

Université de Montréal

**The One & the Many:
Reconciling 'Universals' & 'Particulars'
and the Case of 'Terminal Sedation'**

par

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Université de Montréal
Faculté des études supérieures

Cette thèse intitulée :

The One & the Many: Reconciling 'Universals' & 'Particulars'
and the Case of 'Terminal Sedation'

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Catherine (Cate) McBurney

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Résumé

Traditionnellement, ce qu'il est convenu d'appeler le principe de l'action à double effet, grâce à la distinction qu'il apporte entre l'intention et les effets prévus d'un acte, nous a aidé à prendre des décisions morales dans des situations difficiles où la fin recherchée ne pouvait être réalisée qu'en entraînant des effets secondaires non voulus ou non désirés. Au cours des dernières années, une controverse importante a marqué l'utilisation de ce principe dans la distinction apportée entre l'euthanasie et la «sédation terminale». On entend par «sédation terminale» la pratique de rendre inconscient un patient en phase terminale comme mesure de dernière instance visant à contrôler la douleur ou les autres symptômes devenus intolérables. Cette thèse examine les aspects cliniques, légaux, philosophiques et théologiques de la controverse dans un contexte (prioritairement) nord américain. Elle illustre comment l'herméneutique de Paul Ricoeur peut améliorer notre réflexion basée sur le principe de double effet en établissant des distinctions significatives entre la «sédation terminale» et l'euthanasie, l'emphase portant sur l'exploration des capacités humaines et l'utilisation des cercles herméneutiques de Ricoeur.

Mots-clés : sédation terminale, sédation palliative, double effet, Ricoeur, herméneutique

Abstract

Traditionally, the so-called principle of double effect with its distinction between intent and foresight has assisted us to make moral decisions in difficult situations where our intended end may only be accomplished by bringing about additional unintended and undesired side effects. In recent years, great controversy has surrounded the use of this principle to distinguish between euthanasia and ‘terminal sedation’, the practice of rendering a terminally ill patient unconscious as a ‘last resort’ measure to control their pain or other intolerable symptoms. This thesis explores the clinical, legal, philosophical, and theological aspects of the controversy in the North American context (primarily) and illustrates how the hermeneutics of Paul Ricoeur can improve our use of double effect reasoning to effect meaningful distinctions between ‘terminal sedation’ and euthanasia. Emphasis is placed on Ricoeur’s exploration of human capabilities and the use of his hermeneutic circles.

Keywords : terminal sedation, palliative sedation, double effect, Ricoeur, hermeneutics

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*Dedicated to the memory of George P. Schner, SJ (1946-2000)
whose life and teaching exemplified phronesis
with grace and wit.
Je me souviens ...*

*“Recall that, for Kant, the ‘sun’ from whose perspective progressive human enlightenment is visible as such is ‘simply the mode of thinking of the spectators’ ... Enthusiasm for the ideal, and the disinterested sympathy of the spectator towards actual human violence (indeed toward human ‘misery and atrocities’) -- both acts which ‘only reason can perform’ -- provide the truly rational person with the ‘perspective of the sun’ vis-à-vis the messy course of human history. Together they found the discourse of enlightenment. The question with which I might open a conversation concerning the violence of enlightenment is therefore this: To what extent do we still dwell in **this world** by means of such a discourse? Can we still dwell in this world peaceably -- indeed even **humanly** -- once we have become the sun?” (Schner 2002: 163)*

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General Introduction

One philosopher has claimed that the problem of universals “is a distinctively philosophical problem” because “people other than philosophers are generally unaware that the problem even exists” (Schoedinger 1992: ix). Although that may have been the case in the past, it seems unlikely that the same situation exists today, although philosophers may still describe, analyze, and resolve the problem using terminology and methods particular to philosophy, but unfamiliar to non-philosophers. Nowadays, the frequent use of words like ‘pluralism’, ‘diversity’, ‘multi-culturalism’, ‘multi-religious reality’, ‘secularism’, ‘tolerance’, ‘identity’, ‘recognition’, ‘equality’, ‘self-determination’, convince this author that at least some awareness of the problem of universals has penetrated many spheres of twenty-first century life, especially since the events of 9/11. Perhaps for the average person, the problem of universals is experienced as a problem about meaning. In the midst of the ‘pluralism’ of Canadian life, for example, what is the meaning of ‘justice’, ‘goodness’, ‘rightness’, ‘truth’, ‘beauty’, ‘respect’, ‘autonomy’, ‘evil’ and so on. Particularists argue that characteristics such as these have only a particular meaning (i.e., meaning for a particular person or a specific community), and that a universally or generally applicable meaning is no longer possible. Tragically, the events of 9/11 illustrated both the massive violence and destruction possible when particular meanings are fanatically wielded by calculating martyrs, and the desperate need to reconcile universals and particulars peacefully for the benefit of all citizens of the universe. The need for reconciliation is no less pressing on the philosophical level where we discover that the aforementioned particularist argument only returns us to the central problem:

[The problem of universals] is a real problem because particulars are, **and can only be** [emphasis mine] described by their characteristics. Such characteristics are qualities and qualities are what are generally understood to be universals. Notwithstanding that qualities determine particulars to be the (types of) things that they are, it is indubitable that relations exist, e.g., that San Francisco is north of Los Angeles. Once it is understood that qualities and realities are ontologically inescapable, it remains to determine the nature of such beasts ... the views concerning the nature of universals have differed widely. One runs the gamut from the position that universals constitute a world unto themselves (e.g., Plato) to the position that there are

no universals at all ... One thing seems clear: one cannot escape the existence of universals. This, in turn, entails not being able to escape an analysis as to their nature ... There is another way of viewing the primacy of universals. Without them there could be no language as we understand it. That is to say, without predicates we would have only subject-words within our command. Ultimately, this reduces to proper nouns and the two pronouns 'this' and 'that'. These two pronouns are useful only in conjunction with pointing. Ostension, by itself, does not constitute language. This observation has everything to say about human thinking. Thinking and language go hand in hand. It is apparent that the recognition of characteristics and the formulation of nouns is symbiotic. Consequently, the nature of universals is ultimately associated with human thinking ... (Schoedinger 1992: ix-x).

Similar sentiments are expressed by American philosopher/bioethicist Daniel Callahan. In an article entitled, *Universalism & Particularism: Fighting to a Draw*, he argues that "No decisive choice should be made between universalism and particularism. Each will have its place in different situations ... The hard part is to devise a theory that can readily join universality and the moral complexity of everyday life" (Callahan 2000: 41). "The hard part" has been a daunting challenge for bioethics from its beginnings right up to the present day. As technological advances began to revolutionize biomedicine in the 1960s, the need for discussion and resolution of the ethical issues associated with these advances brought the disciplines of medicine, law, philosophy and theology into closer contact. This new relationship eventually brought to the fore the differences between these disciplines, for instance, the fact that medicine is more focused on particular disease processes and the divergent needs of particular types of patients, whereas law, philosophy and theology are more concerned with the application of universal principles. As Callahan indicates in his definition of bioethics in the most recent *Encyclopedia of Bioethics*, two questions became urgent: "If the new bioethics was to be interdisciplinary, how would it relate to the long-standing disciplines of moral theology and moral philosophy? ... [Could] they, in their broad, abstract generality, do justice to the particularities of medicine or environmental issues?" (Reich 1995: 250). Questions such as these have fostered a wide-ranging methodological debate within bioethics between so-called principalists (or

universalists) and so-called contextualists (or particularists). How the debate will be resolved is far from clear, and perhaps it will never be resolved to everyone's satisfaction, but the goal of this thesis will be to move beyond the debate and attempt a resolution of the tension between universals and particulars within the context of a specific case study.

The task of reconciling universals and particulars is especially difficult within the sphere of end-of-life issues, for example, palliative care and euthanasia. The English word *euthanasia* derives from the Greek *euthanatos*, which means good or noble death. This definition begs the obvious question of the meaning of "good or noble death," and how we might reconcile its meaning for particular individuals or communities (e.g., patients, families, healthcare teams, professional healthcare associations) with universalistic meanings found within philosophical, legal/public policy and theological discourse. This tension can be exemplified in many ways, but as a starting place within the Canadian context, we can study the influential 1995 Canadian Senate Report entitled, *Of Life and Death*. In this document, we find that "good or noble death" is more likely to be associated with palliative care, whereas euthanasia has only pejorative meanings. The Report defines palliative care as "care aimed at alleviating suffering -- physical, emotional, psychosocial, or spiritual -- rather than curing. It is concerned with the comfort of the suffering individual" (Canada 1995: 14). As is the case in all other Western countries, palliative care is legally authorized in Canada. By contrast, euthanasia is defined as "a deliberate act undertaken by one person with the intention of ending the life of another person to relieve that person's suffering where that act is the cause of death" (Canada 1995: 14). The qualifiers *voluntary*, *non-voluntary*, and *involuntary* distinguish three different types of euthanasia: *voluntary* "means done *in accordance with* the wishes of a competent individual or a valid advance directive"; *non-voluntary* "means done *without the knowledge* of the wishes of a competent individual or of an incompetent individual"; and *involuntary* "means done *against* the wishes of a competent individual or a valid directive" (Canada 1995: 14). All three types of euthanasia are illegal in Canada, although the Report recommends that the Criminal Code be amended to provide in situations of nonvoluntary

and voluntary euthanasia, “a less severe penalty in cases where there is the essential element of compassion or mercy” (Canada 1995: xi). This proposed reform is obviously controversial, and some argue that if it was implemented, it would lead Canada down ‘the slippery slope’ toward full legalization of euthanasia, a step already taken by Belgium, Colombia, and the Netherlands. The question of whether euthanasia or even assisted suicide should ever be legalized in Canada is beyond the scope of this thesis. However, even if euthanasia and assisted suicide were to be legalized in Canada, all available end-of-life practices would still have to be distinguished from each other and from murder, and toward that end, the tensions revealed here would still have to be resolved.

If we consider the Report’s distinction between palliative care and euthanasia, we find that it rests on the idea that although both palliative care and euthanasia aim to relieve suffering, palliative care is directed solely toward that end, whereas euthanasia involves the relief of suffering “with the intention of ending the life of another person,” and “where that act is the cause of death.” Several questions are in order here: What does it mean to intend? Although ‘intention’ is a concept universally applicable to many acts and at the centre of many interesting action theories, it is particular persons who possess and act on particular intentions, and at this level, intentions are often enigmatic. For example, one can have multiple and contradictory intentions simultaneously, it is often problematic to convey one’s intentions, there are often difficulties in understanding the intentions of another person, and there can be a discrepancy between a person’s stated intentions and what their observable actions might suggest regarding their intentions. Also, concerning “ending the life of another,” what does ‘life’, ‘life of another’, and ‘ending life’ mean, and whose definitions of these terms count -- those of particular patients and families? doctors? legal traditions? philosophically or theologically-trained theorists? the general public? Although the title of the Report contains the two nouns -- ‘life’ and ‘death’, they are never defined as universals or particulars except that we are told that ‘life’ is now one of the societal values protected by the Canadian Charter of Rights and Freedoms (Canada 1995: 4), “our current medical profession views death as an enemy” (Canada 1995: 6), “natural

death has been removed from view into hospitals and institutions” (Canada 1995: 7), and technological progress has made possible the prolonging of life and the postponing of death (Canada 1995: 5). And how do we know that a particular act is the cause of death? Although the universally applicable concept of cause and effect is theoretically interesting and useful, what do we do when causal connections are not clear in particular cases and especially, when both causes and intentions are ambiguous?

All of these questions are extremely important in relation to ‘terminal sedation’ or ‘total sedation’ as it called in the Report, “the practice of rendering a person totally unconscious through the administration of drugs without potentially shortening life” (Canada 1995: 14). This practice may be undertaken in cases of intractable pain and suffering, or in preparation for such suffering subsequent to ventilator withdrawal. As the Report makes clear, there is great confusion about whether patients die because of the sedation given to them, or because of their underlying disease processes. For example, Allan Rock, former Minister of Justice, is quoted as saying, “When is it permissible to keep prescribing morphine where you know within the next six hours it will cause death? The underlying disease will not kill the patient, however the treatment for pain will. At present, that is shrouded in obscurity” (Canada 1995: 27). And if a doctor does indeed foresee that the sedation will likely cause death within a few hours or days, is it still credible for the doctor to claim that he or she did not intend the patient’s death? Although the Report does not discuss the problems concerning sedation and the complexity of both doctors’ and patients’ intentions, these problems are clearly expressed by physicians in the American literature on ‘terminal sedation’:

Medical ethicists place great weight on the intentions of clinical actions. The religious principle of ‘double effect’, based on a distinction between intentions and consequences, is an ethical cornerstone in the medical treatment of the terminally ill. Giving high doses of narcotic analgesics to a dying patient to relieve pain and suffering is considered ethical even if it inadvertently hastens death, provided the clinician did not intend to help the patient die. Death may be foreseen as a side effect of the intervention as

long as it is not intended. On the other hand, should a clinician remotely intend to help a patient die, even when death is desired by a terminally ill patient with irreversible suffering, that same act would be considered unethical -- a form of medical killing. From this idealized ethical perspective, intentions are clear and distinct. My training about intentions, however, comes from clinical medicine and psychodynamic psychiatry. When probing intentions in these domains, one rapidly learns they may be complex, ambiguous, and often contradictory. Ethical discourse about intentions often appears idealized and superficial ... (Quill 1993: 1039).

Where exactly are the boundaries that separate relief at the cessation of suffering, the desire to hasten death, and euthanasia? While euthanasia does raise grave concerns, physicians are being less than honest if they don't admit that at times these boundaries are blurred for them. Increasingly, physicians, patients, and families acknowledge that there are times when death is welcome. The principle of double effect is well known to ethicists, but it does not address a physician's hope that the patient will die quickly. Ethicists would do physicians a service by clarifying that while the intent of opioid medication must be for the relief of pain and suffering, the physician also may welcome the patient's death (Buchan and Tolle 1995: 56).

Although the Senate Report's distinction between palliative care and euthanasia makes no explicit reference to the so-called principle of double effect, the distinction's reliance on the concepts of intention and causal connections certainly mirrors that found within this principle. Since, as Quill makes clear above, "the religious principle of 'double effect' ... is an ethical cornerstone in the medical treatment of the terminally ill," there is a need to understand both the principle and its origins, and key problems associated with its use to distinguish between terminal sedation and euthanasia.

The so-called principle of double effect originates within the Roman Catholic tradition in the work of the Dominican priest, Thomas Aquinas (1225-1274). The principle is really a type of reasoning, more accurately called 'double effect reasoning' (Cavanaugh 1995: 3-4), that has long been used in difficult situations wherein one act has two possible effects, for example, the act of sedating a patient will likely have the desired effect of controlling the patient's pain, while at the same time, it could also have the undesired effect

of shortening their life. As explained in the most well-known and commonly-used bioethics textbook, *Principles of Biomedical Ethics*, “Classical formulations of the RDE [rule of double effect] identify four conditions or elements that must be satisfied for an act with a double effect to be justified” (Beauchamp and Childress 2001: 129). The overall purpose of these conditions is to reconcile universals and particulars. The first condition, clarifying the nature of the act, requires that “the act must be good, or at least morally neutral (independent of its consequences)” (Beauchamp and Childress 2001: 129). Is ‘terminal sedation’ a ‘good’ act or at least morally ‘neutral’? There are no clear answers to this question because as the physicians’ views make clear, there is tremendous ambiguity and lack of consensus surrounding the meanings of ‘terminal sedation’, ‘euthanasia’, ‘life’, ‘death’, and ‘good’ within our pluralistic society. The second condition, clarifying the agent’s particular intention, requires that “the agent intend only the good effect. The bad effect can be foreseen, tolerated, and permitted, but it must not be intended” (Beauchamp and Childress 2001: 129). Again, as indicated in the physicians’ views, considerable controversy surrounds the meaning of ‘intention’, whose intention counts, how we know a person’s intention, and whether the foresight/intention distinction still carries moral weight in particular cases of ‘terminal sedation’. Thirdly, means and effects are distinguished. In other words, “The bad effect [e.g., shortened life or the death of the patient] must not be a means to the good effect [e.g., pain control]. If the good effect were the direct causal result of the bad effect, the agent would intend the bad effect in pursuit of the good effect” (Beauchamp and Childress 2001: 129). As already indicated, the causal connections between particular instances of ‘terminal sedation’ and particular patients’ deaths may be impossible to verify with any certainty. Finally, the fourth condition is concerned with proportionality: “The good effect must outweigh the bad effect. That is, the bad effect is permissible only if a proportionate reason compensates for permitting the foreseen bad effect” (Beauchamp and Childress 2001: 129). Certainly, as we will discover, there is no consensus regarding the meaning of proportionality within double effect reasoning, how proportionality judgements should be made in cases of ‘terminal sedation’, and how much

moral weight should be given to these judgements. Moreover, the current tendency to view this fourth condition as requiring a consequentialist calculus completely distorts the original intent of this condition, as we shall soon see. Needless to say, these problems significantly diminish the present capacity of double effect reasoning to reconcile universals and particulars.

In the preceding discussion, the difficult question of how we distinguish 'terminal sedation' from euthanasia has been isolated as a specific case study or example of the problems involved in reconciling universals and particulars. The discussion has revealed that the tension between universals and particulars is multi-layered. There is tension on the epistemological level regarding how we know or understand universals, if they exist at all, and how we should respond to the widespread disagreements about their existence and importance. Underlying this tension, there are the more implicit, but equally important ontological conflicts concerning the meaning of universals such as 'good', 'evil', 'the self', 'the other', 'life', 'death' and so on. As Schoedinger indicated, all universals and particulars are communicated through the vehicle of language. Unfortunately, the structure and limitations of language inevitably frames and often limits the extent of understanding and consensus possible regarding important distinctions like that between 'terminal sedation' and euthanasia. If we return to Quill's view, for example, there are significant differences between the emotional charges and moral weight carried by the phrases "inadvertently hastens death," "help the patient die," and "medical killing." Differences such as these often produce communication and understanding problems despite the speaker's intentions. Finally, there is the difficult question of how we relate universals (however defined and expressed) with particulars, in this case, the concrete reality of 'terminal sedation'. As the physicians' views indicate, although double effect reasoning may be a powerful tool for philosophically inclined ethicists, it can be less useful in the clinic where the hegemony of empiricism and the tragic realities of human suffering have the capacity to relegate even the most 'tried and true' theories to irrelevance.

Obviously, any attempt to resolve the difficulties of distinguishing 'terminal sedation' from euthanasia will be successful only to the degree that it incorporates helpful ways of dealing with these problematic elements. With this in mind, selections from the work of the French philosopher, Paul Ricoeur (1913-2005), will be used to attempt a resolution of these difficulties. Ricoeur's work has been chosen because it permits reflection on all the levels from ontology and epistemology to clinical practice. Even more importantly, Ricoeur's work allows us to face squarely two crucial points that are often either entirely forgotten, or dismissed far too quickly in the debate about whether double effect reasoning still has the capacity to facilitate a distinction between 'terminal sedation' and euthanasia. Firstly, Ricoeur stresses that we have to choose between absolute knowledge and hermeneutics (or interpretation), and that the impossibility of absolute knowledge creates "insurmountable and inescapable" conflicts of interpretation (Ricoeur 1981: 193). In this sense, the current difficulties involved in distinguishing 'terminal sedation' from euthanasia by means of double effect reasoning do not constitute a shocking crisis, but rather, a more or less normal conflict of interpretations in response to which we can hopefully learn to generate more consensus and less tension between universals and particulars. Secondly, we cannot escape the fact that there will always be multiple readings of a text. As Ricoeur says,

Whereas spoken discourse is addressed to someone who is determined in advance by the dialogical situation ... a written text is addressed to an unknown reader and potentially to whoever knows how to read ... A work also creates its public. In this way it enlarges the circle of communication and properly initiates new modes of communication ... It is part of the meaning of a text to be open to an indefinite number of readers and, therefore, of interpretations. This opportunity for multiple readings is the dialectical counterpart of the semantic autonomy of the text. It follows that the problem of the appropriation of the meaning of the text becomes as paradoxical as that of the authorship. The right of the reader and the right of the text converge in an important struggle that generates the whole dynamic of interpretation. Hermeneutics begins where dialogue ends (Ricoeur 1976: 31-32).

It will be the task of this thesis to illustrate how Ricoeur's hermeneutics can improve our use of double effect reasoning to effect meaningful distinctions between 'terminal sedation' and euthanasia. Since any text is subject to multiple readings, and the vast literature concerning double effect reasoning spans eight centuries and several disciplines, there is no question that the hermeneutical challenge involved in the continued use of this type of reasoning is quite daunting. However, this thesis will at least represent a significant contribution to the work involved in meeting this challenge. Although this thesis is not the first to utilize the hermeneutics of Paul Ricoeur to facilitate ethical reflection regarding terminal sedation (see Murphy 2001), it is seemingly the first thesis to do so for the task stated above. The first two chapters will illustrate existing conflicts of interpretation that surround the use of double effect reasoning to distinguish between 'terminal sedation' and euthanasia. The purpose of these two chapters is not to provide exhaustive analyses of all the existing conflicts of interpretation surrounding use of double effect reasoning, but rather to provide enough illustrations to facilitate a robust utilization of Ricoeur's hermeneutics. Chapter one will describe 'terminal sedation' fully, and depict conflicts of interpretation as they are found in a fictionalized case, in the North American clinical literature on 'terminal sedation', in North American legal/public policy discourse from within the English common-law tradition, and within the domains of Philosophy and Theology. The clinical and legal sources have been almost exclusively limited to the North American context and the English common-law context primarily because that is the context out of which the fictionalized case arose. One important exception has been the inclusion of the work of Dr. Tatsuya Morita from Japan because he is, to my knowledge, the most prolific researcher and author of analyses of terminal sedation from a palliative care perspective. In order to set the stage for chapter two, use of the works of philosophers and theologians in the first chapter will be limited to that necessary for the provision of an overview of the development and problematic use of double effect reasoning within the context of Catholic moral theology, and pertinent parts of the larger history of philosophy and philosophical perspectives on bioethics. Chapter two will provide a more in-depth

discussion of the conflicts of interpretation surrounding the use of double effect reasoning through an examination of selected works by British philosopher, Elizabeth Anscombe (1919-2001); Canadian philosopher, Joseph Boyle (1942-); American Jesuit theologian, Richard McCormick (1922-2000); American philosopher and medievalist, Christopher Kaczor (1969-); and American Franciscan philosopher and physician, Daniel Sulmasy (1956-). These authors have been chosen because they represent a continuum from veteran scholars to younger scholars and from locations in academia predominantly to prominence in the clinic and within healthcare journals. All of these thinkers are Catholic, but most have had significant experience participating in dialogue about double effect reasoning outside of the Catholic context. Most importantly, it was Elizabeth Anscombe who introduced double effect reasoning to so-called secular philosophy. Chapter three will present the hermeneutics of Paul Ricoeur with a special focus on the way in which Ricoeur reconciles universals and particulars through his hermeneutic circles. Finally, the fourth chapter will demonstrate how Ricoeur's hermeneutic reconciliation of universals and particulars can improve our use of double effect reasoning to effect meaningful distinctions between 'terminal sedation' and euthanasia.

“ ... we say to the indecisive, *Begin at the beginning, as if beginning were the clearly visible point of a loosely wound thread and all we had to do was to keep pulling until we reached the other end, and as if, between the former and the latter, we had held in our hands a smooth, continuous thread with no knots to untie, no snarls to untangle, a complete impossibility in the life of a skein, or indeed, ... in the skein of life ...*”
(Saramago 2002: 56)

Chapter 1. ‘Terminal Sedation’, Double Effect Reasoning and Conflicts of Interpretation

1.1. Introduction

Already, the multi-layered tension between universals and particulars related to use of double effect reasoning has been identified as a tension between the universally applicable concepts within the reasoning (e.g., ‘good’, ‘bad’, ‘intention’, ‘cause and effect’, ‘proportionality’), and the particularities involved in specific instances where the reasoning is used to distinguish between ‘terminal sedation’ and euthanasia. In Ricoeurian terms, this tension represents an example of the “insurmountable and inescapable” conflicts of interpretation created by the impossibility of absolute knowledge (Ricoeur 1981: 193). In this chapter, our goal will be to begin the task of illustrating this tension or this conflict of interpretations as fully as possible, and to show that it is in fact, a complex, interdisciplinary problem that extends far beyond the discipline of Catholic theology wherein double effect reasoning first originated. To meet this goal, the tension will be examined from four different perspectives. Initially, a fictionalized case will be presented to illustrate the conflict of interpretations that is often manifested within ethics consultations concerning ‘terminal sedation’. Secondly, we will examine primarily the North American clinical literature on ‘terminal sedation’ in order to reveal that the bedside case is actually a microcosm of the larger clinical context. Thirdly, we will survey North American legal/public policy discourse within the English common-law tradition. Within this survey, important foci will include the problematic relationship between *mens rea* and *actus reus*, and recent Canadian and American case law (i.e., *Rodriguez v. British Columbia [Attorney General]*, *Washington v. Glucksberg*, and *Vacco v. Quill*) illustrative of the universalist-particularist tensions surrounding use of double effect reasoning for the

making of legal distinctions such as those between ‘terminal sedation’ and euthanasia. Finally, in order to set the stage for the second chapter, we will provide an overview of the development and problematic use of double effect reasoning within the context of Catholic moral theology, and pertinent parts of the larger history of philosophy and philosophical perspectives on bioethics.

1.2. Conflicts at the Bedside (A fictionalized composite of real cases)

As a clinical ethicist, I was asked to participate in a meeting with the family of a capable, elderly patient and a healthcare team. The question at issue was whether this terminally ill and imminently dying patient should be given ‘terminal sedation’. Since all attempts to control the patient’s obvious pain had been unsuccessful, the physician had suggested ‘terminal sedation’ and after some discussion, the patient had agreed that it was a good idea and had given consent. A meeting with my participation was suggested because family members were not totally in agreement with this plan. At the meeting, while some family members and the healthcare team understood the plan and had accepted the patient’s wishes, other family members were uncomfortable. They wondered whether ‘terminal sedation’ was truly what the patient wanted, whether it was legitimate legally and morally, and whether there were, indeed, no other available options. As the meeting unfolded, a family member who was a lawyer asked all of us this question: If you sedate [the patient] to unconsciousness and [the patient] dies fairly soon after, what is the difference between what you will have done and what Dr. Kevorkian does? The physician quickly outlined the difference between the means used by Dr. Kevorkian and those being proposed by the team; for example, whereas Dr. Kevorkian utilizes fatal doses of medication, the team would only propose or use treatments or the withholding of treatments in keeping with patient wishes and approved palliative care. Although the lawyer understood the doctor’s explanation, the lawyer was not entirely satisfied by it and all eyes turned toward me. I

verified the physician's response, but I also began to discuss the crucially important subject of the vast difference between Dr. Kevorkian's intention -- that of assisting someone to take their own life -- and the intention of the healthcare team -- that of achieving optimal pain control in accordance with accepted regimens and patients' wishes.

After my explanation, the lawyer seemed more satisfied, but added that not all patients react the same to the same medication and that the possible side effects of the proposed medications (e.g., respiratory depression) could in fact, shorten the patient's life. Although the physician acknowledged that in the abstract, there is no maximum, safe dose of morphine or the proposed sedatives, she stressed that the dosages of morphine and the other medications would be titrated carefully to achieve only the desired level of sedation, and to avoid side effects like respiratory depression. Using double effect reasoning, the traditional theoretical way to distinguish between pain control and euthanasia, I stressed that although possible side effects (i.e., the possibility of hastening death) could be foreseen, they were certainly not intended, and the only intention was pain control. Although the lawyer was convinced in the end, I came away from the meeting with nagging doubts about the foresight/intention distinction, and the physician re-affirmed a previously held conviction that cases such as this were among the most troubling in her daily practice. I also wondered if there was a way to strengthen the case I had made during the meeting in preparation for possible future consultations. For example, I wondered if there was a way to create a better connection between my own theoretical approach to a distinction between 'terminal sedation' and euthanasia, and the physician's strictly empirical approach reliant upon connections between desired effects and dosages. After all, I knew that double effect reasoning combines an emphasis on universals such as 'good' and 'intention', as well as an emphasis on the empirical particulars of actions (e.g., circumstances and consequences).

1.3. Conflicts in the Clinical Literature

Although consensus regarding a moral distinction between ‘terminal sedation’ and euthanasia requires at the very least, consensus concerning the definition of ‘terminal sedation’, no such consensus exists in the literature. In fact, little is known about this practice, and what we do know derives mostly from quantitative analyses, the vast majority of which are retrospective studies reliant upon more or less standardized chart notes, or the memory of survey participants. Since the first appearance of ‘terminal sedation’ in the literature (Enck 1991), ‘terminal sedation’ has been known by many different names and definitions, and as one author suggests, this linguistic “ambiguity” or “quagmire” only “discloses similar moral ambiguity (and lack of clarity) surrounding the clinical practice” (Jackson 2002). Some terms stress only the empirical aspects of the practice, for example, **sedation in the management of refractory (or uncontrolled) symptoms** (Cherny and Portenoy 1994; Fainsinger 1998b; Chiu, Hu, Lue et al. 2001), **sedation for refractory symptoms at the end of life** (Shaiova 1998), **sedation for intractable distress in the dying patient (SID Pat)** (Krakauer, Penson, Truog et al. 2000), or **sedation for the relief of refractory symptoms in the imminently dying** (Levy and Cohen 2005). Other terms stress idealist or normative elements, for example, **artificial sleep** (Canada 1995: 34), **controlled sedation** (Salacz and Weissman 2005), **double effect euthanasia** (Association 1992), **slow euthanasia** (Billings and Block 1996), and **psychological euthanasia** (Fondras 1996). Still others associate the sedation with a level of care, thereby giving the sedation a mixture of empirical and normative, but still ambiguous connotations, for example, **palliative sedation** (Rousseau 2000; Gauthier 2001; Braun, Hagen, and Clark 2003; Cowan and Palmer 2002; Lo and Rubenfeld 2005; Rousseau 2005; Schuman, Lynch, and Abrahm 2005), and **palliative sedation therapy** (Morita, Tsuneto, and Yasuo 2001; Morita, Akechi, Sugawara et al. 2002; Morita, Hirai, and Okazaki 2002; Morita, Hirai, Akechi et al. 2003; Morita, Bito, Kurihara et al. 2005).

A few authors (Hardy 2000; Morita, Akechi, Sugawara et al. 2002; Quill 2000; Levy and Cohen 2005; Morita, Bito, Kurihara et al. 2005; Muller-Busch, Andres, and Jehser 2003), differentiate temporary from continuous sedation, and terminal sedation from sedation used in trauma, burn, or post-surgical care. In the context of palliative care, Morita's classifications or categories of sedation are intended "to handle" the persistent definitional inconsistencies (Morita, Tsuneto, and Shima 2002), and they are the most comprehensive categories in the literature: "palliative care without intentional sedation, psychiatric treatment without intentional sedation, mild sedation with opioids, mild sedation with psychotropics, intermittent-deep sedation, continuous-deep sedation, and PAS/euthanasia" (Morita, Akechi, Sugawara et al. 2002: 759). Published attempts to achieve consensus within a group of caregivers and stakeholders regarding a definition of 'terminal (or 'palliative') sedation' are rare, and thus far to my knowledge, there are only six articles that describe the achievement of some consensus (Chater, Viola, Paterson et al. 1998; Hawryluck, Harvey, Lemieux-Charles et al. 2002; Braun, Hagen, and Clark 2003; Morita, Bito, Kurihara et al. 2005; Schuman, Lynch, and Abraham 2005; Quill 2000). For example, Chater et al. proposed the following definition to participants in their international study (respondents included 51 physicians and 2 nurses), and 40% of respondents agreed to it without reservations:

'Terminal sedation' is defined as the *intention* of deliberately inducing and maintaining deep sleep, but *not* deliberately causing death in very specific circumstances. These are: 1) for the relief of one or more intractable symptoms when all other possible interventions have failed and the patient is perceived to be close to death, or 2) for the relief of profound anguish (possibly spiritual) that is not amenable to spiritual, psychological, or other interventions, and the patient is perceived to be close to death (Chater, Viola, Paterson et al. 1998: 258).

The association of the word 'terminal' with 'sedation' has been problematic from the beginning because it is difficult, if not impossible to determine whether a patient has died because of their illness or because of the sedation (Chater, Viola, Paterson et al. 1998; Fainsinger 1998b; Roy 1990). Also, as indicated in a recent article, "*Terminal sedation*

was one of the first labels for this intervention, but has been abandoned due to its lack of clarity with respect to whether ‘terminal’ referred to the patient or to the goal of sedation” (Levy and Cohen 2005; see also Cowan and Palmer 2002). The notion of ‘refractory’ symptoms also presents difficulties because what is ‘refractory’ or ‘intractable’ to one healthcare team working in one context may not be ‘refractory’ to others. Important variables in this regard include caregivers’ attitudes and skills (MacDonald, Ayoub, Farley et al. 2002; MacDonald, Findlay, Bruera et al. 1997; Morita 2004a), the deleterious affects of burnout on caregivers (Morita, Akechi, Sugawara et al. 2002), and most importantly, the serious lack of palliative care resources. In Canada, for example, “it is estimated that [only] five per cent of dying Canadians receive integrated, interdisciplinary palliative care” (Mount 2001: 74). Whether symptoms are ‘refractory’ is particularly difficult to assess when they are existential rather than physical in nature (Cherny and Portenoy 1994; Cowan and Walsh 2001; Morita, Tsunoda, Inoue et al. 2000; Rousseau 2000, 2001; Shaiova 1998; Morita 2004b; Rousseau 2005; Lanuke, Fainsinger, deMoissac et al. 2003; Davis and Ford 2005; Taylor and McCann 2005). One author claims that “these cases really are among the most difficult and they skirt the distinction between assisted death (euthanasia and assisted suicide) and appropriate sedation for refractory symptoms at the end of life” (Cherny 1998: 405). Referring to the difficulties surrounding both the proportionality requirement of double effect reasoning and sedation for existential suffering, Jansen and Sulmasy say,

Reasonable clinicians will disagree about what constitutes a proportionate reason, but the need to treat existential suffering clearly is not sufficient. If it were, then it would be ethically and medically appropriate to terminally sedate a patient with no underlying physiologic condition (Jansen and Sulmasy 2002c: 847).

On the other ‘side’, Morita, a cautious advocate of sedation for existential suffering, offers the following argument based on the proportionality requirement of double effect reasoning:

The chief arguments [e.g., Sulmasy's] against ethical appraisal of sedation for psychological reasons is that intensity of psycho-existential suffering does not always mean patients are imminently dying (i.e., patients are likely to survive longer if sedation is not performed), and thus physicians cannot maintain that patients' shortened survival is only foreseen (not intended). On the other hand, some specialists [e.g., Morita and Rousseau] believe sedation for intolerable and refractory psycho-existential suffering could be ethically approved in selected situations under the principle of proportionality and autonomy. The principle of proportionality requires the appropriate balance between harmful and beneficial effects: the possibility of shortening patients' lives and decreased consciousness should be proportional to the intensity of patient suffering, patients' physical condition (low possibility of symptom relief due to inadequate time), and refractoriness of the suffering. The principle of autonomy requires patient wish[es] for sedation. To justify sedation for psycho-existential suffering, therefore, poor patient condition, refractory nature of suffering, and explicit wishes for sedation of patients is important (Morita 2004b: 447).

Ambiguity and controversy has also surrounded the reported prevalence of 'terminal sedation'. If we isolate the peculiarities of 1% (Fainsinger 1998b) and 89% (Thorns and Sykes 2002), the bulk of published reports indicate that between 16% and 52.5% of patients studied have received 'terminal sedation' (Chater, Viola, Paterson et al. 1998; Coyle, Adelhardt, Foley et al. 1990; Fainsinger 1998a; Fainsinger and Bruera 1992; Fainsinger, Miller, Bruera et al. 1991; Fainsinger, Waller, Bercovici et al. 2000; Greene and Davis 1991; Lichter and Hunt 1990; Morita, Inoue, and Chihara 1996; Morita, Tsunoda, Inoue et al. 1999, 2000; Morita, Akechi, Sugawara et al. 2002; McIver, Walsh, and Nelson 1994; Stone, Phillips, Spruyt et al. 1997; Twycross 1993; Ventafridda, Ripamonti, De Conno et al. 1990; Cowan and Walsh 2001; Kohara, Ueoka, Takeyama et al. 2005; Lanuke, Fainsinger, deMoissac et al. 2003; Morita, Bito, Kurihara et al. 2005; Muller-Busch, Andres, and Jehser 2003; Rietjens, van der Heide, Vrakking et al. 2004; Sykes and Thorns 2003; Chiu, Hu, Lue et al. 2001). Several factors have been proposed to account for these wide-ranging percentages. Most researchers discuss the fact that prevalence percentages will remain wide-ranging until there is greater consensus regarding pertinent definitions of sedation. Also, researchers have divergent interests. For example, while most researchers

emphasize the percentage of patients receiving sedation, some are more interested in the percentage of doctors ordering sedation (Kaldjian, Jekel, Bernene et al. 2004; Kaldjian, Wu, Kirkpatrick et al. 2004; Rietjens, van der Heide, Vrakking et al. 2004). Regarding the influence of differences between physicians, Craig suggests that “individual physicians are likely to have different thresholds for intervention. Treatment may also be influenced by factors such as the stoicism and wishes of the patient” (Craig 2002: 15). In a study entitled, *Differences in Physician-Reported Practice in Palliative Sedation Therapy*, Morita concluded that variance in sedation rates was

significantly associated with a physician-perceived necessity for clear consciousness for a good death, [physicians’] belief that sedation often shortens patient life, availability of a nurse specializing in cancer/palliative care, methods for diagnosing refractory symptoms, priority of intermittent or continuous sedation, and medication preference for phenobarbitones (Morita 2004a: 590).

Greater consensus exists regarding the symptoms for which ‘terminal sedation’ is indicated and the most typical drugs. The most typical refractory or intractable symptoms include pain, dyspnea (breathing difficulties), delirium, terminal restlessness or agitation, nausea/vomiting, and myoclonus/convulsion. The most commonly used drugs are Midazolam (a Benzodiazepine), Methotrimeprazine (a Neuroleptic), and Lorazepam (a Benzodiazepine), but other drugs include opioids (e.g., Morphine and Dilaudid), anti-psychotics, barbiturates (e.g., Phenobarbital), and general anaesthetic agents such as Propofol and Ketamine (Chater, Viola, Paterson et al. 1998; Cherny and Portenoy 1994; Cowan and Palmer 2002; Levy and Cohen 2005; Morita, Bito, Kurihara et al. 2005). Among these drugs, the barbiturates and general anaesthetic agents are the most controversial because they are not analgesics. Barbiturates merit special attention because they have been used to achieve capital punishment, “they are the drugs of choice in Holland for performing euthanasia” (Krakauer, Penson, Truog et al. 2000: 57), they have been recommended in books such as *Final Exit*, and they have been used in reported cases of assisted suicide in North America (Truog, Berde, Mitchell et al. 1992). Great controversy

also surrounds the use of neuromuscular blockers (e.g., Pancuronium or Succinylcholine) to achieve respiratory muscle paralysis in cases of 'terminal sedation' accompanying ventilator withdrawal. The problem in these cases is that drugs typically used to achieve 'terminal sedation' do not usually reduce the 'gaspings respirations' that often follow ventilator withdrawal. Here again, double effect reasoning has been used with contradictory results: for example, two authors use it to support the use of neuromuscular blockers (Perkin and Resnik 2002); another uses it to argue that the use of neuromuscular blockers is not ethically permissible (Hawryluck 2002).

There are several ethical problems associated with 'terminal sedation' apart from, but pertinent to the issue of whether this sedation can be distinguished from euthanasia. Two studies (Chater, Viola; Paterson et al. 1998; Morita, Inoue, and Chihara 1996) describe problems related to insufficient consent, for example, Chater et al. report that only "50% of patients had a major involvement in the decision process, 27% had a minor involvement and 22% had not involvement at all. [Also, only] 69% of families had a major involvement in the decision process" (Chater, Viola, Paterson et al. 1998: 260). Substitute decision-making can also present serious difficulties in cases of sedation. Not unlike substitute decision-making concerning other kinds of treatments, 'terminal sedation' decisions often involve the reality that "it is the family, the team, the institution, risk management, or the law that is, by administering it to the patient, in fact, 'being treated'" (Loewy 2001: 331). Furthermore, in cases where 'terminal sedation' is indicated for children, substitute decision-making can be even more difficult. As Collins explains, "It is known ... that there is frequently discordance between child and observer reports of pain, with parents frequently underestimating pain severity" (Collins 1998: 259). In addition, "caught up in their own grief and fear of loss, parents may be limited in the freedom with which they can make these decisions. The need to do everything to prolong the life of the child is a powerful force" (Kenny and Frager 1996: 40). Substitute decision-making can be especially difficult when the question arises as to whether a sedated dying patient should be awakened for purposes of communication with significant others in cases of intermittent

sedation, or post-operatively when an unsuccessful operation necessitates a withdrawal of treatment decision (Batchelor, Jenal, Kapadia et al. 2003). The ethics of communication in this type of situation is complicated by the fact that “this ... is a potentially unstable situation, and the possibility that lucidity may not be promptly restored or that death may ensue as doses are again escalated should be explained to both the patient [if possible] and family” (Cherny and Portenoy 1994: 36).

Professional burn-out can have serious implications for patients, especially those who present difficult challenges for caregivers who might be tempted to view ‘terminal sedation’ as an easy solution. For example, in his nationwide survey of 697 physicians in Japan, Morita et al. found “that those physicians who were less confident with psychologic care and demonstrated higher levels of emotional exhaustion were more likely to choose continuous-deep sedation for patients with refractory physical and psychologic distress” (Morita, Akechi, Sugawara et al. 2002: 763). Needless to say, if ‘terminal sedation’ is being given in situations where other options exist and should be tried, than it becomes more difficult to distinguish that sedation from euthanasia by means of double effect reasoning or any other kind. Physicians’ fears comprise another important professional problem that can preclude helpful discussion regarding this distinction. For example, in a 1994 issue of the *Journal of Palliative Care*, a Canadian physician described a troubling case of ‘terminal sedation’ and its justification by means of double effect reasoning (Mount and Hamilton 1994). Two years later in the same journal, an article appeared in which two American physicians, who found double effect reasoning unconvincing, defined the 1994 case and others like it as *slow euthanasia* (Billings and Block 1996).

Although debate was certainly fostered by the publication of the Americans’ article along with others that defended the position taken by the original 1994 article (Brody 1996; Dickens 1996; Mount 1996; Portenoy 1996), the main point for our purposes is that *Slow Euthanasia* might never have been published at all were it not for the tenacity of the *Journal’s* editor, Dr. David Roy. As Roy explains in his editorial, “I was advised ... quite

outside the peer-review process, not to publish this article ... with or without commentaries” (Roy 1996: 3). And why was this ‘advice’ given? Roy says, “the physician’s ‘give others a chance to talk’ can be quite exacting, particularly when these others want to say publicly what some other people do not want to hear said at all” (Roy 1996: 3). In the paragraphs that follow, Roy counters physicians’ fears by outlining the basic framework of “the ethics of euthanasia discourse,” the logic of which involves open, public discussion of “matters of fact,” “matters of meaning,” and “matters of belief” (Roy 1996: 4-5). It was the need to reconcile these “matters” that prompted the development of double effect reasoning in the first place, but the degree to which that reconciliation can happen today is a debatable question as the subsequent discussion will reveal.

In the clinical literature, discussions of the actual conditions of double effect reasoning can be divided into two types: articles featuring more or less theoretical discussion of the conditions, and in more recent years, clinical practice guidelines that emphasize practical dimensions of the conditions and their fulfillment within professional practice. We will survey the more theoretical articles first and subsequently, the clinical practice guidelines. The first condition of double effect reasoning, requiring that the act be good or neutral, presumes universally applicable notions of ‘good’, ‘bad’, and ‘neutral’. In the case of end-of-life issues, the first condition requires that the proposed act not involve ‘murder’. Since there is neither widespread agreement about the definition of such universals today, nor much awareness of what they have meant throughout the history of double effect reasoning, controversy reigns within the few articles in which this condition is actually discussed. For example, Gauthier explains correctly that “the first condition ... cannot be determined by the principle of double effect [i.e., by the principle alone as it is typically articulated today]” (Gauthier 2001: 45). But in an effort “to avoid importing a bias in favor of or against an act at the outset,” Gauthier recommends that we “begin with a simple physical description, without reference to intention or effects” (Gauthier 2001: 45). One could ask whether it is even possible to achieve “a simple physical description” of an act without the influence of some prior definitions of ‘good’, ‘bad’ and ‘neutral’, and

certainly, the first condition of double effect reasoning requires the use of prior definitions of this kind. In fact, Gauthier herself defines “a morally neutral act” as one that “can be either good or bad, depending upon its context” (Gauthier 2001: 45). For example, the context of “lingering in pain, particularly if death is sought by the patient him- or herself,” is “exactly what makes the effect, the relief of suffering, good [e.g., in cases of ‘terminal sedation’ or active voluntary euthanasia]” (Gauthier 2001: 46). From this perspective wherein the context determines the content of ‘good’ and ‘bad’, Gauthier questions “whether the effect [i.e., the death of the patient] initially identified as ‘bad’ [i.e., in theory as defined by the first condition] really is a bad effect” (Gauthier 2001: 46).

In a similar vein, Quill argues that “the absolute prohibition against deliberately taking human life” is problematic because it “originated in the context of a particular religious tradition” (Quill 1997: 1770). In Quill’s view, American society now incorporates many different traditions, and medicine “must accommodate” them, even those “persons and groups [who] reject the position that death should never be intentionally hastened when unrelievable suffering is extreme and death is desired by the patient” (Quill 1997: 1770). For Quill and his like-minded colleagues, double effect reasoning is not credible because “such religious beliefs should not determine public policy in a pluralistic society like our own” (Quill, Lo, and Brock 1998: 1066). In addition, “there is enormous subjectivity, variation, and controversy in how the doctrine is used and understood, making it ill-suited as a basis for public policy in a secular society” (Quill, Lo, and Brock 1998: 1067). In what follows, Sulmasy and Pellegrino vigorously respond to these criticisms:

Quill et al suggest that among the ‘shortcomings’ of the rule of double effect as a guideline for medical morality in a pluralistic society is the fact that ‘the rule originated in the context of a particular religious tradition’. This is a very odd position. Should the commonly held position that stealing is morally wrong be rejected simply because it can be found (Exodus 20: 15) in the commandments of a particular religious tradition? The religious origins of a moral principle or rule should not preclude its discussion in civil society ... An exhortation to exclude such rules and principles in the name of tolerance seems itself highly intolerant. There is nothing about the rule of

double effect that is inherently religious. The fact that it was developed by theologians does not vitiate the fact that it might be morally true. Nothing about the rule presumes any knowledge of scripture or the teachings of any religion. All that is required is a belief that certain actions are absolutely morally prohibited, or, more controversially, at least a belief that consequences are not the sole determinants of the morality of an action ... A logically rigorous argument against the rule of double effect would deal with the rule on its own terms (Sulmasy and Pellegrino 1999: 548-549).

Sulmasy's view is problematic for at least three reasons. It begs the epistemological question of whether we can and how we should decide that anything is "morally true" and "that certain actions are absolutely morally prohibited." Secondly, it leaves unanswered the urgent question of how matters of particular belief, pluralism and public policy should be related. Finally, Sulmasy's claim that "nothing about the rule presumes any knowledge of scripture or the teachings of any religion" is disingenuous; it is only true if we completely ignore the original context of this reasoning, the conflict of interpretations within which it has become embroiled, and the stand that Sulmasy has taken within this conflict. The latter will be examined in-depth in the second chapter.

The second condition, requiring that the agent intend only the good effect, has provoked great controversy in the literature because there is tension between 'intention' as a universally applicable concept, and intentions as held by particular persons within particular contexts. For example, as indicated in the Introduction, Quill has challenged the adequacy of a theoretical or universally applicable notion of "clear and distinct" intentions in the face of clinical realities wherein particular physicians may have more than one intention at any given time, and where "the difference between terminal sedation and euthanasia ... is paper thin, requiring a highly intellectualized analysis and presentation of the physician's intentions" (Quill 1996: 210-211). Similarly, another author says, "The area is problematic because our intent may certainly be largely opaque to all except ourselves (and perhaps even to ourselves)" (Dunphy 1998: 211). Even in situations where health care professionals understand the concept of intent, one author emphasizes that "comprehension of the intent of sedation in advanced illness by patients and families [i.e.,

typically under significant emotional stress] may be difficult” (Barreth, Fainsinger, Oneschuk et al. 2003: 217). Some authors ask why we would focus on intent rather than on outcome: “Why not accept the patient’s request to die comfortably, and prescribe a regimen ... that assures this outcome in a humane fashion and according to the patient’s wishes?” (Billings and Block 1996: 25). From a legal perspective, this focus on outcomes is quite problematic as the following response from a legal expert makes clear: “They [i.e., Billings and Block] apply an outcome-oriented test that simply links a physician’s use of medications with their inevitable effect ‘regardless of immediate intent’. However, intent is at the centre of ethical and legal judgments in this area” (Dickens 1996: 43). Several writers have indicated the dilemma in which they perceive themselves to be when on the one hand, death is not unwelcome in situations of great suffering, but on the other hand, death cannot be intended within the confines of double effect reasoning (Buchan and Tolle 1995; Cherny 1998; Hunt 1998; Quill 1996; Quill, Lo, and Brock 1997; Shaiova 1998; Morita, Tei, Inoue et al. 2003). Some physicians believe that there are fundamental incompatibilities between the concept of intention and the practice of medicine. For example, one group of authors ask “whether intentions or desires matter morally if the physician is practising good palliative care with compassion and empathy for the patient” (Sawyer, Williams, and Lowy 1993: 1464). Another physician goes further and critiques the “cross-cultural dissonance” created by “applying a legal and ethical principle to a medical practice”:

The problem is not with the principle itself but with its varied and unequal application, which in turn depends on the different perspectives, interpretations, and language of patients and physicians. By training, physicians are concerned with causation and consequence. Although intent is important in law, in medicine we assume our intent is to benefit patients, and it is otherwise of peripheral relevance in a scientific endeavour. Applying a legal and ethical principle to a medical practice produces cross-cultural dissonance. Physicians who think in terms of the pharmacologic effects of a drug view as hypocritical those who judge medical use on the basis of stated intent rather than consequence, whereas physicians philosophically steeped in the principle of double effect view as immoral

those who would give a drug for the purpose of its likely consequence (Preston 1998).

Given these problems regarding intention, it is not surprising that much confusion and many difficulties also surround the intention/foresight distinction. One author claims “that there is little intuitive moral difference between indirect killing, permitted by the doctrine, and direct killing forbidden by it” (Shaw 2002: 103). Another has the following worry: “In relation to sedation at the end of life, the descriptions ‘killing’, ... or ‘making comfortable’ may all be appended to exactly the same treatment decision. The danger is that the description becomes a sanitized euphemism omitting information of moral relevance” (Dunphy 1998: 210). Loewy claims that it “is, to say the least, disingenuous” to say that “the death of the patient is ‘not intended’” when “patients are intentionally kept asleep, their vital functions are deliberately not artificially supported, and they are allowed to die in comfort” (Loewy 2001: 331; see also Loewy 2004). He also argues that “at least in law, and I would reasonably hold the same true for ethics, one is responsible not only for what one has clearly intended, but also for what one could reasonably foresee” (Loewy 2001: 331). Although double effect reasoning “does not seek to evade” responsibility for both intention and foresight (Dunphy 1998: 211), there is confusion about this aspect in the literature as Loewy’s point illustrates. The possibility of self-deception is frequently cited as another serious problem surrounding the intention/foresight distinction. For example, “A law based on intention will influence clinicians so that they express their intentions in carefully-chosen terms, and maybe cause them to be less than honest” (Hunt 1998: 214). Similarly, Quill argues that when actions are justified by means of the intention/foresight distinction, “the potential for self-deception ... is substantial” (Quill 1996: 211). In other words, “doctors who refuse to abandon their patients must now act in secret or else learn how to hide their actions within the confines of the ‘double effect,’” (Quill 1996: 215).

In the clinical literature, the vast majority of clinicians supportive of the concept of intention and the intention/foresight distinction give the impression that if they state these concepts simply and emphatically enough, there should be no problems distinguishing

between euthanasia and terminal sedation. For example, “Treatment of pain is never a form of euthanasia. Its intent, its goal, and the conditions in which physicians and patients interact are directed to the management of symptoms” (Foley 1991: 291). Or, “We believe the distinction [between euthanasia and terminal sedation based on double effect reasoning] is critically important, ethically clear, and not at all subtle” (Mount 1996: 33). Similarly, “The provision of palliative care is truly guided by the principle of double effect, which is not some fabrication to shield the truth, but rather a highly useful ethical construct that can guide practice ... and reduce ... uncomfortable ambiguity in end-of-life care” (Portenoy 1996: 45). Integrity and sincerity are important in this view: “It is clear that the intent is to relieve symptoms ... the principle’s application relies on the integrity of the person and the sincerity of his or her intention. This last point is crucial to the distinction from assisted suicide or euthanasia” (Lesage and Latimer 1998: 263). And finally, “the invocation of [double effect reasoning] allows the patient and treating clinician to maintain an ethical equilibrium in this difficult situation,” the absence of which “may result in either the undertreatment of catastrophic symptoms or subsequent guilt and its morbid psychological sequelae” (Cherny and Portenoy 1994: 36).

A growing number of authors acknowledge and try to resolve the difficulties involved in the tension between intention as a universally applicable theoretical concept, and the assessment and understanding of particular intentions in particular situations. In the context of empirical research, for example, Morita attempts “to clarify the nature of terminal sedation compared to euthanasia by measuring patients’ status and medical interventions [e.g., volume of artificial hydration, doses and route of sedatives] before and after sedation rather than physician intent itself” (Morita, Tsunoda, Inoue et al. 1999: 22). In the ICU context, Hawryluck et al. propose careful documentation of the Intensivist’s intention in the chart, which would include “the patient’s medical condition and reasons leading to the initiation of palliative care; the goal, which is to relieve pain and suffering; the way pain and suffering will be evaluated; and the way in which drugs will be increased and why” (Hawryluck, Harvey, Lemieux-Charles et al. 2002). Perkin and Resnik suggest

that “intending implies much more than foreseeing or wanting” (Perkin and Resnik 2002: 165). In other words, intending involves both the creation of a plan of action, and the existence of appropriate feelings or concerns if the plan does not unfold according to one’s intentions. For example, the intention to bring about the death of a patient would involve the “[determination of] the dosage of morphine necessary to cause death, [deliberation] about [only that] action, and [administration] of that [lethal] dose” (Perkin and Resnik 2002: 165). Subsequent failure would invoke feelings and concerns non-existent in the situation wherein one only intends sedation. In other words, “if, for some reason, the patient does not die, the physician has some regret and takes some steps to remedy the situation” (e.g., smothering the patient) (Perkin and Resnik 2002: 165-166). In terms of attempts to resolve the difficulties associated with intention and the intention/foresight distinction considered from a clinical perspective, but outside of the genre of clinical practice guidelines, Sulmasy’s work is the most extensive, and it will be discussed in the second chapter.

The third and fourth conditions of double effect reasoning engage particularity to an even greater extent than the other conditions. The third condition requires that in cases of terminal sedation, the bad effect (i.e., shortened life or the death of the patient) not be the means to the good effect (i.e., pain control). Fulfilling this requirement presents difficulties in the context of terminal sedation because, as explained earlier, precise cause and effect determinations are not always possible in particular cases. One author interprets this condition as follows: “A further distinction lies in the fact that with sedation the untoward outcome is not necessary to achieve the desired beneficial outcome” (Mount 1996: 34). As several authors have argued (e.g., Craig 2002; Loewy 2001; Emanuel 2001), it is difficult to argue that death is not the means if sedation is accompanied by the withdrawal or withholding of nutrition and hydration. On the other hand, patients for whom terminal sedation is indicated have already in many cases, had nutrition and hydration withdrawn or withheld because it has been judged to be completely futile (e.g., in cases where no

swallowing reflex remains, and/or where physiological metabolism of nutrition and hydration has become impossible). For one author, this situation has several implications:

This point, serves to raise the fact that approaches involving withdrawal or withholding of life support should all be considered before and probably used in preference to terminal sedation. This in turn makes terminal sedation a rare necessity and of shorter duration. The person who has intractable suffering due to terminal illness is often no longer eating or drinking. Pushing fluids may only increase extravasation of fluids and worsen dyspnea or other suffering due to fluid overload at this point ... If withdrawal of life-sustaining interventions is inappropriate, terminal sedation is probably also inappropriate. If all these are already withheld, with due ethical reason, it will not be long before the condition ends the patient's life with or without terminal sedation (Emanuel 2001: 114-115).

As indicated in the Introduction, there is no consensus regarding the meaning of the fourth condition that requires proportionality between the proposed good and potential bad effects. Some authors define proportionality in terms of the rationale used to justify the risk to be taken for the proposed good (Beauchamp and Childress 2001; Cherny and Portenoy 1994; Dunphy 1998; Hawryluck and Harvey 2000; Mount 1996; Perkin and Resnik 2002; Quill 1997; Shaw 2002). For example, "The bad effect can be permitted only when there is 'proportionally grave reason' for it" (Quill 1997: 1768), or "There is a proportionately good reason for allowing the harmful effect" (Perkin and Resnik 2002: 166). Others define proportionality as a comparison of outcomes (Hawryluck and Harvey 2000; Kendall 2000; Lesage and Latimer 1998; Nuccetelli and Seay 2000; Quill 1997; Rousseau 2000, 2001). For example, "The good result (relief of suffering) must outweigh the untoward outcome (hastening death)" (Lesage and Latimer 1998: 263), or "the good effect must exceed or balance the bad effect" (Rousseau 2000: 1065). Ironically, the frequent emphasis on the titration of analgesics and sedatives to achieve only the desired effect best expresses the original meaning of proportionality within double effect reasoning, although it is never expressed as such in the literature.

As already indicated, in the clinical literature in recent years, articulation and discussion of the actual conditions of double effect reasoning has occurred predominantly within the context of clinical practice guidelines for ‘terminal sedation’ or ‘palliative sedation’. If we take as a generic example, the American Institute of Medicine’s definition of a clinical practice guideline, we discover that “clinical practice guidelines are systematically developed statements to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances” (Field and Lohr 1990: 38). To my knowledge, and fitting more or less within the aforementioned definition of a clinical practice guideline, there are ten clinical practice guidelines for ‘terminal sedation’ or ‘palliative sedation’ within, or closely associated with the palliative care context (Braun, Hagen, and Clark 2003; Cherny and Portenoy 1994; Cowan and Palmer 2002; Hawryluck, Harvey, Lemieux-Charles et al. 2002; Levy and Cohen 2005; Lo and Rubinfeld 2005; Morita, Bito, Kurihara et al. 2005; Quill 2000; Rousseau 2001; Schuman, Lynch, and Abrahm 2005; Authority 1999). Five out of the ten documents (Braun, Hagen, and Clark 2003; Hawryluck, Harvey, Lemieux-Charles et al. 2002; Morita, Bito, Kurihara et al. 2005; Quill 2000; Schuman, Lynch, and Abrahm 2005; Authority 1999) are consensus statements that have evolved out of consultation with a group of caregivers and in some cases, stakeholders of various kinds. Two of the consensus statements are Canadian efforts that originated in Calgary and Toronto respectively (Authority 1999; Braun, Hagen, and Clark 2003; Hawryluck, Harvey, Lemieux-Charles et al. 2002).

Apart from their use of double effect reasoning, all of these practice guidelines include several basic elements: recommended use of ‘terminal (or palliative) sedation’ only for refractory symptoms and the inclusion of criteria for distinguishing between difficult and refractory or intolerable symptoms, the vast majority of the criteria having been derived and evolved from Cherny & Portenoy’s seminal work (Cherny and Portenoy 1994); the requirement that patients have a terminal illness and be imminently dying, recommendations for suitable drugs, appropriate loading doses and titration monitoring; and an emphasis on and in many cases, suggestions for the optimal provision of informed

consent. Most of the guidelines include the need to have a clear do-not-resuscitate (DNR) order in place before ‘terminal sedation’ is initiated. Most of the guidelines also stress the need to have a discussion regarding the provision or non-provision of artificial nutrition and hydration while the patient is being sedated. Most of the guidelines emphasize the need to support patients’ significant others and involved staff members before, during, and after the use of ‘terminal sedation’. This emphasis is most pronounced and substantial in Morita’s guideline (Morita, Bito, Kurihara et al. 2005), perhaps because the guideline is preceded by two unique and valuable studies: *Family Experience With Palliative Sedation Therapy for Terminally Ill Cancer Patients* (Morita, Ikenaga, Adachi et al. 2004), and *Emotional Burden of Nurses in Palliative Sedation Therapy* (Morita, Miyashita, Kimura et al. 2004). Four of the guidelines sanction ‘terminal sedation’ for existential suffering (Cherny and Portenoy 1994; Rousseau 2001, 2003; Levy and Cohen 2005; Morita, Bito, Kurihara et al. 2005). One guideline falls short of sanctioning it fully, but includes the idea that ‘terminal sedation’ for existential suffering is “compelling” (Lo and Rubenfeld 2005). One guideline states explicitly that “These guidelines are most applicable for physical symptoms. The establishment of refractoriness and the role of palliative sedation for existential suffering is less clear and deserves further study” (Braun, Hagen, and Clark 2003: 347). Three of the guidelines do not explicitly address the suitability of ‘terminal sedation’ for existential symptoms (Cowan and Palmer 2002; Hawryluck, Harvey, Lemieux-Charles et al. 2002; Schuman, Lynch, and Abrahm 2005).

Explicit reference to, and use of double effect reasoning is present in six of the guidelines (Cherny and Portenoy 1994; Rousseau 2001; Cowan and Palmer 2002; Levy and Cohen 2005; Lo and Rubenfeld 2005; Hawryluck, Harvey, Lemieux-Charles et al. 2002). In one guideline, double effect reasoning is not used (Quill 2000). Although double effect reasoning is not referred to directly in three guidelines (Braun, Hagen, and Clark 2003; Morita, Bito, Kurihara et al. 2005; Schuman, Lynch, and Abrahm 2005), they in fact, rely heavily on the concepts of intention and proportionality within double effect reasoning. In two guidelines, double effect reasoning provides the “ethical validity” of ‘terminal

sedation' (Cherny and Portenoy 1994; Rousseau 2001). In one guideline, double effect reasoning is "used for ethical support" (Cowan and Palmer 2002). Double effect reasoning provides the "ethical and legal basis" for 'terminal sedation' in one guideline (Levy and Cohen 2005). In another, double effect reasoning is the "traditional justification for palliative sedation" (Lo and Rubenfeld 2005). Finally, the crucial importance of double effect reasoning is associated with its use to differentiate 'terminal sedation' and euthanasia in several guidelines (Rousseau 2001; Hawryluck, Harvey, Lemieux-Charles et al. 2002; Cowan and Palmer 2002; Lo and Rubenfeld 2005).

