Trump, while conservative donor networks and think tanks have been increasing their hold on Catholic institutions. This increasing hold of conservatism – with its long history of opposition to Catholic Social Teaching – on the Church in the U.S., helps to illumine the reasons behind the lack of enthusiasm for the more social emphasis of Pope Francis.

7. Example 3: Certain Cases of Hysterectomy

The third example I would raise is the 2019 CDF Response to a question on the liceity of a hysterectomy in certain cases. The question was, “When the uterus is found to be irreversibly in such a state that it is no longer suitable for procreation and medical experts have reached the certainty that an eventual pregnancy will bring about a spontaneous abortion before the fetus is able to arrive at a viable state, is it licit to remove it (hysterectomy)?” The Response was “Yes, because it does not regard sterilization”.

For our purposes, the “illustrative note” merits careful attention because follows in the trajectory of VS’s recovery of Aquinas’s account of intentional action. It does so by explaining that “The precise *object* [emphasis added] of sterilization is to impede the functioning of the reproductive organs [the proximate end sought by the agent, explanation added], and the malice of sterilization consists in the refusal of children: it is an act against the *bonum prolis*”.

I would add that this refusal of children would be a violation of the virtue of conjugal chastity, which – according to the Catholic tradition – requires a kind of responsible parenthood that excludes acts whose proximate end is to prevent the *bonum prolis*, while encouraging instead periodic abstinence. This “illustrative note” employs a similar language as in the study Martin Rhonheimer published at the request of the CDF on the case of vital conflicts when the illustrative note explains that “The medical procedure should not be judged as being against procreation, because we find ourselves in an *objective context* [emphasis added] in which neither procreation, nor as a consequence, an anti-procreative action, are possible. Removing a reproductive organ incapable of bringing a pregnancy to term should not therefore be qualified as a direct sterilization [...]”.

Bringing this all together, it seems that on the commemoration of EV, we have a clear departure from the physicalism that is has marked those who are more rigorist than the Magisterium, and we have a further justification for emphasizing – as a point of common reference for the Church – a fundamental moral theology centered in *right reason* and *the virtues*, where reason assesses all the relevant factors (generally corresponding to what Aquinas calls “principal conditions of the object”).

8. *A Sign of Growing Consensus on A Methodology Centered in Reason and Virtue*

In this short concluding subsection of my fourth part, I would like to simply note several key texts from a recent and well-regarded work in Thomistic ethics that largely aligns with the above emphasis on the centrality of reason and virtue and how an evaluation in light of the virtue of justice provides better resources than a manualist approach centered on the distinction between formal and material cooperation in evil. The work is by Kevin Flannery, S.I., and is highly praised by leading English language Thomists including Stephen Brock, Nicanor Pier Giorgio Austriaco, O.P. and Stephen Jensen, which suggests the prospects for significantly greater consensus among those working in the Thomistic tradition in the wake of VS.

Flannery emphasizes that, while others speak of cooperation with evil, for Thomas, “the larger and ultimate concern” is “whether a person’s actions are consistent with justice and reason”.³⁶ He rightly recognizes Aquinas’s understanding of human acts as intentional acts and is clear that intentions – for Thomas – are not arbitrary but grounded in reason. Flannery also devotes the fourth and fifth chapters to an examination of all factors regarding reason and justice that have a bearing on his case of cooperation with evil. In so doing, I think he illustrates a growing consensus in Thomistic fundamental moral theology that ranges from key points regarding the moral object, to the centrality of reason, to the need to take into all the relevant factors bearing on reason, role of the virtues in manifesting the order of reason that measures human acts thereby providing the proper contest in which to analyze them.

In sum, it seems that the directions encouraged by VS around the moral object and natural law have not only helped to stimulate movement beyond the approaches of the manuals to the recovery of a robust virtue ethic, and that broad areas of improved consensus in Thomistic fundamental moral theology may be emerging. If this could come to fruition, God willing, perhaps we could hope for a path of Magisterial discernment fostering a broader ecclesial discernment in a more synodal Church where complementary approaches are also welcomed.

³⁶ FLANNERY, *Cooperation with Evil*, *op. cit.*, 10.

