

growth in virtue and holiness over time. But virtue ethics relies on a community with shared conceptions of the good life and a shared sense of the role of particular acts in the formation of the agent and her virtues. My hope is that affirming intrinsically evil acts will bring some necessary attention to the indispensable role of the community and its understanding of the connections between actions, agents, and ends in Catholic virtue ethics.

DANA L. DILLON  
*Providence College*

### **III. Human Rights and Intrinsic Evil: The Language of Exceptionless Moral Norms in Catholic Theological Ethics**

Any human being who has had the occasion to reflect critically and honestly on experience and human history must eventually consider the possibility of moral absolutes. Almost all people, for instance, would agree that murder, rape, genocide, slavery, and child sexual abuse are always morally unjustifiable. Indeed, one need look no further than the bare language with which we describe these activities to know they are wrong. They are unjust by definition. “Unjust slavery” is a tautological phrase, and there is no such thing as “just genocide.” Virtually all human societies have language and concepts that condemn these types of manifest injustice without exception. Additionally, there is a tacit cultural consensus within societies, formed by moral experience, concerning what does and does not count practically as a genuine instance of each type. For example, we know what does and what does not fall under the category of “murder” only because we have seen case after case of human beings killing each other, sometimes intentionally and other times accidentally, sometimes with just cause and other times without.

In short, our past experience of injustice has made it necessary to construct the exceptionless language we use to condemn injustice in the present. And yet, the fact that we have, in a sense, *invented* absolute normative discourse from the perspective of several cultures does not in itself

*Michael P. Jaycox recently completed his PhD in theological ethics at Boston College, where he wrote a dissertation on the constructive role of social anger in response to systemic injustice. Beginning in September 2014, he will be Assistant Professor of Christian Ethics in the Department of Theology and Religious Studies at Seattle University. His research interests include the role of emotions in public life, bioethics, virtue ethics, moral anthropology, Catholic social thought, feminist and liberation ethics, and political theology.*

diminish the obligatory power of a universal ethic implied by the norms. Human beings have a deep need for absolute language in normative discourse; we have learned that preserving an ordered, just, and peaceful common life would scarcely be possible without it.

Nonetheless, the use of absolute normative discourse is complicated by several factors. In the professional field of Catholic theological ethics, methodological difference has been widely recognized for several decades to be perhaps the most significant complicating factor in the debate concerning exceptionless norms. It is not difficult to infer a direct causal relationship between the method an ethicist employs and that ethicist's determination of whether norms can oblige moral agents absolutely, which particular norms in fact do, and whether exceptions exist for specific cases in which these norms conflict. Of course, both sides agree on the existence of absolute *formal* norms, that is, tautological norms prohibiting without exception in general terms what is wrong by definition. Everyone generally agrees, for example, that it is always wrong to kill for an unjust reason, such as jealousy, revenge, or greed. Nobody is in favor of injustice per se. The real issue of contention concerns whether it is possible to articulate any absolute *material* norms, that is, exceptionless norms concerned with empirically observable behaviors described without reference to intentionality or cultural and institutional meaning.

The historical roots of this methodological controversy lie in the gradual intellectual appropriation by Catholic moral theologians of the deontology-consequentialism binary from Anglo-American moral philosophy, through the lens of which they reinterpreted certain casuistry principles (e.g., the principle of double effect) originally elaborated before the Enlightenment. But the catalyst for this intellectual debate was the promulgation of the magisterial teaching on artificial contraception by Pope Paul VI in *Humanae Vitae* and the dissenting and defensive responses it elicited. These events provided the social and political context within which the principal interlocutors established what remain as the basic terms of the current argument concerning exceptionless norms, at least for English-speaking ethicists.

The aim of this article is not to offer another answer to the question of exceptionless norms by way of proposing some novel distinction or blurring a familiar one. Rather, I seek to reframe the current terms of this disagreement not only as a debate about method but also and more fundamentally as a debate about language. The provisional analysis I offer consists of three claims. First, I argue that Catholic ethicists employ not only different methodologies but also different forms of moral discourse as they deliberate about the content of exceptionless norms. To substantiate this claim, I offer a brief exposition of the predominant methodological approach to the question

of exceptionless norms, immediately followed by an exposition of a supplementary sociological approach to understanding the social construction of language: concepts in normative discourse. Second, I argue that the language-concepts of human rights and of intrinsic evil function as the two most rhetorically effective discourses employed for speaking about exceptionless norms, illustrating this claim by comparing and contrasting the contexts and social locations out of which these moral discourses were produced and the extent to which they continue to function as loci of moral socialization among professional Catholic ethicists. Third and finally, I argue that the particular discourse in which the ethicist participates affects her perception of the content of exceptionless norms. As a means of adjudicating which discourse more readily contributes to accurate moral perception, I propose three “tests” of the appropriateness of absolute moral language: historical consciousness, social analysis, and dialogue.

To put these three claims in more concrete terms by way of a familiar example, consider the Consistent Ethic of Life championed by Cardinal Joseph Bernardin, a concept that for a time enabled Catholics of all moral and political persuasions to view abortion, capital punishment, euthanasia, warfare, labor exploitation, and other contested issues with fresh eyes. This reframing was successful in this regard not because it proposed a new methodology but because it offered a new and rhetorically effective language. In this light, I invite the reader to consider that even professional ethicists draw conclusions about moral absolutes on the joint basis of the methodologies that they employ and the language discourses in which they participate.

### *Methods and Language-Concepts in Normative Ethics*

Prior to the proportionalism debates of the 1970s and 1980s, the question of exceptionless material norms was framed in primarily exegetical terms by Catholic ethicists. The concern was to determine what, exactly, Aquinas taught concerning whether the object of the will’s external act (the behavioral means employed by the agent) was alone capable of determining the moral quality of the act as a whole for certain cases.<sup>38</sup> As this exegetical

<sup>38</sup> According to the prevailing wisdom of Catholic moral manuals, Aquinas held (1) that the three sources of morality were the “object” or behavior in itself, the intention, and the circumstances; (2) that certain types of behavior, contrary in themselves to the natural law, could never be employed as a means even to an otherwise good end; and (3) that the norms prohibiting such behavior held universally and obliged the agent without exception, regardless of her intention, in every applicable case. By contrast, Peter Knauer proposed that, for Aquinas, an act was unjustifiable only if the agent’s

debate progressed among adherents to the emerging proportionalist and neo-manualist schools of interpretation, the main interlocutors began to draw distinctions in order to clarify their own positions and to explain why they held to them. These refinements had the effect of characterizing the difference between the two approaches as primarily methodological.