Not unlike the more theoretical discussion of double effect reasoning in the clinical literature, the clinical practice guidelines place less emphasis on the first and third conditions of double effect reasoning, and more emphasis on the second and fourth conditions concerning intention and proportionality. As we recall, the first condition of double effect reasoning, requiring that the act be good or neutral, presumes universally applicable notions of 'good', 'bad', and 'neutral'. From the more theoretical discussions, we recall that the problem with this condition is that the content of these universally applicable notions is so ideal, unknown, controversial, or so remote for people today that writers largely ignore this condition, or they provide their own content, typically by suggesting that context or outcomes determine the meaning of 'good', 'bad', and 'neutral'. We find more evidence of this problem within the clinical practice guidelines. In two guidelines, although the first condition is explicitly included, it is applied minimally and ambiguously to 'terminal sedation'. For example, although Rousseau states the first condition ("the nature of the act must be good or morally neutral and not intrinsically wrong" (Rousseau 2001: 152)), he does not define 'good', 'morally neutral', or 'intrinsically wrong', and he gives no application of this condition in the case of 'terminal sedation'. Similarly, although Cowan and Palmer tell us that "PS [palliative sedation] is felt by many to meet the requirements of the principle of double effect because 1) sedation even to unconsciousness is not immoral (morally neutral)" (Cowan and Palmer 2002), they do not define 'morally neutral'. In two guidelines, 'good', 'morally neutral', and 'bad' are

defined and applied in terms of positive or negative consequences or outcomes: for example, “the treatment is at least neutral (if not beneficial), but may have untoward as well as beneficial consequences [i.e., relief of suffering]” (Cherny and Portenoy 1994: 36), and “the treatment is positive in that it relieves the patient of refractory symptoms with the risk of hastening death ... [whereas] PAS and euthanasia are negative acts of harm that kill the patient as the only way to relieve refractory symptoms (Levy and Cohen 2005: 240). In another guideline, ‘morally wrong’ is determined by the context of intention: “First, the action itself (in this case administering opioids and sedatives), must not be morally wrong, independent of its consequences ... intentionally causing death is wrong” (Lo and Rubenfeld 2005: 1812).

As we recall, the third condition requires that in cases of ‘terminal sedation’, the bad effect (i.e., shortened life or the death of the patient) not be the means to the good effect (i.e., pain control). From the more theoretical discussions, we recall that the predominate approach to this condition was to assert that bad effects of ‘terminal sedation’ are not necessary to achieve the desired pain control. Likewise, in two clinical practice guidelines (Cherny and Portenoy 1994; Levy and Cohen 2005) the same assertion is made, for example, “death is not necessary to relieve the patient’s symptoms” (Levy and Cohen 2005). Both Rousseau and Lo and Rubenfeld (Lo and Rubenfeld 2005; Rousseau 2001) link the non-necessity of the bad effects with control of sedation through proper titration, and they further assert that this control differentiates ‘terminal sedation’ from euthanasia. For example, “the dose of sedative should be the lowest dose that achieves the goal of symptom relief. The initial dose should not be expected to suppress respiration to the point of carbon dioxide retention ... A lethal dose at the onset, which allows no possibility for symptoms to be relieved without the patient’s death, constitutes active euthanasia. Increases in dosage are permissible only if lower doses have been ineffective” (Lo and Rubenfeld 2005: 1812). In another guideline, the bad effect (i.e., shortened life or the death of the patient) is not the means to the good effect (i.e., pain control) insofar as the bad effect -- “death [--] ensues from the underlying illness” and therefore, sedation as a form of

palliative care is differentiated from euthanasia where death ensues from the pain control measures (Hawryluck, Harvey, Lemieux-Charles et al. 2002: 6). Similarly, Cowan and Palmer say, "As opposed to palliative sedation, euthanasia does not meet criteria for the principle of double effect because the intended effect (death), is a bad effect, and a bad effect (death) is the means for a good effect (symptom relief) ... [By contrast,] the means (use of a sedating medication [in palliative sedation]) to achieve the good is not bad" (Cowan and Palmer 2002: 244-245).

As we recall from the more theoretical discussion of intention and the intent/foresight distinction, the authors focused on the importance of documentation of intent in light of the potential for deception, and the tension between intention as a universally applicable theoretical concept, and the assessment and understanding of particular intentions in particular situations. Likewise, in the clinical practice guidelines, comprehensive documentation of intention in patients' charts is heavily stressed. Overall, there is an emphasis on the documentation of a plan of action before and during use of 'terminal sedation', including documentation of discussion of the plan of action with patients and/or substitute decision makers, and their consent for implementation of the plan. For example, in the Toronto guidelines, we find the following:

The intent of the physician administering narcotics and sedatives to the dying patient is the most crucial distinction between palliative care and assisted death (euthanasia/assisted suicide). In order to avoid any misinterpretations, Intensivists must clearly document, in the patient's chart, their intentions and justify their actions ... The intention of the Intensivist administering narcotics/sedatives to palliate dying patients can be assessed by careful documentation in the chart of: 1) the patient's medical condition and reasons leading to the initiation of palliative care, 2) the goal, which is to relieve pain and suffering, 3) the way pain and suffering will be evaluated, and 4) the way in which drugs will be increased and why ... The administration of drugs without any palliative benefit, e.g. lethal doses of potassium chloride or neuromuscular blockers, suggests an intent to euthanize/assist in the suicide of an individual patient (Hawryluck, Harvey, Lemieux-Charles et al. 2002: 6).

Shuman et al. include many of the above elements, but concerning the drugs used, they also suggest that “the physician’s orders must specify the: indication, loading dose, initial infusion rate, [and the] infusion rate range (mg/hr) and time interval for boluses and infusion rate adjustments” (Schuman, Lynch, and Abraham 2005: 674). In all the guidelines, the authors stress the need to document intention via specification of the titration of the sedation. For example,

The ethicist’s bright line between relieving symptoms and hastening death can become blurred at the bedside. An important way to keep the line clear is to document the specific clinical signs that justify increases in sedative medication. In conscious patients, the dosage may be increased if the patient reports unacceptable symptoms. If patients are unconscious or otherwise unable to report pain, physicians and nurses must assess whether patients are comfortable. The dosage should be increased if the patient appears restless or grimaces, withdraws from painful stimuli, has a furrowed brow, or develops hypertension [i.e., high blood pressure], tachycardia [i.e., a fast heart rate], tachypnea [i.e., high respiratory rate], or any other findings that could reasonably be interpreted as suffering (Lo and Rubenfeld 2005: 1813).

Similarly, Rousseau asserts that “increasing sedation without an overt clinical indication might imply the clinician is intending to hasten death and would ostensibly cross the line between [palliative sedation] and physician-assisted suicide or euthanasia” (Rousseau 2001: 153).

As an example of the guidelines’ stress on documenting informed decision making, Schuman et al. emphasize that “the implementing physician must document the discussion of risks and benefits of palliative sedation with the patient or ... with a surrogate decision maker. The discussion should include the option of being awakened from the sedation at a future time, if possible ... However, the patient and/or surrogate should be informed that the effort to awaken the patient may not be successful” (Schuman, Lynch, and Abraham 2005: 673). To ensure the inclusion of all the aforementioned elements of intent and its documentation, Morita et al. provides comprehensive flow charts concerning medical indications, confirmation of patient and surrogates’ wishes, and the initiation of sedation

(Morita, Bito, Kurihara et al. 2005: 721, 723, 725). Unique among the guidelines is Cowan and Palmer's "Palliative Sedation Checklist" which includes elements necessary before sedation is initiated (e.g., that the patient meets the selection criteria as confirmed by peer consultation), and elements that are necessary as the treatment plan is implemented (e.g., associated comfort care measures, drug selection and aspects of proper titration) (Cowan and Palmer 2002: 247).

Not unlike the more theoretical discussion of the fourth condition of double effect reasoning concerning proportionality, there is no consensus in the practice guidelines regarding the meaning of proportionality between the proposed good and potential bad effects. Some authors define proportionality in terms of proportionate reason or the rationale used to justify the risk to be taken for the proposed good. For example, "Adequate relief of unendurable symptoms is an appropriately compelling reason to place the patient at risk of the untoward outcome" (Cherny and Portenoy 1994: 36), or "relief of refractory symptoms is an appropriately compelling reason to put the patient at risk for hastened death. The fourth condition is also known as the concept of degree of proportionate worth" (Levy and Cohen 2005: 240), or "proportionality is established by the terminal condition of the patient, the urgent need to relieve suffering, and the consent of the patient or proxy" (Lo and Rubenfeld 2005: 1812). Others define proportionality as a comparison of outcomes. For example, "the intended good effects (relief of suffering) are proportionally greater than the bad effects (respiratory depression, hypotension, and death)" (Cowan and Palmer 2002: 244), or "Considering the patient conditions (intensity of suffering, lack of other methods for palliation, and expected survival), expected benefits (palliation of suffering), and expected harms (effects on the consciousness and survival), sedation should be the most proportional action among all possible choices" (Morita, Bito, Kurihara et al. 2005: 719). Again, the frequent emphasis on the titration of analgesics and sedatives to achieve only the desired effect best expresses the original meaning of proportionality (i.e., means/end proportion) within double effect reasoning, although it is not expressed as such within the practice guidelines. As we will see, the question of

whether proportionality means the requirement of proportionate reason, a balancing of effects, or means/end proportion, is not of importance to clinicians alone.

1.4. Conflicts in the Legal/Public Policy Literature

In the English common law tradition, double effect reasoning “was first recognized in a 1957 English case, *R. v. Adams*” in which “the jury deliberated for less than an hour before acquitting Dr. John Bodkin Adams ... of the murder of his 81-year-old dying patient” (Sneiderman 2002: 518). During his famous four-hour summation for the jury in this case, Mr Justice Devlin stated: “If the first purpose of medicine, the restoration of health, can no longer be achieved there is still much for a doctor to do, and he is entitled to do all that is proper and necessary to relieve pain and suffering, even if the measures he takes may incidentally shorten life” (Huxtable 2004: 63). As Sneiderman explains, “the law set forth in the *Adams* case provides the sole avenue of defence to the physician or nurse whose patient dies from a drug overdose” (Sneiderman 2002: 518). This defence has been extremely important in Canadian case law because the Criminal Code does not distinguish between culpable homicide (i.e., murder, manslaughter or infanticide) and palliative care pain control measures such as ‘terminal sedation’. Since the early 1980s, several Canadian law reform commission reports (Euthanasia, Aiding Suicide and Cessation of Treatment 1983; Some Aspects of Medical Treatment and Criminal Law 1986; Recodifying Criminal Law 1987; Gilmour 1996) have recommended that the Criminal Code be revised to ensure that palliative care pain control is explicitly exempted from the definition of culpable homicide. For example, a 1987 report recommends the inclusion of the following clause that would specify that the types of culpable homicide “do not apply to the administration of palliative care appropriate in the circumstances for the control or elimination of a person’s pain and suffering even if such care shortens his life expectancy, unless the patient refuses such care” (Recodifying Criminal Law 1987: 60). Unfortunately,

the Canadian Parliament has not yet acted upon recommendations such as this. In addition, although *Of Life and Death* recommended the development of national guidelines and standards for the provision of palliative care pain control, the result has been “egregious inaction” (Downie 2000). As a result, patients face the significant risk of undertreatment of their pain to the extent that caregivers hesitate to use sedation in response to the legal uncertainties.

In *Assisted Suicide: Canadian Perspectives*, Canadian lawyer Russell Savage explains that “for an act [or failure to act] to be criminal, it must have two components,” *actus reus* and *mens rea*: “the *actus reus* [i.e., the prohibited act] is the physical aspect of the action and the *mens rea* is the so-called ‘mental element’ ... sometimes referred to as the intentional aspect of the action” (Savage 2000: 76). Included in the *actus reus* is “all the external circumstances and consequences specified in the rule of law as constituting the forbidden situation”; if we consider murder, for example, “the *actus reus* of murder includes not only D’s killing of P, but also the fact that P is under the Queen’s peace, that P has not been sentenced to be hanged by D, that the killing is within English territorial (or other jurisdictions,” and so on (Williams 1961: 20).

By contrast, *mens rea* or the intentional aspect has both subjective and objective fault elements, both of which are defined by degrees (Roach 2000: 137-145). Included in the subjective element of *mens rea*, we find from the minimum to the maximal level, wilful blindness, recklessness, knowledge, and at the highest or maximal level -- intent, purpose of wilfulness. Recklessness “is found in the attitude of one who, aware that there is danger [or having the foresight] that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk” (Roach 2000: 143). There is an element of probability related to this concept of recklessness. In other words, “foresight merely of probability does not amount to intention,” however, “there is one situation where a consequence is deemed to be intended though it is not desired: this is where it is foreseen as substantially certain” (Williams 1961: 38,44). If we return to the example of pain

control, the relation between intent and recklessness can be described in this way: “if it is foreseen that the dosage is relatively certain to kill, then the *mens rea* requirement for murder has been met. It is, however, a different matter if the foreseeability is that the amount given, which is considered necessary ... might (but is not relatively certain to) kill. In that case, no crime is committed when the drug does in fact stop the patient’s breathing” (Sneiderman 2002: 519). Seemingly in cases such as this, double effect reasoning can provide a way to justify knowledgeable or informed risk-taking and to differentiate that from the higher level of intended murder. However, the use of double effect reasoning in law is just as controversial as it is in the clinical context and in law, the controversy over its use is situated within a larger debate about *mens rea* and its complex relationship to a plethora of prohibited actions. Although this larger debate is well beyond the scope of this thesis, two types of examples will be provided here, one from the classroom setting and others from recent Canadian and American case law.

In 1965, American law professor and then Director of the American Law Institute, Herbert Wechsler, gave a lecture at the University of Toronto entitled, *The Model Penal Code*, the name of the code prepared by his Institute for state legislatures to use in updating their criminal codes. After giving a general description of the *Code*, he proceeded to illustrate problematic issues, principally, *mens rea*. This discussion illustrates that the tension between intention as a universally applicable concept and as related to particular actions is not a new tension emanating from current discussions about issues such as euthanasia, and it is a tension that has provoked considerable angst and efforts to effect clarification within the legal community itself:

I turn first to the problem of *mens rea*, which in our jurisdictions, as in yours, is such a steady stream of litigation. **The law upon this subject is chaotic** [emphasis mine], as Mr. Justice Jackson of our Supreme court observed ..., when, ... he referred to ‘**the variety, disparity and confusion**’ of judicial definitions of ‘**the requisite but elusive mental element**’ in crimes [emphasis mine] ... The *Code* attempts to clarify this **cloudy area** [emphasis mine] by using four familiar concepts to define the mental

elements of culpability ... Those concepts are: purpose, knowledge, recklessness and negligence. In a statement of the minimum requirements of culpability, the Code provides that one may not be convicted of a crime 'unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offence'. This formulation recognizes, as you see, that the kind of culpability required for conviction may not only vary from crime to crime within these limits but also from one to another material element of a single offence -- meaning by material element an attribute of conduct that gives it its offensive quality ... Recklessness ... involves conscious risk creation. It resembles acting knowingly in that a state of awareness is involved, but the awareness is of risk, that is, of probability rather than certainty ... Since risk is indeterminate, however, it would normally be oppressive to hold an actor criminally liable whenever he knew that there was some risk that his conduct might prove to be of the kind forbidden ... Hence the *Code* requires that the risk thus consciously disregarded be 'substantial' and, moreover, that it be 'unjustifiable' ... A surgeon is not reckless in performing an operation merely for the reason that he knows it is very likely to be fatal: it may afford the patient's only chance (Friedland and Roach 1997: 510-511).

Apart from this classroom discussion of the problematic relationship between *mens rea* and *actus reus*, recent Canadian and American case law illustrates graphically the chaotic and conflicting approaches to intention, and the controversial use of double effect reasoning to relate action and intention meaningfully. In the Canadian *Rodriguez* case, Sue Rodriguez, who was suffering from amyotrophic lateral sclerosis (Lou Gehrig's Disease), sought court sanction for a physician's assistance in ending her life at the time of her choosing, when the ravages of her disease had become or would soon become unbearable. Taking her request all the way to the Supreme Court of Canada, she specifically asked that Section 241 (b) of the Criminal Code, which prohibits the giving of assistance to commit suicide, be declared invalid under three sections of the Canadian Charter of Rights and Freedoms: Section 7 concerning the right to life, Section 12 concerning the right not to be subjected to cruel and unusual punishment, and Section 15(1) regarding equality of treatment under the law (see the Appendix for full citations of relevant sections of the Charter). On September 30, 1993, the Supreme Court denied her request in a close 5-4 ruling (*Rodriguez v. British Columbia (Attorney General)* 1993). The views of Justices La

Forest, Sopinka, Gonthier, Iacobucci and Major comprised the majority with Sopinka speaking for them. Justices Lamer (the Chief Justice), L'Heureux-Dubé, Cory and McLachlin dissented.

The majority view (*Rodriguez v. British Columbia (Attorney General)* 1993: 520-523, 581-615) consisted of several key elements. Firstly, the liberty interests in s.7 of the Charter cannot be divorced from the concept of the sanctity of life (another 'universal'). Secondly, any deprivation of Sue Rodriguez's autonomy is not contrary to principles of fundamental justice because that justice requires the balancing of state and individual interests. Thirdly, Section 241(b) of the Criminal Code upholds State interests in protecting life and vulnerable persons. Fourthly, there is a societal consensus concerning respecting human life but not regarding decriminalizing physician-assisted suicide. Finally, the State's decriminalization of suicide was not an acceptance of suicide, but rather, recognition that the criminal law was not the appropriate tool for dealing with the reality of suicide attempts. Regarding s.12 of the Charter, the view of the majority was that Rodriguez was not being subject to any form of cruel and unusual punishment. Concerning the right to "equal protection and equal benefit of the law without discrimination" in s.15, Sopinka said that any infringement of this section is clearly justified under s.1, which stipulates that the State can set "reasonable limits" on rights and freedoms. He also said that attempts to create exceptions to Section 241(b) had been "unsatisfactory"; thus the Court was not willing to create exceptions for Rodriguez.

The dissenting judges' disagreements regarding the majority position were quite substantial. The longest dissent, given by Lamer (*Rodriguez v. British Columbia (Attorney General)* 1993: 524-526, 530-580) focused essentially on two issues. Firstly, Section 241(b) is over-inclusive in protecting the vulnerable; in other words, it protects even those who do not wish to be protected. Secondly, Section 241(b) impairs Rodriguez's equality rights unjustifiably. Justices L'Heureux-Dubé and McLachlin, dissenting together in one judgement (*Rodriguez v. British Columbia (Attorney General)* 1993: 523-524, 616-629),

dismissed the active/passive or act/omission distinction. In other words, regarding the distinction between allowing a ventilator to be withdrawn or withheld (legal) and actively taking someone's life or assisting someone to take their life (both illegal), Justice McLachlin (speaking for herself and L'Heureux-Dubé) said, "I cannot accept that it matters whether the act is 'passive' ... or 'active' ... The distinction, to borrow the language of the Law Reform Commission of Canada, 'is difficult to justify on grounds of logic alone' ... In short, it is arbitrary" (Rodriguez v. British Columbia (Attorney General) 1993: 624).

In the words spoken by Sopinka, the majority defended the active/passive distinction, not so much on the grounds of logic per se, but because in the House of Lords' decision in Airedale N.H.S. Trust v. Bland, Lord Goff said, " 'So to act is to cross the Rubicon which runs between on the one hand the care of the living patient and on the other hand euthanasia -- actively causing his death to avoid or to end his suffering ... It is true that the drawing of this distinction may lead to a charge of hypocrisy ... But the law does not feel able to authorise euthanasia ... for once euthanasia is recognised as lawful in [certain] circumstances, it is difficult to see any logical basis for excluding it in others' " (Rodriguez v. British Columbia (Attorney General) 1993: 599). From this defence of the distinction between 'passive' withdrawal of treatment and 'active' euthanasia, Sopinka proceeds to his explanation of the distinction between palliative care pain control and euthanasia/assisted suicide:

The administration of drugs designed for pain control in dosages which the physician knows will hasten death constitutes active contribution to death by any standard. However, the distinction drawn here is one based upon intention -- in the case of palliative care the intention is to ease pain, which has the effect of hastening death, while in the case of assisted suicide, the intention is undeniably to cause death ... In my view, distinctions based upon intent are important, and in fact, form the basis of our criminal law. **While factually, the distinction may, at times, be difficult to draw, legally it is clear** [emphasis mine]. The fact that in some cases, the third party will, under the guise of palliative care, commit euthanasia or assist in suicide and go unsanctioned due to the difficulty of proof cannot be said to

render the existence of the prohibition fundamentally unjust (*Rodriguez v. British Columbia (Attorney General)* 1993: 607).

Barely four months after the *Rodriguez* decision, in January, 1994 (Dying 1997), *Compassion in Dying et al. v. Washington State* (called *Washington v. Glucksberg* at the Supreme Court) was filed in the US District Court for Western Washington by four doctors and three terminally ill patients. This suit challenged the constitutionality of the State ban on “promoting a suicide attempt” by arguing that the ban did not honour the liberty and equal protection clauses of the Fourteenth Amendment (see the Appendix for the full citation of this Amendment). In May, 1994, the District Court decided that the ban was unconstitutional and it also dismissed the active/passive distinction. Washington State appealed the decision to the US Court of Appeals for the 9th Circuit (i.e., covering nine states including Washington). In March, 1995, the Appeals Court overturned the District Court’s decision, citing no historical protection for a right to commit suicide. However, not quite five months later, a majority of the Appeals Court judges voted to reconsider the decision, and in March, 1996, they upheld the original District Court decision in a 5-3 decision. In their judgement, they upheld the liberty claim to assisted suicide, dismissed the active/passive distinction, and rejected double effect reasoning.

While this process was unfolding in Washington, Dr. Timothy Quill with two other physicians and some terminally ill patients, supported by Compassion in Dying, filed (July, 1994) a similar challenge to the constitutionality of the New York State ban on assisting suicide. Unlike the Washington District Court, the District Court for the Southern district of New York upheld the constitutionality of the state ban. However, the plaintiffs appealed and the 2d Circuit Court of Appeals (i.e., covering three states including New York) ruled that the New York law violated the equal protection clauses of the Fourteenth Amendment. In October, 1996, The US Supreme Court announced that it would review both the Washington and New York cases, and in June, 1997, the Court ruled unanimously that the state bans were constitutional. Despite their unanimity on the absence of a constitutional

right to assisted suicide, the judges were divided 5/4 (like their Canadian counterparts) in their actual judgements.

In the brief presented by the Glucksberg plaintiffs (Dying 1996b), the Supreme Court was encouraged to respond positively to two main questions: firstly, whether the Fourteenth Amendment's guarantee of liberty protected the decision of a competent, terminally ill patient to bring about their death in a "certain, humane and dignified manner," and secondly, whether the ban resulted in a double standard, i.e., permitting those on life support to discontinue it, but forbidding those not on any life support from receiving aid to end their life. Unlike the Rodriguez case, therefore, these plaintiffs were asking that all persons not on life support, not merely those physically disabled, be able to receive assistance in dying. Citing the Casey decision (i.e., which upheld the right to abortion as one of the personal decision rights protected by the liberty claim of the Fourteenth Amendment), the Glucksberg group argued that if abortion received this protection, so too should the right to die be protected as one of a person's most basic, personal decisions. They cited the Cruzan case also, claiming that the right won there (i.e., the right to have a feeding tube withdrawn) was not just the right to be free of battery, but also the right to avoid futile, prolonged, and degrading bodily disintegration; hence, that same freedom should be guaranteed for those wanting assisted suicide.

The Glucksberg plaintiffs argued that terminal sedation is "monstrous" because it constitutes "voluntary [submission] to a drug-induced coma while one's body disintegrates and loved ones stand vigil." In fact, they argued that terminal sedation "[serves] only to make the death less excruciating to observers." The group also claimed that there is no distinction between withdrawal of treatment, terminal sedation and euthanasia. This assertion was supported by a demolition of the active/passive distinction. They argued that having a distinction does not make it justified, that the end is the same in both cases, and that the distinction only "[preserves] the appearance that one is not participating in hastening death." Regarding possible abuse of assisted suicide legislation, the plaintiffs

claimed that this type of assistance is already going on without regulation and that, like abortion, only the affluent have access to assisted suicide. Not unlike Lamer's dissent in *Rodriguez*, the group claimed that existing protection of the vulnerable is over-inclusive. They also argued that proper regulations would avoid the 'slippery slope'. Finally, they insisted that the State must not serve the rights of a moral majority conveyed in abstract, philosophical or theological language.

The Quill brief (Dying 1996a) was a frontal attack on double effect reasoning. Like the Glucksberg brief, the hypocrisy of "appearances" was condemned: "Surely the Constitution does not permit the State to sacrifice the rights of the dying on the altar of appearances." The group reminded the Court that "our nation is built upon the rule of law, not winks and nods," referring to the concrete non-enforcement of assisted suicide provisions supported by dishonesty in the physician-patient relationship (e.g., allowing patients to stockpile barbiturates for 'insomnia'). The "legal fiction" of intent was attacked, e.g., the 'fiction' that patients requesting ventilator withdrawal are only asking to be rid of bodily intrusions when in fact, they are asking to die, and the opposite 'fiction', the notion that all persons asking for assisted suicide are intending suicide when in fact, they merely want their pain alleviated. The group claimed that "if there is a slippery slope to fear," it is death by 'double effect' and terminal sedation, and the nation has already slid significantly down that slope. The 'fiction' in double effect reasoning is the notion that "clearly foreseeable consequences of an act are not intended." On the basis of this 'fiction', the group argued that a distinction between terminal sedation and euthanasia is irrational. Moreover, like the Glucksberg brief, the Quill brief also characterized terminal sedation as a "monstrous" process, whereby patients are "chemically shut down," "imprisoned in their decaying bodies," and "deliberately starved to death, while loved ones keep a gruesome vigil."

The Supreme Court responded to both cases at the same time, and most judges gave one judgement covering both cases. Regarding *Washington v. Glucksberg*, there were

basically three parts to the majority judgement given by Chief Justice Rehnquist (Battin, Rhodes, and Silvers 1998: 377-422). Firstly, he noted that there was no foundation for a constitutional right to assisted suicide because history and tradition have rejected nearly all attempts to have it sanctioned. Here he was relying on the history of American jurisprudence regarding constitutional rights, as well as the fact that euthanasia/assisted suicide is prohibited everywhere in the Western world with only a few exceptions. Secondly, he emphasized the legitimate state interests in banning assisted suicide, for example, protecting all human life, preventing suicides, protecting the integrity and ethics of the medical profession, protecting vulnerable groups, and preventing the 'slippery slope', the best example of which is discernable in the Netherlands. Regarding the plaintiffs' hope that the Casey and Cruzan decisions would provide a precedent for a liberty-based claim to assisted suicide, Rehnquist stressed that the due process clause of the Fourteenth Amendment does not protect "any and all important, intimate, and personal decisions." He ended his judgement by voicing support for the continuance of Americans' "earnest and profound debate" about all aspects of assisted suicide.

In his decision regarding *Vacco v. Quill*, Justice Rehnquist explained that the equal protection clause within the Fourteenth Amendment does not create any "substantive rights"; by contrast, it embodies a "general rule" that states must treat like cases alike. This obviously begs the question of which cases are alike, and in response to this question, Rehnquist upheld both the active/passive distinction and double effect reasoning. Concerning the former distinction, he argued that whereas the patient who refuses life-support dies from their disease, the patient who is given a lethal dose is killed by the drug. Also, whereas doctors abiding by their patients' refusals of life support and giving "aggressive palliative care," intend only the avoidance of futile means in the first case, and pain relief in the second case, doctors assisting in suicide "must, necessarily and indubitably, intend primarily" the death of their patients. Rehnquist's support of double effect reasoning was expressed in these words: "The law has long used actors' intent or purpose to distinguish between two acts that may have the same result ... Put differently,

the law distinguishes actions taken ‘because of’ a given end from actions taken ‘in spite of’ their unintended but foreseen consequences” (Battin, Rhodes, and Silvers 1998: 425). Not unlike Sopinka’s acknowledgement of the difficulty of drawing the line in this way, Rehnquist concludes: “Granted, in some cases, the line between the two may not be clear, but certainty is not required, even were it possible (in a footnote here, he adds that “in the absence of omniscience, the State is entitled to act on the reasonableness of the distinction”). Logic and contemporary practice support New York’s judgment that the two acts are different, and New York may therefore ... treat them differently” (Battin, Rhodes, and Silvers 1998: 427, 430).

Justice O’Connor explained that she joined the majority because she agreed that “there is no generalized right ‘to commit suicide’” (Battin, Rhodes, and Silvers 1998: 389). She did not address the distinctions in question, ostensibly because in her view, the risk of the ‘slippery slope’ and the difficulty in defining terminal illness were sufficient to justify continued prohibition of assisted suicide. She also argued that the availability of palliative care justifies the bans, especially because there are no legal barriers to sedation “even to the point of causing unconsciousness and hastening death” (Battin, Rhodes, and Silvers 1998: 389). Justice Stevens acknowledged the “significant tension” between physicians’ traditional roles “and the actual practice in a growing number of cases” (Battin, Rhodes, and Silvers 1998: 394). He also argued that the distinctions pertaining to intention and causation expressed in the majority view “may be inapplicable to particular terminally ill patients and their doctors” (Battin, Rhodes, and Silvers 1998: 395). In sum, his judgement was a clarion call for further debate and future challenges at the level of particular cases. Justice Souter, who gave the most detailed history of judicial review of substantive state law, emphasized that “ ‘tradition is a living thing’, albeit one that moves by moderate steps carefully taken” (Battin, Rhodes, and Silvers 1998: 403). Accordingly, “novel claims,” such as a liberty right to assisted suicide, must show evidence of both continuity with the past, and a well-accepted, principled vision for the future. Although in Souter’s opinion, such evidence does not yet exist, it could exist in the future, but that requires further debate

and above all, experimentation best undertaken by state legislatures. Justice Breyer agreed with O'Connor that existing palliative care options do not justify decriminalization of assisted suicide, but he added that the situation would be different if states were to "prevent the provision of palliative care, including the administration of drugs as needed to avoid pain at the end of life" (Battin, Rhodes, and Silvers 1998: 413).

The most predominant sentiment expressed by legal commentators who assessed the Court's judgements is that although the constitutional issues have been more or less conclusively resolved, the questions concerning meaningful distinctions between end-of-life treatments remain completely unresolved, and will likely prompt future legal clarification in the context of particular cases. Among the most prominent commentators, David Orentlicher, law professor and physician, suggests (Orentlicher 1997, 1998, 2001) that the Court's decision is problematic because although the Court placed the withdrawal of treatment in the same category as terminal sedation, the distinctions between end-of-life treatments (i.e., terminal sedation, euthanasia, assisted suicide and withdrawal of treatment) are now blurred. For example, terminal sedation is indistinguishable from euthanasia insofar as "it is the combination of a physician-induced coma and the withholding or withdrawal of food and water that constitutes euthanasia" (Orentlicher 1998: 855-856). Also, terminal sedation cannot be distinguished from euthanasia and justified on the basis of double effect reasoning or intent alone because intent can be identical in all four aforementioned end-of-life treatments, and in the case of terminal sedation, "the physician is intentionally engaging in action that will inevitably result in the patient's death" (Orentlicher 1998: 856). Orentlicher holds that the use of double effect reasoning is quite problematic because it "justifies only the sedation part of terminal sedation. We cannot justify the withdrawal of food and water part of terminal sedation, for that step does nothing to relieve the patient's suffering" (Orentlicher 1998: 856-857). For Orentlicher, physicians' culpability is much more of an issue in terminal sedation and euthanasia because unlike cases of treatment withdrawal and/or physician assisted suicide, which require a consenting patient, physicians can easily sedate or euthanize vulnerable, incompetent patients. Rather

than resolve these types of problems associated with existing distinctions, Orentlicher believes that the Court decided as it did largely for symbolic reasons, for example, because decriminalizing physician-assisted suicide “would have meant overturning bans of that practice in more than forty states” and “pre-empting state experimentation” (Orentlicher 1997: 950).

Law professors Norman Cantor and George Thomas, who have written extensively about the legality of current pain control practices, argue that the active/passive and intent/foresight distinctions are too “subtle,” “debatable,” “fragile,” and “ephemeral” to prevail in the current “momentum of people’s yearning for death with a modicum of dignity” (Cantor and Thomas 2000: 87). Cantor’s most recent criticism of the use of double effect reasoning has a twofold focus. Firstly, he holds that there is an inconsistency between what is permitted by this reasoning and the traditional English common-law approach to criminal homicide:

The effort to use the doctrine of double effect, with its focus on a physician’s intention, seems inconsistent with traditional legal doctrine, which establishes that it is criminal homicide to knowingly cause death, even if the actor’s motive or intention is to relieve suffering. Mercy killing has always been prohibited in the Anglo-American system. Thus, at least if an analgesic dosage is certain or practically certain to hasten death, the physician’s knowing conduct constitutes an unlawful killing closely akin to active euthanasia (Cantor 2001b: 186; 2004: 1837-1838). (From England see also Huxtable 2004: 66). [Again] I have argued that the various opinions [i.e., in relation to *Washington v. Glucksberg* and *Vacco v. Quill*] depart from traditional legal bounds of available pain relief. Chief Justice Rehnquist’s opinion endorses the (misguided) conventional wisdom of medico-legal commentators hinging the legality of pain relief upon the provider’s intent to relieve suffering. The concurring Justices go further and assume pain relief may lawfully be administered ‘as needed’ even if the dosage is certain to cause death. While both of these positions are probably wrong as a matter of traditional criminal law doctrine, I suspect that they will serve as self-fulfilling prophecies shaping legal doctrine in the new millennium (Cantor 2001a: 313; 2004: 1837-1838).

Secondly, Cantor focuses on what he perceives to be the indeterminacy of intent. In cases where “the attending physician may share the patient’s assessment that death will be a benefit,” Cantor argues that “at the very least, the physician’s intent may be so indeterminate ... that even the physician may not fully understand the impetus for the pain relief” (Cantor 2001a: 311). Not only is intent indeterminate in Cantor’s view, but this indeterminacy can lead to “perverse practical consequences” (Cantor 2001a: 311). In other words, while it is natural for physicians caring for patients suffering terribly, “not only to welcome, but also to want to bring about the patient’s death” (Cantor 2001a: 311), “simply desiring to bring about death in order to relieve suffering, a natural state of mind under the circumstances, disqualifies the conscientious provider from giving needed pain relief” (Cantor 2001a: 312). Hereafter, as several physicians have indicated and Cantor seems to concur, the temptation to ‘direct intentions’ becomes hard to resist:

The conventional wisdom’s fixation on state of mind [or elsewhere in this article, “a pure state of mind”] provides a strong incentive for dissembling. The troubled physician can furnish the risky pain relief to the distressed patient by pretending that her primary intention is to relieve suffering, regardless of her actual state of mind. Only rarely can a prosecutor (or anyone else) disprove the physician’s assertion that her intention is palliative. The current popular wisdom about the legal bounds of risky pain relief may have encouraged a medical charade (Cantor 2001a: 312).

Cantor and Thomas’ (Cantor and Thomas 2000: 172-173) and Cantor’s most recent opinions (Cantor 2001b, 2001a, 2004) express the view that the most adequate solution to this problem is to draw the line between legal terminal sedation and illegal euthanasia by means of the application of principles of criminal recklessness, that is, by means of an assessment of anticipated risks rather than of intent. From this perspective, “the risk of death is justified, not because it is unintended but because there is no alternative approach that makes the risk of death less likely and the alleviation of suffering possible” (Cantor 2001a: 312). In terms of liability, “no liability is incurred unless the palliative care physician is reckless, i.e., if the physician departs grossly from professional standards” (Cantor 2001a: 312).

The central focus of some commentaries has been the divisions between the Justices. For example, law professor Robert Burt says, “There was, in short, something disordered about each of the Justices’ opinions -- and something equally disordered about the isolation of each of them from one another, about their inability or unwillingness to find a common approach or vocabulary ... [and] with the signal exception of Souter, they could not forthrightly admit their irresolution” (Burt 1998: 976). Burt explains the disorder by drawing parallels between the Court’s treatment of physician-assisted suicide and its treatment of capital punishment. In both cases, Burt argues, the path chosen by the Court has been “the construction of a patina of rationality and fairness, a pretense maintained by an adamant refusal to attend to actual practices in implementation,” thus “[appeasing] vocal public concerns” and shrouding death “in a kind of covertly acknowledged but resolutely unexamined secrecy” (Burt 1998: 981).

Professor Susan Wolf agrees with Burt that the judges left unresolved issues rooted in the actual implementation of end-of-life practices, but she goes further than Burt in her analysis of the causes of this problem. On the surface, she thinks that “for many of the Justices, the facts or sheer factual uncertainty drove them to send the assisted suicide question back to the legislatures” (Wolf 1998: 1066). But below the surface, she argues that there is a “ghost in the machine” which is “rarely named and openly confronted” (Wolf 1998: 1070). The “ghost” is a struggle between universalism and particularism or “between abstract argument that largely avoids the data on end-of-life practices and presents future assisted suicide in idealized terms, and argument that places assisted suicide in the context of data, tethering claims to the realities of the clinic” (Wolf 1998: 1067). Certainly, factual data are ignored, Wolf thinks, because of some of the more obvious barriers to end-of-life care, for example, the myths about opioids and the general inability to discuss openly the realities of death and dying. However, the “ghost in the machine” must be acknowledged, Wolf stresses in these words:

We are on the cusp, moving from one way of thinking to another. The debate on assisted suicide comes to the fore just as bioethics and health law struggle through what I have argued elsewhere is a paradigm shift from an old deductivism that largely ignored empiricism to a new pragmatism that extols it. The debate on assisted suicide manifests the conflict or, more optimistically, the transition between these two approaches (Wolf 1998: 1101).

The original derivation of the phrase ‘ghost in the machine’ comes from Gilbert Ryle’s, *The Concept of Mind* (Ryle 1949) in which he sharply criticizes “the dogma of the ghost in the machine,” a reference to the dualistic, Cartesian concept of the human person and human knowledge. To what degree the “paradigm shift” to which Wolf refers is underway is an open question, but since this shift has certainly affected use of double effect reasoning, there is a need to continue our exploration of the problems surrounding this reasoning within Catholic moral theology and philosophy/philosophical bioethics.

1.5. Conflicts Within Theology and Philosophy

Contrary to popular opinion, Thomas Aquinas did not create ‘the principle of double effect’ (Kennan 1993; Berkman 1997). At most, as indicated in the Introduction, Aquinas created a type of double effect reasoning that enabled him to reconcile empiricism and idealism -- particularism and universalism in order to resolve a specific problem. As Christian and civil society became more integrated and Christians took part in military service, Aquinas needed a way to restrict the scope of universal Christian prohibitions against killing in order to justify killing in self defence and for the defence of one’s country (Jonsen 1996: 43). Consequently, Aquinas outlined a way to integrate the empirical and particular requirements of military service with the idealist and universalist reality of Christian meaning and beliefs. It is intention which mediates or negotiates these two realities -- intention understood in a psychological and spiritual sense within the larger context of Aquinas’ treatment of theological anthropology and the virtues, especially the virtue of justice. Within this context, intention is “defined as **an act of the will** [emphasis

mine] concerning a goal for the sake of which something is done”; for example, if a person wants sedation to relieve suffering, “the end [pain control] is wanted, the means are chosen, [and] what is intended is neither the end in itself nor the means in themselves, but the end through the means” (Kenny 1973: 138). In the following passage, Aquinas uses this type of reasoning to explain how the killing of an attacker can be the foreseen but not the intended effect of an act of self-defence:

A single act may have two effects, of which one alone is intended, whilst the other is incidental to that intention. But the way a moral act is to be classified depends on what is intended, not on what goes beyond such an intention, since this is merely incidental thereof ... In the light of this distinction we can see that an act of self-defence may have two effects: the saving of one’s own life, and the killing of the attacker. Now such an act of self-defence is not illegitimate just because the agent intends to save his own life, because it is natural for anything to want to preserve itself in being as far as it can. An act that is properly motivated may, nevertheless, become vitiated if it is not proportionate to the end intended. And this is why somebody who uses more violence than is necessary to defend himself will be doing something wrong. On the other hand, the controlled use of counter-violence constitutes legitimate self-defence ... It remains nevertheless that it is not legitimate for a man actually to intend to kill another in self-defence, since the taking of life is reserved to the public authorities acting for the common good ... (Aquinas 1975: 2a2ae. 64,7).

In this passage, Aquinas has outlined a way to integrate the particular requirements of military service with the idealist and universalist reality of Christian meaning and beliefs. However, the path from this passage to what has become known as the *principle of double effect* is quite complicated and filled with controversies. For example, in his 1949 seminal article, Joseph Mangan said that despite opposing views, he believed that the *principle of double effect* originated in the above passage (Mangan 1949: 51). In 1951, Josef Ghos disproved Mangan’s view by illustrating that although Aquinas initiated double effect reasoning, the *principle of double effect* was formulated much later on the basis of its usefulness in practical experience (Ghos 1951). Specifically, in the sixteenth century as Dominican and Jesuit priests were trying to resolve difficult moral cases, they

began “to name the common factors among the paradigm cases” (Keenan 1993: 299). Eventually, the Iberian philosopher Jean Poinsot, sometimes known as John of St. Thomas (1589-1644), articulated the factors into the conditions of the principle as such. However, it was not widely used *as a principle* until the nineteenth century (Keenan 1993:299).

Before the nineteenth century, double effect reasoning was used informally by Dominican and Jesuit priests in their efforts to resolve difficult moral cases, and in the process of lively debate, Aquinas’ reflections were often combined with other theological paradigms. In the nineteenth century, however, Aquinas’ double effect reasoning became institutionalized as a universal, idealist system -- a form of “ecclesiastical positivism” (Kelly 1979: 230), which permitted the Catholic Church to compete with the positivism of modern science. During this authoritarian process of institutionalization, double effect reasoning was transformed into the fundamental *principle of double effect*, which was to be applied mechanically by confessors in all cases where acts had two possible effects, not just in situations of self-defence. In the manuals of moral theology, certain paradigm cases emerged, for example, the excision of a cancerous, pregnant womb, the treatment of ectopic pregnancies, sterilization, and cooperation in the sin of another. Quite unlike Aquinas’ development of double effect reasoning as one application of his larger treatment of theological anthropology and the virtues, the nineteenth-century manuals featured a “generalized and stereotyped” principle of double effect, typically presented without justification, and with an application that “had taken on a self-evident character” (Gallagher 1990: 40). In these manuals, the principle of double effect was applied with a physicalist emphasis, which reduced intention to physical terms. In other words, stress was “placed on the physical *finis operas*, *objectum*, or actual physical properties, motions, and goals of the action under consideration” (Kelly 1979: 231).

Two important nineteenth-century developments fostered this physicalism: the work of the French Jesuit Jean Pierre Gury (1801-1866), and the influence of neo-Thomism. From his Jesuit predecessors, Gury inherited the use of double effect reasoning

far removed from Aquinas' original discussion of killing in self-defence, and extended into the analysis of many other issues, for example, "indirect killing of the innocent, especially in time of war; exposing oneself to mortal danger for a good cause; performing some act which one foresees will result in the passive scandal of others ... and cooperating materially in another's evil action" (Mangan 1949: 54-55). From his study of double effect reasoning as it was transmitted to him, Gury was eventually inspired to initiate three of his own changes that moved double effect reasoning even further from its original context. Firstly, whereas for Aquinas, double effect reasoning was merely one particular application of his primary moral principles, double effect became for Gury, "a fundamental moral principle" (Kaczor 1998: 308), "indispensable to the proper understanding of the human act" (Kaczor 1998: 307). Secondly, whereas Aquinas "spoke of intending ends [i.e., good, bad, or indifferent within the larger context of his theological understanding of the moral life], Gury [spoke] of positing causes" or "[setting] in motion a cause either intentionally or unintentionally" (Kaczor 1998: 308-309). In other words, Gury "[bound] intention or will to the causal sequence" (Aulisio 1996: 64). Thirdly, whereas Aquinas emphasized act/end proportion, i.e., "the means used in self-defence must be proportioned to the end of self-defence" (Kaczor 1998: 310), Gury emphasized effect/effect proportion, i.e., "one must balance the possible harm to oneself [effect A] against the possible harm coming to one's neighbour [effect B]" (Kaczor 1998: 311). By shifting the emphasis away from the meaning that Aquinas gave to ends, intention and proportion, and by introducing a new emphasis on the concepts of cause and effect, Gury gave double effect reasoning a physicalist emphasis that departed radically from Aquinas' approach. In this use of double effect reasoning, or more accurately at this point, *in this use of the principle of double effect*, "ethical judgments arrived at [were] considered to be universally applicable to all situations involving the same physical act" (Kelly 1979: 231). A parallelism had thus been achieved between concepts of physical and ethical necessity.

A second transformative influence on the manuals was that of neo-Thomism. The sixteenth-century Catholic Counter-Reformation was not only a reaction against

Protestantism, but it was a reaction against the modern world, particularly Enlightenment science and philosophy. As part of this reaction, the Catholic Church countered the systems of Enlightenment rationalism with its own rationalist system created by means of a systematization of Aquinas' work. Accordingly, the confessors' manuals became vehicles for the expression of this reaction and those "published after 1879 were presented as summaries of the moral theology of [Aquinas]" (Gallagher 1990: 37). This transition changed the manuals dramatically. For example, whereas the earlier manuals incorporated divergent theological paradigms, those after 1879 could only incorporate accepted interpretations of Aquinas (Gallagher 1990: 37). Since these manuals comprised a system for use throughout European seminaries, the manuals "were culturally invariant texts" (Gallagher 1990: 40). Finally, the reactionary nature of this transition resulted in an excessively legalistic and authoritarian approach to moral questions. As already indicated, the label "ecclesiastical positivism" was attached to this approach. In other words, physicalism and the conclusions generated in accordance with it was reinforced by ecclesiastical approbation, a defence "that paralleled the authoritative defense by the medical profession of the scientific conclusions reached in the development of their profession" (Kelly 1979).

After the Second Vatican Council (1963-1965), the interpretation and use of double effect reasoning went through another radical transition from an emphasis on physicalism and legalism to a stress on personalism, that is, "a modality of application ... whereby an emphasis is placed on the entire complexus of the act in its human [as opposed to its purely physical] dimensions, circumstances, and consequences" (Kelly 1979: 419). In other words, personalism represents yet another attempt to reconcile universals and particulars, but this reconciliation attempts to break through the confines of, and remedy the problems created by the physicalist approach to double effect reasoning found in the manuals and in Church teaching. Although the label 'personalism' can be attached to the work of many theologians, the work of the German Jesuit, Peter Knauer, represents the most groundbreaking use of this modality. In 1967, Knauer asserted that double effect reasoning

was “in reality, *the fundamental principle of all morality*” (Knauer 1979 [orig. 1967]: 1). He also reduced the four conditions of double effect reasoning to one single condition: “One may permit the evil effect of [an] act only if [it] is not intended in itself but is indirect and justified by a commensurate reason” (Knauer 1979 [orig. 1967]: 5). In this interpretation, Aquinas’ notion that an act *in itself* could be morally good, bad, or indifferent, was gone. In its place, Knauer substituted the idea of *pre-moral* goodness, badness, or indifference. In other words, although “every human act brings evil effects with it” (Knauer 1979 [orig. 1967]: 16) insofar as the choice of one value denies others, the *moral* aspect of an act is embodied only in the particular choice an individual makes to act in a specific way. A moral evaluation of acts thus depended not on the physicalist notion of intention as conceived by Gury, but rather, upon the assessment of both empirical and non-empirical aspects involved in a particular person’s choice, aspects which, in Knauer’s view, were processed through the use of commensurate (or proportionate) reason -- a revised understanding of the fourth condition of double effect reasoning. By ‘commensurate reason’, Knauer meant, “If, in the given circumstances, the act is the best possible solution of the problem in terms of the horizon given by the whole of reality, it may be said that the act is morally good” (Knauer 1979 [orig. 1967]: 22). Knauer’s innovation was the start of the movement and method called ‘proportionalism’. The person who contributed most to its development in North America is Richard McCormick, whose work will be discussed in the second chapter.

What is not recognized in the clinical or legal/public policy sources, but what should be obvious after this historical survey is that there is not one ‘face’ of double effect reasoning but many, and each must be understood within its particular context. As we will see in more detail in the second chapter, competing contexts continue to fuel current disagreements about the use of double effect reasoning. In fact, American theologian John Berkman says, “Never has the principle attracted more attention from philosophers and theologians [and] never has there been less agreement” (Berkman 1997: 90). His thesis is also “that far from being healthy, the principle of double effect (and ... the discipline of

moral theology more generally] is in a state of epistemological crisis, and that the resolution of the crisis will require changes in conception and practice of the discipline inconceivable to many if not most moral theologians” (Berkman 1997: 90). Not unlike the views of Christopher Kaczor whose work we will examine in the second chapter, Berkman holds that Knauer’s work actually represents more of a continuation of the manualist tradition than a departure from it. For Knauer, like his predecessor Gury, gave double effect reasoning a central place within moral theology:

Knauer’s fundamental error (leaving interpretative questions aside) was to try to make the principle of double effect too central, to invest it with a conceptual weight which it was never meant to bear. It should be no surprise that it is precisely when the principle of double effect became understood as methodologically central in the discipline of moral theology that it underwent an internal collapse, throwing all aspects of it into an uproar, with wildly diverging viewpoints on the principle. Whereas Knauer’s thesis might legitimately be viewed as an *attempt* to resolve the epistemological crisis of moral theology, it proved rather to be a profound example of it (Berkman 1997: 95). Less than a generation removed from the manual tradition, current moral theology continues to be profoundly influenced by many of the assumptions and conceptual categories embodied in the manuals, and more problematically, largely unaware of this influence (Berkman 1997: 99).

The epistemological crisis surrounding double effect reasoning is not peculiar to theology, but pervades philosophy as well, and this situation threatens the present and future viability of this reasoning as a way of distinguishing between terminal sedation and euthanasia. Before the twentieth-century, there was no distinction between metaethics and normative ethics, i.e., between idealist consideration of conceptual and methodological issues, and responses to particular ethical dilemmas. The work of Thomas Aquinas is a good example. His development of double effect reasoning in response to the problem of self defence cannot be separated from his metaethics, i.e., his consideration of issues such as theological anthropology, the nature of ‘the good’, virtues and vices, etc. However, as the *Encyclopedia of Bioethics* indicates, metaethics became separated from normative ethics at the turn of the twentieth-century in response to positivism, i.e., the idea of

“experimentally verifiable science as the paradigm of cognitively meaningful discourse” (Reich 1995: 2: 723,737). In the wake of this division, metaethics became the realm of philosophers and normative ethics became the domain of “preachers, novelists, and other nonphilosophers” (Reich 1995: 2: 737). This onset of fragmentation did not bode well for double effect reasoning.

In the wake of a critique of positivism in the 1950s, philosophers re-entered the realm of normative ethics in the 60s and 70s, and this period was characterized “by new attempts to reformulate and defend classical ethical views” (Reich 1995: 2: 737). Classical Kantian theory was reformulated by philosophers such as John Rawls and his student Thomas Nagel, as well as Alan Donagan, Alan Gewirth, and others (Reich 1995: 2: 737). Classic utilitarianism was reformulated by philosophers such as Richard Hare and his students Derek Parfit and Peter Singer (Reich 1995: 2: 737). Classical Aristotelian/Thomist philosophy was reformulated by Elizabeth Anscombe, Peter Geach, Alasdair MacIntyre, and others (Reich 1995: 2: 737). In this context, it was Elizabeth Anscombe who introduced double effect reasoning into secular moral philosophy.

At this point, normative ethics itself became a fragmented field as it divided along the lines of what distinguished the normative theories from each other, i.e., “the three universal [and idealized] features of human action” -- agency, action, and consequences (Reich 1995: 2: 738). Kantian deontologists focused on duties orienting right and wrong actions. Utilitarians in their corner emphasized the analysis of consequences and ways to maximize desired outcomes. Virtue theorists like Anscombe and MacIntyre analyzed issues such as the role of virtues in ethics, and what it means to know and to intend, both in general terms (MacIntyre), and in the context of double effect reasoning (Anscombe). Debates about the use of double effect reasoning (e.g., between Anscombe and consequentialists) only mirrored the larger divisions that plagued the field. In other words, double effect reasoning became a lightning rod because it combined in one ‘principle’ approaches to ethics that had become radically polarized. The notion of intention was

particularly contested because although virtue theorists and deontologists could conceive of intention as an idea or representation in the mind with or without particular, external manifestations, consequentialists were bound by the notion that “the only mental state primarily relevant to the morality of a voluntary act is the cognitive state with regard to consequences” (Kenny 1973: 143).

Overall, the division within normative ethics produced three major problems. The isolation of the theories from their particular theoretical and historical contexts made it difficult for “any of them to be adequately defended, or successfully criticized” (Reich 1995: 2: 744). Secondly, there has been significant “general disagreement about exactly how these normative theories are to relate to the resolution of particular normative problems” (Reich 1995: 2: 744). Finally, the second difficulty seems to be rooted in the additional fact that “there is no theory-independent criterion of how normative theories are to guide action, since each theory embodies a view about its own application” (Reich 1995: 2: 744). On account of these problems, particularly the difficult theory-practice relationship, the field of applied ethics has arisen, i.e., “a general field of study that includes all systematic efforts to understand and to resolve moral problems that arise in some domain of practical life” (Chadwick 1998: 1: 192). There are now three major divisions of applied ethics: bioethics, business ethics, and environmental ethics (Chadwick 1998: 1: 192).

In order to illustrate the fragmentation of ethics within bioethics and its relationship to portrayals of double effect reasoning, we can use Beauchamp and Childress’ classic text, *Principles of Biomedical Ethics*, as a good starting place. If we survey the five editions of this text, we find evidence of the problematic relationship between metaethics and normative ethics, the contestation surrounding all ethical theories and their relationship to practices in particular contexts, and the fact that double effect reasoning has been affected by these larger methodological controversies. Throughout the five editions, the conditions of double effect reasoning remain essentially unchanged, and they are as indicated in the

General Introduction (see p.7). The only significant change is the development and clarification of the notion of proportionality. From the beginning, it was defined as end/end proportionality, but in the fourth and fifth editions, the need for “a proportionate reason that compensates for permitting the foreseen bad effect” is added (Beauchamp and Childress 1994: 207; 2001: 129).

In the first two editions of this text, the presentations of double effect reasoning are virtually identical. Placed within the chapters concerning Beauchamp and Childress’ principle of nonmaleficence, double effect reasoning is portrayed as a Roman Catholic entity, located “primarily but not exclusively in the Roman Catholic tradition” (Beauchamp and Childress 1979: 102; 1983: 113). The reasoning is defined as a means to narrow the scope of moral prohibitions against acts “such as murder, suicide and abortion” (Beauchamp and Childress 1983: 113). The importance of double effect reasoning within conflict situations is underlined: “Appeals to the principle of double effect are especially prominent when there is conflict between obligations or values, and it is not possible to meet or realize all of them simultaneously” (Beauchamp and Childress 1983: 114). Examples of such conflict situations include the one at the heart of this thesis: “Such a situation may occur in the care of terminally ill patients when there is a duty of nonmaleficence, including a duty not to kill, and there is a duty to make the patient comfortable by inducing sleep and alleviating pain” (Beauchamp and Childress 1983: 114). Several criticisms of double effect reasoning are identified. Utilitarians fault this reasoning because it can lead to different moral judgments in situations where the consequences are identical (Beauchamp and Childress 1983: 105). Similarly, deontologists criticize this reasoning because it can lead to different moral judgments in situations where identical duties are being fulfilled through identical wants, desires and intentions (Beauchamp and Childress 1983: 105). Most importantly concerning end-of-life issues, some claim that double effect reasoning is too restrictive:

[For example,] there are instances of morally justified fetal deaths in addition to those admitted by the restrictive principle of double effect. [And] regarding death and dying in general, few would dispute the moral justification for the cases of hastening death by relieving pain and inducing sleep that can be brought under the principle of double effect, but the principle simply fails to resolve most of the difficult cases ... (Beauchamp and Childress 1983: 104).

Although in the first two editions, no connections are made between double effect reasoning and Beauchamp and Childress' principle of nonmalificence, we can speculate that perhaps the uneasy juxtaposition of the two entities constitutes an example of their initial strict division between metaethical and normative ethical approaches (Beauchamp and Childress 1983: 8-9), but at the same time, an example of the growing conflict between methodologies that becomes more explicit and gains momentum as we progress from the third edition to the fifth. In the third edition, Beauchamp and Childress acknowledge that the methodological conflict itself underlies many moral dilemmas: "Many situations involve moral dilemmas created by conflicting moral principles that generate conflicting demands" (Beauchamp and Childress 1989: 5). Also in the third edition, we find the authors' scepticism regarding both the ability of theories to justify moral judgments and the superiority of any one theory. For example, "whether ethical theory can supply the needed forms of justification is a difficult problem that we will need to investigate" (Beauchamp and Childress 1989: 9). Although the universalizability of theories is usually invoked to supply justifications, even the notion of universalizability comes under fire: "Universalizability makes a formal point about the logic of moral judgment: A moral judgment must, for any person who accepts the judgment, apply to all relevantly similar circumstances. The principle itself does not say, however, what is to count as a relevantly similar circumstance (or whether there are relevantly similar circumstances)" (Beauchamp and Childress 1989: 19). Finally, Beauchamp and Childress come to these conclusions: "Each of our most celebrated types of ethical theory has made a substantial contribution to our understanding of ethics, but none has successfully shown that it alone presents a valid and complete system ... Each type of theory offers an important moral perspective from

which we stand to learn, and there is no reason why only one type of theory must be selected as pre-eminent” (Beauchamp and Childress 1989: 46-47).

In light of these conclusions, we are not surprised to discover that in the fourth and fifth editions, Beauchamp and Childress ultimately recommend “convergence across theories” (Beauchamp and Childress 1994: 109 ff.), and their own “coherence theory” (Beauchamp and Childress 2001: 397 ff.), inspired by Rawls’ reflective equilibrium, and operationalized primarily by means of the notion of specification, that is, “a process of reducing the indeterminateness of abstract norms and providing them with action-guiding content” (Beauchamp and Childress 2001: 16). In this model of coherence theory, “no level or type of moral reasoning ... has priority ... Moral justification proceeds from an expansive coherentist framework of norms that originate at all ‘levels’ ... In everyday moral reasoning, we effortlessly blend appeals to principles, rules, rights, virtues, passions, analogies, paradigms, narratives, and parables. We should be able to do the same in biomedical ethics ... The more general (principles, rules, theories, etc.) and the more particular (case judgments, feelings, perceptions, ... parables, etc.) are integrally linked in our moral thinking, and neither should have pride of place” (Beauchamp and Childress 2001: 408). For our purposes, what is important is not so much the details of this model of coherence, but how double effect reasoning has been interpreted within the context of this model.

Most importantly, we discover that in the fourth and fifth editions, double effect reasoning is explicitly defined as one specification of Beauchamp and Childress’ principle of nonmalficence (Beauchamp and Childress 1994: 206; 2001: 128). As they explain in the fifth edition, “without further specification, ‘do not harm’ is an all-too-bare starting point for thinking through problems, such as assisted suicide and euthanasia. It will not adequately guide action when norms conflict” (Beauchamp and Childress 2001: 16). Interestingly enough, insofar as it specifies ‘do not harm’, Beauchamp and Childress’ portrayal of double effect reasoning from the third to the fifth edition includes an emergent

emphasis on the importance of motivation, character and virtues, elements that are also part of an ethical theory (i.e., Character Ethics) that makes its own contribution to the coherence approach to biomedical ethics represented in the fourth and fifth editions. In the third, fourth and fifth editions, the presentations of double effect reasoning are essentially the same. Two types of problems are identified related to the reasoning's connection with action: "conceptual and theoretical issues about the nature of acting (or omitting) intentionally and about what counts as an intended effect, and [secondly] moral problems about whether the principle of double effect correctly locates a morally relevant difference between actions or effects of actions" (Beauchamp and Childress 1989: 130). Because of these types of problems, Beauchamp and Childress suggest that double effect reasoning should be transformed into a framework that emphasizes the character and motives of agents rather than actions and effects of actions. They also persist in their view that the intentional causing of death is sometimes justified:

Although the principle of double effect is fashioned for the discussion of actions and the effects of actions, it would perhaps be a better principle if it were reconstructed as an account of the motives of agents. We would, on this account, rightly evaluate the following two physicians quite differently. (1) Physician A lets a chronically ill, debilitated patient die out of frustration with the patient and the patient's family. (2) Physician B lets an identically situated chronically ill, debilitated patient die out of mercy and at the request of the patient and family. Both physician A and physician B intend to let the patient die and use the same merciful means. Still, the different desires, goals, and motives of the two agents entail different evaluations of them. In the final analysis, the moral theory proposed by adherents of double effect seems to us sound in spirit but misplaced. One's motives in bringing about a consequence do make a significant difference in moral evaluation, but this is not because one either intends or does not intend the outcome. Regarding the care of patients, few would dispute the conclusions reached by adherents of double effect about the justifiability of hastening death by relieving pain and inducing sleep in some circumstances. But the principle fails to resolve many of the difficult cases and cannot do all the moral work that must be done. As we argue below, some actions that intentionally and directly result in death are justifiable ... In many cases, especially those of patients who wish to die, the proper moral question is not whether a patient's death is intended as an end or as a means but whether the conditions are sufficient to

justify an intentional act of causing death -- an answer that cannot be forthcoming from the principle of double effect (Beauchamp and Childress 1989: 133-134) (Beauchamp and Childress 1994: 210; 2001: 132).

From their maintenance in the first two editions of a strict division between metaethics and normative ethics, and a clear preference for normative ethics, Beauchamp and Childress increasingly come full-circle in the third, fourth and fifth editions, to advocate a coherence between approaches, including those focused on character, virtues and motivation. Ironically, insofar as their interpretation of double effect reasoning also incorporates this emphasis in the same three editions, their interpretation comes closer to the original virtues-based context of double effect reasoning. However, as we shall discover in the second chapter, the relationship between double effect reasoning and elements such as character, virtues and motivation is subject to significant conflicts of interpretation.

1.6. Conclusion: The Many ‘Faces’ of Double Effect Reasoning

If we review what has been learned up to this point, we recall that the opening case study reveals the difficulty of distinguishing between ‘terminal sedation’ and euthanasia insofar as there is a tension between reliance on double effect reasoning and the physician’s empirical approach reliant upon connections between desired effects and dosages. This tension is, in fact, a microcosm of the conflicts found in the clinical literature. In that literature, we find that there is no consensus about the definition of ‘terminal sedation’. Some definitions stress the empirical aspects of the practice, whereas others emphasize idealist/universalist/normative aspects. As Jackson indicated, the linguistic ambiguity surrounding the definitions is only a symptom of the underlying moral ambiguity (Jackson 2002). ‘Terminal sedation’ for existential suffering presents special definitional problems because even the establishment of existential suffering as a refractory symptom presents a significant challenge, not to mention the greater challenge of coming to some consensus about idealist or normative aspects of this use of ‘terminal sedation’. Regarding the use of double effect reasoning to distinguish between ‘terminal sedation’ and euthanasia, the first

condition is extremely problematic because it presumes universally applicable notions of 'good', 'bad', and 'neutral', and there is no consensus regarding the existence of such universals, their definition if they do exist, and the idea that priority should be given to universals over the particularities of specific cases. The fact that the universals within double effect reasoning have their origin in a religious tradition raises the urgent question of how matters of particular belief, pluralism and public policy should be related.

