

## CHAPTER TWENTY-THREE: NORMATIVE PRINCIPLES AND SPECIFIC MORAL NORMS--PART II

A. How do the modes of responsibility work socially?

5 In the second volume of this work, I plan to include a treatise on justice. Here I wish only to introduce a few, very general points concerning the method of moral-theological reflection.

The first question is how the modes of responsibility work socially. Three points must be understood: first, that all of the modes of responsibility apply to acts of one person toward another; second, that all of the modes of responsibility apply to acts of communities; and third, that in principle the moral responsibilities of groups are not different from those of individuals.

The first point, that all the modes of responsibility apply to acts of one person toward another (or others), can be seen from the following examples. A person who thinks it would be good to help a stranger in distress (Titus in the first instance) and who fails to do so out of laziness violates the first mode of responsibility. The second mode precisely shapes one's action to the needs and possibilities of community; a person who makes multiple commitments without considering conflicts among the responsibilities to others which might arise from these commitments violates this mode of responsibility. A mother who resists the marriage of a favorite child whom she does not wish to give up to another violates the third mode of responsibility. A coward who unreasonably abandons companions in a dangerous situation violates the fourth mode of responsibility. The fifth mode precisely bears upon interpersonal allocation of burdens and benefits; a child who takes all the candy supplied for several children violates this mode of responsibility. A person who treats another with superficial cordiality instead of allowing a more serious relationship to develop by engaging in more serious communication violates the sixth mode of responsibility. A person who reveals a damaging truth about another out of spite violates the seventh mode of responsibility. A person who kills a defective child to prevent its living a wretched life violates the eighth mode of responsibility.

The second point, that all the modes of responsibility apply to acts of communities can be seen from the following examples. A parish which carries on a minimal liturgy because there is not enough interest and enthusiasm to plan and arrange, to practice, to obtain necessary things, and to participate violates the first mode of responsibility. A group of ecclesiastical administrators who discourage involvement in church affairs by the people in favor of more efficient management violates the second mode of responsibility. A nation which does not abandon war aims when these are realized to be unreasonable violates the third mode of responsibility. A religious congregation which gives up its proper character and mission simply because it is not attracting as many postulants as it formerly did violates the fourth mode of responsibility. A nation which goes to war against another in order to seize for itself the natural resources of the other violates the fifth mode of responsibility. A university which develops curricula aimed at providing its students with an educational experience instead of the reality of education violates the sixth mode of responsibility. A nation which adopts a policy of strategic bombing in retaliation against enemy attacks on its own civilian population violates the seventh mode of responsibility. A nation which threatens the total destruction of a potential adversary in order to deter war violates the eighth mode of responsibility.

The third point--that in principle the moral responsibilities of groups are not different from those in individuals--can be seen by the following consideration. The ultimate principle of morality (under God) is integral human fulfillment. Integral human fulfillment includes the fulfillment of all persons in all human goods. Persons are fulfilled in human goods both individually and in various groups, and the goods themselves are neither peculiar to individuals nor proper to groups. The human acts of individuals and the cooperative acts of persons in groups arise from the same capacities of intelligence and freedom, and the same nonrational factors can divert them from consistency with integral human fulfillment. Therefore, the same modes of responsibility apply both to individual and to cooperative actions--as the preceding examples illustrate.

Now the goods, the capacities for action, and the norms of reasonable action are all the principles of morality. Therefore, since these are the same in the cases of individual and group action, the moral principles of the actions of groups are not different from the moral principles of the actions of individuals. Hence, since responsibilities follow from principles, the moral responsibilities of groups are not in principle different from those of individuals.

In this conclusion, "in principle" means that the same specific norms apply to the extent that they are relevant. Of course, because the possible acts of individuals and of groups are not wholly the same, the particular responsibilities of individuals and of groups are not the same. For example, no group can have an obligation to remember its wife's anniversary, and no person as an individual can have an obligation to make just laws (since persons can make laws only insofar as they act as members of a group).

B. A note on the notion of the "common good"

A full examination of the notion of the "common good" belongs to the treatise on justice. However, certain misunderstandings of this notion will lead to objections to the conclusion just reached. Here I explain "common good" sufficiently to raise and answer these objections.

In the teaching of the Church and in older treatises on moral theology, it often is said (and universally taken for granted) that in social matters the principle of moral rectitude in action is the common good. One might suppose that "common good" signifies a principle other than the basic human goods which contribute to integral human fulfillment or that it signifies certain categories of these goods exclusively--in other words, that some of them are common and that others are strictly individual. In either case, one might think that the conclusion reached in section A is false.

"Common good" sometimes is used to signify something other than the basic human goods. For instance, one sometimes refers to common property or tools as a "common good"; it sometimes is said that shared natural resources, public facilities such as roads, and a shared body of national cultural objects are components of the common good of a political society. These things can pertain to the common good, but they are not principles of action, for they are merely instruments to or expressions of common life and the humanly fulfilling actions and realities which perfect it. Hence, the common good which is a principle of the moral rectitude of action should not be identified with such goods.

There is no good which helps to shape morally right action except goods which can be sought for their own sake as a basis for a choice to act. The basic human goods precisely are all the kinds of good which can be sought for their own sake, whether in an individual's or a group's decision to act. Hence, the common good as a principle of moral rectitude cannot be a good other than the basic human goods.

Nor are some categories of the basic human goods common and others strictly individual. All of the basic human goods can be purposes of both individual and communal acts; moreover, all of them have both individual and communal dimensions in their realization.

A person can individually choose and act for all of the goods. One might suppose that one could not individually choose and act for a good such as interpersonal harmony, but that supposition is a mistake. A private citizen who summons others to be concerned about what seems a social injustice is acting individually for justice, although such a person hopes that this individual action will lead to social action. One also might suppose that a group of persons could not communally choose and act for a good such as individual self-integration, but this supposition also is a mistake. A community of monks can adopt and act together according to a rule of life, an important part of whose purpose is the development of self control and detachment in each member of the community, since personal sanctification is part of the common purpose.

Moreover, there are individual and communal dimensions in the realization of all the basic human goods. Harmony in the existential domain is an interconnected whole; one does not have inner peace if one is at war with one's fellows, and vice versa. Justice is realized in persons whose individual lives are perfected in community. Individuals are fulfilled by knowledge of the truth, but the truth of any field is known only by a scholarly community, with its many experts and specialists. Human life itself belongs to individual organisms, but it also exists in the common functions of sexual intercourse and procreation. Thus, there are no categories of human good inherently private or inherently social.

What, then, does it mean to talk about the "common good" as a principle for the moral rectitude of action in a social context? It means two things. First, that the principle of moral rectitude is found in intelligible human goods, not in empirical goods which appeal to emotion (considered simply as such). Second, it means that actions which affect many must be directed by impartial (fair, just) judgments, not by partial (unfair, biased, selfish, prejudiced) decisions.

As for the first of these two points, morality as a whole depends upon intelligible goods, as I explained in chapter seventeen, sections G-L. Still, in the case of individuals acting in respect to their own affairs and the concerns of small, intimate groups, such as the family, emotion normally is more or less integrated with reason, and in very many cases one need not emphasize the need to think about what is good. However, in social affairs which involve larger groups, such as a whole political society, feelings seldom can be trusted. If upright judgments are going to be made, there must be constant attention to the fact that action must be directed to what is intelligibly good, not simply to particular, appealing states of affairs. For example, the policy of a nation at war ought to be directed to the intelligible good of peace, not merely to the empirical good of the euphoric day when the war will be brought to a successful end.

In general, the basic human goods are not good insofar as they are realized in this or that individual or group; they are good because they are humanly fulfilling. There is a constant danger that my or our experience of sharing in a good will become an empirical objective whose emotional appeal will override reasonable judgments about the pursuit of that which is good--for example, peace and justice. The appeal to the common good in part attempts to forestall this danger.

