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WERNER WOLBERT

Tendencies in Catholic Moral Theology as reflected in *Veritatis Splendor**

If one comments on current Catholic moral theology, one has to make reference to the Pope's encyclical *Veritatis Splendor* (= VS) which mirrors important «tendencies in Catholic moral theology». In an article on VS, Joseph A. Selling tells about one of the first reactions he heard on the encyclical which came from a small group of people in his parish. Somewhat to his surprise, many people tended to agree with the encyclical's assessment of the modern world¹ «where just about every moral value was up for grabs and few, if any, moral rules appeared to apply to daily behaviour.» Selling continues²:

«There is little doubt that VS has struck a resonant chord in the emotional life of a large number of people, both inside and outside the church. Many people who lack either the time or the necessary tools to reflect upon the moral climate of the world in general readily accept the description of moral chaos implied between the lines of the encyclical. They willingly join sides with what they perceive as a courageous effort to speak out against immorality, to renounce evil, and to attempt to correct the errors of those who exaggerate freedom and perpetrate individualism to the point of absolute autonomy.»

Selling's observation indicates a common feeling that seems to be addressed by the Pope's encyclical. Such an expression of a common feeling, however, is to be distinguished from a precise description of the question(s) at hand and an appreciation of the answers given by the encyclical. A remarkable appreciation is that from Oliver O'Donovan who observes in a respectful commentary³: «*Veritatis Splendor* sometimes gives the impression of having just one answer for every question.»

* Lecture held at a Nordic Research Course in theological Ethics 17th June 1999 at Aarhus University (Denmark).

¹ SELLING, Joseph A., *Veritatis Splendor* and the Sources of Morality, in: *Louvain Studies* 19 (1994) 3–17, 3.

² *Ibid.*, 3s.

³ O'DONOVAN, Oliver (1994), «A summons to reality», in: Wilkins, John (Ed.), *Considering Veritatis Splendor*, Cleveland (Ohio) 1994, 41–45, here 44.

At the beginning of the year, I participated in a discussion group on Hütter's and Dieter's volume on VS and *Evangelium Vitae* (= EV)⁴. Hütter said that among Protestant American theologians the encyclical was received with some respect. A document of that kind (which, of course, has no Protestant equivalent) was, in principle, regarded as desirable. On the other hand, Hütter confessed, he was, at first, not very well informed about the background of the encyclical, i.e. the debates within Catholic moral theology which VS addresses in its second part. This is indeed the case with some (especially non-Catholic) commentators of VS, be they critics or supporters of it.

I. The disposition of the encyclical

The encyclical is divided in three chapters, the first of which presents a kind of biblical foundation centred on the story of the rich young man (Mt 19,16-22). The third chapter lists some consequences: «Moral good for the life of the Church and of the world.» The second chapter, on which I will concentrate here, is the core of the encyclical. Its parts represent the most important subjects of the debates in Catholic moral theology from the 1960s on: I. Freedom and Law; II. Conscience and truth; III. Fundamental choice and specific kinds of behaviour; IV. The moral act.

The first part addresses the debate on moral autonomy, the second one the debate on conscience, especially erroneous conscience, the third is about the so called fundamental option, the fourth about the debate on normative ethics between teleologists and deontologists.

One key problem is the impression given by the encyclical and some commentators that all positions criticised are essentially connected so that the fight seems to be against one battle line⁵. Against this impression one has to keep in mind that not every thesis, for instance, by a proportionalist is a proportionalist thesis as not every thesis presented by a Catholic is a Catholic thesis. The issues of the second chapter are not necessarily connected. This may be illustrated by the fact that Karl Rahner was an important proponent of the theory of fundamental option. But he was never involved in the debate on proportionalism, deontology etc. Proportionalists may support the theory of fundamental option; but this is not a proportionalist thesis. The same holds for the views on conscience and autonomy mentioned in the encyclical.

⁴ HÜTTER, Reinhard/DIETER, Theodor (Hgg.), *Ecumenical Ventures in Ethics. Protestants Engage Pope John Paul II's Moral Encyclicals*, Grand Rapids (Michigan) 1998.

⁵ Cf. VS 46.65.75.

II. Fundamental option

The notion of fundamental choice or option concerns the relationship between the fundamental orientation of the self and particular actions. Gilbert Meilaender describes the position of the Pope correctly in the following way⁶:

«Particular actions can shape the fundamental orientation of the self, and that orientation is itself expressed in particular actions. In the categories of the Reformation, works can shape the person and the person is manifested in the works.»

It is noteworthy that the Pope does not seem to reject the notion of fundamental choice altogether⁷ when he says (VS 65):

«Emphasis has rightly been placed on the importance of certain choices which «shape» a person's entire moral life, and which serve as bounds within which other particular everyday choices can be situated and allowed to develop.»

Nevertheless, he rejects an incorrect view on its relationship to particular actions (VS 67):

«It thus needs to be stated *that the so-called fundamental option, to the extent that it is distinct from a generic intention and hence one not yet determined in such a way that freedom is obligated, is always brought into play through conscious and free decisions. Precisely for this reason, it is revoked when man engages his freedom in conscious decisions to the contrary, with regard to morally grave matter.*»

I have no problem with this remark, except one: I don't know of any author who would deny that a conscious, gravely morally wrong decision has an impact on the fundamental orientation of the self. There can be no coexistence of a deliberate choice for God and a deliberate choice to do what one knows to be gravely wrong, as Meilaender explains⁸:

«Human beings do not, John Paul says, «suffer perdition» only by a fundamental choice against God. On the contrary, with every deliberate and knowing choice of grave evil, one rejects God. There is no room for a divided self who chooses what is evil yet clings to God.»

⁶ MEILAENDER, Gilbert, «Grace, Justification through Faith, and Sin», in: HÜTTER/DIETER (eds), *Ecumenical Ventures* (note 4), 60–83, here 70.

⁷ Nevertheless, PESCHKE, Karl-Heinz, *Christian Ethics. Moral Theology in the Light of Vatican II*, I., Dublin 1985, prefers to change the terminology speaking of «existential choice» and comments (282): «This understanding of the existential choice should not be confused with that theory of the «fundamental option» which reduces mortal sin to an explicit and formal contempt for God and neighbour.» In note 7 he mentions CHIAVACCI, Enrico, *Teologia Morale I. Morale generale*, Assisi 1979, who, however, speaks of «scelta fondamentale» and stresses (51): «Occorre notare subito che non si dà scelta fondamentale «pura»: essa è sempre incorporata in una scelta categoriale.» Cf. FLICK, Maurizio/ALSZEGHY, Zoltan, *L'opzione fondamentale della vita morale e la grazia*, in: *Gregorianum* 41 (1960) 593–619, 599: «L'opzione fondamentale dunque generalmente non si fa con un atto distinto e conscio, ma si incarna in una scelta particolare.»

⁸ MEILAENDER, Grace, *Justification through Faith* (note 6), 73.

I know of no recent article or monograph on this subject. It is not a topic of current research or debate in Catholic moral theology as in the 60s and 70s. We do find, however, a precise explication in a recent manual, that of Helmut Weber (1991)⁹:

1. «The fundamental option is the specific act of fundamental freedom... the person does not ponder on this and that but on herself, nor on this or that aspect, but on herself as a whole; in this regard, there are only two possibilities: self orientation towards good or evil. The person makes a decision either for the path and life of love – i.e. to open herself for others, or for the direction and maxim of egoism – i.e. to care for one's own advantage cutting oneself off from others. In the first case, she acts in accordance with her nature. In the second case, she takes a stance against her nature; she mutilates and estranges it.»