Intention is another thorny issue. As the clinical literature revealed, there is no consensus regarding a definition of intention, and there is significant tension between 'intention' as a universally applicable concept (i.e., 'intention' as a 'clear and distinct' idea), and the muddy reality of intentions as held by particular persons within particular situations. For many physicians, the application of 'intention' within double effect reasoning into medical practice creates "cross-cultural dissonance," which divides physicians along the lines of those who accept the philosophical notion of 'intention' and those who think in terms of measurable cause and effect relationships. These difficulties make the possibility of distinguishing between what is foreseen and what is intended an even greater challenge, and the likelihood of deception (i.e., self deception and deception of others) is a central worry. The third and fourth conditions create similar problems in the clinical context. Regarding the third condition, there is a conflict between the conceptualization of means and ends, and the fact that in many cases of 'terminal sedation', it is impossible to verify that the end (i.e., the patient's death) was not the means to the good effect (i.e., pain relief). Moreover, for some, the intentional withdrawal/withholding of artificial nutrition and hydration makes the assertion of this verification disingenuous to say the least. Finally, the fourth condition concerning proportionality creates many problems. Although it is increasingly relied upon because of the difficulties involved in the first three conditions, there is no consensus about a definition of proportionality, and the sources reveal a division between the notion of proportionate reason, the comparison of outcomes or effects, and means/end proportion, or the titration of dosages to achieve desired effects.

The use of double effect reasoning is just as controversial in the legal/public policy context. Quite apart from the use of double effect reasoning, although the concept of intent or *mens rea* is a central pillar of the English common-law tradition, it is a pillar surrounded by chaos and ‘the variety, disparity and confusion’ of judicial definitions of ‘the requisite but elusive mental element’. In case law, reliance on double effect reasoning has been important because in Canada, for example, the Criminal Code does not distinguish between culpable homicide and palliative care pain control measures such as ‘terminal sedation’. However, as illustrated by the Canadian *Rodriguez* case, and the American *Glucksberg* and *Vacco v. Quill* cases, although the majority positions relied upon the foresight/intention distinction contained within double effect reasoning, the majority judges themselves acknowledged that there are difficulties associated with this distinction on the empirical or factual level. In particular, Justice Rehnquist seemingly acknowledged the intractability of this idealist/empiricist conflict in his assertion that ‘in the absence of omniscience, the State is entitled to act on the reasonableness of the distinction’. In the US context, although the Constitutional issues trumped the need for the judges to reach consensus regarding use of double effect reasoning and in particular, the foresight/intention distinction, legal commentators agree that this distinction is quite controversial and will require resolution. On the one hand, we have the judges’ reliance on double effect reasoning, supported largely by the weight of precedents and fear of ‘the slippery slope’. On the other hand, we have the commentators’ view that intent and the foresight/intention distinction is too ‘fictitious’, ‘subtle’, ‘debatable’, ‘fragile’, ‘ephemeral’ and ‘indeterminate’ to prevail. Not unlike the situation described in the clinical literature, the legal/public policy literature reveals a tendency to decrease reliance upon the problematic notion of intent and the foresight/intention distinction, and to increase reliance upon the recklessness calculus or the proportionality between anticipated risks and their justification. However, not unlike the situation in the clinical context, there is no consensus regarding the definition of proportionality among legal commentators.

Law professors Burt and Wolf were disturbed by the extent of the judges' disagreement and by their inability to discuss that disagreement openly. Professor Wolf's analysis suggested an important reason for both the judges' disagreements and their communication problems, namely, the underlying influence of a difficult paradigm shift between two vastly different epistemologies -- the Cartesian 'ghost in the machine' and pragmatism. As revealed in section 1.5., the struggle between these paradigms has also affected the use of double effect reasoning within Catholic moral theology and within philosophy/philosophical bioethics. Within Catholic moral theology, double effect reasoning has been used within competing contexts, most importantly, forms of physicalism that have bound the elements of double effect reasoning (e.g., intention) to universalized and mechanized physical sequences, and types of personalism that have freed elements of double effect reasoning (e.g., proportionality and notions of 'good' and 'evil') to operate in tandem with a more contemporary theological anthropology that honours the human, acting person subject to constant change and contestations. Within all of these competing contexts, the contemporary relevance of, and if relevant, the appropriate articulation of the virtues-based context of double effect reasoning is still an open question, and a major source of disagreement. Within philosophy and philosophical bioethics, the paradigm struggle has taken the form of an uneasy relationship between metaethics and normative ethics. Within the five editions of Beauchamp and Childress', *Principles of Biomedical Ethics*, we find evidence of this uneasy relationship within their changing interpretations of double effect reasoning. In the early editions, this reasoning is sidelined and isolated as a primarily Catholic and largely metaethical principle. Within the last three editions, double effect reasoning is increasingly incorporated within the authors' attempt to achieve coherence between all ethical theories, and to emphasize metaethical dimensions such as character, virtues and motivation.

Although, as Berkman has correctly suggested, the current controversy surrounding double effect reasoning represents an "epistemological crisis," there is need for caution concerning the term 'crisis' lest anyone read into it any kind of negative connotation, and

lest its ongoing inevitability is not made clear. In the absence of omniscience, to use the words of Justice Rehnquist, or in the absence of absolute knowledge, to use the words of Paul Ricoeur, the literature surveyed in this chapter presents us with an opportunity -- the opportunity of interpreting the various 'faces' of double effect reasoning to effect in this case, better distinctions between 'terminal sedation' and euthanasia. To make this opportunity even more specific, and to reveal the scope of the crisis within the Catholic tradition itself, we will in the next chapter, examine in-depth five different 'faces' of double effect reasoning, which reflect both the full spectrum of competing epistemologies, and more examples of all the problems that have been discussed in this chapter.

"Thomas Aquinas himself wrote this terribly logical, rational Summa Theologica, and at the end of his life he said, 'Everything I've written seems to me like empty straw compared to what I've seen.' Then his followers take up the system, repeat the whole rationalization and conception, and lose this understanding..." (Griffiths 1986: 169).

Chapter 2. Conflicts of Interpretation in the Catholic Context

2.1. Introduction

Outside of the Catholic context, double effect reasoning is often portrayed as a Catholic principle, as though there was only one interpretation of it within Catholicism. However, as indicated in the previous chapter, there are many 'faces' of double effect reasoning even within the Catholic tradition. In other words, the conflicts of interpretation surrounding use of double effect reasoning within Catholicism are just as vast, if not more immense, than those found outside of Catholicism. In order to achieve the goal of revealing the scope of these conflicts among Catholic scholars, we will in this chapter, survey the work of five scholars in this order: Canadian philosopher, Joseph Boyle (1942-); American Franciscan philosopher and physician, Daniel Sulmasy (1956-), American Jesuit theologian, Richard McCormick (1922-2000); British philosopher Elizabeth Anscombe (1919-2001); and American philosopher and medievalist, Christopher Kaczor (1969-). As we will discover, there is an intimate relationship between these thinkers' interpretations of double effect reasoning and their primary contexts -- Boyle as a logician, Sulmasy as a medical doctor, McCormick as a personalist moral theologian, Anscombe as an Aristotelian, deeply rooted in Aristotle's account of practical reason, and Kaczor as a Thomist, steeped in Thomistic metaphysics. As already indicated, most of these thinkers have had significant experience participating in dialogue about double effect reasoning outside of the Catholic context, and as we will discover, their work is clearly marked by this dialogue. Although only three of these thinkers, Sulmasy, Kaczor, and Boyle, have used double effect reasoning in the specific case of 'terminal sedation', we can in relation to the other thinkers, extrapolate how they might make the 'terminal sedation' versus euthanasia distinction on the basis of their use of double effect reasoning to distinguish

between euthanasia and pain control in general. Although a thesis could be written on the work of each of these thinkers, only their analyses of double effect reasoning will be used along with the materials that are necessary to provide an adequate context for their analyses. These authors' analyses of double effect reasoning in the 'just war' context will not be used with the exception of Anscombe's work because World War II provided the primary impetus for her analyses of intention and other aspects of double effect reasoning.

2.2. The Interpretation of Joseph M. Boyle

In his Ph.D. thesis entitled, *The Argument From Self-Referential Consistency: The Current Discussion* (Boyle 1969), Boyle demonstrates the way in which self-referential or self-refuting arguments "can terminate philosophical disagreements because [they] can show definitively that certain statements are false" (Boyle 1969: 4). In a subsequent article, *Determinism, Freedom, and Self-Referential Arguments*, Boyle, his thesis director, Germain Grisez, and Olaf Tollefsen critique several deficient self-referential arguments against determinism in an effort to articulate a more cogent argument and thus, to demonstrate that "determinism is untenable" (Boyle 1972: 4). Since use of double effect reasoning presumes that human beings have free choice and are not determined, Boyle's subsequent work on double effect reasoning constitutes wittingly or unwittingly a sustained effort to defend many implications of his and his colleagues' work on free choice. However, the grave dilemmas unfolding within the clinical context would expand and challenge Boyle's thinking on free choice and its expression in the use of double effect reasoning.

Approximately one year after Boyle completed his doctoral thesis, "some Down Syndrome babies were born [at Johns Hopkins Hospital in Baltimore] with defects incompatible with life" (Pence 1990: 137). In one case involving a child born with Down Syndrome as well as a surgically correctable defect (i.e., "duodenal atresia - a blockage between the higher duodenum and the lower stomach - which prevented passage of food

and water” (Pence 1990: 137)), the parents refused to consent to the proposed surgery and elected instead to allow the child to die of starvation. Although the parents’ wishes were honoured without any court action, this apparent case of ‘letting die’ as opposed to ‘killing’ provoked widespread debate regarding the question of whether the parents’ refusal of treatment should have been honoured, and the issue of whether the ‘letting die’ versus ‘killing’ distinction carried any moral weight. Regarding the latter issue, several prominent American philosophers (e.g., Jonathan Bennett, Judith Jarvis Thomson, Michael Tooley and James Rachels) argued that the distinction did not carry any moral weight. Responding to these philosophers’ critique, Boyle held that although the Johns Hopkins case was a clear example of “cases of letting die in which the death ought to have been prevented” (Boyle 1977b: 437), the moral significance of the ‘letting die’ versus ‘killing’ distinction was equally clear. Boyle’s “moral significance thesis” (Boyle 1977b: 433) includes two central elements. Firstly, he says: “I take the distinction between killing and letting die to be roughly a difference in causal structure. One kills another if he [deliberately] does something which [directly in a causal sense] brings about the death of another. One lets another die when he does not do something which, if done, would have prevented the other’s death” (Boyle 1977b: 433). The second essential part of Boyle’s thesis involves the important role of intention. In other words, “Deciding to kill someone involves intending the person’s death. Some cases of letting die also involved this intention” (Boyle 1977b: 439). At this early stage in the development of Boyle’s thought, he more or less simply asserts that there is a distinction between foresight and intention, and he associates intention with the concept of a plan of action. In other words, regarding the Johns Hopkins case, Boyle says, “whatever the motives and ends of the agents were, the plan of action set forth by them involved the state of affairs of the child’s being dead as an essential ingredient” (Boyle 1977b: 439) (see also Finnis, Grisez, and Boyle 2001: 37).

Boyle’s focus on intention expanded and deepened in his responses to positions taken by American philosopher, Roderick Chisholm, and British philosopher H.L.A. Hart. As recorded in chapter one, we may recall that the foresight/intention distinction is

sometimes countered by the idea that we intend every consequence that we foresee. As Boyle and Sullivan explain, this idea was first held by the British utilitarian, Henry Sidgwick (1838-1900), and later expressed as, “the diffusiveness of intention principle” by Chisholm (Boyle and Sullivan 1977: 357). Although this principle holds in many cases, Boyle and Sullivan argue that there are situations when it does not, for example, when one foresees a consequence opposed to one’s intention or purpose, and one struggles actively and forcefully against that consequence. In this case, Boyle and Sullivan conclude that “that consequence can hardly be construed as a part of one’s intention,” and “therefore, that major emendations of the diffusiveness principle are in order” (Boyle and Sullivan 1977: 359).

In *Double-Effect and a Certain Type of Embryotomy* (Boyle 1977a), Boyle’s development of his notion of intention occurs specifically within the context of double effect reasoning, and his position is a reaction to Hart’s claim that this reasoning has been used inconsistently, i.e., that in relation to two cases considered by Hart to be analogous (the classic hysterectomy case and the embryotomy/craniotomy case), double effect reasoning has been used in Catholic teaching to justify the first but not the second. Boyle notes that the second case involves the rare obstetrical situation “which arises if a woman is in labor but cannot deliver the child because it cannot pass through her pelvic cavity. If the labor is not terminated the woman will surely die” (Boyle 1977a: 304). Boyle is considering only an embryotomy/craniotomy whereby the fetus’ “skull is perforated [and] its contents [are] emptied” before delivery (Boyle 1977a: footnote #6: 316), as opposed to a “case in which the skull of the fetus is crushed or its body dismembered” (Boyle 1977a: 304). Regarding double effect reasoning, Boyle’s point of departure is his own translation of Gury’s 1869 version: “It is licit to posit a cause which is either good or indifferent from which there follows a twofold effect -- one good [which must follow immediately from the cause], the other evil -- if a proportionately grave reason is present, and if the end of the agent is upright -- that is, if he does not intend the evil effect” (Boyle 1977a: 303).

Although Hart supposes that the two cases have been judged differently because of an assumption that the death of the fetus is inevitably connected with the embryotomy/craniotomy case, Boyle argues that the inevitability of the fetus' death is not the determining factor in either the hysterectomy or the embryotomy/craniotomy case, and that both cases can in fact, be justified by double effect reasoning. Instead of inevitability, Boyle claims that "what counts is [the place of effects] in the means/end sequence and [their] relation to the intention of the agent" (Boyle 1977a: 305). Boyle also adopts Hart's own suggestion of a foresight/intention distinction wherein intention is defined in purely conceptual or logical terms. In Hart's words, "a foreseen but unwanted outcome will be taken to be intended if it is of a kind so immediately and invariably connected with action of the kind done that the connexion is regarded as conceptual rather than contingent" (Boyle 1977a: 305). Boyle's argument for the justification of the embryotomy/craniotomy case in terms of double effect reasoning is ultimately his "reconstruction" of Hart's argument as follows (Boyle 1977a: 306) (see also Finnis, Grisez, and Boyle 2001: 27):

(1) (a) If an effect [e.g., death of a fetus] of one's intended act [embryotomy/craniotomy] is related to this act in a non-conceptual [or contingent] way, and (b) if this effect is not the means to one's end [saving the mother's life] or itself the end of one's act, then (c) one need not intend this effect and the bringing about of this effect is indirect.

(2) The death of the fetus in the craniotomy case is not conceptually related to the crushing of the fetus's skull [i.e., "it seems to be *logically* possible that the craniotomy be performed and the fetus not be killed" (Boyle 1977a: 308)].

(3) The death of the fetus in the craniotomy case is not the means to the agent's end of saving the mother's life nor is it the agent's end [i.e., the lethal effect of the craniotomy follows indirectly in a causal sense from the minimum required to save the woman's life (Boyle 1977a: 311)].

(4) The killing of the fetus in the craniotomy case is not a case of direct killing.

Among the three articles examined thus far, only the embryotomy/craniotomy article includes a reference to the Thomistic origin of double effect reasoning. By contrast, *Praeter Intentionem in Aquinas* (Boyle 1978) and the works that follow it exemplify Boyle's study of Aquinas's work and increasingly explicit elements of what Boyle will eventually call "the broadly Thomist theory I prefer" (Boyle 1991a: 565). In *Praeter Intentionem*, Boyle considers two primary questions: "1) Is it possible to distinguish between what the agent intends in acting and what he foresees will follow from his acting but does not intend? And 2) If we can make such a distinction, where is it to be drawn? What components ... are such that they can be outside [i.e., praeter] one's intention?" (Boyle 1978: 650). Based on his study of Aquinas' work, Boyle concludes that it is indeed possible to distinguish between foresight and intention, and that this distinction should be made as follows:

In short what is neither ordered [i.e., as a means] to the intended end nor a part of the good which specifies this order does not fall within the intention. The causal consequences, like many other properties [i.e., "concomitants and non-essential properties" (Boyle 1978: 665)] do not meet either of these conditions (Boyle 1978: 664).

In the above citation, "the good which specifies" needs further specification, and this Boyle begins in *Toward Understanding the Principle of Double Effect* (Boyle 1980) and *The Principle of Double Effect: Good Actions Entangled in Evil* (Boyle 1984b). In these two articles, Boyle distances himself from what he defines as the weaker, causal sense of "voluntary" (e.g., as upheld by Alan Donagan whose work has influenced Sulmasy). For example, Boyle says that "it is not the performance as a willing causal initiative, together with some set of the effects ... which is primarily voluntary or the primary subject of moral evaluation" (Boyle 1980: 535). Accordingly, although "the bringing about of the foreseen effects of one's performances" is voluntary, it is to be distinguished from "the way in which the execution of choices -- regarded as such -- are voluntary" (Boyle 1980: 535). What is the basis for this distinction? Boyle says that although "the foreseen consequences of one's bringing about an intended state of affairs are often considered in deliberating, ... they are

sometimes conditions *in spite of which* one acts ... it is not these effects to which one is committed in acting” (Boyle 1980: 535). In addition, Boyle argues that one has an “entirely different” attitude toward foreseen consequences: “These consequences need not be seen as good or as desirable; ... in many cases the agent would avoid them if he could. They are not a part of what one chooses to bring about” (Boyle 1980: 535-536).

The choices with which Boyle is primarily concerned are the “self-constituting” or “soul-making choices” of the heart by which one contributes to the “personal and interpersonal fabric” of the kingdom of God (Boyle 1984b: 248-251). From this perspective, “voluntarily accepting side effects is not self constituting in the way that intending and choosing are ... In freely choosing to do something a person determines himself or herself to be a certain kind of person” (Boyle 1984b: 251) (see also Finnis, Grisez, and Boyle 2001: 1-2). For Boyle, double effect reasoning is thus a means whereby one can align oneself through one’s actions with absolute goods constitutive of the kingdom. In this sense, the conditions of double effect reasoning “constitute a basis for the **justification** of actions having evil effects: such actions are not themselves evil **in kind** [emphasis mine] and there is grave reason for performing them” (Boyle 1980: 531). From Boyle’s perspective, double effect reasoning is also a way “to separate the morally significant features of human actions from common sense descriptions of actions -- descriptions which often obscure and fail to reveal what one chooses and intends” (Boyle 1984b: 253). Thus, for Boyle, the first and second conditions of the so-called principle of double effect (i.e., that the proposed act be good or neutral in kind, and that one intend only the good) are the most important conditions. The third condition regarding causality is of less importance because “the causal sequence of the effects is [not] **itself** morally significant” (Boyle 1980). Likewise, the fourth condition regarding proportionality “is brought into play only after the other conditions by which we have clarified the essential moral nature of the act in question and determined that the intentions involved are not set on evil” (Boyle 1984b: 257). In taking this stand on proportionality, Boyle places himself

in stark opposition to the proportionalist approach to double effect reasoning (e.g., the work of Richard McCormick). Boyle expresses his opposition as follows:

Proportionalist reinterpretations ... propose as a reinterpretation or replacement of double effect, [an approach that] is, in fact, contrary to its spirit and specific provisions. Proportionalism is an approach to moral decision-making according to which one's moral obligation is to choose the greater good, or the lesser evil. The judgments which determine moral obligation are comparative value judgments -- that is, they are judgments which state that doing A is the lesser evil rather than doing B. Such judgments suppose that the values at stake can be ascertained and compared or weighed against one another ... It is possible, of course, simply to replace double effect with proportionalism. And I think it is not a falsification of the issue to say that this is what the proportionalist reinterpretations amount to ... The double effect approach [i.e., Boyle's approach] does not compromise the moral absolutes which form the bedrock of Catholic moral teaching. Rather, it helps us to grasp, and precisely apply the relevant absolute norm. This contrasts with the proportionalist approach which allows exceptions to traditional moral absolutes ... if making the exception should prove the lesser evil ... The proportionalist notion of lesser evil, however, is beset with analytical difficulties. Ever since the time of Jeremy Bentham, philosophers have been asking: where is the scale of values needed to make the comparison of values we must make to determine the greater good or lesser evil? Neither human experience nor philosophical construction have provided one (Boyle 1984b: 255-257).

Boyle's stance also places him primarily in opposition to the use of double effect reasoning within the broader community of philosophers outside of the Catholic tradition. In *Who is Entitled to Double Effect?*, Boyle re-iterates that "double effect is justified and necessary" in association with "the traditional Catholic conviction that there are exceptionless norms prohibiting inflicting some kinds of harms on people" (Boyle 1991b: 475). In *Further Thoughts on Double Effect: Some Preliminary Responses*, Boyle emphasizes that double effect reasoning "limits [the extent of such prohibitions] to intentional harming" (Boyle 1991a: 567). Regarding those who reject his absolutist interpretation of double effect reasoning, he says that "those who reject it as superfluous have no specific objection to [double effect reasoning] but a normative disagreement with

the absolutism of the Catholic tradition” (Boyle 1991b: 477). For Boyle, the main problem with non-absolutist versions of double effect reasoning is that although they “[capture] pre-philosophical intuitions which are shared by many people” (Boyle 1991b: 480), their justifications “do no more than elaborate the intuitive appeal which striking examples illustrate” (Boyle 1991b: 481). Boyle cites the work of American philosopher Thomas Nagel as an example of an interpretation of double effect reasoning that lacks justification or authority. The problem is that although Nagel assumes that double effect reasoning is justified “from the agent relative perspective,” Nagel “provides no argument for that assumption, beyond the **phenomenology** [emphasis mine] which elaborates common intuitions about the difference between harms one intends and harms one brings about as side effects” (Boyle 1991b: 482) (Boyle 1991a: 567).

Boyle is not a fan of common intuitions, and herein lies the key to his framing of the relationship between ‘universals’ and ‘particulars’ in general, and in the context of double effect reasoning. One of the constant themes in his work is the debate concerning non-cognitivism or voluntarism (originating in Hume’s work) versus Boyle’s own view -- a type of cognitivism or non-voluntarism (e.g., Boyle 1975, 1982, 1989, 1998b, 2001). If we take Boyle’s encounter with R. M. Hare’s non-cognitivism as an example of the larger debate, whereas “the establishing of moral standards is, according to Hare, a function of our freedom; [i.e.,] we **choose** [emphasis mine] to make certain standards the basis for guiding our actions” (Boyle 1975: 84), the establishing of moral standards is, according to Boyle, a function of “a kind of objectivity”; i.e., “evaluative judgments can be true or false; they do not depend on choices for their meaning or truth” (Boyle 1975: 92). In two key articles on moral reasoning (Boyle 1984a, 1986), we find the central elements of Boyle’s cognitivism. For Boyle, “moral reasoning seems to be primarily a cognitive activity”; “it is possible to identify moral reasoning that is correct and mature”; and “it is possible to disengage an objective cognitive procedure from one’s private moral convictions” (Boyle 1986: 165-177).

What is this “objective cognitive procedure”? Boyle reminds us that for both Aquinas and Kant, “rationality was of the very essence of morality” (Boyle 1986: 185). Accordingly, Boyle’s “objective cognitive procedure” is aligned with Aquinas’ “[belief] that an act is moral if it is in accord with human nature, and it is in accord with human nature if and only if it is in accord with right reason ... [and] reason operating on the basis of thoroughly intelligible principles” (Boyle 1986: 185). For Boyle and his colleagues Germain Grisez and John Finnis, the first principle of morality is thus as follows: “In voluntarily acting for human goods and avoiding what is opposed to them, *one ought to choose and otherwise will those and only those possibilities whose willing is compatible with integral human fulfillment*” (Finnis, Boyle, and Grisez 1999: 207) (see also Grisez, Boyle, and Finnis 1987: 128; Grisez 1997: 853-854) . For these authors, basic moral principles such as this are self-evident truths. As Boyle explains, “in saying that a fundamental principle is self-evident, one is not thereby saying that everyone knows it, or would accept it, or even that all those who do accept it understand it equally well. For the claim of self-evidence is a claim about the logical connection [i.e., necessary and immediate] between the subject and predicate of a proposition” (Boyle 1984a: 41-42). From the first principle of morality, these authors have derived and developed their well-known theory of basic human goods, a theory that is far beyond the scope of this thesis. More germane to this thesis is their procedure for reconciling universals and particulars, a procedure which in the view of this author, is explained with the greatest clarity and specificity in Boyle’s work.

As Boyle explains, “moral norms ... are universal propositions ... universal in logical form” (Boyle 1984a: 37). “Clearly,” Boyle says, “the logical relationship is one of instantiation. For the norm indicates that an action of a certain describable kind [or type] should or should not be done” (Boyle 1984a: 38). In the case of norms that are moral absolutes (e.g., the absolute prohibition against intentionally killing the innocent, against adultery, or against intercourse using artificial contraception (Boyle 1998a: 72)), “then the move from norm to judgment is straightforward ... [i.e.,] if a concrete action is known to

have whatever features are needed to make it an act of a kind always prohibited, one knows one may not morally undertake the action” (Boyle 1984a: 38). By contrast, when one attempts to apply absolute norms in new, ambiguous situations, or in the case of non-absolute norms (i.e., many, if not most norms), the relationship between the norm, as a universal proposition, and “the [singular or particular] judgment of what one ought concretely to do” (Boyle 1986: 169) in a given situation is extremely complex and often problematic. In order “to close the gap between norm and singular judgment one must determine that all the morally relevant features of the proposed act have been considered” (Boyle 1986: 169) (see also Boyle 1984a: 39-40). Along with the virtue of prudence, specificatory premises are necessary to achieve this closure. As Boyle explains:

Specificatory premises are universal propositions in which a kind of act is judged to have or to lack some feature which, according to the normative premise in the argument, is morally relevant. Specificatory premises seem to be necessary truths; the claim they make is that the kind of act in question, as a kind of act, has or does not have the morally relevant feature. This kind of connection seems to be a conceptual one: there is something about the act in question which requires that it have or not have the feature in question. And, as Donagan suggests, this connection is established by informal conceptual clarification, which seems to be like the procedures used in traditional casuistry (Boyle 1984a: 43).

Examples of specificatory premises include the Golden Rule (Boyle 1986: 186-187), the modes of responsibility that specify the basic human goods (Boyle 1986: 186) (see also Grisez 1983: 225-226), and most important for our purposes -- double effect reasoning. As Boyle explains, specificatory premises such as these permit us to go beyond the Kantian concern for non-contradiction and explore important “non-Kantian questions,” for instance, “are the values that are ordinarily at stake in, for example, a decision to lie, *always* at stake in such decisions? If not, then there will be cases when the moral meaning of the act will be different. In these cases, one need not be ‘playing favorites’ or making an unjustified exception in one’s favor” (Boyle 1986: 187). These “non-Kantian questions” are extremely important because they facilitate comprehensive moral reflection, even in the

face of the most difficult cases, or what Boyle calls, situations of “ ‘moral impossibility’, that is, [situations] in which one lacks the capacity to prevent the harmful side effect from occurring” (Boyle 1991b: 489). Boyle organizes situations of moral impossibility into three types: (1) deflection cases wherein one can deflect the harm, but not prevent it (e.g., the craniotomy case); (2) cases wherein one can save some from harm at the price of letting harm fall on others (e.g., allocation of scarce medical resources); and (3) ‘no-win’ situations (e.g., building highways and pain control situations in which the required analgesics “will probably shorten the patient’s life”) (Boyle 1991b: 489-491). Regarding ‘no-win’ situations, such as building highways and difficult pain control cases, Boyle says:

In both cases the side effects of taking the action will include the probability of death, but the side effects of the alternatives are also bad, and indeed include some which it is plausible to think would be absolutely impermissible to inflict intentionally. So there remains here a situation in which, whatever one does, harms will occur which it would be absolutely wrong to bring about intentionally, and so a pair of norms [e.g., ‘do not kill’ and ‘control pain’] each of which excluded absolutely bringing about the side effects of each alternative would be impossible to follow (Boyle 1991b: 491-492).

From Boyle’s perspective, double effect reasoning represents a mechanism whereby basic normative principles (e.g., the prohibition against intentionally killing innocent persons) can be specified non-arbitrarily vis-à-vis “the morally relevant features of a proposed human act -- namely, the goods at stake in the act and the voluntary relationship a person establishes toward them” (Boyle 1986: 189). Most importantly, “unless the voluntary character of the acts in question and the goods at stake in decisions involving such acts are clarified, **there will be no way to distinguish** [emphasis mine], for example, between suicide and martyrdom, or between passive euthanasia and reasonable withholding of life saving treatment” (Boyle 1986: 190), or (by extrapolation) between euthanasia and terminal sedation. “For in both of these pairs of acts, there is no necessary difference in the behavior involved, but only a difference in the way death is willed” (Boyle 1986: 190-191). The difference in the way death is willed also has a bearing on one’s moral self. As Boyle

explains, "The point is that the voluntariness of accepting consequences is not determinative of one's moral self in the way one's free choices are" (Boyle 1986: 192).

Boyle does not underestimate the problems involved in the use of double effect reasoning as an ensemble of specificatory premises. For example, use of double effect reasoning sometimes prevents the clarity that its use is designed to provide concerning morally relevant features. "In particular," Boyle says, "there is a tendency to regard human actions too behavioristically, and to ignore the kind of voluntariness that is involved in the action [with the result that] it is often very difficult to discern a rational connection between action so characterized and any morally relevant predicate" (Boyle 1984a: 48). In addition, Boyle cites Donagan's point that " 'different thinkers do not agree about what is seriously disputable'" (Boyle 1984a: 42), or what needs to be specified more precisely. At one level, attempts to make what is perceived to be exceptions to general prohibitions, for instance, against killing, can quickly polarize and alienate people. At another level, there are "substantive questions about the justification and priority of general moral norms" themselves (Boyle 1986: 170).

Regarding these substantive questions, there is a need to re-visit Boyle's framing of the question of 'universals' and 'particulars' in terms of his version of the debate between cognitivism and non-cognitivism or voluntarism. In Boyle's, *Natural Law and the Ethics of Traditions* (Boyle 1992), we discover the larger context of the 'nature' of the act that the first condition of the so-called principle of double effect requires one to specify. The larger context is obviously 'natural law' -- "a set of universal prescriptions whose prescriptive force is a function of the rationality which all human beings share in virtue of their common humanity" (Boyle 1992). Not unlike the contents of Finnis, Grisez, and Boyle's theory of basic human goods, the contents of 'natural law' are far beyond the scope of this thesis. Again, however, what is most germane is the way in which 'natural law' as a set of 'universals' is understood to be connected or unconnected to 'particulars', especially the particular choices of particular persons within particular cultures and particular traditions of

enquiry. In *Natural Law and the Ethics of Traditions*, Boyle distinguishes three ways in which traditions of enquiry are tradition-dependent, and he uses this typology to draw conclusions about the tradition-dependence of natural law. Firstly, traditions of enquiry are tradition-dependent insofar as they are necessarily rooted in “elements of contingency and particularity within which all enquiry seems to take place,” for example, “language,” “the current state of knowledge,” and “particular questions posed by people in definite cultural circumstances” (Boyle 1992: 5). Secondly, traditions of enquiry are tradition-dependent in a “much stronger sense” insofar as they comprise “those engaged in an enquiry and who recognize themselves to be developing a body of thought which prior thinkers have originated and developed but left incomplete, at least as far as its application to the problems and challenges, both internal and external, which the theory must deal with at any given time” (Boyle 1992: 7). Finally, traditions of enquiry are tradition-dependent in a “still stronger sense” insofar as they are “rooted in the lived ethical experience of people who share a common way of life” (Boyle 1992: 9).

Boyle says that natural law is obviously and undeniably tradition-dependent in the first sense of tradition-dependence on the level of language and cultural contingencies. Certainly, tradition-dependence on this level presents problems for natural law because its “claim that its most basic prescriptions are accessible to all (more precisely, to all capable of understanding their terms) may seem more difficult to accommodate within a view in which the cultural contingency and particularity of enquiry is acknowledged” (Boyle 1992: 6). Still, Boyle asks, “why should it be impossible that the same proposition or prescription can be expressed in different languages or arrived at by enquiries with very different starting-points and presuppositions” (Boyle 1992: 7)? Similarly, “why should it be impossible that two distinct propositions or prescriptions should make reference to the same moral reality, or to realities which are integrally related and more or less well expressed in the distinct propositions or prescriptions” (Boyle 1992: 7)? Regarding this type of tradition-dependence and natural law, Boyle makes the following conclusion: “Natural law theorists have surely not developed an account for this kind of tradition

dependence, but equally surely, they have not denied it. So, if natural law theory cannot account for its being dependent ... [in this way], that must be because of implications of some of its key assertions which its proponents have not drawn" (Boyle 1992: 6).

Not surprisingly, Boyle says that natural law is not tradition-dependent in the third sense of being rooted in the lived experience of persons sharing a common life. There are three main premises that contribute to Boyle's view. Firstly, he re-iterates "the claim of natural law theory that [its] principles are known or at least [are] knowable by anyone, independently of whether one is part of a vital moral community" (Boyle 1992: 11). Thus, for example, one can know and uphold the principle of the sanctity of human life even if one does not live in a community wherein that value is upheld. Secondly, natural law has functioned primarily within the "largely analytical" context of casuistry, and "as such the tradition it presupposes is the tradition of intellectual enquiry, not a community of shared values" (Boyle 1992: 12). Finally, virtues (especially practical wisdom or phronesis) play an important role in natural law, but virtues are "dispositions of character" or "intrinsic principles which give shape to moral life" (Boyle 1992: 14). Hence, the most that can be said is that "the importance of the virtues within the natural law account of moral life does not immediately settle the extent to which, on natural law grounds, virtuous living presupposes a community of shared values" (Boyle 1992: 14). What is settled for Boyle is that "access to human goods and other basic moral considerations cannot, on natural law grounds, be simply a matter of experiencing them in so far as they are lived within a particular community and embodied in the character traits of a community's members" (Boyle 1992: 15). In fact, for Boyle, "the actuality of a set of values is [not] a necessary condition for moral knowledge" because "the actual lived values of a given society are frequently more or less distorted and perverse" (Boyle 1992: 16).

Paradoxically, the strongest sense in which natural law is tradition-dependent is insofar as it is a tradition of enquiry and as such, "natural law theory is committed to the significant tradition **independence** of moral knowledge" (Boyle 1992: 15). Boyle explains

this paradox by distinguishing the non-cognitivist or voluntarist view of practical reason from his own cognitivist view. Non-cognitivists or voluntarists “conceive practical reason as based on and limited by the values lived within a community. The grounds for moral judgement, therefore, are not accessible to those who do not share the life of a community. In a community of shared values the operative values are actual; they are not abstract or ideal values ...” (Boyle 1992: 16). By contrast, Boyle’s cognitivist view of practical reason “is based on the conviction that moral norms are found among the principles of practical reasoning, and that these principles are goods which all humans know and are interested in ... [According to this view,] moral norms are intelligible; they make sense and provide reasons for action and rational motives for acting morally ...” (Boyle 1992: 15-16).

Boyle’s view is still plagued by a serious credibility problem in light of the fact that, as he himself acknowledges, many do not know, are not interested in, or are not convinced by the ‘universal’ goods and corresponding norms that Boyle upholds. Part of Boyle’s ultimate response to this problem can be found in the following claim: “Recognition that normative claims are based upon analyses developed from within a particular tradition of enquiry does not provide a reason for thinking that these claims are not critically vindicated, whether or not these claims are universal” (Boyle 1992: 9). In addition, Boyle attempts to “account for moral diversity and disagreement” by means of three elements: ignorance, the reality of hard cases (of which terminal sedation would presumably be a good example), and the reality of divergent responsibilities. Regarding ignorance, Boyle says, “natural law theory recognizes that people can be ignorant even of very basic moral truths because of mistakes in reasoning” (Boyle 1992: 19). Concerning hard cases that can make application of principles extremely difficult, especially within complex institutional settings, Boyle says, “moral agreement at this level, even among those who share a tradition of moral enquiry or a common set of values, is a considerable achievement” (Boyle 1992: 19). Finally, there are inevitable variations “in people’s actual responsibilities due to different vocations and opportunities, and due to the possibilities for action created and blocked by differences in cultural and social context ... Stealing is always wrong [for

example], but what makes something the legitimate property of some person or group is variable ...” (Boyle 1992: 19). Boyle acknowledges that a more adequate response is still needed concerning what is probably the most serious credibility problem -- the “deep semantic and epistemological objections to the entire conception of self-evidence which Aquinas takes over from Aristotle, and to the foundationalist understanding of human knowledge of which this conception is a part” (Boyle 1992: 26). In recent years, some have sought to replace foundationalism with coherentism, for example, Rawls’ use of reflective equilibrium. However, Boyle ends the article with the following critique of coherentism:

The underlying foundationalist theory of knowledge, whatever its merits in epistemology generally, has considerable power in the area of moral knowledge. For moral judgements appear to be justified by reasoning, and reasoning from more general moral considerations. Thus, moral judgements will be correct only if these more general moral considerations are correct. How can these general moral considerations be known to be correct? There are surely alternatives to thinking that they are basic truth (truths, that is, of a special, normative kind). One could maintain that they are necessary but not basic ... And one might provide a coherentist account of their special status as the basis of moral thinking. But what would be the elements whose coherence would constitute grounds for thinking certain principles basic? Reflexive equilibrium between principles and moral judgements appears to deny the dependence of the latter on the former. Coherence between moral principles themselves appears to suppose that there are enough elements to relate so that a plausible, and non-question-begging picture will emerge. The implications of both these forms of coherentism are troubling, and indeed incompatible with the way people actually think about moral questions. The more natural way to think of these matters is that suggested by natural law’s (and perhaps ethical theory’s) foundationalism: there are moral principles which are known to be in the appropriate way true (Boyle 1992: 27).

In 1997, Boyle edited an issue of *Christian Bioethics* entitled, *Intentions, Christian Morality and Bioethics: Puzzles of Double Effect*. Boyle introduces the issue by saying, “The discussion of double effect in this issue ... shows at the very least that the topic of double effect continues to fascinate, perplex and infuriate moralists” (Boyle 1997: 87). According to Boyle, the issue includes the work of “a new generation of Roman Catholic

ethicists each of whom seeks to find a coherent, defensible place within the Catholic moral tradition for double effect or a remnant of it” (Boyle 1997: 87). The central focus of all the articles is their quest “for the authority by which [the foresight/intention distinction] has its unique prescriptive force” (Boyle 1997: 88). All of the authors share the view that the distinction has moral authority, and “they explain this more in philosophical than in confessional or theological terms. That is the Catholic way” (Boyle 1997: 88). However, Boyle responds, “But I think there is a more overtly Christian answer to the question of the source of authority of double effect than my younger colleagues provide. Christianity is a religion of the heart: one’s choices, intentions and the character they establish are a lot more significant morally than behavior, or success, or conformity to norms” (Boyle 1997: 88). Given the fact that Boyle’s work explains the moral authority of double effect reasoning in almost exclusively philosophical rather than confessional or theological terms, his response to the work of his younger colleagues is somewhat surprising. However, there is a need to recall that Boyle’s career work on double effect followed his initial critique of determinism and in particular, his and his colleagues’ zealous defence of free choice. If we return to the Introduction to Boyle, Grisez and Tollefsen’s, *Free Choice: A Self-Referential Argument* (Boyle, Grisez, and Tollefsen 1976), we discover that the theological underpinnings of their defence of free choice are associated with their defence of theism and their reaction against naturalism:

The issue with which we are concerned in this work emerged most clearly in early modern philosophy. Jewish and Christian religious beliefs about man and moral obligation had shaped an interpretation of the common human experience of making choices. Within the theistic perspective, it seemed evident that whenever a person makes a choice he could equally well chose an alternative other than the one he does. Many early modern philosophers, such as Hobbes and Spinoza, replaced traditional theism with a naturalistic conception of the world and of man. This naturalistic conception became part of the worldview of science ... Within the naturalistic perspective, it seems evident that whenever anything happens, however contingent it might be, what does happen is the only possible outcome of conditions given prior to the event. The state of the world at a given time and the way the world works settles whatever is going to happen in the world at any later time. As

soon as the naturalistic view was applied to human choice the incompatibility between the modern view and the traditional one became evident ... The heretical thesis of Hobbes is the orthodox position today ... However, we are as dissatisfied with the position prevalent today as Hobbes and others were with the position prevalent in their day. Thus, in this work we attempt to establish a thesis which few contemporary philosophers regard as defensible: that human persons can make free choices -- choices such that **only the act of choosing** [emphasis mine] itself settles which alternative a person will choose (Boyle, Grisez, and Tollefsen 1976: 1-2).

Boyle's emphasis on free choice continues up to the present day in an article entitled, *Medical Ethics and Double Effect: The Case of Terminal Sedation* (Boyle 2004). In this piece, Boyle's concern is not so much the use of double effect reasoning to distinguish terminal sedation from euthanasia, but rather, emerging medical-legal consensus that uses the reasoning in the case of terminal sedation (Hawryluck 1999) and the question of "how much of this distinctive moral view [i.e., double effect reasoning in the context of Roman Catholic casuistry] does the medical profession and the law implicitly accept by accepting this application of double effect?" (Boyle 2004: 52). Boyle explains that the absolutism connected to double effect reasoning does not forbid terminal sedation because "a physician's prescribing analgesics, described in just that way, is morally indifferent; therefore, the results, intentions and other circumstances of this chosen behavior will determine its permissibility or impermissibility" (Boyle 2004: 54). Although Boyle admits that intention can be problematic insofar as "a person's intentions are at least in part inaccessible to others" (Boyle 2004: 58), important parts of a physician's intention are publicly accessible (e.g., "notations on the patient's chart and in the recorded dosages and titration of analgesics" (Boyle 2004: 51-52)), and insofar as these intentions have been publicly clarified, terminal or palliative sedation can be distinguished from euthanasia. "The requirement of a proportionately grave reason" (Boyle 2004: 54) is also not a problem from Boyle's perspective. He says, "In the case of terminal sedation, this condition of proportionality seems to be easily met, and the existing consensus assumes that. The need for palliation of some dying patients is substantial and is assumed generally to justify

terminal sedation if moral and legal worries about euthanasia are satisfactorily addressed” (Boyle 2004: 55). Regarding the use of double effect reasoning to distinguish terminal sedation from euthanasia in the medical-legal context, Boyle stresses the fact that this reasoning comprises a specificatory premise, i.e., that “although double effect presupposes the truth of some ... indefeasible norms, its function in moral thought is not to justify them but rather to limit their application to intentionally harming the goods of human beings” (Boyle 2004: 57). Hence, in whatever context “such norms are taken as true or appropriate, whether as moral norms or social regulations” (Boyle 2004: 59), double effect reasoning can be legitimately used. In other words, the application of double effect reasoning “in law and [public] morality need not depend on the particular framework in which it was developed” (Boyle 2004: 51).

However, here again, Boyle’s interpretation of the use of double effect reasoning depends largely on his particular understanding of free choice. Regarding the intention/foresight distinction, or what Boyle refers to as “the distinction between what a person intends in acting and accepts as a side effect (hereafter the intended/accepted distinction),” Boyle says: “It seems that Aquinas and the theological tradition regarded the ethical significance of the intended/accepted distinction ... as simply obvious” (Boyle 2004: 55). What seemed obvious was the analogy between divine and human action. In other words, “Just as God creates only what is good, humans should voluntarily pursue in their actions only what is humanly good. And just as God permits the evils flawing his creation, so humans must accept some evil consequences they should not intend” (Boyle 2004: 56). The necessity to accept some evil consequences stems from “a limitation on the human capacity to pursue the good,” in other words, “in all situations calling for human choice, no matter what a person chooses to do, some instance of a human good will be harmed, destroyed or at least knowingly neglected” (Boyle 2004: 56). Boyle emphasizes that “this limitation is essentially a limitation on the human capacity to avoid some bad side effects of good choices, and not a limitation on the human capacity to avoid choosing

precisely for the sake of bad goal”; on the contrary, “choosing to pursue results that involve harming a good is always avoidable -- though often at a high price” (Boyle 2004: 56-57).

2.3. The Interpretation of Daniel Sulmasy

In his doctoral dissertation, *Killing and Allowing to Die* (Sulmasy 1995), Sulmasy defends a distinction between killing and allowing to die in the context of widespread public demand for assisted suicide and euthanasia. As he explains, “Some have argued that since allowing patients to die is widely socially sanctioned, and there is no coherent moral difference between killing and allowing to die, then euthanasia and assisted suicide ought to be considered morally permissible. If the thesis of this dissertation is correct, however, then all such arguments must be rejected” (Sulmasy 1995: 10-11). In explicit agreement with Boyle’s basic position in *On Killing and Allowing to Die*, Sulmasy argues “that requiring a distinction to be decisive [in itself] in order for it to be meaningful [e.g., ‘Every x is w [i.e., wrong] and every y is not w’] is far too restrictive” (Sulmasy 1995: 236). By contrast, “particularly in medicine, distinctions of the form, ‘Every x is w. Some y is w and some y is not w’ are meaningful and of immense practical importance” (Sulmasy 1995: 236). Hence, one of Sulmasy’s central arguments “is that the killing and allowing to die distinction assumes this form [i.e., it **signals** a moral difference], and that once stated in this form it can be defended as meaningful and morally important” (Sulmasy 1995: 236). Not unlike the evolution of Boyle’s work, the development of Sulmasy’s interpretation of double effect reasoning takes shape initially in the context of a killing and allowing to die distinction, and then moves into the broader context of other moral distinctions made possible by double effect reasoning, particularly a distinction between terminal sedation and euthanasia. As Sulmasy explains in his thesis, “the PDE [principle of double effect], a very general and purely formal moral principle, is not equivalent to the [killing] and [allowing to die] distinction, nor can [that distinction] be deduced from the PDE without additional information” (Sulmasy 1995: 157). Sulmasy’s thesis and subsequent work can be viewed as a sustained attempt to provide the “additional information” or the “moral

context that can supply the machinery for all the missing premises” (Sulmasy 1995: 157) required for more effective use of double effect reasoning. The result of this effort is a practical distinction between terminal sedation and euthanasia that combines descriptive, medical elements and moral elements.

In his thesis, Sulmasy pays special attention to the additional information and moral context provided by Aquinas’ structure of human (i.e., voluntary, moral) action (Aquinas 1975: I-II. Q.6-21). As indicated in the first chapter, this structure is extremely important because double effect reasoning is essentially an application of this larger framework by means of which Aquinas reconciles ‘universals’ and ‘particulars’ in the realm of human action. Sulmasy’s interpretation of Aquinas’ theory is heavily indebted to the work of Australian-American philosopher, Alan Donagan (1925-1991). Sulmasy describes an eight-part structure wherein “each of [the] attitudinal functions plays a role in the process of making an intention determinate” (Sulmasy 1995: 360). It is important to note that “the psychological reality is often more complex than even this elaborate scheme can capture. The scheme is not meant, for instance, to suggest a necessary ordering of mental events preceding an act” (Sulmasy 1995: 360). Sulmasy’s portrayal of Aquinas’ framework is overlaid with “the three Aristotelian mental functions highlighted by Donagan -- desire, deliberation, and decision -- [corresponding] to three distinct propositional attitudes [or functions] (Sulmasy 1995: 356), namely, “the doxastic (belief), orectic (desire), and prohairetic (choosing) functions (Sulmasy 1995: 357). The eight-part structure is divided into two parts, the first, concerned with ends as universals, and the second, concerned with particular means and the reconciliation of ends and means:

Concerning the end, Aquinas called the doxastic function the agent’s ‘apprehension’ of the end as good (apprehensam); the orectic function the agent’s ‘desire’ for the end (velle or simplex voluntas); and the prohairetic function the agent’s ‘intention’ (intentio -- in his restricted use of the term as a commitment to the end). Concerning the means, Aquinas suggested that all three basic mental functions also played a role. He named the doxastic function the agent’s ‘counsel’ or deliberation regarding the means

(consilium); the orectic function the agent's 'consent' to the means as desirable (consensus); and the prohairetic function the agent's 'choice' of a particular means of achieving the end (electione). **All these together form what I have been calling**, in keeping with the contemporary philosophical discussion, **a mature prior intention** [emphasis mine] ... Another doxastic function and another prohairetic function each plays a role in Aquinas' much less well developed account of how a prior intention gives rise to an **intention in acting** [emphasis mine]. The doxastic function he calls command (imperium). The prohairetic function he calls application or use (usus). He only considers these latter attitudinal refinements in relation to the translation of a prior intention into an intention in acting. This is not the strength of the Thomistic contribution (Sulmasy 1995: 358-359).

As the above citation indicates, Sulmasy believes that there is a weakness in Aquinas' framework. In other words, Sulmasy says, "Aristotle and Aquinas really only address what I am calling prior intentions, and not intentions in acting" (Sulmasy 1995: 316). As Sulmasy explains, "There are two types of prior intention. A simple prior intention only regards the goal or the end of a possible act. A mature prior intention is roughly synonymous with the agent's chosen plan, including both means and end. It is the intentional propositional attitude an agent takes towards an act that is to be undertaken **in the future**" [emphasis mine] (Sulmasy 1995: 313). Although Sulmasy's mature prior intention coincides roughly with the cumulative integration of all the functions before 'usus', or the application of an entity to the purpose or operation of the will (Aquinas 1975: I-II. Q.16. a.1), Sulmasy's problem is that Aquinas' structure does not sufficiently account for the fact that "when an agent **is acting or has acted** [emphasis mine] [...], one can ascribe to the agent's act a choice of a complete act -- both an end and a means of achieving that end" (Sulmasy 1995: 307). In other words, "an intention in acting is more or less an ascription of an acting agent's choice of means and ends in bringing about a particular event, whether or not this act was the result of a pre-conceived deliberate plan and regardless of what further intentions [i.e., *finis operantis* in more traditional terminology (Sulmasy 1995: 308)] the agent might have in bringing the event about" (Sulmasy 1995: 314).

In his thesis, Sulmasy is attempting “to traverse a via media between those who would propose that an agent intends everything that he or she foresees following upon his or her act, and those who might suggest a specious strategy of intention re-direction such as that satirized by Pascal” (Sulmasy 1995: 476). Accordingly, Sulmasy shuns the extreme position of Peter Abelard wherein “the morality of human acts is solely a function of underlying intention” (Sulmasy 1995: 288), and he constructs a theory of intention that emphasizes intention in acting and “[imposes] limits that will disallow such moral abuses as justification by directed intention” (Sulmasy 1995: 290). Underlying this view of intention within limits is Donagan’s definition of a human act. According to Donagan, “human acts are ‘human doings that can be explained by their doers’ propositional attitudes’” (Sulmasy 1995: 293). Examples of propositional attitudes include “desiring, wishing, believing, doubting, accepting, and hoping” (Sulmasy 1995: 301). In Sulmasy’s Donaganian view, intention itself is a propositional attitude: “An intention is an irreducibly simple attitude [e.g., desiring], ascribable to an agent [e.g., he] that takes as its object a proposition about an event [e.g., he desires that x should be dead] that the agent himself chooses to bring about under a definite description [e.g., he is ‘killing’ or has ‘killed’ x with a knife]. If the event occurs in the way the agent has chosen, this attitude will explain the event” (Sulmasy 1995: 302). As Sulmasy explains, Donagan has a causal view of agency: “Human beings ... are accountable for what they cause by their agency. Agency is the power of intention to cause events in the world” (Sulmasy 1995: 349). Regarding the term “event,” “Donagan holds that voluntary human doings constitute the class of things that are known as acts, and that acts are ‘a species of event’. He holds further that all ‘events are genuine individuals [or concrete particulars]’, [and] he defines events as ‘changes or persistences in states of continuing individual objects’ ... represented linguistically ... by individual names or definite descriptions, not by sentences’ ” (Sulmasy 1995: 293-294). Sulmasy reports that Donagan’s view of acts as events has been supported by many philosophers, especially the American philosopher Donald Davidson (1917 -) in his *Essays on Actions and Events*. In keeping with this causal understanding of agency, Sulmasy

adopts John Searle's notion that intentions "have 'conditions of fulfillment' rather than truth conditions per se" (Sulmasy 1995: 303). Accordingly, Sulmasy believes that the credibility or fulfillment of a stated intention (i.e., as distinct from foresight) vis-à-vis individual events rest on three criteria: **logical implication or coherence** (i.e., "what an agent believes is logically implied by the propositional content of her intention"; **plausibility** (i.e., "what an agent believes to be an alternative true definite description of the conditions of fulfillment of her intention"); and **cause and effect relationships** (i.e., "what the agent believes will be caused by the conditions of fulfillment of her intention") (Sulmasy 1995: 369-370). Sulmasy bolsters these criteria with an elaborate testing scheme consisting of an abundance of formal logic and three different causality scenarios (Sulmasy 1995: 370-400).

In order to situate this view of intention and act description within the medical context, Sulmasy utilizes "the ordinary linguistic intuitions of medical practitioners as a gold standard" (Sulmasy 1995: 472). Generally speaking, he suggests that the killing and allowing to die distinction is one that "does not explain the difference between two classes of acts, but rather points to one class [i.e., 'killing'] where what is most important [i.e., intention and causal description] can be known rather easily, while in the other class [i.e., 'allowing to die'], what is most important [i.e., intention and causal description] will require more work to uncover" (Sulmasy 1995: 473). Seeking an analogy within medical practice, Sulmasy concludes that the pathognomonic sign represents the same type of distinction. As he explains, "the presence of a pathognomonic sign [e.g., an abnormal finding on physical examination or in the results of diagnostic tests] assures one that the disease is present (i.e., the sign is specific for the disease). If the pathognomonic sign is not there [e.g., if all you have are symptoms reported by a patient], the disease may or may not be present" (Sulmasy 1995: 237) and you would need to search further for any pathognomonic sign(s). In the same way, 'killing' "is a sign, like a pathognomonic sign ... ['Killing'] denotes a class of actions that are always immoral ... because of a complex of the [agent's] intentions and causal relationship to the death" (Sulmasy 1995: 255-256). By

contrast, 'allowing to die' is a sign that denotes a class of actions which are not necessarily immoral because they may or may not involve the presence of pathognomonic sign(s) indicative of 'killing'. One would need to explore carefully the intention and causal description involved in particular instances. Using philosophical language to describe the same distinction, Sulmasy says, "In ['killing'], the doctor's act will always be necessary, and will usually, but not always be sufficient for the death of the patient to have come about in the way that it did. In ['allowing to die'], however, the doctor's causal role is different ... the doctor's act is never sufficient, even though it is usually necessary for the death to have come about in the way that it did" (Sulmasy 1995: 256).

Although Sulmasy does not explicitly articulate a distinction between terminal sedation and euthanasia in his thesis, he does explore briefly whether a distinction can be made between the achievement of pain relief from morphine and the hastening of someone's death (i.e., from the respiratory depression often associated with morphine). In this instance, although he does not use the pathognomonic sign terminology, his process for making a distinction is the same. In other words, he subjects the claim or the signal of intending only pain relief and not the hastening of death to his credibility analysis: "Is such a combination of intentions coherent, plausible, and [morally] justifiable" (Sulmasy 1995: 413) ? He concludes that the claim is coherent because on the molecular level in time, "there are, in fact, two separable events, distinct in time and space"; in other words, "pain relief occurs at lower doses and more rapidly than respiratory depression" (Sulmasy 1995: 413-414). The claim is plausible for two main reasons: "The Event of the death of the patient is certainly not a necessary causal condition for the Event of pain relief. If it is not the doctor's further intention that the patient should die and it is not the case that he intends analgesia by way of the patient's death, then the claim is at least plausible" (Sulmasy 1995: 414). In this example, Sulmasy relates moral justifiability to a proportionality analysis that leads him to this conclusion: "If the circumstances are such that the patient's death is inevitable and the pain is great, then fears of the chance of hastening the patient's death seem overwhelmingly out of proportion compared to the benefits of pain relief. The act is

then morally justified as well” (Sulmasy 1995: 415). This conclusion is in accordance with the way he has explicitly defined proportionality in his thesis: “My use of the term proportionality is intended to describe the weighing of the good and evil involved in a case, and ought not to be confused with the school of Roman Catholic moral thought known as proportionalism” (Sulmasy 1995: 176). Regarding the first condition of the principle of double effect and its specification that a proposed act must be ‘good’ or ‘neutral’ before the rest of the conditions come into play, Sulmasy says only this:

My entire analysis is based on the premise that it is morally wrong to act with the specific intention in acting that a human being should die by way of one’s act ... I have not provided a justification for this moral premise ... this task is beyond the scope of [this thesis]. However, I should point out that one might hold such a moral premise to be true for a variety of reasons. One might hold this premise on the basis of deep moral intuitions. Or ... for religious reasons. Or one might be a Kantian and hold this premise because of a belief that the humanity in another or in oneself can never be used as a means to any end. Or one might be a rule Utilitarian and hold that a rule based upon this premise will generate the best consequences in the long term (Sulmasy 1995: 477).

Within Sulmasy’s publication of key aspects of his thesis in *Killing and Allowing to Die: Another Look* (Sulmasy 1998), he acknowledges that the killing and allowing to die distinction is at the centre of great public controversy. He notes, for example, that the American Supreme Court decisions regarding physician-assisted suicide/euthanasia left this distinction and double effect reasoning in its entirety in urgent need of clarification. Reviewing the views of Dr. Timothy Quill and several prominent philosophers who supported Quill in *The Philosophers’ Brief* (Dworkin, Nagel, Nozick et al. 1998), Sulmasy concludes that “they all seem to share a common view that the distinction is ‘confused and mistaken’” (Sulmasy 1998: 55). In response to his own question, “Why another paper on killing and allowing to die?” (Sulmasy 1998: 56), Sulmasy takes up Tom Beauchamp’s challenge in *Intending Death*: “If we are to retain the distinction between killing and letting die, we need to provide clearer, more precise meanings that are useful for medical ethics. For example, killing could be reserved for circumstances in which one person

intentionally and unjustifiably causes the death of another human being ...” (Beauchamp 1996: 7). In his thesis, of course, Sulmasy reserved ‘killing’ for these exact circumstances within the context of double effect reasoning, and in *Another Look*, he summarizes the larger theory of intention and act description that has already been presented here.

Another Look also contains several new elements that extend and deepen Sulmasy’s interpretation of double effect reasoning. In response to Quill’s prioritization of patient autonomy over and above any killing and allowing to die distinction, Sulmasy says, “proponents of the traditional view [i.e., his view] do not discount autonomy and the role of patients in making end-of-life decisions ... However, proponents of the distinction also argue that the patient’s autonomous authorization is not the **only** condition that needs to be met for a clinician to make morally justifiable end-of-life decisions” (Sulmasy 1998: 58-59). Quill’s emphasis on patient autonomy forces Sulmasy to be more transparent about his own interpretation of the first condition of the principle of double effect, that is, the basis of his “deontological view that some acts ought not be done, no matter what the consequences or the preferences of another person” (Sulmasy 1998: 59). Building upon the foundations of this view given in his thesis, Sulmasy emphasizes four more: that his view of the relational value of human life “proscribe[s] euthanasia and assisted suicide as violent acts rejecting the value of relationship”; that the Kantian emphasis upon ‘humanity itself is a dignity’ compels him to honour each person’s life even if an individual is not able or does not necessarily wish to honour their humanity in the same way; that “life is not of infinite value” and “this is why ‘Allowing to die’ can be appropriate”; and finally, that a “slippery slope” exists, that is, “even if one does not believe that human life has any intrinsic value, worries about the consequences of deciding that there is no moral difference between killing and allowing to die lead many to consider it important to retain this distinction” (Sulmasy 1998: 62).

Sulmasy also links intention and commitment more explicitly by giving more explanation of the conditions of fulfillment: “Intention seems to involve something over

and above belief and desire. It involves commitment. As propositions have truth conditions, so intentions have conditions of fulfillment -- that is, what the agent is committed to accomplishing; aiming at" (Sulmasy 1998: 59). Finally, Sulmasy includes a cursory explanation of what he calls "the ethics of cooperation," or the use of double effect reasoning in "cases involving multiple agents" (Sulmasy 1998: 61). As Boyle explains, "the morality of cooperation ... is most reasonably understood as a specification of double effect, which clarifies when cooperation with others does and does not count morally as doing the bad act oneself" (Boyle 1994: 197). According to the classic definition of moral theologian, Alphonsus Liguori (1696-1787), "That (cooperation) is formal which concurs in the bad will of the other and cannot be [permissible]; that (cooperation) indeed is material which concurs only in the bad action of another, outside the intention of the cooperator" (Boyle 1999: 191). In *Another Look*, Sulmasy says, "To provide freely the immediate material means [i.e., material cooperation] by which a patient carries out an act one considers morally inappropriate is never morally permissible, even if one claims not to share in the intention" (Sulmasy 1998: 61).

As already indicated, throughout the 1990s, Quill and his colleagues conducted a sustained attack against every aspect of double effect reasoning (Quill 1993, 1996, 1997, 1998; Quill, Lo, and Brock 1997). The central tenets of the attack included the fact that the principle of double effect was a religious rule, that it was used inconsistently, that 'clear and distinct' intentions were actually quite ambiguous and the foresight/intention distinction was 'fiction', that there was a substantial potential for self-deception and abuse, and that patient autonomy should have priority over any use of double effect reasoning to distinguish between terminal sedation and euthanasia. In *The Rule of Double Effect: Clearing Up the Double Talk* (Sulmasy and Pellegrino 1999), Sulmasy and his thesis director, Edmund Pellegrino, provide an extensive rejoinder. Their response begins with their application of double effect reasoning to facilitate a distinction between the use of morphine for pain control and euthanasia:

Treating dying patients in pain with appropriate doses of morphine is generally done in a manner that satisfies the criteria for double effect. The use of morphine (1) is not in itself immoral; (2) it is undertaken only with the intention of relieving pain, not of causing death through respiratory depression; (3) morphine does not relieve pain only if it first kills the patient; and (4) the relief of pain is a proportionately grave reason for accepting the risk of hastening death ... This rule allows physicians opposed to euthanasia and assisted suicide to treat pain adequately ... with a clear conscience (Sulmasy and Pellegrino 1999: 545).

Sulmasy and Pellegrino emphasize what double effect reasoning is NOT, that is, it is “not simply an instrument of consequentialist reasoning” (Sulmasy and Pellegrino 1999: 546), it is not euthanasia under legal cover (Sulmasy and Pellegrino 1999: 547), and it is not equivalent to the killing and allowing to die distinction (Sulmasy and Pellegrino 1999: 547). As already indicated, Sulmasy and Pellegrino argue that the religious origins of double effect reason “should not preclude its discussion in civil society” (Sulmasy and Pellegrino 1999: 548), and that patient autonomy is not a moral absolute (Sulmasy and Pellegrino 1999: 549). In support of “the disambiguation of clinical intentions,” they argue that the notion of a side effect in medicine is totally dependent on the concept of intention within double effect reasoning, and that “common sense and the law place important weight on intentions in evaluating the morality of human actions, and properly so” (Sulmasy and Pellegrino 1999: 548). In lieu of explaining how contemporary action theory supports a distinction between desires and intentions and between foresight and intention, Sulmasy and Pellegrino refer readers to Sulmasy’s previous article, *Another Look*. Finally, they re-iterate that in cases of physician-assisted suicide, “the proper moral category” for ... physicians is not double effect but cooperation (i.e., whether the physician is an accomplice and therefore morally culpable)” (Sulmasy and Pellegrino 1999: 546).