However, the second point--the demand for fairness--is more precisely what it means to say that in social matters the principle of moral rectitude in action is the common good. Most large-scale societies are a complex of various sorts of interpersonal relationships, some of them based on morally evil acts. However, to the extent that there really is community and cooperative action, people are committed to the same goods and (in most cases) work so that these goods be realized in such a way that to some extent all will share in their realization. For example, insofar as a political society has the character of a real community, the members are committed to justice among themselves and try to establish a form of life such that all will share in this good, by treating others justly and by being treated in the same way.

Of course, the precise states of affairs for which a community undertakes common action usually cannot be achieved without such common action--which is why common action is undertaken. However, in many cases individuals or smaller groups can enjoy many of the rewards of the common undertaking although they do not contribute fairly to bearing its burden. Moreover, individuals often can prefer objectives other than the common ones; their action for these can be unfair merely because they are pursued selfishly to the detriment of the common undertaking. Further, some individuals relate to others on a completely amoral basis; they consider only their own satisfactions and care nothing for others except insofar as they can use them or must beware of them. Hence, there is much unfairness in the life of any large-scale society. The appeal to the common good is an appeal for fairness in the conduct of every communal undertaking.

On the basis of the preceding explanation, it is easy to grasp two senses in which it is correct to say: "The common good is superior to the goods of individuals."

In one sense, this means that intelligible goods are humanly superior to empirical

goods, and thus the human good itself is more important than whose good it happens to be. For example, that truth be known is more important than that I know it or you know it. Of course, truth is not known unless some individuals and groups participate in it. But the whole possible fulfillment is larger than any participation, and each participation is humanly good because of what it is, not because of whose it is. In other words, a fulfillment is fulfilling because it fulfills, not because it fulfills this or that individual's capacity, although some capacity must be fulfilled or there is no fulfillment.

In another sense, the superiority of the common good means that the fulfillment of the group by its cooperative action has priority over any unfair individual satisfaction. Any individual who views common life selfishly, any group which views public life solely in terms of group interests, will seek unfair satisfactions and violate the primacy of the common good, understanding "common good" in this sense.

There is another conception of the common good which will generate an objection to the conclusion I reached in section A. This conception, which is found in Aristotle, is that individuals are related to society as parts of a single organism are related to the whole organism. The common good, on this view, is the only true and complete good of the individuals, just as the common life is the only real life they have. On this view, as Aristotle says: The common good is greater and more godlike than the good of individuals. Unfortunately, by way of St. Thomas and others, this conception has found its way into Catholic moral and social thought.[1]

The trouble with this view is obvious. It simply is not true that individual persons are subordinated to communities as parts of an organism are subordinated to the whole organism. Parts of one's body as such do not have moral standing of their own. For example, the life and health which is a human good is that of the person as a whole. Hence, not only may one cut off a cancerous part for the life of the whole, one may cut off an organ healthy in itself to protect the well-being of the whole--for example, one may amputate healthy testicles to impede breast cancer in a man, because the normal hormonal product of the testicle contributes to the virulence of such cancer. But one may not kill members of society--particularly not innocent ones--for the welfare of the whole. To do so is to violate the eighth mode of responsibility.

Precisely at this point one sees the significance of this false conception of the common good. Its usefulness is to justify subordinating individuals to society and so to permit society to act in ways which will be seen as violations of the eighth mode of responsibility if human goods are admitted to be as truly realized and at stake in each individual as in any social body. If this idea of the common good were sound, then there would be a difference in principle between individual and social morality. When necessary, social ends could rightly be pursued (as they are in almost all states) by destroying, damaging, or impeding human goods in individuals, because the only true and complete human good would be that of society.

#### C. What is the moral foundation of authority?

Authority is the ability of a person (or group) to make a choice which in itself (not simply by virtue of expected consequences) morally ought to be carried out either in the action of more than one person or in the action of at least one person who did not share in making the choice.[2]

Authority is an ability to make a choice. To make a law or to establish a policy is to make a choice; the choice in such cases is of a plan of acting which guides subsequent choices. Sometimes a person can make choices which others morally ought to follow, yet the obligation does not arise from the moral force of the choice itself--for example, a stick-up man makes a choice which a victim perhaps has a moral obligation to comply with, but the obligation arises from the state of affairs the stick-up man creates--very much as one's obligation not to stand under a tree in a thunderstorm arises from the natural state of affairs--together with relevant human goods and the modes of responsibility (in these examples, responsibility for one's own life and safety). A group of persons who together make a choice with the mutual understanding that all of them will act on it are an authority in making the choice and are subject to authority in carrying it out, although the same people make the choice and carry it out. The ability to make a choice which someone else ought to act upon also is authority.

Thus the question is: Why can a person be morally obligated to act on a choice which he or she did not make by himself or herself, and perhaps did not even participate in making? There are three basically different kinds of situations to be considered. First, sometimes one party (person or group) undertakes to comply with the choice of another party. Second, sometimes one party must act with and in dependence upon another party, a choice must be made, and only one party is able to make it. Third, sometimes a person is a member of a community, which has been constituted by common commitments, and which acts upon decisions made for the community by all its members or by some assigned this task.

The first kind of situation is the simplest. There are many morally acceptable reasons why one party might undertake to follow out the choice of another party. The one granted authority might be more expert--for example, one asks medical advice from one's physician, with an undertaking to follow it. The one who grants authority might wish to please the other party: "Just tell me where you would like to go to dinner for your birthday, and I'll take you." And so on. No matter what the reason for the undertaking, this reason itself (assuming it is upright) constitutes a moral basis for acting as the authority decides. In many cases, the undertaking also has the character of a promise, and in such cases fairness also contributes to the obligation to follow the decision of the authority. The obligation is *prima facie*, yet it has a real moral force.

The second kind of situation is most easily understood if one uses an unusual and rather artificial example. Imagine a group of miners trapped by a cave-in, only one of whom can interpret the coded messages which are being sent, and he is unable to do more than point at a place, gesture to dig, and tap a reply to the message received. If the message requires the miners to choose among possible routes for the rescue party, and these have various possibilities and risks, the one individual who understands the

message must make a fateful decision on behalf of all. By the design of the example, only he can decide; he cannot discuss the relevant considerations with the others, and they do not understand the issue. Once the choice is made and the rescuers notified, the chosen possibility is the only one which offers hope of escape. The trapped miners ought to act according to the choice which has been made, although they had no part in making it.

The ground of their moral obligation is not in any undertaking, since they made none. Nor is it merely in the factual situation the one man has created by his decision and message to the rescuers, although the moral responsibility for their own lives and safety does dictate that the choice be carried out. There is a further consideration: The miners, by the decision of the only one of them able to decide, have established a working relationship with the rescue party. The rescuers will be treated unfairly if their effort is rendered fruitless by the noncooperation of those they are seeking to rescue.

This kind of authority is present, although its special character is less obvious, in a natural society such as the family. Parental authority over children is not based on an undertaking by the children, nor is it based on common commitments. Yet parental authority does not simply reduce to the fact that parents are there first and are stronger than small children. A family must live a common life; decisions must be made; children are more or less (depending upon their maturity) incapable of making them. Even when children become old enough to share in making family decisions, some choice often is necessary in matters about which no agreement can be obtained. It remains that parents can choose in a sense that children cannot, since the parents have scope for independent action and responsibility for all members of the family which the children do not have.

When choices are made with this sort of authority, a limit on one's obligation to comply is set by unexceptionable moral norms. If parents, for example, tell their children to act spitefully or to tell lies, the children ought not to comply. One can say that such orders are without authority, or if one uses "parental authority" in a looser sense to refer to anything parents command, one can say that authority in such cases should not be followed.

The third kind of authority arises in a moral community. Here two or more persons commit themselves to certain goods, subject to some definite limits (which often are only implicit). Each makes the commitment, which refers to the commitment of the other as part of his or her own choice. (The marriage commitment which constitutes marital community is a good example.) The point of constituting the community is to create a unified self which can engage in common acts for goods which cannot be pursued at all (or not as well) by persons acting individually.