2. «Such a fundamental option is not a singular, particular or explicit act. The person does not make such a decision purely as such. One is not somehow abstractly, entirely isolated from all concrete challenges, confronted with the abstract question: Do I want to be good or bad? This question is always merely posed and decided in other acts and decisions which in their own respect possess a specific content. A fundamental option, if there is such, is one moment among these others, these material actions, albeit without converging

⁹ WEBER, Helmut, *Allgemeine Moraltheologie*, Graz 1991, 234–240: 1. «Die Grundentscheidung ist der spezifische Akt der Grundfreiheit ... die Person befindet sich nicht über dieses und jenes, sondern über sich selbst, aber auch da nicht über diesen oder jenen Aspekt, sondern über sich selbst als Ganzes, wobei es nur zwei Möglichkeiten gibt: die Bestimmung auf das Gute oder das Böse hin. Die Person entschließt sich entweder zur Linie und Lebensform der Liebe – sich zu öffnen für andere, oder zur Richtung und Maxime des Egoismus – sich in Abschottung gegen andere primär um den eigenen Vorteil zu kümmern. Das erstemal bestimmt sie sich ihrem Wesen entsprechend; denn Person ist wesentlich Beziehung zu anderen. Im zweiten Falle stellt sie sich gegen ihr Wesen; sie verstümmelt und verfremdet es.» 2. «Eine solche Grundentscheidung ist kein einzelner, bestimmter oder ausdrücklicher Akt. Die Person trifft eine derartige Entscheidung nicht rein als solche; man kann sich nicht gleichsam abstrakt, völlig losgelöst von allen konkreten Herausforderungen, allein vor der bloßen Frage sehen: Soll ich gut oder böse sein? Die Frage stellt und entscheidet sich immer nur in anderen Akten und Entscheidungen, die ihrerseits einen bestimmten Inhalt haben. Eine Grundentscheidung ist, wenn es sie gibt, ein Moment in diesen anderen, materialen Handlungen, ohne allerdings in ihnen aufzugehen, weder in einer einzelnen noch in ihrer Summe. Grundentscheidung kann es ohne den «Leib» der konkreten-kategorialen Einzelentscheidungen nicht geben, aber sie fällt nicht mit ihnen zusammen.» «In der Grundentscheidung liegt der eigentliche Wert einer Einzelhandlung.» 3. «Grundentscheidungen sind, weil nicht als eigener kategorialer Akt existierend, nur in einer besonderen und eingeschränkten Weise erkennbar. Es kann von ihnen kein klares, objekthaftes Wissen geben, wie man weiß, ob man eine Berufswahl getroffen hat oder eine Entscheidung im Fall einer Lüge. Solche Entscheidungen haben einen Inhalt; bei ihnen läßt sich objektiv feststellen, ob man diesen Inhalt bejaht oder abgelehnt hat.» 4. «In der Grundentscheidung für oder gegen das Gute fällt in der Sache die Entscheidung für oder gegen Gott. Die Person trifft ihre Selbstverfügung vor ihm.»

in them, neither in one particular action nor in the sum of them. There is no fundamental option without the 'body' of the concrete – categorial particular decisions, but it does not coincide with them.» «The true value of the particular action is to be found in the fundamental option.»

3. «Since fundamental choices do not exist as a categorial act of their own, they can be known only in a specific and limited way. There can be no clear and objective knowledge of them in the way one knows about one's choice of profession or a decision in the case of lying. These decisions have a content; it can be determined objectively, if one has affirmed or denied this content.»

4. «In the fundamental option for or against goodness, a decision is made *per se* for or against God. The person is determining herself in front of God.»

The first comment on this theory by the magisterium was made in the Declaration of the Congregation of Faith *Persona Humana* (1975) whose position McCormick (presenting a criticism of Ch. Curran) comments as follows¹⁰:

«The notion of fundamental option in the document is a caricature. E.g., the Congregation describes the opinions of some who see mortal sin only in a formal refusal directly opposed to God's call and not in particular acts. Curran rightly wonders what theologians hold this position. He knows of none; nor do I.»

Nevertheless, the present Pope made similar remarks in his Apostolic Exhortation *Reconciliatio et Paenitentia* (1984) on reconciliation and penance in the mission of the church today¹¹. The title of this document may mark the Pope's principal concern in this matter: the sacrament of penance, confession. Traditionally the confessors examined their conscience according to some catalogue (mostly the decalogue) along which they could list their particular sins. Yet,

¹⁰ MCCORMICK, Richard A., *Notes on Moral Theology 1965 through 1980*, Lanham MD 1981, 677.

¹¹ In no. 17: «Likewise, care will have to be taken not to reduce mortal sin to an act of 'fundamental option' – as is commonly said today – against God, intending thereby an explicit and formal contempt for God or neighbour. For mortal sin exists also when a person knowingly and willingly, for whatever reason, chooses something gravely disordered. In fact, such a choice already includes contempt for the divine law, a rejection of God's love for humanity and the whole of creation; the person turns away from God and loses charity. Thus the fundamental orientation can be radically changed by individual acts. Clearly there can occur situations which are very complex and obscure from a psychological viewpoint and which have an influence on the sinner's subjective culpability. But from a consideration of the psychological sphere one cannot proceed to the construction of a theological category, which is what the 'fundamental option' precisely is, understanding it in such a way that it objectively changes or casts doubt upon the traditional concept of mortal sin. – While every sincere and prudent attempt to clarify the psychological and theological mystery of sin is to be valued, the church nevertheless has a duty to remind all scholars in this field of the need to be faithful to the word of God that teaches us also about sin. She likewise has to remind them of the risk of contributing to a further weakening of the sense of sin in the modern world.»

when they were taught about fundamental option, they may have felt some difficulty in confessing something about it because there was no paradigm for it. Popular teaching or preaching on fundamental option may have caused misunderstandings among the faithful in the way that is criticised by the pope.

Those misunderstandings were, of course, never intended by the proponents of the theory of fundamental option, whose origin is, by the way, in dogmatic theology. It¹²:

«originated in a psychology of grace which was meant to explain the inner operation of grace and the experience it begets. It aimed to analyse the human sphere in which grace flourished. The theory of the fundamental option was developed in reaction to the tendency in neo-scholastic theology to emphasise the transcendence of grace and its utter discontinuity with nature. This emphasis resulted in an extrinsecism where grace was superimposed on or grafted onto nature. In reaction to neo-scholastic theology, there emerged a greater appreciation of the reciprocity or interpenetration that exists between the transcendence and immanence of grace. There emerged, in other words, a better understanding of the human dimensions of grace.»

Some insights were gained from hermeneutical philosophy which stressed that all our knowledge is conditioned, in part, by our pre-understanding or pre-judgements, as Kopfensteiner explains¹³:

«In light of the work of the German philosopher Hans-Georg Gadamer, it has become an hermeneutical axiom to assert that our prejudices, far more than our judgements, constitute our historical existence. In a similar way, individual decisions are only adequately understood when they are seen as stemming from a more primordial context which directs our stance toward life as a whole.»

Within moral theology these insights were important for the understanding of the particular moral action¹⁴:

«Moral actions, in other words, do not stand juxtaposed to each other in an unrelated fashion, but they weave the story of our moral lives. ...

¹² KOPFENSTEINER, Thomas R., «The theory of the fundamental option and moral action», in: Hoose, Bernard (ed.), *Christian Ethics. An Introduction*, London 1998, 123–134, here 124. Cf. DEMMER, Klaus, *Opzione fondamentale*, in: F. Compagnoni/G. Piana/S. Privitera (eds), *Nuovo Dizionario di Teologia Morale*, Cinisello Balsamo, Milano 1990, 854–861, here 854: «Si punta al superamento di un positivismo ed estrinsecismo teologico, del tutto dimentico della sua base antropologica. Al centro si vuole porre la mediazione ermeneutica tra dimensione teologica e dimensione antropologica dell'esistenza cristiana: l'iniziativa salvifica presuppone come condizione di possibilità una potenzialità ricettiva nell'uomo stesso, la quale si attua primordialmente attraverso l'opzione fondamentale quale auto-determinazione globale che coinvolge il soggetto nella sua interezza.»

¹³ KOPFENSTEINER, Thomas R., *The theory of the fundamental option* (note 12), 125.

¹⁴ *Ibid.* 127.

Though no one decision will exhaust the fundamental option, individual decisions can be seen as interpretative extensions of it. ... Through our decisions and actions there is a slow maturation of the fundamental option as we realise ever more fully the meaning of our life projects.»

The criticism of John Paul does not seem to take any regard of this original context of a theology of grace. His concern is an ethical one. He stresses a correct understanding of sinful actions (morally good actions are not mentioned, typically) as may be demonstrated by VS 68¹⁵:

«According to the logic of the positions mentioned above, an individual could, by virtue of a fundamental option, remain faithful to God independently of whether or not certain of his choices and his acts are in conformity with specific moral norms or rules. By virtue of a primordial option for charity, that individual could continue to be morally good, persevere in God's grace and attain salvation, even if certain of his specific kinds of behaviour were deliberately and gravely contrary to God's commandments as set forth by the Church.»

There is, of course, a reciprocal influence between the option and the particular act. An act «deliberately and gravely against God's commandments» either results from a morally bad option or changes (or, at least weakens) a morally good one. The theory did not underestimate the impact of particular actions, but tried to correct the «impression that moral action no longer presupposed a human subject»¹⁶.