For instance, Josef Fuchs distinguished between behavioral means that are evil in a “pre-moral” sense (e.g., killing, telling a falsehood) and human acts involving a genuine moral evil (e.g., murder, lying).<sup>39</sup> On the basis of this distinction, he argued that exceptionless material norms are extremely difficult to formulate because one simply cannot anticipate the details of every possible case involving the pre-moral evil to which such a norm would apply.<sup>40</sup> Presumably, Fuchs would have thought the manualist approach to be methodologically inadequate precisely because of the presumption and practical impossibility of claiming to know in advance which intentions and circumstances will be morally relevant in all cases of a given type of wrongful act. Indeed, his thesis implies that the manualists were not actually employing the three-sources method they attributed to Aquinas; instead, “they smuggled the intention (or some circumstance) into the very description of the object” for cases involving a supposedly exceptionless material norm.<sup>41</sup>

own reason for acting (the intended end) were not “commensurate” with “the totality of the act,” inclusive of the behavioral means employed, any applicable norms, the relevant circumstances, and even the foreseeable consequence of causing one or more physical evils. His thesis implied that no material norm can oblige an agent without exception, the agent’s own prudential judgment of proportionality instead being the decisive factor constituting the act itself precisely as a moral act, not only in difficult cases but also in every case. See Peter Knauer, “The Hermeneutic Function of the Principle of Double Effect,” in Curran and McCormick, *Moral Norms and Catholic Tradition*, 1–39, at 15; and Bernard Hoose, *Proportionalism: The American Debate and Its European Roots* (Washington, DC: Georgetown University Press, 1987), 34.

<sup>39</sup> See Josef Fuchs, “The Absoluteness of Behavioral Moral Norms,” in *Personal Responsibility and Christian Morality* (Washington, DC: Georgetown University Press, 1983), 115–52. His usage of the term “pre-moral evil” is analogous to Knauer’s use of “physical evil.” Both authors locate the origin of the distinction in Aquinas. See Knauer, “The Hermeneutic Function,” 18ff.

<sup>40</sup> From Fuchs’s point of view, the only exceptionless norms in practice would be tautological norms prohibiting murder, theft, and the like as well as those norms “with precise delineations of action to which we cannot conceive of any kind of exception—e.g., cruel treatment of a child which is of no benefit to the child” (Fuchs, “The Absoluteness of Behavioral Moral Norms,” 141).

<sup>41</sup> Richard A. McCormick, *Notes on Moral Theology, 1965 through 1980* (Washington, DC: University Press of America, 1981), 533.

Defenders of the manualist approach, such as John Connery, responded that once the three-sources method is abandoned, and along with it a consideration of whether the behavioral means employed is itself subject to an exceptionless norm, ethicists risk defaulting methodologically to some form of consequentialism.<sup>42</sup> While this is a legitimate concern from the perspective of Anglo-American moral philosophy, Connery begs the question of whether it is possible to apply the norms of justice to difficult cases without weighing the consequences of the alternative courses of action to determine which would least undermine the values that societies seek to protect.<sup>43</sup>

As this debate approached an impasse, the way ethicists interpreted and employed the distinction between what is “direct” and what is “indirect” became perhaps the most significant methodological difference marking each as belonging to a particular school of thought.<sup>44</sup> One proportionalist, Bruno Schüller, claimed that the distinction is useful only for cases in which the agent determines there is a proportionate reason for indirectly permitting an inevitable and morally evil consequence while also directly intending a premorally or morally good consequence.<sup>45</sup> This rather restrictive interpretation would mean that the distinction is not applicable to the classic case of deciding whether to remove life support from a patient in a persistent vegetative state (PVS) because allowing such a patient to die is at most a pre-moral evil. For Schüller, the distinction would be needed for more extreme cases, such as that depicted in the film *Sophie's Choice*. Without the category of indirect permission of moral evil, it would be difficult for an ethicist to explain how the mother was not complicit in the murder of her child by the Nazi doctor while she intended to save her other child.

By contrast, Germain Grisez interprets the direct/indirect distinction in the context of the neomanualist theory of basic goods he developed as an alternative to proportionalism. Recasting the traditional formulation of the principle of double effect, he claims the direct/indirect distinction functions to explain how, in difficult cases, it is blameless to act against one basic good while simultaneously acting to promote another equally valuable, incommensurable basic good.<sup>46</sup> Given this interpretation, the distinction

<sup>42</sup> See John R. Connery, “Morality of Consequences: A Critical Appraisal,” *Theological Studies* 34, no. 3 (1973): 396–414. Connery diagnoses Fuchs as a rule utilitarian.

<sup>43</sup> See McCormick, *Notes on Moral Theology*, 542–43.

<sup>44</sup> My understanding of this distinction is particularly indebted to the historical analysis found in Hoose, *Proportionalism*, 101–35.

<sup>45</sup> See Bruno Schüller, “Direct Killing/Indirect Killing,” in Curran and McCormick, *Moral Norms and Catholic Tradition*, 138–57.

<sup>46</sup> See Germain Grisez and Russell Shaw, *Beyond the New Morality: The Responsibilities of Freedom*, 3rd ed. (Notre Dame, IN: University of Notre Dame Press, 1988), 140ff.

would apply to the case of the PVS patient because, presumably, the removal of life support is an indirect act against the good of life and simultaneously a direct act to promote the good of justice (by reducing futile end-of-life care expenditures).<sup>47</sup>

Finally, Richard McCormick interpreted the distinction differently from both Schüller and Grisez. Against Grisez, he argued that the distinction is mostly helpful for those who presuppose that certain premoral evils involved in difficult cases are evil in themselves—that is, an exceptionless material norm applies to the case.<sup>48</sup> Absent this presupposition, it is apparent that the presence of a proportionate reason would be the real justification for removing life support from the PVS patient, rendering the supposed indirectness of the act in relation to some basic good a redundant consideration.<sup>49</sup> Yet McCormick also thought the distinction to be more widely applicable than his fellow proportionalist, Schüller, supposed. At one point, McCormick argued that it still applies to cases in which a probable short-term consequence and a possible long-term consequence bear differently on the fundamental value to be protected by the action.<sup>50</sup> Revising this position, he argued at a later point that it can apply to difficult cases in which the agent's proportionate reason rests on a "necessary connection" or "association" between a premoral good and a premoral evil, such that the former cannot be promoted without permitting the latter.<sup>51</sup>

As is well known, the papal intervention that was Pope John Paul II's encyclical *Veritatis Splendor* had the effect not of resolving but of silencing the debate among professional ethicists regarding the possibility of exceptionless material norms. Although it is true that many proportionalists subsequently diverted their energies away from fundamental moral theology into other areas of ethical inquiry,<sup>52</sup> the fundamental disagreement persists,

<sup>47</sup> I write "presumably" because Grisez and Shaw do not offer an entirely satisfying explanation for their apparent permissiveness toward removing life support in certain circumstances. Depending on how one chooses to construe the agent's intentions in a particular case, the act might violate their own requirement that the basic goods not be subordinated to one another in a means-ends relationship; see Grisez and Shaw, *Beyond the New Morality*, 150, 130ff.

<sup>48</sup> Schüller objected to the neomanualist interpretation of the distinction on the same grounds; see Schüller, "Direct Killing/Indirect Killing," 150ff.

