

# The Universality and Immutability of the Precepts of the Natural Law: The Existence of an Intrinsically Absolute Morality\*

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## 1 The Debated Issue and the Position of *Veritatis Splendor*

The encyclical *Veritatis Splendor* is not intended to be a complete study concerning the universality and immutability of the precepts of the Natural Law, nor is it intended to be a complete exposition of the doctrine concerning the moral act. Its objective was solely to carry out a doctrinal discernment that had been made necessary and unpostponable.<sup>1</sup> For this reason it recalled certain fundamental points of Catholic doctrine regarding these matters, and rejected certain theological currents that during the last 25 or 30 years have put these fundamental points in doubt or have denied them.

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<sup>1</sup> Cf. John Paul II, Enc. *Veritatis Splendor*, 6-VIII-1993, nos. 4-5, and the end of no. 29. From here on out this encyclical will be abbreviated as VS. English translation is taken from the Vatican's website: <http://www.vatican.va>.

These currents of thought are fundamentally proportionalism and consequentialism and, more generically, teleological ethics. These will be discussed at another time. The more immediate and manifest doctrinal problem raised by the proportionalist and consequentialist method consists in the fact that once applied to concrete moral problems by those who sustain it, it justifies “as morally good, deliberate choices of kinds of behaviour contrary to the commandments of the divine and natural law.”<sup>2</sup> The method that arrives at these results is that of a ‘weighing of goods’ or of a ‘proportionate reason’. Such a method makes “impossible to qualify as morally evil according to its species –its ‘object’ –the deliberate choice of certain kinds of behaviour or specific acts, apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned.”<sup>3</sup> Consequently, it also denies the universal and absolute validity, without exceptions, of the moral norms that prohibit this type of behavior. To this must be added that, by means of a distinction between the plane of moral goodness or evil and the rightness and wrongness of the act, it introduces a disassociation between the morality of the choice of action and the morality of the person, a disassociation that breaks the unity of the practical reason and that of the moral subject.<sup>4</sup>

All of this means, in simpler terms, that it is not enough to know that a

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<sup>2</sup> VS 76.

<sup>3</sup> VS 79.

<sup>4</sup> Among the works of proportionalist authors prior to *Veritatis Splendor*, cf.: P. Knauer, “La détermination du bien et du mal par le principe du double effet,” *Nouvelle Revue Théologique* 97 (1965), 365 – 374; R.A. McCormick, “Notes in Moral Theology,” *Theological Studies* 28 (1967) 749 – 800, 36 (1975) 77 – 129, 40 (1979) 59 – 112; B. Schüller, *Die Begründung sittlicher Urteile*, (Düsseldorf: Patmos Verlag, 1973); J. Fuchs, *Responsabilità personale e norma morale*, (Bologna: Dehoniane, 1978); F. Böckle, *Moral fundamental*, (Madrid: Cristianidad, 1980). After *Veritatis Splendor*, cf. J. Fuchs, “El acto moral: lo intrínsecamente malo,” in Mieth, D. (ed.), *La teología moral ¿en fuera de juego? Una respuesta a la encíclica “Veritatis splendor”*, (Barcelona: Herder, 1995), 199 – 217; J. Fuchs, “Das Problem Todsünde” *Stimmen der Zeit* 212/2 (1994) 75 -86; L. Janssens, Teleology and proportionality. Thoughts about the Encyclical ‘Veritatis splendor’,” *Bijdragen, tijdschrift voor filosofie en theologie* 55 (1994) 118 – 132; P. Knauer, “Zu Grundbegriffen der Enzyklika ‘Veritatis splendor’,” *Stimmen der Zeit* 212/1 (1994) 14 – 26; R.A. McCormick, “Killing the Patient,” *The Tablet* (10-30-1993) 1410 – 1411; Idem. “Some early reactions to ‘Veritatis splendor’,” *Theological Studies* 55/3 (1994) 481 – 506; W. Wolbert, “Los actos ‘en sí mismos malos’ y el consecuencialismo,” in Mieth, D. (ed.), *La teología moral . . .*, (1995), 101 – 124.

person has knowingly and deliberately committed an abortion, has lied, has had sexual relations outside of marriage, or has deliberately murdered an innocent, in order to pronounce a moral judgment on the action and on the decision of this person. There would not exist types of actions such as ‘to voluntarily have an abortion’, ‘to lie’, ‘to fornicate’, or ‘to murder’, that would always and for all people be evil, nor would the precepts that prohibit them be valid always and for all people. Although these precepts give a generally useful evaluative instruction, these actions would have to be morally evaluated on a case by case basis, in light of all the circumstances and consequences, therefore contemplating the goods in play for the interested person and for others. The same issue could be raised in another, more precise way: admitting beforehand that ‘abortion’, ‘lying’, etc., are evil actions, it would not be clear that every discontinued pregnancy always constitutes the performance of an ‘abortion’, nor would it be clear that every time sexual relations are had between single people it is always ‘fornication’, etc., after having examined the intentions, circumstances, and consequences or, in other words, after having carefully considered all the goods in play.

