

The Misinterpretation of John Paul II's Teaching in Evangelium vitae n. 73

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In his 1995 encyclical *Evangelium vitae*, John Paul II takes up a “particular problem of conscience” that can occur “[when] a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on” (n. 73).

He then makes the following most important statement:

In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at *limiting the harm* done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil effect. (n. 73)

Among Catholic theologians and philosophers noted for their loyalty to the magisterium, a consensus soon emerged regarding the interpretation of *Evangelium vitae* n. 73.¹ John Finnis expresses this consensus in the following passage:

¹ Among theologians and philosophers who hold this consensus are Angel Rodriguez Luño, “*Evangelium vitae* 73: The Catholic Lawmaker and the Problem of a Seriously Unjust Law,” *L’Osservatore Romano* (September 18, 2002): 3–5; Tarcisio Bertone, “Catholics and Pluralist Society: ‘Imperfect Laws’ and the Responsibility of Legislators,” in

In a state in which abortion is legally permitted up to (say) 24 weeks gestation, it is not necessarily unjust for a legislator to support a proposal to enact a bill of the form “Abortion is permissible up to 16 weeks.” For it is possible to support such a proposal precisely as a proposal to extend legal protection to the life of unborn children after the 16th week. That is the proposal whose adoption a legislator of upright conscience may rightly support. Such support is formal cooperation in making a just change in the law, but not in the retaining of the unjust denial of legal protection to unborn children up to 16 weeks.²

In two articles published in 2002, Colin Harte challenges this consensus.³ In the Colloquy section of the Winter 2002 issue of *The National Catholic Bioethics Quarterly*,⁴ I responded too briefly to Harte’s article, “Inconsistent Papal Approaches towards Problems of Conscience?” In my reply, I stated that this critically important passage of *Evangelium vitae* must be read in light of John Paul II’s writing in *Veritatis splendor* regarding the “object” of a human act. According to John Paul II (and to St. Thomas Aquinas, to whom he explicitly refers), “the morality of the human act depends primarily on the ‘object’ rationally chosen by the deliberate will” (n. 78). He continues:

In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself in the *perspective of the acting person*. The object of the act of willing is in fact a freely chosen kind of behavior. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally. ... By the object of a

Evangelium Vitae: Five Years of Confrontation with the Society—Proceedings of the Sixth Assembly of the Pontifical Academy of Life (February 11–14, 2000), eds. Juan de Dios Vial Correa and Elio Sgreccia (Vatican City: Libreria Editrice Vaticana, 2001), 206–218; A. Fisher, O.P., “A Guided Tour of *Evangelium vitae*,” *Australasian Catholic Record* 72.4 (October 1995): 445–462; Livio Melina, “La Cooperazione con Azioni Moralmente Cative Contro la Vita Humana,” in *Comento Interdisciplinare alla “Evangelium Vitae,”* eds. Elio Sgreccia and Ramón Lucas Lucas (Rome: Libreria Editrice Vaticana, 1997), 467–490; R. George, in “The Gospel of Life: A Symposium,” *First Things* 56 (October 1995): 32–38.

²J. Finnis, “Unjust Laws in a Democratic Society: Some Philosophical and Theological Reflections,” *Notre Dame Law Review* 71 (1996): 596–598. This essay is an updated English version of Finnis’s “Le Leggi Ingiuste in una Società Democratica: Considerazioni Filosofiche,” in *I Cattolici e La Società Pluralista: Il Caso delle “leggi imperfette,”* eds. Joseph Joblin and Réal Tremblay (Bologna: Edizioni Studio Domenicano, 1996), 99–115.

³Colin Harte, “Challenging a Consensus: Why *Evangelium Vitae* Does Not Permit Legislators to Vote for ‘Imperfect Legislation,’” in *Culture of Life—Culture of Death: Proceedings of the International Conference on “The Great Jubilee and the Culture of Life,”* ed. Luke Gormally (London: Linaere Centre, 2002), 322–341; and, “Inconsistent Papal Approaches towards Problems of Conscience?” *National Catholic Bioethics Quarterly* 2.1 (Spring 2002): 99–124.