<sup>49</sup> See Richard A. McCormick, *Ambiguity in Moral Choice* (Milwaukee: Marquette University Press, 1973), 45ff.; and McCormick, *Notes on Moral Theology*, 352–53.

<sup>50</sup> See McCormick, *Ambiguity in Moral Choice*, 58ff.

<sup>51</sup> Richard A. McCormick, "A Commentary on the Commentaries," in *Doing Evil to Achieve Good: Moral Choice in Conflict Situations*, ed. Richard A. McCormick and Paul Ramsey (Chicago: Loyola University Press, 1978), 193–267, at 261–62; and McCormick, *Notes on Moral Theology*, 720–22.

<sup>52</sup> See Kalbian, "Where Have All the Proportionalists Gone?"

and its cause continues to be understood by most parties as a primarily methodological difference. From the proportionalist perspective, neomanualists remain determined in their mistaken attempt to deduce absolute normative content from the general exhortations of Christian “paranetic” discourse and to apply this content to contingent cases.<sup>53</sup> From the neomanualist perspective, proportionalists generally fail to acknowledge the extent to which they are indebted to the method of utilitarianism, thereby surrendering by default the theoretical basis needed to explain how norms can oblige free agents and to know when exceptions apply.<sup>54</sup> Indeed, this methodological gulf was so pronounced that Grisez and McCormick frequently found it difficult to avoid misunderstanding one another’s positions.

It is thus abundantly clear that the proportionalism debate of the 1970s and 1980s was, taken on its own terms, primarily a debate about method. Other considerations suggest, however, that this factor alone cannot account for the disagreement. Despite their differences, both proportionalism and basic goods theory were developed in the interest of formulating an adequate moral theory of *individual* responsibility. As a result of the limited scope of this aspiration, the basic contours of the argument concerning the question of exceptionless material norms were elaborated in relative isolation from the practical concerns and conceptual categories of Catholic social ethics. Social ethicists have frequent occasion to consider the analogous question of whether some forms of social, political, and economic association are always wrong (e.g., slavery, religious persecution, genocide, nuclear warfare). In their approach to such questions, they generally employ the supplementary analytical tools of political philosophy and the social sciences in order to aid their understanding of systemic and structural relationships from the moral point of view, whereas those adhering to proportionalist or basic goods theories continue to employ the metaphysical and psychological categories of Anglo-American moral philosophy to aid their understanding of individual human agency and responsibility. The circumscription of the task of moral inquiry within these limits had the unfortunate and unintended side effect of defining the discipline of “fundamental moral theology” in terms of an assumed individualistic point of reference, thus neglecting a sustained inquiry into the cultural and institutional basis of the very normative claims that the practitioners of this discipline sought to understand. Thus, the possibility that the moral language and concepts invoked in the proportionalism

<sup>53</sup> See Richard A. McCormick, *The Critical Calling: Reflections on Moral Dilemmas since Vatican II* (Washington, DC: Georgetown University Press, 1989), 58–59.

<sup>54</sup> See Germain Grisez, *The Way of the Lord Jesus*, vol. 1, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983), 141–71.

debate were themselves partially a product of social construction was not generally perceived as a pertinent consideration by the parties to the moral debate.

In the absence of an outright recognition that the language and concepts of normative ethics are socially constructed, several proportionalists expressed their awareness of this possibility. For example, McCormick demonstrated that the meaning of the direct/indirect distinction changed over time: the terms were originally meant to differentiate the deliberate causing of a disvalue from the unavoidable causing of a disvalue in reference to the agent's intention and responsibility, but they eventually came to indicate the kind of psychological stance agents ought to adopt toward particular types of behavior. In short, "'direct' and 'indirect' became terms which *decided* what actions are licit or illicit rather than terms used to summarize such a conclusion drawn on other grounds (presence or absence of proportionate reason)."<sup>55</sup> The terminology emerged in order to address the moral quandaries human beings encountered in difficult cases of conflicting values, and it subsequently developed in response to new social and intellectual conditions. This is to say, implicitly, that human beings created the moral language of direct and indirect intention to meet a fundamental social need, and that we changed the meaning of this language once the social circumstances had changed.

For a somewhat more recent example of awareness of social construction, Jean Porter argues in her analysis of *Veritatis Splendor* that the encyclical grossly underestimates the extent to which the process of evaluating actions from the moral point of view relies on a tacit social and cultural base of normative ethical perceptions. In a particularly lucid passage, she writes:

It is sometimes assumed that the object of an act can be equated with some form of behavior which can be described in terms that make no reference to cultural conventions or to particular institutional forms of life, and which is therefore natural in the sense of being comprehensible in nonconventional terms. This is the view of those moral theologians who defend a version of the traditional doctrine of intrinsically evil actions along the lines set out by Grisez and Finnis, and it appears to be the view of the encyclical as well. ... In the majority of cases, [Aquinas] does *not* equate the object of an action with a form of behavior that is natural in the sense of being comprehensible in nonconventional terms. ... In most cases, the moral concept which gives the object of an action includes some essential reference to the institutional, or more broadly, the cultural context in which the act takes place, within which it takes on its distinctively rational and human meaning.<sup>56</sup>

<sup>55</sup> McCormick, *Notes on Moral Theology*, 353 (emphasis in the original).

<sup>56</sup> Jean Porter, "The Moral Act in *Veritatis Splendor* and in Aquinas's *Summa Theologiae*: A Comparative Analysis," in Allsopp and O'Keefe, "*Veritatis Splendor*," 278–95, at 285–86.



Porter demonstrates here and elsewhere in her essay that the meaning of the phrase “object of the act” changed as the scholastic terminology was appropriated by the manualists, thereby proving, in effect, that their attribution of the formulaic three-sources method to Aquinas was an anachronism.<sup>57</sup> More significant for the purposes of this article, however, is her retrieval of the Thomist insight that an adequate description of an act from the moral point of view must always include reference to its cultural and institutional context. This context supplies the ethicist with the “generic moral concepts” and “prior evaluative judgments” that are indispensable for articulating in culturally comprehensible terms why a particular action deserves praise or blame.<sup>58</sup> Therefore, if there is no such thing as a normative ethics standing independently of human cultures and social institutions, as Porter suggests, then it becomes necessary to ask about the role of institutional and cultural factors in the *production* of moral norms, especially when these norms find expression in terms that do not admit exceptions.

Sociological research concerned with the social construction of norms and the specific language-concepts by which they are expressed generally pertains to the field referred to as “sociology of knowledge.”<sup>59</sup> I will make no attempt to summarize this vast literature within the confines of this article, but it will be helpful to review briefly some of the more significant contributions that bear on the approach taken here for understanding the social construction of moral language-concepts. Karl Marx was the first to observe that social factors (substructure) exert an influence over patterns of thought (superstructure), famously claiming that “the ruling ideas are nothing more than the ideal expression of the dominant material relationships.”<sup>60</sup> In what may be

<sup>57</sup> Ibid., 289.

<sup>58</sup> Ibid., 285, 281.