The position of *Veritatis Splendor* on the issue can be expressed briefly. It is repeatedly stated that it is the doctrine of the Church, based on Scripture,<sup>5</sup> that there exist some types of moral actions that cannot be deliberately chosen without thereby committing a moral transgression.<sup>6</sup> It is concerned with actions that have an absolutely negative intrinsic morality, namely, actions that are immoral by virtue of the moral object that constitutes actions of a particular kind. Consequently, it is added that the moral norms that prohibit such actions are valid *semper et pro semper*: they are always valid and true for all.<sup>7</sup> It thus denies that such actions can only be morally evaluated on a case by case basis, in light of “the ulterior intentions of the one acting,”<sup>8</sup> and in light of the consequences and specific circumstances of that action.

The encyclical gives some theological and methodological indications, both positive and negative, which point to the root of the problem, and that allow the above mentioned doctrinal thesis to be properly understood. There are

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<sup>5</sup> Cf. VS, no. 81, which cites 1 Cor 6, 9-10.

<sup>6</sup> Cf. VS, nos. 67, 76, 79, 80, 81, 82.

<sup>7</sup> Cf. VS, nos. 52, 82, 96, 97, 99.

<sup>8</sup> VS, no. 80.

three principal indications of a positive character. The first is the thesis that “[t]he morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will,”<sup>9</sup> which is solidly grounded by Saint Thomas Aquinas and peacefully accepted by the Catholic moral-theological tradition. The second—of great importance—is that “[i]n order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself in the perspective of the acting person. The object of the act of willing is in fact a freely chosen kind of behaviour. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will.”<sup>10</sup> The third indication, and very close to the previous one, puts the morality of the choice and that of the person in close connection: the moral object “is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person. Consequently, as the Catechism of the Catholic Church teaches, ‘there are certain specific kinds of behaviour that are always wrong to choose, because choosing them involves a disorder of the will, that is, a moral evil.’”<sup>11</sup>

There are two primary negative methodological indications, that is, indications concerning what should be avoided. The first alludes in essence to the very concept of moral action, and says that, “one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world.”<sup>12</sup> The second refers to the constitution of the moral object, and notes that “[t]he weighing of the goods and evils foreseeable as the consequence of an action is not an adequate method for determining whether the choice of that concrete kind of behaviour is ‘according to its species’, or ‘in itself’, morally good or bad, licit or illicit.”<sup>13</sup>

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<sup>9</sup> VS, no. 78.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* The internal citation is from no. 1761 of the *Catechism of the Catholic Church*.

<sup>12</sup> VS, no. 78.

<sup>13</sup> VS, no. 77.

## 2 The Constitution of the Moral Object

At first glance, it may seem that the problem with these moral theories is that for them the end justifies the means. However, this is not quite the case. An editorial of “L’Osservatore Romano” published May 20<sup>th</sup>, 1995 synthetically exposed the core of the issue. “By providing guidance on how to understand the moral object, the encyclical cautions against consequentialism and proportionalism as theories that conceive the constitution of the moral object in such a way that allows: first, for the action chosen to be rendered morally neutral and; subsequently, for a continuous ‘redefinition’ of the action based on intentions and the consequences that ensue. Thus, there is established an argumentative context which certainly does not deny the principle that the ends do not justify the means, but makes it practically inapplicable. This is the complex methodological step that absolutely has to be rejected.”<sup>14</sup> Let us slowly look at this methodological step.