⁴W. May, “*Evangelium Vitae* 73 and the Problem of the Lesser Evil,” *National Catholic Bioethics Quarterly* 2.4 (Winter 2002): 577–579.

given moral act ... one cannot mean a process or an event in the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person. (n. 78, original emphasis)

A human act, as I stress in my Colloquy reply to Harte, is specified morally by what the acting person chooses to do in the present moment. We could say the object that morally specifies a human act is the *intelligible content* of a proposal adopted by choice by the acting person. Thus, if a legislator, in voting for a law, adopts a proposal by choice that intends to kill unborn children, the object which specifies his act is to *intentionally kill unborn children*, an object that is not in conformity with the order of reason. Hence, it is a morally evil object. But John Paul II judges that the kind of political decisions which can be licit do not have as their moral objects permitting or authorizing abortions, or the intentional killing of unborn children. Rather, the object that morally specifies the legislator's act in this situation is *to extend the protection of law to the lives of unborn children who are not protected under existing legislation or under alternative proposed legislation, which this legislation is intended to replace*. This is evidently a good moral object.

Harte responds to my reply in a subsequent edition of the *Quarterly*.⁵ He notes that I "rightly" acknowledge the relevance of *Veritatis splendor's* teaching on the object that morally specifies human acts, but maintains that I do not identify properly the moral object of the laws in question. He emphasizes my acknowledgment that my view is an "interpretation" of John Paul II's thought and challenges this interpretation. In his reply, however, Harte does not offer an alternative interpretation of the relevance of *Veritatis splendor* n. 78 on the meaning of the moral object which specifies human acts, an issue central to my interpretation (and that of other authors whose views constitute the "consensus"). But in a chapter of his *Changing Unjust Laws Justly: Pro-Life Solidarity with the "Last and the Least,"* Harte presents his analysis of John Paul II's teaching in *Veritatis splendor* n. 78 on the object which morally specifies human acts.⁶

In this paper I will respond more in depth to Harte's faulty interpretation of the papal texts, considering first the two essays that appeared in 2002, and then his interpretation of *Veritatis splendor* n. 78, a text crucially significant for understanding John Paul II's teaching in *Evangelium vitae* n. 73. I will then comment on the

⁵ Harte, "Evangelium Vitae 73 and Intrinsically Unjust Laws," *National Catholic Bioethics Quarterly* 3.2 (Summer 2003): 241–243.

⁶ Harte, *Changing Unjust Laws Justly: Pro-Life Solidarity with the "Last and the Least"* (Washington, D.C.: Catholic University of America Press, 2005), 140–151. The chapter devoted to this topic is called "Good Acts by Bad Acts?"; In "Inconsistent Papal Approaches?," 112, note 39, Harte refers to an essay of his by this title that was to appear in *A Problem of Conscience: Towards an Understanding of a Disputed Papal Teaching*, eds. Jaroslaw Merecki, S.D.S., and Tadeusz Styczen, S.D.S., noting that this book was due "to appear in 2002. I have not been able to discover whether or not this book was ever published, but the relevant chapter is included as Chapter 4 of Part III."

debate between Harte and John Finnis, put forth in two articles by each in *Cooperation, Complicity and Conscience: Problems in Law and Public Policy*, edited by Helen Watt.⁷

Harte's Reasoning in the 2002 Articles

Harte conveys a major argument to advance his interpretation as follows in "Challenging the Consensus":

One could try ... [to introduce] separate legislation to prohibit some categories of abortion (i.e., the *primary legislation*). Such legislation might lower the time limit during which abortions could take place or prohibit "social" abortions, but in so doing it would tolerate if not specifically permit earlier or "hard case" abortions. Because such legislation would make an illicit *distinction of persons*—granting protection to some but not to others in a context which requires that the right to life of all the unborn should be safeguarded—it can be judged to be intrinsically unjust.⁸

The same is true of any proposed amendment to an existing law that permits abortion. The "key consideration," Harte maintains,

is that the justice of any Amendment Act is determined by judging the justness of the original act to which it refers, *as amended* by the Amendment Act. If some abortions will still be permitted or tolerated under the terms of a previous Abortion Act after the enactment of an Amendment Bill, the Amendment Bill can be judged to be *intrinsically unjust* and a violation of the moral law which prohibits all abortions.⁹

To support his position, Harte appeals to *Evangelium vitae* n.73, where John Paul II, citing the Congregation for the Doctrine of the Faith's 1974 *Declaration on Procured Abortion*, states: "In the case of an intrinsically unjust law, such as a law *permitting* abortion or euthanasia, it is never licit to obey it, or to 'take part in a propaganda campaign in favor of such a law, or vote for it'" (emphasis added).