<sup>59</sup> Sociological researchers generally seek to describe the function of social norms as a regulatory force in relation to human behavior, i.e., a social fact. They do not observe *moral* norms as such because to do so would imply studying aspects of human intentionality, which are not measurable, strictly speaking. This being the case, I generally treat sociological insights concerning the factual aspect of social norms as relevant to but not determinative of the value content of normative ethics.

<sup>60</sup> Karl Marx and Friedrich Engels, “The German Ideology, Part I,” in *The Marx-Engels Reader*, ed. Robert C. Tucker, 2nd ed. (New York: W. W. Norton, 1978), 146–200, at 172. Marx’s argument that normative moral concepts are unilaterally produced by economic forces and ultimately function to advance the interests of the ruling class is now widely regarded as a simplistic explanation of a much more complex social process, although his arguably more fundamental insight that social location affects moral perception has stood up to critical scrutiny. For example, Karl Mannheim retained critical Marxist insights concerning perspective and social location but also sought to overcome the “dogmatic type of Marxism” by proposing that concepts are produced through

regarded as a contrasting and less reductive approach to investigating the social construction of morality, Émile Durkheim proposed that the language-concepts of social norms, which provide the members of a society with a vocabulary for understanding and evaluating their experience of social interaction, are created by human societies as “collective representations” of the cultural values institutionalized in the religious symbol structure.<sup>61</sup>

A certain crystallization of Marxist and Durkheimian strands of thought was achieved in Peter Berger and Thomas Luckmann’s classic *The Social Construction of Reality*, according to which an overarching process of externalization-objectivation-internalization accounts for the construction of language in general and norms in particular. Language is produced by social interaction as subjectively expressed vocal signs become “detached” from their immediate context, gradually coalescing into an objective system of signification held in common by the society. All specific forms of objectivated knowledge, including institutionalized norms of social interaction, depend on the more general objectivation of language in order to be communicable.<sup>62</sup> Being objectively available as language-concepts, norms are subjectively internalized by individuals as they are gradually socialized into their specific role and location within the institutional structure. The individual takes on the identity of her “social self” precisely as she learns, through accumulated experiences of social interaction, how the norms apply to her.<sup>63</sup>

several forms of group association including but not limited to economic class relationships; see Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge* (New York: Harcourt, Brace, 1940), 239–56. A detailed summary of the criticisms of Marxist reductionism is offered in Robert K. Merton, *Social Theory and Social Structure*, 2nd ed. (Glencoe, IL: The Free Press, 1957), 462ff.

<sup>61</sup> Durkheim claimed that the ritual practices of religion itself are a community-binding phenomenon, the function of which is to facilitate the process by which language-concepts and other forms of knowledge are creatively and cooperatively produced. Being constructed and therefore “artificial,” social norms are nevertheless morally obliging because society’s members have internalized the norms as being constitutive of their group identities. Although social norms are subjectively internalized, they remain objectively authoritative in themselves precisely because they are verifiable by collective experience and coherent in respect to one another. In other words, the fact that morality is a product of human institutions and cultures renders it more, not less, “true” in the eyes of society’s members, according to Durkheim. See Émile Durkheim, *The Elementary Forms of the Religious Life*, trans. Joseph Ward Swain (New York: The Free Press, 1965), 22–32, 482–93. For further clarification on these points, see Merton, *Social Theory and Social Structure*, 472–73.

<sup>62</sup> Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (New York: Doubleday, 1966), 34–46.

<sup>63</sup> See Berger and Luckmann, *The Social Construction of Reality*, 72–79, 132–33.

During the past twenty years, “the new scholars of social norms” have developed the implications of these theoretical foundations in dialogue with other disciplines.<sup>64</sup> For example, Amitai Etzioni argues that the neoclassical economics model of human action, according to which norms are mere external constraints on individuals whose free choices are the result of instrumental rationality and fixed preferences, becomes increasingly less plausible once it is recognized that norms are socially constructed and internalized. In search of an alternative model, Etzioni argues that the available evidence points toward a much more communitarian moral anthropology. The enduring human capacities to be socialized into accepting traditional social norms, on the one hand, and to choose against or even reconstruct maladaptive norms, on the other hand, suggest that “we are both persuadable and deliberative creatures, that social norms affect our predispositions and reflect our choices.”<sup>65</sup>

Theological ethicists have not yet fully comprehended the implications of this abundant sociological literature concerning the social construction of norms and the language-concepts used to express them, especially with respect to the field of fundamental moral theology. The nearly exclusive focus on methodology during the proportionalism debates stands as evidence that little reflection was devoted to the question of whether the conceptual apparatus assumed by ethicists on either side of the dispute was itself a locus of moral socialization. In other words, there was not an open discussion about whether the disagreement about exceptionless material norms was rooted in the more fundamental cultural and institutional dynamics into which ethicists themselves were socialized and in which they continue to participate tacitly. In view of this lacuna, it will be helpful to consider the extent to which the language-concepts of intrinsic evil and human rights function as two different loci of moral socialization for approaching questions of absolute morality, given that these terms continue to enjoy a relatively high level of rhetorical effectiveness in contemporary Catholic cultures.

### *Human Rights and Intrinsic Evil as Functional Discourses*

I propose a basic premise to guide the present study of absolute normative language: professional ethicists generally internalize human rights or intrinsic evil as their guiding language-concept over the course of their gradual socialization into the culture and institutions of their discipline, in accordance with the specific social location they occupy and the experiences that render one or the other concept more plausible. Both intrinsic evil and

<sup>64</sup> Amitai Etzioni, “Social Norms: The Rubicon of Social Science,” in *The Monochrome Society* (Princeton, NJ: Princeton University Press, 2001), 163–85, at 181.

<sup>65</sup> *Ibid.*, 185.

human rights, considered as functional discourses, provide ethicists with a vocabulary for approaching the question of normative absolutes as it comes to bear on particular cases. Once internalized, these language-concepts influence the methodologies explicitly employed by ethicists, forming the fundamental anthropological presuppositions they hold, guiding the determination of morally relevant details in case analysis, and ultimately affecting the tone and posture assumed in extraecclesial and intraecclesial dialogue. Before these claims can be addressed in greater detail, however, it is necessary to examine the contexts out of which these language-concepts were constructed, as a means of understanding their original function.

The concept of intrinsic evil was developed in reaction to the dominant analysis of moral acts proposed by Aquinas and his contemporaries. In response to Abelard's controversial thesis that intention alone determines the moral quality of actions, a consensus had been reached among scholastic theologians that murder, theft, and the other types of moral acts prohibited in the second table of the Decalogue were always unjust by definition because their very description already included "selfish desire preferring a creature to God."<sup>66</sup> According to such reasoning, God could command an agent to kill for the sake of love for God, thereby removing the presumed selfish intention, but this command would not per se constitute an exception to the precept prohibiting murder proper. Basically affirming this consensus, Aquinas argued that the real issue in moral analysis concerns whether a particular case of killing counts formally as the act of murder, whether a particular case of taking property that is not one's own counts formally as the act of theft, and so on.<sup>67</sup> Because he denied, in effect, that any behavior is in itself unjust, neither exceptionless material norms nor any concept equivalent to intrinsic evil is found in his thought.

