CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY

FUNDAMENTAL MORAL

For quite a few years now, theologians have, without disowning casuistry, disowned an excessively casuistic approach to the moral life. The effects of such an approach—a unilateral and cramping juridicism of outlook—are all too clear. S. Pinckaers, O.P., believes that behind the casuistic thought-patterns of some theology and much spoken doctrine is a certain concept of liberty, the notion of "liberty of indifference."[1] Being defined as the power to choose between this and that, the reasonable and unreasonable, for or against the law, this concept of liberty tends to manifest itself by staking out claims against all that is not itself. Autonomy is to be guarded, and this defensive attitude expresses itself in separation, negation, revolt. Now casuistic moral theology does not defend this concept of liberty, Pinckaers asserts, but too often its reflections seem to imply and even buttress it. With such a notion of freedom, the law appears as the expression of a foreign will making threatening claims. The dominant response of the person is fear, the dominant virtue obedience. The moralist and conscience itself become primarily concerned with acts in violation of obligation, with sins; hence they become almost arbitrators between man and the will of God.

Rather than this liberty, Pinckaers proposes what he calls the "liberty of perfection," one which takes root in a primitive and spontaneous sense of perfection and aspiration for the good. Instead of tension between liberty and law, where God is seen as the supreme legislator, the liberty of perfection views God as the sovereign good, all amiable, supremely worthy of friendship. Thus liberty should really be conceived as the ability to respond creatively, if progressively, to this great good. Moral theology must be primarily concerned with promotion of this response. This does not mean that obligation ceases to exist; rather it pertains, Pinckaers believes, to a certain "infancy level" of response where one has need of exterior aids and constraints—just as the budding artist must submit to a certain discipline and painful restraints to bring himself to a level of more profound and spontaneous response. The mature pass beyond the need of such guidelines simply because they do the things commanded spontaneously and with internal grasp of the value involved. Casuistic moral theology pertains to the level of constraint—the early level of pedagogy, so to speak—and it

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[1] S. Pinckaers, O.P., "La liberté en morale," *Revue ecclésiastique de Liège* 51 (1965) 86–102.

concerns itself with sin and imperfection precisely to lead to the fuller moral life of spontaneous creativity. Thus far Pinckaers.

Rather than say that the casuistry of sin is based on an inadequate concept of liberty, the liberty of indifference, I would prefer to say: the casuistry of sin is only one aspect of the search for God's will, and the liberty of indifference only one aspect of liberty. If we cannot do without the discernment of spirits, neither can we totally dispense with the casuistry of sin. Men, even the most mature, will never cease to live in a concrete and complex world where the accumulated wisdom of the past will have something (not everything) to say to them. Similarly, just as we need that aspect of liberty comprised by the phrase "liberty of indifference" (and not only for sinful but also for virtuous acts), so we need also that aspect of liberty which regards it as a gift, a power of spontaneous and creative response. Eventually, however, without liberty of indifference such a response would be meaningless. The real villain is neither liberty of indifference nor casuistry, but the mentality which decontextualizes them.

Whenever one writes "an essay in emphasis," he is exposed to the dangers of caricature and tends to build up false opposites. Pinckaers has not entirely escaped this danger—though his emphasis is certainly healthy. The more we can educate people to the idea that their liberty, rather than a sovereign autonomy to be jealously guarded from the claims of law, is a power of personal and creative response to the God behind all law, the more will we educate them to moral adulthood.

P. Anciaux has an excellent article on conscience and moral education.[3] Basically, he treats two points: the concept of conscience in the light of psychological data and contemporary philosophical thought, and the proper education of moral conscience in light of this concept.

Too often we encounter fragmentary notions of conscience which express only one side of it—for example, conscience as a judgment about that which is prohibited and allowed, or conscience as the reaction after an act, or conscience as the "voice of God." This latter is a notion which is generally deformed by a negative codalism or juridicism. Contrarily, Anciaux contends that before seeing conscience as a judgment or voice of any kind, one must view it as a capacity to be developed. It is the capacity to grasp the fundamental law, that is, that life is a task to be performed, a vocation to be realized in liberty. In other words, in the measure that a man progresses in "the age of reason," he grasps himself as responsible for his life, that his life must be assumed as response to a vocation or call. He seizes the fundamental

[3] P. Anciaux, "La conscience et l'éducation morales," *Collectanea Mechliniensia* 50 (1965) 3–31.

law of his existence. Therefore it is false and dangerous to reduce moral conscience to a cognitive or notional faculty in the abstract. Rather it is the faculty of knowing values as moral, scil., in so far as they are related to man's becoming what he ought to be, a person. This is a growing thing and therefore is tied up intimately with the personality structure which conditions man's life—above all, his social life.

Adopting a dynamic structure for the development of personality, Anciaux proceeds to point out what this means for moral education. Here he is especially good. Moral education must, above all, educate man to live according to his vocation. The climate of tenderness and love is most important in the early years—as contrasted with an exclusive concern with order and good external behavior. Immediately before the arrival at use of reason, the child is governed by a type of "mirror conscience," that is, by reflections from his parents. Hence the quality of the mirror is important. Parents will be eager to indicate not just what is to be done, but above all why. Identification and imitation in the early years do not stop at exterior conduct; they include also profound personal attitudes. Therefore the child must experience that the parents themselves are guided by the norms which they impose. Only so will he perceive objective values gradually.

Moral education will then emphasize the call to responsibility. Practically, parents will avoid unmotivated orders; furthermore, orders will be inspired by love and not only by expressions of impatience or the desire of peace and quiet. The youngster constantly harassed by unmotivated orders or contradictory ones becomes either the "wise little compliant" or the rebel—in either of which cases he is dependent on and bound to his parents in a way which impedes gradual maturity. Moral education depends almost totally on the persons of the educators. Their job: aid the youngster to become a person, to assume responsibility for himself. Only if he surpasses the stage of mirror conscience and dependence can he achieve the level of intersubjectivity. Only genuine love can get him that far.

J. Ghoos wrote a companion article to that of Anciaux, and it is difficult to believe that he was not peering over Anciaux's shoulder as he wrote.[3] The emphases are very close indeed. Ghoos's main concern is the development of conscience as a responsible personal undertaking, the shaping of a life project. He approaches his subject somewhat more theologically than Anciaux. Specifically, he seeks the proper place of authority, of commandments, of norms, of virtues in this developmental process and is at pains (successfully, I believe) to show that the personalism he advocates is not situationism. There is nothing new in the article, but there is a succession of

[3] J. Ghoos, "De morele ontwikkeling door het leven heen," *ibid.*, pp. 32–56.

balanced and worth-while assertions. For example, when treating the authority of the Church in the enlightenment of conscience, his touch is deft. Because we are spellbound by the immediate, we need in the moral life, just as in every other aspect of life, the aid of authority. The norms proposed by the magisterium are not heteronomous and foreign to man; they are rather the demands of the love which is our life project. On the other hand, we must guard against the idea that the Christian message can be harmonized for all time by the language and thought patterns of a single era. In this type of counterstatement Ghoos is not advocating the suppression of concrete norms, but a truly virtuous and intelligent assessment of their place. As long as the moral life continues to be conceived as a series of exterior acts in fulfilment of precepts (instead of as a growth process in a basic orientation), we shall need articles like this. Their continuing appearance is a painful reminder of their necessity.

John Courtney Murray, S.J., once observed that "the American mind has never been clear about the relation between morals and law."[4] The chief manifestation (and mischief) of this confusion is the reformer's cry that "there ought to be a law," that is, whatever is moral ought to be legislated. Apparently this confusion is not restricted to America. Norman St. John-Stevas notes its presence in England.[5] He asks the question: What is the principle which guides us in deciding what moral rules are to be imposed by law? The distinction used by the Wolfenden Committee between crime and sin he feels is unsatisfactory, and for two reasons. First, most crimes are moral offenses and therefore the distinction is unrealistic. Secondly, the distinction is inappropriate because the state knows nothing of sin qua sin, "though it may well be concerned with conduct contrary to the moral standards accepted by the community which may incidentally also be considered by the Church as sinful." The Wolfenden principle is, then, too exclusive. On the other hand, there are those who would place no theoretical limit to state power to legislate against immorality, on the grounds that the state has a right to pass judgment on moral matters and to enforce this judgment by law. St. John-Stevas rejects both of these positions as extremes and accepts the principle that only those moral offenses which affect the common good are fit subjects for legislation. What constitutes this "common good"? Beyond the obvious factors (public order, civil peace, security of the young, etc.), there is also the public consensus on morality. This is a varying thing, more likely to be affected by public than private acts, but "one can-

[4] J. C. Murray, S.J., *We Hold These Truths* (New York: Sheed & Ward, 1960) p. 156.

[5] Norman St. John-Stevas, "Public Morality," *Wiseman Review*, Winter, 1964–65, pp. 343–50. Cf. also THEOLOGICAL STUDIES 21 (1960) 233–34; 22 (1961) 234–38.

not say that no private act can ever affect it." Euthanasia, for example, is a private act but constitutes such a threat to the sanctity of life that it should be punishable by law.[6]

It is easy to agree with St. John-Stevas that the crime-sin distinction does not provide a sufficient theoretical basis for the relationship between morals and law; for it too easily leaves the impression that legality and morality are absolutely distinct. That this is not the case is brought out admirably by a series of editorials in *America*.[7] The editorials quickly state the obvious fact that law has an inherently moral purpose and go on to discuss the problems this raises in a pluralistic society. Because of law's undeniably moral purpose, it is too easy to think that only moral principle is relevant to decisions of public policy involving morals. Hence, too, the temptation to urge the enactment of one's moral convictions (which are largely derived from one's religious faith) into law. On the other hand, there is the extreme which would exclude the moral conscience from the public forum, as if what is good for men (the common good) has nothing to do with moral climate and moral convictions. *America* rather points to a sound middle ground. Laws which enact a society's moral code must express the convictions of the community. Such laws, representing a consensus of the community conscience, are elaborated through a process of rational reflection which must take into account the whole social reality with which the law must deal. The Catholic (and even more broadly, the religious man) may, indeed must, (1) attempt according to his capacity to exercise a creative influence on the formation of a public consensus by presenting his convictions, but (2) not "as doctrines revealed by God. . . but as convictions about the moral and human values that society exists to protect and to foster."[8]

As long as many Catholics are scandalized by the difference between a Catholic moral position on, for example, divorce and a Catholic position on the public policy concerning divorce, they show that they need a heavy dose of the message of these editorials. Otherwise not only will the cause of good law suffer, but also eventually the cause of good personal morality.

Contributing formatively to the public ethos is one thing; judging individual policies is quite another. In an interesting and on the whole excellent article Paul Ramsey, Harrington Spear Professor of Religion at Princeton

[6] Whether homosexual acts should fall into this category is becoming very difficult to judge. Homosexual literature increasingly argues for a change of law not because homosexuality involves private acts, but because a minority is being deprived of rights. Legal toleration could easily mean a type of social acceptance with enormous consequences for the public good.

[7] *America* 112 (1965) 280, 351, 450, 520–21, 747.

[8] *Ibid.*, p. 747.

University, discusses the relationship between the church and the magistrate (and to that extent between morality and political policy) in terms of the above distinction.[9] Ramsey insists that the churches in our time have done what they ought not to and thereby left undone what they ought to have done. Specifically, they have attempted to pronounce upon and influence *particular* policy decisions. In doing this, not only have they identified the moral precept with the political decision, thereby improperly narrowing the range of political decisions; they have also neglected what is their proper task as churches, the informing of "the ethos and conscience of the nation," and *therewith* the forming of the conscience of its statesmen. Ramsey means that "it is not the Church's business to recommend but only to clarify the grounds upon which the statesman must put forth his own particular decree . . . to see to it that the word over which and through which statesmanship or government wins its victory is not an inadequate word." There has been, he asserts, a tendency for Americans to mark down "moral" and "immoral" beside specific policy decisions without first weighing carefully the nature of politics. In saying this, Ramsey does not mean to imply that morality should be left to professional ethicians; he means only that when moralists undertake to influence the opinion of a nation, they are responsible for the type of disciplined reflection which is in command of political realities. It is hard to think that Ramsey did not have in mind (though he nowhere says so) incidents similar to the one-page newspaper advertisments signed by hundreds of clergymen urging the President to stop the carnage in Vietnam.

Ramsey's remarks on policy decisions should not be confused with a completely different thing: the duty of bishops to inform their flocks of the spiritual and religious values involved in issues put to the electorate. Francis G. McManamin, S.J., provides a good overview of the activity of American Catholic bishops in this delicate area and the consequent obligation on the voter.[10]

A particular instance where morality and public policy interact is that of abortion. The sanctity of life is not only a moral concern; it is also a public and legal one. As such, policies which protect it must be elaborated out of a public consensus, as was pointed out earlier. Some recent writings provide examples of how influence may be brought to bear in the formation of public consensus.

Norman St. John-Stevas devotes two chapters of his recent book *The Right*

[9] Paul Ramsey, "The Church and the Magistrate," *Christianity and Crisis* 25 (1965) 136–40.

[10] Francis G. McManamin, S.J., "Episcopal Authority in the Political Order," *Continuum* 2 (1965) 632–38.

to Life to the thalidomide incidents.[11] The first chapter deals with the famous Liège case, in which Madame Suzanna van de Put—together with her mother, sister, husband, and a Dr. Jacques Casters as copartners—was tried for the murder-by-poison of her deformed baby. At the end of the six-day trial Madame van de Put and the other defendants were acquitted in a tumultuously popular verdict. St. John-Stevas sees the verdict as striking at one of the fundamental principles on which Western society is based.

> The van de Put case, in effect, confers on the individual citizen a license to kill—a license with no clear limiting terms. To one person, life without sight will appear unbearable; to another, the absence of arms; to another, the lack of legs. Once the principle of the sanctity of life is abandoned, there can be no criterion of the right to life, save that of personal taste. For all its apparent benevolence, then, the Liège decision is a step back to the jungle from which society has, with infinite difficulty, emerged.

In a relentlessly logical manner St. John-Stevas exposes one argument after another as even poor pragmatism. For instance, Madame van de Put had pleaded that she took her child's life for what she regarded as the child's good. "I just thought you could not let a baby like that live. I thought it could never be happy in its whole life." Here St. John-Stevas quietly points to the totalitarian implications of depriving another of life on the grounds that "*in someone else's opinion*, the amount of unhappiness he is likely to endure in living will probably be greater than the amount of happiness."

P. Pas treats specifically the problem of handicapped children, whether the handicap be physical or psychic.[12] He places the whole discussion in the context of charity, insisting that it is charity which brings happiness under any circumstances—the charity others show us, but above all the charity we bring to our relations with others. Certainly this virtue is a parental duty and privilege, but it is also a community project. The entire community must preoccupy itself with the handicapped, as it actually has done. Modern prosthetic techniques show what can be done and what direction our charitable concern must take in the future. As for the psychically handicapped, Pas admits that their suffering has no meaning in itself; rather one must give it meaning. The suffering of these infants receives a meaning when they are loved. He concludes simply that killing is "to capitulate before the difficulties of life."

[11] Norman St. John-Stevas, *The Right to Life* (New York: Holt, Rinehart and Winston, 1964).

[12] P. Pas, "Vijfde gebod en gehandicapte kindern," *Collectanea Mechliniensia* 50 (1965) 167–91.

In a second chapter St. John-Stevas treats of abortion. Many who defend the practice on moral grounds appeal to the theory of retarded animation. St. John-Stevas does not deny the theoretical possibility of delayed animation but points out that "today, and indeed for a very considerable period, it has been accepted by biologists that there is no qualitative difference between the embryo at the moment of conception and at the moment of quickening. Life is fully present from the moment of conception."[13]

I am not as sure of biological opinion as St. John-Stevas is. But even were biologists to conclude that there is a qualitative difference between the embryo and the fetus at quickening (first movement), another article concludes that this would provide only indirect evidence at best about the presence of a soul.[14] Where the soul is concerned as the term of a creative act of God, we are dealing with things impervious to the *direct* measuring capacities of human instruments.

Catholic thinkers (and many others also) are, of course, aware of these truths. Their mention here is justified for two reasons. First, it serves as a reminder that their relatively peaceful possession in Catholic theological circles is in marked contrast to a growing public consensus. Secondly, the articles cited indicate how the religious conscience should operate to form (and transform) this consensus; for while the authors may hold their positions because of enlightenment from religious belief, they need not and do not urge them in these terms; rather they offer them as basically a human position.