In other words, according to Harte's interpretation, a legislator who votes for a law or an amendment that restricts abortions, by providing the protection of law to some unborn children who were previously not protected, votes for an intrinsically unjust law because some abortions will be still be tolerated or permitted under the new law. In his judgment, the "object" that specifies the moral act of the legislator is precisely to permit the killing of unborn children.

In "Inconsistent Papal Approaches toward Problems of Conscience?" Harte advances the same basic argument. Early in this essay, Harte examines at some length views that interpret the papal passage as justifying a legislator's vote for a law

⁷London: Linacre Centre, 2005. The essays are Harte, "Problems of Principle in Voting for Unjust Legislation," 179–208, and "The Opening Up of a Discussion—A Reply to John Finnis," 46–268; and John Finnis, "Restricting Legalized Abortion Is Not Intrinsically Immoral," 209–245, and "A Vote Decisive for ... a More Restrictive Law," 269–295.

⁸Harte, "Challenging the Consensus," 329.

⁹Ibid.

or amendment that restricts a prior law or proposed amendment limiting abortion, but nonetheless *permits* the abortion of some unborn children by appeals to the “lesser evil,” the principle of totality, and the law of gradualness. I will focus attention on Harte’s analysis of the authors’ views whom he identifies as those who justify such legislation as the “lesser evil”; in particular, I will consider the positions taken by Robert George and Germain Grisez to illustrate one of the major problems with Harte’s essay, namely, his failure to consider adequately the context in which the passages he cites are situated, context necessary for understanding properly the positions of the authors whom he criticizes. All the authors whom he considers, by the way, agree that it is never morally permissible to intend evil to achieve good, and that it is intrinsically immoral to *intend*, that is, to have evil as the “object which morally specifies” freely chosen acts. All agree that a “lesser evil” is still an “evil,” and that freely choosing such evil is always wrong.¹⁰ Thus if some appeal to the “lesser evil,” the sense in which this expression must be understood is important, and to gain this sense one needs to pay careful attention to what the authors in question actually say. I submit that Harte fails to do this.

Harte’s Treatment of Robert George

Harte cites a passage from George in which the latter raises the question, “Can one legitimately judge, as a matter of prudence, that the imperfect, though more protective proposal is a ‘lesser evil’?” George answers by saying, “Here the Pope [John Paul II] says yes,” and then quotes the passage from *Evangelium vitae* n. 73 cited above regarding proposals “aimed at limiting the harm done by such an [unjust] law, and at lessening its negative consequences at the level of general opinion and public morality.”¹¹ Harte, however, ignores the context of this passage from George. Its meaning is evident if one examines closely what George states. Here I provide the fuller context that enables us to understand the sense in which George refers to the “lesser evil” by citing his essay at more length:

The first and most urgent obligation of law and government is to protect the fundamental rights of every human being within their jurisdiction. *The first and most fundamental human right is the right to life, or, to be more precise, the right of an innocent person not to be deliberately killed, whether by public authority or private license.... The grave injustice to the unborn of laws permitting and funding abortion makes it illegitimate for citizens or public officials to support such laws. They can never be justified, as, say, drug le-*

¹⁰ On this, see John Finnis, *Moral Absolutes: Tradition, Revision, and the Truth* (Washington, D. C.: Catholic University of America Press, 1991); P. Lee, “The Permanence of the Ten Commandments: St. Thomas and His Modern Commentators,” *Theological Studies* 42 (1981): 422-443; Germain Grisez, *The Way of the Lord Jesus*, vol. 1, *Christian Moral Principles* (Quincy, IL: Franciscan Herald Press, 1983), 145-150; William E. May, *An Introduction to Moral Theology*, 2nd ed. (Huntington, IN: Our Sunday Visitor, 2003), 141-169.

¹¹ George et al., “Gospel of Life,” 32-38, quoted in Harte, “Inconsistent Papal Approaches?” 100.

galization could, conceivably, be justified, as a "lesser evil" that one may reluctantly support as a matter of prudence. The prudential toleration of evil simply has no application in cases of radical injustice. So, as the Pope says, "in the case of intrinsically unjust law, such as a law permitting abortion or euthanasia, it is never licit to obey it or to take part in a propaganda campaign in favor of such a law, or vote for it." (emphasis added)

A problem that has vexed Catholics and others in the pro-life movement, however, is the question whether it is legitimate to support a less than perfectly protective legislative proposal restricting abortion, euthanasia, and like injustices, when the only politically realistic alternative at the moment is a proposal that is even less protective of the rights of the unborn, elderly, or handicapped. Can one legitimately judge, as a matter of prudence, that the imperfect, though more protective, proposal is a "lesser evil"?