What is involved here is something more than a particular undertaking to follow a choice and the making of a choice to be followed, because a community is formed by a commitment which leaves open an indefinite series of choices, as I explained in chapter nine, section I. Hence, authority is built in to every community, for choices must constantly be made and followed if the community is to act as such, and at least some members of the community must carry out choices they did not make by themselves.

There is no one way in which authority is located in communities. In many cases, its locus is part of the understanding which exists at the time the community-forming commitments are made. In some cases, such as many friendships and voluntary associations, all members of the community participate in the authority function, for they decide together what to do, and then share together in the work of carrying out the common decision. This arrangement might seem ideal, but in a complex community it is not feasible to share authority generally and on all matters, because decision-making itself becomes a full-time job. Very often in such cases, authority about some decisions--for example, who will make other decisions--is very widely shared, but authority about most matters is exercised by a very small group.

To the extent that a social situation has the character of moral community, the moral basis of its authority is twofold: the second and the fifth modes of responsibility.

The second mode requires one to enter into communities and to seek fulfillment by cooperation. Since most human goods cannot be realized to any significant extent without cooperation, one who lives consistently with integral human fulfillment will make commitments to common life. Once made, the goods at stake and other modes of responsibility, such as the fourth which demands courage to overcome obstacles, demand that one fulfill one's commitments.

Most important, decisions made by authority will be fulfilled by some because of their relationship to the good to which the commitment has been made; others, who might be disinclined to carry a decision out because of its burdensomeness to themselves will be acting with partiality if they do not do their assigned share. Of course, the bearing of the norm demanding impartiality is not only on those who must obey; it also requires that the authority and its decision procedure be fair.

Although there is a substantial moral basis for the authority of a community, the norm that such choices ought to be carried out also is *prima facie*. There are cases in which duties conflict, and legitimate decisions occasionally ought to be overridden by a member of a community who can be morally certain that a fair exception is warranted for the very goods to which the common commitment which constitutes the community has been made.

#### D. What are rights and duties?

Duties are the responsibilities which one person (or group) has toward another (or others, including group members). Not all moral responsibilities concern the interpersonal bearing of actions, so not all moral responsibilities are duties. However, all the modes of responsibility can apply to the acts of persons (and groups) toward others. Therefore, each of the modes of responsibility can generate duties. As I explained in chapter twenty-two, section B, not all the modes of responsibility have normative force in the same way. Therefore, not all duties are duties in the same way.

For example, one who fails through laziness to help another who needs help, but who has no other claim to help, violates a duty in one sense of "duty"--Titus had a duty to help the person lying in the road. One who acts unfairly toward another violates a duty in another (and many people would say "stricter") meaning of "duty"--Titus had a duty to order his friend, if anyone, to do the dangerous job, since his friend was the person better qualified to do it, and the order was given the other man out of favoritism. One who chooses to act against the good of another in violation of the seventh or eighth modes of responsibility violates a duty in still other senses of "duty"--Titus had a duty to restrain himself from fighting with his father-in-law.

In very many cases, two or more modes of obligation will be violated simultaneously if one acts wrongly. In many, but by no means all, acts affecting others, if one acts wrongly, one also acts unfairly. Not all, because one can treat others badly in the same ways one treats oneself badly, by engaging in agreeable modes of self-destruction. In such cases, one violates a duty--in some sense of "duty"--to the other without being unfair. An example would be a person who fairly shares dope with his or her addict friends.

Many people restrict the meaning of "duty" to instances in which there is some unfairness. Such a restriction is simply a matter of linguistic preference; the important point is that if "duty" is used of a responsibility one can fail to fulfill without unfairness, then it is not used in exactly the same sense as it is if fairness is at stake.

If "duty" is limited to a responsibility whose violation involves unfairness, one still must distinguish various meanings of "duty" according to other modes of responsibility which are involved. Thus, for instance, it is one thing to be unfair to others in enthusiastically overcommitting oneself and another to be unfair to others in spitefully harming them.

From the preceding, it is clear that there are many duties which exist prior to anyone's making any choice. For example, there is a general duty not to choose to kill others. Because such a duty exists prior to anyone's making any choice, it can be said to pertain to human nature itself. The duty can be called a "natural duty."

However, very many duties are specified by the decisions of authorities. Since these have a moral foundation and there are prima-facie norms requiring one to carry them out, these decisions impose particular moral responsibilities on those subject to them. These responsibilities always bear on others and always involve (at least) a requirement of fairness. Because such duties do not exist prior to the decision of authority, they clearly do not pertain to human nature itself. These duties can be called "positive duties"--meaning by "positive" that they are posited or put upon one by the authority's decision.

Since duties have diverse moral bases, they differ as do specific moral norms generally. Some duties are unexceptionable--for example, the duty not to choose to kill unwanted children--while others are only prima facie.

"Rights" is used as a correlative of "duties." Hence, there are as many meanings of "rights" as there are of "duties," and distinctions must be made in respect to rights corresponding to the distinctions one makes in respect to duties. "Rights" does not signify a different entity from the moral responsibilities signified by "duties," but rather signifies the same entity from the point of view of the person (or group) affected by the action which is subject to the duty. Just as "duty" is restricted by many people to cases in which fairness is at stake, so many would deny that anyone has a right unless failure to do the relevant duty would be unfair. Since one cannot be unfair to oneself, those who take this view think of rights as claims (or as the basis for potential claims) to fair treatment.

Of special importance is the distinction between natural rights and various sorts of positive rights. The right to life is one thing (for it is based on a natural duty which is unexceptionable, since it derives from the seventh and eighth modes of responsibility); the right to vote is prima facie (for it is based on the second and fifth modes of responsibility, and can be subject to legal limits); the right of a person in need to the help of a passerby is still another thing (for it is based on a natural duty, but one which probably is only prima facie, as in the case of the person in the road whom Titus passed by).

#### 60 E. A note on the modern use of the language of rights

According to the explanation I have given, the language of rights is wholly reducible to the normative principles set out in chapters twenty and twenty-one. Anyone who has examined the literature on rights knows that rights have proved very resistant to theoretical analysis. Initially, one's rights seem to be a bundle of moral levers one holds by which one can move others (or a society) to act or refrain from acting as one wishes. All the levers in the bundle appear homogeneous. But on closer examination, rights turn out to be a very heterogeneous collection of moral entities, whose reality cannot be denied but whose precise nature and sources become more mysterious the more closely they are examined.

Nevertheless, in modern times the language of rights has been very widely used in social and political philosophy, in moral theology, and even in the social teaching of the Church. If this language is theoretically opaque and if (as I hold) it is reducible to the more basic modes of responsibility, why has the language of rights been adopted so widely?

To begin with, everyone makes claims which he or she considers justified, and many such claims are widely acknowledged, sometimes even by those against whom they are made. Therefore, rights are immediately present in social experience and are explicitly conceptualized and discussed. For this reason, their reality is obvious and vital to everyone. Furthermore, one can talk about rights and reach some agreement about them without having any theory of morality. Indeed, even those who disagree about the foundation of rights can agree that there are some rights and can even agree concerning some specific rights--although this agreement is easier when one is formulating a document such as the United Nations Declaration of Human Rights than it is when one is dealing with a real



issue. However, in a political context one can occasionally reach practical agreement about actions required to protect or promote commonly recognized rights. Finally, the language of rights is an appealing one for leaders, since it calls the attention of those addressed to their own stake in society.

5 Now, there is one sense in which the language of rights is unavoidable in moral reflection and teaching concerning human life in society. Since rights correspond to duties, and since duties are social responsibilities, one must talk about rights more or less explicitly if one is going to talk about social morality at all. Moreover, since modern thought about society heavily uses the language of rights, in many cases an important moral point can best be articulated by beginning from an acknowledged right and then clarifying the responsibilities which constitute the moral reality of that right. 10 Vatican II does precisely this in its teaching on religious liberty; it asserts the right to religious commitment and practice against the potential (and actual) infringements of political society, but the Council explains this right by the various responsibilities which underlie it. 15

However, the use of the language of rights can be and often is very confusing. One reason for the confusion is the many meanings of "rights"; there is a tendency to suppose that all are similar in ways that they are not. Again, because talk of rights focuses on claims, the language of rights is easily exploited by those who overlook or conceal essential qualifications, such as against whom and to what the claim is justified. Thus, 20 the right to religious liberty often is misunderstood or misrepresented to mean that people are justified in teaching heresy or practicing it.