As already indicated, the notion that one is culpable for everything that one foresees has caused disagreements and confusion in the use of double effect reasoning. In *Relieving Pain and Foreseeing Death: A Paradox About Accountability and Blame* (Nuccetelli and Seay 2000), the authors argue that although in certain cases, “an action may be justified

when its intended good result outweighs its foreseen but unintended harm ... , in other, equally compelling cases, [double effect reasoning] fails to show that agents are exempt from blame for foreseen, adverse, direct results of their actions, whether or not they have intended them” (Nuccetelli and Seay 2000: 19). Examples of such unconvincing cases include that of the strategic bomber who, “in a just war causes the deaths of non-combatants when he bombs a munitions plant in a heavily populated civilian neighborhood,” and the case of the Irish Fenian who was found guilty of murder by an English court in 1868, “for the foreseeable deaths of some inmates killed when he dynamited a prison wall he mistakenly believed to be that of the exercise yard where his comrades would be waiting to escape” (Nuccetelli and Seay 2000: 20). On account of these sorts of cases, and their belief that there is no univocal notion of intention, Nuccetelli and Seay assert that it would be better to distinguish between types of duties rather than between foresight and intention. Concerning duties, they distinguish between cases involving general moral duties and those involving *special duties*,

which could be defined as those generated by specific relationships or transactions between individuals, such as the duties arising among members of an organization, or when one makes a promise, or signs a contract. **In cases involving any of these duties, agents may rightly be held accountable even when they are unable to fulfil them [emphasis mine] --** as some philosophers have argued for legal, epistemic, or academic grounds ... Arguably, doctors have certain duties just because they are doctors: some owed to society, others to the profession, but the most important of them owed to patients ... Foremost among these, however, are the duties to conserve and extend life whenever possible, and to relieve physical suffering. It is these that are in conflict in the case where palliation causes a depression of respiratory function that leads to a foreseeable death ... since all such duties arise out of some fundamental purposes of medicine, they could be regarded as *special* duties binding the agent even where she cannot fulfil them (Nuccetelli and Seay 2000: 22-23).

Despite their duty-based, “conservative view of what physicians may legitimately do in the care of the dying,” Nuccetelli and Seay acknowledge that “duties might sometimes be overridden” in the pursuit of “humane and compassionate care,” and they conclude with the

following recommendation: “the clinician must take into account all of her relevant professional obligations ... and weigh them in deciding how to do what is best for that patient, *all things considered*, given *his* values and beliefs, with a reasonable assessment of what the quality of his remaining life is likely to be” (Nuccetelli and Seay 2000: 24).

In *Commentary: Double Effect--Intention is the Solution, Not the Problem* (Sulmasy 2000), Sulmasy dismisses Nuccetelli and Seay’s notion of conflicting duties with a counter example that their argument would permit illogically, and he dismisses their concluding recommendation by saying, “Advice so vague is of limited usefulness to a clinician” (Sulmasy 2000): 28. Regarding the confusion associated with the foresight/intention distinction and culpability, he argues “that one’s *responsibility* covers the whole ‘package deal’ of what one freely chooses to bring about, but that under certain circumstances such as those specified by RDE [i.e., rule of double effect], *culpability* (that for which one can be blamed) only covers what one intends” (Sulmasy 2000: 27). Not unlike his position in *The Rule of Double Effect*, although Sulmasy calls attention to the fact that there are exciting developments concerning intention underway in the realm of philosophy of action, he simply refers readers to pertinent sources via his footnotes. However, he acknowledges that some “descry [intention] as unknowable,” and as a rebuttal, he cites Elizabeth Anscombe’s assertion of the absurdity of the idea that “ ‘intention can’t be known because it is something private ... [In other words,] it is often, nay *usually* quite apparent that someone is doing such-and-such on purpose. It is no objection to this that error on this point is possible”” (Sulmasy 2000: 28). Interestingly enough in view of this emphasis on the public realm, this article also includes a discussion of proportionality within double effect reasoning, and here Sulmasy’s emphasis is on “the publicly defensible character of the proportionality condition of the RDE [i.e., rule of double effect]” (Sulmasy 2000: 27). In other words, the proportionality condition “includes weighing the consequences of the action ... in a publicly defensible manner. One is not free to decide idiosyncratically that the good outweighs the bad ... The proportionality condition of the RDE is not completely subjective” (Sulmasy 2000: 27). Seemingly, this article represents an important turning

point in Sulmasy's work because although he has consistently emphasized the publicly or objectively defensible character of all the conditions of the principle of double effect, he will from this point onward, concentrate almost exclusively on a publicly defensible proportionality calculus.

Thus far, there are two main parts of this calculus, one involving a distinction between different types of suffering, and the other concerning the corresponding appropriate clinical responses vis-à-vis sedation. In a position paper entitled, *Physician-Assisted Suicide*, co-authored by Snyder and Sulmasy on behalf of the Ethics and Human Rights Committee of the American College of Physicians-American Society of Internal Medicine (Snyder and Sulmasy 2001), we find the beginnings of the proportionality calculus. Noting the ongoing significant public support for physician-assisted suicide/euthanasia, Snyder and Sulmasy explain that even if physician-assisted suicide becomes legal for terminally ill, consenting adults, criteria will be needed to avoid arbitrary discrimination between terminally ill and non-terminally ill persons, and between patients with different levels of functional capacity (e.g., those who can and cannot "take pills or push buttons") (Snyder and Sulmasy 2001: 213). Repeating Sulmasy's ongoing theme regarding the non-absolute nature of patient autonomy, the authors emphasize that patients experience many different types of pain and suffering, and that "one can raise serious questions about whether medicine should arrogate to itself the task of relieving all human suffering, even near the end of life" (Snyder and Sulmasy 2001: 212). These questions lead the authors to the drawing of a sharp distinction between "physical symptoms or psychiatric syndromes," the alleviation of which "physicians should vigorously pursue ... even at the risk of unintentionally hastening death," and "interpersonal, existential, or spiritual" suffering, the alleviation of which physicians should primarily delegate to "clergy, social workers, family and friends" (Snyder and Sulmasy 2001: 212).

More of the proportionality calculus is revealed in a subsequent article co-authored by Jansen and Sulmasy entitled, *Sedation, Alimentation, Hydration, and Equivocation:*

Careful Conversation About Care at the End of Life (Jansen and Sulmasy 2002c). The antagonistic context is, yet again, the work of Quill and his colleagues. Jansen and Sulmasy now focus on three papers (Quill 2000; Quill, Lee, and Nunn 2000; Quill, Lo, and Brock 1997) in which Quill et al. “recommended terminal sedation and refusal of hydration and nutrition as morally acceptable and relatively uncontroversial options for end-of-life suffering” (Jansen and Sulmasy 2002c: 845). In response, Jansen and Sulmasy distinguish between two types of refusal of nutrition and hydration, and two types of sedation. They distinguish between “*refusal of hydration and nutrition,*” by which they mean a situation where a patient has irreversibly lost the capacity to metabolize nutrition and hydration, and “has determined that the **benefits of artificial nutrition are not proportionate to the burdens** [emphasis mine], and “*voluntary stopping eating and drinking,*” by which they mean a situation where a patient has no underlying metabolic problem, but “nevertheless intends to end his or her own life by not eating or drinking” (Jansen and Sulmasy 2002c: 845-846). Whereas the first situation is morally justifiable and can be supported by physicians, the second situation is unjustifiable and it would be impermissible for physicians to cooperate or collaborate in it (i.e., it would be impermissible for a physician even to present to a patient voluntary stopping eating and drinking as an acceptable option) (Jansen and Sulmasy 2002c: 848). Proportionality is the key to their distinction between the first and second situations, and we discover precisely what type of proportionality calculus Jansen and Sulmasy have in mind when they use double effect reasoning to distinguish between two types of sedation, *sedation of the imminently dying* and *sedation toward death*:

The rule of double effect, when applied to the issue of terminal sedation, maintains that it is not immoral to render a patient unconscious as a side effect of treating specific symptoms if 1) one does not aim at unconsciousness directly, 2) unconsciousness is not the means by which one intends to relieve symptoms, and 3) one has a ‘proportionate reason’ for taking such action. These conditions are fulfilled in the type of terminal sedation we have called *sedation of the imminently dying*. By contrast, in *sedation toward death*, the clinician *aims* at rendering the patient

unconscious, not to serve future consciousness but to shorten life ... **The condition in the rule of double effect that holds that a physician must have a proportionate reason turns out, on reflection, to be important in evaluating terminal sedation** [emphasis mine]. In [the first situation], what makes the sedation permissible is that it is a rational response to a specific physiological condition that the physician is attempting to treat. [In the second situation], by contrast, the patient is suffering [e.g.,] because of her belief that she will soon become debilitated. Although certainly grave, this kind of suffering does not justify terminal sedation. For terminal sedation to be a proportionate response to suffering, the good effects must outweigh the bad *and* it must 'fit' the situation. Like the existential suffering of patients who are not terminally ill, [the existential suffering of those who are terminally ill] is appropriately managed not by aggressive sedation but by other specialized interventions, such as appropriate non-sedating medication, psychological counselling, or spiritual guidance. Physicians who cannot adequately provide these interventions should enlist the help of those who can (Jansen and Sulmasy 2002c: 847).

The above article resulted in several letters to the editor. Charles Sasser, MD, questioned what he perceived to be the reduction of double effect reasoning "to a simple distinction between physical and existential suffering"; and he said, "To argue that physical pain can be teased out of the multidimensional suffering of terminal illness and then used as sole basis for the application of appropriate palliative options, to the disregard of the whole person, is archaic mind-body dualism" (Sasser 2002). Quill stressed what has become his typical themes, for instance, the controversy surrounding general acceptance of double effect reasoning, "the potential for self-deception and oversimplification," the notion that physicians are responsible for both their foreseen and intended consequences, the priority of patients' informed choices, and the need to consider "proportionate presence of suffering, and absence of less harmful alternatives" (Quill 2002). Paul Rousseau, MD, writer of several articles regarding existential suffering and sedation, said, "I understand their argument but believe they trivialize the significance of existential distress. By restricting palliative sedation to physical suffering, they disregard the anguish of existential suffering and, more important, may precipitate further suffering" (Rousseau 2002). Tatsuya Morita, MD, pointed out that "symptom relief sometimes requires sedatives not

proven pharmacologically effective for the underlying symptom,” and he gave the example of agitated delirium (Morita, Tsuneto, and Yasuo 2002). In response to these letters, Jansen and Sulmasy emphasized primarily that double effect reasoning could justify sedation in complex cases such as agitated delirium, and that they were neither reducing double effect reasoning “to the distinction between physical and existential suffering,” nor to “the proportionality clause” (Jansen and Sulmasy 2002a). In addition, they stressed that “the distinction between physical and existential suffering does not rest on any mind-body dualism, archaic or otherwise,” and that they were trying to reduce “a tendency in the medical literature on terminal sedation to view terminal suffering as *sui generis*” (Jansen and Sulmasy 2002a).

Jansen and Sulmasy extend and deepen their responses to their readers’ concerns in *Proportionality, Terminal Suffering and the Restorative Goals of Medicine* (Jansen and Sulmasy 2002b). They re-iterate that “different types of suffering require different responses,” and that “lack of clarity on this matter can lead to ethical uncertainty” (Jansen and Sulmasy 2002b: 321). Presumably in an effort to meet the charge of mind-body dualism more definitively, they now differentiate between neuro-cognitive and agent-narrative suffering. They explain that “neuro-cognitive suffering is suffering that has a *direct* causal relationship to the patient’s underlying medical condition” (Jansen and Sulmasy 2002b: 324). By contrast, agent-narrative suffering is “suffering that is belief-dependent, bearing, at most, an indirect relationship [i.e., causal relationship] to the patient’s underlying medical condition” (Jansen and Sulmasy 2002b: 322). In this case, “it is not the medical condition as such that causes the patient to suffer. Nonetheless, [agent-narrative suffering] may arise from the patient’s beliefs about what the condition means or will mean to his or her life. So characterized, agent-narrative suffering depends on factors that are (largely) particular to the person experiencing the suffering” (Jansen and Sulmasy 2002b: 325). In making this distinction, Jansen and Sulmasy stress that they are not “[discriminating] more important from less important types of suffering” (Jansen and Sulmasy 2002b: 329). By contrast, they are attempting to lessen ethical uncertainty by

characterizing suffering more precisely, and linking that characterization with their notion of proportionality.

Again, the impetus is largely Quill's work, specifically, what Jansen and Sulmasy call his principle of proportionality: "The greater the patient's suffering, the greater risk the physician can take of potentially contributing to the patient's death, so long as the patient understands and accepts the risk" (Quill, Lo, and Brock 1997: 2102). This principle is problematic for Jansen and Sulmasy because it "does not specify which type (or types) of terminal suffering might justify a physician in using aggressive pharmacological interventions" (Jansen and Sulmasy 2002b: 323). Consequently, they formulate their own "principle of therapeutic responsiveness":

A physician's therapeutic response to terminal suffering is justified, even if it imposes a high risk of hastening the patient's death, if and only if (i) the measures implemented are directly proportionate to the intensity of the patient's suffering; (ii) the measures implemented are appropriate for the type of suffering the patient is experiencing and, therefore, are properly responsive to the patient's restorative interests; and (iii) the patient or the patient's legal surrogate understands and accepts the risks associated with the measures (Jansen and Sulmasy 2002b: 329-330).

Jansen and Sulmasy add three "clarificatory comments" to their principle. Firstly, "the requirement that the therapeutic measure be appropriate to the kind of suffering the patient is experiencing calls for greater discrimination on the part of the physician in diagnosing suffering" (Jansen and Sulmasy 2002b: 330). Secondly, their principle "requires physicians to recognize the limits of their medical authority" and to refer patients to those who can relieve agent-narrative terminal suffering if physicians themselves are unable to relieve it (Jansen and Sulmasy 2002b: 331). Finally, "a physician should not honor a patient's request that her agent-narrative terminal suffering be treated with high dose opioids ... [and] *physicians should not participate [or cooperate] in medically inappropriate interventions, even when their patients request them to do so* (Jansen and Sulmasy 2002b: 331). Regarding hard cases (e.g., a patient with end-stage amyotrophic lateral sclerosis

who suffers no physical pain, but finds isolation and increasing dependence unbearable), Jansen and Sulmasy recommend supporting this patient's restorative interests just as physicians would in the case of non-terminally-ill patients (Jansen and Sulmasy 2002b: 332), acknowledging the fact that sedatives could mask agent-narrative suffering (Jansen and Sulmasy 2002b: 333), and giving high-dose sedatives only "after every possible effort has been made to restore the patient to a state of psychosocial health" (Jansen and Sulmasy 2002b: 334). Interestingly enough, after sharply dissociating himself from Roman Catholic proportionalists in his thesis, Sulmasy and Jansen justify their new emphasis on proportionality by means of the following footnote:

The concept of proportionality first emerged as an explicit principle in ethical theory in connection with the rule of double effect. Yet while the principle of proportionality has traditionally been associated with the rule of double effect, it can be affirmed without accepting this rule. This is evident from the fact that physicians who formed part of the so-called conservative professionalism movement in the mid-nineteenth century routinely appealed to a freestanding formulation of the principle to justify certain forms of risk taking, particularly those surrounding the relief of pain. And in recent years, a number of prominent medical ethicists who reject the rule of double effect have also invoked the principle while insisting that it can be put to many uses in biomedical ethics beyond those permitted by the full rule of double effect (Jansen and Sulmasy 2002b: footnote #2: 336).

2.4. The Interpretation of Richard McCormick

In his doctoral thesis (McCormick 1957), McCormick considered an issue germane to current ethical dilemmas surrounding 'terminal sedation', namely, "when a state of facts [e.g., cause and effect] can be established only to a certain degree of probability, what is one allowed to do?" (Odozor 1995: 15). Within this broader ethical question, McCormick's specific obstetrical concern was the following: " 'When [a] mother is faced with a likelihood of almost certain death ... and her only hope lies in the removal from the uterus of a non-viable fetus probably but not certainly dead, is such a removal permissible' "(Odozor 1995: 15)? McCormick decided that it was permissible on the basis of a

proportionate reason which was in this case, the idea that “ ‘it is not against the exigencies of justice to remove a fetus in which the presence of life is positively and invincibly doubtful to save the mother’ ” (Odozor 1995: 17). Although this was seemingly a quandary for which double effect reasoning would have been relevant because the situation involved two possible effects (i.e., the positive effect of saving the mother’s life and the negative effect of certain death of the fetus), McCormick claimed that this reasoning had no role: “ ‘The application of the principle of the twofold effect has no place in the problem ... There is no question of two effects, one bad, one good, but of an action which may be either (objectively and disjunctively) good or bad’ ” (Odozor 1995: 19). As Odozor says, “it is difficult to see why this was not a case of double effect,” and whether or not McCormick was consciously aware of it, “he [was] already engaged in the reinterpretation of the principle of double effect” (Odozor 1995: 19-20). In this way, McCormick’s work anticipated that of Peter Knauer who “in the more tolerant climate of the post-Vatican II era,” explicitly connected double effect reasoning and proportionalism (Odozor 1995: 20).

As we recall from the first chapter, Knauer’s revision of the fourth condition of double effect reasoning stressed the use of commensurate or proportionate reason, in other words, “If, in the given circumstances, the act is the best possible solution of the problem in terms of the horizon given by the whole of reality, it may be said that the act is morally good” (Knauer 1979 [orig. 1967]: 22). Again, “the whole of reality” is important insofar as it represents a reaction against the physicalism of the past whereby the elements of double effect reasoning were tied closely to physical causality. As we also recall from the first chapter, proportionality can mean different things to different people, for example, the existence of proportionate reason, end/end proportion or the comparison of potential outcomes, and means/end proportion. Likewise in the theological context, significant confusion associated with conflicting meanings of proportionality made it necessary for Knauer, McCormick and other proportionalists to expend considerable energy in attempts to increase clarity and decrease confusion. In 1972 through intense dialogue with other theologians, McCormick defines and defends his emerging understanding of

proportionality against the charges of consequentialism, relativism, and extrinsicism. In response to Connery's position that the work of proportionalists represents a form of consequentialism or " 'a moral system that makes the judgment of an act depend solely on its consequences' " (McCormick 1979 [orig. 1972]: 301), McCormick argues that "it is no longer a matter of 'consequences alone', but of the proportion between the evil involved and the good sought" (McCormick 1979 [orig. 1972]: 306). He also emphasizes (in agreement with Schüller, a fellow proportionalist) that vastly different works are being unhelpfully grouped under both of the titles 'deontology' and 'consequentialism', and that prudential judgment is more important than absolute clarity in the use of moral norms (McCormick 1979 [orig. 1972]: 301-303, 308-309). In response to Quay's claim that McCormick and other proportionalists are proposing a 'theology of values' wherein absolute prohibitions are being relativized (McCormick 1979 [orig. 1972]: 309), McCormick stresses that there is a fundamental "confusion between fact-description ... and value-description ... (McCormick 1979 [orig. 1972]: 311). In other words, whereas " 'Defrauding laborers', like adultery, murder, theft, is a value-description [and a] pejorative one [at that,] ... the issue is: What concrete conduct [or fact description] is to count for murder, for 'defrauding laborers', etc." (McCormick 1979 [orig. 1972]: 311)? Similarly, in response to May's accusation that proportionalism is " 'at root a form of extrinsicism in ethics' [that] derives the meaning or intelligibility of human acts from their consequences or results [i.e., from extrinsic factors as opposed to inherent or intrinsic factors of acts]' " (McCormick 1979 [orig. 1972]: 320), McCormick argues that proportionalism "denies only that this [or that] inherent good and meaning is an **absolute** value" (McCormick 1979 [orig. 1972]: 321).

By the same token, even at this early stage, McCormick's emerging proportionalism also includes a cautious denial of the absolute status of inherent or intrinsic evils. As McCormick recalls, the Catholic tradition has defined two categories of actions as absolute, intrinsic evils: "(1) actions *against nature* (certain sexual actions, e.g., contraception, masturbation); [and] (2) actions wrong because of a *lack of right* (direct killing of the

innocent, dissolution of a sacramental and consummated marriage)” (McCormick 1979 [orig. 1972]: 315). However, as we recall from the first chapter, Knauer substituted for the traditional idea that an act could be evil *in itself*, the quite different notion of *pre-moral* [or non-moral] evil. In other words, although “every human act brings evil effects with it” insofar as the choice of one value denies others, the *moral* aspect of an act is embodied only in the particular choice an individual makes to act in a specific way (Knauer 1979 [orig. 1967]: 16). In dialogue with Knauer’s perspective and those of his fellow proportionalists, McCormick says, “that when an action is always morally wrong, it is so not because of unnaturalness or defect of right ..., but because when *taken as a whole*, the nonmoral evil outweighs the nonmoral good, and therefore the action is disproportionate. One can legitimately continue to call such an action intrinsically evil, but I see no great gain in doing so” (McCormick 1979 [orig. 1972]: 322). In fact, by the end of this discussion, McCormick isolates his own and his fellow proportionalists’ weak sense of intrinsic evil (i.e., intrinsic evil only in a pre-moral or non-moral sense) from the strong sense of intrinsic evil (i.e., intrinsic evil as an absolute unaffected by particular circumstances and choices) held by other theologians (McCormick 1979 [orig. 1972]: 329). By contrast with Knauer’s position, however, the question of what it would mean to *intend* pre-moral good or evil was still an important question for McCormick (McCormick 1979 [orig. 1972]: 296-297). Moreover, regarding the shift to a weak sense of intrinsic evil, McCormick says, “the theological problem only begins here” (McCormick 1979 [orig. 1972]: 300). In other words, “where exceptions are concerned the real problem is to show that there are higher values involved, and what they might be ... [Otherwise] are we not inviting people to exempt themselves without providing any hierarchy which would make such a decision rational, and therefore promotive of greater humanization” (McCormick 1979 [orig. 1972])?

In his 1973 lecture, *Ambiguity in Moral Choice*, we find a full articulation of McCormick’s version of the principle of double effect. It includes several striking features, for instance, the substitution of the directly voluntary/indirectly voluntary distinction for

the foresight/intention distinction, the specification of conflict situations as the context for the reasoning, the linkage between a “more or less necessary good” and “reluctantly caused evil,” and the presence of “a proportionately grave reason” for “allowing” evil:

The distinction between what is directly voluntary and indirectly voluntary has been a staple of Catholic moral thought for centuries. It has been used to face many practical conflict-situations where an evil can be avoided or a more or less necessary good achieved only when another evil is reluctantly caused. In such situations the evil caused as one goes about doing good has been viewed as justified or tolerable under a fourfold condition. (1) The action is good or indifferent in itself; it is not morally evil. (2) The intention of the agent is upright, that is, the evil effect is sincerely not intended. (3) The evil effect must be equally immediate causally with the good effect, for otherwise it would be a means to the good effect and would be intended. (4) There must be a proportionately grave reason for allowing the evil to occur. If these conditions are fulfilled, the resultant evil was referred to as an ‘unintended byproduct’ of the action, only indirectly voluntary and justified by the presence of a proportionately grave reason (McCormick 1985 [orig. 1973]: 7).

Although McCormick indicates that he has accepted “the substance” of Knauer’s innovations at this point, McCormick identifies two problems, the fact that “the notions of direct and indirect intention have become so utterly identified with the existence of a commensurate reason ... [that no] meaning [remains associated with] psychological intent,” and that “Knauer does not satisfactorily indicate the limitations of intention in determining the meaning of concrete human actions” (McCormick 1985 [orig. 1973]: 11-12). In addition to his desire to keep some form of direct and indirect intentionality and proportionality together, McCormick also re-iterates his reluctance to dismiss completely any sense of intrinsic evil. His reluctance is expressed in his reservation of the term “virtually exceptionless norms,” for instance, the prohibition against killing (McCormick 1985 [orig. 1973]: 50). He says, “Clearly we have more to learn, but by that same token we have learned something already. We know, for instance, that killing of others is, except in the most extreme and tragic circumstances, destructive of the *humanum* in every way, and is therefore destructive of community. And there are other things that we know before the

event ...” (McCormick 1985 [orig. 1973]: 17). In this lecture, McCormick gives content to his insistence that direct and indirect intent still has meaning through his distinction between an intending and a permitting will. In other words, “the intending will (hence the person) is more closely associated with the existence of evil than the merely permitting will. Furthermore, I believe we must say that an intending will is more willing that the evil be than is a permitting will” (McCormick 1985 [orig. 1973]: 35-36). In order to distinguish his perspective more precisely from Knauer’s, McCormick says that although “[Knauer] maintains that when the reason is proportionate ..., the evil caused or permitted is indirect,” “I would prefer to say that the evil is direct or indirect depending on the basic posture of the will, but that it is justified in either case if a genuinely proportionate reason ... is present” (McCormick 1985 [orig. 1973]: 45).

McCormick also gives a preliminary definition of proportionate reason: “[It] means three things: (a) a value at least equal to that sacrificed is at stake; (b) there is no less harmful way of protecting the value here and now; [and] (c) the manner of its protection here and now will not undermine it in the long run” (McCormick 1985 [orig. 1973]: 45). Inversely or negatively, McCormick says that “an action is disproportionate in any of the following circumstances: if a lesser value is preferred to a more important one; if evil is unnecessarily caused in the protection of a greater good; [and] if, **in the circumstances** [emphasis mine], the manner of protecting the good will undermine it in the long run” (McCormick 1985 [orig. 1973]: 45). Once again, McCormick differentiates his notion of proportionate reason from a simple utilitarian calculus, and this time, the crux of the differentiation is his definition of ‘**in the circumstances**’. In other words,

a truly adequate account of the circumstances will read them to mean not just how much *quantitative* good can be salvaged from an individual conflict of values, but it will also weight the social implications and reverberating aftereffects insofar as they can be foreseen. It will put the choice to the test of generalizability (‘What if all persons in similar circumstances were to act in this way?’). It will consider the cultural climate ... It will draw whatever wisdom it can from past experience and reflection, particularly as embodied

in the rules peoples of the past have found a useful guide in difficult times. It will seek the guidance of others whose maturity, experience, reflection, and distance from the situation offer a counterbalance to the self-interested tendencies we all experience. It will allow the full force of one's own religious faith and its intentionalities to interpret the meaning and enlighten the options of the situation. This is what an adequate and responsible account of the circumstances must mean (McCormick 1985 [orig. 1973]: 46).

McCormick ends the lecture by concluding that the direct/indirect distinction “as descriptive of the posture of the will [i.e., intending or permitting] toward a particular evil ... only aids us in understanding what we are doing” (McCormick 1985 [orig. 1973]: 50). However, there is another consideration: “Whether the action so described represents integral intentionality more generally and overall depends on whether it is, or is not, *all things considered*, the lesser evil in the circumstances” (McCormick 1985 [orig. 1973]: 50). And what comprises ‘*all things considered*’? Two central categories are included: McCormick’s anthropology or his overall perspective on the human person, and his view of the state of the world or the broader context within which all human beings live and act. In McCormick’s, *Notes on Moral Theology: 1981* (McCormick 1984b), McCormick explains that his anthropology derives from the teachings of Vatican II, specifically, the idea “that ‘human activity must be judged insofar as it refers to the human person integrally and adequately considered’ ” (McCormick 1984b: 49). For the content of ‘integrally and adequately considered’, McCormick relies on the work of his fellow proportionalist, Belgian theologian Louis Janssens (1908 - 2002). Specifically, McCormick upholds the eight aspects that comprise, for Janssens, “the human person in all his/her essential aspects” and correspondingly, the heart of morally right action:

The human person is (1) a subject (normally called to consciousness, to act according to conscience, in freedom and in a responsible way). (2) A subject in corporeality. (3) A corporeal subject that is part of the material world. (4) Persons are essentially directed toward one another (only in relation to a Thou do we become I). (5) Persons need to live in social groups, with structures and institutions worthy of persons. (6) The human person is called to know and worship God. (7) The human person is a

historical being, with successive life stages and continuing new possibilities. (8) All persons are utterly original but fundamentally equal. Janssens then formulates from these characteristics a general criterion of the rightness or wrongness of human actions. An act is morally right if, according to reason enlightened by faith, it is beneficial to the human person 'adequately considered in himself (nn. 1 and 2) and in his relations (nn. 3,4,5,6)' (McCormick 1984b: 49-50).

McCormick's reflections in the general area specified by aspects 3-6 give us more insight into his understanding of the functioning of double effect reasoning. Regarding a person's relation to God, McCormick explains in *Notes on Moral Theology: 1980*, that "the right end [of action] is communion with God," and "that actions which unsuit us for communion with God are morally wrong" (McCormick 1984a: 3). However, he asks this key question: "how does one get from these very general assertions to the conclusion that direct killing of the innocent always unsuits us for communion with God" (McCormick 1984a)? One way to reconcile the universals and particulars in this instance is what McCormick calls "ecclesiastical positivism," or the linking of universals and particulars on the basis of "the Church says so" (McCormick 1984a: 5). Not being in favour of this option, McCormick suggests instead that we use double effect reasoning as he understands it. Regarding the world at large, our relationships with each other and the structures/institutions within which we live and act, he proposes that we have an "understanding [of] moral norms within the conflict model of human reality" (McCormick 1984a: 2). In other words, "conflicted values mean that occasionally our choices (actions or omissions) are inextricably associated with evil" (McCormick 1984a: 2). Within this context, norms are more realistically envisioned as having "the provisional character of our journey into the future. They are an orienting force in a history which is both fulfilment and promise" (McCormick 1984a: 2). Through this lens, McCormick understands double effect reasoning as "a set of exception-making categories" with which we face the conflicts inherent in our human reality (McCormick 1984a: 10). Accordingly, the first condition of double effect reasoning -- the notion that the proposed action not be morally evil -- is also viewed through the conflict model of human reality, and the result is an equivocal notion of

evil, namely, pre-moral or non-moral evil. As explained by proportionalist Lisa Cahill and emphasized by McCormick in *Notes on Moral Theology: 1980*, evils of this type “ ‘are “pre-moral” evils in that their sheer presence does not *necessarily* make the total act or relation of which they are a part “morally” evil or sinful’. There can be sufficient reason for causing such pre-moral evil” (McCormick 1984a: 11). Regarding the question of how we know we are encountering moral as opposed to pre-moral evil, McCormick proposes three categories of knowledge and action: firstly, “we know from experience that certain actions are counterproductive [e.g., robbery, violence, adultery]”; secondly, “there is a second category of actions where we sense very strongly (sense of profanation, outrage, intuition) that the actions are counterproductive”; and finally, “there are actions or procedures where we know very little and must proceed to normative statements gradually by trial and error [e.g., DNA recombinant research and many technological matters]” (McCormick 1984a: 16).

In his essay, *The Principle of the Double Effect in How Brave a New World?*, McCormick identifies the principle as “a kind of code name to summarize the distinction between what is said to be directly willed and what is said to be indirectly willed” (McCormick 1981: 431). McCormick’s statement of the conditions of the principle is unchanged from his earlier articulation, and again, he perceives the context of the principle to be “many practical conflict situations where an evil can be avoided or a more or less necessary good achieved only when another evil is reluctantly caused” (McCormick 1981: 431). In McCormick’s view, the problem of physicalism consists in the fact that whereas “historically the terms ‘direct’ and ‘indirect’ referred to the relationship of the will to the evil inextricably associated with the agent’s action [, ...] as time passed, the terms became attached to certain physical actions ... In other words, the visible procedure began to define the intentionality, rather than the over-all intentionality defining the procedure” (McCormick 1981: 433). Proportionalism is viewed by McCormick as a way of correcting this problem insofar as proportionate reason is a means to express “the over-all intentionality” that has been minimalized by physicalism. The opponents of

proportionalism (e.g., Boyle's colleague, Grisez and Paul Ramsey) see it quite differently, however. From their perspective, "the basic goods are incommensurable. Those who shift the major emphasis ... to proportionate reason are measuring the incommensurable. If one attempts to do that, he is unavoidably involved in a form of consequentialism" (McCormick 1981: 442). In this essay, McCormick has two responses to this charge. The first is a question: If basic goods are incommensurable, why and for what role was proportionality included in double effect reasoning in the first place? (McCormick 1981: 443). Secondly, "while the basic goods are not commensurable (one *against* the other), they are clearly associated goods ... [For instance, regarding marriage and birth control,] it is precisely concern for the procreative good, but **as related to and supported by** [emphasis mine] the communicative good that could lead to the conclusion that interference with fertility is morally right when necessary" (McCormick 1981: 445). Correspondingly, it is the intending will that has the capacity to clarify associations or relationships such as this: "... where nonmoral evils are concerned, the essential line of demarcation to be drawn ... is not between intending and permitting, as tradition understood these terms, but between intending as an end on the one hand, and intending as a means and permitting on the other" (McCormick 1981: 446).

In *A Commentary on the Commentaries* (McCormick 1985), McCormick reviews and responds to commentaries on his earlier lecture, *Ambiguity in Moral Choice*. In this essay, he re-states the problem. In response to the question, "how do we come to terms with unavoidable evil?" (McCormick 1985: 195), the Catholic tradition has used the direct/indirect distinction to "[distinguish] evil that is merely permitted from that which is intended [and is thus morally illicit]" (McCormick 1985: 195). The moral relevance of that distinction has become a source of great disagreement, and the problem is further complicated because if we consider the two main moral systems in use, "not only are the terms *deontological* and *teleological (consequential)* ... such huge umbrellas as to be almost useless ..., but approaching the problem in this way leaves the problem of prime concern ... incompletely or poorly analyzed" (McCormick 1985: 197). Within

Catholicism, McCormick notes the historical inconsistency: “the understanding of moral norms and exception making has been along teleological lines ... except in two instances: killing of innocents and sexual conduct. In these two instances, there was appeal to a special characteristic [i.e., lack of right in the case of killing and unnaturalness in the case of sexual conduct] that made doing these things evil *in se*” (McCormick 1985: 198). From McCormick’s perspective, “if it can be shown or at least argued that doing the actions in question is not intrinsically evil, or, what is the same, that the special characteristics appealed to are not valid, the need to redouble the intention disappears -- or at least ... [it disappears] as this need was understood in the tradition” (McCormick 1985: 198).

As already indicated, in dialogue with his fellow proportionalists, McCormick has been developing a replacement for the notion of intrinsic evil and the development continues in this essay. The problem, as he re-states it, is that “an action involving evil is too quickly classified as a *moral* evil” (McCormick 1985: 202). Classifying ‘intrinsic evils’ as ‘pre-moral evils’ would solve the problem by clarifying that the *moral* evaluation begins with the agent’s act, and not with a pre-act classification of evil that may or may not be borne out in the actual act. Whether the pre-moral evil becomes *moral* evil depends on a complex proportionality analysis and in this essay, McCormick sheds more light on that analysis. Again, he differentiates it from consequentialism: “The phrase ‘proportionate reason’ is not convertible with the notion of ‘better results’ or ‘net good’. Rather it means that the value being sought will not be undermined by the contemplated action ... [e.g.,] where there is a question of taking life, such taking is proportionate only if it is, all things considered, the better service of *life itself* in the tragic circumstances” (McCormick 1985: 201). This is another example of McCormick’s notion of the association of, or the interrelationship of goods, rather than a simple consequentialist calculus.

The direct/indirect distinction still has descriptive significance for McCormick: “It describes what one is aiming at, with what means or with what collateral harm. That in turn reveals to us the meaning of the action ... [which] suggests to us which values (goods)

are involved ... and how they are involved,” and that in turn leads us “to develop a judgment of proportion” (McCormick 1985: 263). In addition, the moral relevance of the distinction still has a psychological component. As McCormick argued in *Ambiguity in Moral Choice*, “the will relates differently to what it intends and permits” (McCormick 1985: 262). But now in agreement with Schüller, McCormick holds that “the *moral* difference is located in the attitudes of approval or disapproval that are revealed in one or the other [i.e., the intended or the permitted]” (McCormick 1985: 263). Furthermore, necessity is an extremely important dimension of proportionate reason as McCormick explains using the example of ‘killing’:

The sole remaining question (and the key question) is: when and on what grounds must a killing action, for example, be said to be *necessary* (namely, if omitted, more harm to life will be inevitable)? Obviously, life itself or a value quite as urgent (adoption of a hierarchy) must be at stake. Killing for lesser reasons is unnecessary and disproportionate. This is not an object of dispute ... My own suggestion, and hence my explication of a key aspect of proportionate reason, is: when the killing is the *only way imaginable* to prevent greater loss of life. When it is not the only way available, and the evil could be avoided, even improbably, without causing the harm (especially by a cessation from wrongdoing or the threat thereof on the part of others), then causing the harm is *unnecessary*. Because there is not a *necessary* connection between avoiding the evil or achieving the good and intending harm as a means, other basic goods (for example, liberty) are brought into play in using the harmful means. Because of the association of basic goods, undermining one undermines others, and thus, the very value at stake, for example, life, will suffer more if the killing is done. That is, the action is disproportionate. Thus, whether or not the evil (nonmoral) intended as a means is proportionate is determined not quantitatively, but all things considered, by carefully weighing the association of basic goods (McCormick 1985: 262).

Although McCormick did not publish specific reflections regarding a distinction between ‘terminal sedation’ and euthanasia (i.e., to my knowledge), he did refer to “omission vs. commission” and “killing vs. administering pain-killers that could hasten death” as “rather standard distinctions” (Cobb and McCormick 1997: 121). In the 1990s, he published several works regarding euthanasia/physician-assisted suicide (McCormick

1991; Cobb and McCormick 1997; McCormick 1997), and again, although these works do not specify his proportionalist articulation of a distinction between pain control and killing, they provide an illuminating starting point from which we can extrapolate how he might have made such a distinction. We recall McCormick's stress on 'in the circumstances', and in these works, he gives an extensive presentation of contextual elements, particularly, the cultural climate, the social implications, and the reverberating aftereffects surrounding the public demand for physician-assisted suicide. In the background, of course, is his own religious faith and its intentionalities that have undoubtedly alerted him to certain circumstances and allowed others to remain less important. In all of these works, he emphasizes "the absolutization of autonomy" and he says, for example, that "the symbolic cheerleader for this absolutization is Dr. Jack Kevorkian" (Cobb and McCormick 1997: 114). In McCormick's view, there are "two noxious offshoots" of this absolutization: "an intolerance of dependence on others" (McCormick 1991: 1132) or "dignity as independence" (Cobb and McCormick 1997: 115), and the fact that "very little thought is given to the values that ought to inform and guide the use of autonomy" (McCormick 1991: 1132). Another important factor is "the secularization of medicine" (McCormick 1991: 1133), or "the divorce of the profession from those values that make of it a profession of human service to others [rather than a business]" (McCormick 1997). Particularly relevant to the issue of 'terminal sedation' is McCormick's stress on "the inadequate management of pain"; "unfortunately," he says, "just about everything about physicians' treatment of pain is, well, painful" (McCormick 1991: 1133). In this regard, he cites dismal statistics from a 1989 study regarding physicians' lack of training in pain management and the high percentage of undermedicated cancer patients.

Within the context of these circumstances (at the very least), and given what we know about his proportionalism, it is possible to extrapolate how he might have distinguished between 'terminal sedation' and euthanasia. Given his stress on the confusion between fact-description and value-description, he may have tried to clarify both the empirical facts and the values involved in various definitions of 'terminal sedation' and

‘euthanasia’, particularly, the association of both terms with ‘killing’. Regarding his view “that killing of others is, except in the most extreme and tragic circumstances, destructive of the *humanum* in every way and is therefore destructive of community” (McCormick 1985 [orig. 1973]: 17), he may have considered the tragic dimensions of ‘terminal sedation’ and pondered whether such sedation is destructive of the *humanum* in any ways and therefore, destructive of community (e.g., the community closest to a particular patient, the medical community, the larger public community). In view of his direct/indirect distinction, he might have asked regarding particular cases of ‘terminal sedation’, what is being aimed at and with what means and with what collateral harm? What is being approved of and disapproved of? Does the action so described represent integral intentionality? Given all of these considerations, he might then have been in a position to articulate the meaning of such action(s) in terms of the values or goods involved and the specific ways in which they were involved. Moving on to his judgment of proportion, McCormick might have asked whether ‘terminal sedation’ is truly necessary? Also, is life itself or a value quite as urgent at stake and what precisely is at stake in these cases? Finally, is ‘terminal sedation’ the only way imaginable to prevent greater loss of life (however defined and to whatever extent) in both the short term and the long term?

2.5. The Interpretation of Elizabeth Anscombe

Although Professor Anscombe wrote a doctoral thesis when she was a postgraduate philosophy student at Cambridge in the early 1940s, she declined to submit it because she was not satisfied with it (Gormally 2002). Whether this decision reflected a streak of perfectionism, a common female response within academia, or some other factors, we may never know. However, it is clear that even without a submitted thesis, she became one of the greatest British philosophers of the twentieth century. Although a complete bibliography of her published work is not yet available, it appears that she wrote her first piece on double effect reasoning in 1939 and her last in 1982. As the Second World War was just beginning, she co-authored, *The Justice of the Present War Examined* with

Norman Daniel (Anscombe and Daniel 1981 (orig. 1939)). In the introduction, we find these words: “a war is not made just by the fact that one’s enemies’ deeds are hateful. Therefore it is our duty to resist passion and to consider carefully whether all the conditions of a just war are satisfied in this present war, lest we sin against the natural law by participating in it” (Anscombe and Daniel 1981 (orig. 1939): 72). In the view of these authors, three conditions of a just war remained to be fulfilled: “the intentions of our government must be upright, both (1) as to means, and (2) as to ends, and (3) the probable good effects of the war must outweigh the probable evil. If these conditions are not fulfilled, *this* war is rendered wrong” (Anscombe and Daniel 1981 (orig. 1939): 73). Regarding the need for an “upright intention,” Anscombe and Daniel say, “the truth is that the government’s professed intentions are not merely vague, but unlimited ... [For example,] they have talked about ‘sweeping away everything that Hitlerism stands for’ and about ‘building a new order in Europe’” (Anscombe and Daniel 1981 (orig. 1939): 75). This focus on intention in the context of war seemingly precipitates a goal that would preoccupy Anscombe for many years to come: “we must try to elucidate, in however crude a fashion, the doctrine of intention in human acts” (Anscombe and Daniel 1981 (orig. 1939): 75).

Regarding means, although President Roosevelt had asked the British for a promise not to attack civilians, the British response was basically: “We said that we should adhere to international law on the matter, but that we reserved the right ‘to adopt appropriate measures’ if the Germans should break it” (Anscombe and Daniel 1981 (orig. 1939): 76). Since this response “[could] only mean that, given certain circumstances, we should attack civilians” (Anscombe and Daniel 1981 (orig. 1939): 76), the response was not indicative of a just war. Indeed, although “it has been argued that it is justifiable to attack civilians because their death is an example of ‘double effect’, ... this is no example of double effect, which is exemplified when an action designed to produce one effect produces another ... by accident” (Anscombe and Daniel 1981 (orig. 1939): 78). Another problem was the British blockade that prevented the delivery of food to Germany: “As we have seen, our

government does intend to do that which is unlawful, and it is already blockading Germany with intent to starve the national life. The present war is therefore wrong on account of means” (Anscombe and Daniel 1981 (orig. 1939): 79). Regarding the requirement that the probable good effects of a war must outweigh its probable evil ones, the article ends with the following indictment:

There is a widespread tendency to make what our country chooses to do, the criterion of what may be done, and to call this patriotism. So a war against totalitarianism produces a totalitarian tendency; not only are morals lowered, but the very theory of morals is corrupted ... Already men are talking of Germany as a pariah nation; they are already saying that she must henceforward be kept down and never allowed to become powerful again. ... Then after the war, what prospects have we, but of greater poverty, greater difficulties, greater misery than ever, for a space; until just another such war will break out. Such are the probable evil effects; and they greatly outweigh the good effects of putting an end to the injustices of Germany at the present day, since we have so little hope of substituting anything for them but other injustices (Anscombe and Daniel 1981 (orig. 1939): 81).

Between works wherein Anscombe analyzes and applies double effect reasoning in its entirety more or less, we find pieces in which she focuses on individual elements of, or issues pertinent to double effect reasoning, for example, the complex relationship between acts and their descriptions, intention, causality and determination, and the influence of consequentialism. In her classic text, *Intention*, she differentiates three distinct senses of intention: “Very often, when a man says ‘I am going to do such-and-such’, we should say that this was **an expression of intention** [i.e., an intention of acting, emphasis mine]. We also sometimes speak of **an action as intentional** [emphasis mine], and we may also ask **with what intention the thing was done** [i.e., an intention in acting, emphasis mine] (Anscombe 1969 (orig. 1957): 1). Action can be intentional “without any intention in it” and “without being concerned with the future in any way” (Anscombe 1969 (orig. 1957): 1). By contrast, “an expression of intention is a description of something future in which the speaker is some sort of agent, which description he justifies (if he does justify it) by

reasons for acting, sc. reasons why it would be useful or attractive if the description came true, not by evidence that it is true” (Anscombe 1969 (orig. 1957): 6).

One of the most important and most frequently quoted aspects of Anscombe’s view of intention is that intentional actions are those “to which a certain sense of the question ‘Why?’ is given application; the sense is of course that in which the answer, if positive, gives a reason for acting” (Anscombe 1969 (orig. 1957): 9). Anscombe vehemently asserts that it is not the physical causal sense of the question ‘Why?’ that interests her: “the question has not [the pertinent meaning] if the answer is evidence or states a cause, including a mental cause” (Anscombe 1969 (orig. 1957): 24) (see also Anscombe 1969 (orig. 1957): 15, 34-35). Anscombe also differentiates between motives and intentions: “A man’s intention is *what* he aims at or chooses; his motive is what determines the aim or choice [but again, not in a physical causal sense]” (Anscombe 1969 (orig. 1957): 18-20). As Anscombe explains in her later work, “To regard ... any case of choice as a predetermining causal event now appears as a naïve mistake in the philosophy of mind” (Anscombe 1981 (orig. 1971): 145). The error of regarding anything as a predetermining causal event involves the mistaken identification of necessitation with causation. In other words, “through [the necessity of laws of nature] we shall be able to derive knowledge of the effect from knowledge of the cause, or vice versa, but that does not show us the cause as source of the effect. Causation, then, is not to be identified with necessitation” (Anscombe 1981 (orig. 1971): 136). Regarding “the explanation of action by intention,” Anscombe says that “it does not properly come under my title, ‘the causation of action’ -- at any rate as moderns, rather than Aristotelians, understand the term ‘causation’ ” (Anscombe 1983: 189-190). Rather, it comes under the consideration of “causalities especially involved in a history of people’s dealings with one another ... The first thing to note is: these causalities are mostly to be understood **derivatively** [emphasis mine] ... from the understanding of action as intentional, calculated, voluntary, impulsive, involuntary, reluctant, ...etc. ... [in other words,] **we apply such conceptions** of what people are engaged in” (Anscombe 1983: 190).

The relationship between act-descriptions, intentions and truth is extremely complex, as is illustrated by Anscombe's example of the "man [who] is pumping water into the cistern which supplies the drinking water of a house" (Anscombe 1969 (orig. 1957): 37). The man's action could be represented by four completely different descriptions: (a) he is moving his arm up and down; (b) he is operating the pump; (c) he is replenishing the water supply and (d) he is poisoning the inhabitants of the house (Anscombe 1969 (orig. 1957): 40). Anscombe asks: "What is the man doing? What is *the* description of his action" (Anscombe 1969 (orig. 1957): 37)? *The* description is in fact, "*any* description of what is going on, with him as subject, which is true" (Anscombe 1969 (orig. 1957): 37). However, not all true descriptions describe intentional actions: " 'He is X-ing' is a description of an intentional action if (a) it is true and (b) there is such a thing as an answer in the range I have defined to the question 'Why are you X-ing?' " (Anscombe 1969 (orig. 1957): 38). By "in the range I have defined," Anscombe means certain criteria, for example, "in order for it to be possible to say that an agent does P in order that Q, *he* must treat an acknowledgement of 'But if P, Q won't happen' as incompatible with his having that intention in acting" (Anscombe 1969 (orig. 1957): vi).

Even if 'He is X-ing' is a true description of intentional action, we can still ask, as Anscombe does, "Are there as many actions and as many intentions as there are such descriptions" (Anscombe 1969 (orig. 1957): vi)? In the case of the man pumping water where we can ask whether there are four intentions or only one (e.g., the poisoning), Anscombe says that the intentions are related as means to an end: "When we speak of four intentions, we are speaking of the character of being intentional that belongs to the act in each of the four descriptions; but when we speak of one intention, we are speaking of intention *with which*; **the last term we give** [emphasis mine] in such a series gives the intention *with which* the act in each of its other descriptions was done, and this intention so to speak swallows up all the preceding intentions *with which* earlier members of the series were done ... When terms are related in this fashion, they constitute a series of means, the last term of which is, just by being given as the last, so far treated as end" (Anscombe 1969

(orig. 1957): 46-47). Regarding truth claims and how they relate to complex act-descriptions and intentions, Anscombe says that although “we can find cases where only the man himself can say whether he had a certain intention or not, they are further limited by this: he cannot profess not to have had the intention of doing the thing that was a means to an end of his” (Anscombe 1969 (orig. 1957): 44). Moreover, “the idea that one can determine one’s intentions by making ... a little speech to oneself is obvious bosh” (Anscombe 1969 (orig. 1957): 42). For example, even if the man pumping water told himself that he was only doing his job when in fact, he was poisoning the inhabitants of the house, the truth of his claim would still be subject to external tests such as the relationship between the publicly defined (or definable) elements of his job and empirical observations of what he was doing (or had done) (Anscombe 1969 (orig. 1957): 47). Regarding the empirical dimension of intention, Anscombe answers the question, “how do we tell someone’s intentions?” by saying, “if you want to say at least some true things about a man’s intentions, you will have a strong chance of success if you mention what he actually did or is doing. For whatever else he may intend, or whatever may be his intentions in doing what he does, the greater number of the things which you would say straight off a man did or was doing, will be things he intends” (Anscombe 1969 (orig. 1957): 7-8).

The linkage between act-descriptions, intentions and truth is definitely not the same type of linkage as that associated with premises and conclusions of logical arguments. In fact, Anscombe complains that modern philosophy has “blankly misunderstood ... what ancient and medieval philosophers meant by *practical knowledge*[.] Certainly in modern philosophy we have an incorrigibly contemplative conception of knowledge. Knowledge must be something that is judged as such by being in accordance with the facts. The facts, reality, are prior, and dictate what is to be said, if it is knowledge” (Anscombe 1969 (orig. 1957): 57). Anscombe expresses the same problem in other words when she says, “There is a difference of form between reasoning leading to action [i.e., practical reason] and reasoning for the truth of a conclusion [i.e., speculative reason] (Anscombe 1969 (orig. 1957): 60). Whereas speculative reasoning is essentially concerned with universals,

“practical reasoning [i.e., in Aristotle’s view] is essentially concerned with ‘what is capable of turning out variously’ ” or what is “the form of a calculation [of] what to do” (Anscombe 1969 (orig. 1957): 60). Using one of Aristotle’s examples in the context of healthy eating, Anscombe says that there is a difference between the speculative recognition that “here is a type of food that is good for me,” and the practical decision “so I’ll have some” or “so I’d better have some” (Anscombe 1969 (orig. 1957): 61). Moreover, “the role of ‘wanting’ in the practical syllogism is quite different from that of a premise. It is that whatever is described in the proposition that is the starting-point of the argument **must be wanted** [my emphasis] in order for the reasoning to lead to any action” (Anscombe 1969 (orig. 1957): 66). In other words, it is one thing for a conclusion to be shown to be true, but it is quite another thing for a person to **want** the true thing. Furthermore, Anscombe says that “a chief mark of an idle wish is that a man does nothing -- whether he could or no -- towards the fulfilment of the wish” (Anscombe 1969 (orig. 1957): 67).

There is an important connection between wishing/wanting and knowledge. Essentially, a concept has to be formed or envisaged before it can be made the object of a wish. In Hamlet’s case, for example, Anscombe says, “once the concept ‘revenge’ exists it can be made the object, as with Hamlet. We must always remember that an object is not what what is aimed at is; [rather,] the description *under which* it is aimed at is that under which is is *called* the object” (Anscombe 1969 (orig. 1957): 66). From these sorts of reflections, Anscombe concludes that “there are two features present in wanting; movement towards a thing and knowledge (or at least opinion) that the thing is there” (Anscombe 1969 (orig. 1957): 68). Anscombe also discusses the relationship between wanting and goodness: “Goodness is ascribed to wanting in virtue of the goodness (not the actualization) of what is wanted; whereas truth is ascribed immediately to judgments, and in virtue of what actually *is* the case. But again, the notion of ‘good’ that has to be introduced in an account of wanting is not that of what is really good but of what the agent conceives to be good ...” (Anscombe 1969 (orig. 1957): 76). Anscombe’s views regarding

the relationship between wanting, knowledge and goodness have profound implications for ethics:

So what can the practical syllogism have to do with ethics? It can only come into ethical studies if a correct philosophical psychology is requisite for a philosophical system of ethics: a view which I believe I should maintain if I thought of trying to construct such a system; but which I believe is not generally current. I am not saying that there cannot be any such thing as moral general premises, such as 'People have a duty of paying their employees promptly', ...; obviously there can, but it is clear that such general premises will only occur as premises of practical reasoning in people who want to do their duty.¹ The point is very obvious, but has been obscured by the conception of the practical syllogism as of its nature ethical, and thus as a proof about what one ought to do, which somehow naturally culminates in action. [Re:]¹ It is worth remarking that the concepts of 'duty' and 'obligation', and what is now called the 'moral' sense of 'ought', are survivals from a *law* conception of ethics. The modern sense of 'moral' is itself a late derivative from these survivals. None of these notions occur in Aristotle. The idea that actions which are necessary if one is to conform to justice and the other virtues are requirements of divine law was found among the Stoics, and became generally current through Christianity, whose ethical notions come from the Torah (Anscombe 1969 (orig. 1957): 78).

In *Modern Moral Philosophy*, Anscombe re-iterates her call for an up-to-date philosophy of psychology, and she states her conviction that "the concepts of obligation and duty ... ought to be jettisoned" because they derive from a Judeo-Christian conception of ethics "which no longer generally survives" (Anscombe 1958: 1). She also asserts that English philosophers from Sidgwick to her day all share in common the denial of the Judeo-Christian view of ethics, especially the notion "that there are certain things forbidden whatever *consequences* threaten, such as: choosing to kill the innocent for any purpose, however good; vicarious punishment; treachery ...; idolatry; sodomy; adultery ... [in other words,] the prohibition of certain things simply in virtue of their description as such-and-such identifiable kinds of action ..." (Anscombe 1958: 10). Anscombe introduces and attaches the label, *consequentialism*, to this denial of Judeo-Christian ethics, and she attacks what she considers to be "the most important thing about Sidgwick [i.e.,] his definition of

intention [namely, the idea] that one must be said to intend any foreseen consequences of one's voluntary action" (Anscombe 1958: 11).

Anscombe identifies many problems with this view. It is a denial of personal moral responsibility insofar as one considers oneself responsible only for the consequences that one foresees, and not for "the *actual* consequences of the most disgraceful actions" (Anscombe 1958: 12). "It is a shallow philosophy" because there are no foundational criteria for permissibility or impermissibility other than foreseen consequences (Anscombe 1958: 12-13). The foreseen consequences are typically evaluated on the basis of conventional societal standards, and this is problematic because "the chance that a whole range of conventional standards will be decent is small" (Anscombe 1958: 13). Moreover, consequentialism leads to self-legislation or self-determination, and although "whatever you do 'for yourself' may be admirable[,] it is not legislating"; in other words, "the search for 'norms' might lead ... one to eat the weaker according to the laws of nature, but would hardly lead anyone nowadays to notions of justice" (Anscombe 1958: 13-14). Anscombe's emphasis on justice here is not coincidental, but is an integral part of her proposal for a new philosophy of psychology that takes shape in this article. One central required element is "an account of what *type of characteristic* a virtue is -- a problem, not of ethics, but of conceptual analysis -- and how it relates to the actions in which it is instanced: a matter which I think Aristotle did not succeed in really making clear" (Anscombe 1958: 5). Other important elements include an account of "action," "intention," "pleasure," "wanting," "human nature," and "the concept of virtue [itself]" (Anscombe 1958: 14-15). If these fundamentals were to be developed, it would lead to a "great improvement," specifically, the transition from naming something "morally wrong" to the practice of using terms such as "untruthful," "unchaste," and "unjust" (Anscombe 1958: 9). What Anscombe is suggesting here is that we "look for 'norms' in human virtues," and just as a complete set of teeth is the norm for teeth, a complete set of virtues is the norm constitutive of overall human flourishing (Anscombe 1958: 14).

In *War and Murder* (Anscombe 1981 (orig. 1961)), Anscombe returns to her analysis of the use of double effect reasoning. In the face of the perpetual need to exercise force to combat violence and crime within and between societies, Anscombe asks: “what is a just attitude to this exercise of violent coercive power on the part of rulers and their subordinate officers” (Anscombe 1981 (orig. 1961))? She considers three possible responses: first, the idea that “the world is an absolute jungle” and that the force used to combat violence and crime is merely an integral part of the jungle; secondly, the pacifist idea that such violence is objectionable; and finally, “that it is both necessary and right that there should be this exercise of power, that through it the world is much less of a jungle than it could possibly be without it, so that one should in principle be glad of the existence of such power, and only take exception to its unjust exercise” (Anscombe 1981 (orig. 1961): 51). Anscombe holds that pacifism “is an illusion, which would be fantastic if it were not so familiar” (Anscombe 1981 (orig. 1961): 51). By the same token, “society is essential to human good; and society without coercive power is generally impossible” (Anscombe 1981 (orig. 1961): 52). For these reasons, Anscombe concludes that the problem is not the exercise of force in itself, but rather, “the principal wickedness” of “killing the innocent” (Anscombe 1981 (orig. 1961): 53).

In the context of war, “the innocent” usually comprise “people whose mere existence and activity supporting existence by growing crops, making clothes, etc., constitute an impediment to [combatants]” (Anscombe 1981 (orig. 1961): 53). By contrast, “what is required, for the people attacked to be non-innocent in the relevant sense, is that they should themselves be engaged in an objectively unjust proceeding which the attacker has the right to make his concern” (Anscombe 1981 (orig. 1961): 53). “The attacker” Anscombe has in mind here is a ruler or his delegate, and it is only to such a person that “the right to attack with a view to killing normally belongs” (Anscombe 1981 (orig. 1961): 53). The general immorality of murder is not at issue here, that is, murder defined as “the deliberate killing of the innocent, whether for its own sake or as a means to some further end” (Anscombe 1981 (orig. 1961): 53). What Anscombe critiques are the attempts often

made to defend the moral permissibility of murder so defined, when it is carried out in the specific context of self defence. From Anscombe's double effect reasoning-based perspective, "the plea of self-defence (or the defence of someone else) ... must in conscience -- even if not in law -- be a plea that the death of the other was not intended, but was a side effect of the measures taken to ward off the attack" and again, "the deliberate choice of inflicting death in a struggle is the right only of ruling authorities and their subordinates" (Anscombe 1981 (orig. 1961): 54). In response to those who might have opposing points of view and dismiss the use of double effect reasoning in this way, Anscombe says, "the denial of [double effect reasoning] has been the corruption of non-Catholic thought, and its abuse the corruption of Catholic thought" (Anscombe 1981 (orig. 1961): 54).

Anscombe recognizes the potential for controversy and abuse insofar as the foresight/intention distinction is problematic: "The distinction is evidently a fine one in some cases ... yet in other cases the distinction is very clear" (Anscombe 1981 (orig. 1961): 54). One of the "very clear" cases is in fact, pain control: "In the case of the administration of a pain-relieving drug in mortal illness, where the doctor knows the drug may very well kill the patient if the illness does not do so first, the distinction is evident ... everyone understands that it is a very different thing so to administer a drug, and to administer it with the intention of killing" (Anscombe 1981 (orig. 1961): 54-55). Within the Christian and Catholic context, Anscombe argues that "double-think about double effect" is tied to the lack of recognition regarding the necessity of double effect reasoning in relation to absolute norms. In other words, "Christianity forbids a number of things as being bad in themselves. But if I am answerable for the foreseen consequences of an action or refusal, as much as for the action itself, then these prohibitions will break down [i.e., become senseless and unwieldy]" (Anscombe 1981 (orig. 1961): 58). In addition, "without understanding of this principle, anything can be -- and is wont to be -- justified and the [absolute prohibitions go] by the board" (Anscombe 1981 (orig. 1961): 58). In Anscombe's view, double effect reasoning "has been repeatedly abused from the

seventeenth century up till now” (Anscombe 1981 (orig. 1961): 58). Again, the problem is “Cartesian psychology” according to which, “an intention was an interior act of the mind which could be produced at will ... You only had to ‘direct your intention’ in a suitable way. In practice, this means making a little speech to yourself” (Anscombe 1981 (orig. 1961): 58-59). Particularly heinous examples include “the devout Catholic bomber [who] secures by a ‘direction of intention’ that any shedding of innocent blood ... is ‘accidental’, and the idea “that it was an *accident* that the people of Hiroshima and Nagasaki were there to be killed” (Anscombe 1981 (orig. 1961): 59). Furthermore, although there will be borderline cases in which it is difficult to discern whether some effect is truly incidental, “the obliteration bombing of a city is not a borderline case” (Anscombe 1981 (orig. 1961): 59).

In subsequent publications, Anscombe adds more clarity to her view of the complex relationship between the mind, intentions, acts and act-descriptions. In *Events in the Mind*, she explains that the problematic Cartesian view of intention can be summed up as follows: “[Descartes] called volitions and intentions ‘ideas’ -- thus assimilating ‘I have an idea’ to ‘I have a cogitatio’ and treating **all** as if they were contents of experiencing, as if ‘I intend’ were the report of an experience-content called an ‘intention’, [and as if] ‘I see blue’ [were] a report of an experience-content called a ‘sensation’ ” (Anscombe 1981 (orig. 1963): 61). Anscombe’s solution of this assimilation problem involves the conclusion that it would be better to differentiate “three different kinds of mental report[s]”:

First, there are reports of experiences -- sensations and images -- which may be called occurrences and which have contents. Second, there are reports of intention, understanding, knowledge and belief; it is characteristic of these that though one may have intended, etc., something at a certain time, that does not require that what one intended, etc. at that time be before one’s mind at that time. Here intention, understanding, knowledge and belief **are not events** [emphasis mine]; nor *need* they be started off by a forming of intention, an occurrence of insight, an occasion of learning or an initial judgement. Finally, there is thought *of*, or *that*, such and such. **This is an event** [emphasis mine], but not an experience; what we call its content is

given by words which do not describe an inner experience (unless that is what the thought was about) but which have their primary application (Anscombe 1981 (orig. 1963): 63).

Not only is intention not an event in the mind for Anscombe, but acts are not events. In "*Under a Description*", she explains that "if one says that one and the same action ... may have many descriptions [e.g., the man pumping water], it is sometimes supposed that this must be said in the light of a theory of event-identity [e.g., that of Davidson or Donagan]. Now this appears to me no more true than that one can say one and the same man may satisfy many different definite descriptions in the light of a theory of human identity. There may be different theories of human identity, yielding different results in curious describable cases" (Anscombe 1981 (orig. 1979): 210). Similarly, concerning action, Anscombe says:

I may seem to have let myself off too easy, not giving any account of the 'individuation' of actions or events. But it is not possible to do that, if it means fixing criteria for what is a single action or event. This is a natural consequence of the uncountability which is characteristic of the concept of action or event. On the other hand, suppose we take a countable concept of an action or event like, say, administering poison. Such an event will split up into a lot of sub-events or sub-actions; there might even be a gap in the process, which yet counts as one administration of poison -- the administration being interrupted, say, by a fit of coughing on the part of the administerer. However, we are willing to count the whole episode as just *one* time that person administered poison, one administration. So here we have one action, and if what happens in consequence of it without any further contribution from the administerer yields reports using active verbs, 'poisoned NN', 'killed NN', which are true of him, the latter at least will yield a definite description of an action on his part, which is satisfied by that one original act of administering poison. There is here no promise of a theory of what is absolutely one and what are many actions and events; rather it appears that there is no such thing (Anscombe 1981 (orig. 1979): 216).