John Lynch, S.J., once wrote that "while the principle of double effect endures, a moralist's life need never be dull."[15] As if to prove this, P. Knauer, S.J., has written a lengthy study of the double effect.[16] After complaining that standard interpretations of this principle put too much emphasis on the physical structure of the act (its causality) and thus fragment the total moral act into unreal parts, Knauer writes: "in the total objective structure of an action, that only constitutes the *finis operis* which is willed by the subject, not only materially but formally, to the exclusion of the physical elements on which the intention does not bear." Theologians would certainly admit this.

How does one know what is "formally" willed by the subject? The motive or reason for acting must be considered here. "The reason which one pro-

[13] *Op. cit.*, p. 32.

[14] Richard A. McCormick, S.J., "A Human Stand on Abortion," *America* 112 (1965) 877–81.

[15] THEOLOGICAL STUDIES 17 (1956) 169–70.

[16] P. Knauer, S.J., "La détermination du bien et du mal moral par le principe du double effet," *Nouvelle revue théologique* 87 (1965) 356–76.

poses does not remain exterior to the act, but it co-operates in the constitution of the '*finis operis*' itself of the act."

Therefore, in defining or describing that which is willed by the subject, one must include the motive; for this tells us eventually under what formality the act is willed. But the formality under which the act is willed is determined by the proportionate reason for acting. That is, since the motive must be included in the *finis operis*, and since this motive is actually the proportionate reason for acting, it is the proportionate reason which tells us under what aspect the act is willed. By doing this, it determines whether the evil effects enter formally into the intention or not. "To admit an evil without proportionate reason constitutes sin; the evil is no longer 'accidental' but enters into the object of our act. Contrarily, if there is a proportionate reason, the evil effect becomes by this very fact indirect. *An evil effect will be indirect or direct according to the presence or absence of a proportionate reason.*"[17] Knauer's basic thesis, then, is that what is directly willed or only indirectly willed is determined by the presence or absence of a proportionate reason, precisely because this determines the object willed.

To clarify the direction of Knauer's reasoning, I will present one of his own applications of it. Suppose a doctor uses a medicine with harmful effects after discovery of a more recent and better medicine. Now one who uses the older medicine after discovery of the better one can only do so because he had a different motive from that originally proposed (cure of the disease). This reason might be the avoidance of higher costs or even avoidance of extra work. This reason for acting enters into the very object of choice. Thus the object of choice would no longer be "to cure disease" but "to save money." But it is only a *proportionate* reason (one which aspires to the maximum realization of the value in question) which renders the evil effects indirect. Since the reason is not proportionate to the original goal in the case given, and since it enters into the very object of the act, the evil effects would enter into the choice directly and formally.

Knauer sees this same thinking verified in several other areas of moral theology: for instance, the treatise on co-operation. "Suppose an act of material co-operation with sin without proportionate reason; from the material co-operation that it was, the co-operation becomes formal." Acceptance of work in a drugstore where abortifacients are sold constitutes formal co-operation if there is no proportionate reason; with a reason, the co-operation is material. It is, then, simply the proportionate reason which decides the difference between the two types of co-operation. Knauer feels that the proportionate-reason principle as determinative of what is directly

[17] *Ibid.*, p. 365.

or indirectly willed should be used in explaining many tracts of moral theology: e.g., the casuistry of the lie, self-defense, theft in extreme need, probabilism, and the principle of totality. With regard to this last, he states that the principle of totality is nothing more than the double effect and is not a separate principle at all. "A medical operation to produce a cure consists formally in the removal of an obstacle to the cure. It can happen 'accidentally' that this obstacle is a member of the organism. In this case the removal of the organ as such is not willed directly, because it is justified by a proportionate reason."[18]

Summarily, then: proportionate reason determines under what aspect I will the act and therefore whether evil effects enter the will-act formally and directly. If the motive or reason is proportionate, the evil effects are only indirectly willed. Therefore the proportionate reason determines what is directly or indirectly willed.

I suspect that behind Knauer's treatment was the kind of vague dissatisfaction we all feel in certain complex instances of double effect where we manipulate the description of the act rather abstractly—almost to come up with a certain conclusion. For example (and Knauer uses this example), a man jumps out a fifty-story-high room to escape excruciating death by fire. As not infrequently presented, the action here is defined as "jumping out of a window." Every sane person squirms under this description of what is going on—and that is why some moralists have never allowed this type of thing. In order to be realistic here, one has to appeal to the motive to get an *objectum actus* in an acceptable sense. It is in generalizing off this example that Knauer, if I understand him correctly, appears to me to be imprecise. Let us change some words in the quotation just given on the principle of totality. "A medical operation in view of health consists formally in the removal of an obstacle to health. It can happen 'accidentally' that this obstacle is a living, nonviable fetus. In this case the removal of the fetus as such is not willed directly, because it is justified by a proportionate reason." One senses immediately that something is wrong here. If not, the quotation could be changed to the following: "A bombing mission in view of a nation's survival (by deterrence) consists formally in the removal of obstacles to this survival. It can happen 'accidentally' that this obstacle is the population of another nation. In this case removal (destruction) of the population as such is not willed directly, because it is justified by a proportionate reason."

If applied right down the line, this reasoning would destroy the concept of that which is intrinsically evil *ex objecto*. Knauer might disown this conclusion. But it is not clear to me that he could do so logically. Of course, his

[18] *Ibid.*, p. 373.

formulation is not necessarily wanting because it leads to such conclusions (for we cannot exclude the possibility that the conclusions are correct); it is vulnerable only if in doing so it proves inconsistent. I believe this is the case. I should like to comment on two points: first, the inconsistency; secondly, what appears to me to be the source of the problem.

First, the inconsistency. After identifying the traditional notion of *objectum actus* with physical structure or causality and rightly rejecting this as a sufficient determinant of the meaning of an action, Knauer makes proportionate reason so unqualifiedly the constitutive factor of the object of the act that causality or the external act is no longer functional at all. Hence he makes it theoretically possible to assume into an act as indirect and licit any means, providing it is necessary to a value or end envisaged. Knauer sees this impasse clearly and rejects it as a conclusion to his reasoning as follows: "If a nonjustified evil precedes the achievement of the end, it enters itself into the specification of the act: to kill to get money is to commit murder." This is certainly true, but it is not clear that Knauer can conclude it. Mere temporal precedence does not qualify an act or effect as evil, as Knauer himself admits. Therefore the above statement must mean that killing to get money is wrong because it is not justified. One wonders why not on Knauer's principles, if the proportionate reason is decisive; for then the object of the act can be defined by this motive. Knauer's only logical answer can be that the motive or reason is not proportionate. But this may be questioned. For example, to save the life of the mother is certainly a motive proportionate to the value with which the doctor is dealing when he treats a pregnant woman. Why it would not justify destroying the child if necessary is not clear. And if this is true, then it is equally licit to destroy one million enemy civilians (noncombatants) by people-bombing if this will act as an effective deterrent against loss of five million Americans. These deaths would be, in Knauer's terms, indirect because of the existence of a proportionate reason.

Secondly, the source of the problem. How did Knauer get to the point where his formulation seems open to this objection? It seems to me that he has failed to distinguish "proportionate reason" carefully. "Proportionate reason" can mean two things. Some proportionate reasons are identical with the good effect *as produced immediately by the cause* (or with the cause as producing this effect as one equally immediate with several others). Other proportionate reasons are motives "introduced from outside," so to speak, and superimposed on an external act whose basic meaning is already determined (because of its unique immediate effect). If I fail to make this distinction, nothing will prevent me from introducing the motive into an act which

already has a basic meaning in human terms to alter it substantially. There is nothing wrong with doing this on the drawing boards; the chief objection to it is that it contravenes experience. When I destroy a child to save its mother, I may, if I care to, call this "mother-saving." But no amount of verbal shuffling can obscure what is clear to common sense, scil., that I will this (destruction of the child) directly, because it is the single immediate effect of what I am doing.

Why did Knauer fail to make this distinction clearly? I believe Knauer was led to gloss over the ambiguity in the term "proportionate reason" because he relies heavily on St. Thomas' use of self-defense against unjust aggression as an example of the double effect. St. Thomas regarded the death of an unjust aggressor resulting from an act of self-defense as indirectly voluntary. Because he supposes this as a case of double effect, Knauer must explain how the death of the aggressor was not an object of will. Therefore something else had to be this object of will, namely, self-defense—which, of course, is the motive or proportionate reason. Once he has accepted this as a case of indirect voluntary, clearly the external act cannot be that which tells me the *objectum actus* and what is directly and indirectly willed. Furthermore, he is in a position where any external act (regardless of its causality) can and must be defined (*objectum*) in terms of its motive. The problem here: most modern theologians find it extremely difficult to accept the death of the aggressor as an example of the double effect.

Once Knauer has begun in this way, one can understand his repugnance to using the external act in any way as constitutive of the object. He notes, for instance, that the physical character does not differ in murder and self-defense—which is certainly true. Therefore, if the physical structure is to be equated with the moral object, there is no differentiation at the level of object, and one must seek it elsewhere, that is, in the motive. Thus the motive enters the very notion of the object.

Where Knauer has abandoned the physical structure of the act altogether, I would prefer to say that it oftentimes helps to determine the moral object, though it is not always sufficient by any means. Moralists have always insisted that the object (*objectum actus*) may not be understood in a mere physical sense. To get the moral object, it is sometimes necessary to turn to the circumstances or the intention. For example, sometimes an act produces two immediate (causally) effects, so that only the intention will determine or specify the true moral object. At other times the circumstances enter into the object. Thus the moral object of a murderous act is not simply "killing a man" but "killing an innocent man." The object of the act of self-defense is not simply "killing a man" but "killing an unjust aggressor." The difference

is not precisely in the motive but in an objective circumstance, and this circumstance distinguishes the two acts in a valid and humanly reasonable way. At still other times a physical evil (e.g., the death of a human being) is so uniquely the immediate effect of my action that it is unrealistic to talk about it as anything but a *direct* killing—whether this be done in service of a higher value or not.

Summarily, then, what Knauer is doing is this: he is trying to make the specification of the human act (*objectum*) move from the intention to the external act, rather than vice versa. Once this is done, anything not specified by one's good purpose is excludable from what is directly willed. Many anguishing problems could be solved if this could be done. However, "direct willing" is not just a phrase; it represents a psychological reality. It seems to me that experience itself supports our belief that our act gets basic moral specification from the object—that is, *from the external act reasonably understood, reasonably interpreted.*[19]

This understanding of *objectum actus* seems basic to any use of the double effect. For example, where co-operation is involved, Knauer says that it is precisely the proportionate reason which constitutes co-operation material. I believe it would be more accurate to say that co-operation is material because, being an act distinct from the sinner's, *it can be chosen and willed* without intending his sin. In order to establish this distinctness, one must return to the standard concept of *objectum actus*. Whether one actually does withhold his intention will, of course, depend largely on the proportionate reason. But even to postulate the possibility, the two acts must be distinguishable. The proportionate reason will not always give me this distinction. Furthermore, the distinction is often difficult in practice, and no doubt we have been guilty of making a few hairline distinctions and planting a few definitions to come up with certain attractive conclusions. But these weaknesses do not reflect any inadequacy in the moral principles; they rather reflect the complexity of material reality, which is continuous and inherently not totally intelligible. Nor do they mean that we can do without the concept of *objectum* as traditionally understood. If we jettison this notion altogether, we arrive at the point of suspension of ethical thought—basically, I would suggest, because we have abandoned our own experience as the stuff to be judged.

THEOLOGY OF THE NATURAL LAW

There has been a great deal of interesting writing on the natural law in the very recent past. The noted Scripture scholar John L. McKenzie, S.J.,

[19] Many of these same reflections are applicable to W. Van der Marck's *Love and Fertility* (New York: Sheed & Ward, 1965).

examines the biblical basis for the natural-law tradition.[20] His exegesis of the *loci classici* (Rom 1:19–21; 2:14–15) leads him to the conclusion that "Paul's thought is correctly summarized if we say that he regarded a morality of reason and nature as a morality that fails." Surely this conclusion is incontestable. When one approaches what we call the natural law in terms of its efficaciousness as a saving or salutary mediation (and this is Fr. McKenzie's approach[21]), there can be little doubt that the New Testament abrogates all law.[22] Surely also Fr. McKenzie is right when he rejects in the Pauline corpus any kind of "natural morality." On the other hand, I am unaware of any theologians who would seek the biblical basis for natural-law thinking in the existence of such a law as of itself efficacious, as a saving mediation. There is only one way of salvation: redemption by the blood of Christ. I am also unaware of any theologians who would hold that the existence and validity of natural law should be equated with "natural morality."[23]

Finally, Fr. McKenzie turns his attention to a totally different question, that of the possibility of a system of moral obligations in particular based on a rational consideration of nature. He rejects the possibility and contends that "Christian love offers a solution to all these problems, but we find the solution impractical." The problems referred to are the ethics of war, use of wealth, ownership of slaves, internal and external politics, sex, etc. McKenzie is unquestionably right in asserting that Christian love can find the solution to these problems. But it is not from mere perversity that I suggest that he is being frivolous when he states that this search excludes moral imperatives derived rationally from man's being. If he intends this seriously, then two points must be clearly stated.

First of all, the intelligibility of the ethical values of revelation (*lex Christi*) is dependent upon a rational (intuitive) knowledge by man of the ethical values discernible in his own being and experience (*lex naturae*). More practically, man would not understand the meaning of love, humility, trust in revelation unless his own ethical experience (founded on his being) was

[20] John L. McKenzie, S.J., "Natural Law in the New Testament," *Biblical Research* 9 (1964) 1–11.

[21] Cf. his phrases "no greater efficacy," "a saving power which belongs to Christ alone," "a morality that fails," "any salutary value to the observance," etc.

[22] Cf. S. Lyonnet, S.J., "Liberté chrétienne et loi de l'esprit," *Christus* 1–4 (1954) 6–27.

[23] For other reflections on natural law in the Bible, cf. Rudolph Schnackenburg, *The Moral Teaching of the New Testament* (New York: Herder and Herder, 1965) pp. 290–93; Jos. Fuchs, S.J., *Lex naturae: Zur Theologie des Naturrechts* (Düsseldorf, 1955) pp. 21–38. John Courtney Murray, S.J., is of the opinion that "it would not, of course, be difficult to show that the doctrine is, in germinal fashion, scriptural" (*We Hold These Truths* [New York: Sheed & Ward, 1960] pp. 296–97).

ground for a language which would make these notions naturally clear to him. Bruno Schüller, S.J., has made this point extremely well in an article in *Lebendiges Zeugnis*.[24] He points out that faith, in so far as it is knowledge, is knowledge mediated and negotiated by signs. The encounter, therefore, between the believing man and the revealing God is only possible because God makes use of language already familiar to man. Now man's ethical vocabulary is just as broad as his own natural ethical experience, his own ethical consciousness. Schüller says: "If, therefore, it is the natural ethical consciousness of man which grounds the expressive possibilities of human language, then it seems to follow that God through His revelation can only communicate to man that aspect of moral insight which man already knows by means of his natural ethical experience, or at least that which he can know."[25] Schüller concludes: "man is, therefore, only capable of hearing and giving intelligent belief to the ethical message of the New Testament because prior (logically) to the revelation of God's word he already grasps and expresses himself as an ethical being."[26] So, far from denying rational knowledge of a *lex naturae*, the *lex Christi* supposes it and is impossible without it.

Secondly, there is every indication that Fr. McKenzie is opposing two things between which there is and can be no real opposition: Christian love and the concrete demands of that love founded on man's being (the natural law). Far from denying the validity of what theologians call natural-law obligations, it is precisely because Christ charged us with love of the neighbor that He must be thought to have asserted them. One who would claim to love his neighbor while at the same time refusing to acknowledge the claims that the human person makes on this love would not accept and communicate with the total reality of that person. In failing to do so he would, incidentally, be underestimating the affirmation of the dignity and worth of men implied in Christ's very Incarnation (His God-*manhood*). How these claims are to be formulated is, of course, another thing. But they are there, and some of them are inseparable from the being of man. Hence they are inseparable from the privilege of loving him. And because man is reasonable, he can discover, if only with difficulty, the larger outlines of these demands. This is all that the authentic natural-law tradition asserts. In making such an assertion, it is not endorsing a "natural morality"; it is but insisting that a person's lovability may not be defined short of his full humanity. Being a work of God, man *as man* is a word of God.

[24] Bruno Schüller, S.J., "Wieweit kann die Moraltheologie das Naturrecht entbehren?" *Lebendiges Zeugnis*, March, 1965, pp. 41–65.

[25] *Ibid.*, pp. 47–48.

[26] *Ibid.*, p. 48.