Furthermore, the language of rights does not lend itself to serious dialectic. Rights are asserted by one, admitted or denied by another. If not granted as evident, 25 argument comes to a stop. Even if they are granted, the argument from the right conceded to its application to a problem at issue depends upon an appeal to fairness and an exclusion of claims which would make the admitted right seem only prima facie. For example, one can gain little on the issues of abortion and euthanasia by appealing to the right to life, since proponents of the legality of such practices claim the right is 30 limited by other rights, and one cannot deal with this claim without articulating some theory of justice as fairness which goes beyond the mere assertion of rights.

The language of rights lends itself to high-flown rhetoric, since it can be used to affirm an interest in justice without making too many specific admissions about responsibilities to other people. Talk of rights also lends itself to the moral justification of highly questionable decisions and actions. For example, the United States Supreme Court long used the rights of private property and freedom of contract to justify the exploitation of workers by corporations and the resistance of business to unionization; more recently, the Court uses the right of a woman to control over her own body to justify the legalization and public funding of abortion. 35

All things considered, it seems to me that Catholic moral theology and social teaching should be very cautious in using the language of rights. In reading the New Testament, one finds a great deal about the responsibilities of Christians, very little about rights. Sound talk about rights should move quickly from the modern focus upon justifiable claims to the traditional focus upon the principles which underlie justifiable 40 claims, by generating the responsibilities to which they correspond. 45

#### F. How ought Christians to regard their own rights?

There are three possible ways to regard one's rights. One can be concerned to protect 50 them precisely because they are one's own. Or one can be concerned to protect one's rights for the sake of justice. Or one can voluntarily concede one's rights better to fulfill one's commitments. Only the third approach is appropriate for Christians.

In the fallen human condition, most people are especially concerned to protect their rights simply because they are their own. Because this bias toward self is 55 virtually universal and because the bias in this instance is concerned with that which one is justified in demanding, conventional morality approves this approach. Nevertheless, it violates the fifth mode of responsibility, since one who takes it acts out of love of self rather than out of love of justice. One who loved justice would not be concerned with his or her own rights precisely as his or her own, but rather would be concerned 60 impartially with the justice to be done, and so would be concerned about the rights of all who suffer a similar injustice.

The second approach, then, is to be concerned to defend rights on principle. Those who take this approach have a social consciousness, and they pursue their own rights for the sake of justice to all who are similarly situated. Even in cases in which they 65 would consider the effort to defend their own rights to be too much trouble, they will defend their rights for the sake of justice. This second approach conforms to the common requirements of human moral responsibility, since it is based upon an impartial love of justice.

Christians, however, must seek and accept everything as a gift from God. Hence, 70 in imitation of Jesus, who did not cling to His right to divine honor, Christians ought to pursue the interests of others in preference to their own (cf. Phil 2.1-11). Transforming justice into mercy, they should voluntarily forego rights and more than fulfill duties (cf. Mt 5.38-42). Overcoming evil with good, they should forgive injuries (cf. Mt 5.43-48; Rom 12.21). Living redemptively, they should suffer evil meekly that good 75 might follow from it (cf. Mt 5.10-12; Rom 5.7-7). Lambs do not demand their rights; Jesus was the lamb of God (cf. Acts 8.32; Rv 5.12-13).

Thus, Christians ought not to be concerned about their rights, but rather about the responsibilities of their personal vocation. St. Paul, for example, did not accept support from his converts, although he was entitled to it, for he wished them to receive 80 the Gospel entirely as a gift (cf. 2 Cor 11.7-9). He claimed his right as a Roman citizen to trial before the emperor (cf. Acts 25.11), but it is clear from the context that he did this only to continue his mission (cf. Acts 24.24-27, 26.29, 28.17-31).

To fulfill their responsibilities, Christians ought to seek to vindicate their rights, but not otherwise. For example, a bishop ought to defend his right to preach

the Gospel and to minister to his flock; Christian workers ought to seek just compensation for the support of their families and the work of the Church; Catholic nurses should defend their right to exemption from assignments to participate in abortions. Christians can make the establishment and protection of justice in society a part of their vocational commitment, but if they do so, they will prove that their concern for justice is redemptive by preferring to act in defense of rights from whose violation they do not personally suffer harm.

Because Christians may claim their rights when to do so is to fulfill the responsibilities of their personal vocations, there often will appear to be little difference between the behavior of conventionally moral persons and that of Christians in exacting rights. However, in certain cases behavior will be strikingly different, if one has in this matter the mind of Christ, rather than the mind of a person with normal self-bias or the mind of a person committed to the good of justice, but without commitment to the redemptive work by which alone justice will come to fallen humankind.

15 G. To what extent does one have a duty to obey the laws of human societies?

In section C, above, I considered the moral basis of authority. The present question proceeds to a further point concerning the moral responsibility of members of human societies to obey their laws. The laws of the Church present special problems; I will consider them in section H.

Human societies include many communities other than that of civil society--for example, they include corporations, families, colleges, and so on. Some of these groups--for example, business corporations and families in respect to parent-child relations--do not have the character of community, inasmuch as they are not based upon common commitment. Therefore, authorities in them do not make laws in the sense I will consider here, although their decisions can have moral force, as explained in section C. Authorities in genuine communities do make laws, although the laws in communities other than civil societies generally are called "bylaws," "policies," "rules," or simply "decisions." According to the position I explained in section B, there is no essential difference between the authoritative decisions of a voluntary association, such as a university, and the authoritative decisions of a political society.

Theoretically, one can distinguish at least four different types of law, which constitute (moral) duties in somewhat different ways. (The distinctions I draw do not correspond precisely to the distinctions among the fields of law drawn within the law itself.)

First, constitutional law articulates the content of the common commitment by which the community exists. It includes an indication of common purposes and the limits of the area of cooperation (restriction of powers; reservation of liberties). It also includes some determination of the locus and structure of authority, and the manner of its exercise (most of the United States Constitution is taken up with this matter).

This type of law has the moral authority which justifies the community-forming commitment. To the extent that people ought to make the commitment, they also ought to support and implement the constitutional law. Once they make the commitment, their acting in accord with it also normally is required by fairness. Further, those who have the greatest opportunity to violate constitutional law are those who hold official positions in the community. The holding of these positions depends upon trust--expressed, for instance, in an oath of office. The promise involved in accepting the trust requires that one be faithful in fulfilling the office according to the constitutional law, or that one resign the office.

Second, civil law provides a public facility for the regulation of private affairs according to the public purpose of mutual justice and general peace. The law of contracts and the law of torts (damage suits), for example, help people who make binding agreements and settle disputes to facilitate their cooperation and minimize their private conflict.

Such law does not of itself require anything of those who initiate the use of it; it can be used or ignored. If one ought to pursue some purpose for which the use of such law is necessary, then one ought to use it, and to use it one will have to comply with its requirements. Otherwise, such law has no moral force.

Third, criminal law calls attention to the wrongness of various sorts of acts which would be immoral even if not forbidden by law, and it determines by authoritative decision how the community will respond if acts of these sorts are done within its jurisdiction. Authority does not make crimes be wrong; therefore, no more can it make wrong acts innocent by restricting or repealing portions of criminal law. The wrongness of crimes arises from their intrinsic, immoral character. Usually, but not always, a society is concerned about this immorality precisely because it has the aspect of unfairness. Even crimes which are possible only because of the existence of the society--for example, treason, deliberate tax evasion, and so on--mark out acts which would be immoral even if they were not mentioned in criminal law.[3]

With respect to the crime itself, this type of law has the moral force which is inherent in the criminal act. With respect to the criminal process and penalty, the criminal normally has no choice. Those who do have a choice--public officials involved in the criminal justice system--are bound by the provisions of criminal law in the same way that everyone is bound by the provisions of the type of law to be discussed next.