In 1982, The American Catholic Philosophical Association awarded Anscombe its twenty-sixth Aquinas Medal. Upon receiving the award, she gave a speech that was later

published under the title, *Medalist's Address: Action, Intention and 'Double Effect'* (Anscombe 1982). In this address, she reminds her readers that “some scholastics” distinguished “between ‘human action’ -- *actus humanus* -- and ‘act of a human being’ -- *actus hominis*,” the latter covering examples such as “idly stroking one’s beard, or idly scratching one’s head [both of which] may be an ‘act of a human being’ without being a ‘human act’ ” (Anscombe 1982: 12). Her main point is that this distinction does not mean “that ‘moral’ [stands] for an extra ingredient which some human actions have and some do not”; on the contrary, her thesis is that “all human action is moral action. It is all either good or bad. (It may be both) ... [In other words,] it may be good only in a certain respect [e.g., generically], and bad in others” (Anscombe 1982: 13, 15). Still, she says that “not all human-action descriptions are moral action-descriptions [i.e., descriptions “at least suggesting some *specific* goodness or badness about an act that falls under it”]” (Anscombe 1982: 14). In other words, there are neutral or “*indifferent* human-action descriptions,” for example, “ ‘Chucking a pebble into the sea’, ‘Picking a flower’ [or] ‘walking’ ” (Anscombe 1982: 14).

In making these distinctions and especially stressing the point that ‘moral’ is not an ‘add-on’ to human actions, Anscombe is critiquing two specific restrictive trends. Her first example is the work of Donald Davidson that “suggests that we have an action (in the restricted sense) if what is done (no restriction on the ordinary sense here) is intentional under *some* description” (Anscombe 1982: 12). Anscombe’s critique is as follows: “I am inclined to think that the attempt, brave as it was, was misconceived anyway. There is a goal in view when people want to introduce a restricted sense of ‘action’, but I don’t think it can be attained by trying to find a characterization of a sub-class of events” (Anscombe 1982: 12). Her second critique is aimed at those who would distinguish between ‘evil’ and ‘pre-moral evil’, or evil in a restricted sense. She says, “The idea that a human action could be called a ‘pre-moral evil’, or evil in a pre-moral sense, is extremely confused ... [e.g.,] Death is an evil, and a killing (of a human by a human) may not be a wicked action. For it may be blamelessly accidental and so, it is suggested, a ‘pre-moral evil’. The amount of

truth there is in this conclusion consists in this: the description 'killing someone' may be the description of an *act of a human being* (actus hominis) without describing a *human act* (actus humanus) -- as when I was a parcel rolling down the hill. [But] note that when it is the description of an act of a human being, even though not of a human act, it is still a moral action-description" (Anscombe 1982: 17). In other words, "indeterminateness of description does not signify an indeterminateness in the quality of the human act ... Murder is a complex concept with many disparate elements in it. But you don't have to know what some private person killed his uncle **for** [emphasis mine] in order to know he committed murder, so long as he was awake, *compos mentis* and was doing the killing on purpose" (Anscombe 1982: 18). Similarly, "there are several kinds of action which, if they are done intentionally, are evidently evil actions, no matter what they are done for" (Anscombe 1982: 20).

Nonetheless, some distinctions need to be made and for this reason, double effect reasoning is important. In other words, "One cannot say that *no* action may be done which foreseeably or probably leads to some death, or that all such actions are murderous. Why, the very begetting of a child would be murder at that rate ... And much that is done in medicine and surgery is done knowing it involves the risk of death -- pain-killing drugs which may kill the patient before his disease does, and high risk surgery" (Anscombe 1982: 20). In cases of this type, Anscombe suggests that "what we are talking about is death as a side-effect which is brought about as well as the effect being aimed at. I will call it the 'principle of side-effects' that the prohibition on murder does not cover *all* bringing about of deaths which are not intended. Not that such death aren't often murder. But the quite clear and certain prohibition on intentional killings ... does not catch you when your action brings about an unintended death" (Anscombe 1982: 21).

Again, Anscombe repeats her dismissal of the abuse of 'directing intentions' and the idea that "the intentionalness of an action can't be known to anyone but the agent" (Anscombe 1982: 18): "An act does not merely have many descriptions, under some of

which it is indeed not intentional: it has several under which it is intentional. So you cannot choose just one of these, and claim to have excluded others by that. Nor can you simply bring it about that you intend *this* and not *that* by an inner act of ‘directing your intention’. Circumstances, and the immediate facts about the means you are choosing to your ends, dictate what descriptions of your intention [i.e., regarding the means you are performing] you must admit” (Anscombe 1982: 23). In this address, Anscombe stresses the modesty or the limitations of the ‘principle of side effects’. For example, “it says ‘where you must not aim at someone’s death[,] causing it does not *necessarily* incur guilt” (Anscombe 1982: 21); in addition, “it does not say *when* you may foreseeably cause death” (Anscombe 1982: 22); and “this principle tells you rather what you can’t do than what you can” (Anscombe 1982: 24). Notions of ‘direct’ and ‘indirect’ only add to these problems: “ ‘Direct’ and ‘indirect’ are dodgy terms; sometimes they relate to offshoots, as it were, from a given sequence of causes, and sometimes to immediacy or remoteness, and sometimes to what is intended or not” (Anscombe 1982: 22). For all these reasons, Anscombe concludes that the principle of side effects is not sufficient for the task with which it is usually associated, and she adds what she thinks is needed: “Having accepted the principle of side effects, we need some further principle or principles on which to judge the unintended causing of death. There is one which both seems obvious and covers a good many cases[:] The intrinsic certainty of the death of the victim, or its great likelihood from the nature of the case ...” (Anscombe 1982: 24). By contrast, what she cannot accept is the proportionalists’ “principle of the balance of good over evil in the expected upshot” (Anscombe 1982: 24).

From 1978-1981, Professor Anscombe was a member of the Working Party assembled by the Linacre Centre for Health Care Ethics to study ethical issues surrounding euthanasia. Within *Book One* of the group’s final report, *Euthanasia, Clinical Practice and the Law* (Gormally 1994 (orig. Book One: 1982): 3-108), Anscombe (in conversation with other group members) wrote most of the third chapter, *Murder and the Morality of Euthanasia: Some Philosophical Considerations* (i.e., sections 5 and 6 of this chapter were

written largely by John Finnis) (Gormally 2002). Anscombe indicates that although “murder is a complex of disparate elements,” “*the intentional killing of the innocent ... [is] the hard core of the concept*” (Gormally 1994 (orig. Book One: 1982): 37-38). Regarding “murder where the death of the victim is a side-effect,” she recognizes that “these cases constitute a penumbra or fuzzy area surrounding the central areas of murder, intentional killing” (Gormally 1994 (orig. Book One: 1982): 48). A central issue in these cases is risk management, and as Anscombe indicated in the previous *Address*, “not all deliberate action involving risk can be prohibited. So it must be possible to have sufficient excuse for risking or accepting death as a side-effect. This is readily grasped in the case of doctors giving pain-killing drugs” (Gormally 1994 (orig. Book One: 1982): 48). Again, Anscombe explains that the ‘principle of double effect’ is limited as a tool for discerning and negotiating risks: “The principle of the side effect merely states a possibility: where you may not aim at someone’s death, causing it does not necessarily incur guilt -- it can be that there are necessities which in the circumstances are great enough ... to provide a valid excuse for risking or accepting that you cause death. Without such excuse, foreseeable killing is either murder or manslaughter” (Gormally 1994 (orig. Book One: 1982): 48).

Not unlike her previous *Address*, this chapter includes further principles or criteria which could be used to differentiate murder from the unintended causing of death. One proposed criterion is “the immediacy and intrinsic certainty of the death of the victim” (Gormally 1994 (orig. Book One: 1982): 49). Another proposal is the notion of necessity as an exonerating plea, but use of this criterion is not without problems. For example, although necessity may justify a State’s killing of a person who poses a danger to the common good, “civil authority cannot make it policy to decide on or license the killing of innocent people without losing the character of civil authority” (Gormally 1994 (orig. Book One: 1982): 40). Moreover, even if all could agree concerning the inclusion of a criterion of necessity, the ‘principle of double effect’ “does not say what necessities excuse foreseeably causing death” (Gormally 1994 (orig. Book One: 1982): 49). Finally, in the medical context, not unlike other contexts, “necessity is a highly relative term”:

We invoke the necessity of relieving pain when we accept the risk of giving pain-killing drugs, but where the risk is considerable we shall allow it only in cases of terminal illness. It is appropriate to recall here that it is an axiom of medical practice that even in the most extreme situations, the least drastic remedy should be employed. There are graduations and shadings when there is a comparison to be made between the importance of ends being sought and the risks to life, as also in the circumstances which affect the comparison, and there are also graduations of uncertainty and remoteness ... (Gormally 1994 (orig. Book One: 1982): 50).

2.6. The Interpretation of Christopher Kaczor

Kaczor's doctoral thesis, *Thomas Aquinas and Proportionalism: An Evaluation of Their Compatibility* (Kaczor 1996), appears to be the first book-length work to examine proportionalism in relation to Aquinas' thought. In Kaczor's explanation of the originality of his thesis, he says that although "[his] dissertation could not encompass the whole of St. Thomas's thought in depth, it will touch upon and synthesize elements that often are either ignored or treated separately, such as his account of the final end, intention, law, and characterization of action. The virtues in particular have been marginalized ... in the contemporary discussion of proportionalism and St. Thomas ..." (Kaczor 1996: 11). Kaczor's study of Aquinas', *De Malo (On Evil)*, plays a particularly important role in Kaczor's comparison of Aquinas' treatment of evil with that of proportionalists. Since there are significant differences among proportionalists and proportionalism is not generally considered to be a unified system, Kaczor takes as his reference point, James J. Walter's definition of proportionalism in Richard McBrien's, *Encyclopedia of Catholicism* (Walter 1995). Kaczor sets out this definition "so that the individual versions of the theory may be made more intelligible in light of this general understanding":

[Proportionalism is] a type of analysis for determining the objective moral rightness and wrongness of actions in conflict situations and procedure for establishing exceptions to behavioural norms ... The proponents make a distinction between moral and premoral values/disvalues. Moral values and disvalues describe the qualities of persons as they confront situations ... Premoral evils or disvalues refer to the harms, lacks, deprivations, etc., that

occur in, or as a result of, human agency, e.g., death. Premoral values refer to those conditioned goods that we pursue for human and non-human well-being, e.g., life, health, etc. This distinction is used by proportionalists in their application of the principle of proportionate reason ... First, the word 'reason' means a premoral, i.e., a conditioned, and thus not absolute, value that an agent seeks to promote in the whole act. Second, the term 'proportionate' refers to a proper relation that must exist between the premoral disvalues(s) contained in, or caused by, the means and the end or a proper relation between the end and the premoral disvalue(s) in the consequences of the act. In making exceptions to negative behavioural norms, e.g., no killing, proportionate reason is used to discern if the premoral disvalue contained in, or caused by, the means (killing) stands in due proportion to the premoral value in the act (self-defense). If a proportionate reason is present, the norm as stated does not apply to this act under its terms of reference. Exceptions to behavioural norms that prohibit premoral evil, then, are made on the basis of the presence of a proportionate reason (Kaczor 1996: 1-2).

For Kaczor, what is problematic in proportionalism so defined is the fact that for both Aristotle and Aquinas, "not only does man act for an end, but man has a final end" (Kaczor 1996: 24). In other words, Aristotle holds that "happiness consists in activity in accord with virtue," and for Aquinas, "happiness is operation in accord with perfect virtue" (Kaczor 1996: 28). Following Aquinas, Kaczor differentiates two spheres of human activity, intransitive and transitive. Intransitive activity or *actio* in Aquinas' terminology, is "activity that does not bring about change in external affairs"; by contrast, transitive activity or *factio* in Aquinas' Latin, is "the introduction of change into external states of affairs" (Kaczor 1996: 59). For Aquinas, "not any *actio* is our happiness, but **knowing** [emphasis mine], and not knowing any object, but the highest object – God" (Kaczor 1996: 29). Accordingly, "each human act is ... primarily in terms of its evaluation, an intransitive act, and human acts "precisely as moral, should be considered as *actio* not *factio*, i.e., doing considered precisely as self-determining activity, rather than as making that is the shaping of what is outside the person's will and mind" (Kaczor 1996: 59). Kaczor's major complaint against proportionalism is "that the majority of [proportionalist] authors either do not explicitly raise the question of the ultimate basis of moral judgment or write

ambiguously on the matter” (Kaczor 1996: 38). For Kaczor, the work of Richard McCormick and Louis Janssens provides many examples of this type of ambiguity, the origins of which can be found in the work of Jean Pierre Gury.

As we recall from our discussion of Sulmasy’s work, Aquinas’ structure of human action includes a sophisticated progression through several interlocking aspects that facilitate the self-determining integration of internal and external acts. Kaczor reminds us that the whole process begins with intellectus, or the understanding of universals such as “the universal good of God” (Kaczor 1996: 46). This understanding becomes crucial in the second step - voluntas or willing - because “one cannot choose what one does not know ... the will moves only when presented some object by which what is potential can become actual” (Kaczor 1996: 44-45). The third dimension, frui or enjoyment, refers “to enjoyment of an object as a possible end for an agent” (Kaczor 1996: 49). If we take health as another example of an end, having understood health as a universal good, having desired or willed it, and having enjoyed or rested in it as a potential object, health can be “finally [pursued] as an end to be sought by means” (Kaczor 1996: 50). In other words, health is now intended -- the fourth dimension. As the intended end, health is a remote end (i.e., finis operantis) in relation to a proximate end or object (i.e., finis operis), for instance, taking medication. The fifth aspect - consilium or deliberation - concerns the intellectual discernment necessary “ ‘ in doubtful and uncertain matters’ ” (Kaczor 1996: 55), or in situations where the appropriate means is not immediately obvious. Consensus or consent follows deliberation in these situations, and in this sixth dimension, the will applies itself “ ‘to the determination of deliberation’ ” (Kaczor 1996: 55). The deliberation itself may have surfaced “a plurality of options” regarding acceptable means, and the seventh aspect - electio or choice - involves “the favouring of one thing over another” (Kaczor 1996: 56). The eighth dimension - command or imperium - “ ‘is an act of reason’ ” (Kaczor 1996: 57) whereby the intellect takes command of the choice made in the previous stage. The final aspect - usus or use - is between command and the actual execution of an external act. As

Aquinas explains, usus is “ ‘the motion, by which the will moves to execution’ ” (Kaczor 1996: 58).

In Kaczor’s perspective, what is extremely important about the entire structure from intellectus to externally observable action is that “human action ... is not primarily effects brought about by the agent in the world, but an ordering of the agent’s intellect and will” in relation to a final end (Kaczor 1996: 58). From this Thomistic viewpoint, Kaczor emphasizes that the physicalism against which the entire proportionalist project is aimed, is a problem located in the manuals and not in Aquinas’ own work. At the heart of the problem is the meaning of the *object* of an act, the primary basis for moral evaluation of acts. Kaczor recalls “the charge from proportionalists that the object of the act was previously understood in a physical sense, that is, as merely the externally visible state of affairs able to be captured by a third person observer” (Kaczor 1996: 83-84). However, for Aquinas,

objects of acts are not mere states of affairs existing in the world independent of agents. The object of the act is often equated with the *finis operis* and the intention with the *finis operantis*. Thomas, it should be noted, seems to avoid this usage after his commentary on the *Sentences* of Peter Lombard written early in his career, but even here Thomas clearly does not evaluate the *finis operis* without reference to the agent, since the *finis operis* is defined in relation to the agent. ‘The *finis operis* is that to which the work is ordained by the agent, and this is called the meaning of the work; the end of the agent (*finis operantis*) however is what the one acting principally intends.’ Further, the structure of the *Summa theologiae* with its early and governing distinction between acts of a man and human acts makes clear that physical occurrences, considered only as such, do not concern the theologian whose subject is the *actus humanus* not the *actus hominis* (Kaczor 1996: 90).

At issue here is not just Aquinas’ definition of *objectum*, but the fact that “Thomas’s account requires all relevant aspects to be good, since a lack of any relevant perfection indicates the act is *malum simpliciter* [i.e., evil in itself], although it may be good in other respects (*bonum secundum quid*)” (Kaczor 1996: 81-82). Accordingly,

the proportionalist account, on Thomistic grounds, faces the following difficulty. Evil aspects of a human action are either relevant to the moral evaluation of the act or not. If the aspects are relevant, they all must be good, or the action is defective in some important way, *bonum secundum quid sed malum simpliciter*. If the aspects are not relevant, then their evil need not be part of the moral evaluation. The ‘premorally’ evil simply does not enter the analysis (Kaczor 1996: 82).

In other words, the proportionalist idea that “consequences can render a premorally evil act good” (Kaczor 1996: 121) is incompatible with Aquinas’ thought. The most serious problem is that this idea represents a “third party view” of the evaluation of action: “The distinction between good and right as used by [proportionalist] authors envisions a judgment upon acts as right or wrong independently of the character of the agents performing them. Clearly, this shift in moral theology, with its accompanying silence about the virtues, marks a clear departure from Thomas” (Kaczor 1996: 144). The problem here is not only the lack of emphasis on the virtues, but the corresponding non-Thomistic emphasis on skills (*techne*) and production (Kaczor 1996: 196-197).

To illustrate the problem presented by the notion of pre-moral or ontic evil within proportionalism, Kaczor compares Janssens’ notion of ontic evil with Aquinas’ definition of moral evil. “ ‘Ontic evil,’ says Janssens, ‘is a lack of perfection, a deficiency which frustrates our inclinations’ ” (Kaczor 1996: 152). However, “moral evil, according to Aquinas, is a lack of perfection in a human agent” (Kaczor 1996: 152). Surely one would have to agree with Kaczor that “thus far, it is hard to see how the moral evil would be different than ontic evil” (Kaczor 1996: 152). For this reason, Kaczor asserts that it would be more helpful to use the distinctions that Aquinas himself makes concerning evil -- the distinction between *malum simpliciter* and *malum secundum quid*, and the distinction between *pena* (punishment) and *culpa* (fault or blame). In the first question of Aquinas’, *De Malo*, where he deals with the issue of whether evil is something, “Thomas makes a distinction between ‘That is called simply evil [i.e., *malum simpliciter*] which with respect to itself (*secundum se*) is evil’ and ‘that in one respect (*secundum quid*) is called evil which

is not evil with respect to itself, but of another ...' [e.g.,] just as a flame is an evil to water" (Kaczor 1996: 153-154). Acknowledging that this distinction does not cover the element of suffering evil that proportionalists like Janssens were trying to capture, Kaczor suggests that Aquinas' distinction between *pena* and *culpa* could be more helpful because both terms "involve the frustration of the human person but in different ways" (Kaczor 1996: 154). Also "this distinction may capture better the distinctly *human* suffering involved in ontic and moral evil: '[*culpa*] and [*pena*] pertain to a rational nature' " (Kaczor 1996: 155). In *De Malo*, Aquinas articulates this distinction as a distinct reconciliation of universals and particulars woven into his structure of human action:

A rational or intellectual nature in comparison with other creatures is related in a special way to good and evil because every other creature is naturally ordered to some particular good, but only an intellectual nature, by means of the intellect, grasps the universal nature of good and is moved to good universally by the appetite of the will. And therefore **evil in the rational creature is divided by a special division into fault and punishment** [emphasis mine] ... it is of **the nature of fault** [emphasis mine] to be according to the will, but of **the nature of punishment** [emphasis mine] to be contrary to the will, and the will is found only in an intellectual nature. The distinction of these two (fault and punishment) can be understood in this way Now good designates a certain perfection. And perfection is twofold: namely, the first, which is form or habit [i.e., virtue], and the second, which is operation. **But everything we use in operating can be referred to the first perfection, the use of which is operation** [emphasis mine]. Consequently, and conversely, a twofold evil is found: one in the agent himself, according as he is deprived either of form or of habit or of whatever else is necessary for operation, thus blindness or crookedness of the leg is an evil; but the other evil is in the defective act itself, for instance if we should say that limping is an evil. And just as these two evils may be found in other creatures, so also in an intellectual nature, which operates by the agency of the will. In which it is clear that **a disordered act of the will has the nature of fault** [emphasis mine], for a person is blamed and rendered culpable inasmuch as he voluntarily does a disordered act. **But evil is also found in an intellectual creature according to a privation** [emphasis mine] of form or habit or of any other thing whatsoever that may be necessary to operate rightly, whether it pertains to the soul or to the body or to exterior things; **and ... it is incontrovertible that such evil is punishment** [emphasis mine]. For three characteristics belong to the nature

of punishment. One of which is that it has regard to fault, for someone is properly said to be punished when he suffers evil for some act he has committed ... The second characteristic of the nature of punishment is that it is contrary to the will ... The third characteristic seems to belong to the nature of punishment as it consists in a kind of suffering or undergoing, for those things which happen contrary to the will are not from an intrinsic principle, i.e., the will, but from an extrinsic principle, the effect of which is called a suffering or undergoing (Aquinas 1995: I,4: 28-29).

One of the key points in the above passage is that “everything we use in operating can be referred to the first perfection [i.e., habit or virtue], the use of which is operation.” In other words, operations specify virtues, and in fact, double effect reasoning facilitates the specification of the virtue of justice -- “the chief of the moral virtues” for Aquinas (Kaczor 1996: 252-253). Aquinas differentiates two types of justice -- distributive and commutative. Distributive justice “ ‘is distributive of common goods according to a proportion’,” thus relating parts to a whole or individuals to an entire community (Kaczor 1996: 253). By contrast, commutative justice “pertains to the relationship of individuals” to each other, and it is this type of justice that is specified through double effect reasoning (Kaczor 1996: 254). Not surprisingly, homicide is the first vice or sin opposed to commutative justice; but for Aquinas, not all sins and correspondingly, not all homicides are equal. As Kaczor explains, “the sin is more or less grave in species depending on how far the evil takes away the good of human persons” (Kaczor 1996: 71). In “the *locus classicus* of double effect reasoning” (Kaczor 1996: 254), ST II-II, 64, Aquinas considers how far the evil takes away the good of human persons in several different instances of homicide. In ST II-II, 64,7, as translated by Kaczor, Aquinas explores the situation “where one effect of the action is self-defense and the other is the death of the one threatening the life of the innocent person”:

Nothing prevents that there be two effects of one act: of which the one is in the intention, but the other is outside the intention (*praeter intentionem*). However, moral acts take their species from that which is intended, not however from that which is outside the intention, since it is *per accidens*, as is clear from things said before. Therefore, for the act of one defending

himself a two-fold effect is able to follow: one the preservation of his own life, the other however the death of the aggressor (*invadentis*). Therefore, an act of this type, from the fact that the preservation of his own life is intended, does not have the character of the illicit (*rationem illiciti*), since it is natural to anyone to preserve himself in his being insofar as he is able. Nevertheless, it can happen that some act proceeding from a good intention, be rendered illicit, if it is not proportioned to the end (*proportionatus fini*). Therefore, if someone for the sake of defending his life uses more force than is necessary it will be illicit. If however he repels the violence moderately, it will be a licit defense. For according to the rights (*secundum iura*), it is licit to repel force with force with the moderation of the blameless defense [*Decretal. Gregory IX ...*]. Nor is it necessary for salvation, that a man forego an act of moderate defense so that he might avoid the death of another, **since man is bound more to provide for his own life than for the life of another** [emphasis mine]. But since it is not licit to kill a man, except for the public authority acting for the common good, as is clear from what was said above, it is illicit that a man intend to kill the man, so that he might defend himself, save for him who has public authority, who intends to kill a man for his own defense referring this to the public good, as is clear in the case of a soldier fighting against the enemy, and in minister of the judge fighting against thieves. Although even these two would sin, if they were moved by private animosity (*privata libidine*) (Kaczor 1996: 255-256).

Jean Pierre Gury's version (1874), as translated by Kaczor, is formulated as

follows:

It is permitted (1) to posit [ponere] a good or indifferent cause, from which a two-fold effect follows, one good, but the other bad, if (2) there is present a proportionately grave reason, (3) the end of the agent is honest, and (4) the good effect follows from that cause not from a mediating bad one (Kaczor 1996: 259).

Kaczor explains that "*ponere* can also be translated ... as to place, put, or set down" (Kaczor 1996: 259). In the rest of Gury's text (i.e., *Compendium theologiae moralis*), the meaning of "a proportionately grave reason" is not specified (Kaczor 1996: 259). By "the end" to which Gury refers in (3), Kaczor understands "that the agent must have as his end not the evil effect but the good effect that follows from his action" (Kaczor 1996: 260). Finally, regarding "cause," "the physical structure of the act's causal relation is key"

(Kaczor 1996: 260). For Kaczor, Gury's version of double effect reasoning represents three major deviations from Aquinas' formulation, and insofar as proportionalists have continued and developed these deviations, their work constitutes an extension of Gury's work much more than that of Aquinas (see also Kaczor 1998). The first deviation is that whereas Aquinas' "analysis of double effect reasoning comes midway through the *Secunda Secundae* at question 64" and is "almost as an aside," Gury's version appears "at the very beginning of his work in his account *De actibus humanis* ... [leading] one to believe that Gury believes double effect reasoning to be so indispensable to the proper understanding of the human act that its role must be made clear at the outset of the discussion" (Kaczor 1996: 261-262). Secondly, "Thomas's intending-of-a-good end is altered to *positing* a good or indifferent cause"; the problem here is that "*ponere* is ambiguous as to the intentional status of the agent ... [and] while Gury merely did not highlight the importance of [the foresight/intention] distinction, [proportionalists] positively undermine it" (Kaczor 1996: 263). Finally, whereas Aquinas stressed means-end proportionality as an expression of "agent-relative responsibility," Gury's [end-end] proportionality "[referred] to the *justification* of the foreseen evil effect" (Kaczor 1996: 267).

Kaczor explains that proportionalists' continuation of the centrality of double effect reasoning rests on the notion of ontic or pre-moral evil, and insofar as Kaczor has already illustrated the problems associated with this framing of evil in relation to Aquinas' thought, proportionalists' emphasis on the centrality of double effect reasoning is unjustifiable, especially insofar as it leads to a downplaying of the foresight/intention distinction (Kaczor 1996: 269-270). Kaczor re-iterates that proportionalists' emphasis on commensurate reason is also unjustifiable in relation to Aquinas' work because "what justifies self-defense is not that one good (defender's life) is a commensurate reason for sacrificing (or risking) another good (attacker's life), but that the defender has more responsibility to defend his own life than to defend the life of another"; in other words, "there is no weighing of goods involved unless *responsibility itself* be determined by the goods or evils resulting from action" (Kaczor 1996: 309). Furthermore, Kaczor argues that proportionalists'

interpretation of the foresight/intention distinction as being merely descriptive rather than morally significant requires a renewed understanding of Aquinas' articulation of the distinction in the context of his structure of action. In an effort to promote such a renewed understanding, Kaczor highlights three crucial aspects of Aquinas' foresight/intention distinction. Firstly, "foreseen consequences differ from intended, as an act of understanding differs from volitional commitment" (Kaczor 1996: 280). Secondly, "for Thomas, the greater the motion of the will, the greater the engagement or identification of the person with the action, both for good and for ill" (Kaczor 1996: 280). Thirdly, "the foreseen pertains to the understanding of the person (*intellectus*) but not to the will of the person (*voluntas, fruitio ...*). The foreseen, in fact, does not engage *the will* properly at all, but only the intellect" (Kaczor 1996: 282). To reinforce these aspects, Kaczor includes "at least six salient features" by which his fellow student from Notre Dame, Thomas Cavanaugh, distinguishes intention from foresight in his doctoral thesis entitled, *Double Effect Reasoning: A Critique and Defense* (Cavanaugh 1995: 147-148):

First, an intention has as its object what the agent apprehends as 1) rationally motivating, 2) not yet achieved by the agent, and as 3) able-to-be-achieved-by-the-agent. Belief, such as foresight, has as its object what the one who believes grasps as what was, is, or will be. **Second**, an agent's intention reveals the agent's volitional commitment to acting to effect the object apprehended as good and realizable. Foresight reveals an agent's intellectual apprehension of what will be. Thus, intention differs from foresight as volitional commitment differs from intellectual apprehension. **Third**, an intention characteristically issues in deliberation while foresight does not. **Fourth**, when an intention issues in deliberation and deliberation is successful, then the agent forms further intentions concerning means. Foresight does not characteristically issue in further intentions concerning means. **Fifth**, an intention is a knowing [practical knowledge] which causes the object intended, while foresight is a knowing [theoretical knowledge] caused by the object known. **Sixth**, the object of an intention is known by the agent without observation while the object of foresight is not known without observation. [A]n agent can be ignorant of [the] foreseen, while she cannot be ignorant of what she intends (Kaczor 1996: 277-278).

In *Distinguishing Intention From Foresight: What Is Included in a Means to an End?* (Kaczor 2001), Kaczor uses some of the features above allied with inspiration from Michael Bratman's, *Intention, Plans, and Practical Reason* (Bratman 1987), to distinguish terminal sedation from physician-assisted suicide (PAS). Initially, Kaczor discusses two intention/foresight distinctions that fail to provide a viable distinction between terminal sedation and PAS. Kaczor recalls Boyle's, *Double Effect and a Certain Type of Embryotomy*, in which Boyle uses what Kaczor calls, "the criterion of causal contribution to the agent's goals" to facilitate an intention/foresight distinction (Kaczor 2001: 82). Kaczor reminds us of Boyle's conclusion, namely, "that neither in the hysterectomy case nor in the craniotomy case is the negative effect of death a means to the end of saving the mother's life"; in other words, "the *death* of the child does not contribute [causally] to the preserving of maternal life in either case" (Kaczor 2001: 81). Although Kaczor finds this conclusion convincing, he argues that the criterion of causal contribution "leads to the conclusion that PAS to relieve pain and terminal sedation should not be distinguished but rather should be placed in the same category as intentional killing" (Kaczor 2001: 81). His argument is as follows:

Although there is no agreement as to whether such cases actually exist, assume for the sake of argument that, in certain cases of PAS, the doctor kills the patient as the only way to end pain. In the case of terminal sedation, morphine is administered, itself a licit act, and this morphine suppresses the function of the nervous system, which both relieves pain and can cause respiratory failure leading to death. The death in this case contributes to the goal of ending pain by ensuring that pain never again can arise. In both cases the death contributes to the end sought by the agent, namely, the ending of pain (Kaczor 2001: 81).

Kaczor describes a similar problem in the use of a suggestion from Warren Quinn and Kevin Flannery "that the criterion should be whether or not the agent seeks to affect the victim" (Kaczor 2001: 82). If we consider the classic comparison between the terror bomber and the strategic bomber, Quinn and Flannery's intention/foresight distinction works as follows: "In the case of the terror bomber, the bomber seeks to affect the civilians

by dropping bombs in their vicinity, [whereas] the strategic bomber does not seek to affect civilians in one way or another” (Kaczor 2001: 82). Similarly, “in the craniotomy case, the object of the operation is the child, and the operation has a negative effect upon the child, [whereas] in the hysterectomy case, the surgeon has the uterus and not the child as the object of his or her activity” (Kaczor 2001: 82). However, in the case of terminal sedation and PAS, this “affect criterion” does not permit us to distinguish one from the other. In other words, “in both PAS and terminal sedation, the subject of the operation is the same. Physicians in both cases seek to have an effect on the patient” (Kaczor 2001: 82).

In an effort to create a better distinction between terminal sedation and PAS, Kaczor then utilizes a combination of Cavanaugh/Bratman criteria or conditions. Linked with Aquinas’ notion of *consilium* or deliberation, the first condition is that “it is intention, and not foresight, which characteristically gives rise to deliberation about means to be taken in order to achieve the end” (Kaczor 2001: 83). Linked with Aquinas’ notion of *consensus* or consent whereby the will is constrained by the results of deliberation, Kaczor articulates the constraining condition, the idea that “an evil effect is intended if bringing about the evil effect constrains one’s other intentions, limiting those options for which the agent can give consent” (Kaczor 2001: 83). Linked with Aquinas’ notion of *electio* or choice, the third condition is “the endeavouring condition” whereby a person strives to achieve the intention by the chosen means (Kaczor 2001: 83-84). Linked with Aquinas’ notion of *frui* or enjoyment of the act, the fourth condition relates to success; in other words, “the intended can be distinguished from the foreseen according to the criteria by which success is reckoned ... [i.e.,] whether one’s plan [to achieve certain effects] has been realized” (Kaczor 2001: 83-84). If we take the strategic and terror bombers as an example, “if the strategic bomber were to learn, contrary to his expectations, that no children were killed, this news would not indicate any failure whatsoever in his planned attack. On the other hand, the terror bomber, having heard the news, would have failed in his mission ...” (Kaczor 2001: 83-84). By applying these four conditions, Kaczor makes the following distinction between terminal sedation and PAS:

First, the achievement of the evil effect presents a problem in PAS, but not in terminal sedation, that occasions **deliberation** [emphasis mine] about what sort of dosage to give and perhaps even about the choice not to use morphine but a drug that brings about death more efficiently. Second, the achievement of the effect **constrains** [emphasis mine] the other intentions of the agent. If, for instance, euthanasia [or PAS] is illegal or frowned upon in certain contexts, the physician may choose to kill the patient in a way or at a time that will be conducive to the act being seen as accidental in order to mask the killing. Terminal sedation requires no such further planning ... Third, the physician assisting the suicide of another **endeavors** [emphasis mine] to achieve the effect of death, perhaps being forced to return to deliberation if circumstances change or if the first attempt fails. Endeavoring to achieve death does not interest the doctor whatsoever in terminal sedation. Finally, a **failure** [emphasis mine] of death to be realized is to be accounted as a failure of the first physician [assisting the suicide] but not of the second [giving terminal sedation], though both may share the same remote end of relieving pain (Kaczor 2001: 84-85) (see also Kaczor 2002: 109-111), (Kaczor 2005: 79).

In *Proportionalism and the Natural Law Tradition*, Kaczor returns to his evaluation of proportionalism in relation to his understanding of Aquinas' thought (Kaczor 2002). In the early chapters, he reviews the changes proportionalists have effected, especially their separation of the rightness and wrongness of acts from the goodness and badness of persons. Underlying this separation is proportionalists' focus on normative ethics and "end" detached from Aquinas' anthropology, but attached instead to "end" as understood by analytic philosophy (Kaczor 2002: 9-10). Accordingly, absolutes exist only in a virtual sense, and they are connected with a teleology or an "objective" weighing of values "more in accord with common sense" (Kaczor 2002: 21). In other words, "proportionalism consistently affirms norms forbidding murder, lying, and other terms for action that contain both [a] factual element (killing, falsehood) and an element of negative moral description (without a proportionate reason, unjustly)" (Kaczor 2002: 20). Intention has been split in this normative focus with psychological intention downgraded on the one hand, and moral or factual elements of intention prioritized on the other hand (i.e., intention based on proportionate reason, attitudes of approval, physical causality, etc.) (Kaczor 2002: 68-75).

From Kaczor's perspective, what has been lost through proportionalism is above all, Aquinas' emphasis on action as self-determining or a subject-centered morality (Kaczor 2002: 52,54). In John Mahoney's view from *The Making of Moral Theology* (Mahoney 1990), this is a contrast between "Thomas's approach" and "the tendency to begin with the exterior effects and work back toward the agent" (Kaczor 2002: 53). Again, proportionalism defines human action as the production of effects or outcomes (Kaczor 2002: 78), and the Thomistic relationship between moral and metaphysical goodness is lost (Kaczor 2002: 80). Additionally, one of the key problems with a focus on outcomes is that we cannot always predict them in "the vast majority of moral decisions facing agents" (Kaczor 2002: 85).

The demise of a Thomistic understanding of virtue in proportionalism is a major problem for Kaczor. In Gury's work, there was at least some reference to virtues: "For Gury, ... proportionate reason is in part the justification for allowing the foreseen evil effect and obtains only when one is not obliged from justice or charity to avoid the evil effect" (Kaczor 2002: 120). However, "in the manuals following Gury, this connection to virtue was lost and replaced with a weighing or balancing of goods" (Kaczor 2002: 120). In Knauer's work and in that of his proportionalist colleagues, this weighing and balancing translates into the entrance of proportionate reason "into the very object of the act" (Kaczor 2002: 121). Thus, Kaczor concludes: "We have in proportionate reason a rival first principle to Aquinas's that good is to be done and evil to be avoided" (Kaczor 2002: 124). Moreover, "what may be operative here is some form of rule teleology or more accurately consequentialism" (Kaczor 2002: 131). In response to this possibility, Kaczor asks: "Can we know however that following these conditions or rules will always and in every case lead to better outcomes?" (Kaczor 2002: 131). Kaczor answers his own question in this way: "It is surely unsound to believe that the better the craftsman [i.e., the person producing effects observable in the world] the better the person morally. The good craftsman may be a good person, but the good craftsman may also be an evil person. Craftsmanship and virtue are not co-extensive ..." (Kaczor 2002: 134-135).

There is another crucial difference between Aquinas' thought and that of Gury that his proportionalist successors have developed further. In a nutshell, "Gury orders his exposition around law; Thomas orders his around the human person and the human act ... In [Aquinas'] *Summa*, the Decalogue is God's gift to wayward humankind ... In the later tradition, law operates often as a suppression of human liberty ... An act came to be understood as wrong because prohibited by laws or norms, rather than laws and norms arising from the wickedness or the goodness of an act [i.e., norms arising from practices (see also Kaczor 1996:215-218)]. In contrast to Thomas's conception, law and freedom are pitted against one another" (Kaczor 2002: 173). On the subject of intrinsically good or evil acts, Kaczor also stresses that the proportionalist claim that absolutes are only virtual or formal (i.e., tautological) norms which require material clarification in each context, ignores the fact that both Aristotle and Aquinas emphasized non-tautological, exceptionless norms; if we take, for example, the exceptionless prohibition of adultery, both Aristotle and Aquinas defined "adultery" non-tautologically as "having intercourse with another's wife" (Kaczor 2002: 178). Concerning what Kaczor perceives to be "the [proportionalists'] claim that the Catholic tradition is overwhelmingly teleological," Kaczor argues that this "is overstating the case considerably" (Kaczor 2002: 186,188).

If we take the case of lying, for example, "Augustine and Thomas do indeed suggest that lying is wrong because it perverts the faculty of speech and as such is activity contrary to nature. However, they also both suggest that lying is wrong because contrary to the virtue of truthfulness and contrary to Scripture. As the development of moral thought in the Catholic tradition became systematically divorced both from a conception of virtues and from its relationship to Scripture, these arguments were left behind" (Kaczor 2002: 192). Again, the concept of intention has also been caught up in this development with deleterious results. The foresight/intention distinction "is not simply a contrivance that is useful for limiting the scope of norms ... rather the distinction is that which defines a performed act as this or that kind of act ... [For example,] the specification that the innocent should not be killed arises not from a desire to narrow the application of a norm

but rather from an account of the virtue of justice” (Kaczor 2002: 195-196). On the basis of reflections such as these, Kaczor comes to his major conclusion:

Proportionalism cannot claim to be grounded in the tradition, save in the most superficial sense, for what was marginal and derivative in this tradition, like double-effect reasoning, replaced what was central and primary, like the biblical tenet that one must not do evil that good may come, a tenet adhered to unto death by the martyrs. Doubtless, a continuity was maintained and indeed sought as much as possible with as much of the natural law tradition as possible. But like a seamless garment, the unravelling of one aspect of this tradition led to the significant changes in the whole. Proportionalism turned out to be much more revolution than evolution (Kaczor 2002: 207).

2.7. Conclusion: Five Different Distinctions

This chapter has revealed five different ways of distinguishing pain control (and terminal sedation explicitly in some cases) from euthanasia, and underlying these ways, five distinct perspectives on universals and how they can be reconciled with the contingencies or particularities of action. Boyle’s interpretation focuses on universals understood primarily within the context of logic. In his “broadly Thomist theory,” double effect reasoning specifies the relationship between morally significant features of acts and self-evident moral norms, in particular, those belonging to Grisez’s theory of basic human goods. From this perspective, double effect reasoning is a justification mechanism whereby one aligns oneself with absolute goods, the scope of which has been limited by the conditions of the reasoning. In this way, one is also making “self-constituting” or “soul-making” choices in relation to goods constitutive of the kingdom of God. For Boyle, the relationship between moral norms as universal propositions and particular acts is understood in terms of the logical relationship of instantiation. In some cases, this relationship and the move from norm to judgment is as straightforward as a syllogism because the norm itself is clear and the features of the concrete act in question correspond straightforwardly to the type of act prohibited by the norm. However, in cases of

ambiguous action where there is no clear-cut relationship between the proposed relevant norm and the morally significant features of the act, double effect reasoning is a necessary and important tool because it facilitates instantiation in a non-arbitrary manner. Seemingly because Boyle's priority is logical instantiation, the first and second conditions of double effect reasoning are of paramount importance whereas the third and fourth conditions are of lesser importance and apply only after the first two have been fulfilled. Not surprisingly, intention is understood primarily as an internal phenomenon, and as an expression of the logical actualities and possibilities that comprise one's freely chosen means/end combination as opposed to those that only comprise one's foresight. In "no-win" situations of moral impossibility like pain control and by extrapolation, terminal sedation, intention understood as above is the only mechanism for separating actions from euthanasia because on the level of outward behaviour and effects, terminal sedation and euthanasia may be indistinguishable.

The benefits of Boyle's approach to double effect reasoning include the fact that he presents this reasoning as an efficient, logical system working in tandem with Grisez's list of basic human goods. Insofar as intention is an internal phenomenon for Boyle, he avoids the behaviourism that he condemns, and he maintains a connection between intention and the Thomist notion of aligning oneself with goods constitutive of the kingdom of God. The problems in Boyle's approach include the fact that the connection between double effect reasoning and the virtues is only of minor importance although as Kaczor indicates, double effect reasoning is a specification of the virtue of commutative justice. Boyle's emphasis on logic is also problematic in many ways. For example, although Boyle dismisses determinism by means of his self-referential argument, the fact remains that although we humans can act heroically in spite of many kinds of adverse conditions and foreseen consequences, there are limits to our freedom and fragilities of the human condition that defy logic and extend far beyond the bounds of ignorance, "hard cases" and divergent responsibilities, the only limits that Boyle takes into consideration. In other words, there is more to the self than the logical, intending self portrayed in Boyle's account. And on the

level of the larger community of selves and its relationship to the natural law tradition that forms the context for double effect reasoning, there is, as Boyle admits, no accounting for the acknowledged dependence of this tradition on language and cultural contingencies. Moreover, Boyle's insistence on the tradition independence of moral knowledge makes one wonder if Boyle's approach to double effect reasoning is merely an elitist system for logicians. Also, he has seemingly replaced the necessity involved in the naturalism he dismisses with the necessity involved in logic.

Kaczor's interpretation focuses on universals understood exclusively within the context of Aquinas' metaphysics, and it is this focus that distinguishes Kaczor's work from all the other interpretations in this chapter. From this perspective, double effect reasoning does not specify the relationship between action and moral norms but rather, the relationship between self-determining persons and their final end -- happiness in God. Insofar as the virtues facilitate one's movement toward this universal end, double effect specifies the virtue of commutative justice in action in relation to the opposite vice of homicide. By stressing the importance of intransitive activity, movement toward one's final end and the role of the virtues in action, Kaczor is emphasizing his understanding of the Thomistic connection between metaphysical and moral goodness. Similarly, by stressing the relationship between punishment, fault, and action, Kaczor is underlining his interpretation of the Thomistic connection between metaphysical and moral evil. In keeping with his overall commitment to Aquinas' metaphysical schema and its fulfilment in action, Kaczor retains double effect reasoning as a code or short-form for the entirety of Aquinas' structure of action. True to this context, Kaczor stresses means-end proportionality as an expression of personal or agent-relative responsibility. Furthermore, Kaczor's intention/foresight distinction does not serve to limit the scope of absolute norms but rather, to define the act as this or that type of act, and to differentiate volitional commitment from the intellectual act of understanding (e.g., foreseeing possible consequences). Moreover, it is the elements of volitional commitment as articulated by Cavanaugh/Bratman, that serve to distinguish terminal sedation from euthanasia/PAS. In

other words, the ends of terminal sedation and euthanasia/PAS give rise to two different deliberations about the divergent means to these different ends. The achievement of terminal sedation versus euthanasia/PAS involves disparate constraints on other volitional commitments. The ends of terminal sedation and euthanasia/PAS involve two dissimilar processes of endeavouring or striving. Finally, the ends of terminal sedation and euthanasia/PAS necessitate two different sets of criteria for success.

The benefits of Kaczor's approach to double effect reasoning include the facilitation of an extensive understanding of the specific origin and overall context of this reasoning within Aquinas' work. Most importantly, Kaczor's efforts clarify Aquinas' notion of intransitive or self-determining action, the crucial connection between understanding and willing, double effect reasoning as a specification of the virtue of commutative justice, and one way in which Aquinas' structure of human action can form the basis for an innovative distinction between terminal sedation and euthanasia. Kaczor's discussion of the presence of evil prior to human choice (i.e., Aquinas' notion of punishment or suffering) is particularly illuminating, and it reveals that although McCormick's notion of pre-moral or non-moral evil may have its flaws, there is still a need to account for this type of evil. Obviously, Grisez's basic human goods may be affected by this kind of suffering and insofar as they are so affected, we must ask (as McCormick and others have asked) in what way they can be solely human goods. By the same token, we must also raise the question of how we are to deal with this type of ambiguity within human choosing and use of double effect reasoning. The problems in Kaczor's approach include the fact that Aquinas' metaphysical notions of final end, virtues, etc., are remote to most people today. Therefore, we must consider how Kaczor's interpretation of double effect reasoning, closely tied as it is to Aquinas' metaphysics, can still be useful within the contemporary context of cultural diversity and moral conflict. Similarly, although it is useful to know that for Aquinas, double effect reasoning was a specification of the virtue of commutative justice, we must consider precisely how and in what way virtues like justice have a role to play in the use of double effect reasoning today. Not unlike Boyle's work, Kaczor's approach also raises

questions concerning the meaning of 'tradition', its relationship with ongoing social change, and the implications for use of double effect reasoning.

McCormick's interpretation focuses on virtual universals or virtually exceptionless moral norms that form a kind of horizon for human action. In McCormick's own words, norms have "the provisional character of our journey into the future. They are an orienting force in a history which is both fulfilment and promise" (McCormick 1984a: 2). In McCormick's account, the context of double effect reasoning is neither Thomistic metaphysics, nor formal logic, but rather, the concrete complexity and fragility of human life. McCormick's adoption of Janssens' notion of 'the human person integrally and adequately considered' places the use of double effect reasoning within an anthropology that prioritizes relationships -- the human person as a corporeal subject in relationship with the material world of change and growth, the social world of structures and institutions, and the sacred world of God. Relational life brings inevitable conflicts and indeed, for McCormick, double effect reasoning functions within the practical reality of moral decision-making that most often involves conflicted values and many different types of uncertainty. Within this context, double effect reasoning is understood as "a set of exception-making categories" (McCormick 1984a: 10). On the level of the first condition -- the notion that the proposed action not be morally evil -- exception-making relates to the introduction of the concept of pre-moral or non-moral evil, the idea that evil is inextricably part of our world and the effects of all our actions, and therefore, that the label "moral evil" should only be attached, if warranted, to freely and deliberately chosen particular acts. In other words, whether a pre-moral evil becomes a moral evil depends on a complex proportionality analysis. As already indicated, although McCormick did not distinguish between terminal sedation and euthanasia, we can, by extrapolating from his approach, suggest that his distinction would be based on consideration of all the empirical details, the tragic dimensions, the relationship between the proposed sedation and his anthropology, the implications of integral intentionality, the necessity of the proposed sedation, and the proportionality between the applicable pre-moral evil ('killing') and the proposed moral

goods (e.g., pain relief). The most important benefits of McCormick's approach include his relational anthropology, and his willingness to incorporate into the use of double effect reasoning the very elements missing in Boyle's approach -- aspects of the complexity, the fragility, the limitations, and the uncertainties involved in contemporary human life. Whether or not one agrees with McCormick's articulation of the notion of pre-moral evil, the existence of evil before human choice is, nonetheless, a perpetual force to be reckoned with as Kaczor's interpretation of Aquinas's work reveals. The problems in McCormick's approach include the fact that the link between his anthropologically based notion of integral intentionality and his proportionality assessments is somewhat weak, opening the door to the ongoing charges that his approach is simply another form of consequentialism. What is needed is a more robust notion of selfhood that accommodates constant change and is better integrated with the use of double effect reasoning in the resolution of bioethical problems.

Both Anscombe and Sulmasy's interpretations focus on universals made practical, within an account of practical reason in Anscombe's case, and within medical practice in Sulmasy's case. Both of these thinkers share with McCormick the conviction that double effect reasoning as it has become known and used (i.e., as a set of four conditions), is not sufficient, but requires a moral context influenced by history and practice, and additional principles that can assist us to respond to contemporary dilemmas. Anscombe's work on double effect reasoning developed as a response to three key problems. In the context of World War II, double effect reasoning in its just war theory garb was abused to justify the obliteration bombing of German cities. This problem was the primary impetus for Anscombe's account of intention that strictly prohibited the temptation of directing intentions. Although as a Christian, Anscombe believed that there should be certain prohibited acts and that double effect reasoning was needed to mediate these absolutes so that they would not become unwieldy, she was also concerned about the inadequacy of law-based accounts of absolutes (i.e., the Judeo-Christian ethos), and the need to retain the Aristotelian linkage between goods and human desire. Perhaps most importantly, modern

philosophy with its “incorrigibly contemplative [i.e., Cartesian] conception of knowledge” (Anscombe 1969 (orig. 1957): 57) misunderstood what the ancient and medieval philosophers meant by practical knowledge. Again, “There is a difference of form between reasoning leading to action [i.e., practical reason] and reasoning for the truth of a conclusion [i.e., speculative reason] (Anscombe 1969 (orig. 1957): 60). And whereas speculative reasoning is essentially concerned with universals, “practical reasoning [i.e., in Aristotle’s view] is essentially concerned with ‘what is capable of turning out variously’ ” or what is “the form of a calculation [of] what to do” (Anscombe 1969 (orig. 1957): 60).

Anscombe counters the temptation of directing intentions with an account of practical reason that stresses important connections between the mind, intention, acts and act-descriptions. Countering the Cartesian psychology of mind, Anscombe emphasizes that intention is not an interior event in the mind about which one can make little speeches to oneself and to others. By the same token, acts are not events that can be differentiated one from the other by fixed criteria. At the same time, act-descriptions are important, however complicated and tenuous they may be, and the potential for directing intentions is limited by Anscombe’s assertion that “circumstances, and the immediate facts [i.e., empirical facts] about the means you are choosing to your ends, dictate what descriptions of your intention [i.e., regarding the means you are performing] you must admit” (Anscombe 1982: 23). Although Anscombe defines three senses of intention, she stresses intentional actions as actions “to which a certain sense of the question ‘Why?’ is given application; the sense is of course that in which the answer, if positive, gives a reason for acting” (Anscombe 1969 (orig. 1957): 9). Anscombe is not interested in “a reason for acting” in the physical causal sense as understood by “moderns”, but rather, “causalities especially involved in a history of people’s dealings with one another” (Anscombe 1983: 190). Among these causalities, desire or wanting is of special interest to Anscombe because her focus is practical rather than speculative reason. Again, she says, “I am not saying that there cannot be any such thing as [true] moral general premises ... obviously there can, but it is clear that such general premises will only occur as premises of practical reasoning in people who **want**

[emphasis mine] to do their duty” (Anscombe 1969 (orig. 1957): 78). As we recall, wanting involves two dimensions: “movement towards a thing and knowledge (or at least opinion) that the thing is there” (Anscombe 1969 (orig. 1957): 68). For Anscombe, the lack of connection between the occurrence of moral general premises and the capabilities of knowing and wanting is precisely the inadequacy of law-based accounts of absolutes.

Anscombe’s account of practical reason suggests that double effect reasoning as it has become known is insufficient in important ways. The connection she makes between true moral general premises and the capacities of knowing and wanting implies that between the first condition concerning the true ‘goodness’, ‘badness’, or ‘neutrality’ of a proposed action and the second condition concerning a person’s intention, there is a need to include and account for the human processes of knowing and wanting ends. In relation to the second condition, she has illustrated the immense complexities of intention and the need to avoid directing intentions by means of a relationship between conceptual and empirical aspects of intentions. In relation to the third condition concerning the causal relationship between means and ends, she has highlighted the fact that causation is a humanly constructed category, that there have been different definitions of causation throughout history, and that causation is not to be identified with necessitation. Finally, in relation to the notion of proportionality, Anscombe emphasizes that in cases of murder where death is a side effect (e.g., the case of doctors giving pain-killing drugs), the central issue is risk management. In other words, “it must be possible to have sufficient excuse for risking or accepting death as a side-effect” (Gormally 1994 (orig. Book One: 1982): 48). Since double effect reasoning or ‘the principle of the side effect’ in Anscombe’s words, only gives possibilities for sufficient excuses, she gives two additional principles whereby the acceptance of death as a side effect can be judged: the intrinsic certainty or great likelihood of the death of the victim (i.e., a victim already terminally ill), and the presence of necessities great enough to justify taking the risks involved in giving the proposed drugs.

The benefits of Anscombe’s approach to double effect reasoning include her constant emphasis on the need to move away from law-based accounts of absolutes or in

other words, the need to retain the Aristotelian linkage between goods, virtues, and human desires. Laudatory also are Anscombe's attempts to avoid the temptation of directing intentions by moving away from a contemplative, Cartesian conception of knowledge, and embracing an account of practical reasoning that develops and makes explicit key connections between the mind, intention, acts and act-descriptions. The problems in Anscombe's account include her almost exclusive stress on intentional actions as those to which the why question is given application. This emphasis gives undue attention to past actions and does not sufficiently explore the linkage between intention and future actions, or between intention and change. In addition, although Anscombe clarifies the important difference between speculative and practical reasoning, she leaves hanging the open question of whether there can ever be an integration of these two types of reasoning for the benefit of clarifying both intentions themselves, and the overall resolution of moral dilemmas. Finally, although Anscombe's emphasis is on **practical** reason, she still presents a highly abstract account of this reason, and one that lacks an anthropology. For this reason, one wonders whether in her later work, for instance, in her account of a distinction between pain control and euthanasia, she (not unlike McCormick) has succumbed to the temptation of emphasizing factors like inevitability and necessity, and ultimately downplaying the role of personal intention.

Sulmasy's interpretation focuses primarily on universals as understood within medical practice. From this perspective, "killing" versus "allowing to die" and "terminal sedation" versus "euthanasia" are four signs signifying or signalling moral differences in the same way as medical signs signal the differences between normal states and pathology. In Sulmasy's account, just as there is a system of pathology underlying the signs of specific pathologies, so too double effect reasoning is transformed from "a very general and purely formal moral principle" (Sulmasy 1995: 157) into a system of moral pathology whereby specific moral pathologies can be isolated and then the above distinctions can be made. This is all in an effort to create a practical principle, and one that "traverse[s] a via media between those who would propose that an agent intends everything that he or she foresees

following upon his or her act, and those who might suggest a specious strategy of intention re-direction such as that satirized by Pascal” (Sulmasy 1995: 476). Sulmasy accomplishes this “via media” by means of a theory of intention that imposes strict limits on what agents can claim to be inside and outside of their intentions.

As already indicated, Sulmasy attempts to re-invigorate double effect reasoning by placing it within contexts that can assist us to use it more effectively. Although medical practice is Sulmasy’s primary contextual focus, he also utilizes Donagan’s work and selected parts of the action theory of Davidson and Searle. Sulmasy explores Donagan’s interpretation of Aquinas’ structure of human action and decides that whereas Aristotle and Aquinas focused on prior intentions, his own focus will be intention in acting, that is, “more or less an ascription of an acting agent’s choice of means and ends in bringing about a particular event ...” (Sulmasy 1995: 314). At this early stage in his creation of a credibility analysis for a claimed intention, Sulmasy brings together Donagan’s notion that intention is a propositional attitude, Davidson’s view that acts are events, and Searle’s idea that intentions have conditions of fulfillment rather than truth conditions per se. In other words, a claimed intention (as distinct from foresight) is credible if there is a correlation between the stated propositional attitude, its conditions of fulfillment (or commitment), and the actual act/event.

In the second stage of Sulmasy’s intention theory creation, he connects a credibility analysis with the medical notion of a pathognomonic sign. In other words, ‘killing’ and later, ‘euthanasia’ signify acts that are always immoral (or indicative of moral pathology) because they do not pass the credibility analysis. By contrast, ‘allowing to die’ and later, ‘terminal sedation’ signify acts that may or may not be immoral depending upon the results of the credibility analysis. This analysis, representative of the strict limits Sulmasy places on what an agent can claim to be inside or outside of their intention, involves the question of whether the claimed intention(s) are coherent, plausible, and morally justifiable. Coherence and plausibility depend upon an appropriate correlation between the stated

intention(s) and the cause and effect relationships involved in the act/event. Moral justification depends upon the beginnings of a proportionality analysis.

In the latest stage of Sulmasy's intention theory creation, although he does not explicitly use the language of pathognomonic signs and credibility analyses, it would seem that these underlying concepts still guide his distinction between terminal sedation and euthanasia. Now the relevant signs are 'neuro-cognitive suffering' and 'agent-narrative suffering'. In the former case, the suffering has a direct causal relationship to the disease, whereas in the latter case, the suffering has at best an indirect causal relationship to the disease, and is largely dependent upon the patient's beliefs or the meaning the patient attaches to his or her disease. Accordingly, sedation for 'agent-narrative suffering' or 'sedation toward death' signals actions that are almost always immoral (i.e., the "hard cases" may constitute exceptions) because they do not pass the credibility analysis involving the appropriate correlation between the stated intention(s) and the cause and effect relationships involved in the act/event. By contrast, sedation for 'neuro-cognitive suffering' or 'sedation of the imminently dying' signals actions that are most likely morally justifiable because they typically pass the credibility analysis involving the appropriate correlation between the stated intention(s) and the cause and effect relationships involved in the act/event. In addition, not unlike McCormick's work and the later work of Anscombe, Sulmasy's attention has become increasingly focused on the development of proportionality and necessity assessments. In other words, even when faced with "hard cases" that may involve 'agent-narrative suffering', Jansen and Sulmasy recommend the giving of high-dose sedatives only in situations of necessity "after every possible effort has been made to restore the patient to a state of psychosocial health" (Jansen and Sulmasy 2002b: 334). Moreover, in the same article, Quill's approach to proportionality is countered by Jansen and Sulmasy's "principle of therapeutic responsiveness" -- a well-developed proportionality calculus that is explicitly separate (and defended as such from within the history of medicine) from double effect reasoning.

The benefits of Sulmasy's work on double effect reasoning include the fact that he has presented an efficient, consistent, logical and innovative approach, deeply rooted in and accountable to his own context -- the profession of medicine. Explicitly influenced by Anscombe, he has sought to avoid even the remote chance of directing intentions by means of a theory of intention that stresses inter-related types of credibility analyses. To some degree, Sulmasy accounts for one important element that Boyle leaves hanging -- the dependence of double effect reasoning on language and cultural contingencies. In other words, Sulmasy realizes that 'killing' versus 'allowing to die', 'terminal sedation' versus 'euthanasia', and even 'intention' merely represent language signs signifying entities that must be continually re-evaluated, re-defined, and re-signed within changing cultural contexts. However, most problematically, Sulmasy seems oblivious to the larger reality of multiple sign systems and their contested interpretations, and he gives no justification for his prioritization of the medical system of signs in his construction of a distinction between 'terminal sedation' and 'euthanasia'. His process is simply another form of instantiation, not based on the signs and significations of logic as is the case in Boyle's account, but instead, based on the signs and significations of the medical system, most notably, 'cause', 'effect', and suffering as a 'pathological' 'event'. It is these notions that undergird 'neuro-cognitive suffering' and distinguish it from 'agent-narrative suffering', or suffering that makes sense within the context of patients' sign systems. We get a taste of the larger battle between these sign systems in the letters to the Editor (Morita, Tsuneto, and Yasuo 2002; Quill 2002; Rousseau 2002; Sasser 2002) that voiced reactions to Sulmasy's distinction.

*No story is the same to us after a lapse of time; or rather, we who read it are no longer the same interpreters;
(Eliot 2002: 532)*

Chapter 3. The Hermeneutical Interpretation of Paul Ricoeur

3.1. Introduction

In the first chapter, we learned that there are many ‘faces’ or interpretations of double effect reasoning because tension exists between the idealist/universalist/normative aspects of the reasoning and the empirical aspects. The first condition is extremely problematic because it presumes universally applicable notions of ‘good’, ‘bad’, and ‘neutral’, and there is no consensus regarding the existence of such universals, their definition if they do exist, and the idea that priority should be given to universals over the particularities of specific cases. The second condition regarding intention and the foresight/intention distinction is also problematic because within the contexts sampled, there is a tension between intention as a clear and distinct idea and the muddy, empirical reality of intention. The third condition regarding means and ends is no less contentious because if we take ‘terminal sedation’ cases as our example, there is a conflict between the conceptualization of means and ends -- causes and effects, and the fact that in many cases of ‘terminal sedation’, it is impossible to verify that the end (i.e., the patient’s death) was not the means to the good effect (i.e., pain relief). The fourth condition regarding proportionality also presents problems because we have three different definitions of proportionality (i.e., means/end, end/end, and proportionate reason), and there are many difficulties involved in putting each of the definitions into practice.

In the second chapter, we found five different distinctions between ‘terminal sedation’ and euthanasia because in this chapter also, the five different authors present five distinct ‘faces’ or interpretations of double effect reasoning. Despite the fact that these authors are working within the Catholic tradition and are favourably disposed, generally speaking, to the first condition, each of them conceives of the universals involved quite

differently, and each of them has a radically different understanding of the relationship between the universals in question and the contingencies of particular situations. Given the goal of this thesis, and our comparison of the strengths and weaknesses of the five positions in the conclusion of the second chapter, we come now to Ricoeur's hermeneutics with several pressing needs. In other words, although Ricoeur's hermeneutics can be presented in many different ways, they will be presented here with a view to meeting the following needs. In agreement with McCormick and Kaczor that there is a need to explore the presence of evil before human choice, we need to investigate Ricoeur's understanding of evil. As we will discover, Ricoeur's study of evil led him to one of his foundational starting points -- his conviction about the impossibility of absolute knowledge and the concomitant necessity of hermeneutics. In agreement with Anscombe regarding the problems associated with the Cartesian view of knowledge and its implications for use of double effect reasoning, we have a need to understand Ricoeur's perspective on the Cartesian cogito and its connection with inevitable and insurmountable conflicts of interpretations. In agreement with Sulmasy that our language-based moral distinctions are merely signs, we have a need to explore Ricoeur's understanding of the larger reality of sign systems, and his understanding of the fact that signs bring both alienation and the possibility of appropriation of meaning. Equipped with these insights, we will then be in a position to understand the entirety of double effect reasoning as a sign system, and in particular, to understand more fully what Anscombe has already brought to our attention -- the fact that causation is a humanly constructed category or sign (to use Sulmasy's term), that it does not mean necessitation, and that there is a need to explore different interpretations of causality, especially those involved in the history of people's dealings with one another.