5. NATURAL LAW AS THE LIGHT OF REASON

In the context of the post conciliar debate about the good and evil of human action, in which various moralists had claimed that common understandings of natural law were confusing it with biological laws and neglecting its fundamentally rational nature, VS encouraged a recovery of Aquinas's account of natural law. It did so by repeatedly highlighting Thomas's neglected definition of it as "the light of understanding [...], whereby we understand what must be done and [...] avoided" (VS 12, 40, 42 [2x]). This recovery of what can be understood as the epistemological dimension of natural law helps us to understand how it is not a threat to human freedom, since our natural reason has access to God's Eternal Law that is the ultimate measure of all action. In thereby highlighting how our natural reason can attain moral truth – provided our passions don't blind us to it – this understanding of natural law can be an impetus to cultivating a love for the good of virtue so we can live in true freedom. Thus, for the person who is seeking virtue and holiness and assisted by the motions of the Holy Spirit, excellent action should follow consistently, and with relative ease and joy. Following this law is not heteronomy, but "participated theonomy" (VS 41).

6. CONSCIENCE

When speaking of the conscience, therefore, I think it is helpful to note that it is spoken of in a range of ways in the tradition, ranging from broader accounts that present it more as a moral faculty to more focused accounts like that of Aquinas that presents it within a comprehensive moral theory as a judgment of reason. Especially because I think Magisterial moral teaching needs to best position itself to deal with the more rigorist positions of more conservative – for lack of a better term – moralists who ground their work in (contestable) readings of Aquinas, I think any commemoration of EV needs to include a prominent place for a fundamentally Thomistic account of conscience in the limited sense of a judgment of reason. This inclusion can build on other potential points of consensus among Thomists in giving us a common point of reference in moral theory. This consensus, as we have seen, would thus include at least the centrality of reason and virtue, key points regarding the moral object, and the importance of charity. This would help those Thomists who want to support the more moderate positions that seem to be favored by the Papal Magisterium in recent decades to

argue for them as reflecting the discernment of the Magisterium, which is to be distinguished from more ideologically committed positions.

Conscience as a judgment of reason could then be understood either as second order reflection, or in light of our possession of the natural law as light of reason, placing it in the first-person perspective of the agent. Of course, second order reflection results in the articulation of particular precepts of natural law, which can be appropriated into a habitus of knowledge of particular moral teachings about kinds of human acts and normative statements about them. Regarding the formation of conscience, I would highlight how VS 64 helpfully treats the formation in conscience as a formation in all the virtues. Thus, we would have in the forefront, an approach that builds on the intervention of VS and can more easily influence the discussion in Thomistic moral theology seen as a common foundation for moral reflection in the Church, taking into account magisterial discernment, which of course must align with the harmony of faith and reason.

That said, it seems to me that we want to be clear that there is an ultimate rule and measure for action in the eternal law, that right human reason grasps this eternal law, and – with VS – that it is possible to define kinds or species of acts that are always evil, and there can be universal and permanent precepts of natural law – that is normative statements – that prohibit them. As I have also said, I think we should also recognize that there can be ambiguity in the formulation of the species/kinds of acts, and the precepts and norms about them, and how concretely chosen behaviors relate to those types or norms. And we should also remember that intrinsically evil does not mean gravely evil, and the gravity of the act can depend on the circumstances.

Regarding TB 124 on the regulation of births and sexual ethics, I think it is always better to frame the discussion about such difficult and contested matters in light of the universal human search for happiness, the virtue of conjugal chastity that helps such happiness to be realized, and what the Church has learned about the beauty and full truth Christian marriage as a sacrament of the mystery of life-giving love. I would then strongly prioritize the language of reason over law and natural law, presenting the norms the Church has articulated as guides that have been discerned to help us toward fulfillment, while realizing that these norms about sexual ethics are both an ongoing locus of debate among scholars and can be challenging for agents to understand and live. In the context of such discussion, I think it is helpful to emphasize that the Church stands ready to accompany everyone on the way to true happiness and holiness in Christ. TB 127 is closer to this approach, but its content might be better earlier.

Regarding TB 125 on *epikeia*, Thomas's point is not that "The moral necessity thus consists in disobeying the law of justice" (as the text reads) but that "if the law be applied to certain cases [like the madman] it will frustrate the equality of justice and be injurious to the common good, which the law has in view". So as Thomas writes in ad 1, «"Epikeia" does not set aside that which is just in itself but that which is just as by law established"». So what is just in itself, according to right reason – that is, just according to the way God knows the world – is the measure of action.

Regarding TB 126, yes discernment is always necessary, and God has given us the natural light of reason, the help of the motions of Grace, and the teaching and accompaniment of the Church to assist us. Regarding the clash of goods or values, I would say that the good to be done that follows from right reason (a correct judgment of conscience) will never be against any of the virtues – like justice or chastity or charity – as they all are ultimately measured by God's truth. Again, I would say that it is possible for species/kinds of acts to be articulated that are intrinsically evil and thus never to be done (corresponding to universal and permanent precepts of natural law), but that there can be questions about whether a particular act would be of a given species of intrinsic evil, and there could be situations in which the agents are unable to assess the situation rightly, and particular acts of a given species could be of greatly differing gravity following from the circumstances. And the Church accompanies those striving to follow Jesus on the way of love.