The fourth type of law is the regulation by statutes and ordinances of the common life of the community at large, of some of its more important subgroups, and especially of the government itself and its agencies. This law is that of policies and programs, of security forces, of the regulation of businesses, of public administration, and of many matters of common life, such as traffic control. Decisions are made about many matters; they direct frequently repeated behavior into commonly acceptable patterns (for example, traffic laws), shape complexes of behavior into programs (for example, medicare), and even constitute single public acts (for example, a declaration of war).

This fourth kind of law has moral force solely from the moral foundation of the authority of the community, which I described toward the end of section C, above. To the extent that there is a genuine community, its members have a prima facie obligation

to act in accord with the decisions of its authorities. However, this obligation can be qualified in two ways. First, the decision can lack moral authority due to some defect in it or the process by which it was reached. Second, decision can be nonapplicable in particular cases.

5 A decision lacks moral authority due to a defect in it if it would require a person to do something wrong--for example, to violate the eighth mode of obligation in some way. A decision can lack authority due to a defect in the process by which it is reached if there is a moral defect in the constitution (for example, laws enforcing slavery in the United States before the Civil War), if the decision is unconstitutional, or if fair  
10 procedures have not been followed in reaching the decision (for example, the shaping of a tax law to suit the interests of large political contributors).

A decision can be inapplicable because under specific conditions (not mentioned and perhaps not even envisioned by the authority) the authority could not have reasonably meant the decision to apply. For example, in emergencies, property laws can be set  
15 aside to preserve human life, because no authority can reasonably intend that the system of property obstruct the more basic human good to whose service it is directed. In a case of this sort, one violates the letter of the law to preserve its spirit. The use of judgment to act against the letter of the law in a case of this sort is called "epikeia."

20 A decision of law also can be inapplicable because it requires action and one has a conflicting duty which must be fulfilled. I will discuss conflicts of duty in section J, below.

Finally, a decision of law can be inapplicable because compliance would no longer serve the purpose for which the law was made; in such a case, the authority could not  
25 reasonably enforce the law. Examples are many antiquated statutes which have fallen into disuse but remain on the books.

Unless a person subject to a law is morally certain that the decision lacks moral authority or is inapplicable, the prima facie norm requiring compliance with the law will form the conscience of an upright person. Even if one is not bound to act according to  
30 a law, when there is nothing wrong in doing so, Christians often will find reason to comply, since such compliance often will contribute in some way to one's Christian vocation.

#### H. Some further remarks on legal obligations

35 Legal obligations are very important. Most detailed problems of conscience are concerned with duties, and most duties arise from legal obligations--taking "law" in the very wide sense I have given it to include all authoritative decisions. Moreover, many people today fail to see the moral force of legal obligations, partly because of prevalent individualism, partly because authority often is abused, and partly because the  
40 older awe of social authority has faded and not been replaced by a more mature and intelligent respect (cf. GS 30).

A proper understanding of criminal law is important. In this area, a political society is less the maker than the protector of norms. No society can exist unless there  
45 is widespread outward compliance with some basic moral norms--for example, those forbidding killing. However, a society can permit the killing of certain classes of its weaker members, such as the unborn and the aged who lack the support of relatives and friends. To introduce such differences in legal protection is unfair. This consideration about fairness--not the sanctity of life as such--points to what is basically objectionable  
50 about the legalization of abortion.

Because criminal law presupposes the wrongness of the acts with which it deals, the legalization of acts previously and rightly considered criminal does not alter the moral wrongness of doing such acts. Moreover, the argument that one ought not to try to  
55 enforce moral standards by criminal penalties is fallacious. Not every immoral act can be the concern of society, since most immorality is hidden. Society can concern itself only with more serious wrongs, concerning which evidence is available, and which interfere with the common purpose of the society, usually by their injustice. However, within these limits, morality is precisely what criminal law is concerned with. Those who object to certain criminal laws as impositions of morality really mean that they hold a  
60 different moral position and wish to impose it on others--for example, on the unborn, by killing them if they happen to be unwanted.

The fourth type of law, which has its force solely from the moral basis of social authority, often is slightly defective in its moral foundation without altogether lacking moral force. Tax laws, for example, are influenced unfairly by powerful groups;  
65 moreover, a substantial part of any government's budget is likely to be used for morally indefensible purposes (for example, the maintenance of military power for immoral uses) or used inequitably for good purposes (for example, the funding of exclusively secularized public education).

Even so, a morally responsible citizen will realize that life in political society  
70 is inevitable, that the society in which he or she lives is not altogether unjust, that many of its activities ought to be supported, and that other citizens, including those in worse economic condition, will suffer if one does not contribute one's legally specified share. This consideration shows that one cannot easily be morally certain that a defect in the process by which a law is made is sufficient to undermine its moral force.

75 The notion of epikeia is widely misunderstood and abused. Although the use of epikeia is analogous to the qualification of prima facie moral norms by the addition of further specifications, epikeia really belongs only in the area of positive law, when one is morally obliged to make an exception to an authoritative decision, but has no authority to revise and refine the decision. Those subject to law are not justified in  
80 making exceptions simply because they personally would have made a different law; if such individualism were permissible, social authority would mean nothing. Nor are those subject to law justified in making exceptions whenever they think a different course of action would be considered reasonable by the authority if it knew all the conditions. The assumption of such judgments by every member of the society will produce too much



diversity and leave the community without a common framework for its common action. The condition which justifies exceptions is more stringent: One must be able to say sincerely that if the lawmaking authority knew the circumstances, it would surely want the exception to be made.

5 In general, a penalty, such as a fine, for noncompliance with a law is different from a license fee. A license fee is a kind of tax; the authority is not deciding against the kind of activity which is taxed, but is regulating it. A fine is an incentive to compliance; the penalized activity is forbidden. However, there are certain cases in which fines and license fees are not easily distinguished--for example, parking  
10 tickets are given when a vehicle remains too long in a legitimate place. In borderline cases of this sort, many of the older moral writers spoke of "purely penal laws." The moral requirement in the case of a purely penal law would be either to comply with the ordinance or with the penal provision by paying the fine if assessed. Most laws clearly are not of this type. The decisions made are based on a judgment by authority that be-  
15 havior of a certain sort will be for the social good in a way that the collection of a fine would not be.

If one is justified in noncompliance with a law, one has no moral obligation based on the law itself for accepting the penalty for noncompliance. For example, if one is justified in refusing to register for the draft, one has no moral obligation arising  
20 from the law to engage in civil disobedience by making one's refusal public and inviting trial and punishment. If one is committed to the justice which one believes is being violated and to fairness toward other members of the community, one could have a moral responsibility arising from these commitments to engage in civil disobedience. However, this obligation cannot be generalized into an unexceptionable norm. For example, not  
25 every German citizen during the Nazi regime who neither complied with immoral orders nor openly resisted them was morally irresponsible.

#### I. To what extent do Catholics have an obligation to obey the law of the Church?

30 In general, what has been said in section G and explained in section H concerning the laws of human societies applies to the law of the Church. However, although law in the Church and in other human societies is essentially similar, the Church is essentially different from any other human society. Therefore, certain points concerning the moral foundations and force of Church law deserve special note.

35 Students for the priesthood will make a special study of canon law (the law of the Church) and the pastoral care of persons who have violated it. These matters will not be treated in moral theology.

The constitutional law of the Church is contained in the divine precepts, which I discussed in chapter twenty-two, section L. Since all of the human law of the Church de-  
40 pends upon this divinely given foundation, the entire law of the Church has a sacred character.

The common life of the Church is the practice of faith, which is necessary for the sanctification of the members of the Church, the redemption of the world, the return to God of an appropriate sacrifice of thanks, and the building up of Christ to fulfillment.  
45 The Church's law regulates her common life in view of this great good. Therefore, the moral obligation to obey the Church's law is grounded not merely in justice, but in the good of religion which is shared by the act of living faith itself.