Gregory Baum does not oppose the fact of natural law; rather he is uncomfortable with the term "natural law."[27] As for the word "natural," Fr. Baum claims that we have "no way of knowing whether a moral conviction which matures in the consciences of men is simply natural, or whether it is not partially the work of redemptive grace in them, grace of which Jesus is the sole mediator." If a moral conviction is alive in the consciences of men, he says, it is impossible to say whether this is due to human reflection or brought about under the influence of divine grace. Fr. Baum feels that the word "law" is unfortunate, because it suggests some kind of formulated law or set of laws.

Unfortunately, what the word "law" suggests to some or even many people is after a certain point beyond control. That is the way it is with words. That the word has led to a caricature of the thing in some quarters is probably true. That it must do so is a conclusion which strikes at the very possibility of any precise scientific terminology. That it is more inclined to lead to caricature than other words is a matter of opinion. I do not share Fr. Baum's discomfort with the word "natural," because I know of no theologian who understands the word as in the phrase "*natural* law" precisely as he does. He understands the word to mean those moral convictions arrived at without the aid of grace.

There are two problems with this understanding. First, the word "natural" as in the phrase "natural law" need not exclusively or even primarily refer to the cognitive aspects of this law, a point Fr. Baum's explanation supposes. It refers rather to the fact that the law is founded on the being of man, regardless of how he has factually come to know it. That is, it is derived from his nature as a human person. If Fr. Baum wants a truly misleading term, I suggest "the law of reason." This is misleading because it suggests that only those demands concluded to by rational reflection, without magisterial help or revelation, and with persuasiveness to most men here and now, may be said to pertain to the natural law. However, while admitting the physical capacity of the intellect (or perhaps better, of the person) to arrive at certain conclusions, theological literature is at one with papal statements in asserting that "divine revelation must be considered morally necessary so that those religious and moral truths which are not of their nature beyond the reach of reason in the present condition of the human race may be known with a firm certainty and with freedom from all error."[28]

My second problem with Fr. Baum's understanding of "natural" centers

[27] Gregory Baum, O.S.A., "The Christian Adventure—Risk and Renewal," *Critic* 23 (1965) 41–53.

[28] Pius XII, *Humani generis*, *AAS* 42 (1950) 561–62.

around the notion of grace. Even with regard to the cognitive aspects of natural law, theologians assert the physical capability of the intellect to grasp the law. This does not mean that grace is absent. Quite the contrary. Modern theologians insist on the fact that grace is busily operative here. However, grace is not a faculty; it is an aid for our faculties in their own proper operations. Therefore, when theologians use the word "natural" in this context, they do not mean to suggest the absence of grace, nor need the word itself suggest this.

A thoroughly competent and well-documented article by John J. Reed, S.J., discusses the natural law and its relation to the Church.[29] Fr. Reed insists that one element of the natural law is that it is "God-made," another that it is "man-discovered." Without thereby detracting from the importance of this latter aspect, he states that the more theologically significant element of the natural law is that it is God-made, that is, founded on the being of man. "It has the character of law precisely and only because it is an order established and willed by God, not because it is an order perceived by man." Because this law is founded on man's being and because man is reasonable, the law will be knowable "more or less," to use Fr. Reed's phrase. However, whether man arrives at a moral conclusion by rational reflection, or through the teaching of the Church, or even through revelation, this methodology is not constitutive of the law as natural. Thus the fact that something is also revealed does not mean that it is not of natural law. Therefore Reed feels it is very important to distinguish the source of the law from the source of our knowledge of the law. One can derive (and probably does so more often than we think) his certitude about a particular aspect of natural law from, for example, the magisterium without prejudice to the law's distinctive attribute as natural law. "Such a position does not cut off dialogue with the non-Catholic theologian or moral philosopher. On the contrary, it is a position more acceptable to him than the implication that he fails to see the cogency of the Catholic argument. He is, quite rightly, not prepared to admit that the Catholic has a reason or a degree of sincerity which he has not."

There are two points in this very helpful essay on which I should like to comment. First, there is the matter of arguments. Fr. Reed refers to the fact that in matters of natural law the arguments and analyses we make "demonstrate at least the reasonableness of a particular controverted position." This strikes me as being an extremely important point in ethical discussion. Any theologian who holds a natural law would assert that the good of human life,

[29] John J. Reed, S.J., "Natural Law, Theology, and the Church," THEOLOGICAL STUDIES 26 (1965) 40–64.

for example, is at the heart of this law. This must be intuitively clear to rational human beings.[30] It is also and almost equally clear that certain material norms with an absolute validity are inseparable from this intuition.[31] However, our ability to establish persuasively these material norms within a system may not rise above the level of reasonable consistency. This might explain the apparently paradoxical fact that one can be deeply convinced of a conclusion without being able to demonstrate his conviction persuasively to all or many. It also could explain why another can feel the urgent need to demonstrate and why he could deny the same conclusion for lack of demonstration. To admit this is not to stump for a complacent obscurantism. It is to admit that our perception of the implications of the primary principles of moral conduct is fragile and difficult. Certain truths about man's nature penetrate his consciousness gradually by historical processes and for the same reason are maintained only with difficulty. It is this very fact which suggests the inherent reasonableness of an authoritative magisterium.

The theological issue in many matters of natural law is one of expectation, expectation from ourselves and from the Church. What do we expect of ourselves in the area of "proof" where applications of the natural law are involved? Does it follow that because something pertains to the natural law, a convincing proof must be clear to all men, or most, or even many, and *now*? As for the Church, what have we a right to demand of the Church in vindication of her teaching on natural law? Is it not, up to a point, precisely because arguments are not clear, or at least not universally persuasive, that a magisterium makes sense in this area? At what point does our healthy impatience to understand muffle the voice most likely to speed the process? These remarks are not offered as special pleading of one sort or another. They simply raise a genuine and difficult issue. It is the issue of expectation. To expect too little of ourselves would be the abject abdication of reason. To expect too much would be a new rationalism and at root a subtle attack on our human condition and the divinely commissioned teaching authority which protects it. The line between abdication and exaltation of reason is not easy to draw.

Secondly, there is the matter of Church competence to teach the natural law infallibly. Fr. Reed maintains clearly and explicitly this competence. He

[30] Cf. B. Schüller, S.J., *art. cit.*, p. 47; also G. Grisez, *Contraception and the Natural Law* (Milwaukee: Bruce, 1965) p. 65.

[31] An interesting article contends that "in matters of supreme importance, in the basic issues, we have, characteristically and historically, tended to act in a uniform way." The article lists and illustrates these "centralmost drives or desires of personal existence." Douglas Straton, "The Meaning of Moral Law," *Andover Newton Quarterly* 57 (1965) 31–39.

explains the position as being clear from two facts. First, the Church has been charged with the whole of revelation. Secondly, a particular demand of natural law cannot be excluded from this totality, because it may be contained only implicitly and obscurely in the depositum, and the Church is the one competent to decide what is contained in revelation.

The Church's ability to teach the natural law infallibly is the subject of a good deal of recent discussion. In this country Gregory Baum has been especially emphatic on the point that the Church cannot teach the natural law with infallibility.[32] His reason: the Church's infallible competence is limited to revelation. The wording of conciliar documents (*doctrina de fide vel moribus*) refers simply to revelation, the "ethics revealed in the gospel."[33] Obviously Frs. Baum and Reed are at an impasse here, and I suspect that their disagreement is representative of a growing body of opinion on both sides of this question. The discussion will continue, and in the interests of ultimate clarity I should like to state certain difficulties with Fr. Baum's position which other theologians may share with me.

First of all, we may ask: Is what theologians call the natural law actually present, even though obscurely, in revelation? There are good reasons for thinking so. I do not refer merely to the *loci classici*. There is also the simple fact that the mediator of our salvation and the exemplar of Christian existence is the God-*man*. Furthermore, Christ and Paul, who are interested in nothing if not *Christian* morality, insist on the observance of natural-law prescriptions. Finally, Paul propagates the commands of natural-law morality as belonging to the *evangelium*.[34] Fr. Baum himself hints the germinal presence of natural-law morality in the revealed word of God when he writes: "Since the dignity of man is so powerfully revealed in the Scriptures and lies at the heart of the Christian message, we may even ask the question whether modern society, even while largely abandoning the Christian creed, has not retained, assimilated and developed an inherited Gospel theme."[35] I agree with this and wonder how the revealed dignity of man can fail to include

[32] *Commonweal* 81 (1965) 516–17; *Critic, art. cit.*, pp. 43–44, 50–51. Of the opposite opinion he says simply: "This is wrong." To these allegations George K. Malone attaches this note: "It is unusual that one side of this matter would be stated so apodictically by a council *peritus*, Gregory Baum, O.S.A., who writes about the Church: 'Her teachings regarding natural wisdom and the meaning and content of the natural law, however true they may be, and however authoritative her voice in pronouncing them, are not and can never be infallible' " (*American Ecclesiastical Review* 152 [1965] 102). The quotation from Baum is from *Commonweal*, Nov. 20, 1964, p. 286.

[33] *Critic, art. cit.*, p. 44. [34] 1 Th 4:2; Phil 4:9; 1 Cor 7:10.

[35] *Critic, art. cit.*, p. 49.

precisely the dignity of *man*. Perhaps it is because Fr. Baum thinks of natural law as a code of rules that he finds it hard to discover it in the gospel.

Secondly, to speak of the natural law and the gospel morality as two different entities involves a false notion of the place of natural law in the *Heilsordnung*. Is there any such thing as a natural law actually separable from the law of Christ? Hardly. There is rather only Christian morality. To admit a natural law and yet to conceive it independently from the law of Christ is to conceive it as a mere abstraction. The language itself of papal literature is abundantly suggestive of the integral position of the natural law in the law of Christ. This literature does not refer to two different moral laws, one natural, the other Christian. It often refers simply to "moral conduct,"[36] "truths of the moral order,"[37] "moral truths,"[38] "the field of morals."[39]

Thirdly, even if (*per impossibile*, I should think) the natural law was not integral to the gospel, the Church's prerogative to propose infallibly the gospel morality would be no more than nugatory without the power to teach the natural law infallibly. One could hardly propose what concerns *Christian men* without proposing what concerns *men*. The Church could hardly propose *Christian love* in any meaningful way without being able to propose the very suppositions of *any love*. In other words, and from this point of view alone, to propose the natural law is essential to the protection and proposal of Christian morality itself, much as certain philosophical truths are capable of definition because without them revealed truths are endangered. Furthermore, charity has no external act of its own. It can express itself only through acts of other virtues. But natural-law demands constitute the most basic demands of these virtues, simply because we can never escape the fact that it is *man* who is loving and to be loved. Would not, therefore, the ability to teach infallibly the dignity of man (certainly a revealed truth) without being able to exclude infallibly forms of conduct incompatible with this dignity be the ability infallibly to propose a cliché?

COMMUNICATIO IN SACRIS

The practical conclusions listed under title of *communicatio in sacris* will undergo considerable revision, perhaps even some drastic changes, in the months and years ahead. This should not be surprising; for adaptation has long been a part of Church discipline in this area. In a historical article covering the major shifts in Church practice over the centuries, Wilhelm de Vries,

[36] *AAS* 22 (1930) 579. [37] *Ibid.* [38] *AAS* 42 (1950) 561–62.
[39] *AAS* 46 (1954) 671–73.

S.J., calls attention to a gradual move away from earlier flexibility toward increasing rigidity.[40] Recent centuries have been stamped by a highly negative tone, the one found, for example, in canon 1258. De Vries insists on two points. First of all, even in her most severe directives the Church never contended that liturgical services in common with non-Catholics are "necessarily and intrinsically morally reprehensible." Secondly, to understand the negative tone of the Holy See's position, one must understand the theoretical basis. De Vries states that this "is to be looked for in the firm conviction of the Catholic Church that it is the one and only true Church of Christ, and that it alone has the right to offer legitimate public worship to God." Through the many oscillations of history this conviction is one of those "fixed points that remain always the same."

I wonder whether it is precisely this conviction of her uniqueness which completely explains the negative tone of ecclesiastical directives over the years. If there is a logical and necessary connection between awareness of uniqueness and negative attitudes on *communicatio*, I am afraid we are committed to negativism. Even the *Decretum de oecumenismo*,[41] assuredly one of the most irenic of conciliar documents, testifies repeatedly to the Church's awareness of her unique position. It seems, therefore, that her past negative attitudes would rather be traceable to the manner in which she expressed this conviction at various historical moments. At certain times—by force of circumstance and human frailty—the line of demarcation between full and imperfect membership in the Church was drawn in a polemical and divisive spirit because these were polemical and divisive times. At such times the Church tended to view separated groups as sources of danger and contamination. A kind of "war ethos" prevailed in which the term *sentire cum ecclesia* had, as R. Egenter notes,[42] a military ring. Practically, this spirit meant that the Church set herself apart and proclaimed her position by a process of dissociation, above all liturgically, because liturgy is the deepest expression of her faith and doctrines. Where, however, circumstances are greatly altered, the conviction of her uniqueness will manifest itself in different ways. In our time I believe the Church is attempting to signalize herself by a truly unique desire for unity with those still outside her visible precincts. Her desire for unity, while it never blurs the lines which separate or waters down her own belief that she is the one true Church, leads her to acknowledge a community

[40] Wilhelm de Vries, S.J., "Communicatio in sacris," in *The Church and Ecumenism* (= *Concilium* 4; New York: Paulist Press, 1965) pp. 18–40.

[41] *AAS* 57 (1965) 90–107; Latin text also available in *Nouvelle revue théologique* 87 (1965) 40–65.

[42] Richard Egenter, "Die Bedeutung des Sentire cum ecclesia im christlichen Ethos," *Trierer theologische Zeitschrift* 74 (1965) 1–14, at p. 3.

of heritage in spite of important differences. It leads her to dialogue, to mutual exchange, to co-operative social action, and to sharing—even liturgically, to some extent—if this will promote the unity so profoundly a part of her salvific mission. Obviously we have here an impulse which can yield different practical directives where *communicatio in sacris* is concerned.

Just what direction these practical directives might take is treated very thoroughly and competently by John Prah in an exploratory article presented in advance of the ratification of the *Decretum de oecumenismo*.[43] To determine what can be done, one must determine exactly what principles control *communicatio*. It is probably safe to say that most priests left the seminary with the conviction that the conclusions on common worship spelled out in canon law were unchangeable. They were explained in terms of external approbation of heresy or schism, danger of scandal, danger of perversion of faith. Thus the prohibition was traced to divine law itself, and when divine law is invoked in moral matters, it is all too easy to get locked into immutable positions. Certainly it is easy to agree with Fr. Prah that this analysis too readily obscured the contingent character of the conclusions.

Assuredly, if active participation in non-Catholic rites involves approbation of a false cult precisely as false, then clearly such participation will involve implicit denial of one's faith. Furthermore, if it is attended by scandal or danger of perversion, it will be prohibited to the extent that these dangers are imprudently incurred. Whether these hypotheses are realized concretely is a matter of variable fact. This point has been missed, can still be missed, and therefore must be made even more implicit.

For instance, whether active participation involves external approbation of false cult and denial of one's faith depends largely on the manner in which these rites are viewed by the Church. In an apologetic and defensive age, because the Church will tend to emphasize her uniqueness protectively by withdrawal from others, she will see these rites as from across a chasm, as separate *and therefore* as false rites. She will therefore view participation in these rites as a repudiation of allegiance to herself. Where her concern is less polemical, her approach to such rites will undergo a decided shift in emphasis. She will view them not so much as false rites but rather insist that "the brethren divided from us also use many liturgical actions of the Christian religion. These most certainly can truly engender a life of grace in ways that vary according to the condition of each church and community. These liturgical actions must be regarded as capable of giving access to the community of salvation."[44] Here she is viewing these rites not so much as false but rather

[43] John Prah, "Communicatio in sacris: Present Trends," *Proceedings of the Catholic Theological Society of America* 19 (1964) 41–60.

[44] *AAS* 57 (1965) 93.

as sources of grace for those still not in full communion with herself. Once this has been said, it is clear that participation in such rites need not imply repudiation of one's own faith.

As for scandal, this would above all take the form of approval of a separated sect, and therefore to some extent of separateness. This engenders the deceptive impression that unity has in fact been achieved. Such an impression is theologically scandalous, because it tends to weaken the faith of Catholics and makes it harder for all concerned to seek genuine union. In an apologetic age common worship is more likely to sharpen these sources of scandal. But in an era characterized by intelligent ecumenical aspirations, limited common worship can more readily suggest common heritage, the incompleteness but reality of existing ties, and the desire for full union.