7. SPECIES OR KINDS OF HUMAN ACTS

I have already discussed above how human actions fall into different kinds, how these different kinds can be understood as kinds of virtues, of how these kinds become better understood and specified over time, of how questions about kinds of acts can remain open for many years (i.e., EV addressing aspects of the prohibition of killing, how the case of *Vital Conflicts* has remained open for many years, how the CDF intervenes over time to address questions like the hysterectomy case, etc.), and of why there can be ongoing disagreement about them. On this basis, it could highlight the need for ongoing work at further clarifying Catholic teaching, the way that work needs to be purified of ideological distortions, the way an ecclesial stance of charity and friendship should inform it, and the stance of *obsequium religiosum* theologians and faithful should have toward the Papal Magisterium.

8. NORMS

In the light of all that has been written above, I think it is helpful to clarify that the language of moral norm, although it became more prominent in modern moral discourse than it was in much of the preceding Catholic tradition, is common in contemporary society and can be employed fruitfully in Catholic moral discourse, even if we want to emphasize a fundamentally reason-grounded and virtue-oriented ethic over a fundamentally normative one. In such a context, these norms can be understood simply as linguistic expressions about different kinds of human acts, and whether – for example – a particular kind of species of human act is always contrary to human flourishing as in the relatively rare case of negative absolute moral norms about what are also called “intrinsically evil acts”. They correspond to precepts of the natural law.

9. DISCERNMENT

As we all know, the notion of discernment has come into greater prominence in Catholic morality through the influence of our first Jesuit Pope, who comes from a tradition in which the practice is common. Ignatian discernment seeks to attain a spirit of detachment, to discern different influences, and to seek divine assistance in choosing the best path. For the sake of fostering the conversation in the Church, I think it helps to discuss how it overlaps considerably with a Thomistic sense of prudence, the virtue that perfects the process of practical reasoning regarding the means to achieve ends, understood in the context of the related virtues, gifts of the Holy Spirit, natural ability to know the moral law through the light of reason, and the judgment of conscience. In a Thomistic framework, prudence works in a virtuous circularity with the moral virtues of justice, fortitude and temperance to direct acts well; the ends that the agent seeks depend largely on his or her formation in these moral virtues or corresponding vices. Like the Ignatian framework, the ability to deliberate or discern well depends on the moderation of passions through the moral virtues. And like the Ignatian framework, there is ample opportunity for not just distorted reasoning through passions or external agents, but the opening to divine guidance, especially through the gift of counsel.

There is a wide literature on the debates surrounding discernment and AL. It seems to me that Pope Francis is trying to find a way to help the Church to walk together in Charity, taking into account several factors: 1) that people need to follow

their conscience, their best rational judgment about what is to be done; 2) that the Church has a tradition of teaching about the morality of certain kinds of human acts that they should receive appropriately; 3) that there is a considerable amount of debate about moral topics; 4) that the credibility of the Church as a moral teacher is not at a high point; and 5) that there are many reasons why people may have difficulty understanding how Church teaching about particular kinds of acts can be reconciled with their best judgment about what they see as possible for them. For such reasons, it seems that the Holy Father sees the language of discernment as helpful, and it seems to me we can support him in this by putting this language in dialogue with the more Thomistic language of less sympathetic moralists, and never forgetting to exemplify the essence of charity as a form of friendship.

10. CONCLUSION

In writing about fundamental moral theology on roughly the occasion of the quarter century anniversary of the publication of St. John Paul II's 1995 encyclical *EV*, it seemed important to do so in recognition of the fact that this document followed the 1993 publication of *VS*, which had intervened into the post conciliar renewal of moral theology by encouraging directions that would ensure the fidelity of that renewal to the tradition. As I have tried to show above, it seems to me that the most important of these directions have helped to advance the scholarly discussion toward a better understanding of topics central to the discipline including the object of the human act, the way reason rules and measures human action, the way this reason considers all the factors relevant to assessing the morality of the action, and how the virtues reflect this order of reason which is ultimately measured by Divine Truth.

For these reasons, it would seem important that these promising directions receive reinforcement on this occasion by being in the forefront of our reflections on fundamental morality. Although so doing would give a certain priority to the Thomistic tradition as a common point of reference, and as an example of how human reason and philosophy can be employed in the service of revelation, this should not be understood to undermine the legitimate diversity of theological and philosophical approaches. It should instead be understood in the context of a fruitful dialogue with other perspectives within the context of a more synodal way of walking together as a community of disciples of Christ.