Part of the Church's law is a form of criminal law, for it declares certain kinds of acts wrong rather than making them so by decision; the Church's law merely determines  
50 how the Church as community will deal with such immoral acts. Laws of this sort have the force of the moral norms by which the acts they declare wrong are wrong in themselves; in addition, the Church's legislation adds an obligation of reverence to divinely established authority.

This obligation, which attends the Church's law generally, is similar to the duty  
55 of children to obey their parents, which I discussed in section C, above. By way of the divine precepts and their act of faith, Christians are in a relationship of cooperation with the redemptive work of God. In this work, God has authority because decisions are necessary which only He can make. Divine authority was given to Christ, and He transmitted it to the apostles, led by Peter, and their successors. Therefore, as children  
60 are unreasonable and unfair if they do not obey their parents, so members of the Church are unreasonable and impious if they do not obey ecclesiastical authority.

Therefore, although the part of the Church's law which regulates her common life by authoritative choices has the moral force only of the authority from which it comes,  
65 this authority is different in kind from that of any other human society. Such law can be changed by the same authority which makes it, yet while it is in force members of the Church should treat it reverently.

Because of the nature of the Church and the subject matter of her laws, because of the character of those who make them and the care with which they are made, there is very little possibility that laws of the Church will be defective by requiring anything im-  
70 moral of those who would comply or by issuing from an abuse of authority. This very small possibility of defect is further diminished in the case of laws issued by authority of the pope. Moreover, if there were serious moral defect in the procedure by which a Church law is made and issued, there is scarcely any possibility that one subject to the law could be morally certain of this fact. Hence, for all practical purposes, the kind  
75 of moral defectiveness which sometimes undercuts the authority of the laws of other human societies can be ignored in the case of the law of the Church.

Like similar law in other human societies, the part of the Church's law which is made by authoritative decisions and which could be changed by such decisions has limits in its application. Within the very narrow limits of its legitimate use, epikeia ap-  
80 plies to Church law. Similarly, laws which require acts at certain times can be rendered inapplicable because of a conflict of duties. Also, Church laws can lose their point and fall into general disuse.

However, none of these conditions should be assumed too quickly to be fulfilled. Certain cases in which laws can be considered inapplicable are discussed in treatments

of canon law; in other cases, dispensations can be obtained from the proper authority. The very common practice of substituting one's own, supposedly better judgment for the law of the Church is a grave abuse of epikeia. Moreover, one ought not to suppose a law is a dead letter simply because it is widely violated; only the practice of those who

5 are most experienced, conscientious, and holy is a safe guide in this matter.  
 There are several reasons why priests ought to be especially conscientious in their observation of Church law. First, compliance with the law maintains unity among the clergy and solidarity with the bishop; noncompliance is divisive. Division seriously impedes the work of the Church. Second, compliance with the law (except in the rare case  
 10 in which it truly is inapplicable) serves the people; noncompliance arrogantly imposes upon them personal judgments instead of the proper authority of the Church. Third, compliance with the law sets a good example of obedience; noncompliance sets a bad example of self-will.

These points can be illustrated by the many arbitrary, usually minor, and seemingly  
 15 insignificant variations in the liturgy one encounters today. Such variations lead to disagreements, irritation, and uncooperativeness among priests. Virtually all of them are ill-considered, and they often compel the better-informed faithful to tolerate things they rightly find repugnant. Finally, an easy-going approach to the liturgy detracts from its sacred character; at the same time, this approach suggests that Christians may  
 20 do as they please in very important matters. This last suggestion is applied by some of the faithful to moral issues. There is a difference between canon law and moral norms, but not all of the little ones understand this difference..

J. How are conflicts of duties distinguished from other moral problems?

25 In the most proper sense, a conflict of duties is the impossibility of a person's doing at once two acts, both of which are required by definite responsibilities toward others, and neither of which could be omitted blamelessly in the absence of the other. By "definite responsibility" here I mean one determined by law or by a social role--for  
 30 example, the responsibility of a firefighter during working hours to fight a fire. Such definite responsibilities must be distinguished from social responsibilities not defined by law or one's role--for example, the responsibility of a passerby to help a person in distress. These latter can be called "duties," but they are such in a wider sense than those which arise from definite responsibilities.

35 In practice, many conflicts of duties can be avoided if one is careful not to over-commit oneself (the second mode of responsibility) and if one plans one's schedule. Incipient conflicts of duties can be forestalled by arranging to fulfill one of them at another time or by another means--for instance, through someone else's help. Most laws which require the regular fulfillment of a duty at a precise time--Sunday Mass attend-  
 40 ance, voting, participation in an academic exercise--carry at least implicit exception clauses. Moreover, in cases of conflict one often can obtain a permission or dispensation to solve a problem.

Still, there remain certain conflicts. For example, a professor might have a conflict between a professional duty to meet his or her classes, which cannot be taken over  
 45 by someone else or made up, and a family duty to participate in the funeral of a parent, which would require a week's absence. (The latter, it is to be noted, is a definite duty, for although it is not prescribed by law, it does pertain to one's role in the family.) If there were no conflict, it would be wrong to omit either act. Because it is impossible to do both, only one can be morally required.

50 In cases of this sort, one must be careful not to act with partiality. To avoid unfairness, one must ask oneself how one's omission of either duty would affect everyone involved, and one must try to put oneself in the place of the various persons (or sorts of persons) affected. Having done this, one possibility is likely to be identifiable as the proper duty to fulfill. If not, one may blamelessly omit either duty.

55 In a less strict sense, one can have conflicts of duties between a definite duty and a duty in the wider sense. For example, a firefighter on the way to a fire might in passing notice a pedestrian lying by the curb and waving for help. Here there is a conflict between the definite duty of the role and the nondefined duty to help someone in need of help. In a case of this sort, one must first be careful to take into account  
 60 built-in limits to the duties of one's role. Ordinary jobs, for example, do not demand unexceptionable punctuality, and so a person on the way to work normally would not have a duty to go on to work despite someone else's dire need for help. However, if there is a real conflict of this sort, one again must be careful to avoid partiality. If fairness does not require one to set aside the defined duty in favor of the nondefined one, it  
 65 will require that one rather fulfill the defined duty, for others should be able to depend upon one's doing so.

Conflicts between nondefined duties also can arise. Their resolution is similar to that of conflicts between defined duties.

70 Conflicts of duties in all of these senses must be distinguished from two, quite different sorts of moral difficulties. First, there are cases in which one cannot fulfill what would be one's duty without violating an unexceptionable moral norm. Second, there are cases of doubtful conscience, including perplexity.

An example of the first is the problem of Thomas More. In general, it would have  
 75 been his duty to preserve his life and liberty, in order to fulfill his responsibilities to his family. However, he could not fulfill these responsibilities (through avoiding offense to Henry VIII) without taking an oath to what More believed false. Such oath-taking is morally excluded by an unexceptionable moral norm. Hence, More refused to take the oath, much to the distress of his wife, who reminded him that he was letting her down.

80 In cases of this kind, there is no conflict of duties, since one cannot have a duty to do anything immoral. To talk of a conflict of duties here is to suggest that the moral determination of the wrong act be ignored, and that one consider what would seem fair if the wrong act were not wrong. The acceptance of this suggestion leads to the moral compromises of conventional moralities and also to consequentialist rationalization.

Doubtful conscience is the condition of a person who is deliberating about a possible action and who does not know whether it would be morally right or wrong to choose the action. The first obligation of a person in this condition is to resolve the doubt, if possible, by appropriate inquiry. Catholics should try to find out if there is a relevant teaching of the Church; if so, they should follow it, as I explained in chapter 5 fourteen, section 0. If there is no relevant teaching or if an individual cannot--for example, because of lack of time--find out what it is, then one may consider certain whichever judgment seems more likely true, whether that judgment indicates action or in- action, whether it indicates a more or less appealing (or repugnant) choice. Obviously, 10 in considering which judgment is more likely true, one must take care to avoid a tendency to partiality and other temptations.