The danger of perversion of faith mentioned in moral literature takes the form of indifferentism—not perhaps full-blown theological indifferentism, but at least the "indifferentist mentality." This mentality is more subtle and insidious than theological indifferentism. It is definable in terms of those whose constant association with sincere non-Catholics has led them to underesteem the sacraments, the authoritative aids of Church teaching, etc., so that eventually they come to regard full membership in the Catholic Church as an inherited misfortune. This attitude is all too virulent and one dare not underestimate it. However, this again is a factual and variable matter. It seems that limited common worship need not foster this mentality at all where sound instruction has prepared the way. In an ecumenical age well-informed Catholics could approach non-Catholic religious rites as the worship of fellow Christians whose membership in the Church is as yet incomplete. Far from minimizing obstacles, this spirit meets them head on, but with calm and patient charity rather than with the animosity of strategy or blind sentimentality. Because a strong and intelligent desire for union insists on facing obstacles honestly, the danger of perversion is enormously reduced. Indeed, such contact could quite easily be a source of edification and growth in one's faith.

It is doubtless this type of consideration which Fr. Prah had in mind when he wrote that "distinctions between the rites themselves and the modifying circumstances were not sufficiently marked off."

It is clear that the *Decretum de oecumenismo* has enlarged the approach to this subject. After indicating the desirability of prayer in common as "an effective means of obtaining the grace of unity and ... a true expression of the ties which still bind Catholics to their separated brethren," the Decree turns to worship properly so called.

Yet worship in common (*communicatio in sacris*) is not to be considered as a means to be used indiscriminately for the restoration of Christian unity. There are

two main principles governing the practice of such common worship: first, the bearing witness to the unity of the Church, and second, the sharing in the means of grace. Witness to the unity of the Church very generally forbids common worship to Christians, but the grace to be had from it sometimes commends this practice. The course to be adopted, with due regard to all the circumstances of time, place, and persons, is to be decided by local episcopal authority, unless otherwise provided for by the Bishops' Conference according to its statutes, or by the Holy See.[45]

The interesting word here, as Enda McDonagh points out,[46] is *indiscretim*. "In the mind of canon law," he writes, "active participation in worship together (which seems certainly in question) would have been unthinkable as a means towards unity." The Decree does not take this point of view. In using the word *indiscretim* it actually implies that there are times when active common worship is in place. At the same time and secondly it implies recognition of the enormous practical difficulties which make of active common worship such a delicate thing. One of these difficulties mentioned by Gustave Thils[47] is the diversity of doctrine about the sacraments and particularly about the Eucharist. For this and similar reasons the Decree is content to present two general theological principles on *communicatio* and leave their application to local authority.

The first principle in control of common worship is the fact that liturgy bears witness to the unity of the Church. The second principle views liturgy from a different point of view; it sees it as a means of grace. Gregory Baum has indicated that these two principles move in opposite directions.[48] One forbids while the other favors. One must balance these carefully against each other to determine whether the prohibitive or permissive principle should predominate in individual instances.

The Council fathers were not content to state these two controlling principles; they also applied them in a general way. Thus, when one considers liturgy as a sign of unity, "significatio unitatis *plerumque* vetat communicationem." They immediately add: "gratia procuranda *quandoque* illam commendat." As a general rule, worship as a sign of unity will give rise to the dangers and problems because of which common worship has been and must continue to be prohibited.

I think it would be accurate to summarize the shift in emphasis introduced by the Decree in the following way. Formerly we had asked: When is common worship permissible because free of improper approbation, scandal, and

[45] *AAS* 57 (1965) 98.

[46] Enda McDonagh, "The Practice of Ecumenism," *Irish Theological Quarterly* 32 (1965) 141–50, at p. 145.

[47] G. Thils, "Le décret conciliaire sur l'oecuménisme," *Nouvelle revue théologique* 87 (1965) 231.

[48] Gregory Baum, O.S.A., "Communicatio in sacris," *Ecumenist* 2 (1965) 62.

danger of perversion? The factual answer to this question had been emphatically negative because of conditions flowing from a pre-ecumenical era. Actually, however, even the question asked was unilateral. The dangers adduced tell us what can be wrong with *communicatio*; they do not tell us positively what can commend it. More precisely, these three sources of the prohibition of common worship arise from an approach to liturgy as a sign of unity. Liturgy is certainly a sign of unity. But the Decree points out that it is also a means of grace. It is in giving more explicit and emphatic recognition to this fact that the Decree has effected a shift in approach. Previously, of course, we had instances of this aspect of *communicatio* where priests were permitted to administer the sacraments to dying non-Catholics. In these instances the role of liturgy to signify unity became subordinate to the over-all salvific mission of the Church. There could be other situations where *communicatio* is necessary as a means of grace, but in a larger and less obvious sense, and where it could lead to a similar subordination. That is, in specific cases common worship could be a very apt means of manifesting the unity of grace and baptism already existing between Christians, and thereby of promoting Christian unity and charity. Christian unity, being an essential aspect of the salvific mission of the Church, could dictate the momentary neglect of the liturgy as a sign of unity "... as long as the momentary neglect of the liturgy as sign of unity would not confuse the Christian conscience, or in particular, create the danger of indifferentism."[49] Equivalently, then, the Decree has said *per se non licet, per accidens licet*, and it has given us a fuller notion of the necessity which may lead to a judgment of licitness.

It is explicitly stated by the Decree that the practical course to be adopted is to be decided by local episcopal authority "unless otherwise provided for by the Bishops' Conference according to its statutes, or by the Holy See." Examples of such determination already exist in this country.

On June 11, 1965, the Archdiocese of St. Louis published its *Archdiocesan Directory on Ecumenism*. It is an admirable blend of prudence and initiative. After discussing the meaning of ecumenism and the *Decretum de oecumenismo*, it presents detailed directives with regard to *communicatio*, but states for its faithful that the norms "are given with full realization that future developments may cause them to be modified." Of particular interest is the statement on the Eucharist. The Directory states that the Eucharist is the sign and cause of unity and as such it is the goal towards which the ecumenical movement is directed. It continues:

Although there is theological discussion of the advisability of admitting members of other Christian Churches to Communion on specific occasions, the arguments

[49] Baum, *ibid.*

against open Communion in the present stage of the ecumenical era seem the more cogent. Generally speaking, Catholics look to the Eucharist as the sacrament of unity to be shared in by those who are already fully united. Inter-Communion is viewed as a goal to be attained rather than a means of achieving unity.

The Directory mentions "open" Communion, and that "in the present stage." It does not discuss the matter of individual (for lack of a better word) administration of Communion (or absolution) to a well-disposed non-Catholic Christian.

What is to be thought of such "individual" reception of these sacraments? Any policy on this point must return to the principles asserted in the *Decretum de oecumenismo*. There it is implied that the liturgy as a sign of unity is of great importance. But this sign of unity is not ultimate.[50] The over-all salvific mission of the Church must be the ultimate arbiter of policy. When this mission demands or strongly suggests it, common worship will be in place. Specifically, the Decree is suggesting that Christian unity is so essential a part of her salvific mission that when common worship will aid or promote it, this unity is to be considered as *gratia procuranda*. By way of general answer to the question of "individual" reception of absolution and Communion by well-disposed non-Catholic Christians, I would suggest the following formulation: If local ordinaries judge that individual reception will actually foster eventual unity among Christians without unduly occasioning the dangers associated with common worship, they will have judged that this vital aspect of the Church's mission has in fact taken precedence over the *signum unitatis*. This is an extremely delicate matter and one that local ordinaries will certainly want to weigh carefully. Practically, I do not believe that such individual reception of the sacraments should be invited or encouraged at the present time.

In mid-June (1965) the Catholic press published the text of *Interim Guidelines for Prayer in Common and Communicatio in sacris*. This document was issued by the Commission for Ecumenical Affairs of the U.S. Bishops. The Commission states that ultimately the Secretariate for Promotion of Christian Unity will present a directory applicable to the universal Church. In the meantime it offers certain recommendations.

The *Guidelines* text quotes liberally from the *Decretum de oecumenismo* but makes it more specific in places. For instance, with regard to the participation of Catholics in the official worship of other Churches, it states that the

[50] This is obvious in the attitude taken by the *Decretum* toward the separated Eastern Churches. There it is stated that "quaedam communicatio in sacris . . . non solum possibilis est sed etiam suadetur" (*AAS* 57 [1965] 102). Cf. also Augustin Cardinal Bea, "Il decreto conciliare sull'ecumenismo: L'Azione da svolgere," *Civiltà cattolica* 116 (1965) 9–22, at pp. 19–20.

Decretum does envisage such *communicatio*. Specifically, "Catholics may attend official services of other Churches which have special civic or social significance, especially weddings and funerals." While this is not new in every respect, still there is no mention of mere passive presence. With regard to the Eucharist, the document is very close to the St. Louis Directory. "At the present time, however, except in particular cases of members of the Eastern Orthodox Church, intercommunion with Christians in other denominations should not be permitted." This is a tentative conclusion and one can surmise that the document is concerned with open reception of the Eucharist on the part of non-Catholic Christians.

Recent literature and the *Decretum de oecumenismo* have, then, brought a more positive emphasis to the matter of common worship by making explicit the contingent character of the facts behind prohibition and by highlighting the all-too-often-neglected principle of *gratia procuranda*. Moral theologians will have to reconsider many of their practical conclusions in light of these principles.

DIGNITY OF THE HUMAN PERSON

Premarital intercourse has always been something of a practical problem for the young. This is to be expected. That it should be a theological problem of sorts might come as a surprise. Yet some recent literature, especially non-Catholic, has been concerned with the problem theologically. A sampling may help to show what is being said.[51] D. E. H. Whiteley had stated in the *Expository Times* that fornication is always a sin, and he had listed the reasons for his conclusion.[52] Most of the reasons listed were appeals either to its harmful effects, or to the psychic results of violation of conscience, or to the possibility of growing abuse if "anticipated marriage" between the engaged were allowed. In answer, R. E. Taylor points out the nonuniversal character of many of these arguments.[53] He concedes, of course, that to inflict psychological harm or to cause misery violates the command to love our neighbor,

[51] See also John A. T. Robinson, *Honest to God* (Philadelphia: Westminster Press, 1963) pp. 105–21; *The Honest to God Debate*, ed. David L. Edwards (Philadelphia: Westminste, Press, 1963); Arnold Lunn and Garth Lean, *The New Morality* (London: Blandford Press 1964) esp. pp. 56–72; Lunn and Lean, *The Cult of Softness* (London: Blandford Press, 1965); Francis Canavan, S.J., "Reflections on the Revolution in Sex," *America* 112 (1965) 312–15.

[52] D. E. H. Whiteley, "Important Moral Issues: I—Sex and Fornication," *Expository Times* 75 (1963) 36–39.

[53] R. E. Taylor, "Another Look at 'Anticipated' Marriage," *Expository Times* 76 (1965) 252–54.

and that the morality of premarital relations cannot be assessed apart from this great command.

Basically, however, an understanding of sin must come, he insists, more directly from an understanding of God's word itself. With regard to "anticipated marriage," the first question must be: Do Scripture and tradition tell us that it is *always* a sin? Taylor finds no evidence in Scripture condemnatory of sexual intercourse so long as marriage was definitely intended. *Porneia*, for example, is a general term for illicit intercourse, and it evidently includes promiscuous sexual relationships, but not clearly intercourse between those betrothed. The early Christians felt that present marriage consent (Taylor says inaccurately and continuously "mutual commitment") was a sufficient basis for life as man and wife. Ceremonies were highly desirable; their lack was not invalidating. He concludes that what morally legitimated sexual relations in both Jewish and Christian tradition was neither the blessing of the Church nor the permission of the state, but the freedom of the couple to marry and their commitment to do so. Therefore "churchmen may continue to teach that sexual relations *unaccompanied by a lifetime commitment are sin.*"

Paul Ramsey approaches the problem of sexual relations from a slightly different point of view.[54] First he presents an analysis of sexual intercourse. Ramsey sees intercourse as an act which is *of itself* both an act of love and procreative. He puts this very clearly and it would help to cite him exactly:

> Whether or not an existing relation between the man and the woman is actually nourished and strengthened by their sexual intercourse, the act itself is an act of love. Whether or not a child in engendered, the act is in itself procreative. This means that sexual intercourse tends, of its own nature, toward the expression and strengthening of love and toward the engendering of children.

One could scarcely put the double *finis operis* of sexual intercourse more clearly. Neither love nor procreativity is present only when the parties decide to put their minds to it; these are the inner senses of intercourse. Secondly, Ramsey insists over and over again that "God has joined these two things together" in a single act. Thirdly, Ramsey suggests that the crucial question about premarital relations is this: "whether sexual intercourse as an act of love should ever be separated from sexual intercourse as an act of procreation." His answer: man may not separate these two inner senses and premarital intercourse does so.

[54] Paul Ramsey, "A Christian Approach to the Question of Sexual Relations outside of Marriage," *Journal of Religion* 45 (1965) 100–118.

Ramsey argues that as a general rule premarital intercourse is irresponsible activity. For when men attempt to put asunder entirely an act of sexual love from its procreative meaning, they must be sensitive to the responsibilities involved. In premarital intercourse they are not. First of all, where a contraceptive is not technically and humanly perfect, the irresponsibility is clear. Fornicators who ignore a two per cent defectibility rate in a contraceptive are just as irresponsible as two people who play Russian roulette where chances of death are only two in a hundred. Secondly, even where a perfect contraceptive removed from all human error is available and where man *can* separate acts of sexual love from procreation, *should* he? No, says Ramsey, for in doing so "no respect is paid, no honor given, to the fact that God joined sexual love and procreation together in our beings." Even a perfect contraceptive means a refusal of the image of God's creation (where love and creation combined) in our activity.

More precision is needed where relations between those engaged to be married are involved. Here Ramsey distinguishes marriage consent from the ceremonies of marriage. Therefore we must distinguish premarital relations from expressions of an existing marriage which is simply unannounced. Preceremonial relations are not necessarily premarital relations. "If they [the couple] mean to express the fact that their lives are united and that they now are willing to accept all that is entailed in sexual intercourse as their unity in one flesh . . . then it is simply impossible for them to engage in *pre*marital sexual relations as this is understood in Christian teachings." If, on the other hand, the couple engages in something they know is *pre*marital in the authentic sense, they recognize their irresponsibility.

Anyone familiar with the writings of Paul Ramsey will appreciate the precise and provocative character of his thought. Particularly remarkable in this article, for one who does not take his departure from Catholic teachings, is Ramsey's insistence that intercourse is "at the same time and by virtue of its own tendencies, an act of love and an act of procreation." There are a few points in his interesting presentation which deserve comment.

First of all, Ramsey's proof for the immorality of premarital intercourse when a technically perfect contraceptive is used seems unpersuasive. He had argued that this completely separates the act of love from the sex act as procreative and thus amounts to a refusal to allow the image of God (in whom love and creativity always combine) in our activity. However, if the oneness of the unitive and procreative aspects of sex is honored in marriage even when perfect contraceptives are used, as Ramsey claims it can be, then it is clear that this honor can be manifested in ways other than in individual acts. The young man who sincerely intends to marry later and

raise a family is showing honor to this union in Ramsey's terms, I should think, even though he indulges in premarital relations now.[55]

Secondly—and this point is common to Taylor and Ramsey—what is the relationship between individual marriage consents and competent authority? Taylor had remarked that "the Church did not have the power to validate or invalidate a marriage,"[56] for marriage is fundamentally a consensual thing. Ramsey, in clarifying his position as reported in *Time* magazine, wrote that "Christians in past ages believed that persons consenting together (whether before church or state, or not) have a performatory power that is so extraordinary that it creates an indissoluble bond that did not exist before between them."[57] Both Taylor and Ramsey would hold, I take it, that relations which express an already given consent (private, that is, and preceremonial) are not premarital in a moral sense and, to that extent, not immoral. It is here that I believe something more has to be said.

What Christians believed in the past in terms of what the Church actually did then is one thing; what the Church *can do* is quite another. The Church vindicates to herself competence over the marriage of the baptized in such a way that she can establish even diriment impediments to marriage.[58] She has the competence, in other words, to make demands which when not observed render the persons *inhabiles* to contract—even though they are *habiles* to consent. Furthermore, since not any contract was elevated by Christ to sacramentality but only a valid one, this *inhabilitas* would indirectly obtain for the sacrament also. Now if a person is for some reason or other *inhabilis* to contract, what in his case would "marriage consent" mean or achieve? This consent achieves its full effect in an ecclesial and social context. As long, then, as the Church has the right to make invalidating demands and actually does so (as she still does in our time where canonical form is concerned—whether she should is another question), lack of compliance with them means that consent is not effective in establishing a true marriage.