Here the Pope says yes: "When it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality." So, though the Pope offers no comfort to "pro-choice" Catholics such as Governor [Mario] Cuomo or Senator Ted Kennedy, he in effect blesses the efforts of Governor Bob Casey and Congressman Henry Hyde to work incrementally toward the full equal protection of the unborn.

The Pope does not provide an extensive argument on behalf of his teaching about the permissibility of sometimes supporting imperfectly just laws. If I may presume, however, to speculate about the ground of his teaching, I would suggest that the key to the matter is the application of the Golden Rule of fairness to the question of supporting such laws.

*While it can never be fair to will that members of a disfavored class—whether the unborn, the disabled, or members of some racial or religious minority group—be excluded from legal protections one wills for oneself and those dear to one, a legislator or voter is personally responsible for no unfairness to the victims of an objectively unjust law where he supports that law **precisely, and only**, because the alternative is even less protective of its victims.* Here, as Bishop John J. Myers of Peoria observed in his Pastoral Statement on the Obligations of Catholics and Rights of Unborn Children, the voter or legislator need will only the law's protections, while accepting, though not willing, the injustices that he is powerless to remove. A legislator or voter is justified in supporting a law whose protections fall short of all that justice requires where the unjust aspects of the law do not figure in his deliberation and choice as reasons for his decision to vote for it. Rather, they figure as reasons to oppose it—albeit reasons that are defeated in these circumstances by the protections it affords to victims who would otherwise be left even more vulnerable.¹²

It is evident from this that George in no way claims that one can vote for an intrinsically unjust law; he rather affirms that one who votes for a law that *restricts* abortions extends the protection of the law to unborn human persons whose killing was

¹² George et al., "Gospel of Life," 32–38 (italics and bolding added for emphasis).

permitted in prior or proposed legislation. He does *not* choose or intend evil, even a lesser evil, but rather intends a *good*, namely, the extension of the law against homicide to persons whose lives were previously not so protected. Therefore, Harte does not accurately present George's position in "Inconsistent Papal Approaches toward Problems of Conscience?"

Interestingly, however, Harte considers George's essay again in his book, *Changing Unjust Laws Justly: Pro-Life Solidarity with "The Last and the Least."* In this work, Harte emphasizes that George acknowledges, in the passage I cited above, that the more restrictive law is "objectively unjust." He thus concludes that one who supports this law is indeed violating *Evangelium vitae* n. 73's reaffirmation of the Congregation of the Doctrine of the Faith's *Declaration on Procured Abortion* (1974), that it is always wrong to vote for an intrinsically unjust law such as a law permitting abortion.¹³

Harte, however, fails to understand George properly. In accordance with those who interpret John Paul II's teaching to justify voting for "a more restrictive law, aimed at limiting the number of authorized abortions" in the circumstances in question, George agrees that it is always immoral to vote for an intrinsically or objectively unjust law—a point I make in my *Quarterly* "Colloquy" note "*Evangelium vitae* 73 and the Problem of the Lesser Evil." Harte fails to recognize the significance of George's statement: "he [a legislator or voter] supports that law *precisely, and only*, because the alternative is even less protective of its victims,"¹⁴ and he completely ignores the reference George makes immediately after this to Bishop Myers of Peoria's statement that the voter or legislator needs to

will only the law's protections, while accepting, though not willing, the injustices that he is powerless to remove. A legislator or voter is justified in supporting a law whose protections fall short of all that justice requires where the unjust aspects of the law do not figure in his deliberation and choice as reasons for his decision to vote for it. Rather, they figure as reasons to oppose it—albeit reasons that are defeated in these circumstances by the protections it affords to victims who would otherwise be left even more vulnerable.¹⁵

If we consider George's statement in its context we can, I believe, see how seriously Harte has misread it.

Harte's Treatment of Germain Grisez

Harte considers the following passage, taken from Grisez's masterful work *Abortion: The Myths, the Realities, and the Arguments* (written, be it noted, some twenty-five years prior to *Evangelium vitae*) as justifying the choice of the "lesser evil":

There are ... cases in which there is literally no choice but that between two evils. For example, if a legislative body has directed a committee to consider various proposals for relaxing existing abortion laws and to report one of them,

¹³ Harte, *Changing Unjust Laws*, 94 and note 16.