Later scholastic theologians, such as Durandus of Saint-Pourçain, argued that Aquinas had ignored the material specificity of the Decalogue by reducing its content to two formal precepts: act justly, and do not act unjustly. From Durandus' perspective, it would not have made sense for God to command against so many different types of action unless at least some of them contained matter (i.e., behavior) that is in itself inseparably tied to evil; God commanded against these because they are evil, not the reverse.<sup>68</sup>

<sup>66</sup> John F. Dedek, "Moral Absolutes in the Predecessors of St. Thomas," *Theological Studies* 38, no. 4 (1977): 654–80, at 679.

<sup>67</sup> John F. Dedek, "Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas," *Thomist* 43, no. 3 (1979): 385–413, at 405ff.

<sup>68</sup> John F. Dedek, "Intrinsically Evil Acts: The Emergence of a Doctrine," *Recherches de Théologie Ancienne et Médiévale* 50 (1983): 191–226, at 221ff.

In direct opposition to Aquinas, Durandus proposed that the behaviors apparently prohibited by certain negative precepts can be described as intrinsically evil, which would mean that the precepts themselves are exceptionless material norms from which not even God can dispense.

Once intrinsic evil had been constructed as a concept, casuists assumed its legitimacy while formulating the first condition of the principle of double effect, which was originally developed by way of inductive reasoning from particular cases in search of the general patterns that mark such cases as exceptional. After papal decree chastened the abuse of casuistry principles during the seventeenth century, the accumulated lists of intrinsically evil actions were increasingly guaranteed by the “extrinsic” authority of hierarchs and professionals deductively applying the principles to cases rather than by the “intrinsic” authority of coherent argument.<sup>69</sup> Thus, by the early twentieth century, the authors of the standard neoscholastic manuals of moral theology generally assumed that the Catholic natural law tradition had always prohibited certain behaviors as intrinsically evil and even attributed this position to Aquinas himself.<sup>70</sup>

Despite the fact that the Second Vatican Council attempted a radical reorientation of moral methodology toward a personalist interpretation of natural law, it is unclear whether the authors of the documents still viewed certain categories of behavior as always wrong in themselves.<sup>71</sup> This view was explicitly defended by Paul VI in regard to the use of artificial birth control in his encyclical *Humanae Vitae* published shortly thereafter. Therefore, given the degree of prominence that this language-concept had gained in the Catholic moral tradition, it should not be surprising that its being thrown into doubt by the proportionalist interpretation of Aquinas prompted a strong reaction among neomanualist authors. As is well known, Pope John

<sup>69</sup> See Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California Press, 1988), 269–71.

<sup>70</sup> See James F. Keenan, *A History of Catholic Moral Theology in the Twentieth Century: From Confessing Sins to Liberating Consciences* (New York: Continuum, 2010), 44–45.

<sup>71</sup> *Gaudium et Spes* 27 does not contain the term “intrinsic evil,” though its authors do seem to assume that certain types of empirically observable behavior can be described as wrong in themselves, construing them as offenses against human dignity and the common good. The document condemns, for example, mutilation, a behavior that would obviously have a very different moral meaning depending on the circumstances and the intention of the agent in a particular case. The great majority of the types of actions listed are wrong by definition because of the agent’s intention and/or contain some implied reference to cultural and institutional meaning; see Second Vatican Council, *Pastoral Constitution on the Church in the Modern World (Gaudium et Spes)* 27, in *Vatican Council II: The Basic Sixteen Documents*, ed. Austin Flannery (Northport, NY: Costello Publishing, 1996), 163–282, at 193.

Paul II vigorously defended the concept in *Veritatis Splendor* precisely by appeal to the authority of Aquinas and other major figures in the moral tradition rather than by engaging with the arguments of specific proportionalist authors interpreting that same tradition.<sup>72</sup>

It is certain that the language-concept of intrinsic evil is aligned with a particular methodological commitment, but the history of its origin and development indicates that its broader social function concerns much more than this. I tentatively suggest that it is, most fundamentally, a discourse employed by ethicists who have been socialized into cultural and institutional contexts in which presuming the prima facie authority of moral laws themselves is more highly valued than discerning the likely intentions of the moral lawgiver. In such contexts, a norm is generally perceived to be morally obligatory because of its systematic coherence with other norms and continuity with tradition, not because of its verifiability by experience or the inherent intelligibility of the argument relating the norm to its social purpose. The language-concept of intrinsic evil, once internalized, functions for this group of ethicists as a script to be consulted in situations in which individual agents seem to be violating the prima facie authority of a negative precept by the behavioral aspect of their action.

Although the function of the language-concept of human rights as a moral discourse is analogous to that of intrinsic evil with respect to the possibility of exceptionless norms, the context out of which it was constructed is rather different. The roots of the idea can be traced back to twelfth-century canonists, who, in an effort to adjudicate competing claims among individuals and communities in medieval political society, began to use the ambiguous term *ius naturale* not only in the objective sense of universal laws accessible to human reason but also in the sense of “a subjective force or faculty or power or ability inherent in human persons,” or, stated differently, “natural rights that could licitly be exercised.”<sup>73</sup> Although Aquinas generally did not understand the term in this latter sense, the new moral and political questions raised by European colonialist ventures prompted later scholastic theologians to resort increasingly to the subjective sense of *ius naturale*, thereby contributing decisively to the development of natural rights theories and international law.<sup>74</sup> The discourse of natural rights first began to take on the

<sup>72</sup> See Pope John Paul II, Encyclical Letter *Veritatis Splendor* 78–83 (Vatican City: Libreria Editrice Vaticana, 1993), 119–27.

<sup>73</sup> Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law, 1150–1625* (Atlanta: Scholars Press, 1997), 65.

<sup>74</sup> Vitoria’s appeal to the category of subjective rights in the context of Spanish colonialism exemplifies the early political function of this discourse; see Francisco de Vitoria, *On the American Indians (De Indis)* and *On the Law of War (De Iure Belli)*, in *Francisco de*

sense of an absolute entitlement or immunity held by an individual in the writings of John Locke, a development that nearly guaranteed the official Catholic rejection of human rights in the early modern period by virtue of its perceived connection to political revolution, religious liberty, social destabilization, and above all the denial of communal claims on the individual.<sup>75</sup> The concept of human rights seemed to reduce all social duties to the single duty not to interfere with the exercise of rights by another individual.

Only once Catholic thinkers had begun to reckon with the disastrous social effects of laissez-faire capitalism, totalitarian governments, and nuclear warfare did they revisit and reinterpret the concept of human rights as a viable moral discourse. In response to these new threats to human flourishing, Jacques Maritain, John Courtney Murray, John XXIII, and the Second Vatican Council all endorsed a qualified version of human rights: the most basic moral claims possessed and exercised by human beings in virtue of their fundamental dignity as socially constituted persons created in the image of God.<sup>76</sup> The person has human rights not in the sense that she has an absolute entitlement to or immunity from this or that, but in the sense that the fact of her human dignity demands that she have access to the basic social, political, and economic conditions necessary for empowering her freedom to participate in the common good of her society.<sup>77</sup> Paul VI and John Paul II expanded and deepened appeals to this personalist interpretation of human rights in response

*Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (New York: Cambridge University Press, 1991), 231–327.