The terms "premarital" and "conjugal" must be understood in relation to the total reality of marriage. Marriage as totally understood is an ecclesial and social reality. Hence intercourse performed with what the parties call "marriage consent" is *premarital*, I should think, in the fullest moral sense. After all, is not one's ability to effect something by consent condi-

[55] For a helpful analysis of the morality of premarital relations, cf. Joseph Fuchs, S.J., *De castitate et ordine sexuali* (3rd ed.; Rome: Gregorian Univ. Press, 1963) pp. 45 ff., 99 ff.

[56] *Art. cit.*, p. 254.

[57] *Time* 85 (March 19, 1965) 15.

[58] A. DeSmet, *De sponsalibus et matrimonio* (Bruges, 1926) nos. 419–25, esp. n. 1, p. 362; M. Zalba, S.J., *Theologiae moralis summa* 3 (Madrid, 1958) nos. 1197 and 1334.

tioned by his ecclesial reality? Therefore I do not understand the abstract (and absolute) character of the performatory power which Ramsey and Taylor assert. This is not to underestimate such performatory power (for nothing can supply for consent[59]); it is rather to put it in its proper ecclesial context. As for the nonbaptized, it seems that the proper civil authority could make similar demands (whether it does beyond mere civil effects I do not know). Marriage consent is qualified by the ability to marry, and we dare not think of such ability apart from man's ecclesial and social context; for this would jeopardize the very goods marriage is intended to achieve.

Thirdly, Ramsey has spoken of the union of the procreative and unitive purposes of intercourse in the selfsame act and asked: Is it proper for man to put these asunder completely? It would be interesting if a man of Ramsey's shrewdness were to ask: *Can* man, even if he wants to, ever separate the two? That is, what assurance does man have, after he has altered the act in such a way that procreation is impossible, that he is still dealing with a true act of sexual love? How is such an act to be defined concretely and by what criteria?

Two articles in the *Homiletic and Pastoral Review*[60] attempt to face the premarital problem at a pastoral level. Their main point is that adolescent sexual problems must be situated within the context of the adolescent growth process. Once such problems are viewed as above all developmental problems, what can the priest do to aid the process of growth to maturity? The articles suggest that the priest—in any of his three roles of confessor, counselor, teacher—makes his best contribution by helping the adolescent to see and understand himself as a person and by aiding him in the understanding of the positive values of human sexuality. With regard to this latter, the priest will find very helpful Evelyn Millis Duvall's new book *Why Wait till Marriage?*[61] This is not a moral or religious treatise, but it contains a wealth of common sense couched persuasively for those for whom it was written.

Denis F. O'Callaghan discusses the case of the spy who desires to take his own life to protect his comrades, perhaps even his country, from the harm he could cause through revelation of classified information.[62] The case is interesting not merely or especially because in an era of cold war and arms

[59] W. Bertrams, S.J., "Efficacitas consensus matrimonialis naturaliter validi," *Periodica* 51 (1962) 288–300; H. Heimerl, "Ehewille–Eheschliessungsform–Ehegültigkeit," *Theologisch-praktische Quartalschrift* 113 (1965) 144–63.

[60] R. A. McCormick, S.J., "The Priest and Teen-Age Sexuality," *Homiletic and Pastoral Review* 65 (Feb., 1965) 379–87; 65 (March, 1965) 473–80.

[61] Evelyn Millis Duvall, *Why Wait till Marriage?* (New York: Association Press, 1965).

[62] Denis F. O'Callaghan, "May a Spy Take His Life?" *Irish Ecclesiastical Record* 103 (1965) 259–64.

races espionage is more frequent; it is above all pertinent as a test of our existing practical formulations concerning the sanctity and inviolability of human life. One of the most common of these formulations, as manifested in the distinction between direct and indirect killing, is the principle of double effect. O'Callaghan discusses thoroughly and accurately existing formulations, admitting that eventually every one runs into human complexities where the load seems too great for the formulation, especially if we have endowed it with a computer-like rigidity. One such instance, it is said, would be the inability of the terms direct–indirect self-killing adequately to grasp the real difference between suicide and self-sacrifice. Some direct self-killings conform humanly to the notion of sacrifice rather than to that of suicide—e.g., when done in a very noble cause. O'Callaghan, while admitting the moral relevance of this distinction, prefers to associate it with motive and ultimately finds direct killing of self for one's country "unacceptable both from the point of view of principle and the point of view of consequence."

It is interesting that those who prefer the categories suicide–sacrifice to direct–indirect self-killing (Leclercq, Huftier[68]) give as examples of sacrifice of self classic cases of indirect killing (e.g., the soldier who kills himself in the process of blowing up a fortress). I am inclined to agree with Fr. O'Callaghan that the spy may not take his own life, and for two reasons. First, the spy cannot be regarded as an unjust aggressor against his country, even though his human frailty may be the cause of harm to it; for unjust (materially unjust—which is all that is required) aggression supposes that an individual has left the sphere of his own rights and entered the sphere of another's. One simply performing vital activities, for example, even though they are harmful to others, cannot be said to have abandoned the sphere of his own rights. While we have a right to demand that those with deadly communicable diseases segregate themselves, we do not have a right to demand that they cease vital functions if this is our only protection. Somewhat similarly, reacting in accordance with human limitations under severe torture does not mean that I have left the sphere of my own rights and invaded that of my government's; for no government has the *right* to demand that I be superhuman. Hence, though the revelation under torture of secret information could be harmful to others, I doubt that such a probability would put the spy in the category of unjust aggressor. In making use of human agents with built-in limits, the government must be thought to understand and accept this calculated risk.

Secondly, even though the indirect voluntary leaves us scratching our

[68] J. Leclercq, *Leçons de droit naturel* 4: *Les droits et devoirs individuels* (Namur: Maison d'Editions, 1955) pp. 57–58; M. Huftier, in *L'Ami du clergé* 72 (1962) 297–303.

heads at times, it does represent a most human and common-sense distinction capable of handling the vast majority of sacrificial vs. suicidal situations. For this reason I would prefer to adhere to it even in the face of an unpopular solution, if such a solution constitutes my only solid reason for abandoning it.

Patrick Granfield, O.S.B., presents an admirably clear and thorough summary of moral thought on the right to silence.[64] Textbook literature has been generally content to rest its case for this right on a practical positive-law basis. That is, the defendant is bound to respond *secundum ordinem juris*, and civil codes do not demand confession of one's crime. This treatment easily leaves the impression that the right may not be natural. More current literature contends that the axiom *nemo tenetur tradere seipsum* expresses something rooted in man's very being, something which founds a natural, though not unlimited, right against self-incrimination. What is this something? Fr. Granfield summarizes the five most common arguments which point to the natural-law origin of the right to silence: (1) right to secrecy; (2) right to reputation; (3) exceptional character of the duty to perform heroic acts; (4) legitimate love of self; (5) dignity of the human personality. I must confess that whenever I encounter such abundance, I suspect that no one argument quite carries it off. Apparently Fr. Granfield shares this uneasiness when he concludes with a combination of 1 and 5: "the best argument for the right to silence is the fundamental dignity of man as God's superb creation, destined to perfect himself in a society. Man, endowed with liberty, has a certain dominion over his inner world. He has a right to his private and personal life." But this right has limits. Precisely because this dignity can be developed and maintained only within society is the right limited by the common good (Granfield prefers "maximal public order"); but precisely because the common good purposes the good of individuals is the limitation itself severely limited.

Another problem touching secrecy and through it the dignity of the individual is wire tapping. Traditional moral theology has said very little about this specific type of invasion of privacy. It has given two general principles: to search out another's secret demands a right to the knowledge and the use of licit means.[65] A recent article can help concretize the term "licitness of means."[66] While the two lawyers who discuss wire tapping do

[64] Patrick Granfield, O.S.B., "The Right to Silence," THEOLOGICAL STUDIES 26 (1965) 280–98.

[65] Robert E. Regan, O.S.A., *Professional Secrecy in the Light of Moral Principles* (Washington, D.C.: Catholic Univ. of America, 1943) p. 34.

[66] F. E. Inbau and Herman Schwartz, "Wiretapping: Yes or No?" *Christian Century* 82 (1965) 75–79.

not approach it from a moral point of view, much of what they say is very pertinent to the moral question.

Fred E. Imbau, of Northwestern University, argues in favor of wire tapping on the grounds that it is the only practical way of getting at the big racketeers. Furthermore, the fear of the ordinary citizen that police will have access to his private affairs (indiscretions, etc.) is unjustified, for wire tapping is neither cheap nor easy. It simply is not worth while unless it is done to get at the very serious criminal offender. Nor should we fear blackmail, for there are easier ways to go about this too. Finally, those who opt for wire tapping as a necessary police function want it permitted only after the police have obtained a court order.

Herman Schwartz, of the State University of New York (Buffalo), argues against the need of wire tapping on two basic grounds: danger to privacy is too great and the value of the wire tap is relatively minimal. As for privacy, he contends that the wire tap is inherently unlimitable. To tap the line of one person means to invade the privacy of many. Nor is the wire tap the only practical way of getting to the major criminal elements in society, a point admitted by not a few attorneys general. It is useful, of course, but a case for indispensability has not been made, "and in a free society one does not give the police drastic powers unless a need is conclusively shown." Finally, the wire tap is but one investigative technique made possible by the electronic revolution. Legitimation of this one technique will lead and has led to use of other devices (detectaphones, parabolic microphones, etc.).

We all share a strong revulsion against the criminally parasitic and we share an instinctive reaction that these people should be prevented at any cost. But these reactions, however wholesome, must be carefully controlled if we are to survive our own enthusiasms. The cost just may be too high. We may have indeed provided protection against criminal elements in society, but in the process we may have produced a society where it is hardly worth while being protected. I would suggest the following conclusions about the licitness of this means: wire tapping is *per se* illicit, *per accidens* licit—that is, illicit unless it is carefully restricted (1) by court order and surveillance (2) to instances of very serious crime or its threat (3) where no other means are practicable. Whether these conditions can ever be realized practically, *videant sapientiores*. But on paper Schwartz has the better of the argument. A society which enjoys privacy can unfortunately begin to take it for granted and badly underestimate its true worth. The road back is long and hard.

L. Beirnaert's interesting discussion of the modern problem of secrecy is more concerned with the subjective (personal) factors involved.[67] Even

[67] L. Beinaert, "Problèmes autour du secret," *Etudes*, March, 1965, pp. 334–40.

when all the standard protective conditions are fulfilled, the very idea of unburdening oneself to another retains a fearsome aspect and often blocks the genuine exchange so basic to modern organized charitable endeavors. Why? The secret is symbolic of our own personal dignity. Since we all possess a kind of instinctive urge to penetrate the secrets of others (a guarded secret contains a bit of defiance), we tend to storm the secrecy of others and thereby provoke the attitude of resistance; for the person is under attack. Therefore, in modern situations calling for self-unburdening, any exercise of power must be renounced in favor of a charity which seeks uniquely the good of the person. Otherwise the relationship may produce information for the dossier, but it will scarcely produce the real self-revelation necessary for the progress of the subject.

Rudolph Weiler presents a brief moral analysis of the use of narcotic stimulants in athletic events.[68] The first problem one faces here is one of definition. Weiler understands *das Doping* as meaning the "administration or use by healthy persons of substances foreign to the body in any form and of physiological substances in abnormal doses or in an abnormal way, with the single purpose of artificially and unfairly heightening competitive achievement." After listing what all would regard as medical examples (morphine, cocaine, etc.), he opines that ten times the daily dose of vitamins would probably fit his definition. Also to be included by affinity, so to speak, are psychic means of stimulation such as hypnosis. Rather surprisingly (to Americans), he includes use of oxygen by football players.

The essay concludes that use of stimulants as defined is to be morally interdicted on three grounds. First, it is harmful, or easily can be, to bodily health. Athletics purpose among other things enduring bodily health and conditioning. Any drugs which have an over-all negative effect on the whole person later on are irreconcilable with the human meaning of athletics. Secondly, drug stimulants offend the fairness and honesty inseparable from competitive sport, because they alter its basic suppositions and conditions. Furthermore, they deceive the public. Finally, these practices are (in many places) in violation of international agreements. Weiler's statements are general and he is careful not to venture beyond this general character. Serious sin can be present but is not often likely to be present.

Without gainsaying the validity of this analysis, I would prefer a slightly different approach. Victory is inseparable from the notion of competitive athletics. Because this struggle for victory sharpens personal skills and co-

[68] R. Weiler, "Das Doping und seine sittliche Beurteilung," *Theologisch-praktische Quartalschrift* 113 (1965) 164–67. For further remarks cf. THEOLOGICAL STUDIES 21 (1960) 589–90.

ordination, develops foresight through strategic thinking, intensifies co-operation and unselfishness through teamwork, enlarges toleration for adversity—in short, calls forth and promotes human qualities which reflect man's dignity and worth—it has always been honored as a *human* achievement. It is precisely because men bear the burden of this struggle that it is humanizing. To the extent that this burden is shifted to a drug, competition is dehumanized and therefore becomes dehumanizing. Little more need be said. In an age which already short-cuts many of its challenges through chemistry, it is unfortunate that this form of dehumanization is actual and common enough to require moral analysis.

Underlying any legal (whether civil or canonical) stipulations about obscenity is a theological notion of the obscene. Theologians would readily admit to a feeling of vague dissatisfaction with the results of their attempts to make this notion precise and viable. Maurice Amen, C.S.C., summarizes for attorneys Church law on the obscene and especially the theological attempts to elaborate that notion.[69]

An excellent article by Peter R. Connolly offers some challenging reflections.[70] While admitting that obscenity is comprised of both subjective and objective factors (scil., the objective *allectatio* is measured by the reactions of the individual), he feels that theological formulations of the obscene have tended to neglect the objective factors. This neglect manifests itself in our use of quantity of sexual detail as a criterion, whereas it is not quantity but quality (the spirit which animates the sexual detail) which distinguishes pornography from other literary genres. Unless we make this quality clear, *allectatio* will remain an ambiguous term containing indiscriminately the allure of the pornographic and the allure of things not pornographic, above all that of erotic realism.[71]

Erotic realism, Connolly insists, in spite of its treatment of sexual detail, is not pornographic. Genuine pornography is a subliterary type involving direct solicitation to lustful acts, whether in the mind or outside of it. It isolates physical sexuality from all context of spiritual or emotional feeling and imprisons the reader in the world of genital stimulation. Erotic realism, on the other hand, appeals to and builds up erotic feeling but contains it. It attempts to control and interpret the sexual experience of contemporary man. There is a continual reference to a larger and more total pattern. Thus,

[69] Maurice Amen, C.S.C., "The Church versus Obscene Literature," *Catholic Lawyer* 11 (1965) 21–32.

[70] Peter R. Connolly, "The Moralists and the Obscene," *Irish Theological Quarterly* 32 (1965) 116–28.

[71] Connolly includes in the literary type of "obscene writing" the scatological, the bawdy, and erotic realism. Clearly he is distinguishing obscenity from pornography.

whereas pornography is the verbal counterpart of lust, erotic realism "in the West has become a literary correlative for the state of romantic love as it evolved in that tradition." This article presents a convincing case that the two genres are antithetical despite superficial resemblances and that this difference is detectable even at the level of verbal texture.

Once the distinction between true pornography and other literary types (including the bawdy, the scatological, and erotic realism) has been made, two questions occur: (1) Has the Church been forbidding only pornography? (2) Should she have forbidden only pornography? As for the first question, I suspect we would have to say "no," and Connolly would suggest that it is precisely because of neglect of objective factors (which literary criticism is best suited to provide) that we have to answer in this way. I believe it is a reasonable reading of his meaning to say that he would answer the second question affirmatively. It is not hard to agree with Connolly here. If erotic realism, etc., are genuine literary types—and I am convinced they are—control were better left to sound education and to the principles covering individual moral risk. At any rate, Connolly's own sensitivity should make it clear to the theologian that an acceptable notion of pornography cannot be elaborated independently of literary criticism.

Nudity in films is not necessarily obscenity. But it does raise practical problems. There are at least two points of view from which one might approach nudity in films: that of artistic canons and that of practical policy. Because the two are distinct, they should be kept distinct. A press release of a statement by the Episcopal Committee for Motion Pictures, Radio, and Television wrote of films: "In itself nudity is not immoral and has long been recognized as a legitimate subject in painting and sculpture. However, in the very different medium of the motion picture it is never an artistic necessity." The Committee's statement went on to adopt a policy with regard to nudity: "The temptation for film-makers to exploit the prurient appeal of nudity in this mass medium is so great that any concession to its use, even for otherwise valid reasons of art, would lead to wide abuse." An editorial in *America* stated that the Episcopal Committee was stating a "*policy*, not a principle of moral philosophy or a canon of artistic criticism."[72] As a policy, the attitude voiced by the Episcopal Committee makes good common sense. Nor are the American bishops the only ones concerned about the temptation to exploitation. James Wall, editor of the *Christian Advocate* (Methodist), wrote: "The sight of bared breasts is of course not likely to do great harm to the American psyche. But the watering-down of the code that has occurred can mean only that a vast commercial enterprise is endeavoring to widen its economic base.... The proper use of nudity in

[72] *America* 112 (1965) 895.