¹⁴ George et al., "Gospel of Life," 38.

¹⁵ *Ibid.*

a member of that committee may be forced to vote on which of the proposals should be considered. In such a situation, there is obviously no compromise in preferring the less unjust alternative.¹⁶

Here Harte does Grisez an injustice by ignoring the context in which this passage occurs. It is included in a section titled, “A Strategy in Defense of Life,” which begins “The strategy that should be followed by those who are convinced that the law ought to regard the unborn as legal persons is seldom seriously discussed.” In these pages Grisez sketches such a policy—his book, be it noted, appeared before the United States Supreme Court withdrew all protection of the law from the unborn child in its infamous *Roe v. Wade* decision. Pro-life people were then seeking to protect the lives of the unborn by opposing state laws that permitted abortion. Here the context was the following: The current state laws *did not allow abortion*. Some people were proposing *complete legalization* of abortion, whereas others proposed as a compromise *limited relaxation* of the current law. Given this situation, Grisez firmly repudiates any kind of compromise that would oppose the complete legalization of abortion (in states where current law prohibits abortion) by proposing instead limited relaxation of the law against abortion. Thus, in a centrally important passage he writes:

There are important reasons for opposing compromise. Complete legalization and limited relaxation seem very different superficially. But relaxation means an abandonment of the only principle on which complete legalization can be resisted—that the unborn are legal persons. Once this principle is abandoned, the limits of any restrictive law will be stretched, breached, and abandoned. ... Then, is there any point in opposing complete legalization when relaxation already has occurred? The most important reason for keeping some restrictive conditions is that *some lives may be saved by them*.¹⁷

Note (a) Grisez rejects *compromises* that oppose complete legalization and limited relaxation of laws prohibiting abortion and (b) in the passage cited by Harte, Grisez explicitly says that in the legal situation envisaged “no compromise” is involved, and it is not involved precisely because one prefers the “less unjust alternative”—that is, the alternative which keeps some *restrictive conditions* and does so in order that *some lives may be saved by them*.

Grisez’s massive study is one of the most superb books ever written to defend unborn human life, and to expose the fallacies in all arguments advanced to support abortion. Harte, by removing the passage he cites from its context, has done Grisez a great injustice.

Harte likewise considers the views of Tarcisio Bertone, charging him with justifying *doing the lesser evil in the sense of intending evil*. He considers Bertone’s views more closely than those of George and Grisez,¹⁸ but in my judgment he misinterprets

¹⁶ Germain Grisez, *Abortion: The Myths, the Realities, and the Arguments* (New York: Corpus Instrumentorum, 1970), 459.

¹⁷ *Ibid.*, 460 (emphasis added).

¹⁸ Harte, “Inconsistent Papal Approaches?” 107–111.

some key passages in Bertone's essay. To enter into a discussion of this, however, would take us too far afield, and I have already adequately made my point.

Harte's major claim, as we have seen, is that a legislator who votes for a law that "limit[s] the number of authorized abortions in place of a more permissive law already passed or ready to be voted on"—to use the words of John Paul II in *Evangelium vitae* n. 73—votes for a law that nonetheless still permits abortion and is, therefore, in Harte's judgment, intrinsically unjust. In view of this it is pertinent, I believe, to recall then Cardinal Ratzinger's reply in May 1982, in response to a request from the U.S. bishops regarding an amendment Senator Hatch proposed to limit abortions (an example of an "imperfect law" that permits some abortions but is far more protective of unborn human life than the current law). Ratzinger writes:

According to the principles of Catholic morality, an action can be considered licit whose object and proximate effect consist in limiting an evil insofar as is possible. Thus, when one intervenes in a situation judged evil in order to correct it for the better, and when the action is not evil in itself, such an action should be considered not as the voluntary acceptance of the lesser evil but rather as the effective improvement of the existing situation, even though one remains aware that not all evil present is able to be eliminated for the moment.¹⁹

Harte's Faulty Interpretation of *Veritatis Splendor* n. 78

As I said previously, Finnis, I, and others appeal to the teaching of John Paul II in *Veritatis splendor* n. 78 that the morality of act depends primarily on the object rationally *chosen* by the agent, and that this object can be grasped only by placing oneself in the perspective of the acting person. It is essential to consider John Paul's teaching in *Veritatis splendor* n. 78 in order to interpret *Evangelium vitae* n. 73 properly.