Underlying all these requirements, we discover the need to grapple with the diverse and contested views of the self presented by the five authors in the second chapter. In particular, given Boyle's minimalist, logical self, Kaczor's remote metaphysical self, Sulmasy's divided neuro-cognitive/agent-narrative self, Anscombe's speculative/practical

self, and McCormick's lack of a tight link between his portrayal of the self as a historical subject and his use of double effect reasoning, we will seek to understand Ricoeur's dynamic, relational anthropology, and his process for bringing that anthropology to bear in the ethical realm. In our quest for a reconciliation of universals and particulars, we need to explore Ricoeur's primary anthropological insight -- the notion that human beings are both universal and particular, and most importantly, that their universality and particularity is lived out through the functioning of various human capabilities that we will investigate. By "capability," Ricoeur means "the kind of power that we claim to be able to exercise," or "the power to cause something to happen" (Ricoeur 2003). Fallibility, speaking, writing, acting, narrating and imputability are all important capabilities for Ricoeur. Within Ricoeur's framing of the relationship between universals and particulars on the level of anthropology or in terms of human capabilities, he advances a dynamic connection between two modes of intelligibility or between two ways of dealing with otherness, that is, between pure, universalist reflection and hermeneutics. Since our goal in this thesis is the reconciliation of universals and particulars to improve use of double effect reasoning, we will emphasize Ricoeur's articulation and integration of these two approaches throughout all three sections. Since Ricoeur's hermeneutic circles are the vehicles for the integration of these two approaches, we will present Ricoeur's hermeneutics in this chapter with a central focus on the relationship between Ricoeur's understanding of human capabilities and the development of his hermeneutical circles.

Although this focus could fill several dissertations, it will be limited here in the following ways. The chapter will be divided into three sections, each of which explore certain capabilities and the hermeneutic circle(s) arising out of Ricoeur's investigation of these capabilities. Organization of the chapter in this way accords with my perception of the evolution of Ricoeur's thought whereby his reflection on capabilities and otherness, and his development of hermeneutic circles occurs in tandem. The first section will present Ricoeur's interpretation of the capability of fallibility, evil, and his initial hermeneutic circles. Sources for this section will be limited to *Fallible Man*, *The Symbolism of Evil*, and

The Conflict of Interpretations. The second section will feature Ricoeur's understanding of the capabilities of speaking, writing, and his circle of understanding. Sources for this section will be limited to *Interpretation Theory*, and *From Text to Action*. The third section will explore Ricoeur's interpretation of the capabilities of acting, imputation, and his ethics circle. Sources for this section will be limited to *Oneself As Another*, two "exercises" from *Le Juste 2 (Les trois niveaux du jugement medical and L'universel et l'historique)*, and brief citations from *The Just and Time and Narrative: I*. In all three sections of this chapter, use of the selected texts will be limited to what is necessary for meeting the goals of this thesis.

3.2. Fallibility, Evil and the Emergence of Hermeneutic Circles

In the second chapter, we recall that the work of McCormick and Kaczor's interpretation of Aquinas emphasized in different ways the need to account for the presence of evil before human choice. In Ricoeur's early work, *Fallible Man*, we find the same emphasis. In Ricoeur's terminology, it is the need to account for "the riddle of the slave-will, that is, of a *free will that is bound and always finds itself already bound*" (Ricoeur 1986: xiv). By the term "slave-will," Ricoeur means "a certain *bondage* which the soul imposes on itself ... This bondage has nothing to do with determinism which is only a necessary rule binding *objects* together for a *theoretical* consciousness; the bondage of passions [e.g., vanity, suspicion, concupiscence, envy, etc.] is something which happens to a subject, that is to a freedom" (Ricoeur 1966: 23, 277). From Ricoeur's perspective, previous attempts to account for this riddle have not succeeded because overall, they have substituted "an ethical vision of the world" for a more comprehensive reflection on evil. Ricoeur describes the problem in this way:

... we could have chosen *Grandeur and Limitation of an Ethical Vision of the World* as a subtitle to this book. From one point of view this *recovery* of the symbolics of evil by philosophic reflection indeed tends toward an ethical vision of the world in the Hegelian sense of the term. But, on the

other hand, the more clearly we perceive the requirements and implications of that ethical vision of the world, the more inescapable seems the impossibility of encompassing the whole problem of man and evil itself within an ethical vision of the world. What do we mean here by an ethical vision of the world? If we take the problem of evil as the touchstone of the definition, we may understand by the ethical vision of the world our continual effort to understand freedom and evil by each other. The grandeur of the ethical vision of the world is to take us as far as possible in this direction ... This vision attained its first maturity with Kant's *Essay on Radical Evil*. Moral formalism, in eliciting a single maxim of good will, also brings out a single maxim of bad will. **Through formalism, evil tends to be reduced to a maxim of free will; it is the very essence of the ethical vision of evil** [emphasis mine]. But the grandeur of this ethical vision is complete only when, in return we realize its benefit for the understanding of freedom itself. Freedom that assumes the responsibility for evil is freedom that comes to a self-understanding fraught with meaning (Ricoeur 1986: xlvi-xlvii).

It must be emphasized that Ricoeur's goal in *Fallible Man* is not to banish formalism from the quest to understand evil. Rather, Ricoeur's goal is to reveal the limits of formalism, and to establish it as merely the first stage in his larger philosophical anthropology (Ricoeur 1986: 46). In other words, the limitations of formalism (e.g., reductionism) highlight two paths of intelligibility: pure or transcendental reflection, and hermeneutics. In all Ricoeur's hermeneutic circles, these two paths are creatively integrated. In what follows, we will trace major aspects of the development of these stages in relation to fallibility and evil, as they lead Ricoeur toward the presentation of his first hermeneutic circles in *The Symbolism of Evil* and *The Conflict of Interpretations*.

By "pure or transcendental [e.g., phenomenological] reflection," Ricoeur means "a reflection that starts not with myself but with the object before me, and from there traces back to its conditions of possibility" (Ricoeur 1986: 5). In other words, "it is a reflection that begins ... with the *thing* [emphasis mine]. It is "upon" the *thing* that this reflection discerns ... discovers ... apprehends ... It is reflection *upon* the object. This is the way in which it is properly transcendental ... But the limitation of this reflection appears directly along with its strength: the synthesis that it reveals and inspects will be a synthesis only in

the object, in the thing; a synthesis that is merely intentional, projected outside, into the world, into the structure of the objectivity it makes possible” (Ricoeur 1986: 18). And what is “the objectivity it makes possible?” In defining “the thing,” Ricoeur says, “It is the unity that is already realized in a correlate of speech and point of view; it is the synthesis as effected outside. That synthesis, inasmuch as it is in a correlate, bears the name of objectivity. Indeed, objectivity is nothing other than the indivisible unity of an appearance and an ability to express; the thing [e.g., a concept] shows itself *and* can be expressed” (Ricoeur 1986: 37). At this early stage in his writing, Ricoeur defines “hermeneutics” as “an exegesis of the fundamental symbols [i.e., signs, symbols and myths] in which man avows the servitude of his free will” (Ricoeur 1986: 6). This exegesis will pre-occupy Ricoeur in *The Symbolism of Evil*, whereas his goal in *Fallible Man* is transcendental reflection (Ricoeur 1986: 6).

Taking evil as an object and tracing back to its condition of possibility in *Fallible Man*, Ricoeur explains that its condition of possibility is fallibility itself, that is, “the *possibility* of [or the capability for] moral evil [that] is inherent in man’s constitution” (Ricoeur 1986: 133). In other words, human beings are not inherently evil, but they “can be evil only in accordance with the lines of force and weakness of [their] functions and [their] destination” (Ricoeur 1986: 143). For Ricoeur, fallibility “consists in a certain non-coincidence of man with himself: this ‘disproportion’ of self to self would be the *ratio* of fallibility” (Ricoeur 1986: 1). Ricoeur also says, “it is a difference ... in the center of an individual destiny, between its need and its own contingency. The need, in Kantian terms, is the totality that reason ‘demands’; in Aristotelian terms, it is the happiness man ‘pursues’ in his action. The contingency of character is what expresses this need” (Ricoeur 1986:138). In *Fallible Man*, Ricoeur explores three types of disproportion, that between the totality that reason ‘demands’ or understanding in the fullest sense and the limited, finite understanding that any individual can have; that between happiness as “an idea, a demand for totality” (Ricoeur 1986: 98), and the finite, existential happiness possible for any individual given their character (i.e., “the finite openness of [their] existence taken as a

whole (Ricoeur 1986: 58)); and that between finite pleasure and beatitude or “the *perfection* of pleasure, such as Aristotle extolled it in the *Ethics*” (Ricoeur 1986: 93).

As Ricoeur re-iterates, “fallibility [or disproportion] is *only* the possibility of evil: it indicates the region and the structure of the reality that, through its point of least resistance, offers a ‘locus’ to evil” (Ricoeur 1986: 143). If we take, as our example, the first type of disproportion from the three types above, the region involved is the imagination and structure in question is the power of understanding. Within this locus, Ricoeur describes an important problem: “It is one thing ... to *receive* the presence of things, it is another to *determine* the meaning of things. To receive is to give oneself intuitively to their existence; to think is to dominate this presence in a discourse which discriminates by denomination and connects in articulate phrasing” (Ricoeur 1986: 19). Receiving in this sense is a type of finitude that “consists in the perspectival limitation of perception. It causes every view of ... to be a *point of view* on ... I must catch sight of the finitude of *my* point of view” (Ricoeur 1986: 20-21). The determination of meaning, however, is a different type of process wherein language permits us to transgress the finitude of receiving. Signification is the vehicle of this transgression. In other words, “through its signifying function, language conveys not my perception’s finite perspective but the sense that intentionally transgresses my perspective. Language transmits the intention, not the perception of what is seen ... To achieve meaning is not to bestow it directly; the word has the admirable property ... of fading away bodily in giving rise to the act that confers the sense. In short, the word becomes the sign” (Ricoeur 1986: 27-28). Denomination is an important example of this process: “Because the name signifies, I can *say* that one appearance signifies all the others” (Ricoeur 1986: 29). As Ricoeur indicates, this is how universals are born, but the birth is problematic because it creates an “irreducible” “gap between certainty and truth” (Ricoeur 1986: 30). In other words, and here Ricoeur quotes from Hegel’s, *The Phenomenology of Mind*, “ ‘ ... since universality is the real truth of sense-certainty, and language merely expresses *this* truth, then it is **not possible** at all for us even to express in words any sensuous existence which we “**mean**” ’ ” (Ricoeur 1986: 30). Herein lies the potential for

brutality within any system of instantiation because as Ricoeur indicates, a dualism is created -- "at once the duality of the understanding and sensibility, in Kantian terms, and the duality of the will and the understanding in Cartesian language" (Ricoeur 1986: 37). Not unlike Boyle, Ricoeur also warns us that "all the dangers of voluntarism are inscribed in this dichotomy" (Ricoeur 1986: 36). However, unlike Boyle, Ricoeur unites in a dialectical relationship, willing, understanding or interpreting, and the complexities of language -- especially signification. As we will discover, Ricoeur's hermeneutic circles become the vehicle for this synthesis.

As Ricoeur re-iterates at the end of *Fallible Man*, there is a vast difference between fallibility or the capacity for evil and the actual reality of evil; in fact, these two entities "remain external to each other" (Ricoeur 1986: 143). Indeed, "evil *arises* from this weakness only because it is *posited*" (Ricoeur 1986: 146). Hence, in *The Symbolism of Evil*, Ricoeur turns to hermeneutics or "a new type of reflection bearing on the *avowal* that consciousness makes of [evil or fault] and on the *symbols* of evil in which this avowal is expressed" (Ricoeur 1969: 143). Here again at the beginning of this text, Ricoeur contrasts pure reflection or a philosophy of fault with what is involved in a hermeneutics of evil, namely, a " 're-enactment' of the confession of the evil in man by the religious consciousness" (Ricoeur 1969: 3). Those interested in developing a philosophy of fault have often used as the starting place of their critique, the Augustinian notion of original sin. However, as Ricoeur indicates, this is extremely problematic:

Nothing is less amenable to a direct confrontation with philosophy than the concept of original sin, for nothing is more deceptive than its appearance of rationality. On the contrary, it is to the least elaborate, the most inarticulate expressions of the confession of evil that philosophic reason must listen. Therefore we must proceed regressively and revert from the 'speculative' expressions to the 'spontaneous' ones. In particular, it is essential to be convinced from the start that the concept of original sin is not at the beginning but at the end of a cycle of living experience, the Christian experience of sin. Moreover, the interpretation that [the concept of original sin] gives of this experience is only one of the possible rationalizations of

the root of evil according to Christianity. Finally and above all, this rationalization ... belongs to a period of thought marked by Gnostic pretensions to 'know' the mysteries of God and human destiny. Not that original sin is a Gnostic concept ... But it belongs to the age of gnosis in the sense that it tries to rationalize the Christian experience of radical evil in the same way as gnosis set up as 'knowledge' ... (Ricoeur 1969: 4-5).

"Behind speculation, and beneath gnosis and anti-gnosis constructions," (Ricoeur 1969: 5), Ricoeur turns our attention to major myths and symbols that have played an important role in the avowal of "the beginning and the end of" evil throughout human history (Ricoeur 1969: 5). By the term "myth," Ricoeur means "a species of symbols, as symbols developed in the form of narrations and articulated in a time and a space that cannot be co-ordinated with the time and space of history and geography according to the critical method. For example, ... the history of the expulsion of Adam and Eve from Paradise is a mythical narration ... bringing into play fabulous personages, places, times, and episodes" (Ricoeur 1969: 18). Ricoeur defines six main characteristics of symbols. Firstly, "symbols are signs ... that communicate a meaning; this meaning is declared in an intention of signifying which has speech as its vehicle" (Ricoeur 1969: 14). Secondly, although "every sign aims at something beyond itself and stands for that something," the symbolic sign "conceals in its aim a double intentionality," or a double meaning (Ricoeur 1969: 15). In other words, "symbolic signs are opaque, because the first, literal, obvious meaning itself points analogically to a second meaning" (Ricoeur 1969: 15). Furthermore, although there is an analogical bond between the first and second meaning, Ricoeur specifies this bond as follows: "While analogy is inconclusive reasoning that proceeds by fourth proportional - A is to B as C is to D - in the symbol, I cannot objectify the analogical relation that connects the second meaning with the first. It is by living in the first meaning that I am led by it beyond itself" (Ricoeur 1969: 15). Fourthly, there is a difference between a symbol and an allegory. Whereas in an allegory, there is a relationship of translation between the literal and the symbolic meaning such that the allegory becomes useless after the translation has been made, there is an ongoing "donation of [enigmatic]

meaning in trans-parency” between the two meanings of a symbol (Ricoeur 1969: 17). Ricoeur emphasizes also that the symbols that concern him “have nothing to do with” the symbols utilized in symbolic logic -- symbols that are essentially “ ‘characters’ in the Leibnizian sense ... that is to say, elements of a calculus (Ricoeur 1969: 17). Ricoeur is not interested in these ‘characters’ because they have “been cut loose from the ordinary linguistic expressions,” and represent terms “which need no longer be spoken and by means of which it is possible to calculate without asking oneself how they are incorporated in a deontology of reasoning” (Ricoeur 1969: 17). Finally, symbols and myths can be differentiated insofar as symbols are more primitive and have “analogical meanings which are spontaneously formed and immediately significant” (Ricoeur 1969: 18).

In *The Symbolism of Evil*, Ricoeur surveys several myths that have portrayed the beginning and the end of evil in the human race. He also presents an extensive exploration of three primary symbols -- defilement, sin and guilt -- that have been part of the confession of evil in human beings by the religious consciousness. The most archaic symbol - defilement - conveys the belief that evil touches human beings “in the guise of a stain or blemish that infects from without” (Ricoeur 1969: 8). Sin is a more developed symbol of evil insofar as it “indicates the *real* situation of [all men] before God, whether man knows it or not. It is this sin of which the myth of the fall recounts the entry into the world and which speculation on original sin attempts to erect into a doctrine” (Ricoeur 1969: 7). Still more developed is the notion of guilt, the symbol of evil that conveys, “the precise sense of a feeling of the unworthiness at the core of one’s personal being”; this symbol “is only the advanced point of a radically individualized and interiorised experience” (Ricoeur 1969: 7). As preparation for our understanding of Ricoeur’s hermeneutic circles, what is most important at this point is not the entirety of Ricoeur’s explorations of symbols and myths of evil, but rather, the fact that these symbols and myths have existed, and that important conclusions can be drawn from explorations of them. Returning to the contrast between pure reflection and hermeneutics, Ricoeur makes this conclusion about the ability of pure reflection to explore evil: “Pure reflection makes no appeal to any myth or symbol; in this

sense it is a direct exercise of rationality. But comprehension of evil is a sealed book for it; the reflection is pure, but it leaves everyday reality outside, insofar as man's everyday reality is 'enslavement to the passions'" (Ricoeur 1969: 347). By contrast, the hermeneutical exegesis of the symbolism of evil permits our comprehension of "the enigma of servile [or bound] freedom [as] avowed by the religious consciousness" (Ricoeur 1969: 347).

As he concludes *The Symbolism of Evil*, Ricoeur considers how pure reflection and hermeneutics can be integrated. He dismisses "two hazards": "On the one hand, it is not possible simply to *juxtapose* [pure] reflection and confession ... But neither is it possible to have a direct philosophical transcription of the religious symbolism of evil, for that would involve going back to an allegorizing interpretation of the symbols and the myths" (Ricoeur 1969: 348). Ricoeur expresses his integrative solution in the phrase, " 'The symbol gives rise to thought' " (Ricoeur 1969: 348). Symbols and the language in which they are given constitute the starting place for thought: "Understanding of symbols can play a part in the movement towards the point of departure; for, if the beginning is to be reached, it is first necessary for thought to inhabit the fullness of language" (Ricoeur 1969: 348). Remembering is an important aspect of the understanding of symbols: "There is no philosophy without presuppositions. A meditation on symbols starts from speech that has already taken place ... For it, the first task is not to begin but, from the midst of speech, to remember; to remember with a view to beginning ... It is in the age when our language has become more precise, more univocal, more technical in a word ... it is in this very age of discourse that we want to recharge our language ... to start again from the fullness of language" (Ricoeur 1969: 348-349). This connection between symbols, language and thought leads Ricoeur to the positing of his first hermeneutic circle:

What we need is an interpretation that respects the original enigma of the symbol, that lets itself be taught by them, but that, beginning from there, promotes the meaning in the full responsibility of autonomous thought ... In short, it is by *interpreting* that we can *hear* again. Thus it is in hermeneutics

that the symbol's gift of meaning and the endeavor to understand by deciphering are knotted together. How does hermeneutics meet the problem? What we have just called a knot -- the knot where the symbol gives and criticism interprets -- appears in hermeneutics as a circle. The circle can be stated bluntly: 'We must understand in order to believe, but we must believe in order to understand.' The circle is not a vicious circle, still less a mortal one; it is a living and stimulating circle. We must believe in order to understand: never, in fact, does the interpreter get near to what his text says unless he lives in the *aura* of the meaning he is inquiring after (Ricoeur 1969: 349-351).

In *The Conflict of Interpretations*, Ricoeur reveals more of the elements involved in his hermeneutics, a redevelopment of his initial hermeneutic circle, and fundamental conclusions regarding the relationship between hermeneutics and evil. We learn that the maxim, 'the symbol gives rise to thought', applies first and foremost to the self because existence itself is not self-evident, but must be interpreted. In relation to the self now, the necessity of hermeneutics in the face of the inadequacies of pure reflection is stressed, and Ricoeur's path to this conclusion is inspired by several important considerations. One factor is the vanity of "the celebrated Cartesian *cogito*, which grasps itself directly in the experience of doubt" (Ricoeur 1974: 17). This is not only "a vain truth" from Ricoeur's perspective, but "it is like an empty place which has, from all time, been occupied by a false *cogito*. We have indeed learned, from all the exegetic disciplines and from psychoanalysis in particular, that so-called immediate consciousness is first of all 'false consciousness'. Marx, Nietzsche, and Freud have taught us to unmask its tricks" (Ricoeur 1974: 17-18). Moreover, although Ricoeur does not share Heidegger's direct ontology or "the short route of the Analytic of Dasein," Ricoeur nonetheless emphasizes the Heideggerian-inspired notion that the human subject "is a being who discovers, by the exegesis of his own life, that he is placed in being before he places and possesses himself" (Ricoeur 1974: 11, 6). Accordingly, hermeneutics is an essential quest for understanding understood "no longer [as] a mode of knowledge but [as] a mode of being, the mode of that being which exists through understanding" (Ricoeur 1974: 7). Emphasizing this fundamental shift from epistemology to ontology, Ricoeur has also been influenced by the

work of the French philosopher, Jean Nabert (1881-1960). In particular, Ricoeur stresses Nabert's definition of hermeneutic reflection as "nothing other than the appropriation of our act of existing by means of a critique applied to the works and the acts which are the signs of this act of existing. Thus, reflection is a critique ... in the sense that the *cogito* can be recovered only by the detour of a decipherment of the documents of its life" (Ricoeur 1974: 17).

In keeping with the above foundational elements, Ricoeur defines hermeneutics or interpretation in this way: "*Interpretation ... is the work of thought which consists in deciphering the hidden meaning in the apparent meaning, in unfolding the levels of meaning implied in the literal meaning*" (Ricoeur 1974: 13). So defined, Ricoeur's hermeneutics will from this point on, include several key elements, for instance, "an entire theory of signs and significations," "a notion of signification that is much more complex than the system of so-called univocal signs required by the logic of argumentation," and an emphasis on appropriation -- the goal of "overcoming distance and cultural differences and of matching the reader to a text which has become foreign, thereby incorporating its meaning into the present comprehension a man is able to have of himself" (Ricoeur 1974: 4). The inevitable conflict of interpretations is itself an integral part of the process. As Ricoeur says, "it is only in a conflict of rival hermeneutics that we perceive something of the being to be interpreted: a unified ontology is as inaccessible to our method as a separate ontology. Rather, in every instance, each hermeneutics discovers the aspect of existence which founds it as method" (Ricoeur 1974: 19). Finally, Ricoeur's definition of "symbol" places the problem of double meaning or intentionality at the forefront of his hermeneutics: "I define 'symbol' as any structure of signification in which a direct, primary, literal meaning designates, in addition, another meaning which is indirect, secondary, and figurative and which can be apprehended only through the first" (Ricoeur 1974: 12).

At the end of *The Conflict of Interpretations*, Ricoeur reconsiders the symbolism of evil and redevelops his first hermeneutic circle. He notes the literal meaning of the three

primary symbols: evil is a stain, a deviation, and a burden of guilt -- “words which do not resemble the thing signified” (Ricoeur 1974: 289). At the same time, these symbols have a secondary, figurative meaning. They “[point] to a certain situation of man in the Sacred ... precisely stained, sinful, guilty being. The literal and obvious meaning ... points beyond itself to something which is *like* a stain, *like* a deviation, *like* a burden” (Ricoeur 1974: 289-290). Together, the three symbols constitute a conflict of interpretations. Ricoeur refers to “the polarity of the primary symbols, stretched between a schema of exteriority, which is dominant in the magical conception of evil as stain [i.e., “evil already there” (Ricoeur 1974: 291)], and a schema of interiority, which only fully triumphs with the painful experience of the guilty and scrupulous conscience” (Ricoeur 1974: 294). Ricoeur invites us to move beyond this conflict of interpretations by means of a redevelopment of his first hermeneutic circle.

Not surprisingly, the first stage is a form of pure reflection -- “a simple phenomenology [that] remains an understanding of symbol by symbol, by the totality of symbols” (Ricoeur 1974: 297). Here the goal is to understand the symbols in question as a symbolic system with internal coherence. The limitation of this stage is that “the question of *truth* has not yet been posed ... it is a truth without belief, truth at a distance, a reduced truth” (Ricoeur 1974: 297). Certain questions have no place within this first stage, for example, “*Do I myself believe that? What do I personally make of these symbolic meanings?*” (Ricoeur 1974: 297). The second stage is that of “hermeneutics proper,” in other words, “interpretation applied in each case to an individual text” (Ricoeur 1974: 298). Within *The Symbolism of Evil*, Ricoeur’s interpretation of symbols and myths from specific texts is certainly a good example of this stage. As Ricoeur explains, in the interpretation of individual texts, one inevitably “[quits] the position, or better, the exile, of the remote and disinterested spectator in order to appropriate in each case an individual symbolism” (Ricoeur 1974: 298). In other words, “hermeneutics proceeds from the preunderstanding of the very matter which through interpretation it is trying to understand” (Ricoeur 1974: 298).

The third stage “is that of *thought starting from symbol*” (Ricoeur 1974: 298) and here Ricoeur issues a warning regarding two hazards. The first is the reduction of the relationship between symbols and meaning to a simple allegorical tie. In the case of the symbolism of evil, this hazard would be embodied by “the ethical vision of evil,” in other words, the prolonging of “the progressive reduction of stain and sin to personal and inner guilt” and a fixation on “a simple allegory of servile will” (Ricoeur 1974: 300). The second hazard is “speculative thought [that] wants to save what an ethical vision of evil tends to eliminate ... [and] to show its *necessity*. And its specific peril is *gnosis*” (Ricoeur 1974: 300). Here the result is “dogmatic mythology” or “reification of evil in a ‘nature’, [in other words,] the concept of *nature* is put forth here in order to counterbalance that of *contingence*, which ruled the first [hazard]” (Ricoeur 1974: 304). Here too the aforementioned schema of exteriority reigns, and we find references to “the idea of a guilt of nature, effective as an act and punishable as a crime, though inherited as a sickness” (Ricoeur 1974: 306). As Ricoeur indicates, “This is an intellectually inconsistent idea ... inasmuch as it mixes two universes of discourse -- that of ethics or of right, and that of biology” (Ricoeur 1974: 306). Ricoeur’s solution is to advance thought “between the two chasms of allegory and gnosis” (Ricoeur 1974: 310), or in broader terms, “the myths of evil have to be taken all together; it is their very dialectic that is instructive” (Ricoeur 1974: 309). Most importantly, Ricoeur concludes, “At its base the symbolism of evil is never purely and simply the symbolism of subjectivity, of the separated human subject, of interiorised self-awareness, of man severed from being” (Ricoeur 1974: 309). On the contrary, “one must come to the point where one sees evil as the adventure of being, as part of the history of being” (Ricoeur 1974: 309). Within this adventure, the tragic symbol of evil-already-there has a definite role: “The function of the tragic is to question self-assurance, self-certitude, one’s critical pretensions, we might even say the presumption of the moral conscience that is laden with the entire weight of evil. Much pride is concealed, perhaps, in this humility” (Ricoeur 1974: 309).

Near the end of *The Conflict of Interpretations*, Ricoeur reaches some fundamental conclusions regarding the relationship between hermeneutics and evil. One conclusion is “that whether evil be passively endured or actively committed, whether it be a question of ethical evil or suffering, the only access to the experience of evil itself is through symbolic expressions” (Ricoeur 1974: 315). Since these expressions have a twofold meaning or intentionality, Ricoeur concludes, “The existential signification is ... given indirectly, analogically, by means of the primary, literal signification. For this reason, to undergo the experience of evil is also to express it in a language; but furthermore, to express it is already to interpret its symbolic expressions” (Ricoeur 1974: 316). Lest we think that there is no relationship between the symbolism of evil and the symbolism of goodness, Ricoeur says, “One can suppose that the symbolism of evil is always the contrary of a symbolism of the good or salvation or that a symbolism of salvation is the counterpart of a symbolism of evil: the pure corresponds to the impure, forgiveness to sin, freedom to guilt and bondage” (Ricoeur 1974: 316). For those who may be tempted to view the symbolism of evil as a problem only for theologians or scholars of religion, Ricoeur makes these conclusions regarding the problem that evil presents for philosophy:

The philosopher, as philosopher, can have nothing to say with regard to the claims of the Gospel, according to which these figures are ‘fulfilled’ with the coming of Christ; but, as philosopher, he can and must reflect on the meaning of these symbols insofar as they stand as representations of the End of Evil ... The hermeneutics of evil appears as a particular domain that lies at the heart of a general interpretation of religious symbolism. For the moment we shall consider the symbolism of evil only as the inverse of a religious symbolism. **We shall ultimately see, however, that the hermeneutics of evil is not an indifferent domain but the most significant domain, perhaps the very source of the hermeneutic problem itself** [emphasis mine]. Why, then, is there a problem for the philosopher? The reason is that there is something astonishing and even scandalous about the use of symbols. (1) The symbol remains opaque, not transparent, since it is given by means of an analogy based on a literal signification. The symbol is thus endowed with concrete roots and a certain material density and opacity. (2) The symbol is a prisoner of the diversity of languages and cultures and, for this reason, remains contingent ... (3) The symbol is given

to thought only by way of an interpretation which remains inherently problematical. There is no myth without exegesis, no exegesis without contestation. The deciphering of mysteries is not a science in either the Platonic or Hegelian sense or in the modern meaning of the word science. Opacity, cultural contingency, and dependency on a problematical interpretation -- such are the three deficiencies of the symbol as measured by the ideal of clarity, necessity, and scientific order in reflection (Ricoeur 1974: 317).

3.3. Speaking, Writing, and the Circle of Understanding

In *Interpretation Theory* and *From Text to Action*, Ricoeur is again focused on the deficiencies of pure, universalist reflection and the need for hermeneutics. This time, the problematic pure reflection is semiotics. One articulation of the problem is that whereas “semiotics, the [disintegrative] science of signs, is formal [and virtual] to the extent that it relies on the dissociation of language into constitutive parts,” “semantics, the [integrative] science of the sentence, is immediately concerned with the concept of sense [i.e., meaning]” (Ricoeur 1976: 8). At the heart of this problem is the fact that whereas the concern of semiotics is *langue*, “the code -- or the set of codes -- on the basis of which” a particular speaker speaks, the concern of semantics is *parole* or discourse, the “particular message” given by the speaker (Ricoeur 1976: 3). There are vast differences between the message and the code. For example, whereas “a message is individual, its code is collective” or universal; whereas “a message is intentional -- it is meant by someone[,] the code is anonymous and not intended”; whereas “a message is arbitrary and contingent,” “a code is systematic and compulsory for a given speaking community” (Ricoeur 1976: 3). The relationship with time is also different for the message and the code: “A message is a temporal event in the succession of events which constitute the diachronic dimension of time, while the code is in time as a set of contemporaneous elements, i.e., as a synchronic system” (Ricoeur 1976: 3).

Another way to frame the problem is to contrast the concern of semiotics with “the ‘objective’ side” of meaning, and the concern of semantics with “the ‘subjective’ side of

meaning”(Ricoeur 1976: 19). As Ricoeur indicates, the ‘objective side’ of meaning comprises “what the sentence does” or “the utterance meaning -- in the sense of the propositional content” (Ricoeur 1976: 19). By contrast, the ‘subjective side’ of meaning encompasses “what the speaker does” or “the utterer’s meaning -- in the threefold sense of the self-reference of the sentence, the illocutionary dimension of the speech-act, and the intention of recognition by the hearer” (Ricoeur 1976: 19). Problematically, there is a subjective element of the ‘objective side’ of meaning. In other words, “the ‘objective’ side of discourse itself may be taken in two different ways. We may mean ‘the what’ of discourse or the ‘about what’ of discourse. The ‘what’ of discourse is its ‘sense’, the ‘about what’ is its ‘reference’” (Ricoeur 1976: 19). The difference between ‘sense’ and ‘reference’ compels Ricoeur to emphasize that whereas ‘reference’ is a crucial concern for semantics, ‘reference’ is a non-issue for semiotics:

[The distinction between sense and reference] can be directly connected with our initial distinction between semiotics and semantics. Only the sentence level allows us to distinguish what is said and about what it is said. In the system of language, say as a lexicon [i.e., the focus of semiotics], there is no problem of reference; signs only refer to other signs within the system. With the sentence [i.e., the focus of semantics], however, language is directed beyond itself. Whereas the sense is immanent to the discourse, and objective in the sense of ideal, the reference expresses the movement in which language transcends itself. In other words, the sense correlates the identification function and the predicative function within the sentence [i.e., the concern of semiotics], and the reference relates language to the world [i.e., the concern of semantics]. It is another name for discourse’s claim to be true (Ricoeur 1976: 20).

Ricoeur concludes that “semiotics appears as a mere abstraction of semantics,” and that “the most concrete definition of semantics ... is the theory that relates the inner or immanent constitution of the sense to the outer or transcendent intention of the reference” (Ricoeur 1976: 21-22). As Ricoeur prioritizes the building of a relationship between sense and reference, he stresses the need to avoid two opposite extremes, the semiotic emphasis on language as a closed, ‘objective’ system, and his predecessors’ emphasis (i.e., that of

Schleiermacher and Dilthey) on “recognition of the author’s intention from the point of view of the primitive addressees in the original situation of discourse” (Ricoeur 1976: 22-23).

From the perspective of reference, understood as above, writing and written texts are quite problematical, and Ricoeur surveys the difficulties. In writing, we find “the detachment of meaning from the event [i.e., of speaking] ... The human fact disappears. Now material ‘marks’ convey the message” (Ricoeur 1976: 25-26). The meaning of the text is also detached to some extent from the author’s intentions: “The text’s career escapes the finite horizon lived by its author. What the text means now matters more than what the author meant when he wrote it ... The authorial meaning becomes properly a dimension of the text to the extent that the author is not available for questioning” (Ricoeur 1976: 30). There is a certain universalization of the audience of a text which has implications: “Whereas spoken discourse is addressed to someone who is determined in advance by the dialogical situation ..., a written text is addressed to an unknown reader and potentially to whoever knows how to read ... A work also creates its public” (Ricoeur 1976: 31). The implications of this universalization include the fact that “reading is a social phenomenon, which obeys certain patterns and therefore suffers from specific limitations”; also “it is the response of the audience which makes the text important and therefore significant” (Ricoeur 1976: 31). As we have already discovered in the use of texts concerning double effect reasoning, the text has “semantic autonomy,” and it presents significant “opportunit[ies] for multiple readings” (Ricoeur 1976). Consequently, “the problem of the appropriation of the meaning of the text becomes as paradoxical as that of the authorship. The right of the reader and the right of the text converge in an important struggle that generates the whole dynamic of interpretation” (Ricoeur 1976: 32).

Spoken and written discourse present important differences regarding reference. In a conversation, for example, “the ultimate criterion for the referential scope of what we say is the possibility of showing the thing referred to as a member of the situation common to

both speaker and hearer”; in other words, “all references in the dialogical situation consequently are situational” (Ricoeur 1976: 34-35). By contrast, in written texts, the relationship between sense and reference is more complex, and reference is divided. As Ricoeur indicates, although “ostensive indicators and definite descriptions continue to identify singular entities, ... a gap appears between identification and monstration” (Ricoeur 1976: 35). Moreover, “in the same manner that the text frees its meaning from the tutelage of the mental intention, it frees its reference from the limits of situational reference” (Ricoeur 1976: 36). This liberation has both positive and negative implications. On the one hand, “the effacement of the ostensive and descriptive reference liberates a power of reference to aspects of our being in the world that cannot be said in a direct descriptive way ... the world is the ensemble of references opened up by every kind of text, ... that I have read, understood, and loved” (Ricoeur 1976: 37). In this sense, texts, not unlike paintings, are iconic (Ricoeur 1976: 40-42). On the other hand, insofar as written texts divide and liberate reference, “the written word ... scatters and isolates” (Ricoeur 1976: 40). “Alienation” (Ricoeur 1976: 38), or “distantiation” occurs -- “It is a dialectical trait, the principle of a struggle between the otherness [e.g., of texts] that transforms all spatial and temporal distance into cultural estrangement and the ownness by which all understanding aims at the extension of self-understanding” (Ricoeur 1976: 43).

For Ricoeur, this struggle between “otherness” and “ownness is at the heart of hermeneutics, the goal of which is an enlargement of self-understanding accomplished through appropriation: “To appropriate is to make ‘one’s own’ what was ‘alien’” (Ricoeur 1976: 44). Hermeneutics is also not just one approach among many, but rather, “the last word”: “The dialectic of distanciation and appropriation is the last word in the absence of absolute knowledge” (Ricoeur 1976: 44). In the absence of certainty, there is also a vital relationship between this dialectic and “tradition”:

This dialectic may also be expressed as that of the tradition as such, understood as the reception of historically transmitted cultural heritages. A tradition raises no philosophical problem as long as we live and dwell within

it in the naiveté of the first certainty. Tradition only becomes problematic when this first naiveté is lost. Then we have to retrieve its meaning through and beyond estrangement. Henceforth the appropriation of the past proceeds along an endless struggle with distancing. Interpretation [or hermeneutics], philosophically understood, is nothing else than an attempt to make estrangement and distancing productive (Ricoeur 1976: 44).

Thus far in this section, we have outlined Ricoeur's understanding of the problematic dichotomy between universalist codes and particular discourse, between utterance meaning and the utterer's meaning, between sense and reference, and between meaning and event. At the end of *Interpretation Theory*, Ricoeur asks, "How do we make sense of written discourse?" and he presents his process for making distancing productive -- essentially the first formulation of the circle of understanding. Ricoeur explains that, "**understanding** [emphasis mine] is to reading what the event of discourse is to the utterance of discourse and that **explanation** [emphasis mine] is to reading what the verbal and textual autonomy is to the objective meaning of discourse. A dialectical structure of reading therefore correlates to the dialectical structure of discourse" (Ricoeur 1976: 71-71). In his articulation of this dialectical relationship between explanation and understanding, Ricoeur is reconciling what was "a clearly contrasting duality in Romanticist hermeneutics":

Each term of the pair there represents a distinct and irreducible mode of intelligibility. **Explanation** [emphasis mine] finds its paradigmatic field of application in the natural sciences. When there are external facts to observe, hypotheses to be submitted to empirical verification, general laws for covering such facts ..., and subordination of empirical generalizations to hypothetic-deductive procedures, then we may say that we 'explain'. And the appropriate correlate of explanation is nature understood as the common horizon of facts, laws and theories, hypotheses, verifications, and deductions. **Understanding** [emphasis mine], in contrast, finds its originary field of application in the human sciences ..., where science has to do with the experience of other subjects or other minds similar to our own. It relies on the meaningfulness of such forms of expression as physiognomic, gestural, vocal, or written signs, and upon documents and monuments, which share with writing the general character of inscription ... The dichotomy between understanding and explanation in Romanticist

hermeneutics is both epistemological and ontological. It opposes two methodologies and two spheres of reality, nature and mind. Interpretation is not a third term, nor, as I shall attempt to demonstrate, the name of the dialectic between explanation and understanding. It is understanding applied to the written expressions of life (Ricoeur 1976: 72-73).

Here again in Ricoeur's work, we find a contrast between pure reflection and hermeneutics. Explanation is a mode of intelligibility that begins with the **thing** or the external **object**, and produces facts, laws, theories, deductions, etc. Although this type of intelligibility is important in its own right, it has limitations as we have already indicated: "The limitation of this reflection appears directly along with its strength: the synthesis that it reveals and inspects will be a synthesis only in the object ... a synthesis that is merely intentional, projected outside, ... into the structure of objectivity it makes possible" (Ricoeur 1986: 18). By contrast, understanding (i.e., ultimately self-understanding from Ricoeur's perspective) is a process and an end that relies on the exegesis of signs of life. To facilitate the integration of these two modes of intelligibility, Ricoeur articulates a "dynamic of interpretative reading" (Ricoeur 1976: 74), what will later become a more fully developed circle of understanding. This process has two stages: from guess to validation and from explanation to comprehension or understanding.

The first stage involves guessing the meaning of the text, and attempting to validate or test the guesses that are made. As Ricoeur explains, there is a relationship between guessing meaning and the semantic autonomy of texts: "The necessity of guessing the meaning of a text may be related to ... semantic autonomy.... With writing, the verbal meaning of the text no longer coincides with the ... intention of the text ... In other words, we have to guess the meaning of the text because the author's intention is beyond our reach" (Ricoeur 1976: 75). Initial guesses are then validated to provide the best explanation of the individual text as a whole. Regarding the process for validating guesses, Ricoeur says: "I agree with E.D. Hirsch that they are closer to a logic of probability than to a logic of empirical verification. To show that an interpretation is more probable in the light of what we know is something other than showing that a conclusion is true ...

validation ... is an argumentative discipline comparable to the juridical procedures used in legal interpretation ... ” (Ricoeur 1976: 78). It must be emphasized that validation takes place within the larger context of a structural (i.e., semiotic) analysis of the text: “To read [in this context] means ... to transfer oneself into the ‘place’ where the text stands.... According to this choice, the text no longer has an exterior, it only has an interior. To repeat, the very constitution of the text as a text and of the system of texts as literature justifies this conversion of the literary object into a closed system of signs” (Ricoeur 1976: 81).

The second stage, from explanation to comprehension, involves the opposite process, that is, opening up the text to an exterior world, or making the distancing produced by explanation productive of new meaning. In this stage, the dichotomy between sense and reference and between utterance meaning and the utterer’s meaning becomes reconciled. Ricoeur explains the new understanding that is produced:

Taking the notion of depth semantics as our guideline, we cannot return to our initial problem of the reference of the text. We can now give a name to this non-ostensive reference. It is the kind of world opened up by the depth semantics of the text, a discovery, which has immense consequences regarding what is usually called the sense of the text. The sense of a text is not behind the text, but in front of it. It is not something hidden, but something disclosed. What has to be understood is not the initial situation of discourse, but what points towards a possible world, thanks to the non-ostensive reference of the text. Understanding has less than ever to do with the author and his situation. It seeks to grasp the world-propositions opened up by the reference of the text. To understand a text is to follow its movement from sense to reference: from what it says, to what it talks about. In this process the mediating role played by structural analysis constitutes both the justification of the objective approach and the rectification of the subjective approach to the text. We are definitely enjoined from identifying understanding with some kind of intuitive grasping of the intention underlying the text. [However,] what we have said about the depth semantics that structural analysis yields rather invites us to think of the sense of the text as an injunction coming from the text, as a new way of looking at things ... This is the reference borne by the depth semantics. The text speaks of a possible world and of a possible way of orientating oneself

within it. The dimensions of this world are properly opened up by and disclosed by the text (Ricoeur 1976: 87-88).

In *From Text to Action*, Ricoeur reviews why language makes interpretation or hermeneutics necessary: “[The issue] is polysemy, that is, the feature by which our words have more than one meaning when considered outside their use in a determinate context” (Ricoeur 1991: 54). Again, he emphasizes “the central problem of hermeneutics,” namely, “the opposition, disastrous in my view, between explanation and understanding” (Ricoeur 1991: 53). This opposition can be framed in another way as that “between alienating distanciation and belonging” (Ricoeur 1991: 75). For Ricoeur, this “antimony ... establishes an untenable alternative: on the one hand, alienating distanciation is the attitude that renders possible the objectification that reigns in the human sciences; but on the other hand, this distanciation, which is the condition of the scientific status of the sciences, is at the same time the fall that destroys the fundamental ... relation whereby we belong to and participate in the historical reality that we claim to construct as an object” (Ricoeur 1991: 75). In an attempt to resolve this problem, Ricoeur adopts a “working definition of hermeneutics”: “hermeneutics is the theory of the operations of understanding in their relation to the interpretation of texts” (Ricoeur 1991: 53).

Central to the operations of understanding is the role of reference, and in *From Text to Action*, Ricoeur reviews the function and importance of reference in relation to both spoken and written discourse. In the context of spoken discourse or “speech as an event,” time and place are important references: “Discourse is always realized temporally and in the present” (Ricoeur 1991: 145). There is always a subject in spoken discourse: “discourse refers back to its speaker by means of a complex set of indicators such as the personal pronouns. We shall say that the ‘instance of discourse’ is self-referential” (Ricoeur 1991: 145). Spoken discourse is always related to a world: “discourse is always about something. It refers to a world that it claims to describe, to express, or to represent” (Ricoeur 1991: 145). Conversation always involves more than one person: “discourse alone has not only a world but an other, another person, an interlocutor to whom it is

addressed” (Ricoeur 1991: 146). Regarding written discourse, reference becomes more complex, but just as important. A reference to time and place belongs primarily to the reader because “the system of language [of the written text] is virtual and outside of time” (Ricoeur 1991: 77). A written text is a work or an object made possible by structure: “To impose a form upon material, to submit production to genres, to produce an individual [work] ... Discourse thereby becomes the object of a *praxis* and a *techne*” (Ricoeur 1991: 80). In other words, the text has a reference related to its production that can be analyzed quite apart from the reference of either the author(s) or the reader(s) of the text. As already indicated, however, any written text presents a certain autonomy -- “the ‘matter’ of the text may escape from the finite intentional horizon of its author” (Ricoeur 1991: 83), and its mode of production. Most importantly, the ‘matter’ of the text opens up a world for the reader or interpreter -- ultimately, a world of enlarged self-understanding:

The [proposed world of the text] is not *behind* the text, as a hidden intention would be, but *in front of* it, as that which the work unfolds, discovers, reveals. Henceforth, to understand is *to understand oneself in front of the text*. It is not a question of imposing upon the text our finite capacity for understanding, but of exposing ourselves to the text and receiving from it an enlarged self, which would be the proposed existence corresponding in the most suitable way to the world proposed. So understanding is quite different from a constitution of which the subject would possess the key. In this respect, it would be more correct to say that the *self* is constituted by the ‘matter’ of the text (Ricoeur 1991: 88)

There is a parallel between the distinction between sense and meaning, and the distinction between explanation and understanding (or interpreting). In both cases, whereas sense and explanation pertain to the internal structure of a text, meaning and understanding pertain to the reference of a text. In other words, Ricoeur says, “The ‘actualized’ text finds a surrounding and an audience; it resumes the referential movement ... toward a world and toward subjects ... Initially the text had only a **sense** [emphasis mine], that is, internal relations or a structure; now it has a **meaning** [emphasis mine], that is, a realization in the discourse of the reading subject” (Ricoeur 1991: 119). Similarly, “to **explain** [emphasis

mine] is to bring out the structure, that is, the internal relations of dependence that constitute the statics of the text; [by contrast] to **interpret** [or to **understand** - emphasis mine] is to follow the path of thought opened up by the text, to place oneself en route toward the *orient* of the text" (Ricoeur 1991: 122). As Ricoeur indicates, "the debate between explanation and understanding is an old one" (Ricoeur 1991: 125), and he emphasizes "that the battle has raged mainly over the use of the word *cause*. Perhaps wrongly":

For it was admitted too hastily that the word *cause* (causation) had only one meaning, that given to it by Hume: indeed, for Hume the relation between cause and effect implied that antecedents and consequences are logically independent, that is to say, capable of being identified separately (if a match sets fire to an explosive, I can perfectly well describe the match without describing the explosion). There is thus no logical connection of implication between cause and effect.

Now this is not the case between intention and action, or between motive and project. I cannot identify a project without mentioning the action I am going to do: this is a logical and not a causal connection (in the Humean sense). In the same way, I cannot state the motives of my action without relating these motives to the action whose motives they are. There is thus an implication between motive and project that does not belong to the schema of the logical heterogeneity of cause and effect.

Consequently, in this language game if I use the same word *because* -- 'he did this because' -- it is in another sense of *because*. In one instance I ask for a cause, in the other a reason. Anscombe strongly contrasted the two language games, in distinguishing these two uses of the words *why* and *because of*. In one, I am in the domain of causation, in the other in that of motivation.

On another precise point the debate has been just as lively: the question of the place of the agent in his or her action. Can one say that the agent is the cause of his or her acts? No, if by cause we mean a constant antecedent; yes, if we can say that the relation between the agent and his or her acts belongs to a non-Humean causal model, one more closely resembling the Aristotelian cause. This, then, is the state of the problem that I am taking as the initial state in our discussion (Ricoeur 1991: 133).

Following this statement of the problem, Ricoeur makes a case to illustrate that the dichotomy between the domain of causation (i.e., explanation) and motivation (i.e., understanding or interpretation) is untenable. In other words, he disagrees with Anscombe's emphasis on keeping the two language games separate. Since Ricoeur's argument has undergone further development in *Oneself As Another*, we will defer our discussion of this argument until the next section. However, before leaving *From Text to Action*, there is a need to explain Ricoeur's renewed presentation of the circle of understanding whereby explanation and understanding are integrated. Not unlike the initial presentation in *Interpretation Theory*, here too we begin with a guess, but Ricoeur explains the rationale behind the guessing: "Why do we need an art of guessing? Why do we have to 'construe' the meaning? ... because the double meaning of metaphorical language requires ... deciphering ... In more general terms, a text has to be construed because it is not a mere sequence of sentences, all on an equal footing and separately understandable ... it is in construing the details that we construe the whole. There is no necessity and no evidence concerning what is important and what is unimportant, what is essential and what is unessential. The judgment of importance is a guess" (Ricoeur 1991: 158).

Validating the guess is the moment of explanation. This requires various kinds of structural analyses proceeding on the basis of a logic of probability, and including "procedures of invalidation similar to the criteria of falsifiability emphasized by Karl Popper ... The role of falsification is played here by the conflict between competing interpretations. An interpretation must be not only probable but more probable than another" (Ricoeur 1991: 159-160). At this stage, structural literary analysis "proceeds from the suspension ... of the ostensive reference. To read in this way means to ... transfer oneself into the 'place' where the text stands ... According to this choice, the text no longer has an outside[;] it has only an inside ... [i.e.,] a closed system of signs" that one seeks to explain (Ricoeur 1991: 162-163). This structural analysis is a necessary intermediary stage between the guess or the "naïve interpretation," and the "critical interpretation" that follows (Ricoeur 1991: 164).

By “critical interpretation,” Ricoeur means the subsequent ‘moment’ of “depth semantics that constitutes the genuine object of understanding and that requires a specific affinity between the reader and the kind of things the text is *about*” (Ricoeur 1991: 164). Again, the goal is to reveal the reference, or “to grasp the proposed worlds opened up by the references to the text. To understand a text is to follow its movement from sense to reference ...” (Ricoeur 1991: 165). To follow this movement is also to appropriate the text and ultimately, to appropriate an enlarged self:

By ‘appropriation’, I understand this: that the interpretation of a text culminates in the self-interpretation of a subject who thenceforth understands himself better, understands himself differently, or simply begins to understand himself. This culmination of the understanding of a text in self-understanding is characteristic of the kind of reflective philosophy that ... I have called ‘concrete reflection’ ... On the one hand, self-understanding passes through the detour of understanding the cultural signs in which the self documents and forms itself [i.e., explanation]. On the other hand, understanding the text is not an end in itself; it mediates the relation to himself of a subject who, in the short circuit of immediate reflection, does not find the meaning of his own life ... In short, in hermeneutical reflection - or in reflective hermeneutics -- the constitution of the *self* is contemporaneous with the constitution of *meaning* (Ricoeur 1991: 119).

3.4. Acting, Imputability, and the Ethics Circle

In *Oneself as Another*, Ricoeur defines imputability in this way: “Imputability ... is the ascription of action to its agent, *under the condition of ethical and moral predicates* which characterize the action as good, just, conforming to duty, done out of duty, and, finally, as being the wisest in the case of conflictual situations (Ricoeur 1992: 292). In his more recent text, *The Just*, Ricoeur consults “The *Robert* dictionary” to provide another definition: “ ‘to impute an action to someone is to attribute it to him as its actual author, to put it, ... on his account and to make him responsible for it’ ... Let me emphasize this again: to attribute an action to someone as its actual author. We must not lose sight of this reference to an agent” (Ricoeur 2000: 14). Not losing sight of “this reference to an agent”

has been Ricoeur's emphasis in all his books consulted thus far, and not unlike the overall structure already discovered in these earlier works, Ricoeur, in *Oneself as Another*, contrasts pure reflection on agents and agency with hermeneutic reflection that facilitates the self-understanding of a subject. Indeed, looking back on *Oneself as Another* from his perspective in 1999, Ricoeur says, "Here is found the most decisive step that governs the whole structure of *Oneself as Another*: namely, the need to articulate at each level an objective approach with a reflective [or hermeneutic] one ..." (Ricoeur 2002a: 281). Not surprisingly, Ricoeur also relates the two approaches using the terms he used in his earlier works -- explanation and understanding: "This correlation between the objective mood of discourse and the reflective one governs the structure of *Oneself as Another*. I can put this correlation under a precept in the form of a slogan: 'explaining more in order to understand better'" (Ricoeur 2002a: 281).

In *Oneself as Another*, Ricoeur connects explanation and understanding on four main levels or as related to four primary fields: linguistics, action theory, identity theory, and ethics. In other words, *Oneself as Another* "can be read in terms of four verbs [or four capabilities], which the 'I can' modifies: *I can speak*, *I can do things*, *I can tell a story*, and *I can be imputed*, an action can be imputed to me as its true author" (Ricoeur 2002a: 280). Ricoeur utilizes the notion of imputability to connect his philosophical anthropology with his ethics (Ricoeur 2002a: 280). However, as Ricoeur emphasizes, it is his overall stress on all the capabilities as modifications of the verb 'I can', that brings the entirety of his work together:

When I try to cast a retrospective glance at my work, I agree that it is -- for the sake of a discourse of the second order -- a personal reinterpretation offered to my readers. And I must say that it is only recently that I felt allowed to give a name to this overarching problematics. I mean the problem of human capability, capability as the cornerstone of philosophical anthropology, or, to put it in more simple terms belonging to ordinary language, the realm of the theme expressed by the verb *I can* ... The advantage of starting with this model verb *I can* is to be able to link it to a

plurality of verbs implying some kind of actualization, a variety of potentialities or capabilities ... (Ricoeur 2002a: 280).

Oneself as Another has a triadic structure that permits Ricoeur to focus on three overarching capabilities: describing action, narrating action, and prescribing action (Ricoeur 1992: 20). By means of the first four studies, Ricoeur relates objective and reflective approaches to describing action within the larger context of methods found within linguistics (i.e., covered in the first two studies), and those situated within English-language action theory (i.e., the focus of the third and fourth studies). Ricoeur connects objective and reflective approaches to identity and narrating action in the fifth and sixth studies. Finally, in the last three studies, Ricoeur relates objective and reflective approaches to prescribing action. From the perspective of this author, these last three studies comprise Ricoeur's ethics circle. Insofar as describing action, narrating action, and prescribing action are all involved in Ricoeur's definitions of imputability, *Oneself as Another* represents an in-depth, cumulative investigation of the problem of imputability, the implications of which will become clearer as we proceed.

In *Oneself as Another*, Ricoeur makes a fundamental suggestion that has profound implications for this thesis. Instead of prioritizing an inquiry concerning how events can be distinguished one from another, in our case for instance, how terminal sedation can be distinguished from euthanasia, Ricoeur's inquiry focuses on relationships within and between selves: "... the major issue [resides] less in determining what distinguishes actions from other events occurring in the world than in **determining what specifies the self, implied in the power-to-do, at the junction of acting and the agent**" [emphasis mine] (Ricoeur 1992: 113). Ricoeur's exploration of the latter determination begins in the Introduction of *Oneself as Another* where he specifies two meanings of identity, the definition and implications of which he develops throughout the book. Continuing his preference for hermeneutic or reflective meditation over pure reflection, Ricoeur indicates that his first intention in this text is "to indicate the primacy of reflective meditation over the immediate positing of the subject, as this is expressed in the first person singular: 'I

think,' 'I am'. This initial intention draws support from the grammars of natural languages inasmuch as they allow the opposition between 'self' and 'I'" (Ricoeur 1992: 1). This initial intention is also supported by Ricoeur's wish to posit a self somewhere between the exalted cogito of the Cartesian tradition, and the shattered or humiliated cogito of the tradition culminating with Nietzsche (Ricoeur 1992: 4-16).

Ricoeur's second intention "is to distinguish two major meanings of 'identity'," identity as sameness or constancy (*idem*-identity) and identity as ever-changing selfhood (*ipse*-identity) (Ricoeur 1992: 2-3). Ricoeur's third intention is to indicate that *ipse*-identity involves "the dialectic of *self* and the *other than self* ... *Oneself as Another* suggests from the outset that the selfhood of oneself implies otherness to such an intimate degree that one cannot be thought of without the other, that instead one passes into the other, as we might say in Hegelian terms" (Ricoeur 1992: 3). Ricoeur indicates that fundamentally, the dialectic of *self* and the *other than self* includes complex relationships between the self and "one's own body, or the flesh" (Ricoeur 1992: 319-329), between the self and "the otherness of other people" (Ricoeur 1992: 329-341), and between the self and "conscience" (Ricoeur 1992: 341-355). Thus in *Oneself as Another*, Ricoeur's hermeneutics of the self involves tracking the complexities of these relationships as they are revealed on the levels of describing action, narrating action and prescribing action. Near the end of the Introduction, Ricoeur emphasizes two features of this tracking that merit attention. Firstly, the studies in this text have a "fragmentary character" because although they "have as their thematic unity *human action*," this unity "is not the unity that an ultimate foundation would confer to a series of derivative disciplines" (Ricoeur 1992: 19). Secondly, "the type of certainty to which [this hermeneutics] may aspire" is not that derived from an ultimate foundation, but rather, "the notion of *attestation*, by which I intend to characterize the alethic (or veritative) mode of the style appropriate to the conjunction of analysis [i.e., explanation] and reflection [i.e., hermeneutics], to the recognition of the difference between selfhood and sameness, and to the unfolding of the dialectic of the self and the other ... (Ricoeur 1992: 21).

From the previous section concerning the circle of understanding, we recall Ricoeur's emphasis on the problematic dichotomy between universalist codes and particular discourse, between utterance meaning and the utterer's meaning, between sense and reference, and between meaning and event. In the first four studies that constitute Ricoeur's exploration of describing action, he again probes these dichotomies on the levels of linguistics and action theory. His major conclusion applicable on both levels is that "the phenomenon of ascription constitutes, in the final analysis, only a partial and as yet abstract determination of what is meant by the ipseity (the selfhood) of the self" (Ricoeur 1992: 111). For example, on the level of linguistics in the first study, Ricoeur stresses that insofar as persons are identified linguistically as corporal entities, this objective identification or ascription poses two key problems. Such identification "does not stress the capacity belonging to the person to designate himself or herself in speaking ...; here, the person is one of the 'things' about which we speak rather than itself a speaking subject" (Ricoeur 1992: 31). Moreover, insofar as language identifies persons as bodies "by means of spatiotemporal location[,] the thing [i.e., the body] remains the same in different times and places ... Yet ..., understanding the way in which our own body is at once a body like any other (situated among other bodies) and an aspect of the self (its manner of being in the world) is a problem of vast proportions ..." (Ricoeur 1992: 33). A similar ambiguity exists when identification occurs by means of the word 'I'. As Ricoeur explains,

The expression 'I' is fraught with a strange ambiguity; ... On the one hand, 'I' as a personal pronoun belonging to the system of language is a member of the paradigm of personal pronouns. As such, it is an empty term which, ... designates in each instance a different person for each new use; ... As a vacant term of this sort, 'I' is a migrating term; it is a position with respect to which several virtual utterers can be substituted for one another. Whence the term 'shifter' ... On the other hand ... we [can move] from one sense of the expression 'I' to [another]. [In this case,] we are no longer stressing the *substitutable* aspect of the shifter, but instead the *fixation* [or "anchoring"] that results from speaking ... by virtue of which 'I' designates in each case only one person to the exclusion of any other, the one who is speaking here and now ... The paradox consists quite precisely in the apparent contradiction between the substitutable character of the shifter and the

nonsubstitutable character of the phenomenon of anchoring (Ricoeur 1992: 48-49).

Leaving the level of linguistics behind, Ricoeur says, “the difficulties, paradoxes, and aporias with which the preceding studies ended take on new proportions within the framework of the theory of action” (Ricoeur 1992: 56). In other words, just as universalist linguistic identifiers conceal selfhood and render self-designation ambiguous, if not impossible, so too action theory creates similar problems. As Ricoeur notes, action theory encloses both actions and agents within

the same conceptual schema, containing notions such as circumstances, intentions, motives, deliberations, voluntary or involuntary motions, passiveness, constraints, intended or unintended results, and so on ... What is important in establishing the range of meaning of each of these terms is the fact that they all belong to the same network; the relations of intersignification thus guide the respective meanings, so that knowing how to use one of them is actually knowing how to use the entire network in a meaningful and appropriate manner. This is a coherent language game, in which the rules governing the use of one term are systematically related to the rules governing the use of another term ... the entire network serves to determine what ‘counts as’ an action (Ricoeur 1992: 57-58).

This conceptual identification schema is extremely problematic because the question ‘who?’ “tends to be relegated to the sidelines to make room for the much more important question of the relation between the questions ‘what?’ and ‘why?’ (*quoi? et pourquoi?*) which overrides the relation between the pair of questions ‘what-why?’ and the question ‘who?’” (Ricoeur 1992: 59). Problematically, questions such as ‘what?’ and ‘why?’ have gained prominence insofar as “it is in relation to the notion of *something that occurs* [i.e., of an **event**] that one then strives to determine the descriptive status of actions” (Ricoeur 1992: 60). As Ricoeur indicates, events happen and they have observable, explainable causes, whereas actions create happenings and derive from internal, non-observable, and sometimes obscure motives (Ricoeur 1992: 61). Not only is the question ‘who?’ sidelined in the attempt to describe actions as events, but here again, the attempt opens up an abyss

between the notions of cause and motive. In other words, “the internal, necessary (and in this sense, logical) connection characteristic of motivation is incompatible with the extrinsic, contingent (and, in this sense, empirical) connection of causality” (Ricoeur 1992: 63). Insofar as motive is usually associated with wanting, a gulf is also created between the internal, contemplative phenomena of wanting and the external phenomena of causes and events (Ricoeur 1992: 63-64). Furthermore, the notion of interpretation or understanding is strictly separated from that of explanation:

To evoke the reason for an action is to try to place the action in a broader context, generally one composed of rules of *interpretation* and of norms of execution, which are assumed to be shared by the agent and [his/her community] ... [This process strengthens] the opposition between the two opposing schemata of explanation, to the extent that only one of them can be considered a form of interpretation (Ricoeur 1992: 64).

Although many would say, “in Wittgenstein’s sense, that action and its motives on one side, and the event and its cause on the other, belong to two separate ‘language games’,” Ricoeur does not agree with this analysis; in fact, he holds that “the constant encroachment of one [‘game’] on the other ... [renders] problematic the very principle of their dissociation” (Ricoeur 1992: 65). For example, “phenomenologically speaking, the opposition between motive and cause is not obligatory ... It seems instead that the category of wanting offers itself as a mixed category” because wanting can simultaneously involve both intentional, reasons-for actions, as well as compulsive causes (Ricoeur 1992: 66). In other words, there is a two-sidedness about wanting -- “[wanting] as a *force* that compels and moves and as a *reason* for acting ... motive is at one and the same time the motion of wanting and its justification ...” (Ricoeur 1991: 134). Ontologically, the dichotomy between action/motive and event/cause is also problematic because “it amounts to opposing mental predicates to physical predicates,” in relation to one and the same person or agent (Ricoeur 1991: 66). Regarding this problem, the salient question remains that asked by Ricoeur in *From Text to Action*:

What is the being that makes possible this double allegiance of motive to force and to sense, to nature and to culture, to *bios* and to *logos*? One would have to reflect here upon the very position of the human body in nature: it is at once one body among others (a thing among things) and a manner of existing of a being capable of reflecting, of changing its mind, and of justifying its conduct (Ricoeur 1991: 135).