Pawnbroker is doomed to be followed by productions so catering to mass prurience that though they reap quick profits they will eventually harm the entire community."[73] Since the Episcopal Committee was specifically interested in a policy approach, two questions remain open to discussion: (1) whether they should have said "it [nudity] is never an artistic necessity"; (2) whether *Pawnbroker* was the best vehicle for implementation of this policy. Such questions will probably be discussed for months, or even years.

CONTRACEPTION

Contraception continues to be (at the time of the composition of these Notes) the major moral issue troubling the Church. In an address to the College of Cardinals delivered June 24, 1965, Pope Paul VI stated that his special commission had not yet completed its work, but that he hoped to be able to make a statement soon.[74] By the time these Notes appear, that statement may have appeared. It was to be expected (given the general unrest on this matter, the now famous "holding" statement on June 23, 1964, the appointment and meeting of Pope Paul's special study commission, and the imminence of the fourth session of Vatican II) that the literature on contraception in the past six months would be voluminous. That expectation has not been disappointed. Only a few of the contributions can be reviewed here.[75]

What is the theological note for the Church's teaching on contraception? Frs. Ford and Kelly had earlier expressed the opinion that it is "very likely already taught infallibly *ex jugi magisterio*."[76] L. L. McReavy came to the same conclusion, that is, that it is "contained in, and guaranteed by, the ordinary and universal teaching of the Church, which cannot mislead."[77] Disagreeing with Fr. McReavy, Canon F. H. Drinkwater insists that we are not dealing with irreformable doctrine.[78] Since *Casti connubii* was not

[73] James M. Wall, "Toward Christian Film Criteria," *Christian Century* 82 (1965) 777.

[74] *Documentation catholique* 62 (1965) 1154–59. For a summary of the commission's task and the papal address to its members, cf. E. Tesson, S.J., in *Etudes*, May, 1965, pp. 724–30.

[75] For summaries of earlier contributions, cf. *Moral Problems and Christian Personalism* (= *Concilium* 5; New York: Paulist Press, 1965) pp. 97–154.

[76] John Ford, S.J., and Gerald Kelly, S.J., *Contemporary Moral Theology* 2 (Westminster, Md.: Newman, 1963) 277.

[77] L. L. McReavy, in *Clergy Review* 49 (1964) 707.

[78] F. H. Drinkwater, "Ordinary and Universal," *Clergy Review* 50 (1965) 2–22. This essay is also included in his book *Birth Control and Natural Law* (Baltimore: Helicon, 1965) pp. 39–66. Karl Rahner's statement in *America* 112 (June 12, 1965) 860 is ambiguous. He states that neither *Casti connubii* nor Pius XII's teaching is "absolutely formal or irreformable." He did not address himself to the question of the ordinary and universal magisterium, unless it was by implication.

an ex-cathedra pronouncement and since the same must be said of subsequent papal directives, Drinkwater's main concern is with McReavy's contention that the teaching on contraception is infallible from the ordinary and universal magisterium. His rather lengthy discussion of "ordinary and universal" contains the implicit conclusion that the immorality of contraception has not been taught in this way.

Without asserting that the immorality of contraception is infallible *ex jugi magisterio*, I am puzzled by Drinkwater's reasons for thinking it is not. Unless I am mistaken, his assertion is twofold.

First, he contends that during the past thirty-five years we have had "a whole generation of frozen silence, the silence of intellectual death, or at least of paralysis. . . . The point is that in such an atmosphere the true living voice of the ordinary and universal teaching of the Church is not to be easily heard. There is heard only, so to speak, a single gramophone record playing on and on."[79] There seem to be two implications here: first, that the "ordinary and universal" character of this teaching spans a period of only thirty-five years; secondly, that unless each bishop has made a profound personal study of the matter, the consent is speciously universal. As for the first implication, a book such as John T. Noonan's *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists*[80] should be sufficient to bid it adieu. Secondly, while sympathizing with the Canon's fears of curialism and the all too human temptation to confuse infallibility with administrative centralization, I find it difficult to accept a concept of "ordinary and universal" which demands that each bishop have wrestled personally with the problem himself.[81] The essential of the concept concerns *that which is taught*, not why it is taught or how one arrived at the conclusion. The Church, being also a cultural phenomenon, will always carry along deadwood, both formulated and personal. But Canon Drinkwater's own description of infallibility as a kind of preventative *assistentia* might have suggested to him that such deadwood does not shackle the preventative assistance of the Holy Spirit.

His second assertion is that the immorality of contraception has not been the core teaching. Rather, the real truth being constantly preserved (and repeated in, for example, *Casti connubii*) is "the whole doctrine of Christian marriage, monogamous, fruitful, image of Christ and Church." Therefore,

[79] *Art. cit.*, pp. 18–19.

[80] Cambridge: Harvard Univ. Press, 1965.

[81] This idea of ordinary and universal is also presented in Baum's "Can the Church Change Her Position?" in *Contraception and Holiness* (New York: Herder and Herder, 1964).

far from denying an ordinary and universal (and therefore infallible) magisterium on marital morality, Canon Drinkwater is asserting it but interpreting its assertion. The Church has indeed been infallible *ex jugi magisterio* but the assertions of this magisterium have concerned "the whole doctrine of Christian marriage. . . ." As for contraception, "the contraception paragraph was an incidental detail, occasioned by a Lambeth Conference of those days."[82] This may be right, but there is little evidence in Canon Drinkwater's presentation to secure the point. On the face of it, the evidence is heavily weighed against this restrictive reading of the constant and universal teaching.

Unless I am mistaken, we have here one of the most basic theological issues in this entire discussion: Who can assert the *certain* criteria for a doctrine infallible from the universal and ordinary magisterium? Drinkwater is correct, it would seem, when he states that no one of the indications (he lists seven) is decisive. Yet, using his own criteria for what pertains to the universal and ordinary magisterium, I would have to say that where the immorality of contraception is concerned, he has opted for noninfallibility rather than justified this conclusion.

Gregory Baum holds that the Church's infallibility is not involved in the traditional teaching on contraception, but he holds this on different grounds, scil., the Church *cannot* teach infallibly the natural law.[83] Drinkwater obviously, though perhaps unwittingly, disagrees with Fr. Baum, since he holds that the Church has actually been teaching infallibly but only up to a certain point. Also in total disagreement with Fr. Baum is E. Schillebeeckx, who asserts not only the possibility but the fact of irreformable teaching on basic natural-law morality. He says: "We are in fact faced with the universal teaching of the bishops of the world, so that we cannot go back on it. Moreover, it is unthinkable that in such a vitally important question the Church would in fact err in teaching something that has not been declared infallibly."[84] Schillebeeckx, however, interprets the meaning of this teaching in a manner similar to that of Drinkwater.

As the discussion of contraception has continued, it has become obvious that methodological considerations are extremely important. Two articles deal with methodology.

Germain Grisez points out a series of equivocations and assumed premises

[82] Drinkwater, *art. cit.*, p. 18.

[83] Gregory Baum, "The Christian Adventure—Risk and Renewal," *Critic* 23 (1965) 41–53.

[84] E. Schillebeeckx, O.P., as reported in *Moral Problems and Christian Personalism*, p. 124.

which lead him to the conclusion that the controversy has been conducted with "almost incredible sloppiness."[85] He cites several examples of this philosophical untidiness. One is the word "intention." It can refer to the tendency of the will toward the good or the end, the tendency which leads to deliberation and eventually to choice. It can also refer to the act of the will which is the choice, the efficacious willing with a view to the end. Grisez's constant message (and one with which I agree) has been: personal problems, population problems, etc., do not tell us whether contraception is morally right or wrong. They rather point up more acutely the need of knowing whether it is right or wrong, and especially why.

Michael Dummett calls attention to the fact that very few of those convinced of the immorality of contraception are satisfied with available statements of the grounds of this immorality.[86] He insists, therefore, that this situation makes it "not less, but *more* incumbent on them [those who favor contraception] to scrutinize that view, and the possible grounds there may be for it, with the greatest care." He does not believe that the real case against contraception has been stated, and hence "those who have convinced themselves that they may safely reject the case against contraception are judging rashly, since it is impossible that they should have considered that case presented in the strongest version of which it should be capable." In the course of his presentation, Dummett gives what he considers to be the two possible sources of the evil of contraception and points out the problems with both of them.

I believe that everyone would concede the importance of methodology in moral discussion. And most would, in dispassionate moments, probably agree with Grisez that there has been an enormous amount of position taking. It is so hard to retain an open and balanced point of view, simply because so much seems to be at stake. On the one hand, there appears the health and happiness of married life itself; on the other, the integrity of morals and the indefectibility (in carefully defined contexts) of the Church's magisterium. However, as soon as one approaches the problem as "something at stake," he tends either to promote or to defend. Neither the promotional nor the defensive posture is a properly theological one. The theologian's task is understanding through open enquiry.

The notion of "open" enquiry may well be at the heart of many methodological problems. I should like to submit the following understanding for theological discussion. The effect of repeated authoritative Church pro-

[85] Germain Grisez, "Reflections on the Contraception Controversy," *American Ecclesiastical Review* 152 (1965) 324–32.

[86] Michael Dummett, "The Question of Contraception," *Clergy Review* 50 (1965) 412–27.

nouncements on a matter of this importance is a presumptive certitude of their correctness. (This supposes for the moment that the precise conclusion in question has not been irreformably taught.) Because there is presumptive *certitude*, prudence demands the acceptance of the conclusion in defect of prevailing contrary evidence. But because this certitude is *only* presumptive, circumstances can arise which will create a duty for the theologian to test it in the light of changing fact, increasing understanding of ethical theory, etc. This testing may appear to be an attempt to get at the same conclusions by other means; hence it may appear to be a defensive or apologetic tactic. The line between testing a teaching and defending it is indeed fine—so fine that not a few theologians have been trapped into a defensive mentality. But testing is not closed-minded apologetics; it is enquiry—but enquiry conducted with the conviction that a Catholic cannot begin as if the Church had never spoken or, if she did, as if this is momentarily irrelevant.

It is here that methodology becomes crucial. If, as some contend, the atmosphere within the Church for the past thirty-five years has prevented truly free discussion of this matter, then by the same token the doctrine has simply been insufficiently tested. It is here that I agree with Dummett that the teaching on contraception has not been presented in the strongest version of which it is capable.

But if the Church's magisterium enjoys certain presumptions, this does not exempt those who draw enlightenment from this teaching from contributing to its formation. The promised guidance of the Holy Spirit, far from rendering discussion and human co-operation unnecessary, rather demands it. In the past semester there have been several attempts to deepen our understanding of marital sexuality. I shall mention but three—and these in impoverishing summary.

Robert O. Johann, S.J., presented to the Catholic Theological Society of America (June, 1965) a paper entitled "Responsible Parenthood: A Philosophical View."[87] After determining the meaning of responsibility as above all stressing the fact that our actions are precisely responses of persons, and after rejecting two extreme forms of the ethics of responsibility, Fr. Johann develops the broad outlines of an ethics of responsibility which will avoid these extremes. Man's very personhood is a call to responsiveness to Being. "What this affirmation of Being requires, i.e., what actually constitutes an adequate response to Being in any particular situation, is a matter for discerning intelligence." This does not exclude universally binding norms.

[87] Fr. Johann very kindly allowed me the use of his manuscript. Quotations are taken directly from the talk as given. It will appear in the *Proceedings of the Catholic Theological Society of America*, Twentieth Annual Meeting, 1965.

"For we are not related to the Absolute and Infinite except through the mediation of the finite and relative." Reason discerns certain types of conduct as incompatible with man's fundamental call to responsiveness to Being. Thus, for example, reason discerns the radical distinction between the order of persons and the order of impersonal nature. Because persons are open to the Absolute, the order of persons participates in the value of the Absolute. Thus this order is necessarily included in one's orientation to God. In other words, one cannot love God without loving the neighbor. Therefore, any exploitative conduct offensive to the dignity of the person is intrinsically evil (e.g., racial discrimination, economic exploitation, rape, etc.). Fr. Johann insists that his general approach, since it is thoroughly ontological in character (founded on man's nature as person), is one of natural law which insists on the objectivity of the moral realm. But he equally insists that though man is concerned with the world's workings, "the importance of natural processes does not lie in their brute facticity." God did not intend that man simply observe the way things operate and leave them that way. Openness to Being is creative and inventive. Against this general background Johann approaches marital ethics.

Sex at the human level absorbs the brute facticity of biological function, and sexual union becomes the embodiment of mutual self-giving. The whole generative process becomes the co-operation of two lovers in the creation of new intelligence, a new freedom, a new person. Summarily, the human meaning of sex is the family. "And it is to this integral sense that man in his freedom and rationality is called to respond." Fr. Johann concludes that any use of sex which makes it a plaything is a failure in responsiveness—but not because "a biological process is interrupted." It is not the perversion of sex as a physical activity that is monstrous, but the perversion of reason in relation to the full human sense of sex. Hence, man's "intervention in natural processes is always justified when its issue is an enlargement of human meanings and possibilities." Fr. Johann concludes that when biological fertility begins to threaten the common work of raising and being a family and when abstention is itself also a threat, then modification of the physical processes so as to further the central reality (the family) is not to thwart the full meaning of sex but to promote it.

Gustave Martelet, S.J., of Lyons, takes a different point of view.[88] If the structure of sexuality is mere "brute facticity," then surely Johann's objections would be decisive. But Martelet insists that this is not so. After stating honestly and forcibly the arguments of present proponents of contra-

[88] Gustave Martelet, S.J., "Morale conjugale et vie chrétienne," *Nouvelle revue théologique* 87 (1965) 245–66.

ception, he reduces them to a single difficulty: the accusation of naturalism. That is, the traditional negative law proscribing contraception ties man to the yoke of the biological and physiological, thus subordinating his intelligence and freedom to the brute facticity of physical structures. In answer to this, Martelet points out that man is *conditioned* transcendence, that is, his intelligence and liberty meet certain thresholds of objectivity which he must adequately understand before asserting his power arbitrarily to intervene. Only when one understands the structure of sexuality adequately will he perceive a genuine spiritual sense in it—a sense which will remove it from the category of "brute facticity." Once this fuller dimension is clear, it is obvious that man actually attests his intelligence and liberty in respecting it and in assuming it as a sign of his creaturehood.

In order to grasp the full sense of sexuality, it is necessary to understand clearly two things: the meaning of the term "natural" and the relation of this to man's creaturely condition.

As for the term "natural," this is not to be understood as the metaphysically necessary. Nor is it to be taken as if "brute facticity" were normative in the narrow context of faculties and finalities. "Natural" rather refers to functionally integral structure. Even though there are variations in the structures of concreteness, beneath them and presupposed in their contingency is the permanence of structure itself. Heads may be all shapes and sizes, but beneath these contingencies is the integrality of the fact of having a head. So also with sexuality. "It is a fact that the sexuality which gives to love its most original language, does so within the generic context of fecundity which one may call natural to love."[89] Natural in what sense? In the sense that this fecundity constitutes an integral part of its structure and condition. One cannot say, then, that sexuality is human when it unites and simply biological when it procreates. In human sexuality the biological conditions the expression of love. That is, "it is to the same reality of life that human subjects, in their conjugal union, owe the sexual language of their love and, in this love, the fecundity (for the most part unforeseen) of their life."[90] If man attributes union to the person and procreation to nature, he is guilty of falsely spiritualizing sexuality. The systematic dissociation of life and love is a basic denial in the area of sexuality of man's conditioned transcendence. So much for the term "natural."