<sup>75</sup> See Charles E. Curran, *Catholic Social Teaching, 1891–Present: A Historical, Theological, and Ethical Analysis* (Washington, DC: Georgetown University Press, 2002), 215–17; and John Langan, “Human Rights in Roman Catholicism,” in *Official Catholic Social Teaching*, ed. Charles E. Curran and Richard A. McCormick, *Readings in Moral Theology* 5 (New York: Paulist Press, 1986), 110–29, at 117–18.

<sup>76</sup> See Jacques Maritain, *The Person and the Common Good*, trans. John J. Fitzgerald (Notre Dame, IN: University of Notre Dame Press, 1966), 74–75; Maritain, *Man and the State* (Washington, DC: Catholic University of America Press, 1998), 76–107; John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (Garden City, NY: Doubleday, 1964), 39–85, 280–317; Pope John XXIII, Encyclical Letter *Pacem in Terris*, in *Catholic Social Thought: The Documentary Heritage*, ed. David J. O’Brien and Thomas A. Shannon (Maryknoll, NY: Orbis Books, 1992), 131–62; Second Vatican Council, *Gaudium et Spes* 24–31, 41, in Flannery, *Vatican Council II*, 189–97, 208–9; Second Vatican Council, Declaration on Religious Liberty (*Dignitatis Humanae*), *ibid.*, 551–68. A helpful analysis of the gradual transition in official Catholic teaching from hostility to embrace of human rights is offered in David Hollenbach, *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition* (New York: Paulist Press, 1979), 41–106.

<sup>77</sup> See Curran, *Catholic Social Teaching*, 217ff.

to the recognition that global poverty and oppression have systemic and structural causes, proposing integral development and solidarity as necessary commitments involved in the protection and promotion of rights.<sup>78</sup> Having created an intellectual alternative to the false dichotomy of individual versus community that characterizes both libertarian and collectivist interpretations of rights, the Catholic tradition of human rights can be understood as a tradition of reflection on experience and practice in order to discern the minimal moral standards by which we respect the dignity of the person in her social context.<sup>79</sup>

If we consider the language-concept of human rights from the standpoint of how it functions as a moral discourse, it can be understood as an exemplification of the social process by which human societies construct and internalize moral values. In its embrace of the philosophical turn to the subject, Catholic social thought has affirmed that the dignity of historical human persons struggling to flourish is itself the basis of the authority of human rights claims, not the conceptual continuity of human rights with Catholic tradition or its systematic coherence with the other normative content in that tradition.<sup>80</sup> Therefore, there is a basically intrinsic aspect to the Catholic moral vision of human rights. Its claims are founded in the social nature of persons, and persons exercise these claims with social support. The extrinsic aspects of human rights, such as their objective formulation in the Universal Declaration, the verifiability of the claims by collective experience, and the responsibility of states and citizens to protect them by means of civil law and democratic participation, are all ultimately derivative in respect to their fundamentally intrinsic source and goal: the dignity of the person. Therefore, from the standpoint of how this discourse functions socially, it is a conscious participation in the social construction and internalization of normative values, in the very best sense of the phrase.

Moreover, human rights discourse functions in practice as a set of exceptionless norms when ethicists invoke the concept in response to violations of rights. Human rights find expression in the language of positive precepts insofar as they primarily regard values to be pursued, but the fact that their violation is an absolute moral disvalue implies that they have the force of

<sup>78</sup> See Pope Paul VI, Encyclical Letter *Populorum Progressio*, in O'Brien and Shannon, *Catholic Social Thought*, 240–62; and Pope John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, *ibid.*, 395–436.

<sup>79</sup> See Hollenbach, *Claims in Conflict*, 84.

<sup>80</sup> Both Maritain and Murray sought to demonstrate the formal compatibility of a Thomist natural law framework with a non-Lockean version of natural rights, but for neither author was continuity with the tradition envisioned as the justification for human rights from a Catholic standpoint.



absolute negative precepts prohibiting any action or social structure that diminishes the dignity of the person. Because the absolute disvalue of diminishing human dignity is wrong by definition, human rights primarily function as exceptionless *formal* norms.<sup>81</sup> Generally lacking the specificity of political or economic policy, the reach of human rights discourse extends to the level of moral particulars only to prohibit that which can be described “with precise delineations of action to which we cannot conceive of any kind of exception,” to use Fuchs’s formulation.<sup>82</sup> Cases of genocide, rape, torture, and child abuse are all clear violations of human rights in this sense. Therefore, the language-concept of human rights does occasionally function with the force of a highly specific *material* norm (e.g., “Genocide ought never be done”), but even in these cases the claim would presuppose a process of discernment that takes an exceptionless *formal* norm as its point of departure (e.g., “Murder ought never be done”).

The bare fact, however, that human rights have the force of absolute claims when invoked in response to a violation does not mean that a course of action that simultaneously respects the rights of all parties is always available. It is simply not possible, even with well-coordinated global efforts, to realize human dignity in all its fullness, for all persons, in every instance through the protection and promotion of human rights. A variety of contingent factors, including inadequate institutional support, lack of infrastructure or resources, intercultural disagreement, and—as is perhaps most often the case—a genuine conflict of rights claims among two or more parties, frustrate the possibility of a perfect correspondence between the ideal of human rights and historical realities.<sup>83</sup> In view of this caveat, it must be admitted that the language-concept of human rights functions as a set of absolute normative claims only by way of a rough analogy to the way the language of intrinsic evil functions in its more narrowly delimited context of analysis,<sup>84</sup> in which it is generally expected that a course of action respecting all applicable norms will be available to the agent in most cases.

<sup>81</sup> Hollenbach, borrowing a phrase from Murray, interprets human rights as “norms of discernment” (*Claims in Conflict*, 84).

<sup>82</sup> Fuchs, “The Absoluteness of Behavioral Moral Norms,” 141.

<sup>83</sup> See Hollenbach, *Claims in Conflict*, 141–85.

<sup>84</sup> James Gustafson has noted that this narrow focus on act analysis affected the adequacy of McCormick’s proportionalist methodology, as well as that of the neomanualist defenders of the concept of intrinsic evil; see James M. Gustafson, “The Focus and Its Limitations: Reflections on Catholic Moral Theology,” in *Moral Theology: Challenges for the Future*, ed. Charles E. Curran (New York: Paulist Press, 1990), 179–90, at 182ff.