Ricoeur is critical of Anscombe's treatment of actions, intentions, causes and events in *Intention* because she prioritizes the question 'why?': "Employing the criterion of the question 'why?' and of the acceptable answers to this question privileges the objective side of action, namely the result obtained, which is itself an event. As Anscombe states ... , I do what happens. The obliteration of the agent of action is further reinforced by accentuating the objective side of the reason for acting" (Ricoeur 1992: 70). Ricoeur is also critical of Anscombe's dualistic approach to the relationship between intentional action and knowledge: "On the one hand, she staunchly asserts that intentional action is the object of description [i.e., known by observation]; ... On the other hand, intentional actions constitute a subclass of things known without observation ... This notion of nonobservational [or practical] knowledge ... incontestably brings Anscombe's position closer to that of the supporters of the duality of language games" (Ricoeur 1992: 69-70). Anscombe's stress on the relationship between descriptions and truth claims is also problematic for Ricoeur, and he uses this problem to advance further his notion of attestation:

In my opinion, it is the exclusive concern with the truth of the description that tends to overshadow any interest in assigning the action to its agent. Assigning the action to an agent poses a problem of veracity and no longer a problem of truth, in the descriptive sense of the term ... the relation of means to end and the logic that belongs to it does not exhaust the meaning of the intention with which one acts. The latter, it seems to me, implies in addition the pure act of intending which has been cast out of first place ... It is perhaps due to the very style of analytic philosophy and to its almost exclusive preoccupation with description, as well as with the truth claims appropriate to description, that it ignores problems pertaining to attestation ... Tests of sincerity ... are not verifications but trials that finally end in an act of trust ... Anscombe herself recognizes that there is a moment when

only the person concerned can say what his or her intention is. But this saying is on the order of an avowal ... when communicated, the avowal is or is not accepted. But it is never the equivalent of a public description; it is a shared confession. What Anscombe calls knowledge without observation belongs, it seems to me -- and this in opposition to the author's will -- to the order of attestation ... attestation escapes sight, if sight is expressed in propositions held to be true or false. Veracity is not truth, in the sense of the adequation of knowledge to its object. Because of the inability to thematize this attestation, Anscombe's conceptual analysis is unable to account in any detail for the third use of the term 'intention': the intention to ... Anscombe confines herself to stating that the criterion for the question 'why?' and for the corresponding answers also holds for the intention of a proposed action. This amounts to saying that the mark of the future ... is not a distinguishing factor; only the explanation by reasons counts ... what is eliminated is the one who, in intending, places this intention on the path of promising, even if the firm intention lacks the conventional and public framework of explicit promising (Ricoeur 1992: 72-73).

In the fourth study, *From Action to the Agent*, Ricoeur attempts to overcome the "major obstacle" created by action theory, namely, "the attraction exerted on the logical analysis of action sentences by an ontology of events which blocks the return path toward the question 'who?'" (Ricoeur 1992: 88). Again, Ricoeur's chief concern is imputability and the fact that personal responsibility for an action cannot be adequately linked with descriptions or explanations of that action unless the question 'who?' has been fully answered. As already indicated, the movement Ricoeur attempts to facilitate is away from a distinction between events and toward the "[determination of] what specifies the self, implied in the power-to-do, at the junction of acting and the agent" (Ricoeur 1992: 113). Ricoeur acknowledges that "with the notion of power returns the old idea of efficient causality which the Galilean revolution had cast out of physics" (Ricoeur 1992: 101). He also acknowledges that a link between "power-to-do" and a restoration of efficient causality may also require the appeal to "something as a primitive datum (*fait primitif*)," but he "[opposes] the modest avowal of a few primitive data, inherent in the construction of a fundamental anthropology to the Promethean ambition of an ultimate foundation based

upon the model of the Cartesian cogito and its successively more radical formulations” (Ricoeur 1992: 101-102).

Ricoeur’s solution seems to be another application of the circle of understanding. In other words, he does not take any primitive datum as a given, but only as a type of hunch that is subjected to “a labor of thinking, ... a dialectic ... a conflict of arguments ... developed rigorously” (Ricoeur 1992: 102). In this case, the first stage of the dialectic is “a *disjunctive* stage, at the end of which we observe the necessarily antagonistic character of the original causality of the agent in relation to the other modes of causality” (Ricoeur 1992: 102). As Ricoeur reminds us, this antagonism was already recognized by Kant in *The Critique of Pure Reason*: “ ‘Causality in accordance with the law of nature is not the only causality from which the appearances of the world can one and all be derived. To explain these appearances it is necessary to assume that there is also another causality, that of freedom’ ” (Ricoeur 1992: 102). The second stage of the dialectic is “a *conjunctive* stage, at the end of which we recognize the necessity to coordinate in a synergistic way the original causality of the agent with the other forms of causality. Only then will the primitive datum of what we must call not simply the power to do but *initiative* [emphasis mine], in the strong sense of the word, be recognized” (Ricoeur 1992: 102).

Within attempts to link personal responsibility and explanations of actions, defining and limiting initiative or the power to do is no small feat, as the controversy surrounding “terminal sedation” has revealed. In Ricoeur’s discussion of “the open conflict between the foreseeable and desired intentional effects of an action and ... its ‘side effects’ ” in *The Just*, he gives this diagnosis of the problem:

The problem stems, in effect, from the finite character of the subjective will. This finitude consists in the fact that the subjective will can become action only by exteriorizing itself, thus placing itself under the law of external necessity ... Whence the moral dilemma: on the one hand, one would like to impute to the agent only what follows from an intention that bears the mark of the goal in mind. This intimate connection authorizes extending the predicate ‘mine’ from the intention to the results which, in a way, stem from

it and thus continue to *belong* to it. On the other hand, *my* effects do not exhaust what follows as a consequence of the action. Thanks to the connection of willed effects with external necessity, action has consequences that we can say escape the circumspection of the intention ... [However, the question remains:] How far does the 'my' character of 'consequences' extend, and where does the 'alien' begin? (Ricoeur 2000: 32-33).

As Ricoeur says in *Oneself as Another*, "separating what belongs to the agent from what belongs to the chains of external causality proves to be a highly complex operation. It is necessary to separate the intentional segments ... from those segments which could be called systemic, to the extent that they express the structure of dynamic physical systems" (Ricoeur 1992: 106). Kant accomplished this separation in his distinction between "two types of beginning: one which would be the beginning of the world, the other which is a beginning in the midst of the world ... [i.e.,] the beginning related to freedom ... [or] an absolute beginning with respect to a particular series of events" (Ricoeur 1992: 105). For Ricoeur, a beginning in the world has two essential characteristics. Firstly, "determining the end point where the responsibility of an agent ends is a matter of decision and not some fact to be established" (Ricoeur 1992: 107). Secondly, "this notion implies a multiplicity of agents and of beginnings ... which can be identified only in terms of the distinct series of actions assigned to each one. Now the conflictual structure of this assigning cannot be eliminated" (Ricoeur 1992: 107). It is the notion of a beginning in the world that underlies Ricoeur's notion of **initiative** -- "an *intervention* of the agent of action in the course of the world, an intervention which effectively causes changes in the world" (Ricoeur 1992: 109). Constraint related to the clash of causalities is certainly a dimension of action as initiative: "If, at the present stage of our investigation, we can represent this grasp of the human agent on things, within the course of the world, as Kant himself says, **only as a conjunction between several sorts of causality** [emphasis mine], this must be frankly recognized as a constraint belonging to the structure of action as initiative" (Ricoeur 1992: 109). Nonetheless, the notion of action as initiative provides an important way to overcome the

aforementioned limitations of action theory, and to begin the development of a view of imputability that upholds the ipseity of the self.

In the fifth and sixth studies, Ricoeur compares and integrates views of personal identity that reify or objectify identity as sameness (i.e., idem-identity), and reflective approaches that support identity as ever-changing selfhood (i.e., ipse-identity as narrative identity in this case). Among the examples of the former in the fifth study, we find the position of Locke and earlier views that Ricoeur himself held. Reminding us of Locke's, *An Essay Concerning Human Understanding*, Ricoeur explains that within this text, "Locke introduces the singular idea of the identity of a thing with itself ... It is indeed by comparing a thing with itself in different times that we form the ideas of identity and diversity; 'When therefore we demand whether anything be the same or no, it refers always to something that existed such a time in such a place, which it was certain at that instant, was the same with itself'" (Ricoeur 1992: 125). From Locke, we have also inherited both the dichotomy of mental and corporeal identity, and the prioritization of structural criteria of sameness: "The tradition has credited [Locke] with inventing a *criterion* of identity, namely, mental identity, to which may henceforth be opposed the criterion of corporeal identity ... governed by the permanence of an organization observable from outside" (Ricoeur 1992: 126).

Ricoeur looks back at his work in *The Voluntary and the Involuntary* (Ricoeur 1966) and in *Fallible Man* in order to specify how his own views supported the notion of identity as sameness as it pertains to the notion of character. Ricoeur defines "character" as "the set of distinctive marks which permit the reidentification of a human individual as being the same [e.g., the "marks" of "numerical identity and qualitative identity, uninterrupted continuity and permanence in time"]" (Ricoeur 1992: 119). In what follows, Ricoeur recalls his earlier positions on the immutability of "character" and his awareness of the revision being articulated in *Oneself as Another*, namely, his new view of character as the primary locus for the dialectic between identity as sameness and identity as selfhood:

In the days when I was writing *The Voluntary and the Involuntary*, I placed character under the heading of ‘absolute involuntary’ in opposition to the ‘relative involuntary’ of motives in the area of voluntary decision and to powers in that of voluntary motion. As an absolute involuntary, I assigned [character], along with the unconscious and with being alive, symbolized by birth, to that level of our existence which we cannot change but to which we must consent. And even then, I underscored the immutable nature of character as a finite, unchosen perspective through which we accede to values and to the use of our powers. Ten years later, I returned to this fascinating theme of character in *Fallible Man*, but in a somewhat different context. This time, it was no longer in relation to the polarity of the voluntary and the involuntary but in connection with the Pascalian theme of the ‘disproportion’, the noncoincidence between the finite and the infinite. Here, character appeared to me as my manner of existing in accordance with a finite perspective affecting my opening to the world of things, ideas values, and persons. In a certain sense, I am still pursuing the investigation in this direction. Character still appears to me today as the other pole in a fundamental, existential polarity. But instead of conceiving of character, in a framework of perspective and of opening, as the finite pole of existence, I am interpreting it here in terms of its place in the problematic of identity. This shift of emphasis has as its principal advantage the fact of putting into question the immutable status of character, taken for granted in the earlier analyses (Ricoeur 1992: 119-120).

As part of this inquiry, Ricoeur asks a question that permits him to retain important elements of identity as sameness (in this case, permanence in time), but at the same time, to anticipate how such elements could be developed to support ipse identity. He asks: “Is there a form of permanence in time which is not simply the schema of the category of substance? ... [or] “Is there a form of permanence in time which can be connected to the question ‘who?’ inasmuch as it is irreducible to any question of ‘what?’” (Ricoeur 1992: 118). Ricoeur answers his own questions in this way: “When we speak of ourselves, we in fact have available to us two models of permanence in time which can be summed up in two expressions that are at once descriptive and emblematic: *character* and *keeping one’s word* [or promising]” (Ricoeur 1992: 118). Although in both of these expressions, Ricoeur explains, “we easily recognize a permanence which we say belongs to us” (Ricoeur 1992: 118), there is an important difference between the two: “Keeping one’s word expresses a

self-constancy which cannot be inscribed, as character was, within the dimension of something in general but solely within the dimension of ‘who?’ Here, too, common usage is a good guide. The perseverance of character is one thing, the perseverance of faithfulness to a word that has been given is something else again” (Ricoeur 1992: 123). In other words, in our fidelity to a promise, we express self-constancy amidst change: “... counting on someone is both relying on the stability of a character and expecting that the other will keep his or her word, regardless of the changes that may affect the lasting dispositions by which that person is recognized” (Ricoeur 1992: 148). As we recall from the section on action, Ricoeur integrates self-constancy or sameness and the self’s capacity to effect change by means of the notion of initiative. Here too in an attempt to integrate objective and reflective approaches to identity, Ricoeur stresses a special form of initiative seemingly -- the act of promising.

We recall that at the end of the section on describing action (i.e., the fourth study), Ricoeur resolves the problems created by pure reflection on action (i.e., action theory) by means of his dynamic notion of action as initiative. At the end of the fifth study, as above, we see that Ricoeur seemingly extends his notion of initiative into the realm of identity with the example of the act of promising, an act that will assume more importance in relation to the ethics circle. However, in the sixth study, as Ricoeur ends the section on identity, he extends the notion of initiative in another way. As he explains, “... narrative [grants] to the character an initiative -- that is, the power to begin a series of events ... [in fact, narrative has] the power of determining the beginning, the middle, and the end of an action” (Ricoeur 1992: 147). Certainly, this is not an entirely new idea in Ricoeur’s work. We remember that in *The Symbolism of Evil*, one of Ricoeur’s central arguments is that myths, as traditional narratives, permitted people to determine the beginning and the end of the world, and of the entry of evil into the world. However, in the sixth study of *Oneself as Another*, Ricoeur harnesses this capacity of narrative in order to place it as a mediator between action theory and the ethical realm, or between describing and prescribing. In other words, narrative itself and narrative theory (i.e., “the theory of plot and of character”)

can create “a meaningful transition between the ascription of action to an agent who has the capacity to act and its imputation to an agent who has the obligation to act” (Ricoeur 1992: 152). Indeed, “Literature is a vast laboratory in which we experiment with estimations, evaluations, and judgments of approval and condemnation through which narrativity serves as a propaedeutic to ethics” (Ricoeur 1992: 115).

From the first volume of *Time and Narrative*, we recall Ricoeur’s notion of emplotment, that is, the dynamic mediating or configuring operation of a plot (Ricoeur 1984: 65). Ricoeur explains that emplotment “is a mediation between the individual events or incidents and a story taken as a whole ... it draws a meaningful story from a diversity of events or incidents” (Ricoeur 1984: 65). Moreover, “emplotment brings together factors as heterogeneous as agents, goals, means, interactions, circumstances, unexpected results” (Ricoeur 1984: 65). Emplotment also mediates time (Ricoeur 1984: 66) insofar as it creates beginnings, middles and endings. Ricoeur’s argument in *Oneself as Another* is that just as emplotment functions as a mediator in these ways within narrative, narrative itself, as a process and/or a product of this mediation, can mediate character involved in the dialectic between idem-identity and ipse-identity (Ricoeur 1992: 140-141). For example, “the loss of the identity of [a] character [can correspond to] the loss of [a] configuration of [a] narrative,” thus enabling an exploration of new relationships between idem-identity and ipse-identity (Ricoeur 1992: 149). Through emplotment, events become personal; in other words, “by entering into the movement of a narrative which relates a character to a plot, the event loses its impersonal neutrality” (Ricoeur 1992: 142: #1). In the “story chain,” answers to the question ‘who?’ can take centre stage, and contextual issues such as motives and frame of mind can be developed more fully than is possible within action theory (Ricoeur 1992: 146). We recall Sulmasy’s work and his reliance upon the notion of acts as events from the work of Davidson and others. In response to Davidson and Parfit’s notion of event, Ricoeur establishes a dynamic relationship between acts as events and narratives:

I am not contesting what these theories have established, namely, that, as occurrences, events have the right to an ontological status at least equal to that of substance, nor do I contest that they can be the object of an impersonal description. [However,] I am saying that, by entering into the movement of a narrative which relates a character to a plot, the event loses its impersonal neutrality. By the same token, the narrative status conferred upon the event averts the drift of the notion of event which would make it difficult, if not impossible, to take the agent into account in the description of the action (Ricoeur 1992: 142: #1).

Between describing and prescribing, narrative can make helpful connections between actions or between units of praxis that can then be subject to analysis within the ethical realm. For example, narrative can investigate and reveal practices such as “professions, the arts and games” (Ricoeur 1992: 153). Narrative can also explore second-order “nesting relations” or non-linear relations such as those characteristic of the work of a farmer: “The work of a farmer, for instance, includes sub-ordinate actions, such as plowing, planting, harvesting, and so on in descending order, until one reaches basic actions such as pulling or pushing” (Ricoeur 1992: 154). On the “intermediate level between practices -- profession, games, arts -- and the global project of an existence[,]” narrative can serve to illuminate life plans; here it can track the “back-and-forth movement between more or less distant ideals,” and “the weighing of advantages and disadvantages of the choice of a particular life plan on the level of practices” (Ricoeur 1992: 157-158). Again, narrative can help us with beginnings and endings: “... with the help of the narrative beginnings ... we stabilize the real beginnings formed by the initiatives ... we take. And we also have the experience, however incomplete, of what is meant by ending a course of action, a slice of life. Literature helps us in a sense to fix the outline of these provisional ends” (Ricoeur 1992: 162). Also, in the “intertwining” of different types of narratives and life histories, we can discover helpful “model[s] of intelligibility” and “model[s] of interaction” (Ricoeur 1992: 162). Above and beyond these general examples, narrative can explore and expose extremely important ethical issues. For example, narrative can effectively reveal “humans as acting and suffering,” or participating in the

“essential dissymmetry between the one who acts and the one who undergoes, culminating in the violence of the powerful agent” (Ricoeur 1992: 144-145). As *The Symbolism of Evil* demonstrated so well, “the thought experiments we conduct in the great laboratory of the imaginary [e.g., through myths], are also explorations in the realm of good and evil” (Ricoeur 1992: 164). Most importantly, narrative can close the gap between narrative identity and moral identity, for instance, in the context of multiple and perhaps, conflicted moral commitments. Here again, the initiative of promising is important. As the sixth study ends, Ricoeur asks the key question that has already been asked: “ ‘Who am I, so inconstant, that *notwithstanding* you count on me?’ ” (Ricoeur 1992). The ‘who?’ has already been revealed as a dialectic between idem-identity (sameness) and ipse-identity (selfhood). In the next section, we will explore the dimensions of promising within the “dialectic complementary to that of selfhood and sameness, namely, the dialectic of *self* and the *other than self*” (Ricoeur 1992: 3).

From his perspective in *Le Juste 2*, where Ricoeur looks back at “la petite éthique,” comprised by studies seven-nine in *Oneself as Another*, he refers to it as “le cercle le plus vaste de mon exploration” (Ricoeur 2001a: 8). There are three “moments” in this ethics circle: ethics, morality and practical wisdom or conviction. As we will see in our exploration of *Les trois niveaux du jugement médical* in *Le Juste 2*, the order of the “moments” depends on contexts and contents (Ricoeur 2001b). As was the case in all the other parts of Ricoeur’s work consulted thus far, there is a dialectic within this circle between pure universalist reflection (i.e., explanation) and hermeneutic reflection (i.e., understanding), or between the universal and the historic, to use Ricoeur’s terminology in *Le Juste 2* (Ricoeur 2001c). Regarding the “moment” of ethics, Ricoeur says, “Let us define ‘ethical intention’ as *aiming at the ‘good life’ with and for others, in just institutions*” (Ricoeur 1992: 172). If we take the first part -- *the ‘good life’*, here Ricoeur is making reference to “what Aristotle called ‘living well’” -- “it is the very object of the ethical aim. Whatever the image that each of us has of a full life, this apex is the ultimate end of our action” (Ricoeur 1992: 172). From an Aristotelian perspective, “it can only be a

question of the good for us” (Ricoeur 1992: 172). Indeed, Ricoeur says, “With respect to its content, the ‘good life’ is, for each of us, the nebulous of ideals and dreams of achievements with regard to which a life is held to be more or less fulfilled or unfulfilled” (Ricoeur 1992: 179). By “life,” Ricoeur does not mean solely biological life, but rather, the “[designation of] the person as a whole, in opposition to fragmented practices” (Ricoeur 1992: 177). Moreover, “living well” or “the good life” refers to “an accomplished life” (Ricoeur 1992: 170): “Taken as a singular term, the word ‘life’ receives the appreciative, evaluative dimension of *ergon* which is used to qualify man as such. This *ergon* is to life, taken in its entirety, as the standard of excellence is to a particular practice” (Ricoeur 1992: 177-178).

Once again, Ricoeur focuses on the intermediary role of narrative. Contained within “the good life” is the notion of “the narrative unity of a life” comprised of “the connection[s] that narratives [make] between estimations applied to actions and the evaluations of persons themselves”; in other words, “the notion of narrative unity places its accent on the organization [and assessment] of intention, causes, and chance that we find in all stories” (Ricoeur 1992: 178). For example, narratives track relationships between “*internal goods* immanent to a practice,” and thus permit us to analyze the connections between these goods, and overall, to understand “the teleology immanent to the practice” (Ricoeur 1992: 176). Similarly, “in the relation between practice and life plan the secret of the nesting of finalities, one inside the other, is to be found” (Ricoeur 1992: 178). Here again, such secrets must always be interpreted:

It is in unending work of interpretation applied to action and to oneself that we pursue the search for adequation between what seems to us to be best with regard to our life as a whole and the preferential choices that govern our practices. There are several ways of introducing the hermeneutical point of view at this final stage. First, between our aim of a ‘good life’ and our particular choices a sort of hermeneutical circle is traced by virtue of the back-and-forth motion between the idea of the ‘good life’ and the most important decisions of our existence (career, loves, leisure, etc.). This can be likened to a text in which the whole and the part are to be understood

each in terms of the other. Next, the idea of interpretation adds to the simple idea of meaning that of a meaning for someone. For the agent, interpreting the text of an action is interpreting himself or herself ... our concept of the self is greatly enriched by this relation between interpretation of the text of action and self-interpretation. On the ethical plane, self-interpretation becomes self-esteem (Ricoeur 1992: 179).

We aim at the 'good life' **with and for others**. This "second component of the ethical aim," which Ricoeur calls "solicitude," calls attention to the dialogical structure of self-esteem (Ricoeur 1992: 180) or the fact that for Ricoeur, "self-esteem assumes its complete sense only at the end of the itinerary of meaning traced out by the three components of the ethical aim" (Ricoeur 1992: 172). At this second level, the relationship between objective and subjective elements or between the universal and historic becomes quite complex because although the universal hope to live well defines the teleological character of the ethical aim in general, particular historical contexts define how the aim is lived out in private and common life (Ricoeur 2001c: 268-270). Again, Ricoeur stresses the dialectical relationship between idem-identity and ipse-identity and consequently, his view that self does not entail possession. In other words, "it is not by chance that we have continually been speaking of esteem of the self and not esteem of myself. *To say self is not to say myself*" (Ricoeur 1992: 180). To say self is also to emphasize capabilities of the self and their inter-dependence on the capabilities of others: "If one asks by what right the self is declared to be worthy of esteem, it must be answered that it is not principally by reason of its accomplishments but fundamentally by reason of its capacities ... The discourse of 'I can' is, to be sure, a discourse in I. But the main emphasis is to be placed on the verb, on being-able-to-do, to which corresponds on the ethical plane, being-able-to-judge. The question is then whether the mediation of the other is not required along the route from capacity to realization" (Ricoeur 1992: 181).

As an example of the way in which the mediation of others and their capabilities is required in the fulfillment of the ethical aim, Ricoeur discusses friendship. While "friendship ... works toward establishing the conditions for the realization of life,

considered in its *intrinsic goodness and basic pleasure*" (Ricoeur 1992: 186), the fact is that "*lack dwells at the heart of the most solid friendship*" (Ricoeur 1992: 187). In other words, "The friend, inasmuch as he is that other self, has the role of providing what one is incapable of procuring by oneself" (Ricoeur 1992: 185). Beyond friendship, the intermingling of capabilities is also present in the situation of suffering: "Suffering is not defined solely by physical pain, nor even by mental pain, but by the reduction, even the destruction, of the capacity for acting, of being-able-to-act, experienced as a violation of self-integrity ... the other appears to be reduced to the sole condition of *receiving*" (Ricoeur 1992: 190). In this situation, the ethical aim of living the good life **with and for others** is tested: "In true sympathy, the self, whose power of acting is at the start greater than that of its other, finds itself affected by all that the suffering other offers to it in return. For from the suffering other there comes a giving that is no longer drawn from the power of acting and existing but precisely from weakness itself. This is perhaps the supreme test of solicitude" (Ricoeur 1992: 191).

At the third level of the ethical aim, living well with and for others is extended to encompass **institutions** and **justice**. In other words, "living well is not limited to interpersonal relations but extends to the life of *institutions*," and "justice presents ethical features that are not contained in solicitude, essentially a requirement of *equality*" (Ricoeur 1992: 194). By "institution," Ricoeur means "the structure of *living together* as this belongs to a historical community -- people, nation, region, and so forth -- a structure irreducible to interpersonal relations and yet bound up with these ... What fundamentally characterizes the idea of institution is the bond of common mores and not that of constraining rules" (Ricoeur 1992: 194). Here again, the universal and the historical are inextricably mixed because although the wish or the hope to live together is a universal hope, the actual living out of that hope is dependent upon the cooperation of many contextual elements, not the least of which is the resolution of this fundamental question: What is a just institution? (Ricoeur 2001c: 270). For Ricoeur, the just has two faces: "The *just* ... faces in two directions: toward the *good*, with respect to which it marks the

extension of interpersonal relationships to institutions; and toward the *legal*, the judicial system conferring upon the law coherence and the right of constraint. In this study we shall remain exclusively on the first side of the issue” (Ricoeur 1992: 197). In this context, power is defined as a particular type of initiative related to justice: “However illusive power may be in its fundamental structure, ... it is **power, as wanting to live and act together** [emphasis mine], that brings to the ethical aim the point of application of its indispensable third dimension: *justice*” (Ricoeur 1992: 197). In the context of this type of power and following Aristotle, Ricoeur stresses proportional as opposed to arithmetic equality:

On the one hand, Aristotle finds in the equal the character of intermediateness between two extremes, which he carries from virtue to virtue ... The unjust man is one who takes too much in terms of advantages ... or not enough in terms of burdens. On the other hand, [Aristotle] carefully marks out the type of intermediateness, namely *proportional equality*, that defines distributive justice. Arithmetic equality is not suitable, he holds, because of the nature of the persons and of the things shared. For one thing, in a society of antiquity, persons have unequal shares, related to unequal merits, which ... different constitutions define in different ways; for another thing, the shares are themselves unequal outside of justice -- one might say, susceptible to brute division, as in war or pillage. Distributive justice then consists in equalizing two relations between, in each case, a person and a merit. It therefore rests on a proportional relation with four terms: two persons and two shares. Aristotle thus posed the formidable problem ... of justifying a certain idea of equality without crediting egalitarianism ... *Equality ... is to life in institutions what solicitude is to interpersonal relations* ... the sense of justice presupposes [solicitude], to the extent that it holds persons to be irreplaceable. Justice in turn adds to solicitude, to the extent that the field of application of equality is all of humanity (Ricoeur 1992: 201-202).

In his discussion of the relationship between the “moments” of ethics and morality, Ricoeur says, “I reserve the term ‘ethics’ for the *aim* of an accomplished life and the term ‘morality’ for the articulation of this aim in *norms* characterized at once by the claim to universality and by an effect of constraint” (Ricoeur 1992: 170). In other words, “morality is held to constitute only a limited, although legitimate and even indispensable,

actualization of the ethical aim, and ethics in this sense would then encompass morality” (Ricoeur 1992: 170). There is a need for “the ethical aim to pass through the sieve of the norm” (Ricoeur 1992: 170) for two overriding reasons. The first is the reality of conflict and violence within society, and the need for credible arbitration of disputes arising from vastly different expressions of the hope to live well (Ricoeur 2001c: 272). Underlying this first reason is the reality of fallibility and by implication, the limitations of our freedom. As Ricoeur explains, “It nevertheless remains that the propensity for evil *affects* the use of freedom, the capacity for acting out of duty -- in short, the capacity for actually being autonomous. This is the true problem for us” (Ricoeur 1992: 216).

In view of these problems, “the norm puts the wish to live well to the test” (Ricoeur 1992: 204). The test can be articulated in the form of this question: “Is the maxim of my action universalizable?” (Ricoeur 1992: 207). As Ricoeur recalls, Kant’s formulation of this inquiry involves the three forms of the categorical imperative. The first formulation is ““Act only on that maxim through which you can at the same time will that it should become a universal law”” (Ricoeur 1992: 208), that is, “... a universal law of nature” [translation mine] (Ricoeur 2001c: 273). Kant’s second formulation is ““Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end”” (Ricoeur 1992: 222: #33). Thirdly, “Act in such a way that in the empire of ends [i.e., within the “rational horizon of a state of law” [translation mine] (Ricoeur 2001c: 274)], you are able to behave at one and the same time as subject and as legislator” [translation mine] (Ricoeur 2001c: 273). Fundamentally, these formulations are problematic for Ricoeur because they create a dichotomy between duty and human inclinations, and “inclination is then defined by its power of disobedience” (Ricoeur 1992: 209). Although these formulations certainly qualify as validation tests of the universality of proposed maxims, Ricoeur reminds us that Kant was only interested in the internal logical contradiction that a proposed exception to a rule might represent (Ricoeur 2001c: 273). The first formulation is problematic because it parallels moral and physical laws and in so doing, it creates a form of universal

determinism (Ricoeur 2001c: 273). In the second formulation, “humanity” itself is an abstract universal without content, and “humanity” is pitted against individuals as ends in themselves (Ricoeur 1992: 222). Finally, the third formulation is clearly a regulatory idea, the accomplishment of which depends upon concrete political realities within historical societies (Ricoeur 2001c: 274). In sum, Kant’s formulations are problematic for Ricoeur because they represent only pure reflection on universality, or universality as an object external to the dialectic among selves.

In *Oneself as Another*, Ricoeur attempts to overcome the problem involved in the second formulation by suggesting that “the idea of persons as ends in themselves ... demands that one take into account the plurality [or diversity] of persons” (Ricoeur 1992: 222). Diversity can be adequately taken into account, he suggests, not by an abstract notion of “humanity,” but rather, by the living out of a norm of reciprocity among persons, for instance, that introduced by the Golden Rule (i.e., ““ Treat others as you would like them to treat you””) (Ricoeur 1992: 219). As Ricoeur concludes *L’universel et l’historique*, he gives more indications of how he views the relationship between universals and particulars, and how a norm of reciprocity could be lived out. Basically, although alleged or potential universals can have an important regulatory and explanatory role, they cannot become genuine universals for all without mutual understanding:

(1) L’universalisme peut être tenu comme une idée régulatrice permettant de reconnaître comme appartenant au domaine de la moralité des attitudes hétérogènes susceptibles de se reconnaître comme cofondatrices de l’espace commun déployé par la volonté de vivre ensemble.

(2) Nulle conviction morale n’aurait de force si elle n’élevait une prétention à l’universalité. Mais on doit se borner à donner le sens d’universel présumé à ce qui se donne d’abord comme universel prétendu ; entendons par universel présumé la prétention à l’universalité offerte à la discussion publique en attente de la reconnaissance par tous. Dans cet échange, chaque protagoniste propose un universel prétendu ou inchoatif en quête de reconnaissance ...

(3) S'il est vrai que l'humanité n'existe que dans des cultures multiples comme le sont les langues -- en quoi consiste fondamentalement la thèse des contradicteurs communautaristes de Rawls et Habermas -- les identités culturelles présumées par ces auteurs ne sont protégées contre le retour de l'intolérance et du fanatisme que par un travail de compréhension mutuelle pour lequel la traduction d'une langue dans une autre constitue un remarquable modèle.

On pourrait rassembler ces trois conclusions sous la déclaration suivante : l'universalisme et le contextualisme ne s'opposent pas au même plan mais relève de deux niveaux différents de la moralité, celui de l'obligation présumée universelle et celui de la sagesse pratique qui prend en charge la diversité des héritages culturels. Il ne serait pas inexact de dire que la transition du plan universel de l'obligation au plan historique de l'application revient à recourir aux ressources de l'éthique du bien vivre ... (Ricoeur 2001c : 284-285).

In *Les trois niveaux du jugement médical*, Ricoeur defines practical wisdom (i.e., prudence or phronesis) as “the faculty of judgment ... applied to singular situations ... The judgments rendered in these situations exemplify a practical wisdom of a nature more or less intuitive as a consequence of teaching and experience [translation mine]” (Ricoeur 2001b: 227). The context of and the need for phronesis is quite complex as Ricoeur presents it in *Oneself as Another*. Most importantly, “practical determination cannot be reduced to a simple modality of choice and deliberation along the lines described by Aristotle and Kant” (Ricoeur 1992: 242). In relation to the previous stage of morality, for example, even the clearest principles require instruction by tragedy -- by “the mysterious depths of motivations that no analysis of moral intention can plumb,” (Ricoeur 1992: 242), by “the narrowness of the angle of commitment of each [human being]” (Ricoeur 1992: 243), and by the “all too human character of every institution” (Ricoeur 1992: 245). There is also the ever-present reality of conflicts of all kinds: For instance, “medical as well as juridical practice never ceases to place moral judgment in contact with situations in which the norm and the person cannot be satisfied at the same time” [translation mine] (Ricoeur 2001c: 279). Within the larger public arena, there is ongoing conflict regarding “the priorities to be established among the primary goods” (Ricoeur 1992: 257). Power itself is

another problematic factor, and Ricoeur discusses the conflict between the need for power-in-common in the Aristotelian sense, and the reality of domination or political power: “we can define *the political* as the set of organized practices relating to the distribution of political power, better termed domination. These practices concern the vertical relation between the governing and the governed ...” (Ricoeur 1992: 257).

As the previous discussion of the categorical imperative revealed, although moral principles are important, they themselves create problems that require recourse to practical wisdom. For instance, the use of abstract ideals such as “humanity,” “autonomy,” and “justice” can conceal or obliterate the reality of diversity and conflicts within human communities. At the most foundational level, as Ricoeur indicates, “the principles of justification of a moral or legal rule leave intact the problems of application ... This notion of application comes from another field than the one of morality or of law, that is, the domain of interpretation of texts ... the problem of application of universal norms brings into play the historical and cultural dimension of mediating traditions in the process of application” [translation mine] (Ricoeur 2001c: 279-280). In other words, practical wisdom or *phronesis* functions as a mediator: practical wisdom is entrusted with the task of “the practical mediation capable of surmounting the antinomy” between “the *universalist* claim attached to the rules claiming to belong to the principle of morality and the recognition of positive values belonging to the *historical and communitarian contexts* of the realization of these same rules” (Ricoeur 1992: 274). Again, Ricoeur’s goal is not to dismiss formalism. In relation to Kantian formalism, for example, Ricoeur’s goal is “not to refute it but to bare the universalist claim that forms its hard core” (Ricoeur 1992: 274). Ricoeur’s examination of the problems involved in the categorical imperative would constitute one example of his attempt to fulfil that goal.

In response to this type of problem and as a way of implementing the mediation role of practical wisdom, Ricoeur recommends a thorough revision of Kantian formalism in three main stages. The first stage involves the “[questioning of] the order or priority

granted by Kant to the principle of autonomy in relation to respect applied to the plurality of persons and to the principle of justice relevant to the plane of institutions” (Ricoeur 1992: 274). An important part of this questioning or reprioritizing is acknowledgement of the fact that “an autonomy that is of a piece with the rule of justice and the rule of reciprocity can no longer be a *self-sufficient* autonomy” (Ricoeur 1992: 275). In other words, Ricoeur is calling for a “[reworking of] the opposition between autonomy and heteronomy” that takes into consideration all the forms of ‘otherness’ that have been included thus far, for instance, the otherness of the body, the otherness of evil, the otherness of selfhood, the otherness of other people, etc. (Ricoeur 1992: 275). The second stage involves “[questioning] the restrictive use Kant makes of the *criterion of universalization*” (i.e., the test of internal coherence) (Ricoeur 1992: 276), and combining the need for coherence between moral principles with the need for productivity of thought arising from concrete situations. In other words, “It remains that it is the plea for *universality* that gives full weight to the problems tied to the *historicity* of concrete morality” (Ricoeur 1992: 280). Thirdly, Ricoeur calls for discussion that “will not simply involve an attempt to found the requirement of universalization along a regressive path [i.e., of justification and ultimate grounding], but will also involve an examination along a progressive path on the level of actual practice” (Ricoeur 1992: 283). Again, Ricoeur emphasizes the role of “potential” or “inchoate” universals:

One must ... assume the following paradox: on the one hand, one must maintain the universal claim attached to a few values where the universal and the historical intersect, and on the other hand, one must submit this claim to discussion, not on a formal level, but on the level of the convictions incorporated in concrete forms of life. Nothing can result from this discussion unless every party recognizes that other potential universals are contained in so-called exotic cultures. The path of eventual consensus can emerge only from mutual recognition on the level of acceptability, that is, by admitting a possible truth, admitting proposals of meaning that are at first foreign to us. This notion of universals in context or of potential or inchoate universals is, in my opinion, the notion that best accounts for the reflective equilibrium that we are seeking between universality and historicity (Ricoeur 1992: 289).

As an example of Ricoeur's attempt to achieve this type of reflective equilibrium, we recall his consideration of the 'end of life' problem of telling the truth to the dying. He describes the problem in this way: "A breach, indeed, appears to open between two extreme attitudes. Either that of telling the truth without taking into account the capacity of the dying to receive it, out of sheer respect for the law, assumed to abide no exceptions; or that of knowingly lying, out of fear, one believes, of weakening the forces in the patient struggling against death and of transforming the agony of a loved one into torture" (Ricoeur 1992: 269). Ricoeur rejects both extremes, and again, he substitutes his notion of promising or fidelity-in-relationship for the autonomous and ahistorical exercising of the abstract universalization criterion of always telling the truth no matter what the cost. Ricoeur says, "If fidelity consists in responding to the expectation of the other who is counting on me, I must take this expectation as the measure for applying the rule [i.e., in this case, the duty of truth-telling]" (Ricoeur 1992: 268). In keeping with his notion of the need for productivity of thought along the progressive path of actual practice, Ricoeur suggests that "practical wisdom consists in inventing conduct that will best satisfy the exception required by solicitude, by betraying the rule to the smallest extent possible" (Ricoeur 1992: 269). He also recommends "a search for the [Aristotelian] 'just mean'" (Ricoeur 1992: 273). For example, Ricoeur says, "What practical wisdom most requires in these ambiguous cases is a meditation on the relation between happiness and suffering" (Ricoeur 1992: 269). In the case of telling the truth to the dying, the result of Ricoeur's productivity of thought and application of the 'just mean' is as follows:

It is false to say of this meditation on the relation between suffering and happiness that the concern, at any price, not to 'make patients suffer' at the end of their life leads to establishing as a rule the duty to lie to the dying. Never can practical wisdom consent to transforming into a rule the exception to the rule. Even less should one legislate in an area where the responsibility for difficult choices cannot be made easier by laws. In such cases, one must have compassion for those who are morally or physically too weak to hear the truth. In certain other cases, one must know how to communicate this truth: it is one thing to name an illness, it is another to reveal the degree of seriousness and the slight chance of survival, and yet

another to wield the clinical truth as a death sentence. But there are also situations, more numerous than is thought, where telling the truth may become the opportunity for the exchange of giving and receiving under the sign of death accepted (Ricoeur 1992: 269-270).

In 1992, Ricoeur gave a convocation address at McGill University that was published the following year entitled, *Responsibility and Fragility: An Ethical Reflection* (Ricoeur 1993). In this work, he contrasts two types of responsibility that form a meaningful reference point for his reflections in *Les trois niveaux du jugement medical* (Ricoeur 2001b). On the one hand, we have the “more traditional analysis of responsibility as being able to designate oneself the author of one’s own acts” (Ricoeur 1993: 9). As a type of ascription, this analysis suffers from all the limitations Ricoeur associated with action theory in *Oneself as Another*, particularly, the fact that it is a retrospective analysis: “consider how meagre this notion of responsibility is that emerges after the fact of the action: most significantly it is turned toward the past rather than towards the future” (Ricoeur 1993: 9). By contrast, Ricoeur advocates a future-oriented view of responsibility that is “fundamentally related to the fragile”: “The call, or command, as well as the confidence that proceeds from someone fragile establishes that it is always *another* who declares us to be responsible, who makes us responsible ... It is another, in counting on me, who makes me accountable for my acts” (Ricoeur 1993: 9-10). “By the fragile,” Ricoeur means, “both those who may perish by virtue of natural weakness and those who are endangered by the blows of historical violence which are incorporated in human action” (Ricoeur 1993: 8). Our relationship with this fragile person or persons is based on trust: “The fragile someone counts on us, expects our help and our care, has confidence that we will attend his or her needs. This bond of confidence is fundamental and is intimately linked to the request, the command, the imperative. It is because of this bond that in our awareness of responsibility *we feel* that we have [been] *made* responsible *for* and *by*” (Ricoeur 1993: 9). In *Les trois niveaux du jugement medical*, Ricoeur is in fact, reflecting upon the responsibility involved in a particular example of this bond of confidence -- that between fragile patients and their doctors. Ricoeur’s vital linkage between the physician’s

responsibility and the call of the fragile person is reminiscent of a similar linkage made by the French physician and philosopher of science, Georges Canguilhem (1904-1995) in *The Normal and the Pathological*:

If today, the physician's knowledge of disease can anticipate the sick man's experience of it, it is because at one time this experience gave rise to, summoned up, that knowledge. Hence, medicine always exists *de jure*, if not *de facto*, because there are men who feel sick, not because there are doctors to tell men of their illnesses (Canguilhem 1991: 93).

Les trois niveaux du jugement médical is an illustration of the ethics circle at work, but here as already indicated, Ricoeur has reversed the order of 'la petite éthique', such that we proceed from the prudential 'moment' to the deontological 'moment' and finally, to the 'moment' of ethics. As Ricoeur explains, the reversal is necessary because the overall ethical aim of health (insofar as it is possible) is already understood to be in place, and so are the deontological codes that govern the practice of medicine (summation of (Ricoeur 2001b: 241-242)). In this revised order, the 'moment' of practical wisdom or prudence is the starting place because of the overriding influence of the singular situation on the other two 'moments'. In other words, "c'est la circonstance initiale qui suscite la structuration propre à l'éthique médicale à savoir la souffrance humaine. C'est le fait de la souffrance et le souhait d'en être délivré qui motivent l'acte médical de base ... " (Ricoeur 2001b : 241). In fact, the 'moment' of practical wisdom is of special significance to bioethics at-large: "c'est de la dimension prudentielle de l'éthique médicale que la bioéthique au sens large emprunte sa signification proprement éthique" (Ricoeur 2001b : 228).

Here again in this article, Ricoeur's fragility-based notion of responsibility frames the content of the 'moments' of the ethics circle. For our purposes, we will take as examples, the 'moments' of practical wisdom and ethics. In the 'moment' of practical wisdom, Ricoeur's prime concern is the doctor-patient relationship characterized by a fragile dialectic between trust and mistrust (Ricoeur 2001b: 230-231). In the face of suffering -- "the ultimate refuge of singularity" (Ricoeur 2001b: 228-229), the primary goal

of practical wisdom is to ensure that a promise is honoured: “Le pacte de soins devient ainsi une sorte d'*alliance* scellée entre deux personnes contre l'ennemi commun, la maladie. L'accord doit son caractère moral à la promesse tacite partagée par les deux protagonistes de remplir fidèlement leurs engagements respectifs” (Ricoeur 2001b : 230). An important part of the promise involves overcoming the initial fragility derived from the inequality between doctors and patients: “Au début, un fossé et même une dissymétrie remarquable séparent les deux protagonistes: d'un côté celui qui sait et sait faire, de l'autre celui qui souffre. Ce fossé est comblé, et les conditions initiales rendues plus égales, par une série de démarches partant des deux pôles de la relation. Le patient - ce patient - ‘porte au langage’ sa souffrance en la prononçant comme plainte ... à son tour la plainte se précise en demande ... et demande à ... adressée comme un appel à tel médecin. Sur cette demande se greffe la *promesse* d'observer, une fois admis, le protocole du traitement proposé”(Ricoeur 2001b : 229-230). In the fulfilment of the promise, Ricoeur stresses several elements, both as contents of the ‘moment’ of practical wisdom, and as lenses through which the deontological codes are to be interpreted; he includes the importance of confidentiality (Ricoeur 2001b: 229), the recognition of the singular or non-substitutional character of the patient's situation and the care pact (Ricoeur 2001b: 231), the indivisibility of the person (Ricoeur 2001b: 231), and the importance of self-esteem or “la reconnaissance de sa valeur propre par le sujet lui-même” (Ricoeur 2001b: 232).

It is within the ethics ‘moment’ or “au plan réflexif du jugement moral que se révèlent les modalités les plus intractables de la fragilité propre à l'éthique médicale” (Ricoeur 2001b : 242). The most intractable fragilities that call us to responsibility revolve around two problems already indicated. One is the fact that although the universal hope to live well defines the teleological character of the ethical aim in general, particular historical contexts define how the aim is lived out in private and common life. In view of this problem and given the concrete reality of suffering, Ricoeur suggests that these questions need to be considered: “Quel lien faisons-nous entre la demande de santé et le souhait de vivre bien? Comment intégrons-nous la souffrance et l'acceptation de la mortalité à l'idée

que nous nous faisons du bonheur? Comment une société intègre-t-elle dans sa conception du bien commun les strates hétérogènes déposées dans la culture présente par l'histoire sédimentée de la sollicitude?" (Ricoeur 2001b : 243). As a dimension of the above problem, we also face the additional difficulty of diversity itself and of contested views of how the hope to live well should be lived out. In Ricoeur's words, "l'ultime fragilité de l'éthique médicale résulte de la structure consensuelle/conflictuelle des 'sources' de la moralité commune" (Ricoeur 2001b : 243).

3.5. Conclusion

In the Introduction to this chapter, we stressed Ricoeur's primary anthropological insight -- the notion that human beings are both universal and particular, and most importantly, that their universality and particularity is lived out through the functioning of various human capabilities. In this chapter, we have explored Ricoeur's understanding of several capabilities, notably, fallibility -- the human capability for evil, speaking, writing, acting and imputability. It is through the exercising of these capabilities that we encounter otherness or alterity -- "the variety of experiences of passivity, intertwined in multiple ways in human action" (Ricoeur 1992: 318). In response to otherness, Ricoeur has throughout his works consulted thus far, advanced a dynamic relationship between two contrasting modes of intelligibility -- pure, transcendental reflection and hermeneutics. Although each type of intelligibility brings with it strengths and weaknesses in terms of its potential to mediate otherness, the combination of, or the dialectical relationship between the two modes within the hermeneutic circles has the greatest potential to reconcile universals and particulars within our experience, and to increase our overall understanding of ourselves as others. It is with this potential in mind that we wish to place double effect reasoning within the context of these hermeneutic circles.

In the second section, we have explored Ricoeur's understanding of fallibility or the human capability for evil. As we recall, the otherness of evil functions as a type of

bondage -- a constraint on our capability for actually being autonomous. The otherness of evil consists in disproportions of 'my'self to 'my'self that situate me between universalist needs and particular contingencies. As a human being, although I have universalist needs for total understanding, total happiness, and total perfection, my non-coincidence with 'my'self results in the particular contingencies of finite understanding, finite happiness, and finite perfection. In this way, my autonomy or freedom is constrained. As divergent responses to this type of alterity, Ricoeur contrasts pure reflection on fallibility or an ethical vision of the world with a hermeneutics of evil. Although pure reflection has the potential to keep the otherness of evil theoretically and objectively at bay, it cannot authentically account for the everyday reality of bound freedom. In fact, as Ricoeur says, "evil is a sealed book for it." In particular, a philosophy of fault cannot describe or account for the disproportions of the self to the self that comprise the loci of evil. By contrast, these disproportions can be dealt with within an exegesis of the symbols of evil (e.g., defilement, sin, guilt) within our lived existence. In terms of Ricoeur's first hermeneutic circle, the symbols of evil give rise to thought, thought distanced from real life compels us back to an exploration of the underlying symbols as symbols, and the circular relationship between these two types of reflection permit us to deepen our interpretation and enlarge our selves continuously.

In the third section, we have explored Ricoeur's understanding of the capabilities of speaking and writing. When we speak in conversation with each other, shared meaning is created largely by shared, situational references. However, in writing, the otherness of a text sets in: human meaning disappears behind the material marks or signs of writing, reference is divided and the audience is universalized, thus setting the stage for the inevitable conflict of interpretations. Here again, we, as humans, are caught between universalist needs and particular contingencies -- this time, between pointing or aiming beyond ourselves with words and the fact that words themselves are only signs limited by particular opacities and particular cultural contingencies that breed distancing and alienation from texts. Here again, Ricoeur contrasts two types of responses to alterity, pure

or transcendental reflection -- in this case, semiotics -- and a hermeneutics of written texts that includes semantics. On the textual level, although pure reflection or semiotics provides explanation that mediates alterity to a degree, semiotics analyzes textual signs and symbols as a closed, virtual system wherein reference outside the system is a non-issue. However, in the context of real life and time references wherein we are immersed in competing sign systems, semiotic analysis results in alienation or distancing that can only be made productive through the hermeneutical process of appropriation, or the fostering of the fullest understanding in the sense of ongoing enlargement of selves. Ricoeur's circle of understanding fosters this ongoing appropriation: semiotic explanation of signs and symbols gives rise to fuller self-understanding which, over time, requires recourse to explanation of symbols once again, and the circle keeps turning. Most importantly for Ricoeur, the circle of understanding subverts the disastrous opposition between explanation and understanding.

In the fourth section, we have explored Ricoeur's understanding of the capabilities of acting and imputability. In many ways, Ricoeur's analysis of these capabilities is a natural extension of his exploration of the otherness of texts. Taking selected texts from contemporary action theory as examples, Ricoeur concludes that the selected theorists analyze action and imputability as a closed, virtual system of signs and most problematically, that reference or the self-designation of the agent is a non-issue in this approach. Thus, in these analyses of action and imputability, lived action and imputability in real time is rendered 'other'. I can be imputed as the author of action in this textual system, but in fact, the system creates distancing and alienation from ownership of action because it conceals selfhood and renders self-designation ambiguous, if not impossible. In other words, the person acting in real time and being imputed is reduced by textual forms of objective identification that derive from the prioritization of what and why questions over who questions. For example, action and imputability is largely reduced to a cause and effect analysis when in fact, as Ricoeur says, there is a need to acknowledge frankly and to interpret hermeneutically the structure of action as constrained by a conjunction between

several sorts of causality. Moreover, there are three other forms of otherness not taken into account satisfactorily by the action theory that Ricoeur has analyzed. There is the otherness or passivity of our human body that is at once universal or a body like any other, and a particular part of a particular self. There is the otherness or passivity “implied by the relation of the self to the *foreign*, in the precise sense of the other (than) self, and so the otherness inherent in the relation of intersubjectivity (Ricoeur 1992). Finally, there is the otherness or passivity of conscience which “projects after the fact its force of attestation on all the experiences of passivity placed before it ...” (Ricoeur 1992).

In response to the otherness of acting and imputability, Ricoeur contrasts unsatisfactory pure reflection -- in this case, contemporary action theory and its limited view of imputation -- with hermeneutic reflection that allows for action and imputability to be interpreted within the context of the dialectic between idem-identity and ipse-identity, and between the self and others. In this way, Ricoeur subverts the traditional ethical and bioethical prioritization of making distinctions between actions as discrete events. In other words, “the major issue [resides] less in determining what distinguishes actions from other events occurring in the world than in determining what specifies the self, implied in the power-to-do [i.e., in the capabilities], at the junction of acting and the agent. Thus liberated from its initial subservience, the theory of action [assumes] the role of a propaedeutic to the question of selfhood” (Ricoeur 1992). As we recall, important elements in the process of specifying the self implied in the capabilities, include initiative and promising, both of which arise out of attestation and are embodied by narrative. On the level of Ricoeur’s hermeneutic circles, his Ethics Circle is an extremely important vehicle for determining what specifies the self, implied in the capabilities, at the junction of acting and the agent.

Not unlike his other circles, the Ethics Circle combines an emphasis on explanation with an emphasis on fuller understanding of ourselves-as-others caught between the demands and constraints of universality and particularity. Explanation is embodied by the circle’s ‘moment’ of morality -- the focus on norms or deontological codes and the

explanatory/speculative power (e.g., the power to arbitrate conflicts and to test our ethical aims) that they bring to our existence and to our attempts to deal with otherness. Having all the limitations of the other types of pure reflection, the deontological codes can only be one 'moment' in the larger, ongoing cycle of hermeneutics. We have to keep the codes in relationship with their reference -- the real persons, the real othernesses, the real diversities, and the real fragilities that call us to personal responsibility. By contrast, imputing only on the basis of explanatory codes (e.g., legal or medical codes) is a minimalist and retrospective approach to responsibility in Ricoeur's view. Also from the perspective of the larger community, imputation on the basis of codes can create as many conflicts as it arbitrates.

Keeping pure reflection as only one part of his larger hermeneutical project yet again, Ricoeur posits the other two 'moments' -- ethics and practical reason. Both of these 'moments' explicitly mediate the alterity involved in being selves-as-others caught between universality and particularity. In the 'moment' of ethics, we aim at the good life with and for others in just institutions, with the understanding that we are caught between the universality of our aim to live well and the particularity of the contexts in which we attempt to live out the aim. This constraint leads Ricoeur to stress the importance of potential or inchoate universals grounded in an examination of the requirement of universalization along a progressive path on the level of actual practice. In the 'moment' of practical wisdom, particularly important for bioethics, there is a "confrontation between the *universalist claim* attached to the rules claiming to belong to the principle of morality and the recognition of positive values belonging to the *historical and communitarian contexts* (i.e., particular contexts) of the realization of these rules" (Ricoeur 1992). Again, the central focus of this relationship with morality is determining what specifies selves-as-others, implied in the capabilities at the junction of acting and the agent. In the healthcare context, as Ricoeur explains, the most important elements of this determination -- initiative and promising -- make explicit and facilitate the necessary trust between caregivers and patients. Especially in the clinical context, trust is an important mediator of all the various

forms of alterity that Ricoeur has explored and that both caregivers and patients experience. Making use of all these elements in the next chapter, we will discuss the ways in which double effect reasoning can mediate the otherness involved in being selves-as-others caught between universality and particularity in the case of “terminal sedation”.

... we often project onto others those unconscious fears from which we recoil in ourselves. Rather than acknowledge that we are deep down answerable to an alterity which unsettles us, we devise all kinds of evasion strategies. Primary amongst these is the attempt to simplify our existence by scapegoating others as 'aliens'. So doing we contrive to transmute the sacrificial alien into a monster, or into a fetish-god. But either way, we refuse to recognize the stranger before us as a singular other who responds, in turn, to the singular otherness in each of us. We refuse to acknowledge ourselves-as-others" (Kearney 2003: 5).

Chapter 4. Strangers, Gods, Monsters, 'Terminal Sedation' and Double Effect Reasoning

4.1. Introduction

In the Introduction to his book, *Strangers, Gods and Monsters: Interpreting Otherness* (Kearney 2003), Richard Kearney, the above author and a colleague of Ricoeur's, says the following:

Strangers, gods and monsters represent experiences of extremity which bring us to the edge. They subvert our established categories and challenge us to think again ... Most strangers, gods and monsters -- along with various ghosts, phantoms and doubles who bear a family resemblance -- are, deep down, tokens of fracture within the human psyche. They speak to us of how we are split between conscious and unconscious, familiar and unfamiliar, same and other. And they remind us that we have a choice: (a) to try to understand and accommodate our experience of strangeness, or (b) to repudiate it by projecting it exclusively onto outsiders. All too often, humans have chosen the latter option, allowing paranoid illusions to serve the purpose of making sense of our confused emotions [and thoughts] by externalizing them into black-and-white scenarios -- a strategy found again and again from ancient tales of knights and demons to contemporary war rhetorics of Good versus Evil (Kearney 2003: 3-4).

Along with strangers, gods and monsters, there are two closely related experiences of extremity that comprise the subject matter of this thesis -- "terminal sedation" and death. Insofar as "terminal sedation" is a form of sleep, its closeness to death can be explained from the perspective that " 'sleep remains one of the most universal and easily communicated analogies to death' " (Olav and Anders 2004). The origins of this association are clearly ancient: "In Greek mythology there is an interesting parallel to the relationship between sleep and death: Nyx, the night, had two sons, the twin brothers --

Hypnos, the god of sleep, and Thanatos, the god of death” (Olav and Anders 2004). In the same family as strangers, gods, and monsters, “terminal sedation” definitely invites us to think again about our established categories and especially, about “the tokens of fracture within [our] psyche” (Kearney 2003: 4), for example, good versus evil, self versus other, body versus mind versus soul, particular versus universal, conscious versus unconscious, mens rea versus actus reus, etc. As Kearney indicates, we have a choice in dealing with these tokens of fracture. For each of the examples given above, and there are many others, we can accept the entity on one side of “versus” and reject the opposite entity, often by labelling it as “alien” or as “other” and by projecting it onto outsiders. Alternatively, we can “try to understand and accommodate our experience of strangeness” (Kearney 2003: 4) or otherness. In the case of “terminal sedation,” we can either try to understand and accommodate the otherness associated with it or we can repudiate this otherness, using words such as “evil”, or “murder” or “euthanasia” or any other pejorative terms that may accomplish the repudiation. Insofar as double effect reasoning has long been used to distinguish discrete acts as “good”, “bad”, or “neutral”, it is obviously implicated as a means of accentuating the tokens of fracture. However, we have a choice here too. We can either use double effect reasoning as a mechanism for repudiating otherness and accentuating the tokens of fracture, or we can use it as a vehicle for understanding and accommodating otherness. In Ricoeurian terms, we have the option of using double effect reasoning as a vehicle for understanding and accommodating ourselves-as-other in the case of “terminal sedation”. It will be the goal of this final chapter to explain and discuss this option. The chapter will unfold in three parts. The remaining section of this Introduction will establish basic assumptions in my use of Ricoeur’s work in the case of “terminal sedation”. The second part will recall the content of the first two chapters and feature an analysis of that content in the context of Ricoeur’s work. Finally, Ricoeur’s hermeneutical interpretation will be used to revise and rejuvenate use of double effect reasoning in the case of “terminal sedation”.

Several assumptions underlie my use of Ricoeur's hermeneutics to re-envision double effect reasoning as a vehicle for understanding and accommodating ourselves-as-others in the case of "terminal sedation". Firstly, I am in agreement with Ricoeur that the major issue in ethical reflection is NOT what distinguishes acts from each other, but what specifies the human self, implied in human capacities, at the junction of acting and the agent. After all, it is human selves who engage in ethical reflection, and for whom that reflection is important. The same cannot be said for sticks and stones, for the elements of earth, wind, fire and water, and for non-human living beings. Also, my experience as a clinical ethicist tells me that questions become ethical questions and are pursued as such because aspects of selfhood (e.g., feelings, thoughts, conscience, relationships, responses to otherness) compel the questioning and the pursuit. By extension, it is my conviction that the major issue in ethical reflection concerning "terminal sedation" is not how, and in what ways it can or cannot be distinguished from other acts, but rather, what specifies the self, implied in the capacities, at the junction of acting and the agent in cases of "terminal sedation". By the same token, it is my conviction that the major issue in ethical reflection concerning "euthanasia" is not how, and in what ways it can or cannot be distinguished from other acts, but rather, what specifies the self, implied in the capacities, at the junction of acting and the agent in cases of "euthanasia". "Terminal sedation" and "euthanasia" are indistinguishable in the generic sense that both are texts, and as such, they embody otherness and respond to otherness in the ways that Ricoeur has described. However, in response to Ricoeur's work, my fundamental proposal is that we cease the use of these texts to distinguish between acts and consider instead how these texts may be used to distinguish the otherness they each embody for selves and the ways in which these texts facilitate selves' responses to otherness for better or for worse, i.e., by facilitating the understanding and accommodation of otherness, or by facilitating the accentuation of the tokens of fracture. This thesis begins the consideration necessary for "terminal sedation" as a text. Another thesis would be required for a full consideration of "euthanasia". Only after

significant analysis of this kind would we be in a position to know in what ways “terminal sedation” and “euthanasia” are distinguishable from each other.

My fundamental proposal begs the question of what it might mean to use texts such as ‘terminal sedation’ to facilitate either the understanding and accommodation of otherness, or the accentuation of the tokens of fracture. On the disciplinary level, my proposal begs the question of what it might mean for a text-based discipline (e.g., clinical disciplines, law, moral philosophy and moral theology) to use texts to facilitate either the understanding and accommodation of otherness, or the accentuation of the tokens of fracture. In my mind, this is essentially the question of what it might mean for a text-based discipline to function in an interdisciplinary manner. From my perspective, Ricoeur has provided an innovative approach to interdisciplinary functioning. As already indicated, he has thoroughly discussed various human capabilities (e.g., the capability for evil, speaking, writing, acting and imputing). Through the exercise of these capabilities, we encounter different types of otherness or alterity. In the absence of absolute knowledge, Ricoeur contrasts two divergent modes of intelligibility or two different modes of response to alterity -- pure, transcendental reflection and hermeneutics. As we recall, by “pure or transcendental reflection,” Ricoeur means “a reflection that starts not with myself but with the object before me, and from there traces back to its conditions of possibility” (Ricoeur 1986: 5). In other words,

it is a reflection that begins with the **thing** [emphasis mine]. It is “upon” the *thing* that this reflection discerns ... discovers ... apprehends ... It is reflection *upon* the object. This is the way in which it is properly transcendental ... But the limitation of this reflection appears directly along with its strength: the synthesis that it reveals and inspects will be a synthesis only in the object, in the thing; a synthesis that is merely intentional, projected outside, into the world, into the structure of the objectivity it makes possible (Ricoeur 1986: 18).

This reflection is limited insofar as its concern is *langue* (i.e., a universal code **on the basis of which** someone speaks) as opposed to *parole* (i.e., someone’s particular, intentional,

contingent message). In other words, the emphasis of pure reflection is on language, signs, and symbols as a closed, 'objective' system of meaning that "becomes the object of a *praxis* and a *techne*" (Ricoeur 1991: 80). Again, this closed, 'objective' system of meaning is itself the limitation of pure reflection: it is an 'objective' "synthesis only in the object, in the thing; [it is] a synthesis that is merely intentional, projected outside, ... into the structure of the objectivity it makes possible" (Ricoeur 1986: 18).

It seems to me that although Ricoeur's prime example of pure reflection -- semiotics -- involves a discipline whose sole focus is the closed system of signs in texts, any discipline can exercise a semiotic approach to its body of knowledge and to its functioning. In other words, any discipline can treat the texts that comprise its body of knowledge as a closed system or synthesis of signs and symbols that is the object of a certain *praxis* and *techne* which is closed to outside approaches and practitioners. By contrast, it seems to me that an interdisciplinary approach requires Ricoeur's hermeneutic circles because they embody an optimal approach to interdisciplinarity. Although the hermeneutic circles include a semiotic or explanatory 'moment', it is complemented by a concern for *parole* or the referential 'moment' that is a non-issue in a semiotic approach. Only a combined concern for *langue* and *parole* facilitates the understanding and accommodation of otherness in the quest for the self-as-other. Moreover, it is the lack of concern for *parole*, or in other words, the incapacity or unwillingness to struggle with reference issues, that renders interdisciplinarity impossible. A combined concern for *langue* and *parole* is particularly important in relation to the capability of imputing. As Ricoeur indicates, an exclusive concern for pure reflection or the explanatory capacity of action theory is problematic because it tends to relegate the question 'who?' (i.e., the pre-eminent reference question) to the sidelines. By contrast, use of Ricoeur's hermeneutic circles can assist us to use "terminal sedation" to distinguish the otherness involved in it for selves, and to facilitate development of the self-as-other toward the understanding and accommodation of otherness.