In *Changing Unjust Laws Justly*, Harte claims that we fail to recognize that a good intention cannot make a bad act good. He notes sections of *Veritatis splendor* n.78 where the pope explains this, citing a text from Aquinas's *In duo praecepta caritatis et in decem legis praecepta*. He then maintains that the authors whom he opposes place priority on *intention* and fail to consider the morality of the physical act, that is, the exterior act, which for Aquinas (in *Summa theologiae*, I-II, Q 18.6, the article to which John Paul II explicitly refers) specifies the *object*. He thus concludes that our use of *Veritatis splendor* n. 78 is flawed.²⁰

¹⁹ Joseph Cardinal Ratzinger, quoted in R. G. Peters, "Stopping Abortion: The Pragmatist's View," *Catholic Twin Circle* (September 17, 1989). In a later essay, "The Opening Up of a Discussion" (263, note 67), Harte says "there is nothing in Ratzinger's statement of the principles with which I disagree." It should be noted, however, that in voicing acceptance of these principles, Harte claims that Ratzinger did not inform the American bishops that they could support the Hatch amendment but left it up to them to apply the principles. This contradicts reality. Ratzinger, after all, made this declaration in response to a question raised by those bishops, who were obviously seeking guidance.

²⁰ Harte, *Changing Unjust Laws*, 143–151.

The difficulty with Harte's objection is this: Those with whom he disagrees hold, with Aquinas, that an intended end, which is thought good, cannot make an act good if the act is bad in itself. For instance, one's intended end may be to help a poor person by *choosing to give him alms*, or by *choosing to rob a bank and give the poor person the proceeds*. The second act is morally bad because the good end intended does not justify the evil means freely chosen to secure that end. I have myself put forth this reasoning of Aquinas, in rebutting the efforts of Louis Janssens and others to make Aquinas out to be a defender of proportionalism in ethics.²¹ But does it then follow that we are wrong in prioritizing *intention* as the source of an act's moral goodness or badness? It does not, because *with* Aquinas and the pope we maintain that "moral acts receive their species *from what is intended*."²²

The difficulty is that Harte has allowed the ambiguity of the term *intendere* to lead him to a considerable misunderstanding of Aquinas' view of the morality of human acts. Aquinas uses the Latin term *intendere* in the precise sense to refer to the intention of the end for which one chooses to do at the present moment. This end is the further end or ultimate end of the act. But Aquinas also, as in the above text, uses the Latin term *intendere* in a broader sense: to refer to the *object chosen here and now*, which is the proximate end of the act. The whole matter is made luminously clear in a very important text ignored by Harte, a text most helpful for understanding properly both Aquinas and John Paul II:

The will can be considered in two ways: either insofar as it is *intending*, as bearing on an ultimate end; or insofar as it is *choosing*, as bearing on a proximate object ordered toward that ultimate end. If will is taken in the first way, then the will's badness suffices to make the act bad, since whatever is done for a bad end is bad. But the goodness of the will intending does not suffice to make the act good, for the act may be bad in itself, which in no way can be made good. But *if will is taken as choosing, then it is universally true that the will's goodness makes the act good and the will's badness makes the act bad*.²³

²¹ W. May, "Aquinas and Janssens on the Moral Meaning of Human Acts," *Thomist* 48.4 (1984): 585. There I point out that in *Summa theologiae*, I-II, Q 20.2, Aquinas explicitly asks whether the entire goodness or malice of the exterior act depends on the will's *intention of the end*, to which the exterior act is ordered (Janssens' thesis). But in answering this question Aquinas says: "In the exterior act a twofold goodness or malice can be considered; one according to due matter and circumstances; the other according to its ordering to an end. Now that which pertains to it according to its ordering to an end totally depends on the will. *But that which pertains to it according to its due matter and circumstances depends on reason, and on this depends the goodness of the will insofar as the will itself bears on this*." (In actu exteriori potest considerari duplex bonitas vel malitia; una secundum debitam materiam et circumstantias; alia secundum ordinem ad finem. Et illa quidem quae est secundum ordinem ad finem, tota dependet ex voluntate. *Illam autem quae est ex debita materia vel circumstantias dependet ex ratione, et ex hac dependet bonitas voluntatis, secundum quod in ipsum fertur.*) (Emphasis added.)