*Historical Consciousness, Social Analysis, and Dialogue as Tests of Absolute Moral Language*

Given that intrinsic evil and human rights function analogously, the evaluative question of whether one of these discourses is ultimately more suitable than the other has yet to be addressed. Both are part of the Catholic tradition, and both carry a great deal of rhetorical effectiveness when ethicists invoke them in intraecclesial and public contexts. In order to provide some objective criteria by which to make this determination, I propose three “tests” of the appropriateness of absolute moral language: the ability to account for historical consciousness, the adequacy of the social analysis on which claims are based, and effectiveness for dialogue within and outside the visible boundaries of the church. On all three counts, I argue that the language of human rights is preferable to that of intrinsic evil as an appropriate mode of moral discourse concerning the content of exceptionless norms.

With respect to historical consciousness, it is generally accepted that official church teachings in moral matters do in fact develop and change. Consider what have become two classic examples of this phenomenon: slavery and capital punishment. Taking the historical long view, we can observe that official teaching once held that these were morally permissible and morally required, respectively, but official teaching now prohibits both. Moving in the opposite direction, official teaching once prohibited usury and the toleration of religious difference, but the former is now thought to be permissible within the limits set by a broader framework of economic justice, and the latter is now thought to be morally obligatory.<sup>85</sup> Even within the relatively short history of modern Catholic social thought, the official teaching on private property has not remained constant.<sup>86</sup> Of course, the bare fact of historical change in moral teaching does not necessarily imply that all change is for the better—after all, moral regression is possible. Accordingly, we ought not judge one form of moral discourse to be preferable to another simply because it more readily confirms the prevailing mores of the present time. Rather, we ought to consider that our ability to know with certainty what the natural law requires in specific cases is tempered not only by the contingent nature of moral particulars but also by the limited perspective afforded by our historical vantage point. Therefore, the fact of historical change in moral teachings presses us to ask whether our moral language is

<sup>85</sup> See John T. Noonan, Jr., “Development in Moral Doctrine,” *Theological Studies* 54, no. 4 (1993): 662–77; Noonan, *A Church That Can and Cannot Change* (Notre Dame, IN: University of Notre Dame Press, 2005).

<sup>86</sup> See John Coleman, “Development of Church Social Teaching,” in Curran and McCormick, *Official Catholic Social Teaching*, 169–87.

able to embody what might be called the virtue of epistemic humility. Having assumed this basic posture, ethicists must additionally employ communal prudence regarding their use of language to articulate moral prohibitions.<sup>87</sup>

It is certainly no easy task for a moral theologian who thinks history matters to make sense of an exceptionless material norm. Once the ethicist recognizes that the moral community's comprehension of the natural law develops over time and in conversation with culture, any absolute, universal prohibition expressed with a high level of material specificity becomes a significant problem. Regarding intrinsic evil, it is apparent that this language-concept resists by default historical consciousness of change in the content of moral teaching and in how this content is expressed. This is not to say that the lists of intrinsically evil acts have not changed, because, in fact, they have. Rather, it is to say that the moral tradition of intrinsic evil bears a peculiar property: behaviors placed in this category should not by definition be able to be deemed permissible at a later point in time, nor should what was once permitted become intrinsically evil, yet this happens. Considering that the teachings on slavery, usury, and capital punishment have developed in precisely this way, the ethicist cannot intelligibly appeal to the concept of intrinsic evil as part of her explanation for why this is so.

On the other hand, human rights discourse, which does on occasion descend to the level of materially specific description, more easily accounts for historical development. Maritain, for instance, argued that "the basis for the secret stimulus which incessantly fosters the transformation of societies lies in the fact that man *possesses* inalienable rights but is deprived of the possibility of justly claiming the *exercise* of certain of these rights because of the inhuman element that remains in the social structure of each period."<sup>88</sup> Although the basis of human rights in natural law remains constant, human knowledge of their content develops, and the practical ability to realize them improves over time. Likewise, Murray argued that because the interpretation of natural law unfolds historically and always relies on human experience of that history, the rights of the human person are necessarily discovered progressively through critical reflection and social deliberation.<sup>89</sup> Thus it is apparent that an ethicist can appeal to the language-concept of human rights in response to a violation of human dignity, a claim that on occasion has the force of an exceptionless material norm, yet

<sup>87</sup> For a helpful analysis of the role of communal prudence in the articulation of norms, see Daniel Daly, "The Relationship of Virtues and Norms in the *Summa Theologiae*," *Heythrop Journal* 51, no. 2 (2010): 214–29.

<sup>88</sup> Maritain, *Man and the State*, 102.

<sup>89</sup> See Murray, *We Hold These Truths*, 113–25, 303–17.

not thereby commit herself theoretically to an ahistorical framework or fail to embody epistemic humility. In the end, human rights discourse is an intrinsically historical normative concept because its moral authority is based on the historical experiences of actual human persons struggling to flourish and affecting society's moral perceptions; it is not based on any metaphysical understanding of the grounding of norms or of the structure of human acts. To the extent that human rights discourse does presuppose a metaphysical account of the human person, this account is itself a product of historical experience of what it means to be a human person.

Concerning the second "test," I propose that the adequacy of the social analysis component of moral reflection is affected in part by the particular normative language-concepts the ethicist presupposes *and* in part by her social location. In short, I argue that if we are to take seriously the sociological evidence demonstrating that all norms are socially constructed and internalized, then it is time to consider whether and how the normative language-concepts of intrinsic evil and human rights function sociopolitically and socioeconomically. With regard to social location, Marx and Engels were indeed incorrect to argue reductively that all normative moral discourse is ultimately constructed in service to the economic interests of the ruling class. Acceptance of this critique, however, does not excuse us from asking the critical question: "Who benefits?" Specifically, we should ask which social groups, as a pattern, are more and less likely to benefit when "intrinsic evil" and "human rights" are uttered in the public sphere and in discussions internal to the church or the academy.

For example, let us recall the level of enthusiasm, well-documented in Catholic media sources, with which American Catholic moral theologians, clergy, pundits, and laity argued about whether specific policies occupying a prominent position in the 2008 and 2012 presidential elections were matters of "intrinsic evil" or "prudential judgment." Aside from the methodological issue of whether intrinsic evil is sufficiently precise as a concept to bear the level of moral complexity involved in the analysis of policy in the absence of something like prudential judgment, there is the more fundamental problem that the content of intrinsically evil acts in Catholic tradition has become identified with what counts as a conservative social agenda in US political culture. But this is not to say that human rights discourse is immune to such abuses. Indeed, persons often assert a spurious right to that which is not in fact necessary for ensuring the minimum conditions that make life worthy of a human being, or claim their rights with reference to such an individualistic anthropology that no thought is given to the social context of the person, or are willing to acknowledge only those rights that confirm their own political ideology.

In the end, social location and culture are inescapable factors affecting one's perception of the content of normative ethics.<sup>90</sup> Therefore, taking seriously the sociological insight that normative language is always constructed from and internalized within particular social locations, we should ask in reference to specific cases: Which social groups have elaborated the content of this particular exceptionless norm, the privileged or the oppressed? Which social groups bear the burdens, and which enjoy the benefits, when this normative standard has a hand in determining public policy? In short, we need to ask how the power differentials that already exist as a fact of social life affect our use of absolute moral language.