In an article published after *Veritatis Splendor*, McCormick states that the thesis that some actions are morally evil by virtue of their object (independently of the specific circumstances) is obvious and tautological if it is known beforehand that the object of that action is morally evil. The problem is in knowing which objects are evil and why.<sup>15</sup> It is not enough to materially describe the chosen behavior in order to reach the moral object. It would be necessary to include in the object all the morally significant circumstances and then, concludes McCormick, the proportionalists would agree to say that there are actions that are evil due to their object. They would then have to admit, he adds, “an expanded notion of the object.”<sup>16</sup>

The view of J. Fuchs is not very different from this. This author says that the *complete object* of the act is the fundamental ethical action (*Grundakt*) together with the intention, circumstances, and foreseeable consequences; these latter elements allow us to distinguish, for example, between lying and keeping a secret.<sup>17</sup> In another text he writes: “It cannot be said that killing,

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<sup>14</sup> “La recezione della ‘Veritatis Splendor’ nella letteratura teologica,” *L’Osservatore Romano*,” 20-V-1995, p. 1, our translation.

<sup>15</sup> Cf. R.A. McCormick, *Killing the Patient*, (1993), p. 1410, our translation.

<sup>16</sup> *Ibid.*, p. 1411.

<sup>17</sup> Cf. J. Fuchs, *Das Problem Todsünde*, (1994), p. 83.

as the performance of a human act, is morally good or evil because killing, in itself, does not yet express the intention and the end of the moral subject and, therefore, in itself cannot be a human action.”<sup>18</sup> Without this intention, killing in the interest of self-defense could not be distinguished. It should be considered—Fuchs adds—“that an action in its materiality (homicide, causing injury, going to the moon) cannot be evaluated from the moral point of view without taking into account the motive for the subject’s action. Without this motive, in effect, there is not yet a human action, and only a human action can be evaluated as good or evil in a moral sense. The pre-moral evil performed by means of a human action cannot be desired as such and must be justified in relation to the entire action by proportionate reasons.”<sup>19</sup> The conclusion of Fuchs is that “a moral judgment can only be formulated from the simultaneous consideration of three elements (action, circumstances, and end), which are in themselves pre-moral. The performance of the three elements (a. theft of another person’s money, b. who is very poor, c. to please a friend) is not the combination of three human actions, which can be evaluated separately, but constitute a single human action.”<sup>20</sup> From here, Fuchs goes on to state that, as it is not possible for moral norms to consider the variety of intentions and circumstances, a moral norm that prohibits a negative action can hardly have an absolute value that is without exceptions.<sup>21</sup> In the end, actions have to be judged on a case by case basis.

As has been indicated by various authors,<sup>22</sup> in proportionalism there is an

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<sup>18</sup> Id., “Il carattere assoluto delle norme morali operative”, in *Responsabilità personale e norma morale*, (1978), p. 110, our translation.

<sup>19</sup> *Ibid.*, p. 111.

<sup>20</sup> *Ibid.*, p. 112.

<sup>21</sup> Cf. *Ibid.*

<sup>22</sup> Cf. W. May, “Los actos intrínsecamente malos y la enseñanza de la encíclica ‘Veritatis Splendor’”, *Scripta Theologica* 26/1 (1994) 199-219; M. Rhonheimer, “‘Intrinsically Evil Acts’ and the Moral Viewpoint: Clarifying a Central Teaching of ‘Veritatis Splendor’”, *The Thomist* 58/1 (1994) 1-39; Id., “Intentional Actions and the Meaning of Object: A Reply to R. McCormick”, *The Thomist* 59/2 (1995) 279-311; A. Rodríguez Luño, “Veritatis Splendor’ un anno dopo. Appunti per un bilancio (II)”, *Acta Philosophica* 5 (1996) 47-75; Id., “El acto moral y la existencia de una moralidad intrínseca absoluta”, in Del Pozo Abejón, G. (ed.), *Comentarios a la ‘Veritatis Splendor’* (Madrid: BAC, 1994), 693-714. Other articles of interest published after *Veritatis Splendor* are the following: J. Finnis, - G. Grisez, “Gli atti intrinsecamente cattivi”, in *Lettera enciclica ‘Veritatis Splendor’ del Sommo Pontefice Giovanni Paolo II. Testo e commenti*, Quaderni de L’Osservatore Ro-