²² Aquinas, *Summa theologiae*, II-II, Q 64.7: "Actus autem morales recipient speciem secundum id quod intenditur" (emphasis added). This is a constant theme in Aquinas.

²³ Aquinas, *In II Sententiarum*, d. 40 Q 1.2c: "Voluntas dupliciter potest considerari: vel secundum quod est intendens, prout in ultimum finem fertur; vel secundum quod est

What this means, obviously, is that if the *object freely chosen* is good the entire act is good. This, indeed, is the meaning of Aquinas's statement in *Summa theologiae*, I-II, Q 20.2. In this passage, Aquinas states that a good end intended does not suffice to make a bad act good by reason of the object of the exterior act, insofar as the "goodness of the will depends on [reason] *insofar as [the will] bears on it*" [*et ex hoc dependet bonitas voluntatis, secundum quod in ipsum fertur*] (emphasis added). Note that Aquinas insists, in the concluding part of this important sentence, that the goodness of the will depends on reason *insofar as the will bears on it* (i.e., insofar as the will itself *wills* the object known to be contrary to reason.) There is no *human* or *moral act* without a will act to give it its form or species.

Harte's analysis of the relevant texts of *Veritatis splendor* is therefore not in accord with authentic Thomistic thought, the thought John Paul II follows in the texts under question.

Harte's Reasoning in Cooperation, Complicity, and Conscience

I will briefly consider Harte's two essays in Helen Watt's volume, because I do not think he advances any new arguments to support his view.²⁴ In the first of these articles, he is concerned primarily with presenting and analyzing different kinds of legislative proposals, some of which he judges intrinsically unjust, whereas others he regards as just because they in no way "permit" abortion. He also points out what he believes are flaws in Finnis's arguments for the "consensus" position. Here his basic error is the same as that noted at the end of the last section, namely, his claim that since any act permitting abortion is intrinsically unjust, voting for a law that extends more protection to unborn children, but still legalizes abortion, is intrinsically immoral. It is his failure to see how the principle of double effect can be applied to laws of this kind, so that the one who votes for them does so having as the object of his choice *the extension of the protection of the law to unborn children whose lives are not protected by existing or alternative law*.

In his reply, Finnis first points out that Harte ignores the existential context of *Evangelium vitae* by passing over in silence important episcopal responses to the issues raised by unjust laws permitting abortion.²⁵ Two of these responses, given prior to the issuance of *Evangelium vitae* in 1995, suffice to show how this failure calls Harte's interpretation of the latter into question.

eligens, prout fertur in obiectum proximum, quod in finem ultimum ordnatur. Si consideretur primo modo, sic militia voluntatis sufficit ad hoc quod actus malus esse dicatur: quia quod malo fine agitur malum est. Non autem bonitas voluntatis intendentis sufficit ad bonitatem actus: quia actus potest esse de se malus, qui nullo modo bene fieri potest. *Si autem consideretur voluntas secundum quod est eligens sic universaliter verum est quod a bonitate voluntatis dicitur actus bonus, et a militia malus*" (emphasis added).

²⁴ The response to Harte's thought in these two essays is based essentially on Finnis's essays in the same volume, namely, "Restricting Legalized Abortion," 216–220, and "A Vote Decisive," 269–295.

²⁵ Finnis, "Restricting Legalized Abortion," 216–220.

The first is the statement from the 1989 Bishops' Conferences of Great Britain, in which the members of the conference declare:

Catholics may support and vote for a bill or other proposal which would strengthen *the law's protection* for the unborn, even when the bill fails to extend such protection to the full extent that justice truly requires. ... Catholics who are publicly lending their support to such imperfect legislation should not disguise their view that all procuring abortion is unacceptable.²⁶

The other is a statement by John Cardinal O'Connor—published in the official Catholic paper of the Archdiocese of New York on June 14, 1990, and prominently reprinted in the June 28, 1990, issue of *Origins*—that endorses the British statement. O'Connor writes:

The conflict over imperfect law has definitely been divisive to the pro-life movement. It seems to me that our goal must always be to advance protection for the unborn child to the maximum degree possible. It certainly seems to me, however, that in cases in which perfect legislation is clearly impossible, it is morally acceptable to support a pro-life bill, however reluctantly, that contains exceptions if the following conditions prevail:

- A. There is *no other feasible bill restricting* existing permissive abortion laws *to a greater degree* than the proposed bill.
- B. The proposed bill *is more restrictive than existing law*, that is, the bill *does not weaken the current law's restraints* on abortion. And,
- C. The proposed bill does not negate the responsibility [*scil.* possibility] of future, *more restrictive laws*.