The theory of fundamental option in itself should not be controversial. The controversy probably concerns some perhaps misplaced applications of the theory. The already mentioned Declaration *Persona humana* was about «some questions of sexual ethics». As a reaction against the excessive concern of traditional Catholic ethics and penitential education with problems of sexual morality some people asserted that one single sinful act could not lead to eternal damnation because it could not express a fundamental orientation

¹⁵ Vgl. *Persona Humana* 10: «Manche gehen sogar so weit zu behaupten, schwere Sünde, durch die sich der Mensch von Gott trennt, gebe es überhaupt nur in direkter und ausdrücklicher Auflehnung, in der also der Mensch sich gegen den Ruf Gottes stellt oder, völlig auf das eigene Ich bezogen, vorsätzlich und grundsätzlich die Nächstenliebe ausschliesst. ... Andererseits würden die als peripher bezeichneten Handlungen (die, wie man behauptet, im allgemeinen keine entscheidende Wahl beinhalten) gar nicht bis zu einer Änderung der Grundhaltung führen, um so weniger als sie häufig, wie man beobachtet, aus einer Gewohnheitshaltung hervorgehen. Sie könnten daher zwar die Grundentscheidung schwächen, aber nicht gänzlich ändern.» Es heisst aber auch: «In der Tat, es ist die Grundentscheidung, die letztlich die sittliche Verfassung des Menschen bestimmt. Sie kann jedoch auch durch Einzelhandlungen grundlegend geändert werden, vor allem dann, wenn diese – wie es häufig der Fall ist – bereits durch voraufgehende, weniger bewusste Handlungen vorbereitet werden. Auf jeden Fall ist es nicht wahr, dass einzelne Handlungen nicht ausreichen, um eine schwere Sünde zu begehen.»

¹⁶ KOPFENSTEINER, Thomas R., *The theory of the fundamental option* (note 12), 131.

against God. *Persona humana* opposes this thesis. Hughes offers the alternative example of a poverty stricken bank-clerk who steals £ 1000; can this lead to eternal damnation? What about an act of cruelty? The moral weight of those actions is not only dependent on the gravity of the matter, but also on subjective conditions of the acting person. In most cases, I think, the question must be left open, because God alone can look into the human heart. And, above all, even if we concentrate on the gravity of particular sins or the gravity of some matter, this cannot be appreciated within the theory of fundamental option. The appreciation of particular actions and attitudes is the task of normative ethics. A typical mistake within Catholic moral theology throughout the last decades has been the attempt to solve questions of normative ethics with the wrong tools. This attempt is not limited to the theory of fundamental option; we find it also in the appeal to the prerogative of the individual conscience or in taking reference to the doctrine of the sources of morality. This mistake is mirrored in Wannenwetsch's impression¹⁷:

«Conscience as the court of final appeal in deliberation and decision is the common factor in those moral theories which the pope rejects under the designation «teleological».»

III. Conscience

How can any theologian (esp. a Protestant) doubt that conscience is «the court of final appeal», that it binds, even if it errs. Acting against erring conscience means sin, even if the action would be morally right. This has already been confirmed by St. Paul when he discusses the problem of food consecrated to heathen deities: If the weak eat consecrated food (1 Cor 8,7), «their conscience, being weak, is polluted by the eating», although this eating would be morally right (objectively). Likewise Paul says about the vegetarians (Rom 14,23): «But a man who has doubts is guilty if he eats, because his action does not arise from his conviction, and anything which does not arise from conviction is sin.» So there seems to be no reason for doubting that erring conscience binds, if this is confirmed by the New Testament. But there is a special problem if one judges some actions in a deontological way according to the maxim *Fiat iustitia, pereat mundus* (or *ruat caelum*). In that case an error of conscience may be beneficent, because acting against a deontological norm may cause less harm than acting according to it. Therefore, for a deontologist an erroneous conscience (of another person) may in some cases be desirable. In Catholic moral theology this can for the first time (so far as I see) be ob-

¹⁷ WANNENWETSCH, Bernd, «Intrinsically Evil Acts»; or, Why Abortion and Euthanasia Cannot Be Justified, in: HÜTTER/DIETER (eds), *Ecumenical Ventures* (note 4), 185–215, here 189. Cf. WOLBERT, Werner, Problems concerning Erroneous Conscience, in: *Studia Theologica* 50 (1996) 162–175; IDEM, Probleme mit dem irrigen Gewissen, in: Holderegger, Adrian (Hg.), *Fundamente der Theologischen Ethik. Bilanz und Neuansätze*, Freiburg i.Ue./Freiburg i.Br. 1996, 313–341; DEMMER, Klaus, *Fundamentale Theologie des Ethischen*, Freiburg i.Ue./Freiburg i.Br. 1999, 185–232.

served in the beginning of this century when moral theologians were confronted with the problem of therapeutic abortion which is traditionally regarded as forbidden because it is a case of direct killing of an innocent. Prümmer confirms this view in his manual, but adds a paragraph «*Modus agendi cum medicis in hac materia*»¹⁸:

«*Moderni medici etiam catholici haud raro sunt in bona fide circa licitatem craniotomiae in casu, quo aliter salvari nequeat vita matris. Rationes enim supra allatae pro licitate craniotomiae habent aliquam speciem veritatis. ... Accedit, quod medici se exponunt urgenti periculo cum punitio- nis a legibus inflictæ, tum oblocutionum sinistrarum, si in extrema neces- sitate omittant craniotomiam ad matrem salvandam. Prudentis igitur con- fessarii est iudicare, num præstet relinquere medicum in bona fide, dum- modo tamen baptismus conferatur proli morituræ. Sic enim salus æterna infantis curatur et matris vita salvatur. Aliquando namque permittenda sunt peccata materialia, ut vitentur peccata formalia.*»

After *Humanae Vitæ* a similar recommendation was made by some Episcopal conferences (Austria, Belgium, Germany). In this way, they did not need to reject the doctrine of the encyclical, but found a «pastoral» solution. But a solution like this can only be recommended from a deontological point of view, whereas from the teleological point of view every error of conscience causes *ex definitione* more harm than necessary (or less good than possible). If one tries to avoid unnecessary harm in these cases one possible policy is to advise the person in charge to follow her (erroneous) conscience. But this can only be a temporary solution; the final solution can only be found in an ethical debate on the deontological norm itself in which, on the other hand, the Pope interferes in his encyclical.

The Pope may have such examples in mind when he speaks of an (56)

«*existential consideration*» which «*by taking account of circumstances and the situation, could legitimately be the basis of certain exceptions to the general rule and thus permits one to do in practice and in good conscience what is qualified as intrinsically evil by the moral law.*»

«*What is qualified as intrinsically evil by the moral law*» is, in the understanding of the Pope an action regarded as wrong from a deontological point of view. But the real issue is not if one is ever allowed to do what the moral law forbids, but about the moral law itself, about what it really commands in the respective case. This was, indeed, overlooked also by theologians who tried to solve the problems of deontological norms within the treatise on conscience. In those contexts conscience may appear as a kind of authority besides or over the moral law; cf. VS 54:

«*Here the cultural tendencies referred to above – in which freedom and law are set in opposition to each other and kept apart, and freedom is ex- alted almost to the point of idolatry – lead to a «creative» understanding of*

¹⁸ PRÜMMER, D.M., *Manuale Theologiae Moralis*, II., Freiburg ³1923, no. 136. Cf. LEHMKUHL, Augustinus, *Theologia Moralis I*, Friburgi Brisgoviae 1914, no. 1002; NOLDIN, H., *Summa Theologiae Moralis II*, Oenoponte 1913, no. 340.

moral conscience, which diverges from the teaching of the Church's tradition and her Magisterium.»

The difficulties and the confusions of the Catholic debate on conscience result, in my opinion, mostly from the fact, that these problems are mainly discussed in the context of dissent from the church or, respectively, from its magisterium.

IV. The moral act – Intrinsically evil acts

The question of intrinsically evil acts is treated in the chapter entitled «The moral act»¹⁹. According to the judgement of G. Meilaender the Pope is correct to think that²⁰ «there may be some acts that are intrinsically evil». In Meilaender's understanding, proportionalists do not deny this; they differ²¹ «only on the question of whether at least some such choices can be specified as «intrinsically evil» in advance of any and all circumstances.»

This explanation could cause some confusion. For the Pope it seems to be the property of intrinsically evil acts that they are evil independently of all circumstances. Could the term «circumstance» perhaps be ambiguous? Stanley Hauerwas has supported the Pope against catholic critics in an essay on «Gay Friendship», in which he – while assenting to the Pope's doctrine on intrinsically evil acts – nevertheless accepts gay and lesbian relations as «analogous to marriage» (to which, of course, the Pope would never consent). These relations are regarded by Hauerwas as an exception²²:

«Just as marriage between those past child-bearing age may be an exception, so it may be that the recognition of faithful relations between gay people is an exception. But exceptions are not a problem for a community

¹⁹ The singular is remarkable. Cf VS 71: «The relationship between man's freedom and God's law, which has its intimate and living centre in the moral conscience, is manifested and realized in human acts. It is precisely through his acts that man attains perfection as man, as one who is called to seek his Creator of his own accord and freely to arrive at full and blessed perfection by cleaving to him.» With VS 65: «It has been rightly pointed out that freedom is not only the choice for one or another particular action; it is also, within that choice, a decision about oneself and a setting of one's own life for or against the Good, for or against the Truth, and ultimately for or against God.» In the first context the Pope speaks of «acts» in the second of «actions». The difference is explained by D'ARCY, Eric, *Human Acts. An Essay in their Moral Evaluation*, Oxford 1963, in the following way (6): «an action is called an act only when it can be described in a proposition with a personal subject». And (7): «every act, then (whether voluntary or involuntary), is an action; but not every action is an act.»