What is the relation of this functional structure to man's creaturely condition? It is here especially that Martelet attempts to show why this natural (scil., functional) structure cannot be regarded as "brute facticity." Procreation represents an astonishing *synergie* on the part of God and the

[89] *Ibid.*, p. 257. [90] *Ibid.*, p. 249.

couple. By their loving union-in-one-flesh the couple places the indispensable condition for the divine co-operation. It is for this reason basically that human sexuality and the sexual act itself are not subordinate to man's arbitrary powers of intervention. If procreation were merely the production of a *thing* (not a person), it would be otherwise. Martelet puts it as follows:

> Unless we are to say that in sexuality God finds Himself at the mercy of man, and that He thus passes to the level of a simple *component* of procreation, we must admit that He does not bind Himself to man without man himself being bound to God, and in the same ways. Now the bond of God with the human couple by and in the language of sexuality is sexuality itself. The nature—that is, the structure—is here the intermediary always endowed with the synergic relations of the couple and their God in view of the unlimited appearance of man. The bond which unites procreation by man and woman with creation (strictly so called) by God is, therefore, essentially objective, and here again functional. It is in respecting this structure in which is concealed—and therefore accomplished—the creative operation of God that the spouses, freely engaged in the intersubjective behavior of love, are bound to God in the same way in which God is bound to them. Being forbidden in their works to break the structural correlation which *disposes* the couple and their *work* to the irreplaceable work of God, man and woman united in a love which binds God Himself are, in their turn, bound by God. Therefore, every objective opposition to the structures which relate their love to the possibility of life would be an opposition to God Himself, who established this relationship in which His transcendent activity is hidden and operative.[91]

Because, then, God is bound to the couple through the structure of sexuality, they are bound to Him in the same structure. If this is true, Martelet asserts, one cannot refer to the structures of sexuality as "brute facticity." Rather, they reflect man as conditioned transcendence.

Germain Grisez's book *Contraception and the Natural Law*[92] appeared on the scene in early 1965. Since its appearance he has in several places repeated the reasoning that led him to conclude to the intrinsic immorality of contraception.[93] Grisez approaches the problem from the point of view of basic ethical theory. Too much earlier moral thought had failed in this respect, he feels, and had ended up jumping from what simply *is* in the natural order to what *ought to be*. Grisez criticizes these analyses very tellingly. His own theory begins with the fact that the first principles of practical reason have a basis in experience. These basic principles reflect the goods toward which human activity can be directed. While these goods are

[91] *Ibid.*, pp. 259–60.

[92] Milwaukee: Bruce, 1965.

[93] G. Grisez, *Contraception: Is It Always Wrong?* (Huntington: Our Sunday Visitor, 1965); cf. also *National Catholic Reporter*, April 21, 1965, p. 6.

equally basic, they are not equally good. However, no one can be rejected to maximize another. Intrinsic immorality is action which involves a rejection of one of these basic goods—a will turned against such a good. Now the beginning of human life (the procreative good) is one of these basic goods. Grisez's ultimate assertion is that those who practice contraception cannot help but reject the beginning of human life. Instead of being open to the procreative good, they are unwilling to permit it to be. Thus the malice of contraception is not in the external act alone nor in the will alone. It is rather in a form of external conduct which involves the will in a rejection of the procreative good. The practice of rhythm, on the contrary, need not involve the couple in an act of will directly opposed to the procreative good.

These are presented as but three examples of the type of reflection going on in the Catholic community. They all make excellent points. Johann establishes a personalistic context for the reading of natural law. Martelet makes very explicit the implications in the area of sexuality of man's conditioned transcendence.[94] Grisez highlights the basic goods which are at the heart of moral obligation. However, in my opinion, all three presentations raise grave problems. For example, Johann's reflections have provided an excellent basis for what theologians call the *individual* morality of marital conduct. This term refers to the constellation of circumstances (intentions, attitudes, desires, atmospheres, effects, etc.) which are the heart and soul of the conscious human experience. Man's personhood and with it his openness to Being make any exploitative conduct morally unacceptable at the *individual* level. But these considerations do not touch *specific* morality. Specific morality refers here to those minimal external requirements which distinguish coitus from other acts not coitus. Clearly these minimal requirements are not something that married people consciously reflect upon in their experience of marital relations. Nor do they adequately define the total experience. But at the level of minimal characteristics (note the modesty of purpose here), certain physiological elements of the sexual act will be included in its definition, for we are dealing with human sexuality, not angelic communication. If one fails to state these basic requirements within a coherent theory, it is hard to see how one can logically and consistently make a moral distinction between coitus and other presumably unacceptable

[94] Here he is very close to Pope John XXIII's statement in *Mater et magistra*: "Being fulfilled by a deliberate and conscious act, the transmission of life is subject as such to sacred, immutable, and inviolable laws of God, laws which all are obliged to accept and observe; hence no one is allowed to have recourse to means and methods that are licit with respect to the propagation of plant and animal life" (*AAS* 53 [1961] 447).

forms of sexual expression. This is by no means to state, as some have alleged, that contraceptive practices are equivalent to or will lead to sexual variants. It is to seek a principle of consistency. Either certain minimal physiological elements enter into a definition of coitus or they do not. If they do, the admission of this is not anchoring the person to "brute facticity." It is but admitting that man is, after all, man. Thus, when Fr. Johann says that man's "intervention in natural processes is always justified when its issue is an enlargement of human meanings and possibilities," I find no intelligible limitation here to exclude variants which, on the basis of all evidence (historical, anthropological, physiological, psychological, moral), must be repudiated. This is also the methodological point so sharply made by the renowned English philosopher G. E. M. Anscombe.[95]

On the other hand, Martelet's contention that the sexual structure is inviolable because it is the meeting ground, so to speak, for divine and human operations (just as the couple bind God in their activity and sexuality, so God binds them in their sexuality) is not totally convincing. Martelet had begun with the obvious procreative character of human sexuality, scil., from the fact of procreation. The binding-to-God or inviolability he asserts is therefore rooted in the fertile period of the sexual structure. Since, however, woman is known to be biphasic, would this suggest that the limit of this inviolability is not the structure itself, but the structure in so far as its meaning is derivable from its *biphasic* character? If this is so, not every intervention would be prohibited, but only a type of intervention which removes the good of *prolis* altogether or in unwarranted fashion from the marital scene.

Grisez's challenging analysis leaves me wondering whether he has attended sufficiently to the external act. He admits that the evil of contraception is not found exclusively in the will but is originated in external conduct which involves the will in a rejection of the procreative good. Unless I have misunderstood him, he has not sufficiently specified what this external conduct is. When he does so, the basis of his analysis may appear more traditional than it actually does.

I have always thought that the most basic methodological question where contraception (*not all of marital morality*) is concerned is the following: How does one determine the minimal elements required for coitus? Or even, how does one arrive at a criterion? Or even further, what is the proper ethical theory which will point toward clarity here?[96] I do not believe we have

[95] G. E. M. Anscombe, "Contraception and Natural Law," *New Blackfriars* 46 (1965) 517–21.

[96] Anscombe, *ibid.*, insists that the two questions (What is normal copulation? Why is contranormal copulation wrong?) must be kept separate. Agreed. But there is a point where the first is only answerable by a clear answer to the second.

found a totally satisfactory answer to these questions. The recent brush fire ignited by the pill has shown this clearly. The reason may be that we have been asking inadequate, unilateral questions. For example, traditional formulations, besides being affected by a heavy procreative emphasis, were to some extent also influenced by the effort to exclude the certainly impotent from marriage and simultaneously to allow for the validity of certainly sterile marriages. Equivalently, that means that theologians have been asking: What minimal definition of coitus is required to steer this middle course? This was and is an important jurisprudential question. But when theologians got an answer, perhaps it was easy, too easy, to conclude that they had fully defined the minimal requirements of coitus. Actually they had defined them to the extent of their question. I am not suggesting that theologians would have concluded to the permissibility of contraception, at least in some forms. Quite the contrary. I am suggesting that a larger context to the question might have provided the means for a more adequate understanding of traditional conclusions.

Recent revisionist efforts in the area of the pill have failed to persuade because they (e.g., Janssens, Reuss, Cardegna[97]) have operated within traditional formulations and begun from there. If the traditional questions were inadequate, theories constructed on their answers are necessarily going to share this inadequacy. Thus, in most recent writings we encounter the phrase "the substantially intact (or integral) marital act." The writers mean that when pill or diaphragm is used, the conjugal act remains "substantially intact." More concretely, they mean that there is vaginal semination and that this is all that is required for "substantial intactness." We have been saying something like this for years, but, as was noted above, this "intactness" is concluded largely from jurisprudential considerations and does not represent an adequate question. Revisionist writers who accept the phrase and build upon it make an enormous supposition, scil., that the marital act is truly intact in more than a jurisprudentially useful way. In other words, have they attended to the full reason why such a definition of coitus may be referred to as "substantially intact"?

Finally, to suggest further the inadequacy of our questions, one might point to their profound masculinity. The "substantially intact marital act" (as meaning vaginal semination) says nothing or very little about female participation in coitus. Yet we know that whereas masculine physiology represents relative uniformity, the female is biphasic or cyclic. She is fertile-

[97] L. Janssens, "Morale conjugale et progestogènes," *Ephemerides theologicae Lovanienses* 39 (1963) 787–826; J. M. Reuss, "Eheliche Hingabe und Zeugung," *Tübinger theologische Quartalschrift* 143 (1963) 454–76; F. Cardegna, S.J., "Contraception, the Pill, and Responsible Parenthood," THEOLOGICAL STUDIES 25 (1964) 611–36.

infertile and this biphasic character reaches into her psychology and spirituality. With this in mind, what does total sexual encounter between man and wife mean in personalistic terms? Or again, if all intercourse, even sterile intercourse, is symbolic, where do we derive the content of the symbol and what does this mean for the morality of marital intimacy? What is totally unitive coitus?[98] These questions are methodological in character, my only point being that we have not often asked this type of question.

One point of methodology is easy to overlook—indeed, it is bound to be overlooked. That is the atmosphere itself in which our gropings occur. Rarely has theological thought risen completely above the cultural climate which nourished the theological thinker. The Catholic community must face squarely the unencouraging fact that its present reflections are taking place in an atmosphere described by four hundred German physicians as "public sexualization."[99] These men are not strident and disoriented reformers, but keen and responsible observers of their age. They protest the fact that "the view that the meaning of human life is to be found in 'prosperity and pleasure-seeking' has become the guiding idea for the great majority of people." This powerful document must lead us to wonder how far we can trust ourselves and our own witness. If the characteristic danger of a mechanical and automated age is the submergence of the person, then our reflections on human sexuality are certainly going to share the effects of this submergence.[100] This conclusion has been brilliantly argued by Malcolm Muggeridge.[101] The point reaches paradoxical proportions when we remember that this is occurring at the very time we are extolling the person in our philosophical thought. This leads one to the conclusion that the "problem of contraception" is actually only symptomatic. To think that a pill or a coil will alleviate more than symptoms is to foster the very moral infantilism which nurtures the real problem so unsparingly—a point well made by Michel Roy, S.J.[102]

A committee preparatory to the Lambeth Conference of 1958 asked:

[98] W. Bertrams, S.J., concludes to the immorality of contraception precisely from a consideration of the character of conjugal love and the conjugal act: "De structura metaphysica amoris conjugalis," *Periodica* 54 (1965) 290–300. For a popular expression of the same idea, see Frank M. Wessling, in *National Catholic Reporter*, Jan. 6, 1965.

[99] "Four Hundred German Physicians Attack Propaganda for Contraception," *Herder Correspondence* 2 (1965) 122–24.

[100] For some interesting psychiatric-pastoral insights on this point, cf. André Lussier, "Psychoanalysis and Moral Issues in Marital Problems," *Cross Currents* 15 (1965) 57–67. Interesting sociological implications may be found in Lester A. Kirkendall's "Captives to the Double Standard," *Pastoral Psychology* 16 (1965) 23–32.

[101] Malcolm Muggeridge, "Down with Sex!" *Esquire* 63 (Feb., 1965) 72–74.

[102] Michel Roy, S.J., "Perspectives doctrinales sur l'aide aux couples en difficulté," *Supplément aux fiches documentaires du C.L.E.R.*, Jan.–Feb.–March, 1965, pp. 1–8.

"Is it possible that, by claiming the right to manipulate his physical processes in this matter, we may, without knowing or intending it, be stepping over the boundary between the world of Christian marriage and what one might call the world of Aphrodite—the world of sterile eroticism against which the Church reacted so strongly (perhaps too strongly) in its early days?"[103] If the question is legitimate, and it is, its urgency must bring us to our knees; for is any attack upon Christianity more basic than the confusion of love and eroticism?

As the discussion continues, what is the position and responsibility of the priest who must aid the faithful in the formation of their conscience? Stanislaus de Lestapis, S.J., in discussing the papal statement of June 23, 1964, points out that the Pope demanded "that we change nothing with respect to what the Church has taught us and still requires us to observe in our lives."[104] The declarations of Pius XII continue to be the norm of our conduct, for a "methodical examination is not a doubt." D. F. O'Callaghan, while welcoming the current discussion, also concludes that a "doctrine taught in an authoritative fashion must be accepted as binding at the pastoral level."[105] This was also the position taken by John J. Lynch, S.J., in this journal.[106] What these well-respected theologians would say at the present moment I do not know.

My own very fallible opinion would organize itself as follows. First, it must be pointed out that the discussion first centered around the pill exclusively; only more recently has it broadened to the whole field of contraception. While many theologians are convinced that the same principles which allow (or disallow) contraceptive use of the pill will allow (or disallow) other forms of contraception which are not abortifacient in effect, this continuity of principle has not been as intensely the object of discussion as has been the pill itself. Therefore, although there seems to be little room for a theoretical position distinguishing the pill from other forms of contraception, there might more easily be room for a practical attitude (for the present) which makes this distinction.

I have been of the opinion that Pope Paul's intervention meant both to

[103] *The Family in Contemporary Society* (London: SPCK, 1959) p. 135.

[104] S. de Lestapis, S.J., "Techniques of Contraception or the Practice of Self-Restraint." This is the translation of an article which originally appeared in *Prêtre et apôtre*, June–July, 1965.

[105] D. F. O'Callaghan, in *Irish Ecclesiastical Record* 103 (1965) 180.

[106] J. J. Lynch, S.J., "Notes on Moral Theology," THEOLOGICAL STUDIES 26 (1965) 267–72. J. M. Reuss's "Suggestions pour une pastorale des problèmes du marriage et de la fécundité," *Vie spirituelle, Supplément*, no. 72 (1965) 5–12, appeared earlier in *Theologie der Gegenwart* 7 (1964) 134–39 and was written before the June 23, 1964, statement of Pope Paul VI.

encourage theological thought and yet to repeat *authoritatively* the norms of Pius XII, especially with regard to the pill. I have never been able to read this intervention as merely disciplinary. Hence, I have felt that the official position of the Church as a guide of consciences has been the norms of Pius XII. Practically, this would mean that those who claim the privilege of enlightenment from the magisterium would reflect this magisterium in their advice and actions.

However, since the intervention of Paul VI, there has been a great amount of theological writing asserting the morality of intervention into the physical or biological processes of sexuality. There has also been a great deal of practical advice (in conference and confessional) along these lines. It is clear that the Pope (1) has reserved competence over this extremely important matter to himself, (2) knows the practical urgency of the decision, (3) is well informed on the literature, and (4) has promised to speak soon and authoritatively on the subject. If he fails to do so, one can only conclude that a state of practical doubt exists in the Church on this matter. In such a case it would be hard to deny the application of the principles of probabilism. This would mean that a confessor or priest would indicate to an enquirer that the matter is still under discussion and that he must be ready to receive with open and grateful heart the ultimate authoritative teaching of the magisterium. In the meantime it is not clear that he is acting immorally if his contraceptive use of the progestins is, from all other aspects, responsible.

It is important to note two aspects of this conclusion. First, it is strictly temporary in character. It is not and cannot be regarded as an acceptable resolution of this discussion. No conscientious married couple can rest satisfied with an analysis of their marital intimacy which states that it is at best only *probably* in accord with divine law, is only *probably* not a violation of God's law.

Secondly, the conclusion should not be identified with the claim of those who assert *as a principle* that Christian couples should "be allowed to decide the matter for themselves." This can only mean either of two unacceptable things. First, it might mean that the morality of contraception can only be decided with reference to individual circumstances. This, of course, prejudges the whole question. Secondly, it might mean that the couple is more capable than the magisterium of deciding whether contraception is intrinsically immoral. No Catholic who accepts the divine commission of the Church to enlighten consciences can accept this. It is important, therefore, to realize that the Church will continue to distinguish between determination of family size and determination of the means to implement this decision.

The point has been made recently by Ph. Delhaye, who asserts that "among the discourses delivered at the Council one will look in vain for declarations with a different orientation."[107]

VARIA ON THE SACRAMENTS

An excellent article by Donald P. Gray discusses the relation between liturgy and morality.[108] Gray shows in very convincing fashion that the moral life is the fulfilment or complement of the commitment made in liturgy. This essay is sparing and simple, but it makes a point which should dominate classroom treatment of the moral life.