From my perspective, double effect reasoning itself developed as a response to a selves-as-other dilemma (i.e., Christians confronted by the military needs of the State in Aquinas' time) and insofar as double effect reasoning had the capacity to respond to this and other such dilemmas over hundreds of years, it still has the capacity to resolve self-as-other dilemmas today with some assistance from Ricoeur's hermeneutics. The crucial adjustment is that whereas in its history, double effect reasoning served first as a means of specifying the virtue of commutative justice and later, as a means of specifying or narrowing the scope of absolute prohibitions, it can in a Ricoeurian context, mediate otherness by assisting us in theory and in practice to specify the human self -- ourselves-as-other -- implied in human capacities, at the junction of acting and the agent in cases of "terminal sedation". Obviously, this Ricoeurian understanding and use of double effect reasoning is not completely foreign to the Thomistic origin of double effect reasoning in the sense that the Thomistic origin is essentially concerned with *actio* or the self-determining character of personal action. However, whereas the self for Aquinas was defined as part of a static metaphysical plan, a Ricoeurian understanding and use of double effect reasoning brings to the forefront the fact that we have no absolute knowledge about anything including the self, and that we only have endless conflicts of interpretation which we have to interpret continuously in the face of the otherness of self, of texts, of evil, of action and imputability, etc. As we recall, Boyle explains that double effect reasoning permits us to go beyond the Kantian concern for non-contradiction and explore non-Kantian questions regarding whether values that are ordinarily at stake in moral decisions (e.g., a decision to lie) are **always** at stake in such decisions. It seems to me that a Ricoeurian understanding and use of double effect reasoning could permit us to explore such non-Kantian questions to the fullest degree possible, for instance and most importantly, the question of whether the self ordinarily engaged in moral decisions is **always** the same self and if not, what are the implications for moral decision making? From a Ricoeurian perspective, I am obviously committed to fostering use of double effect reasoning in the context of the fullest possible exploration of the implications of the evolving self-as-other in moral decision making.

Regarding reconciliation of universals and particulars, or universalism and particularism, we recall the sentiments expressed by American philosopher/bioethicist Daniel Callahan as quoted in the general introduction to this thesis. In an article entitled, *Universalism and Particularism: Fighting to a Draw*, he argues that “No decisive choice should be made between universalism and particularism. Each will have its place in different situations ... The hard part is to devise a theory that can readily join universality and the moral complexity of everyday life” (Callahan 2000: 41). It seems to me that Ricoeur has accomplished “the hard part.” In theory and in practice from a Ricoeurian perspective, what joins universality and the moral complexity of everyday life is the self-as-other, or the self continuously caught between universalist needs and possibilities, and particular contingencies. No decisive choice should be made between universalism and particularism because both are part of the self-as-other and each will (and does) have its place in different situations according to the ways in which the self-as-other is engaged in the world. For example, different ethical dilemmas engage selves-as-other in different ways (e.g., different dilemmas confront the self-as-other with new types of otherness), and the myriad of ways in which selves-as-other become engaged usually comprise the source of ethical dilemmas in the first place. But as Ricoeur indicates and Kearney’s work reaffirms, the goal of ethical reflection should not be the polarization of those particularist and universalist tendencies, nor the banishment of one or the other tendency, but rather, the integration or reconciliation of them. To do otherwise accentuates the tokens of fracture within the human psyche and creates violence within and among human beings.

I am also thoroughly convinced that Ricoeur’s thinking about the self-as-other represents not just arcane philosophical posturing, but rather, an indication of the way in which concrete bioethics dilemmas should be framed, i.e., as essentially dilemmas concerning selves-as-other, and that the difficulties resolving them are essentially problems coping with otherness in human life. This type of framing is certainly not foreign in healthcare wherein the paramount ethical consideration -- informed consent -- is already understood as a quintessentially self-as-other dilemma, albeit without the enlightenment

and vocabulary made possible by Ricoeurian reflection. As we recall, for Ricoeur, otherness refers to the “variety of experiences of passivity [or the capacity to receive], intertwined in multiple ways in human action” (Ricoeur 1992: 318). The informed consent process explicitly addresses otherness insofar as the first step in the process is an inquiry into the person’s capacity to receive and process information about proposed treatments. In Ontario, for example, capacity is defined “as the ability to understand information relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of decision” (Best 1998: 37). As a clinical ethicist, I have long been bewildered by the fact that whereas for clinicians (myself included), informed consent and a consideration of the patient’s capacity to consent (as well as other relevant capacities) is at the forefront of discussion of most ethical dilemmas, mainstream bioethics with its emphasis on ‘autonomy’ has for the most part, ignored the subject of concrete human capacities. Admittedly in Ontario, the legal definition of capacity is restricted to mental capacity in decisionmaking. However, although this emphasis is a far cry from Ricoeur’s multi-faceted consideration of capabilities, it is at least, a step in the right direction that mainstream bioethics has not embraced for the most part. The relentless rhetoric on autonomy within mainstream bioethics ignores the shadow side of autonomy -- the fact that every autonomous action brings us face to face with the otherness that constrains our action in some way. Ricoeur’s emphasis on specifying the human self, implied in human capacities, at the junction of acting and the agent is an important corrective for the autonomy mantra in bioethics. If we can concretize Ricoeur’s emphasis in the way that we frame ethical dilemmas and seek to resolve them, we can contribute to the maturation of bioethics, and at the same time, assist real people to deal with “terminal sedation” in the face of the stark otherness of death.

Of all the self-as-other experiences we can have as human beings, it would seem that the experience of death and dying is a self-as-other experience par excellence. Problematically, death and dying, not unlike other quintessential self-as-other experiences (e.g., birthing) are taboo topics in our Western society. By association, the discussion of

“terminal sedation” suffers from the same limitation. Perhaps there is a direct relationship between our inability to discuss something and the degree of otherness which that something represents for us. Whatever the case, Ricoeur’s hermeneutic circles offer us a way to understand and accommodate our experiences of otherness (i.e., even the otherness represented by death) without resorting to silence or to the “black-and-white scenarios” of which Kearney speaks. These extremes are avoided by the fact that Ricoeur’s circles subvert linear thinking and emphasize a dialectical relationship between explanation and understanding, and fundamentally, between the self as sameness (*idem*) and the becoming self (*ipseity*). The relationship between these entities is dialectical in the Hegelian sense. In other words, as part of a conversation or debate (the original Greek meaning of dialectic), the movement between the circles’ ‘moments’ goes back and forth between thesis and antithesis and between partial reality and greater wholeness until some sort of synthesis is formed which in turn, will be open to renewal in the next conversation. As Ricoeur says, “I would rather speak of an endless spiral that would carry the meditation past the same point a number of times, but at different altitudes” (Ricoeur 1984: 72).

Given our society’s intense discomfort with the otherness of death and dying and the fact that the circles permit us to confront otherness directly but without polemics, I think we can use Ricoeur’s circles to great benefit in dealing with “terminal sedation” dilemmas. As we recall from the American Supreme Court’s hearing of the assisted suicide cases, although the Court was willing to hear these cases and hand down judgments, the judgments themselves contained a clarion call for experimentation on the part of State legislatures, not just because of the structure of federal/state relationships in the American system, but because the judges recognized the need for more inquiry, debate, and consensus gathering closer to the grassroots context of actual “terminal sedation” cases. In wholehearted agreement with this sentiment, I think there is a need to use Ricoeur’s circles being mindful of the necessity of different kinds of conversation at different levels, and of the fact that the circles themselves are well suited to meet this need. For example, I think that the ethics circle is well suited to discussion at the macro level (e.g., a town hall

meeting) because discussion of the ethical aim, living well with and for others, extends to encompass institutions or “the structure of *living together* as this belongs to a historical community -- people, nation, region, and so forth ...” (Ricoeur 1992: 194). By contrast, the basic circle of understanding could be used to promote discussion and consensus gathering at any level from the micro level (e.g., the bedside) to the macro level and vice versa. In the case of “terminal sedation”, I think the most beneficial use of these circles is exactly what Ricoeur envisions -- the creation of a spiral that carries the conversation past the same point a number of times, but at different altitudes; in other words, the ideal arrangement would be to alternate the circles to facilitate the fullest possible discussion and consensus gathering. At times and for some issues, it may be better to begin discussion with the ethics circle. In other contexts, the optimal process may be the simultaneous operation of two circles in different places with an integration of the two conversations when and if the time is right.

No matter which circle is being used and at what level, there is a need to align the problem for which the circle is being used (in this case, the dilemmas surrounding use of double effect reasoning in cases of “terminal sedation”) and the functioning of the circles. I will outline the practical aspects of this alignment in the final section of this chapter. For now, it is important to recall that in the context of all the kinds of otherness that constrain our capabilities, the circles facilitate a dynamic relationship between two contrasting modes of intelligibility or forms of response to otherness -- pure, transcendental reflection and hermeneutics. By way of pure reflection (e.g., the explanation ‘moment’ in the circle of understanding and the ‘moment’ of norms in the ethics circle), otherness of all kinds is contained and minimized by an external synthesis, for example, an explanation of causation, or a moral maxim. Although this reflection can facilitate mediation of conflict and the reduction of uncertainty, these are mixed blessings because explanations and norms also produce alienation, and they can cover-up conflicts or ambiguities that have yet to be resolved. By contrast, in the hermeneutic circles, the limitations of pure reflection are overcome by the referential ‘moments’ of *parole*. For example, the initial guesses in the

circle of understanding and practical wisdom in the ethics circle acknowledge that although we can benefit from past explanations and norms, every situation we encounter brings unique challenges and newness (e.g., the self-as-other in new ways) that past explanations and norms cannot always mediate. In this sense, initial guesses and practical wisdom respond more or less intuitively to the otherness of uncertainty and unknowing in new and unexpected situations wherein we may not even know which explanations or norms may apply. Likewise, the ‘moment’ of appropriation in the circle of understanding and the ethics ‘moment’ in the ethics circle acknowledges the distancing brought about by the priority of sense over reference in pure reflection. Moreover, the otherness minimized by pure reflection (e.g., the otherness of evil, texts, action and imputability) is mediated by the opening up of the text in question to a world of reference in the circle of understanding, and to the specific referential aim of a good life with and for others in just institutions in the ethics circle. In relation to both appropriation and ethics, narrative has an extremely important role because it permits us to articulate our beginnings, middles, and endings in the world that constitute the vital reference missing in pure reflection.

Allied with use of Ricoeur’s hermeneutical circles, Ricoeur’s work on death and dying offers added assistance for our task of understanding and accommodating otherness in the case of “terminal sedation”. In a brief essay entitled, *Temporal Distance and Death in History* (Ricoeur 2002b: 239-255), Ricoeur considers this question: “How do we deal with death as an extreme form of temporal distance [i.e., otherness]?” (Ricoeur 2002b: 240). In my mind, his treatment of this question is yet another example of his use of the circle of understanding to make distancing productive. Initially, he contrasts his approach to death -- “centering on our potentiality-for-Dying” with Heidegger’s concept of death “as an intimate possibility of our own most potentiality-for-Being” (Ricoeur 2002b: 241). Not unlike the way in which he has consistently contrasted all of his approaches with those of Heidegger, Ricoeur says, “I shall replace the kind of short circuit instituted by Heidegger between potentiality-for-Being and mortality with a long detour, the details of which follow” (Ricoeur 2002b: 241). In other words, Ricoeur is yet again replacing

Heidegger's short road to a direct ontology with a longer, circular passage in which being is understood only by degrees, and by interpretation or exegesis of signs. In the case of death, we receive and are alienated by textual explanations of death, for example, "one learns of death as an unavoidable fate for the body-as-object," and "one learns of it through biology, confirmed by daily experience: biology tells one that mortality constitutes the second half of a pair, the first half of which is sexual reproduction" (Ricoeur 2002b: 242). For Ricoeur, the difficult goal of self-understanding in the context of dying involves movement beyond "a mere acceptance of having-to-die," i.e., that which is explained by biology, and the accomplishment of appropriation of one's own "potentiality-for-Dying": "We have to work on ourselves for a long time before the entirely factual necessity of death [i.e., death explained] can be converted" into a self-understanding of potentiality-for-Dying (Ricoeur 2002b: 242).

Here again, the process of self-understanding in the case of "potentiality-for-Dying" involves the self in a relationship with otherness, and Ricoeur explains this relationship using, as his inspiration, Montaigne's essay entitled, *To Philosophize is to Learn How to Die*. In this essay, Montaigne (1533-1592) says the following:

To begin depriving death of its greatest advantage over us, let us adopt a way clean contrary to that common one; let us deprive death of its strangeness; let us frequent it, let us get used to it; let us have nothing more often in mind than death. At every instant let us evoke it in our imagination under all its aspects ... we do not know where death awaits us; so let us wait for it everywhere. To practice death is to practise freedom. A man who has learned how to die has unlearned how to be a slave. Knowing how to die gives us freedom from subjection and constraint. Life has no evil for him who has thoroughly understood that loss of life is not an evil (Montaigne 2004: 24).

Toward the achievement of "depriving death of its greatest advantage over us" or the appropriation of death as "potentiality-for-Dying", Ricoeur emphasizes the mediating role of historical deaths and most importantly, the mediating role "played by the death of close relatives" (Ricoeur 2002b: 243). "When viewed in the light of the difficult task of

appropriating knowledge of death,” Ricoeur believes that there are “resources of veracity” or “message[s] of authenticity” “contained in the experience of the loss of a beloved person” (Ricoeur 2002b: 243). In agreement with Montaigne and Ricoeur regarding both the need for appropriation of death, and the mediating role played by previous losses, I think that the use of “terminal sedation” can also play a helpful mediating role for both patients and their significant others. I will outline the practical aspects of this mediation in the final section of this chapter.

4.2. Looking Back

In the first chapter, we exposed the conflict of interpretations regarding both how “terminal sedation” is defined and how double effect reasoning is being used in attempts to distinguish pain control from euthanasia in cases of “terminal sedation”. What became evident in this chapter is that there are many ‘faces’ or interpretations of double effect reasoning that have evolved out of tensions related to the uneasy relationship between its particularist and universalist elements. In the second chapter, we discovered that there are significant conflicts of interpretation regarding use of double effect reasoning in the context of pain control (and other contexts) even within the Catholic milieu as exemplified by the work of the five thinkers surveyed. Again, the exposé illustrated distinct and differing perspectives on the universals within double effect reasoning and how they can be reconciled with the contingencies or particularities of action. In the third chapter devoted to Ricoeur’s hermeneutics, we learned that at the heart of conflicts of interpretation, we find otherness -- the various kinds of passivities that are part and parcel of human life and that are mediated or negotiated by way of our human capabilities. Several types of otherness were explored in this chapter: primarily, the otherness of evil, the otherness of texts and the otherness of action and imputability. Corresponding to these forms of otherness, we discovered Ricoeur’s perspective on the ways in which we mediate otherness by means of our human capabilities for evil, speaking, writing, acting and imputability. At the heart of Ricoeur’s view is the conviction that human beings are both universal and particular, and

most importantly, that their universality and particularity is lived out through the capabilities surveyed. In response to the functioning of the capabilities and the ways in which they are constrained by otherness, Ricoeur advances a dynamic relationship between two contrasting modes of intelligibility -- pure, transcendental reflection (e.g., semiotics and action theory) and hermeneutics. Although each type of intelligibility brings with it strengths and weaknesses in terms of its potential to mediate otherness, the combination of, or the dialectical relationship between the two modes within the hermeneutic circles has the greatest potential to reconcile universals and particulars within our experience, and to increase our overall understanding of ourselves-as-other. It is with this potential in mind that we wish to place the conflicts of interpretation surrounding “terminal sedation” and use of double effect reasoning within the framework of these hermeneutic circles. But before doing that, we need to revisit the content of the first two chapters and place it within the overall context of Ricoeur’s work. Most importantly, we need to identify the capabilities and otherness involved in use of “terminal sedation”, and the myriad of ways in which our understanding of both “terminal sedation” and double effect reasoning have been minimized by forms of pure, transcendental reflection. Having thus identified in Ricoeurian terms, the problems presented by use of double effect reasoning in the case of “terminal sedation”, we can bring the hermeneutics circles to bear on these problems in the final section of this chapter.

As already indicated, Ricoeur’s hermeneutic circles require the combination of pure reflection and ‘moments’ whereby this reflection is opened up to various forms of reference or *parole*. Review of my work in chapters one and two leads me to the conclusion that within the disciplines represented and the work of the selected thinkers, the capacity of double effect reasoning to reflect or mediate *parole* is limited in varying degrees, despite creative and even heroic attempts to achieve openness to more and more forms of reference, and ultimately, forms of self-understanding. If we consider again the work of Boyle, Kaczor and McCormick, within Catholic philosophy, medieval studies and moral theology respectively, it seems to me that we have two interpretations of double effect

reasoning minimized by pure reflection (i.e., Boyle and Kaczor's interpretations) and one interpretation of double effect reasoning moving toward and to some degree achieving the incorporation of *parole* (i.e., McCormick's interpretation), but being thwarted by institutional power, and the lack in McCormick's work, of an adequate connection between his historical, relational anthropology and his proportionality assessments. In line with the emphasis of pure reflection on the outside object as the starting place of consideration and from there, the tracing back to the object's conditions of possibility, it seems to me that for both Boyle and Kaczor, the human person and his/her moral life is an external object, the conditions of possibility of which are traced back to and dependent upon codified conceptions of Thomistic natural law with its metaphysical view of personhood and action. In Ricoeurian terms, both Boyle and Kaczor have substituted a Thomistic ethical vision of the world for a more comprehensive reflection on free will, on evil, on texts, on action, and on imputability. Accordingly, the otherness that they are prepared to acknowledge or accommodate within their systems is quite limited. In a cursory fashion, Boyle acknowledges the otherness of language; the current state of knowledge and particular, contextual questions; the inevitability of harmful side effects; ignorance; hard cases; and variations in actual duties. At the same time, however, Boyle's pure reflection on double effect reasoning leads him to downplay otherness and to overestimate human capabilities, particularly, free choice. For example, he says, "In the choice to act for some goal, namely, in an intentional action, it always remains in the agent's power to choose not to do it ... choosing to pursue results that involve harming a good is always avoidable -- though often at a high price" (Boyle 2004: 56-57). Kaczor's accommodation of otherness is limited to his acknowledgement of Aquinas' metaphysical conceptions of suffering and evil, conceptions that are symbolically illuminating, but remote, nonetheless, to most people today. By the same token, although he acknowledges Aquinas' emphasis on the fact that "one cannot choose what one does not know" (Kaczor 1996: 44-45), Kaczor never accommodates the equally important fact that the Thomistic context of double effect reasoning -- Aquinas' structure of human action and choice -- is also remote to most people

today. Both Boyle and Kaczor have inherited and re-constructed a more or less closed, 'objective' system of pure reflection on double effect reasoning that is the object of an ongoing praxis and a *techne*. Moreover, it is precisely because of this closed system approach that Boyle can claim that natural law is not tradition-dependent in the sense of being rooted in the lived experience of persons sharing a common life.

By contrast, far from the realm of pure reflection, McCormick's obvious concern for *parole* is passionate and wide ranging. For example, his starting place is the concrete complexity, ambiguity, fragility, conflict, and tragedy involved in human personhood and human life -- especially human action. Although McCormick does not use the term 'otherness' to categorize factors such as these, it seems to me that his work on double effect reasoning analyzes and accommodates the reality of otherness more extensively than any other account in this thesis with the obvious exception of Ricoeur's work. For McCormick, the human person and his/her moral life does not comprise an external object, but rather, the human person integrally and adequately considered -- an embodied, historical subject in relationship with the material world of change and growth, the social world of structures (e.g., language) and institutions, the otherness of pre-moral evil or the existence of evil before human choice, and the otherness of God-with-us. It is on behalf of the embodied, historical subject facing otherness exemplified as above, that McCormick attempts to re-conceive double effect reasoning as a mediator of *parole*, or as a set of exception-making categories with which we can negotiate the otherness inherent in our particular human realities. From the perspective of those who favour the exclusive use of pure reflection, perhaps it is McCormick's extensive emphasis on *parole* that makes his proportionalism so threatening. Although in my view, McCormick's work lacks an adequate connection between his historical, relational anthropology and his proportionality assessments, thus opening the door to the charge of consequentialism, perhaps both my critique and the charge of consequentialism are more rooted in the requirements of pure reflection. Furthermore, in fairness to McCormick, perhaps his anthropology and his proportionality assessments could have been better integrated if he did not have to spend so much time

‘fighting fires’. In McCormick’s description of the way in which he would be introduced to visitors at the Kennedy Institute of Bioethics at Georgetown University, he says, “Hellegers [i.e., Dr. André Hellegers, the founder of the Institute] would say, ‘McCormick and I put out fires. We respond to problems. We have no eternally valid ten year schemes or methodological revolutions. All we do is respond to fire alarms’” (Odozor 1995: 23). Perhaps ‘fire fighting’ is an occupational hazard which accompanies the prioritization and accommodation of *parole* within one’s work. However, in my mind, it is a hazard far more preferable than the one that plagues the prioritization of pure reflection, namely, the tendency to assume the perspective of ‘the sun’ or “ ‘the mode of thinking of the spectators’ ” (Schner 2002: 163: for more explanation, see thesis dedication).

If we recall the survey of pertinent developments in twentieth-century Western moral philosophy, it seems to me that from a Ricoeurian perspective, the survey portrays a protracted battle between pure reflection and *parole*, with two significant skirmishes being represented by the principalist-contextualist debate in bioethics, and by the way in which double effect reasoning has become a lightning rod because it combines in one ‘principle’ approaches to ethics that have become radically polarized. Within the history of this battle, it seems to me that the interpretations of Anscombe and Sulmasy represent two similar yet divergent contributions. Each of them in their own way recognizes that *parole* is necessary, and that double effect reasoning minimized by pure reflection has become problematic. Unfortunately, however, both of them perpetuate this problem, albeit in different ways. Although Anscombe recognizes aspects of the problem (e.g., law-based accounts of absolutes, the ‘incurably contemplative’ Cartesian view of knowledge, the need for a new philosophy of psychology, etc.), she nonetheless remains seemingly ambivalent and divided concerning a solution, as Ricoeur indicates through his critique of her dualistic approach to the relationship between intentional action and knowledge. In other words, her articulation of an Aristotelian-based, practical account of double effect reasoning (especially intention) is still largely dominated by pure reflection, and plagued by the unresolved division between speculative and practical reason. Similarly, although Sulmasy also recognizes the

need for a practical account of double effect reasoning, in this case, an account rooted not within the pure reflection of contemporary action theory, but within the practical context of medical practice, he ultimately constructs an account of moral pathology based in the pure reflection supporting the pathognomic sign, that is, causation as understood and articulated within medical practice. This pure reflection leads him to construct a strict, but extremely problematic division between 'neuro-cognitive suffering' (i.e., suffering as explained by the medical view of causation) and 'agent-narrative suffering' (i.e., suffering as understood by patients within the context of their own systems of meaning).

To some degree, it would seem that double effect reasoning has more or less peaceably existed within the English common-law system insofar as it has been incorporated into the legal reflection on intention or *mens rea*, one of the two components of a criminal act within this context. Moreover, although the judges involved in the Canadian and American PAS/euthanasia cases were quite divided in their actual judgements, this case law illustrates the significant degree to which the courts have relied upon the intention/foresight distinction within double effect reasoning to sanction 'terminal sedation'. At the same time, however, the 'fit' between double effect reasoning and English criminal law is uncomfortable, and the most controversial issue is yet again the capacity of double effect reasoning to negotiate reference or *parole*. As both Cantor and Huxtable have indicated, there is some dissonance between use of double effect reasoning within case law and the traditional approach to criminal law. As we recall, Cantor holds that there is an inconsistency between what is permitted by means of the intention/foresight distinction and the traditional view of what is and is not excusable in the context of criminal homicide:

The effort to use the doctrine of double effect, with its focus on a physician's intention, seems inconsistent with traditional legal doctrine, which establishes that it is criminal homicide to knowingly cause death, even if the actor's motive or intention is to relieve suffering. Mercy killing has always been prohibited in the Anglo-American system. Thus, at least if an analgesic dosage is certain or practically certain to hasten death, the

physician's knowing conduct constitutes an unlawful killing closely akin to active euthanasia (Cantor 2001b: 86). Relief of suffering has never provided an adequate justification for killing a human in Anglo-American law. Traditional criminal law simply does not let the presence of extreme suffering by the victim and a merciful motive or intention by the perpetrator serve as a legal excuse or justification for knowingly killing a person ... Administering a drug dosage that is known to be lethal is an unlawful killing whether the actor intends to relieve suffering, intends to cause death, or intends to cause death in order to relieve suffering (Cantor 2004: 1837-1838).

From his perspective in England, Huxtable goes further by noting the same inconsistency that Cantor has noted, as well as the need for impartiality in the application of the criminal law:

[The] Adams [case] straightforwardly adopts the ethical doctrine [of double effect], in removing innocent *intentions* from the law of murder. This view is problematic, however, as it appears inconsistent with principles applied outside the context of palliation. Perhaps more worryingly, legal officials (primarily prosecutors and judges) appear rarely to doubt the innocence of a doctor's intention where analgesics are used ... In a recent House of Lords ruling [1998], the Lords again decided that foresight of virtually certain consequences either amounts to intention or at least provides evidence of intention, from which a jury may infer that the guilty intention was present. Although that case did not concern medical practice, ... the principles set out should apply to all murder cases. Judges are prone to pronounce that the law of murder applies equally to health professionals and laypersons alike. This cannot be the case, however, when a doctor's foresight of death can be innocent and a layperson's foresight of death can be culpable. This evinces ethical inconsistency; if the doctrine of double effect is acceptable, it surely ought to apply across the board ... (Huxtable 2004: 62, 63, 64).

Whether and to what degree the English common-law tradition will continue to rely upon double effect reasoning to resolve end-of-life issues is an open question. Huxtable suggests that double effect reasoning should be retained, "although its terms should be clearly stated (perhaps in an Act of Parliament) and rigorously policed" (Huxtable 2004: 62). Again, this suggestion raises the urgent and vexing question of how particular belief systems, pluralism and public policy should be related. No matter how this question is resolved, the *parole* of

human suffering at the end-of-life is clearly pushing the boundaries of pure reflection within the law and its incorporation of double effect reasoning.

If we recall the portrayal of ‘terminal sedation’ and use of double effect reasoning in the clinical literature, this literature also exposes the tension between double effect reasoning as a form of pure reflection and as a possible mediator of *parole* in the clinic. Intention is a particularly difficult issue, and there is significant tension between ‘intention’ as a ‘clear and distinct’ idea within double effect reasoning as pure reflection (i.e., “the ethicist’s bright line between relieving symptoms and hastening death” (Lo and Rubenfeld 2005: 1813)), and the muddy reality of intentions at the bedside of a suffering patient. Although this tension has been resolved to some degree in the clinical practice guidelines wherein intention has been rendered more publicly accessible through titration monitoring and documentation requirements, there is a need to consider the larger problem. As stated at the beginning of the first chapter, little is known about the practice of ‘terminal sedation’ and what we do know derives mostly from quantitative analyses, the vast majority of which are retrospective studies reliant upon more or less standardized chart notes, or the memory of survey participants. At this point, fourteen years after the first appearance of ‘terminal sedation’ in the literature, the key issue is that the literature on this practice is still largely a form of empirically-based, pure reflection. In other words, the literature portrays ‘terminal sedation’ from within the limited, explanatory categories of medical practice and in particular, of quantitative research. As a result, the ‘what’ and ‘why’ aspects of ‘terminal sedation’ are emphasized and the ‘who’ aspects are for the most part, conspicuously left out.

For example, overriding attention has been given to the pursuit of the pre-eminent question of pure reflection, namely, ‘What is it?’ It seems to me that the controversy over what ‘terminal sedation’ is and the concomitant naming dilemma ultimately reflects a struggle regarding whether and in what ways ‘terminal sedation’ can be accommodated within the existing pure reflection on medical practice. In the late 90s, the struggle might not have become public at all had it not been for the intellectual honesty of Dr. David Roy

in his insistence that *Slow Euthanasia* should be published within *The Journal of Palliative Care* (Billings and Block 1996). Apart from defining and naming 'terminal sedation' as an entity becoming gradually more acceptable within medical practice, the other typical pure reflection issues in the literature include 'How often does the thing occur?' (i.e., the prevalence question); 'What are the medical indications for it?' (i.e., treatments always have specific indications including target, and in this case, 'refractory' symptoms); and 'What are the most typical and most effective drugs to achieve sedation?'. Concerning medical indications for 'terminal sedation', existential suffering is extremely problematic because it has never fit comfortably into the empirically-based pure reflection on medical practice. However, existential suffering is only one of the forms of otherness, the understanding of which is, for the most part, a sealed book for the empirically-based pure reflection on medical practice.

Through my nursing and clinical ethics experience, I have learned that there are several forms of otherness experienced by patients and their loved ones before and/or during 'terminal sedation'. The basic form of otherness experienced by all patients is their disease process with the consequent pain, suffering, and the realities of both the dying process and death itself. By way of these factors, patients as selves become 'other' to their previous physical form, to their previously held images of themselves (e.g., as an independent person), to all their capabilities as previously known and experienced, and to their loved ones. From the perspective of loved ones, the patient becomes 'other' than they were -- sometimes even unrecognizable -- and loved ones struggle with this reality, as well the otherness of the unfamiliar roles they themselves may have to take on in response to the patient's situation. The caregivers, the system of care, and the use of invasive technology together comprise another significant form of otherness experienced by patients and their loved ones, and this otherness is largely a textual reality insofar as patients and their loved ones often have to endure endless procedures, forms, rules such as visiting hours, and other types of regulatory controls. The sedation itself including the specific drugs, their effect on consciousness and communication, and their side effects comprise a major otherness for

patients and their loved ones. Ricoeur speaks of the otherness of conscience, and this is often a significant factor for patients and loved ones because beliefs previously held in the context of better health may change radically in a situation where sedation becomes an option. To my knowledge, there is only one published article devoted exclusively to the experience of family members in cases of 'terminal sedation', and this study provides more insights regarding the otherness of sedation for loved ones. By means of a quantitative questionnaire survey of 280 bereaved families of cancer patients in Japan, Morita and his colleagues found that 185 individual family members (i.e., response rate of 73%) agreed or agreed strongly with the following concerns:

Distressed that they could not communicate with the patient - 50%; Not prepared for changes of patient condition - 34%; Burden of responsibility for the decision - 28%; Feeling they still had something more to do - 28%; The treatment might shorten the patient's life - 24%; Wish there had been a chance for the entire family to discuss - 17%; The physicians and nurses were not sufficiently compassionate - 15%; The patient status of sleeping was not dignified - 15%; Difficult to find meaning in being with the patient - 14%; There might be other ways for symptom relief - 11%; The dying process was unnaturally prolonged - 3.8%; Concerns about legal issues - 2.2%; Feeling as though the patient was forced to sleep - 1.6% (Morita, Ikenaga, Adachi et al. 2004: 562).

In cases of 'terminal sedation', there are forms of otherness also experienced by the caregivers. To state the obvious, for caregivers, patients and their loved ones are 'other' in the basic sense that they are other unique persons, perhaps from other cultures, with other unique needs, problems, varied experiences of disease processes, and so on. As indicated in the literature, patients' existential suffering represents a troublesome kind of otherness for caregivers, particularly because it challenges established medical categories of pathology, and it may challenge the personal boundaries that caregivers are expected to keep between themselves and patients. Unable or unwilling to deal with the otherness of patients and loved ones, caregivers sometimes label a patient and/or their loved ones as 'difficult', or 'non-compliant', and this labelling aggravates the problem of otherness for all concerned. Regarding the drugs used in 'terminal sedation', their actions and side effects

can also become 'other' for caregivers insofar as the same drug may act quite differently in different patients, and drugs may act differently than one might expect from textbook explanations of their actions and effects. Death is also a form of otherness for caregivers, particularly because each patient's death and dying process is different, and because the death of a patient may indeed be experienced as a professional failure, or as an enemy, depending on the caregiver's age, life experience in general, professional training, and cumulative experience of personal and professional capabilities. In some situations, the caregiver may become 'other' to his/herself in the sense that 'terminal sedation' may precipitate a crisis of conscience. If a caregiver's peers or colleagues are also experiencing such a crisis, the otherness of other caregivers and their divergent stances may complicate the crisis experienced by any one individual. The law is another form of otherness for caregivers, particularly law as pure reflection, distanced as it is from bedside realities. By the same token, double effect reasoning, particularly the emphasis on intention, represents otherness for caregivers in all the ways discussed in the first chapter. Although the literature gives the impression that physicians are the ones primarily involved in 'terminal sedation', nurses most often give the actual drugs, and spend the most continuous time at the bedside during the sedation and the patient's actual dying process. Hence, not surprisingly, the otherness of 'terminal sedation' can present special problems for nurses. Unfortunately, however, there is, to my knowledge, only one published study of the "emotional burden of nurses in palliative sedation therapy" (Morita, Miyashita, Kimura et al. 2004). By means of a quantitative questionnaire survey of 3187 nurses (i.e., response rate of 82%) in Japan, Morita and his colleagues found that nurses agreed or agreed strongly with the following factors contributing to nurse-perceived burden in sedation:

Frequent experience of unclear patient wishes - 29%; Insufficient time - 27%; Belief that it is difficult to diagnose refractory symptoms - 27%; Nurse-perceived inadequate knowledge/skills about sedation practice - 27%; Nurse-perceived inadequate interpersonal skills - 26%; Unclear roles of nurses - 17%; Frequent experience of unclear family wishes - 17%; Lack of respect for nurse opinions - 12%; Belief that patient distress is not relieved by sedation - 12%; Nurse-perceived inadequate coping with own grief -

11%; Lack of common understanding of sedation among nurses - 9.1%; Lack of common understanding of sedation between physicians and nurses - 8.1%; Frequent experience of conflicting wishes between patient and family - 8.1%; Belief that sedation would hasten death - 7.2%; Supportive colleagues unavailable - 6.6%; Belief that sedation is indistinguishable from euthanasia - 5.4%; Team conference unavailable - 5.1%; Nurses' personal values contradictory to sedation - 4.1% (Morita, Miyashita, Kimura et al. 2004: 552).

4.3. Toward a Ricoeurian Interpretation of Double Effect Reasoning in the Case of 'Terminal Sedation'

In the Introduction to this thesis, we identified the fact that since the vast literature concerning double effect reasoning spans eight centuries and several disciplines, there is no question that the hermeneutical challenge involved in the continued use of this type of reasoning is quite daunting. Even the hermeneutical challenge involved in bringing Ricoeur's perspective to the limited selection of literature on double effect literature within this thesis is daunting enough. In the Introduction to this chapter, we identified the fundamental option open to us in the context of Ricoeur's work as reinforced by Kearney: We can either use double effect reasoning as a mechanism for repudiating otherness and accentuating the tokens of fracture, or we can use it as a vehicle for understanding and accommodating otherness, specifically, understanding and accommodating ourselves-as-other in the case of 'terminal sedation'. What would it mean to use double effect reasoning in the latter way? Fundamentally, double effect reasoning has been handed down from one generation to another as a text and as such, it is subject to all the otherness of texts as presented by Ricoeur. Therefore, the use of double effect reasoning as a vehicle for understanding and accommodating ourselves-as-other in the case of 'terminal sedation' would mean opening up this text to a world of reference in the ways that Ricoeur has suggested in order to overcome the distancing or alienation that results when the text is reduced to forms of pure reflection or explanation. Similarly, since double effect reasoning is a text that has responded to the otherness of evil with universally applicable concepts or

maxims of 'good', 'bad', and 'neutral', we need to modify this approach in line with Ricoeur's hermeneutical response to the otherness of evil. In other words, there is a need for a comprehensive reflection on 'good', 'bad', and 'neutral' as opposed to the minimization of evil through pure reflection, or the formalist reduction of 'good', 'bad', and 'neutral' to maxims of free choice. Insofar as double effect reasoning is a code or an abbreviated version of Aquinas' action theory as interpreted by various commentators, it is subject to all the otherness of imputability as presented by Ricoeur. With this in mind, we need to replace the use of double effect reasoning as a type of pure reflection on agents and agency with the utilization of this reasoning as a form of hermeneutic reflection that facilitates the greater self-understanding of acting subjects who impute and who can be imputed. Having now analyzed the content of the first two chapters in order to illuminate the problematic forms of pure reflection, we are in a position to move toward a Ricoeurian interpretation of double effect reasoning in the case of 'terminal sedation'. This interpretation will move as Ricoeur's hermeneutics moves from a text, namely, the so-called conditions of double effect reasoning, to what is in front of the text -- enlarged selves-as-other. Our goal is selves-as-other enlarged in two ways. Firstly, there is a need to open up double effect reasoning to wide-ranging *parole* or reference -- ultimately, to greater specification of selves, implied in the capacities, at the junction of acting and the agent in cases of 'terminal sedation'. Secondly, in relation to dying patients for whom 'terminal sedation' is an option, there is a need to use double effect reasoning to facilitate as much as possible, their venturing beyond a mere acceptance of having to die to an appropriation of their own 'potentiality-for-dying'. We turn now to the implementation of these goals by means of the so-called conditions of double effect reasoning.

The first two chapters revealed a conflict of interpretations regarding the meaning of proportionality within double effect reasoning. As we recall, the sources revealed a conflict between three principal meanings: the notion of proportionate reason; the comparison of outcomes or effects; and means/end proportion, the original meaning of proportionality and the one often facilitated today by the proportional titration of dosages to achieve the

necessary level of sedation. While we cannot hope to solve the inevitable conflict of interpretations surrounding these meanings, nor can we deny the helpfulness of these meanings in discernment concerning 'terminal sedation', the fact remains that, from a Ricoeurian perspective, these meanings are largely forms of pure reflection, and they need to be supplemented by the injection of more wide-ranging *parole* or reference for a greater enlargement of selves-as-other in cases of 'terminal sedation'. From a practical perspective, for instance, in the context of a discussion between patients (if possible), loved ones and staff at the unit level, it seems to me that we could assist people to achieve the goal of selves-as-other enlarged in the aforementioned ways, by using Ricoeur's circle of understanding to better understand the capacities and otherness involved in the situations of extremity wherein 'terminal sedation' becomes an option. In terms of the first 'moment' of the circle where we have to guess or follow our hunches regarding the meaning of the situation in which we find ourselves, we might consider the following questions: What capacities have been and can be exercised in this situation, and what constraints on those capacities are we facing? In other words, what does otherness consist of in this situation, and how/in what ways is "terminal sedation" an otherness and/or a possible way to address the otherness we are facing (e.g., the otherness of suffering and death)? In terms of the second 'moment' where we are concerned with pure reflection or the structural explanations of the situation at hand, we might consider: How has 'terminal sedation' been explained structurally? The literature discussed in this thesis provides a myriad of structural explanations that could be adapted and incorporated into unit-based discussion of the basic structural components of 'terminal sedation'. Finally, in terms of the third 'moment' where our goal is to move past the various forms of alienation brought about by structural explanation, we might consider the question of how and in what ways it might be possible for 'terminal sedation' to assist people to appropriate the otherness at hand, and to move toward an appropriation of their own (if possible, in the case of patients themselves), and/or of their loved one's 'potentiality-for-dying'. Achievement of this goal of appropriation will depend to a great degree on the level of sedation required and its effect

on consciousness and communication, the time period involved, as well as the willingness of everyone involved to work through the otherness of dying. As already indicated, toward the appropriation of death as 'potentiality-for-dying', Ricoeur emphasizes the mediating role of historical deaths and most importantly, the mediating role "played by the death of close relatives" (Ricoeur 2002b: 243). In my experience with situations of 'terminal sedation', what is required for this type of mediation is the readiness, willingness, and creativity involved in working through memories -- memories of the death of close relatives, and of death in general. In my experience of patients for whom sedation is indicated and/or their loved ones, the existence or non-existence of these pre-requisites is affected by many factors including the availability of different kinds of professional assistance. However, in situations where these pre-requisites have been or can be achieved, the appropriation of death as 'potentiality-for-dying' is a real possibility, and in some situations I have witnessed, a real, growthful actuality.

The first two chapters also revealed a conflict of interpretations surrounding the second condition requiring that the agent intend only good effects even though bad effects can be foreseen. As we recall, the viability and credibility of the intention/foresight distinction was questioned from many perspectives, and intention itself was considered problematic insofar as there was a significant tension between 'intention' as a universally applicable concept (i.e., 'intention' as a 'clear and distinct' idea), and the muddy reality of intentions at the bedside of suffering patients. In light of Ricoeur's work, I think we can now move toward a solution for these problems and provide at least an outline of what an intention for 'terminal sedation' would mean in Ricoeurian terms. It seems to me that the foresight/intention distinction is in Ricoeurian terms, merely a textual sign that may or may not assist us to negotiate or mediate two types of otherness -- the otherness of what I foresee and the otherness of what I intend. As textual signs, both 'foresight' and 'intention' bring inevitable alienation and the need for perpetual interpretation. In other words, 'intention' and 'foresight' are indistinguishable insofar as neither one of them can, as textual signs, overcome the otherness of all texts. From this perspective, it seems to me

that the intention/foresight distinction does not carry moral weight -- or it cannot mediate otherness in a Ricoeurian sense -- except as interpreted, or in other words, except as part of the journey towards greater enlargement of selves-as-other in cases of 'terminal sedation'. As part of this journey, both intention and foresight are pre-eminently texts, subject to all the otherness of texts that Ricoeur has discussed. As texts, intention and foresight function authentically as attestations, as initiatives, and in particular, as promises within the context of Ricoeur's notion of future-oriented and fragility-oriented responsibility. If we take the intention for 'terminal sedation' as an example, it is first and foremost, a text (i.e., part of a larger narrative) subject to all the otherness of texts. In this regard, the problems surrounding intention in the clinical context are part and parcel of the conflicts of interpretation plaguing all texts. The intention for 'terminal sedation' is also an attestation characterized by a veritative type of certainty rather than that derived from an ultimate foundation. As Ricoeur explains, "[Attestation] perfectly expresses the kind of belief attached to expressions of the type *I believe that I can*, distinguishing it from belief as a weak form of theoretical knowledge" (Ricoeur 2005: 91). The intention for 'terminal sedation' is also a type of action that Ricoeur calls 'initiative'. As we recall, an initiative is "an *intervention* of the agent of action in the course of the world, an intervention which effectively causes changes in the world" (Ricoeur 1992: 109). Not unlike any other type of initiative, the intention for 'terminal sedation' is subject to constraint or otherness related to the clash of causalities that plagues all our initiatives. It seems to me also that the intention for 'terminal sedation' is a type of initiative that Ricoeur calls 'promising'. As he explains, "When someone says, 'I promise,' the speaker effectively commits himself to some future action. To make a promise is to commit oneself to 'do' what the proposition says ... But the commitment is first of all to the other to whom the promise is made ... In other words, the promise has not simply a receiver, but a beneficiary of the promise" (Ricoeur 2005: 129). Accordingly, the intention for 'terminal sedation' functions ideally within the context of Ricoeur's future-oriented and fragility-oriented view of responsibility. Within this context, it is not merely pure reflection, but the inclusion of *parole* that undergirds

responsibility, combined with the importance of trust as a mediator of otherness, for example, the otherness of caregivers from patients' perspectives in cases of 'terminal sedation'.

Regarding the third condition of double effect reasoning, the idea that the bad effect must not be the cause of the good effect, we have in the first two chapters, identified a key problem. This condition is difficult, if not impossible to apply in cases of 'terminal sedation' because precise cause and effect determinations are often not possible, or we only have access to conflictual views of causation and its relationship to cases of 'terminal sedation'. Obviously, this is not a new problem from the perspective of Ricoeur's work. As he indicates in many places, there is a long-standing and seemingly intractable conflict of interpretations regarding the notion of 'cause'. Aquinas, like Aristotle, held an explanation of causes that included the notion that if A is the cause of B, that means that A is the active initiator of change in B. Accordingly, in the Thomistic framework, intention is the vehicle for a person's active initiation of change. By contrast, in what might be called the post-seventeenth century, scientific conception of "cause", "causes are the *inactive nodes in a law-like implication chain*," i.e., " 'A is the cause of B' means 'Given the occurrence of B [e.g., Sulmasy's pathognomic sign], A must necessarily have occurred' " (Hulswit; 2002: 44). In this context, the role of intention is necessarily more ambiguous. For example, as we recall, Ricoeur says in *Oneself as Another*, "separating what belongs to the agent from what belongs to the chains of external causality proves to be a highly complex operation" (Ricoeur 1992: 106). As both Anscombe and Ricoeur have indicated, however, there is a fundamental need to acknowledge frankly that our actions arise out of a **conjunction** between several kinds of causalities. I think this acknowledgement would clear the way for a substantial reduction of the so-called "cross-cultural dissonance" produced by the use of double effect reasoning within medical practice. As we recall, within Ricoeur's recognition of a conjunction between causalities, he stresses that cause as a form of explanation, must not be opposed to cause as a form of understanding ourselves-as-other. On the contrary, he places this conjunction of causalities within the context of

Kant's distinction between two types of beginning: the beginning of the world and our beginnings in the midst of the world. Since use of "terminal sedation" graphically illustrates the clash between these two types of beginnings, it is an ideal example in my view, of how the conflict of interpretations regarding causation will not be solved by any amount of pure reflection on causation, but rather, by acceptance of the inevitable conflict of interpretations, and the need to resolve it hermeneutically via Ricoeur's circle of understanding. It seems to me that this particular conflict of interpretations comprises an immense interdisciplinary and societal problem, the symptoms and implications of which extend far beyond those manifested in the use of double effect reasoning in the case of 'terminal sedation'. Certainly, although problems and insights surfaced in the consideration of this conflict at the bedside level can and should inform the larger discussion, I think that the conflict of interpretations regarding causation can only be mediated effectively by use of Ricoeur's circle of understanding at the level of disciplinary, interdisciplinary and ultimately, societal discussion. An important first step would be the comprehensive, interdisciplinary and societal identification of the conflict of interpretations regarding causation as manifested by pure reflection alone. Within this larger task, the identification of the conflict regarding causation related to the reduction of double effect reasoning to forms of pure reflection in the case of 'terminal sedation' (i.e., the conflict as identified in this thesis) forms only a small but important part.

The first two chapters certainly revealed the conflict of interpretations surrounding the first condition of double effect reasoning and its requirement that an act be 'good' or 'neutral'. Within the first chapter, the first condition was found to be problematic because it presumes universally applicable notions of 'good', 'bad', and 'neutral', and there is no consensus regarding the existence of such universals, their definition if they do exist, and the idea that priority should be given to such universals over the particularities of specific cases. Also in the second chapter, Boyle and Kaczor's pure reflection on this condition is an example from a Ricoeurian perspective, of the otherness of evil reduced to an ethical vision of the world, i.e., evil reduced through formalism to a maxim of free will associated

in the case of double effect reasoning, with underlying definitions of ‘good’, ‘bad’, and ‘neutral’. As we recall, in Ricoeur’s view, two main problems arise when evil is reduced by pure reflection in this way: (1) authority is based along “the regressive path of [theoretical] *justification*” (e.g., the test of internal coherence) rather than along “the progressive path of *actualization*” [i.e., on the level actual practice] (Ricoeur 1992: 279-283). Secondly, this type of reduction of evil is often accompanied by “the intermingling of relations of domination and violence, themselves institutionalized” (Ricoeur 1992: 279-283). It seems to me that the work of Boyle, Kaczor, and other traditionalists exemplifies “the regressive path” of which Ricoeur speaks, and institutionalized “relations of domination and violence” have certainly characterized the relationship between the hierarchical magisterium, traditionalists, and proportionalists like McCormick. As one Catholic theologian has said, “For better or worse, an entire generation of moral theologians has now been formed and schooled during an era of deep theological pluralism/dissent (choose one) ... Regardless of where one assigns blame ... the spectacle of a bickering church acting more like a dysfunctional family than a holy people is nothing short of tragic (LoPresti 2003: 176, 186).

In Ricoeurian terms, it seems to me that we have the option of continuing to interpret the first condition in a reductionistic way, or adopting Ricoeur’s notion of “potential” or “inchoate” universals which can only become universals for all persons through a process that facilitates mutual understanding of selves-as-other. In the context of McCormick’s thought, we have the option of norms more realistically envisioned as having “the provisional character of our journey into the future. They are an orienting force in a history which is both fulfilment and promise” (McCormick 1984a: 2). I think that Ricoeur’s ethics circle provides us with an excellent process whereby we can facilitate mutual understanding of selves-as-other on the way toward the goal of universals for all persons. Regarding the ‘moment’ of ethics in the case of discernment regarding use of ‘terminal sedation’, I think we need to change Ricoeur’s wording of this ‘moment’, and discuss at the societal level, the meaning of the ‘ethical intention’ of aiming at the ‘good

death' or our 'potentiality-for-dying' with and for others in just institutions. Regarding the 'moment' of morality, I think we need to discuss at the societal level, all the current norms involved in aiming at the 'good death', and consider whether they are still serving us well, particularly the relevant legal norms within the English common-law tradition. As already indicated, the controversy surrounding 'terminal sedation' constitutes a good example of how the *parole* of human suffering at the end-of-life is clearly pushing the boundaries of pure reflection within the law and its incorporation of double effect reasoning. Finally, regarding the 'moment' of practical wisdom or phronesis, we, that is, caregivers in particular, need to lift up in appropriate ways and for the purpose of greater public education, what has been learned from our use of Ricoeur's circle of understanding in the consideration of proportionality in cases of 'terminal sedation'.

4.4. Conclusion

In this chapter, we have placed 'terminal sedation' in the company of strangers, gods, and monsters (i.e., other experiences of extremity), in order to illustrate the fundamental choice we have in relation to our use of double effect reasoning. We can either use this reasoning as a mechanism for repudiating otherness and accentuating the tokens of fracture within the human psyche, or we can use it as a vehicle for understanding and accommodating otherness. In Ricoeurian terms, we have the option of using double effect reasoning as a vehicle for understanding and accommodating ourselves-as-other in the case of 'terminal sedation'. The assumptions in the first section of this chapter provide the basis for using Ricoeur's work to improve double effect reasoning for discernment in the case of 'terminal sedation'. Inspired by Ricoeur's work, the most important assumption is my conviction that the major issue in ethical reflection concerning 'terminal sedation' is not how, and in what ways it can or cannot be distinguished from other acts, but rather, what specifies the self, implied in the capacities, at the junction of acting and the agent in cases of 'terminal sedation'. Although double effect reasoning has had a long history of being used to distinguish discrete acts as 'good', 'bad', or 'neutral', and thus, it would not

be an obviously appropriate candidate for the task of specifying the self, its Thomistic origins, as they are concerned with *actio*, suggested the possibility of adapting double effect reasoning to accomplish the Ricoeurian task of specifying the self, implied in the capacities, in cases of 'terminal sedation'. As indicated within the assumptions, it is Ricoeur's hermeneutic circles that have the greatest potential to reconcile universals and particulars within our experience, and to increase our overall understanding of ourselves-as-other even within the context of suffering, death and dying. It is with this potential in mind that we placed the conflicts of interpretation surrounding 'terminal sedation' and use of double effect reasoning within the framework of the circles.

Using resources from the first two chapters, the second section of this chapter illustrated a key obstacle that would prevent the effective use of the hermeneutic circles to facilitate better use of double effect reasoning -- the key obstacle being the exclusive use of pure reflection. This reflection is extremely problematic because its sole focus is *langue* or explanation, a form of knowledge that focuses not on the understanding of selves-as-other, but merely on the explication of external objects and their conditions of possibility. Unfortunately, as the examples in the second section indicate, most of the existing literature on both 'terminal sedation' and the use of double effect reasoning for discernment in cases of 'terminal sedation' relies almost exclusively upon the use of pure reflection. Although pure reflection is beneficial in some ways, e.g., we need explanation as a starting point for all ethical reflection, it is clearly not sufficient for the greater task of understanding and accommodating ourselves-as-other in the case of 'terminal sedation' or any other phenomena. In recognition of both the need for pure reflection and its limitations, Ricoeur's hermeneutic circles require the creative, dialectical combination of both *langue* and *parole*. It is the combined concern for *langue* and *parole* within the circles that makes it advantageous for us to use them to re-construct double effect reasoning as a vehicle for understanding and accommodating ourselves-as-other in the case of 'terminal sedation'.

In the final section of this chapter, Ricoeur's hermeneutic circles were used to revise and rejuvenate use of double effect reasoning in the case of 'terminal sedation'. Fundamentally, double effect reasoning as a form of explanation (i.e., the conditions of double effect reasoning), was opened up to a world of reference in the ways that Ricoeur has suggested. In the context of suffering and dying, what is needed in relation to the explanatory condition of proportionality, is the accomplishment of the proportionality of selves-as-other towards death, or the achievement of 'potentiality-for-dying' as opposed to the mere acceptance of the factual necessity of dying. Accordingly, in this final section, discernment on proportionality in cases where 'terminal sedation' is indicated was envisioned as an implementation of the circle of understanding for the facilitation of 'potentiality-for-dying' as much as possible. In the context of suffering and dying, what is needed in relation to the explanatory or textual condition of intention in the case of 'terminal sedation', is an understanding of the otherness of both foresight and intention as texts, and an enlargement of the functioning of intention to include its authentic existence as attestation, as a form of initiative that Ricoeur calls 'promising', and as a promise functioning within the context of Ricoeur's notion of future-oriented and fragility-oriented responsibility. In the context of suffering and dying, what is needed in relation to the explanatory or textual conditions involving 'cause' and the concepts of 'good', 'bad' and 'neutral' as related to 'terminal sedation', is both a frank acknowledgement of the immense conflicts of interpretation surrounding these concepts, and the urgent need for much more extensive disciplinary, interdisciplinary, and societal discussion and resolution of these conflicts. As Ricoeur says in many places, these conflicts are ultimately conflicts of interpretation regarding the sources of the self, and in keeping with his emphasis on the ongoing enlargement of the self-as-other as a way of mediating these conflicts, we have suggested the use of both his circle of understanding, and his ethics circle to facilitate not just pure reflection, but comprehensive, hermeneutic reflection on 'cause', and on 'good', 'bad' and 'neutral' in the case of 'terminal sedation'. It is only this type of hermeneutic reflection that will allow us to move beyond the exclusive use of double effect reasoning as

a form of pure reflection, and to embrace its use as a vehicle for understanding and accommodating ourselves-as-other in the case of 'terminal sedation'.

The normal is not a static or peaceful, but a dynamic and polemical concept ... When we know that norma is the Latin word for T-square and that normalis means perpendicular, we know almost all that must be known about the area in which the meaning of the terms 'norm' and 'normal' originated ... A norm, or rule, is what can be used to right, to square, to straighten. To set a norm (normer), to normalize, is to impose a requirement on an existence, a given whose variety, disparity, with regard to the requirement, present themselves as a hostile, even more than an unknown, indeterminant. It is, in effect, a polemical concept ... The reason for the polemical final purpose and usage of the concept of norm must be sought, ... in the essence of the normal-abnormal relationship. It is not a question of a relationship of contradiction and externality but one of inversion and polarity. The norm ... creates on its own the possibility of an inversion of terms. A norm offers itself as a possible mode of unifying diversity, resolving a difference, settling a disagreement. But to offer oneself is not to impose oneself. Unlike a law of nature, a norm does not necessitate its effect. That is to say, a norm has no significance as norm pure and simple ... A norm is in effect the possibility of a reference only when it has been established or chosen as the expression of a preference and as the instrument of a will to substitute a satisfying state of affairs for a disappointing one (Canguilhem 1991: 239-240).

General Conclusion

At the beginning of this thesis, the problem, namely, the controversy surrounding use of double effect reasoning in the case of 'terminal sedation', was established as a contemporary example of the ancient problem of universals, the problem described in contemporary philosophical terms by Schoedinger in the General Introduction. The problem of universals is essentially an immense, interdisciplinary and societal problem about meaning. In the midst of the 'pluralism' of Canadian life, for example, what is the meaning of 'justice', 'goodness', 'rightness', 'truth', 'beauty', 'respect', 'autonomy', 'evil', and so on. Universalists will seek to impose one meaning with an 'ultimate' foundation on the many. In Canguilhem's terms, as above, this is 'to right', 'to square', 'to straighten', or 'to impose a requirement on an existence' whose natural plurality responds with hostility. By contrast, particularists will seek to uphold as many particular meanings as there are particular persons, cultures, communities, etc. The real possibility of either or both universalist/particularist violence and totalitarianism makes the reconciliation of 'universals' and 'particulars' an urgent individual and communal task.

If we return to the case study at the beginning of the first chapter, we realize that it is a microcosm of the problem of universals as it relates to the use of double effect reasoning in the case of 'terminal sedation'. On the one hand, the physician relies on her empirical knowledge of drugs and cause and effect relationships to give her distinction between 'terminal sedation' and 'euthanasia'. By contrast, the ethicist relies on her philosophical and theological knowledge of double effect reasoning to offer a very different distinction between 'terminal sedation' and 'euthanasia'. Both relied on universalist theories that had an uncomfortable 'fit' in this particular situation, particularly because the family members were bringing entirely different contextual understandings into the situation. Unknown to both the physician and the ethicist at the time, they were only acting out a complex conflict of interpretations well-known in the clinical, legal, philosophical, and Catholic theological literature. Based on a review of that literature, the main dimensions of the conflict of interpretations concerning 'universals' and 'particulars' were described in more detail, leading to the conclusion that both 'terminal sedation' and double effect reasoning have not one 'face' but many, resulting in divergent distinctions between 'terminal sedation' and euthanasia, some emphasizing 'universals', and others stressing particular contingencies. A parallel problem was discovered in the second chapter because the five selected authors presented five completely different interpretations of double effect reasoning. Moreover, despite the fact that these authors are working within the Catholic tradition and are favourably disposed, generally speaking, to the first condition, each of them conceived of the universals involved quite differently, and each of them had a radically different understanding of the relationship between the universals in question and the contingencies of particular situations (i.e., including the contingencies of 'terminal sedation' in the case of three authors).

In the third chapter, we explored Ricoeur's hermeneutical response to the conflict of interpretations concerning 'universals' and 'particulars'. Fundamentally, Ricoeur's starting place is an anthropological insight -- the notion that human beings are both universal and particular, and most importantly, that their universality and particularity is lived out through

the functioning of various human capabilities. In this third chapter, we explored Ricoeur's understanding of several capabilities, notably, fallibility -- the human capability for evil, speaking, writing, acting and imputability. It is through the exercising of these capabilities that we encounter otherness or alterity that constrains our capabilities in their drive toward universality. In the face of otherness, especially the otherness of evil, Ricoeur stresses the impossibility of absolute knowledge and the inevitability of conflicts of interpretation. In response to otherness, Ricoeur has, throughout his works consulted in this thesis, advanced a dynamic relationship between two contrasting modes of intelligibility -- pure, transcendental reflection and hermeneutics. Although each type of intelligibility brings with it strengths and weaknesses in terms of its potential to mediate otherness, or the constraints on our universality, the combination of, or the dialectical relationship between the two types of intelligibility within the hermeneutic circles has the greatest potential to reconcile universals and particulars within our experience, and to increase our overall understanding of ourselves as others. It is with this potential in mind that we have placed the controversy surrounding 'terminal sedation' and use of double effect reasoning within the context of these hermeneutic circles.

In the fourth and final chapter, we placed 'terminal sedation' in the company of strangers, gods, and monsters (i.e., other experiences of extremity), in order to illustrate the fundamental choice we have in relation to our use of double effect reasoning. We can either use this reasoning as a mechanism for repudiating otherness and accentuating the tokens of fracture within the human psyche, or we can use it as a vehicle for understanding and accommodating otherness. In Ricoeurian terms, we have the option of using double effect reasoning as a vehicle for understanding and accommodating ourselves-as-other in the case of 'terminal sedation'. The assumptions in the first section of the fourth chapter provide the basis for using Ricoeur's work to improve double effect reasoning for discernment in the case of 'terminal sedation'. Inspired by Ricoeur's work, the most important assumption is my conviction that the major issue in ethical reflection concerning 'terminal sedation' is not how, and in what ways it can or cannot be distinguished from

other acts, but rather, what specifies the self, implied in the capacities, at the junction of acting and the agent in cases of 'terminal sedation'. Although double effect reasoning has had a long history of being used to distinguish discrete acts as 'good', 'bad', or 'neutral', and thus, it would not be an obviously appropriate candidate for the task of specifying the self, its Thomistic origins, as they are concerned with *actio*, suggested the possibility of adapting double effect reasoning to accomplish the Ricoeurian task of specifying the self, implied in the capacities, in cases of 'terminal sedation'. As indicated within the assumptions, it is Ricoeur's hermeneutic circles that have the greatest potential to reconcile universals and particulars within our experience, and to increase our overall understanding of ourselves-as-other even within the context of suffering, death and dying. It is with this potential in mind that we placed the conflicts of interpretation surrounding 'terminal sedation' and use of double effect reasoning within the framework of the circles.

Using resources from the first two chapters, the second section of the fourth chapter illustrated a key obstacle that would prevent the effective use of the hermeneutic circles to facilitate better use of double effect reasoning -- the key obstacle being the exclusive use of pure reflection. This reflection is extremely problematic because its sole focus is *langue* or explanation, a form of knowledge that focuses not on the understanding of selves-as-other, but merely on the explication of external objects and their conditions of possibility. Unfortunately, as the examples in the second section indicate, most of the existing literature on both 'terminal sedation' and the use of double effect reasoning for discernment in cases of 'terminal sedation' relies almost exclusively upon the use of pure reflection. Although pure reflection is beneficial in some ways, e.g., we need explanation as a starting point for all ethical reflection, it is clearly not sufficient for the greater task of understanding and accommodating ourselves-as-other in the case of 'terminal sedation' or any other phenomena. In recognition of both the need for pure reflection and its limitations, Ricoeur's hermeneutic circles require the creative, dialectical combination of both *langue* and *parole*. It is the combined concern for *langue* and *parole* within the circles that makes

it advantageous for us to use them to re-construct double effect reasoning as a vehicle for understanding and accommodating ourselves-as-other in the case of 'terminal sedation'.

In the final section of the fourth chapter, Ricoeur's hermeneutic circles were used to revise and rejuvenate use of double effect reasoning in the case of 'terminal sedation'. Fundamentally, double effect reasoning as a form of explanation (i.e., the conditions of double effect reasoning), was opened up to a world of reference in the ways that Ricoeur has suggested. In the context of suffering and dying, what is needed in relation to the explanatory condition of proportionality, is the accomplishment of the proportionality of selves-as-other towards death, or the achievement of 'potentiality-for-dying' as opposed to the mere acceptance of the factual necessity of dying. Accordingly, in this final section, discernment on proportionality in cases where 'terminal sedation' is indicated was envisioned as an implementation of the circle of understanding for the facilitation of 'potentiality-for-dying' as much as possible. In the context of suffering and dying, what is needed in relation to the explanatory or textual condition of intention in the case of 'terminal sedation', is an understanding of the otherness of both foresight and intention as texts, and an enlargement of the functioning of intention to include its authentic existence as attestation, as a form of initiative that Ricoeur calls 'promising', and as a promise functioning within the context of Ricoeur's notion of future-oriented and fragility-oriented responsibility. In the context of suffering and dying, what is needed in relation to the explanatory or textual conditions involving 'cause' and the concepts of 'good', 'bad' and 'neutral' as related to 'terminal sedation', is both a frank acknowledgement of the immense conflicts of interpretation surrounding these concepts, and the urgent need for much more extensive disciplinary, interdisciplinary, and societal discussion and resolution of these conflicts. As Ricoeur says in many places, these conflicts are ultimately conflicts of interpretation regarding the sources of the self, and in keeping with his emphasis on the ongoing enlargement of the self-as-other as a way of mediating these conflicts, we have suggested the use of both his circle of understanding, and his ethics circle to facilitate not just pure reflection, but comprehensive, hermeneutic reflection on 'cause', and on 'good',

'bad' and 'neutral' in the case of 'terminal sedation'. It is only this type of hermeneutic reflection that will allow us to move beyond the exclusive use of double effect reasoning as a form of pure reflection, and to embrace its use as a vehicle for understanding and accommodating ourselves-as-other in the case of 'terminal sedation'.

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Appendix

RELEVANT SECTIONS OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Section 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject to such reasonable limits prescribed by law and as can demonstrably be justified in a free and democratic society.

Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Section 15. Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

FOURTEENTH AMENDMENT OF THE US CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.