²⁰ MEILAENDER, Grace, *Justification through Faith* (note 6), 70.

²¹ *Ibid.* 71.

²² HAUERWAS, Stanley, *Gay Friendship: A Thought Experiment in Catholic Moral Theology*, in: IDEM., *Sanctify them in the Truth. Holiness Exemplified*, Edinburgh 1998, 105–121, 120.

that is secure in its essential practices. The crucial question is how to live in a manner that the exception does not become the rule.»

For Hauerwas the problem of intrinsically evil acts seems to be reduced to a kind of pastoral problem of rules and exceptions. But the Pope's main concern is one of doctrine. The following «confession» of Hauerwas is here remarkable²³:

«I confess I have always found the phrase «intrinsically evil» mystifying. In a conversation with David Burrell some years ago I asked him if he thought a certain belief was «absolutely true.» He challenged my use of the phrase «absolutely true» by asking what «absolutely» added if in fact the belief is true. In the same vein I continue to wonder what the qualifier «intrinsic» adds to an action's being evil.»

Hauerwas is right to wonder about the qualifier. A similar question may come up to us if we realise that the problem of intrinsically evil acts is dealt with in the paragraph titled «The moral act» (singular). This seems, at first glance, to include that every evil act is intrinsically evil. If, on the other hand, there are only some intrinsically evil acts, what about the others? For an answer we may look at VS 74:

«But on what does the moral assessment of man's free acts depend? What is it that ensures this ordering of human acts to God? Is it the intention of the acting subject, the circumstances – and in particular the consequences – of his action, or the object itself of his act?

This is what is traditionally called the problem of the «sources of morality». Precisely with regard to this problem there have emerged in the last few decades new or newly-revived theological and cultural trends which call for careful discernment on the part of the Church's Magisterium.»

The Pope refers to the traditional doctrine of the sources of morality (*fontes moralitatis*) which distinguishes three elements of the act: object, circumstances and the end (intention or *finis*). This doctrine is confronted with the normative ethical theory which is called proportionalism, consequentialism or teleologism; these terms seem to be more or less equivalent for the pope²⁴. For this theory the consequences of an action are the only right making properties; the Pope identifies the consequences with what are called the circumstances in the doctrine of the sources of morality. This identification (which is indeed the *πρῶτον ψεῦδος*) can be found in the *Catechism of the Catholic Church*

²³ *Ibid.* 111.

²⁴ Cf. VS 75: «This «teleologism», as a method for discovering the moral norm, can thus be called – according to terminology and approaches imported from different currents of thought – «consequentialism» or «proportionalism». The former claims to draw the criteria of the rightness of a given way of acting solely from a calculation of foreseeable consequences deriving from a given choice. The latter, by weighing the various values and goods being sought, focuses rather on the proportion acknowledged between the good and bad effects of that choice, with a view to the «greater good» or «lesser evil» actually possible in a particular situation.»

as well (no. 1754)²⁵: «The circumstances, including the consequences, are secondary elements of a moral act.»

This seems to suit to the explanation of the doctrine in traditional manuals like that of Prümmer²⁶:

«Objectum autem, prout est principium moralitatis, non est objectum *physicum*, quod actus humanus attingit, sed objectum morale, prout subest *normae moralitatis* ... Hinc e.g. in actione furandi obiectum morale non est ipsa res aliena ablata in se considerata, sed quatenus ratio vetat ne auferatur domino rationabiliter invito.»

The circumstances are traditionally listed by the verse: *Quis, quid, ubi, quibus auxiliis, cur, quomodo, quando*²⁷. The circumstances of theft, for example, can be: the amount of the money stolen, the number of the involved persons, the place (perhaps in a church; stealing money from an offertory box). Circumstances of this kind modify the morality of an act. What counts as circumstance here, is, on one hand, always somehow morally relevant; totally indifferent circumstances are not taken into regard (like, for instance, the colour of a stolen cloth). On the other hand, the circumstances cannot change the basic morality of an act, at least not from a morally bad into a morally good one. The difference between object and circumstances is understood here like that between substance and accident: the morality of the act gets its essential morality from the object. Accordingly, Merkelbach explains²⁸:

«Circumstantia moralis est accidens actus humani ipsum in esse suo morali iam constitutum moraliter afficiens.»

Another manual says²⁹:

«Secundaria moralitas est ex circumstantiis et ex fine.»

Later on we will have to examine if these two characterisations (accidens – secundaria) are really synonymous.

But what about the end (*finis*) as the third source of morality. The distinction between act and circumstances seems to be complete and therefore leaving no room for a third element. Indeed, the end is sometimes called the *cir-*

²⁵ My translation from the German edition.

²⁶ PRÜMMER, D.M., *Manuale Theologiae Moralis* (note 18), no. 111.

²⁷ For a historical survey cf. GRÜNDEL, Johannes, *Die Lehre von den Umständen der menschlichen Handlung im Mittelalter*, Münster 1963, (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters XXXIV, 5).

²⁸ MERKELBACH, B.H., *Summa Theologiae Moralis*, I., Paris 50.J., no. 151. Speaking of theft or adultery as *object* of an action may sound a bit odd. This usage may be explained by the fact that the Latin *agere*, although intransitive, like Greek πράττω unlike Engl. «act» or German «Handeln» can have an «inner accusative» object. Cf. 2Tim 4,7: «I have run the great race». τὸν καλὸν ἀγῶνα ἡγώνισμαι. Bonum certamen certavi. Ich habe den guten Kampf gekämpft. Jag har kämpat den goda kampen. «Object» seems to be the equivalent of Greek πράγμα. Cf. SCHÜLLER, Bruno, *Die Quellen der Moralität: ThPh* 59 (1984) 535–559, 540s.

²⁹ GREDT, Josephus, *Elementa Philosophiae Aristotelico-Thomisticae* II, Barcelona 131961, no. 922.

*cumstantia principalissima*³⁰; like the other circumstances it is only of accidental significance for the morality of the act (it corresponds to the *cur* in the list). Why then is it listed as a source of its own? The difference between object and end rests on another principle of division, and, unfortunately, it is rarely observed that the doctrine of the sources of morality mingles two logically distinct divisions, the first between substantial and accidental morality, the second between formal (subjective) and material (objective) morality. The morality of the object and the circumstances (except the end) is objective, i.e. is not dependent on the intention of the acting person. Almsgiving, for example, is something objectively morally good, independently of the intentions of the agent. However, it depends only on myself, it is under my control, whether I do an act of charity in order to help someone in his need or «to win the admiration from men» (Mt 6,2) or *propter vanam gloriam*, as the manuals say. By deciding for one of the two possibilities, the act becomes formally morally good or bad. The merely possible morality grounded in the material morality of the object and the circumstances becomes real by the respective decision of the acting person. Therefore the term «moral act» can have a twofold meaning: it can denote a merely objectively possible material act (almsgiving) and the act of the will, the decision for (or against) an act of that kind. Likewise, there is an ambiguity to be noticed in speaking of the end (*finis*). If I speak of an «alms» the main purpose of it is already expressed by the term itself: helping the needy. This is traditionally called the *finis operis* which is to be distinguished from the *finis operantis*; only this latter one belongs to the circumstances of an act. A similar ambiguity is, incidentally, often overlooked in speaking of the *consequences* of an action. There are consequences which are already included in the description of an action and others that are not (*handlungsbeschreibende und nicht-handlungsbeschreibende Folgen*). If I speak, for instance, of «poisoning» somebody, the consequence of his (her) having an adverse reaction (possibly death) is already expressed in the verb. This is not the case if I speak of «giving potassium cyanide» to somebody; the description does not include the harmful (deadly) effect. On the other hand, the act of «poisoning» can have further consequences. If I killed a rich aunt in that way I would perhaps get my inheritance a bit earlier than if I had waited for her natural death.

For a better understanding of the doctrine of the sources of morality, one has to realise that this way of speaking of acts and consequences today does not seem to be the usual one. This may be illustrated by E. d'Arcy's paragraph on acts and circumstances, which provides a starting point with a footnote by J. Bentham³¹:

«The etymology of the word circumstance is perfectly characteristic of its import: *circumstantia*, things standing around: objects standing round a given object. I forget what mathematician it was that defined God to be a

³⁰ Vgl. THOMAS, S.th. I-II, q 7 a 4.