error in the conception of the voluntary action. The error consists in the fact that, when they speak of actions, they think of actions as described physically ('killing *per se*', of which Fuchs speaks in the text cited above), deprived of their voluntariness: the intended end evaluated by the reason, a reason which seeks toward a real or apparent good. An action, if it is described as being involuntary, is not a human action and cannot be evaluated morally; the proportionalists are correct about this. However, rather than characterizing the voluntariness (and consequently, the morality) intrinsic to all voluntary action, which has been eliminated so that they may consider any action as an initially 'pre-moral' reality, they introduce the voluntary (and moral) element by taking it from the intention of the end, circumstances, or consequences. It has rightly been written that for the proportionalists, human action as a voluntary and moral reality, is the sum of a merely physical, or physically described, action (killing in itself) plus the intention and the circumstances or consequences. The real problem with proportionalism is that, already on the basic level of action theory, a physical action plus the specific intention of the acting subject (*finis operantis*) does not result in voluntary action, but rather something quite different.<sup>23</sup> Adding the intention of the subject to a physically described action is like trying to make a corpse walk by giving it a cane or putting some shoes on it.

The method proposed by proportionalism for the moral evaluation of actions has, therefore, two stages. In the first stage there is a physicalist mode of

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*mano* 22, (Vatican City: Libreria Editrice Vaticana, 1994), 227-231; J. Finnis, "Beyond the Encyclical", *The Tablet* (8-I-1994) 9-10; B. Honings, "Il discernimento di alcune dottrine morali ed etiche. Una lettura della 'Veritatis Splendor'", in G. Russo (ed.), *Veritatis Splendor. Genesi, elaborazione, significato* (Rome: Edizioni Dehoniane Roma, 1994), 131-153; B. Kiely, "L'atto morale nell'enciclica 'Veritatis splendor'", in Various Authors, *Veritatis splendor. Atti del Convegno dei Pontifici Atenei Romani* (October 29-30, 1993), (Vatican City: Libreria Editrice Vaticana, 1994), 108-118; A. Rodríguez Luño, "Teleologismo, consequenzialismo e proporzionalismo", in *Lettera enciclica 'Veritatis splendor' del Sommo Pontefice...*, (1994), pp. 223-226. The following books are important: S. Pinckaers, "Ce qu'on ne peut jamais faire. La question des actes intrinsèquement mauvais. Histoire et discussion", (Fribourg-Paris: Editions Universitaires de Fribourg-Cerf, 1986); J. Finnis, "Los absolutos morales (tradición, nuevos planteamientos y su verdad)", (Barcelona: Ediciones Internacionales Universitarias, 1992); M. Rhonheimer, "La perspectiva de la moral. Fundamentos de la Ética Filosófica" (Madrid: Rialp, 2000); Id., "Ley natural y razón práctica" (Pampalona: Eunsa, 2000).

<sup>23</sup> Cf. M. Rhonheimer, *Intentional Actions and the Meaning of Object...*, (1995), pp. 286-287.

describing the voluntary action that makes it morally neutral or ‘pre-moral’. Physicalism both deplors and outgrows it after, in a second stage, it subjects the ‘neutralized’ voluntary action to a process of ‘re-definition’ based on the intention of the subject or on the consequences. It does not accept that, in some voluntary actions, the intended ends that constitute them can have in themselves a contrariness to the natural principles of right reason (to the virtues<sup>24</sup>) that make them incompatible with a will oriented toward the human good.

We should look more carefully at the intended end that constitutes the voluntary action, because this end is the moral object.<sup>25</sup> Consider the example of the conduct of Peter the motorist. If we say: “the muscles of Peter’s right arm contract,” we are speaking of a physical fact, and we are adopting the descriptive method of physiology, and certainly not that of ethics. Saint Thomas Aquinas refers to this aspect as the *materia ex qua* of the action. We do not yet have a voluntary action or a moral object. If, in turn, we say, “Peter lifts his arm to signal that he is turning to the right,” we speak of a voluntary action, choosable by a sane person, in which corporal movement (raising the right arm) obeys a projection or end endowed with meaning for him and others. Saint Thomas speaks of *materia circa quam*<sup>26</sup>, of the moral object of the choice, specifying that such an object is a *forma a ratione concepta*,<sup>27</sup> (i.e., that the moral object is formally an end or an operative projection conceived and evaluated by practical reason, and is chosen as such). The material element of the object, the raising of the arm, could respond to a different end, for example, to threaten someone, and then it would happen that the same act, from the standpoint of the *genus naturae*, would actually be a different act from the standpoint of the *genus*

<sup>24</sup> “In ratione practica praeexistunt quaedam ut principia naturaliter nota, et huiusmodi sunt fines virtutum moralium, quia finis se habet in operabilibus sicut principium in speculativis” (St. Thomas Aquinas, *Summa Theologiae*, II-II, q. 47, a. 6, c.).