In addition to the role of social location in the process of moral discernment, the particular normative language-concept presupposed by the ethicist itself affects the quality of social analysis from a methodological point of view. On the one hand, we know that those employing the concept of intrinsic evil necessarily presuppose a tacit account of the morally relevant intentions and circumstances for each general type of prohibited act; the "purely material" behavioral aspect of an action, so to speak, does not and cannot in itself constitute an object of moral inquiry. It is in this light that Jean Porter argues that description and evaluation are not sequential but simultaneous aspects of moral analysis—we evaluate acts precisely by accurately describing them, in all their complexity, as specific instances of this or that general type.<sup>91</sup> Therefore, the primary difficulty with the methodology of intrinsic evil is that the contours of this evaluative process are by design rendered obscure. This difficulty becomes potentially dangerous if an ethicist operating from a social location of privilege thinks she already knows the morally relevant intentions and circumstances involved in the behavior she observes, for this (lack of) knowledge might diminish the incentive to seek outside consultation or to proceed to a more careful and detailed social analysis of the context for the particular action in question. Moreover, this methodology can even lead to a general disregard for morally relevant data available from the empirical and social sciences, especially if the implications of this data seem to contradict a traditional prohibition.

On the other hand, those employing the concept of human rights are somewhat better positioned methodologically to engage in careful social analysis; indeed, doing so is an integral component of any practical application of the concept to a case. It must always be determined whether the particular action or structural relationship in question constitutes a genuine

<sup>90</sup> See David Hollenbach, *Justice, Peace, and Human Rights: American Catholic Social Ethics in a Pluralistic World* (New York: Crossroad, 1988), 24–25.

<sup>91</sup> See Porter, "The Moral Act," 281.

instance of a human rights violation. This usually cannot be done without careful analysis of all relevant contextual factors, which potentially include, but are not limited to, culture, gender, age, ethnic group, family structure, religion, local history, position within the economic system, political affiliations and relationships, civil laws, and overall level of institutional stability. Understanding many if not most of these factors necessarily involves outside consultation on the part of the ethicist. Thus, concerning the task of moral description, the methodology of human rights can be said to draw on a somewhat broader empirical base in determining what does and does not constitute morally relevant “circumstances,” by comparison with the methodology of intrinsic evil. Therefore, all things being equal, the normative conclusions of ethicists who participate in human rights discourse are generally more likely to be based on adequate social analysis than are the conclusions of those who participate in intrinsic evil discourse.

With regard to the third and final “test,” it is somewhat less certain that one or the other moral language-concept is better suited to dialogue among parties who might disagree concerning the content or even the possibility of exceptionless norms. An aspect of the rhetorical effectiveness enjoyed by both human rights and intrinsic evil discourses is that they occasionally function as moral “trump cards” when invoked in reference to specific social, political, and economic policies being considered.<sup>92</sup> Concerning intrinsic evil in particular, Cathleen Kaveny has noted a recent shift toward what she terms the “prophetic” use of this term, especially as it has been employed in public discourse by Catholics opposed to the legalization of elective abortion. She argues that John Paul II’s treatment of the category in *Veritatis Splendor* is responsible for having attached this new, nontechnical meaning to the very technical language-concept of intrinsic evil, a shift that might be politically useful yet morally unhelpful for maintaining an intelligible Catholic voice in public life.<sup>93</sup> As many have noted, the average American citizen is almost certain to misunderstand what, precisely, is meant by the phrase “intrinsic evil,” let alone the assertion that voting for any party or candidate who supports the continued legalization of elective abortion counts as cooperation with intrinsically evil action.

Catholic human rights proponents are also strangely positioned, in a way, to engage in public debate in the US political culture, inasmuch as the dominant philosophy of natural rights in this context remains the basically

<sup>92</sup> The “trump card” metaphor is borrowed from Ronald M. Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977).

<sup>93</sup> Cathleen Kaveny, *Law’s Virtues: Fostering Autonomy and Solidarity in American Society* (Washington, DC: Georgetown University Press, 2012), 232–36.

individualistic interpretation first proposed by Locke. Granting that Catholic and non-Catholic parties to public debate usually have different understandings of the purpose and anthropological basis of human rights at a theoretical level, I argue that the term itself is still a *public* language-concept in a way that intrinsic evil, being a technical term designed for use by professional Catholic ethicists, is not. This consideration alone should give us pause as we consider the relative effectiveness of these terms for dialogue about the content of normative ethics. In general, it is probably more productive to search for some practical consensus regarding the absolute prohibitions on which virtually all parties can agree than to make refuting the positions of one's interlocutors the primary goal.

Such consensus-building discussions need not stay at a high level of generality, only condemning what is wrong by definition in absolute formal terms. Rather, the naming of genocide and nuclear warfare as species of murder, for example, has the effect of saying that it is possible to know that certain types of actions are always wrong by describing them with a such a high level of specificity that an exception would be unimaginable. But this is not necessarily to say that the moral prohibitions on genocide and nuclear warfare are in fact exceptionless material norms; this would place too great a strain on the scholastic categories. After all, these are not actions of a singular responsible agent at all; they are "complicated social patterns and practices for which many agents are responsible," the moral meaning of which inescapably presupposes some essential institutional and cultural background.<sup>94</sup> Once this is recognized, the old formal/material distinction as applied to norms ceases to be a very helpful framework for understanding the nature of such moral evils.

Therefore, it may be possible that a more conscientious usage of normative language-concepts will lead to a general acknowledgement among professional Catholic ethicists that the neoscholastic act analysis framework, by reference to which the basic categories of fundamental moral theology were originally elaborated, has left ethicists woefully ill-equipped to address the moral challenges of the contemporary world in dialogue with their secular and interreligious partners. The relative effectiveness of intrinsic evil and human rights as normative language-concepts ought to be judged by the extent to which they depend on an act analysis framework in order to be intelligible.

### ***Conclusion***

The aim of this article has been to demonstrate that the current impasse among professional Catholic ethicists about the content of absolute

<sup>94</sup> *Ibid.*, 235.

normative standards is not merely the result of methodological difference. Rather, differences in method are rooted in more fundamental differences in language. The constructed language-concepts of intrinsic evil and human rights continue to function as two distinct loci of moral socialization for ethicists themselves, eventually becoming an internalized framework that affects an ethicist's perception of which moral norms can oblige without exception. In other words, ethicists disagree on absolute normative content not merely because the ways they reason differ significantly but also because the default concepts available to them in the first place are at least partially the result of social processes that they did not "choose," so to speak. If there is hope for rapprochement, it lies in the fact that human rights and intrinsic evil, as constructed language-concepts, are susceptible to further conscious modification, to the end that ethicists operating from very different social locations might cooperate in transforming the contemporary world into a place where respect for human dignity is the rule and not the exception.

MICHAEL P. JAYCOX  
*Boston College*