³¹ D'ARCY, Human Acts (note 19), 57 (§ 3).

circle, of which the centre is everywhere, but the circumference nowhere. In like manner, the field of circumstances, belonging to any act, may be defined a circle, of which the circumference is no where, but of which the act in question is the centre. Now then, as any act may, for the purpose of discourse, be considered as a centre, any other act or object whatsoever may be considered as of the number of those that are standing round it.»

Bentham in this way distinguishes between *act* and *offence*³²:

«the same act may, in different circumstances, constitute a case of adultery, or of rape, or it may constitute an exercise of the rights of marriage; or again, the act of killing a man may, in different circumstances, constitute a case of murder, or of manslaughter, or justifiable homicide.»

This reminds d'Arcy on Bohr's model of the atom³³:

«First, *this* nucleus when surrounded by *this* number and arrangement of electrons gives us this sort of atom; in the same way, *this* act when surrounded or accompanied by *these* circumstances gives us *this* sort of offence.

Second, a single word, e.g. «oxygen-atom», connotes the whole complex of this particular arrangement of constituent nucleus and satellites; in the same way, a single word, e.g. adultery, connotes the whole complex of this act and these circumstances.

Third, without the electrons orbiting around it, the nucleus is not an oxygen-atom; and in the same way, without the necessary circumstances, the act is not the offence in question: e.g. the act of killing a man is not murder if the circumstance of intentionality is lacking and the act of sexual intercourse is not adultery if neither of the parties is married, or if they are married to each other.

Bentham has successfully allowed for the fact that a given circumstance may be internal to the concept or the offence, but external to that of the act under a narrower description.»

This way of speaking of acts and circumstances is contrary to the usage found in Catholic tradition. What Bentham calls «act» is, so to say, naked. The moral relevance lies in the circumstances; only these are constitutive for an act to be an offence. (Bentham is not interested in morally good acts because his concerns are «principles of legislation».) The reason is that Bentham distinguishes between acts and circumstances not according to the distinction between substance and accident. What the Catholic tradition calls the act (or the object of the act³⁴) is very different from Bentham's understanding; and it does not know «internal» circumstances. Stressing this difference in the way of understanding the distinction between acts and circumstances is not meant as a criticism of either Bentham or the Catholic doctrine. The reason for the difference lies in the different context. VS 78 reads:

³² *Ibid.* 59.

³³ *Ibid.* 59s.

³⁴ Cf. note 28.

«The morality of the human act depends primarily and fundamentally on the «object» rationally chosen by the deliberate will.»

«In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself in the perspective of the acting person. The object of the act of willing is in fact a freely chosen kind of behaviour. 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 recognise our ultimate end in the perfect good, primordial love. By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person.»

The Pope's question is: How does the will of the person become a good will? The answer: By choosing freely the good, by choosing a good act. In I-II q 20 a 1 Aquinas asks:

«Utrum bonitas, vel malitia per prius sit in actu voluntatis, vel in actu exteriori.»

And he comments (ad 1):

«quod actus exterior est objectum voluntatis, inquantum proponitur voluntati a ratione ut quoddam bonum apprehensum et ordinatum per rationem; et sic est prius bonum, quam actus voluntatis.»

Acts in Bentham's understanding, on the other hand, cannot make the will either good or bad because they are conceived in a purely descriptive, morally neutral way. If one looks, however, for an object of the will, which makes the will good or bad, the act must be described not in a descriptive, but rather an evaluative way. An object here can never be «killing», but must be «murder» or «manslaughter», not «sexual intercourse», but «adultery» (fornication, prostitution), not «taking foreign property», but «theft». The descriptive terms denote only the *physical object*, as Prümmer said³⁵. Similarly the Pope (VS 78):

«By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person. 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.»

³⁵ Cf. note 26. Cf. the Anglican MORTIMER, R.C., *The Elements of Moral Theology*, London 1953, 63: «The object is that at which the action aims, and in which it naturally results, and with the attainment of which it is completed. ... For the object is, by definition, that which gives to the action its form or special character. But it is not an action considered as a bare piece of physical energising which is here under view. Actions, in that sense, have no moral quality.»

The comparison between the different ways of speaking of circumstances illustrates two important linguistic observations made by d'Arcy³⁶:

«First, one cannot lay down two separate lists, one of words and phrases that count always as act-terms, the other of words and phrases that count only as circumstance-terms.

Second, circumstances are, however, negatively definable in the sense that, once the act-description has been chosen, they are facts and considerations not included in the definition of the act-term employed.»

These observations have important consequence for the doctrine of the sources of morality. The possibility of stating good, bad and indifferent objects is dependent on the linguistic resources of the respective language. All actions named by morally evaluative terms count as good or bad objects. If, on the other hand, we had an evaluative term for «going for a walk contrary to duty», this would be a morally bad object; we wouldn't need to find the morality only in the circumstances. For creating new morally bad objects we would only need to invent new morally evaluative verbs. Because our linguistic resources are limited, however, we have indifferent objects besides good and bad ones (e.g. walking, eating, drinking, sleeping). The fact that the number of «intrinsically evil acts» is determined by our linguistic resources is mostly overlooked.

The evaluative terms, on the other hand, which denote the *obiectum morale*, already presuppose a definite moral evaluation of the act even though they don't tell which acts in particular count as murder, adultery, theft etc. If one reflects the relation between the morally right or wrong action and the good or bad will, the judgement on rightness or wrongness must already be settled. Of course, in another context, these judgements may differ between different persons as the Old and the New Testaments differ on which kinds of sexual intercourse count as adultery. Those problems, however, e.g. if (any) termination of pregnancy counts as murder, cannot be solved within the framework of the doctrine of the sources of morality. Disagreement in questions of normative ethics for which within the Catholic church the encyclical *Humanae Vitae* was a kind of catalyst cannot be overcome by insisting, for instance, that artificial contraception (independently of any circumstance) is by its very object fornication or misuse of marriage, is *intrinsically evil*³⁷.

The *Sitz im Leben* of the notion of intrinsically evil acts is exactly this doctrine of the sources of morality. There can be no doubt that there are in-

³⁶ D'ARCY, Human Acts (note 19), 61.

³⁷ Günthör offers an example of the attempt to solve this question within the framework of the sources of morality; cf. GÜNTHÖR, Anselm, Anruf und Antwort. Handbuch der katholischen Moralthologie. Der Christ – gerufen zum Leben. Band I: Allgemeine Moralthologie, Vallendar/ Schönstatt o.J. (1993?), n. 458. RIEF, Josef, «Die bellum-iustum-Theorie historisch», in: Glatzel, N./Nagel, E.J. (Hgg.), Frieden in Sicherheit, Freiburg 1981, 15–40, muddles these different levels in his article on the just-war-theory.

trinsically evil acts in this sense, especially those which are denoted in negative evaluative terms like those listed by the Pope quoting GS 27 (VS 80)³⁸:

«Whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat labourers as mere instruments of profit, and not as free responsible persons: all these and the like are a disgrace, and so long as they infect human civilisation they contaminate those who inflict them more than those who suffer injustice, and they are a negation of the honour due to the Creator.»

He quotes also 1 Cor 6,9-10 (VS 81)³⁹:

«Do not be deceived: neither the immoral, nor idolaters, nor adulterers, nor sexual perverts, nor thieves, nor the greedy, nor drunkards, nor revilers, nor robbers will inherit the Kingdom of God.»

If there is no reason for basic disagreement on the character of these acts, why does the Pope oppose (VS 75) «false solutions, linked in particular to an inadequate understanding of the object of moral action»? A reflection on the traditional doctrine of the sources of morality seems for him to be a necessary therapy for the mainstream of moral theology. But what is the disease?

If one considers this doctrine and realizes its *Sitz im Leben*, one cannot have any reasonable doubt about its truth; it seems almost trivially true. But one has to avoid some easily possible misunderstandings.

1. The Pope stresses (VS 78): «The morality of the human act depends primarily and fundamentally on the «object» rationally chosen by the deliberate will»⁴⁰. This is true in the case of evil acts. But what about good and indifferent objects, which the doctrine knows as well, e.g. going for a walk? Even in this case is the judgement about the respective action already settled, namely

³⁸ The Pope says that the council gives «a number of examples», but it doesn't speak of intrinsically evil actions. The list is remarkable because it shows the importance of the linguistic factor. By adding evaluative adjectives like «arbitrary» one can create intrinsically evil actions at will.

³⁹ DONFRIED, Karl P., The Use of Scripture in Veritatis Splendor, in: HÜTTER/DIETER (eds), Ecumenical Ventures (note 4), 38–59, 53, remarks (quoting Schrage): «In citing 1 Corinthians 6:9–10 to support the theme of «intrinsic evil», *Veritatis Splendor* fails to understand that the «obedience God demands cannot be subdivided or put together out of individual acts. Like Jesus, Paul has his eye on an integral approach to life, not a conglomerate of isolated acts of obedience to the law.»