<sup>25</sup> For a broader exposition of the theory of moral action, let us refer the reader to A. Rodríguez Luño, *Ética General*, 4<sup>a</sup> ed. (Pamplona: Eunsa, 2001), 175-200.

<sup>26</sup> “Obiectum non est materia ex qua, sed materia circa quam, et habet quodammodo rationem formae, in quantum dat speciem” (*Ibid.*, I-II, q. 18, a. 2, ad 2). “Obiecta, secundum quod comparantur ad actus exteriores, habent rationem materiae circa quam, sed secundum quod comparantur ad actum interiorem voluntatis, habent rationem finium; et ex hoc habent quod dent speciem actui” (*Ibid.*, I-II, q. 72, a. 3, ad 2). See also I-II, q. 73, a. 3 ad 1.

<sup>27</sup> *Ibid.*, I-II, q. 18, a. 10, c.



*moris*.<sup>28</sup> The moral object of these two actions is completely different, and therefore we have two different moral actions by virtue of their moral object, and not by virtue of their intention. Whether Peter intends to signal that he is turning right, or whether he intends to raise his arm to threaten someone, he does not need to speak in order to distinguish those two types of actions. The intentionalities of indicating whether he is signaling or whether he is threatening are intentionalities that are intrinsic to the action, which establishes this human action as an action of a particular type, which theological tradition has called a *finis operis*, and which consists in signaling or threatening. In other words: if we disregard the movement of Peter's arm, what remains? There remains the end of signaling for a right turn or the end of threatening. That end is a *forma a ratione concepta* (form conceived by the reason) that informs and gives meaning to the physical movement and which, as such, constitutes the moral object. Hence, *Veritatis Splendor* says that, "one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world."<sup>29</sup>

In accordance with this, the moral object of the 'contraceptive' moral action is not swallowing an anti-ovulatory pill with some water. Swallowing that pill would be the 'contraceptive' moral action, but it could also be another completely different moral action, like the therapeutic action of which is spoken in *Humanae Vitae* no. 15,<sup>30</sup> or the action of protecting against the effects of sexual violence that are foreseeable when an enemy army invades the city. If we want to know what the 'contraceptive' moral action is, we have to define the end or project, the *forma a ratione concepta*, which constitutes it, and then we have to say that 'contraception' is 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."<sup>31</sup> Inasmuch as human action is a project or end conceived and evaluated by practical reason,

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<sup>28</sup> Cf. *ibid.*, I-II, q. 1. A. 3, ad 3.

<sup>29</sup> VS, no. 78

<sup>30</sup> "On the other hand, the Church does not consider at all illicit the use of those therapeutic means necessary to cure bodily diseases, even if a foreseeable impediment to procreation should result there from—provided such impediment is not directly intended for any motive whatsoever" (Paul VI, Enc. *Humanae Vitae*, 25-VII-1968, no. 15).

<sup>31</sup> *Ibid.*, no. 14

and as such is deliberately chosen, human action can never be considered as ‘pre-moral’. The death of a man in itself, caused by an earthquake or a fire, is a ‘pre-moral’ evil. Whereas the deliberate decision to murder is a moral action, and cannot be viewed as otherwise.

The proportionalist authors, in spite of their protests against ‘physicalism’, use a causal-mechanical concept of action.<sup>32</sup> They view human action from the outside, without attending to its internal dynamism, and seeing it as an event that has certain effects on the world. The action of killing cannot be intrinsically evil because they understand an action that is carried out by a man, such as killing, as that which in some way causes the death of another, and this includes voluntary homicide, self-defense, the surgeon whose patient dies during the operation, just war, etc. They subsume under the same moral standard completely different types of action, which entails that every moral rule has exceptions. Self-defense, just war, or the death penalty are all seen as exceptions to the norm ‘do not kill’, which therefore cannot be considered as valid *semper et pro semper*<sup>33</sup>. In a similar way, the act of protecting against the effects of sexual violence or the therapeutic taking of an anti-ovulatory are seen as exceptions to the moral norm about contraception, which are understood simply as taking a pill that inhibits ovulation. One might ask what they intend with all this. The most immediate answer is as follows. With the principle having been settled that no moral action (as they understand it) is intrinsically evil and that all norms have exceptions, this leaves the door open to judging actions on a case by case basis, and also opens the possibility, not only of distinguishing homicide from self-defense or of distinguishing contraception from protection against the effects of sexual violence, but also of judging case by case the different action that are truly contraception or truly voluntary abortion, establishing essential moral distinctions between them from the consequences or the ulterior motive that

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<sup>32</sup> Cf. on this point M. Rhonheimer, “*Intrinsically Evil Acts*” and the Moral Viewpoint: *Clarifying a Central Teaching of “Veritatis Splendor”*, (1994), p. 168.