In addition, it would have to be made clear that we do not believe that a bill which contains exceptions is ideal and that we would continue to urge future legislation which would *more fully* protect human life.²⁷

Finnis then points out what he considers the root causes of Harte's confusion, among them his failure to distinguish in legal proposals between *sentences* (linguistic entities) and *propositions* (mental entities, the products of *judgments* whose truth or falsity can be determined), and his assumption that "intrinsically unjust" means unjust "regardless of context and circumstances, and intentions of any acting person." "This," Finnis says, "is one of the central mainstays of Harte's whole position."²⁸ Here Finnis echoes the criticism I make above.

In "The Opening Up of a Discussion: A Reply to John Finnis," Harte again sets forth no new arguments but rather focuses on Finnis's arguments to support the "consensus" position and his earlier efforts to refute Harte. He even claims that

²⁶ Bishops' Conferences of Great Britain, "Imperfect Laws: Some Guidelines," *Briefing* (July 1989), quoted in Finnis, *ibid.*, 214. The statement was published three months after the document had been submitted to the Holy See.

²⁷ John Cardinal O'Connor, "Abortion: Questions and Answers," *Origins* 20.7 (June 28, 1990): 97, 99–115 (emphasis added), quoted in Finnis, *ibid.*, 215.

²⁸ Finnis, *ibid.*, 231–232.

although Finnis denies that he embraces “situation ethics,” one of the arguments Finnis presents “gives weight to the charge that he is a situation ethicist.”²⁹ In his reply, Finnis argues at length that Harte’s essay in effect “remains inattentive to the nub of the discussion between us.”³⁰

A Final Reflection

In the essays considered in this article, Harte’s basic argument is that if one votes for a law which limits the harm done by a law currently in effect, or one which is about to be enacted (what he calls the *primary law*), one is *choosing to do evil* by voting for an unjust law. His opponents recognize that the law in question is unjust—after all, the title of the conference (undoubtedly requested by John Paul II), sponsored by the Congregation for the Doctrine of the Faith in 1995, is *I Cattolici e La Società Pluralista: Il Caso delle “leggi imperfette”* (bolding added for emphasis). But these opponents, again following closely the teaching of Aquinas and the Catholic tradition on the principle of double effect, distinguish between effects of an action that are *intended*, that is, chosen and as such specifying the moral object, and those which are foreseen but *not intended*, or, as Aquinas says, *praeter intentionem*.³¹ The object of their choice, according to which their act is morally specified, is the effect which extends protection of the law to unborn children whose lives otherwise are not protected. This is a morally good object in harmony with reason. They accept as a foreseen but unintended effect the bad consequence of the law, that is, the abortions it permits. Harte seems unable to recognize this line of thought.

A Debt of Gratitude

I believe that Colin Harte’s interpretation of *Evangelium vitae* n. 73 is not accurate, and also that his criticism of the “consensus” interpretation that has emerged is rooted in a serious misunderstanding of the reasons given to support that interpretation. Nonetheless, I believe we owe Harte a debt of gratitude. He has certainly reflected seriously on the relevant material. In my opinion he raises important and at times challenging questions, forcing those who disagree with him to clarify important matters of dispute. I hope that in this paper I have succeeded in pointing out some of the more serious misunderstandings underlying Harte’s “Challenge to the Consensus.”

²⁹ Harte, “Opening Up of a Discussion,” 255 and note 34.

³⁰ Finnis, “A Vote Decisive,” 269.

³¹ See *Summa theologiae*, II-II, Q 64.7. This is a famous text and the source for the so-called “principle” of double effect. In it Aquinas begins by saying, “Nothing prevents an act from having two effects, of which one is intended whereas the other is outside the scope of one’s intention. But moral acts receive their species according to what is intended, not from what is outside the scope of one’s intention.” (“Nihil prohibet unius actus esse duos effectus, quorum alter solum sit in intentione, alius vero sit praeter intentionem. Morales autem actus recipiunt speciem secundum id quod intenditur, non autem ab eo quod est praeter intentionem.”)