⁴⁰ In the German translation there is no equivalent for the words «primarily and fundamentally». Vgl. PRÜMMER, D.M., Manuale Theologiae Moralis (note 18), 70 (no. 111): «Sed obiectum morale illud vocatur, in quod actio humana ex natura sua *primo et per se* tendit et quod propterea semper est finis ipsius operis.» GREDT, Elementa, II. (note 29) 377 (no. 922): «Prima et specifica moralitas actus humani est ex obiecto morali.»

as indifferent. But such an action does not qualify the will of the person who chooses it. In this case the (final) morality of the act can be constituted by the circumstances (and the end), for instance, if I go for a walk while I should be fulfilling some professional obligation (e.g. care for sick people). The *prima et specifica moralitas* may lie in the object (*prima* in a temporal sense, *specifica* according to the meaning of the respective term (walking)). But is the act under those circumstances *fundamentally* indifferent? Is the behaviour of the priest and the Levite in Jesus' parable (Lk 10, 31s) fundamentally indifferent and only secondarily evil?⁴¹ What's more, almsgiving (a good act) *propter vanam gloriam*, does not seem to be regarded by Jesus as fundamentally good⁴². The underlying misunderstanding can be demonstrated with a (already quoted) phrase from the *Catechism of the Catholic Church* (no. 1754):

«The circumstances, including the consequences, are secondary elements of a moral act.»

This thesis is doubtful even within the framework of the «sources of morality»⁴³. Two examples: I steal a weapon to commit a murder. I steal a ladder to commit an act of fornication or adultery (German: Fensterln). Murder or adultery cannot be regarded as «secondary elements»; but they are accidental elements. That means: even if I don't commit the murder (fornication) I have committed a theft. For the theft being theft (and immoral) it is «accidental» whether I commit the murder or not. For almsgiving being almsgiving it is accidental if it is given *propter vanam gloriam*. But its moral character is «fundamentally» changed by the end. To insist in that way that the action in question is e.g. a case of theft⁴⁴ is appropriate against those who try to appease their

⁴¹ Another problem is with indifferent actions that cause harm. What about killing? Direct Killing of the innocent is intrinsically evil. But are other forms of killing «indifferent»? WASSMER, Thomas A., Is Intrinsic Evil a Viable Term?: *Chicago Studies* 5 (1966) 307–314 indeed formulates (310): «Homicide, the killing of a man – just this act viewed from its object – is morally indifferent.» But homicide is, at least, not as indifferent as walking. There seems to be lacking a category for actions that cause non-moral evil (legitimately or not).

⁴² But cf. NOLDIN, H., *Summa Theologiae Moralis* (note 18), I, 91: «Finis, qui actui ex obiecto indifferenti primam speciem moralem tribuit, ipsum obiectum ingredi atque ad obiectum pertinere dicitur; sic largiri pecuniam ad sublevandam miseriam, canere ad laudandum Deum actiones ex obiecto bonae dicuntur, et canere ad molestiam alteri creandam actio ex obiecto mala dicitur.»

⁴³ It is doubtful even within normative ethics in the case of action describing consequences. In the case of poisoning the main consequence (death) is decisive, not secondary; it would be an element of the «object».

⁴⁴ CONNERY, John. R., Catholic Ethics: Has the Norm for Rule-Making Changed?, in: *TS* 42 (1981) 232–250, 238 stresses that the action is primarily theft, not murder (adultery) as, in his view the consequentialists would say. He refers to Aquinas S.th. I–II, q 18 a 6. But in his Commentary to the Nic. Ethics (V 4, 1130a24) Aquinas says commenting another case: «Ille autem qui moechatur ut accipiat de alieno non videtur luxuriosus, per se loquendo, quia non intendit luxuriae finem. Sed magis videtur esse iniustus, quia propter lucrum contra iustitiam fecit.» Connery should consistently re-

conscience wrongly («It was not bad because I did not commit a murder, because I failed etc.»). The reflection on the sources of morality may help a penitent to a sincere examination of his (her) conscience. «Accidental» in this context means only «not substantial», but not secondary in the sense of «irrelevant», «unimportant» or «less important» („nicht-wesentlich» but not «unwesentlich»). Murder is more important than theft, and the consequences of a lie may be graver than the lie itself. «Accidental» has to be understood as the fourth predicable: something that may possibly belong or not belong to the subject in question, which only contingently belongs to it. What is accidental in this sense is not part of the meaning of the subject.

2. One of the Pope's examples of an intrinsically evil object was «arbitrary imprisonment» (VS 80). By adding adjectives or adverbs like «arbitrary» one could create intrinsically evil acts at will, e.g. «walking contrary to duty». It is, however, remarkable that the German term for «adverb» is «Umstandsbestimmung». Here, an adverb like «arbitrarily» is supposed to denote a circumstance (Umstand)⁴⁵. But if one regards it as circumstance or an element of the act (object) depends on the principle of division which is dependent on the respective context, on the purpose of the classification⁴⁶. Bentham's classification suits to normative ethics, to his study of «principles of morals and legislation». Both ways of distinguishing are legitimate in their context; but it is essential not to confuse the respective contexts.

3. Indifferent actions like walking or eating, drinking need no justification. But what about actions like imprisonment or killing? They cannot be regarded as «intrinsically evil»; only «arbitrary» imprisonment is intrinsically evil and only the direct killing of the innocent. But can one regard them as indif-

gard this as a typically consequentialist heresy. What such actions are primarily, is, obviously, dependent on the respective context.

⁴⁵ Cf. ARISTOTLE, *Nicomachean Ethics*, transl. by H. Rackham, Cambridge (Mass.)/London 1982 (= 1934), 1115b (18ff): «The courageous man then is he that endures or fears the right things and for the right purpose and the right manner and at the right time, and who shows confidence in a similar way. For the courageous man feels and acts as the circumstances merit, and as the principles may dictate.» This suits to the traditional list «*Quis, quid, ubi ...*» But within an explication of courage these things should be listed as part of the object. Cf. again MORTIMER, *The Elements of Moral Theology* (note 35), 65: «The object stands in contrast to the circumstances. The object is those circumstances (!!!) which together make the action what it is. All other circumstances qualify the action one way or another, but still leave it essentially the same class of action.»

⁴⁶ Cf. STEBBING, L. Susan, *A Modern Introduction to Logic*, London 1946, 434, about the classification of vehicles: «*What* order is selected will depend upon the purpose for which the classification is undertaken. If the Chancellor of the Exchequer were to classify vehicles from the point of view of imposing taxes, he would adopt a different principle of arrangement from that adopted by the Minister of Transport. Thus he might consider whether vehicles were run for public or private purposes». The Minister of Transport would perhaps first distinguish (433) vehicles that can alter their routes from those which cannot (trams, trains).

ferent? At least, they always need some moral or legal justification. There is no category for actions of this kind (which cause some non-moral evil) within the framework of the «sources of morality»⁴⁷. An Austrian moral theologian once said that the supply of arms was not an intrinsically evil action. That may be true; within the context of the *fontes moralitatis* that means only that selling arms as such does not necessarily make the will of the seller bad. But in another respect, selling arms is, at least, not as indifferent as selling potatoes. On the one hand, an adequate understanding of the object (cf. VS 75) may be helpful in the examination of one's conscience but not in its formation (*Gewissensbildung*); it may weaken the sensitivity for harmful acts that are not «intrinsically evil»⁴⁸.

The pope is neither the first nor the only one to confront proportionalism or consequentialism with the traditional doctrine of the sources of morality. Many moral theologians have not taken into regard the *Sitz im Leben* of the doctrine of the sources of morality. The consideration of one's actions, its object, circumstances and ends, is typical for the examination of one's conscience, especially in preparation for the sacrament of penance. And Catholic moral theology was traditionally conceived as instruction for father confessors. In traditional lists of sins, the penitent was asked if he committed a certain sin (object) alone or together with others (circumstance)⁴⁹. One has to observe two characteristics of this situation of the examination of conscience:

1. The problem normally is not if what I did was right or wrong, morally permitted or not, but how grave I sinned, if the object was a grave matter, if there were aggravating or extenuative or even exculpatory circumstances (these latter ones belonging, however, not to the accidentals because they change the morality of the act). If, as I stressed, the moral character (right or wrong) of the actions in questions is presupposed to be settled within the «sources of morality», the question of the right or wrong making properties is left open; therefore, the doctrine of the sources of morality is compatible with any normative ethical theory (teleology or deontology).