<sup>33</sup> Someone who sees things very differently is St. Thomas Aquinas, for whom the acts mentioned above are diverse moral actions: “Possibile tamen est quod unus actus secundum speciem naturae, ordinetur ad diversos fines voluntatis, sicut hoc ipsum quod est occidere hominem, quod est idem secundum speciem naturae, potest ordinari sicut in finem ad conservationem iustitiae, et ad satisfaciendum irae. Et ex hoc erunt diversi actus secundum speciem moris, quia uno modo erit actus virtutis, alio modo erit actus vitii” (*Summa Theologiae*, I-II, q. 2, a. 3, ad 3).

corresponds to each action. This procedure is the origin of doctrinal problems to which we have previously alluded, and especially fully distorts the reality of the action, practical reason, and human will.<sup>34</sup>

### 3 The Moral Evaluation of the Action

What we just said primarily refers to the specification of human actions. There is something to be said about its moral evaluation. Since for the proportionalists the action is an event that brings about effects or consequences, the evaluation of the action (or of its “comprehensive object”) should be made by the calculation or consideration of its effects or consequences. If the good effects are of such magnitude as to be considered proportionate to its evil effects, then the action is morally correct. An action is correct whenever the state of things caused by that action is, here and now, the best or the lesser evil among actual possibilities. There are a number of issues that I will not discuss here, but there is no doubt that to consider a delicate economic situation as a proportionate reason for a voluntary abortion implies a judgment or consideration of goods carried out according to subjective criteria that are very difficult to accept.

According to *Veritatis Splendor*, “The morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will [ . . . ] The object of the act of willing is in fact a freely chosen kind of behaviour. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally, and disposes us to recognize our ultimate end in the perfect good, primordial love.”<sup>35</sup> What fundamentally determines the morality of the action is the conformity or non-conformity of the intrinsic intentionality of the action (i.e., the deliberate purpose that constitutes it as such action, with the natural principles of right reason, which are moral virtues like justice, temperance, etc.). The

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<sup>34</sup> We have more broadly discussed this problem in “*Veritatis Splendor*” *un anno dopo*. *Appunti per un bilancio (II)*, (1996).

<sup>35</sup> VS, no. 78.

element that has been of value is not primarily the state of external things, but the compatibility or incompatibility of choosing an action with the basic orientation of the will toward justice, temperance, etc. If the voluntary choice is essentially incompatible with the orientation of the person toward justice then we have an intrinsically unjust action, which cannot be chosen without departing from the human good and therefore is not without moral culpability. Naturally, it is also possible that an action is opposed to justice, not because of its object, but because of circumstances or effects that occur in one case and not in another.

In the properly moral ambit, the morality of each type of action is the ontological basis of the value of the norm that prohibits it. This is not so when it comes to legal norms of a conventional nature.<sup>36</sup> The act of driving on the left, for example, is not opposed to any of the driver's principles of right reason, and in fact, some countries do drive on the left. The illegality of that action is grounded in the existence of a code of driving that requires driving on the opposite side, and while that code is in force, driving on the left or running a red light is equivalent to endangering one's own life and the lives of others. Such laws are based on certain values, in this case, the safety of motorists and pedestrians. If in a particular case that value were not in danger, there could be exceptions or *epikeia*. If in a deserted city, in which it is certain that there is nobody for miles around, a motorist can run a red light without moral fault, and a police officer with common sense should not issue a fine. We therefore have an important social value that is protected by a norm, by virtue of which certain actions are immoral because they generally threaten a human value that must be protected. However, there are exceptions.