Perplexity is the condition of a person whose conscience is doubtful about a specific question: Which of these two possibilities, both of which seem wrong, is right? An example is the situation of a child who thinks it wrong to tell on other children and 15 who also thinks it obligatory to inform adults that another child is doing something very dangerous, such as playing Russian roulette. Since the principles of morality reduce to an ultimate unity, there cannot be perplexity due to incompatibility between two true moral judgments. However, the complexity of some moral issues in the fallen human condition and the limits of moral insight lead to perplexity as a subjective experience.

The experience of perplexity often indicates that the individual who has it has 20 acted immorally and in doing so created a situation within which no morally good possibilities can be chosen. In such cases, the perplexed individual can resolve the problem only by repenting the immoral act which is at its basis. However, the experience of perplexity also can arise for individuals who are personally upright but who are caught 25 within the somewhat false demands of a conventional morality, which has been adapted to the fallen human condition. The child in the example is perplexed because of the false absoluteness which children give to the norm forbidding telling on one another. This norm is genuine, but only *prima facie*.

Individuals who experience perplexity and whose self-examination does not reveal 30 anything they personally can and should correct ought to proceed in the same way as in any other case of doubtful conscience. The act which more certainly seems wrong is the one to be avoided.

#### K. The classical understanding of double effect

35 In the older treatises on moral theology, one finds a treatment of a difficult type of moral problem in which there might seem to be but really is not a conflict of moral responsibilities. For instance, a pregnant woman is diagnosed as having cancer of the uterus. Treatment of the disease is likely to result in the death of her child; 40 nontreatment, in the spread of the disease and the woman's death after the delivery of the child. At first glance, both treatment and nontreatment seem justifiable in view of the goods sought and unjustifiable in view of the harms expected. Cases of this type were resolved by clarification of the moral act rather than (as with the problems considered in the previous section) by clarification of the relevant norm.

The clarification of the moral act began by noticing that in cases of this sort, 45 the same act has two effects, one good and the other bad.[4] The clarification, called "the principle of double effect," often was summarized along the following lines:

One may perform an act having two effects, one good and the other bad, if four conditions are fulfilled simultaneously:

50 1) The act must not be wrong in itself, even apart from consideration of the bad effect. (Thus the principle was not used to deal with the good and the bad effects of an act admittedly excluded by an unexceptionable norm.)

2) The agent's intention must be right. (Thus if one's precise purpose is to 55 destroy, damage, or impede some basic human good, the deed carrying out this purpose could not be justified by the principle.)

3) The evil effect must not be a means to the good effect. (Thus if one chooses 60 to destroy, damage or impede some basic human good, although one chooses this for the sake of a good one might otherwise rightly pursue, the deed carrying out this choice could not be justified by the principle.)

4) There must be a proportionately grave reason to justify the act. (Thus, even 65 if all the other conditions were fulfilled, one still might be obliged by the seriousness of the expected bad effect to abstain from the action.)

The fourth condition provides an opening for consequentialism. The argument is 65 that if the reason which would justify the act really is proportionately grave, the first three conditions are irrelevant. Moreover, those who defend consequentialism as a development of traditional Catholic moral theology claim to find in this fourth condition the supposition of the meaningfulness of "proportionate reason" which is the key notion necessary for consequentialism.

A moralist working in the classical framework would have applied this principle to 70 the case of the cancerous uterus as follows. The treatment of the cancer itself is not a bad act. If the woman were not pregnant, no doubt it would be obligatory. The purpose is not to damage or kill the unborn child. The operation is unlike one done to get rid of an unwanted child; if possible, the child would be (and even will be) saved. Moreover, whatever harm comes to the child is not a means to the good sought by the 75 treatment. If the woman were not pregnant or if the child were miraculously preserved from harm, the treatment of the cancer would be every bit as effective. The case is unlike one in which the child is killed in order to lessen the load it is putting on the mother's system. Finally, there is a very serious reason for going on with the treatment despite its bad effect; the mother's life is just as much at stake as the child's. 80 Thus the case is unlike one in which a pregnant woman has a medically indicated but not urgently necessary hysterectomy (removal of uterus) despite her pregnant condition, thus bringing about the death of the child merely to do something which could be carried out later.

As formulated, the principle of double effect gives rise to three sorts of difficulties.

First, what is to count as "the act" mentioned in the first condition? Are abortionists killing babies? Or is the act something else? For example, does an abortionist who injects saline into a pregnant uterus precisely do the act of injecting saline, with the death of the baby as an effect of the act? Again, if a soldier in battle takes  
5 dead aim at an enemy soldier, is the act one of killing? (If one says it is, then one must say either that some killing is justified or that this act cannot be justified.)

Second, what is to count as "a means" mentioned in the third condition? Is every cause of a desired effect a means to the end sought? For instance, if the effect desired by the soldier is his own safety, and if the death of the enemy soldier in fact  
10 secures this, then is the enemy's death a means to the good end?

Third, what is to count as a "proportionately grave reason" mentioned in the fourth condition? Does the physical proximity or probability of the bad effect have something to do with this? Is the justification in the cancerous uterus case simply that one life is as good as another? Should one take into account the probability that the child could  
15 live many more years than the mother? Or can one begin weighing here factors such as the woman's responsibilities for other children?

It seems to me there are two sources of these difficulties. First, the older moral theologians started out by thinking of human acts in a common sense way, as chunks of behavior having some moral significance because of their inherent characteristics and  
20 their being done on purpose. I criticized this view of human acts in chapter nine, especially sections G and J. If one insists on taking it, one literally never knows exactly what anyone is doing, and so one will not be able to deal with precision with difficult cases of the sort for which the principle of double effect was designed.

Second, the classical moralists also lacked an explicit understanding of the modes  
25 of responsibility. Hence, they could not define "proportionately grave reason" simply in moral terms; and they sometimes talked in ways which have provided an opening for consequentialism.

Nevertheless, it is worth noting that many of the older moralists, in talking about what is proportionately grave, suggested that its meaning at least included the following  
30 consideration. In doing something which brings about unintentional bad consequences, one still might be acting irreverently with religious things, unfairly toward other people, or recklessly with one's own well-being. If so, one's reason would not be proportionately grave. This consideration clearly avoids anything like consequentialism, since it brings into play other relevant moral norms rather than proposing to weigh and  
35 balance the good and bad effects considered prior to moral specification--that is, taken simply as basic human goods.

L. When may one act in a way one foresees will have humanly bad effects?

By "humanly bad effects" I mean the destruction, damage, or impeding of any basic  
40 human good. I have explained action and effects in chapter nine, sections G and J. According to that explanation, one does precisely what one chooses to do--that is, what is included in the proposal one articulates in deliberation and adopts by choice. Whatever is not included in one's proposal but is brought about by the execution of one's proposal  
45 counts as an effect.

It is virtually impossible to do anything without bringing about some humanly bad effects, at least indirectly; moreover, such effects often can be foreseen if one thinks about the situation. For example, preaching the Gospel brings about the effects of belief and disbelief, and so leads to division, which ultimately leads to conflict and persecution. Going for an automobile ride adds to the traffic death toll and to pollution  
50 (which causes various diseases), and so forth. Even the most innocent acts use time and energy which thereby are not available for service to various human goods; thus, in an indirect way, an hour's meditation contributes to the misery of those whom an hour's labor could have helped.

This situation is not a consequence of our fallen human condition, nor is it essentially a result of our finitude. Even God could not create without bringing about foreseen bad consequences; He knew that freedom could and would be abused. His proposal, however, was not that creatures should sin, but that they should be able to love freely. He accepted sin as an unwanted side-effect of the creaturely choice by which love was re-  
60 fused.