⁴⁷ According to DEDEK, John F., *Moral Absolutes in the Predecessors of St. Thomas*, in: *TS* 38 (1977) 654–680, 660 William of Auxerre distinguished *malum in se* and *malum secundum se*. «*Malum in se* is an act which is evil in the abstract (*nulla circumstantia addita*) but becomes good with the addition of a good circumstance, e.g. homicide. *Malum secundum se* is an act which cannot become good through the addition of any circumstance, e.g., fornication.» In that sense some «indifferent» actions could be classified as *mala in se*. Alexander of Hales calls «a bad action considered abstractly, i.e., without any of its concrete circumstances» a *malum in genere* (*ibid.* 664).

⁴⁸ Cf. the article of RIEF, *Die bellum-iustum-Theorie* (note 37).

⁴⁹ The Council of Trento orders (DS 1681; cf. 1707): «Colligitur praeterea, etiam eas circumstantias in confessione explicandas esse, quae speciem peccati mutant, quod sine illis peccata ipsa nec a paenitentibus integre exponantur, nec iudicibus innotescant, et fieri nequeat, ut de gravitate criminum recte censere possint et poenam, quam oportet, pro illis paenitentibus imponere.»

2. In the examination of one's conscience, one regards one's behaviour afterwards, *ex post*. Normative ethics, on the other hand, considers typically *ex ante*, in advance, what a certain person should do or who among us should do what for whom. In this situation the moral character of the action is still in question.

Critics as well as proponents of what is called proportionalism have mostly overlooked these different *Sitze im Leben*. The proponents sometimes wrongly criticised the doctrine of the *fontes moralitatis* and sometimes thought that proportionalists had to give more weight to the circumstances or the intention. Because in doing normative ethics you have to characterise the action in question first (before the evaluation) in a purely descriptive way (like Bentham), some critics understood that proportionalists knew only indifferent objects, that for them the moral value is only in the circumstances and the intention. And the Pope stresses (VS 79):

«One must therefore reject the thesis, characteristic of teleological and proportionalist theories, which holds that it is impossible to qualify as morally evil according to its species – its *object* – the deliberate choice of certain kinds of 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.»

One consequence of this confusion is the extreme ambiguity of the term *intrinsically evil*. Donfried is right to state⁵⁰:

«The most significant flaw in *Veritatis Splendor*, however, is its failure to define with consistent clarity and through the use of concrete examples what is meant by the term *intrinsically evil*.»

Most commentators are equally rather vague on this subject. Let me give two examples.

For Meilaender the Pope regards certain acts as intrinsically evil for two reasons⁵¹:

1. «such acts violate the human dignity of the neighbour»; «they could never, under any circumstances, be done as an expression of neighbourly love.» Cf. VS 13

2. they «are not capable of being ordered to God» (VS 81).

The existence of intrinsically evil acts in these senses cannot be doubted. Therefore, let us look for another explanation, that of B. Wannenwetsch, who gives two explanations as well⁵²:

a) «The essential conviction which underlies talk of *intrinsically evil acts* is that the basic opposition of good and evil cannot be reduced to the relative oppositions of good and better or good and less good.»

⁵⁰ DONFRIED, *The Use of Scripture* (note 39), 59.

⁵¹ MEILAENDER, *Grace, Justification through Faith* (note 6), 72.

⁵² WANNENWETSCH, *Intrinsically Evil Acts* (note 17), 189.

This thesis is in some sense true, but not precise enough. It does not distinguish between 'good' in a moral and non-moral sense. And it does not take into regard the possibility to grow in one's goodness (cf. 1 Thess 3,12).

b) «If we ask what acts are exclusively God's prerogative to undertake, that will provide a key to what must be 'intrinsically evil' in terms of human action and fall under the divine prohibition.»

This is only a small part of those actions which are called «intrinsically evil», those which are forbidden *ex defectu iuris in agente*. This represents one kind of deontological argument in the Catholic tradition.

After illustrating the original *Sitz im Leben* of the term «intrinsically evil» let me now list some possible meanings of the term «intrinsically evil act(ion)»:

1. As I tried to demonstrate, the original *Sitz im Leben* of this term is the doctrine of the *fontes moralitatis* the insufficient understanding of which is for the Pope the main reason of the crisis in moral theology (VS 74; 75). In this sense, an act is intrinsically evil solely by its object and not by its circumstances (or end). Sometimes Aristotle is quoted as an authority for the existence of intrinsically evil acts. He speaks of acts and passions (1107 a9ss):

«Not every action or emotion however admits of the observance of a due mean. Indeed the very names of some directly imply evil (τῶ αὐτὰ φαῦλα εἶναι), for instance malice, shamelessness, envy, and, of actions, adultery, theft, murder. All these and similar actions and feelings are blamed as being bad in themselves; it is not the excess or deficiency of them that we blame.»

2. According to the understanding of this translation (which, I think, is right⁵³) some acts (and emotions) cannot be made right by looking for a mean (and so

⁵³ Cf. SPARSHOTT, Francis, *Taking Life Seriously. A Study of the Argument of the Nicomachean Ethics*, Toronto 1994, 108: «The first kind of action that is ruled out is the kind that is wrong by definition. It is never right to commit adultery, because the word *adultery* means sexual intercourse of a kind that is defined as forbidden. It is an important fact about Aristotle's society, if not ours, that there is such a thing as adultery. The person who is contemplating sexual liaison and who realises that it would be adulterous is prevented by that realisation from debating the pros and cons of such an indulgence – the question 'how much?' is ruled out as irrelevant. ... The other kind of action that is ruled out is one that is excluded by the decision process itself. To speak schematically, as Aristotle does, if I have decided what the virtue of generosity requires of me in a certain situation, all other responses are defined as either excessive or defective. We may give them names: they are either stingy or spendthrift. But we have now divided our notional continuum into two contiguous continua; and on these two continua there are no 'right amounts', because all degrees of stinginess and spendthriftiness are predetermined to be wrong. We could say, if we wished, that spendthriftiness and stinginess are wrong (by definition), just as adultery is; but Aristotle treats the two cases as different, because adultery is made wrong by considerations of 'justice' – in effect, contractual considerations, aspects of the social compact – and the term 'adultery' is chosen to indicate that these conditions are violated; spendthriftiness and stinginess are wrong by excess and defect, and the terms are chosen to indicate that the relevant quantitative determination has already been made. There can't be right amount of an excess or a defect.»

becoming virtuous) because they are characterised as evil already by the respective (evaluative) term.

3. They are also evil in another sense: They admit no excess or deficiency⁵⁴.

4. Intrinsically evil can be the opposite of positively forbidden. Work on Sabbath is in this sense not intrinsically evil (in the OT), but it was forbidden by God in the decalogue⁵⁵.

5. One could call intrinsically evil those actions whose evil (and unbearable) consequences are already contained in the term of the action (for instance: torture, poisoning). This action would be intrinsically evil by virtue of its action-describing consequences.

6. An act may be evil *secundum se* and therefore opposed to God⁵⁶, «either because it is directly against god himself (hatred of God) or because it is done *ex libidine* or *ex improba voluntate*.» In this case the attitude (*Gesinnung*) from which the action results is bad.

The existence of intrinsically evil acts in these first five senses cannot be controversial.

7. In the Pope's understanding (and in the understanding of many Catholic moral theologians) a teleological ethical theory is incompatible with the doctrine of the sources of morality. Therefore, the term intrinsically evil ac-

⁵⁴ That was probably the idea Wannenwetsch had in mind, cf. WANNENWETSCH, *Intrinsically Evil Acts* (note 17).

⁵⁵ This is the key-problem according to PINCKAERS, Servais (Th.), *Ce qu'on ne peut jamais faire. La question des actes intrinsèquement mauvais. Histoire et discussion*, Fribourg/Paris 1986. He characterises the question of the «actes intrinsèquement mauvais» in the following way (22f): «Y a-t-il des actes qui sont mauvais en soi, qui, dès lors, sont défendus par la loi morale parce qu'ils sont mauvais, à la différence des actes qui ne sont mauvais que par la défense de la loi, étant indifférents en soi? D'un côté, la malice de l'acte est antérieure à la loi qui l'exprime, de l'autre, elle est postérieure à la loi qui la fonde. Qu'on le comprenne bien; la question a une portée générale. Il ne s'agit pas simplement de découvrir l'un ou l'autre acte exceptionnel qui serait mauvais en soi et toujours, mais de poser le fondement premier de la qualité morale: procède-t-elle de la nature des actes en liaison avec une loi véritablement naturelle ou dépend-elle essentiellement d'une loi extérieure, de ses précepte et de ses interdits. C'est le caractère intrinsèque ou extrinsèque de la moralité ainsi que l'objectivité du jugement morale en général qui sont ici concernés.» On the other hand, he wants to affirm the badness of certain particular «exceptional» actions: lying (11–19), contraception, abortion, torture (20). In that way Pinckaers confuses the question of moral positivism vs. Natural law with the problem of deontological norms; in his book he confuses several of the above listed meanings of «intrinsically evil».