The same does not occur in the moral order. There are some actions that are opposed to right reason and the human good, such as, for example, adultery, abortion, the deliberate decision to murder a certain person. If we speak normatively about these actions, we do so through negative norms that are valid *semper et pro semper*, value that depends on the intrinsic contradiction of the action with the human good, and not some social value that the norm should protect. No exceptions or *epikeia* fit here. To speak of exceptions

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<sup>36</sup> For the distinction between both types of norms, cf. M. Rhonheimer, *La Perspectiva de la Moral*, (2000), pp. 336-341; A. Rodríguez Luño, *Ética General*, (2001), pp. 281-282

or epikeia would be like stating that in certain circumstances grave injustice or lust are not all bad. Epikeia is a virtue which has an entirely different meaning. It says only that the legal standard that has been given for an purpose should not be enforced against that purpose, so that what normally is just or convenient for society, if in a particular case, is unjust or harmful to society by change of circumstances, then it should not be carried out because the norm has not been formulated for such a case. Moreover, if the lawgiver had foreseen that case, it would have explicitly excluded it from the scope of the norm's application. The epikeia, or even better, the virtuous man who has it, knows to discern these situations with accuracy and truth, so that he knows how to act with justice in extraordinary circumstances as well.<sup>37</sup>

Proportionalism considers all moral norms as legal norms, with their exceptions and with the possibility of being corrected through epikeia. This is a common defect of what today is usually called 'ethics of the third person'.<sup>38</sup>

## 4 Intrinsically Evil Actions

To fully understand the problem of intrinsically evil actions and that of the universality and immutability of natural law, we have to provide at least one more step.

Consider the action of returning to its owner what has been entrusted in deposit alongside the norm 'what has been entrusted in deposit must be returned'. Generally speaking, this norm expresses a requirement of the virtue of justice and has to be complied with. However, there can be cases where returning the deposit, for example a weapon or explosives that are used in quarries, would be unjust because it would be to make oneself guilty of complicity in a murder or in a terrorist act. Regarding these cases, Saint Thomas says that certain moral precepts, referring to a certain type of actions or actions formulated in a certain way, are valid *ut in pluribus* and are

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<sup>37</sup> For a broader study of epikeia we refer the reader to A. Rodríguez Luño, "La virtù dell'epicheia. Teoria, storia e applicazione", *Acta Philosophica* 6 (1997) 197-236 and 7 (1998) 65-88.

<sup>38</sup> On the meaning of this denomination, see our work *Ética General*, (2001), 55-60.

not *ut in paucioribus*.<sup>39</sup> In a similar sense Suárez speaks of the *mutuo materiae*, namely, a change in the action itself, which actually makes this action, though similar in regard to the external event that normally occurs, a distinct action that does not fall under the moral norm. There is no actual change in the moral norm and in the requirement of justice expressed through it. We are simply faced with the imperfection or insufficiency of the linguistic formulation of the requirements of virtue, when they have to be expressed in a brief and simple formula. Suárez further says that, “one must also consider that, being that it is not written on tablets or papers but in minds, natural law does not always formulate itself in our conscience with those general or indefinite terms with which we express it verbally or in writing.” Moreover, referring to the example of the deposit, he adds: “This law is usually formed generally only in those terms: *What has been entrusted in deposit must be returned*. The rest is understood since it is not possible to explain it all in the formulation of a law that is given in a human manner.”<sup>40</sup> Suárez himself cautions that these phenomena in no way deny the universality and immutability of natural law as it is given in right reason, which is the proper place for it.

However, there also exist actions that are describable in concrete terms and which retain their intrinsic intentionality in all circumstances.<sup>41</sup> Valid moral norms can be formulated about these actions, not only *ut in pluribus*, but always, because the action that these norms refer to cannot ever respond to a diverse intentionality or deliberate end. They are absolute prohibitions in the strict sense. Examples include the norms, ‘do not lie’, ‘do not murder’, ‘do not commit adultery’, etc. Naturally, to say what these norms are requires the patient work of defining actions according to the *genus moris*, which in turn requires a thoughtful understanding of the normative structure or content of ethical virtues or, likewise, of the practical principles of the right reason. This is a task that has not yet been satisfactorily achieved

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<sup>39</sup> Cf. St. Thomas Aquinas, *Summa Theologiae*, I-II, q. 94, a. 4, c. and ad 2; q. 94, a. 5, c.

<sup>40</sup> F. Suárez, *De Legibus ac Deo Legislatore*, lib. II, c. 13, no. 6, our translation of the Spanish translation of the bilingual edition of the *Corpus Hispaorum de Pace* (Madrid: CSIC, 1973).