According to the seventh and eighth modes of responsibility, it is wrong to choose to destroy, damage, or impede any intelligible human good. One is tempted to make such choices either out of a nonrational hostility to the good or out of a nonrational preference for some good which is to be realized through the act chosen. To bring about humanly bad effects out of such nonrational motives always is wrong.  
65

But there are other modes of responsibility. The fifth, for instance, is concerned with fairness. If a gardener uses a poison to protect a crop with a possible side-effect of poisoning a neighbor's children, the acceptance of the possible ill-effect probably is unfair; the gardener would object if someone took such a risk with his or her children. Likewise, the foreseen bad effects to a real good when one acts for a merely apparent one, in violation of the sixth mode of responsibility, will not be accepted by an upright person, although such bad effects normally are no part of one's proposal.  
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Therefore, the problem of when one may act in a way which one foresees will have humanly bad effects can be solved only by considering all of the intelligible features of that about which one is deliberating, referring to all the modes of responsibility, and articulating a norm for the act under consideration. The act will be right if and only if in choosing it one violates none of the modes of responsibility.  
75

Thus, if one's proposal is to destroy, damage, or impede any of the basic human goods, the act will be excluded by the seventh or eighth modes of responsibility. If one is inclined to accept the bad effects out of partiality and would not accept them otherwise, one violates the fifth mode. If the bad effects are consequent on an omission one is inclined to out of laziness, one violates the first mode. And so forth. If the foreseen bad effects are accepted without violating any mode of responsibility, one simply accepts them as incidental to the good one is doing. One does not need any reason  
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for so accepting them, except the reason provided by the intelligible goodness of that for which one acts.

M. Final remarks on acts with foreseen bad effects

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Someone might argue that the criterion I have stated is too weak, for it admits the accepting of effects which most people would think wrong to accept. For example, people might know that to engage in some very hazardous game might lead to death, yet no mode of responsibility need exclude their engaging in that activity. Also, if they are willing to take the risk themselves, it seems they might without partiality expose others to a similar risk for a similarly trivial reason. Therefore, the argument will conclude, a more stringent criterion is needed--perhaps to be established by weighing off good and bad consequences (in the way I have argued is impossible).

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Two distinctions are needed to answer this objection. First, moral norms apply to possible acts about which someone really is inclined to choose; imaginary horrendous acts ought to be excluded from argument, unless one can plausibly account for someone's possible interest in doing them. I think that in many cases, if an individual is prepared to risk life in a hazardous game, some mode of responsibility is violated. For example, little boys who cannot refuse dares and daredevils who do stunts which require minimal skill probably are irrationally concerned about honor or wealth, in violation of the third mode of responsibility. Still, a person with real athletic ability and commitment might undertake a hazardous feat, such as a very difficult mountain climb, despite a real and serious risk of death, without violating any of the modes of responsibility. In such a case, however, is the act wrong? I do not think so, provided that one does not specify it further--for example, by saying that the climb might endanger others, at least by example, or that the climber if unsuccessful is going to leave dependents without adequate care.

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The second distinction concerns fairness. One who is willing to accept risk to his or her own life in pursuing some other good does so voluntarily; it is very unlikely that the same sort of risk can be accepted for another who would suffer the consequences involuntarily. For instance, it is one thing for the mountain climber to risk scaling the peak, knowing its dangers; it would be another to invite someone else to come along, without making clear the dangers. Accepting risks for others will be impartial only if morally upright persons would in general be prepared to accept such a level of risk in consequences of the hazardous undertakings of others for themselves and for those for whom they were responsible. For example, the mountain climber who is not prepared to have other sportspersons accept similar levels of risk to the mountain climber's children cannot without partiality accept for another the risk of joining in the expedition.

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In the cancerous uterus case, the analysis I propose leaves open the question of the morality of the treatment. If both mother and child were likely to die without the treatment, then the choice to treat with its foreseen bad consequences certainly can be accepted without unfairness. But if, as in the example, the child has a chance for survival if the treatment is not initiated, it is not clear to me that the choice to carry on treatment to save the mother does not involve partiality. (The problem needs further study.)

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When a soldier on a battlefield shoots an enemy, the proposal executed by this performance need not include killing. (Of course, very often the shooting is precisely to kill; dead bodies are viewed as a good means to ending the war.) A soldier who is involved in a defensive action against an unjust attack could be only trying to inactivate the attackers and limit the injustice. The shooting at the enemy could be effective for the real objective if the shot missed, but caused the enemy to surrender or to flee in terror and engage no more in the unjust action; it also could be effective if the enemy was wounded only minimally but sufficiently to be incapable of further participation in the unjust action. This example begins to indicate both the possibility and the limits of justifiable war on the theory presented here.[5]

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The Christian modes of response sometimes will exclude as immoral acts which by common human standards appear to be right. For example, St. Thomas, in arguing that one can be justified in killing in self defense, works from the supposition that everyone loves and is reasonable in seeking to preserve his or her own life.[6] The Christian modes, especially the seventh and the eighth, seem to me to exclude the justification of accepting the death of an assailant on this ground, for even though the killing might be defensive and humanly justifiable (like justifiable defensive war), still Christians ought to return good for evil and be prepared to undergo evil for the sake of redemption.

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Of course, if I am correct about this more stringent responsibility of Christians, it is conditioned by personal vocation. Hence, a Christian also can be obliged to kill in self-defense, for this can be necessary for the defense of others and the good of one's family.

N. A normative note on cooperation

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In chapter nine, section O, I described cooperative action and helping others. That analysis clarified the point that in actions in which one is involved with others--that is, in most human acts--one's responsibility is determined by what one oneself chooses, accepts as foreseen consequences, and so on. Very often an individual who adopts no proposal in violation of the eighth mode of responsibility makes it possible for someone else who does adopt such a proposal to act immorally. Obviously, if the choice to do what facilitates wrongdoing is made precisely to facilitate it, then one who adopts such a proposal is acting wrongly. But if one adopts the proposal for some other reason (for example, a nurse carefully prepares abortion patients so that they will not become septic), then the morality of the act must be considered in the light of the other modes of responsibility.

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Thus, cooperation is simply a special case of the problem treated in section L, above, and the solution to problems of cooperation is by the general principle: The cooperating act will be right if in choosing it one violates none of the modes of responsibility.



It is worth noting that the Christian modes of response leave less room to act in ways which in fact facilitate evil, especially when that evil involves serious harm to others. The demands of mercy and self-oblation require Christians to avoid cooperation when the immoral act which is facilitated harms another, and the only consideration which might justify cooperation is the good of the Christian himself or herself. Christians not only must avoid partiality in their own favor; they also are called to act with partiality toward others, and especially toward the oppressed, the poor, and the weak.

Notes to chapter twenty-three

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1. Cf. Aristotle, Nicomachean Ethics i, 1094b7-11; St. Thomas Aquinas, Summa theologiae, 1-2, qu. 94, art. 4, ad 1; 2-2, qu. 31, art. 3, ad 3; qu. 47, art. 10; qu. 64, art. 2; qu. 124, art. 5, ad 3; qu. 141, art. 8.
  - 15 2. One may profitably study various works of Yves Simon on authority; a good starting point is: Philosophy of Democratic Government (Chicago & London: University of Chicago Press, 1951), pp. 144-194.
  - 20 3. One who is familiar with the development of Common Law will recall that knowledge of what acts are wrongful was presupposed by this development. The legal development worked out by decisions in particular cases how the community would deal with wrongful acts. Because of its moral foundation, Common Law did not punish as crimes acts which lacked the conditions for moral imputability--that is, sufficient reflection and malicious choice.
  - 25 4. See, for example, Marcellino Zalba, S.J., Theologiae Moralis Compendium (Matriti: B.A.C., 1958), vol. 1, pp. 150-153.
  5. See Germain Grisez, "Toward a Consistent Natural-Law Ethics of Killing," The American Journal of Jurisprudence, 15 (1970), pp. 64-96, for further discussion of the principle of double effect, together with references to relevant literature.
  6. See St. Thomas, op. cit., 2-2, qu. 64, art. 7.