⁵⁶ So Bonaventure according to DEDEK, John, *Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas*, in: *The Thomist* 43 (1979) 385–413, 399. The article demonstrates the confusion of different meanings in medieval authors. One can detect some of the meanings listed above and even some more. The approach of St. Thomas discussing the fifth and sixth commandments is (395): «The fifth commandment forbids all inordinate killing; the sixth forbids all inordinate coitus.» In that respect every evil act is intrinsically evil.

tion» denotes often an action forbidden by deontological criteria. Now, the Catholic tradition knows two kinds of deontological arguments. An action can be wrong, because it is a) *contra naturam*; b) *ex defectu iuris in agente*.

8. Sometimes only an *action contra naturam* is called intrinsically evil. In this sense artificial contraception, adultery, lying would be intrinsically evil, but not killings like abortion and euthanasia or suicide⁵⁷.

9. In VS 8 the Pope lists some actions (quoting GS 27), that «are a disgrace, and so long as they infect human civilisation they contaminate those who inflict them more than those who suffer injustice, and they are a negation of the honour due to the Creator.» Intrinsically evil in this sense may be acts which gravely violate human dignity, neighbourly love or the honour due to the creator⁵⁸. Again, the existence of those acts is not controversial⁵⁹. But the controversy is about the precise understanding of these criteria. Neighbourly love (benevolence) seems to be a teleological criterion⁶⁰. Every immoral act, of course, violates the honour of the creator; but this leaves open the question

⁵⁷ Vgl. BERTRAMS, W., Zur ethischen Begründung der Todesstrafe, in: *StZ* 165 (1959/60) 287–297, 294: «Wohl ist es richtig, dass die Vernichtung menschlichen Lebens nicht eine Handlung ist, die ethisch unerlaubt ist ihrer Substanz nach, d.h. die Handlung enthält ein Element, das als solches – und deshalb immer – der ethischen Ordnung widerstreitet (Gotteshass, homosexueller Geschlechtsverkehr). In diesem Sinn ist das Töten eines Menschen nicht eine substantiell schlechte Handlung. Die Handlung der direkten Vernichtung menschlichen Lebens ist ihrer wesenhaften Struktur nach ethisch unerlaubt wegen des fehlenden Rechtes im Handelnden zu dieser Handlung.» On the other hand, WANNENWETSCH, *Intrinsically Evil Acts* (note 17), 196f regards as intrinsically evil acts which do not respect some objective teleology. But this is typical for the *contra naturam* argument.

⁵⁸ This may be roughly the meaning of Schockenhoffs explanation (SCHOCKENHOFF, Eberhard, *Naturrecht und menschliche Würde. Universale Ethik in einer geschichtlichen Welt*, Mainz 1996, 209f): «Eine Handlungsweise muss immer dann als in sich schlecht und mit der Personwürde eines anderen Menschen unvereinbar angesehen werden, wenn sie die unhintergehbaren Mindestbedingungen des Menschseins angreift, die um der Möglichkeit freier sittlicher Selbstbestimmung willen geschützt werden müssen. Mit einer unter deontologischen Ethikern und Rechtsphilosophen heute eher gebräuchlichen Terminologie heisst dies: Eine Handlungsweise ist im strikten Sinn moralisch verwerflich, wenn sie gegen die unveräusserlichen oder «absoluten» Rechte einer anderen Person verstösst, und zwar unabhängig davon, welche Konsequenzen dies für das Wohlergehen anderer, von dieser Handlung möglicherweise mitbetroffener Personen haben kann.»

⁵⁹ Cf. the interesting remark of MCCORMICK, Richard, *Notes on Moral Theology* (note 10), 163 about speaking of «inherent» or «intrinsic» evil in the debate on the morality of the Vietnam-war: «The very ones who reject this category when dealing with theological methodology are the ones who cling to it when discussing Vietnam, especially when condemning the war on the grounds of civilian loss.»

⁶⁰ Cf. FRANKENA, William K., *Ethics*, Englewood Cliffs ²1973, 45–48; SCHÜLLER, Bruno, *Die Begründung sittlicher Urteile. Typen ethischer Argumentation in der Moralthologie*, Münster ³1987, 289.

by which criteria it is judged to be immoral. And, finally, the criterion of human dignity can be understood in a teleological and in a deontological way⁶¹.

10. Sometimes actions are called 'intrinsically evil' because they are exceptionlessly forbidden⁶². This is often thought to be a property of deontological norms. But this is not true, first, not for W.D. Ross' *prima facie* rules. Furthermore, whether a rule allows exceptions or not depends only on the complete or incomplete formulation of it⁶³. The traditional norm about killing can be formulated both ways: a) You should never kill an innocent human being directly. b) You should never kill a human being, except in cases of self-defence, just war and capital punishment and of indirect killing. These formulations are strictly synonymous.

11. The prohibitions of intrinsically evil acts are sometimes called 'moral absolutes'⁶⁴. 'Absolute', however, is sometimes understood in the sense of 'categorical'. Therefore, 'intrinsically evil' could mean 'categorically forbidden'. In this case, there is a confusion between the normative ethical question about the criteria of right and wrong and the metaethical question about the character of the moral demand as a whole⁶⁵. But among theologians, the categorical character of the moral demand should be beyond question. But this categorical character is sometimes confused with the deontological understanding of a moral norm (as already in Kant's ethics).

⁶¹ Cf. WOLBERT, Werner, *Der Mensch als Mittel und Zweck. Die Idee der Menschenwürde in normativer Ethik und Metaethik*, Münster 1987, 63–83.

⁶² Cf. VS 52, 67, 75, 76, 82, 90, 92, 96, 97, 115. It was, in fact, Schüllers first idea that teleological norms allowed exceptions; cf. SCHÜLLER, Bruno, *Zur Problematik allgemein verbindlicher ethischer Grundsätze: ThPh* 45 (1970) 1–23. But he soon corrected this mistake.

⁶³ Cf. MORTIMER, R.C., *The Elements of Moral Theology* (note 35), 72: «Now it is possible to enumerate with some precision the circumstances in which certain actions are wrong, and to give a name to the presence of these circumstances. We have mentioned some already—murder, fornication, adultery, theft. These are what the moral theologian means when he speaks of an action whose object is bad, or which is intrinsically or inherently evil. Here you have actions which, in themselves, given these circumstances, tend to produce an evil result. But it must be remembered that what we have done is only to state the circumstances in which the result is evil. To conclude from this that the action is wrong whenever these circumstances are present is fallacious. For it may well happen that the addition of other circumstances makes the natural result good and not evil, or evil instead of good, and in that case the object of the action is changed.» Two observations: 1. Mortimer seems to hold a teleological normative ethical theory; 2. 'Intrinsically' is not equivalent to 'exceptionless'.

⁶⁴ Cf. SCHOCKENHOFF, *Naturrecht und menschliche Würde* (note 58).

⁶⁵ A similar confusion is often to be observed in the debate on conscience as the 'source of values', its 'creativity' etc. The duty to follow one's conscience seems sometimes to be confused with views of philosophers like Hare according to which values are not discovered, but simply created by my choices; cf. HUGHES, Gerard J., *Veritatis Splendor: the issues*, in: *The Month* 231 (1993) 432–437, 434.

12. That actions are «bad in themselves» may also mean that they are bad not only because of their results for the acting person, i.e. from an egoistic point of view⁶⁶.

I conclude with a final observation. The questions here discussed play no role in Catholic social ethics nor in the social encyclicals of the Popes. According to the criteria common in biblical research, one could perhaps doubt if VS and the social encyclicals originate from the same person or institution⁶⁷. One reason is that Catholic social ethics were never conceived as an instruction for father confessors. Furthermore, deontological arguments no longer play a role in that field (for instance concerning property⁶⁸). Without expressly reflecting on their deontological character they have more or less been given up.

⁶⁶ Cf. the following quotation of PHILLIPS, Derek L., Authenticity or Morality? in: KRUSCHWITZ, R.B./ROBERTS, R.C. (eds), *The Virtues. Contemporary Essays on Moral Character*, Belmont (California) 1987, 23–35, 29: «For those persons whose actions are guided by a search for authenticity, it is assumed that «ego-satisfaction» is the final aim of all action and that the «pleasure principle» is the basic «drive» which underlies the actions of all persons. This means, of course, that while some actions may be considered «bad» because of their results for the individual actor, they cannot be bad in themselves.»

⁶⁷ Cf. CALVEZ, Jean-Yves, *Morale sociale et morale sexuelle*, in: *Études* 1993, 641–650.

⁶⁸ HAGEL, Joachim, *Solidarität und Subsidiarität – Prinzipien einer teleologischen Ethik*, Salburg 1999. 144–147.