<sup>41</sup> Cf. The clarifications offered about this point M. Rhonheimer, *La perspectiva de la moral*, (2000), pp. 348-368.

for some behaviors. One need only think of the discussions concerning the exact definition of lying.<sup>42</sup>

I would like to refer to a purely theoretical issue, a Byzantine and scholastic one if you will, but one that is of some interest. Suárez refers in book II of *De Legibus* to mutations of the material and of a completely exceptional character. So he says: “Most difficult is the case of the precept of not marrying one’s sister or mother, which is of a natural character. This, however, is not required in a case where the continuity of the human species depends on it, as in fact it did occur in the beginning of creation, and is evident from the treatise on marriage.”<sup>43</sup> We shall ignore for now the fact that Suárez’s standpoint suffers from an overly legalistic approach. The problem is: if after a nuclear war with neutron bombs the land is left unlivable, and there only remain two or three people, should the only surviving man feel himself morally obligated to let the human species become extinct, or should he instead propagate the species through a union which under normal circumstances would be considered incestuous? If we accept the second hypothesis, as seems reasonable in principle, should we conclude that incest, or if it was the case, adultery, is not an intrinsically evil action and that the norm which prohibits those actions are valid only *ut in pluribus*? Perhaps Fuchs is thinking of something like this when he writes in an essay in 1994: “We shall not be able to imagine if, in future times unknown, adjustments may be made with respect to the absolute validity, and without any qualifications, of the principle that prohibits adultery (perchance an absolutely singular exception for supreme and mutually agreed upon reasons).”<sup>44</sup> Naturally, Fuchs says this to justify his disagreement with the doctrine of *Veritatis Splendor* concerning intrinsically evil actions.

We are before a refined sophisticated procedure that is otherwise overly legalistic. The problem is not whether a prohibition can be adjusted because what is primary here is not the law that permits or prohibits it. The main thing is whether or not the action is contrary to right reason, virtue, or the human good. In a hypothesis that we could consider as ‘theological fiction’, like that which we proposed following Suárez, the union that in normal circum-

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<sup>42</sup> Cf. A. Millán-Puelles, *El interés por la verdad* (Madrid: Rialp, 1997), 294-334).

<sup>43</sup> F. Suárez, *De Legibus...*, (1973), lib. II, c. 13, no. 5, our translation.

<sup>44</sup> J. Fuchs, *El acto moral: lo intrínsecamente malo*, (1995), p. 206.

stances we consider incestuous or adulterous would not only not be opposed to the principles of right reason that regulate all of the relevant material, but they would be required by them. If we also want to call the action incest or adultery, to thus play with words, so be it. However, regarding the true reality of the human action we deal with a completely different action than what, in our real world, we call incest or adultery. The real good to which its author intentionally adheres—the salvation of the human species—is completely different from the apparent good that one intentionally seeks when in our real world one commits incest or adultery. The identity of the action is different; it belongs to another *genus moris*, although it has the same *genus naturae*. Therefore, it would be false to call it incest or adultery, unless we have a physicalist and mechanical-causal conception of a deliberate act. In any case, to appeal to this and to other possible theoretical examples to try to demolish the moral doctrine about incest and adultery or about intrinsically evil action exposed by *Veritatis Splendor*, is only sophistry and arbitrariness.

The problem, if there is a problem, lies only in the difficulty of expressing in brief and simple formulae the ethical requirements in all their complexity, so that the formula, which also states the illicitness of an action, explains completely the reason for its illicitness. However, the reason for illicitness is clear, and it is up to moralists to explain it to whoever needs a complete and thorough knowledge of it. For those who sustain a normativistic ethics with an extremely coarse theory of action, it is possible to instrumentalize this difficulty in favor of a broad subjectivity of moral judgment or in favor of an adaptation to the dominant culture. From an adequate conception of the action and of practical reason, as that which is proper to ethics and to virtue, the difficulty is insignificant, and certainly does not support such instrumentalization.<sup>45</sup> Yet despite the limits of his scientific approach and even stopping to examine the hypothetical ‘theological fiction’, Suárez clearly states that “negative precepts prohibit what is of itself and intrinsically evil, and thus oblige always and at all times, both on account of their form—given that such negation overrides everything—and because what is essentially disordered always and everywhere has to be avoided. Then for this same reason they cannot directly do away with these precepts, given that a thing

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<sup>45</sup> We explain that what ethics understands of virtue in *Ética General*, (2001), 55-60.



that is essentially evil in itself cannot cease to be so.”<sup>46</sup>

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<sup>46</sup> F. Suárez, *De Legibus...*, (1973), lib. II, c. 13, no. 4, our translation.