In an era of general renewal and communal soul-searching, the question of parvity of matter in the Eucharistic fast may appear to be a museum piece. And indeed I think it is. The chief and perhaps only reason for discussing it is that such discussion may liberate us from the need of doing so in the future; that is, it may help us to lead the faithful to focus their attention where it should be, scil., on the meeting with Christ sacramentally rather than on the materialities which, while they are intended to prepare for this encounter, more often are distractions from it.

Several years ago Babbini had argued persuasively that parvity of matter is had in this law just as in all ecclesiastical law.[109] Basically, his point was that the arguments adduced to make an exception of the Eucharistic fast (both from intrinsic reasoning and from authority) were unconvincing. His line of reasoning was taken up by G. Rinaldi, who concluded that the arguments admitting parvity of matter in violation of the Eucharistic fast were "grave, plausible, strong, valid, weighty, cogent, and unexceptionable."[110] To those who might have missed the thrust of these dactylics, Rinaldi dismissed the opposing arguments as "deboli, poco cogenti et molto fragili." Clearly no one wants to die for such a cause.

Recently Rinaldi completed his series of articles with an attempt to determine precisely and concretely what this parvity of matter should be.[111] Appealing to the law of attendance at Sunday Mass and the estimate that a third part of the Mass is a "notable" omission, he concludes that "if one communicates with fifteen or twenty minutes lacking to the prescribed hour

[107] Ph. Delhaye, in *L'Ami du clergé* 75 (1965) 170.

[108] Donald P. Gray, "Liturgy and Morality," *Worship* 39 (1965) 28–35.

[109] Leone Babbini, O.F.M., "La legge del dijiuno eucaristico non ammette parvità di materia?" *Palestra del clero* 42 (1963) 923–28.

[110] G. Rinaldi, "La parvità di materia nella legislazione attuale del dijiuno eucaristico," *Perfice munus* 39 (1964) 141–48, 217–22.

[111] G. Rinaldi, "Determinazione della parvità di materia nel dijiuno eucaristico," *ibid.* 40 (1965) 92–99.

of fast, he commits a venial infraction." As for quantity, he finds an analogy in the laws of Lenten fast. Using 120–30 grams (roughly about four ounces) as that quantity which, when eaten between meals, constitutes a "notable" and grave violation of the fast, he suggests that less than this quantity of solid food (and liquids which are not liquors) should be regarded as a slight violation of the Eucharistic fast. As for liquors, 40–50 grams is the break-off point.

Unfortunately, I believe it is precisely this type of discussion which is calculated to bring Church law into deserved disrepute. The impossibility of making practical estimates of this kind without being arbitrary and offensive to common sense and Christian morals leads one to wonder why Rinaldi did not turn his attention originally to the very existence of grave matter in a law which has undergone substantial changes and been reduced almost to nothing. No one wants to assert lightly that a law which has always been regarded and accepted as grave (cf., for example, the imposing excusing causes under canon 858, §1) is no longer such. However, the gravity of an ecclesiastical law is to be measured intrinsically (by the gravity of the matter) and extrinsically (by the will of the legislator). As for the gravity of the matter, this will be measured by the relationship of the prescribed matter to a definite end and by the importance of that goal. One must suppose that the legislator will accommodate his intent to this relationship.

Now the end or goal of the Eucharistic fast may be said to be threefold: avoidance of the abuses mentioned by St. Paul (1 Cor 11:21); devout preparation for reception of the Eucharist; finally and especially, the honor and reverence owed to this august sacrament. Clearly there was a time when the stipulations of the fast were regarded as very conducive to these ends. While the general goals mentioned above have not changed, the constant and substantial reduction of the fast indicates that in the mind of recent popes it no longer conduces to these ends in the same way it did at other times. Indeed, one would have to conclude that facility of access to the Eucharist and reverent, active liturgical participation are regarded now as more likely to secure these goals. Therefore, the materialities of the fast no longer "multum conferunt ad bonum commune,"[112] the touchstone of serious matter where law is concerned. I am convinced, therefore, that this law no longer contains serious matter.

Be this as it may, three remarks may conclude this summary. First, it is obviously important that we avoid the insinuation that ecclesiastical laws are "only venial sins" at times and hence unimportant, or that the legislator is incapable of binding seriously. Secondly, the best manner of avoiding this

[112] M. Zalba, S.J., *Theologiae moralis summa* 1 (Madrid, 1957) 310.

impression is to get the whole emphasis of presentation of the Eucharistic fast out of the area of sin. Thirdly and practically, I believe it would be sound to present the fast in the following manner. "Do the best you reasonably can to observe the fast. If in spite of your best efforts you cannot or do not, you need not deprive yourself of Communion on this account—and there is no need for further worry."

Two points in marriage legislation which have always been sore points with non-Catholics are the requirement of canonical form for the validity of marriages involving a Catholic and the promise that all the children hereafter born of the union be baptized and educated in the Catholic faith (cf. canon 1061). It was inevitable and even desirable that these points be discussed.

With regard to canonical form, Franz Böckle, of the University of Bonn, points out that any ecumenical solution must be theologically sound.[113] Hence, for one thing, it must reckon with the dogmatic position of the Church on the identity between the contract and the sacrament; that is, wherever a marriage between baptized Christians is valid, it is also necessarily sacramental. The sacrament of matrimony gives the husband and wife an active share in the union between Christ and the Church; it is part of the life of the Church. Therefore, "the *de facto* identity of sacrament and contract demands that in some way or other the Church be present at the ceremony." Böckle rightly sees no overwhelming problem here, because the partners are the ministers of the sacrament. As baptized, they represent the Church in a real sense. Hence he proposes that the requirement of a priest should bind only for licitness, not validity.

The same conclusion is proposed by the noted canonist James I. O'Connor, S.J., in an article which reviews the advantages of this change from a practical point of view.[114] Pointing out that the supreme test of ecclesiastical legislation is the good of souls, he asks whether the present law conduces to this good. His answer: an unqualified "no." Present legislation is based on the evils (especially clandestinity) which gave rise to the decree *Tametsi*, and these evils are no longer a serious threat. The existing law is used by many Catholics as a device for a trial marriage. Those Catholics who obey the marriage laws are in a more disadvantageous position. Fr. O'Connor points out that "it is hardly conducive to the good of souls when those obedient to the law have to suffer through life while the disobedient can

[113] Franz Böckle, "Mixed Marriages: A Catholic View," *The Church and Ecumenism* (= *Concilium* 4; New York: Paulist Press, 1965) pp. 115–22.

[114] James I. O'Connor, S.J., "Should the Present Canonical Form Be Retained for the Validity of Marriage?" *Jurist* 25 (1965) 66–81.

derive notable benefit from their disobedience." To the objection that change in the legislation would result in the perpetual misery of many teenagers who marry in a burst of youthful blindness and fascination, he suggests that the validity of such marriages before a Protestant minister or civil authority would really be an enormous deterrent to the actual and more basic problem, youthful marriages.

Fr. O'Connor adduces many other arguments. For instance, the Church has the duty to promote the stability and sanctity of marriage. With a law where divorce with remarriage is easily obtainable (because of invalidity due to defect of canonical form), one can wonder whether the Church actually promotes this stability. Also, Catholics who marry outside the Church know that, practically speaking, they are precisely outside the Church. With this mentality there is easy loss of faith. "A change of law would leave them conscious that they are still members of the Church and thus tend to save both their faith and that of their offspring." Besides having ecumenical value, the position presented by Fr. O'Connor is very persuasive. At a time when dogmatic theology is redescribing the relations between Catholics and non-Catholic Christians, canon law should do the same.[115]

The problem of the *cautiones*, especially the promise to baptize and educate the children in the Catholic Church, is much thornier. There have been several suggestions for revision of Church law on mixed marriages over the past few years. First, it has been suggested that the law should forgo legal insistence on promises to baptize and raise the children Catholics. Presently this legal insistence takes the form of invalidity of the dispensation for a mixed marriage (and therefore of the marriage where disparity of cult, a diriment impediment, is concerned). It also involves refusal of the priest to officiate (hence often ends in invalidity through defect of form). Secondly, it has been suggested that even short of these legal measures the law should cease demanding the formal promise to raise the children as Catholics. Thirdly, the Church should allow marriage as a general policy even when the Catholic baptism and upbringing is not morally certain.

To approach the problem as if a change in canon law would ease the tensions involved labors under at least two weaknesses. First, it supposes that the source of tension and irritation is the means chosen by the Church to insist premaritally on the Catholic baptism and education of the children. Actually the problem seems to be more than that. It seems to be the basic

[115] The same conclusion is urged from another and perhaps more theological point of view by H. Heimerl, "Ehewille–Eheschliessungsform–Ehegültigkeit," *Theologisch-praktische Quartalschrift* 113 (1965) 144–63.

teaching that there is a divine-law duty on the Catholic party to raise his children Catholic. Secondly, such an approach neglects the connection between this basic duty (if it exists) and Church insistence on its fulfilment. Before the architects of new mixed-marriage laws can proceed with security, two basic moral issues must be faced.

First, is the duty to baptize and raise the children as Catholics a duty of divine-law origin incumbent on the Catholic party? Secondly, to what extent must and should the Church insist on this duty if it is truly of divine-law origin? The manner of the Church's insistence (the more properly legal sphere), if insistence is in place, will depend to some extent on how one answers these questions.

Is the duty to baptize and educate the children as Catholics a duty of divine law? Charles Curran contends that "it seems difficult to sustain a divine law obligation to raise all the children of mixed marriages in the Catholic faith."[116] The Catholic spouse has an obligation to see to the Catholic education of the children, but only if such an education would not be against the conscience and religious convictions of the non-Catholic partner. He argues from two principles. First, there is the principle of religious liberty. Granting that there is a conflict of rights, he denies that the conflict can be solved by appeal to the objective truth of one position, since religious liberty is based rather on the dignity of the human person sincerely striving to conform himself to God's will. Therefore he concludes that "the right to educate and raise his child in his own faith is a necessary consequence of his right to worship God according to the dictates of his own conscience."

Secondly, Fr. Curran argues from the ecumenical principle; that is, raising the child in another Christian faith cannot be viewed as a perversion. It is true that children not educated as Catholics would not receive the fulness of truth. "But it is not the difference between night and day and all or nothing. *Per se* it would only be a question of degree." The ecumenical spirit has taught us to take a different point of view toward non-Catholic Christians. As for the former Church documents insisting on the divine-law duty to raise the children Catholic, he believes that "the Church condemned any possibility of raising the children as non-Catholics based on false indifferentism. But today in the light of religious liberty and ecumenism there is a new and true basis for our proposed teaching."

Because, therefore, he denies the divine-law origin of the duty in question,

[116] Charles Curran, "The Mixed Marriage Promises—Arguments for Suppressing the *Cautiones*," *Jurist* 25 (1965) 83–91, at p. 91.

Curran's answer to the second question will be clear. The Church need not and in our time should not insist on this duty. Hence, also, her present legal insistence should go.

Robert G. Wesselmann disagrees with this analysis.[117] As for the argument from religious liberty, he contends that there are limits to religious liberty, limits defined by the rights of God, other men, and society. Where the Catholic education of the children is concerned, the non-Catholic is faced with the rights and duties of another. "Hence we are in an area where there is a just limit to the exercise of the right of religious freedom, especially when you consider that the non-Catholic can call off the marriage if he feels that he cannot sign the promises." If we say that, because of religious liberty there can be no duty of divine law incumbent on the Catholic to educate the children Catholic, would not the Church logically also have to allow divorced non-Catholics to marry Catholics if she must respect their conscience convictions to that extent?

As for the ecumenical principle adduced by Curran, Wesselmann regards it as false irenicism. To suppress or de-emphasize Catholic principles simply because they displease Christians of other faiths will never do. "I submit that the obligation of baptizing children in infancy, raising them as Catholics from infancy, and the policy of doing something about non-Catholic opposition to these ideas before mixed marriages are celebrated, are Catholic principles which cannot be suppressed . . . simply to secure good will from Christians of other faiths."

Because he is convinced that the duty is one of divine law, Wesselmann's answer to the second question follows suit. "It behooves the Church as a mother to insist that her children fulfil this obligation. . . . The Church is certainly obliged to do all that she can to induce her children to observe the law of God when they contract marriage." The limits on the manner or form of this insistence are the limits of prudence defined within the Church's divine commission. For a host of practical reasons Wesselmann is convinced that as a general policy the Church should refuse to allow mixed marriages where there is doubt about the faith of the children. And some form of *cautiones* remains in place to this end.

Ladislaus Örsy, S.J., had treated this problem earlier[118] and concluded that we must accept the following propositions: (1) the Catholic party to a mixed marriage has a right and a duty of immutable divine law to educate

[117] Robert Wesselmann, "The Mixed Marriage Promises—Arguments for Retaining the *Cautiones*," *ibid.*, pp. 92–105.

[118] Ladislaus Örsy, S.J., "The Religious Education of Children Born from Mixed Marriages," *Gregorianum* 54 (1964) 739–60.

all his children in the Catholic religion; (2) the Church has a right and duty to aid every Catholic contracting a mixed marriage to carry out his obligation. The form this help should take (whether legal or more generally pastoral) is another and a prudential question. Moreover, the duty to educate the children as Catholics is an affirmative one, and there could be extraordinary cases (indeed, have been) where omission of acts fulfilling this duty was tolerated by the Church. These are, above all, cases where the natural right to marry is otherwise jeopardized. Could the Church at the present time cease insisting *in general* on the fulfilment of this duty, in order to promote better relations with our non-Catholic brothers? Örsy does not think so. The only opening seems to be in the form of the insistence. But again, according to Wesselmann and others, the form of insistence is not the basic problem; it is the fundamental doctrine itself which offends.

My own tentative opinion corresponds to that of Franz Böckle when he answers the two basic questions as follows: "For the Catholic who is convinced of the divine mission of his Church the education of his children in the faith and the sacraments of this Church is an important divine command."[119] Secondly, "no ecclesiastical authority can dispense him from this; on the contrary he must be reminded of it and his readiness to comply must be required." I do not see how the Church would remain faithful to her convictions about herself if she denied the divine origin of this duty; and I do not see how she would fulfil her charge toward her children if she failed to remind them of this duty, especially, one might say, during an era of great ecumenical desire. I agree with Böckle that this situation is "an almost unbridgeable gap." Hans Dombois, a member of the Evangelical Church of Germany and professor at the University of Heidelberg, agrees that "if one party has convictions that are permanently unacceptable to the other for reasons of conscience, they should be advised not to marry because there is no solution for such a situation."[120]

I have seen no persuasive arguments against the divine-law origin of the duty to do all possible to baptize and educate the children as Catholics, though Fr. Curran has made about as strong a case as can be made. The explicit recognition of full religious liberty for all men does not argue against the divine-law origin of the duty in question; it simply exacerbates the practical problem and makes it more insoluble than ever. The fact that mixed marriages will continue to occur in which the Catholic abandons any determination to raise the children as Catholics is, of course, terribly regret-

[119] Böckle, *art. cit.*, p. 121.

[120] Hans Dombois, "Mixed Marriages: A Protestant View," in *The Church and Ecumenism*, p. 112.

table. Continued insistence on the Catholic's duty will not prevent or meet this situation. Granted. On the other hand, a regrettable situation does not argue to the nonexistence of a duty. As for the principle of ecumenism adduced by Fr. Curran, I see in the practical concessions made by the Catholic the germ of the very indifferentism he claims was behind earlier documents of the Church.[121] Finally, the duty asserted by Fr. Curran (to raise the children Catholic if this does not violate the conscience convictions of the non-Catholic) seems arbitrary in defect of a divine-law obligation.

Everyone admits that the painful dilemmas occasioned by mixed marriages are symptomatic of the deeper division within Christianity. I am afraid that individual couples will continue to feel the pains involved as long as the separation exists. Given this situation, perhaps some of the practical suggestions made by Leo J. Hayes can help to mitigate the tensions.[122] Fr. Hayes agrees that the only situation which offers any hope is the mixed marriage in which the non-Catholic is sincerely indifferentist, believing that one religion is as good as another. At least here there is a common crossing-ground where the dogmatic tenets of the Catholic Church can survive. In such a case the non-Catholic is not asked to abandon his right but "to predetermine the direction that his right is going to take." The most appropriate procedure, Fr. Hayes suggests, is that the non-Catholic party make his promises directly to the Catholic party and that the Catholic attest to the reception of such promises. He feels that there are two practical advantages to this. First, this puts the promises in the context of personal commitment between husband and wife. It is, after all, "within this personal family relationship that the actual decisions of free exercise of faith are to be made." Secondly, if the situation is actually one of the insoluble type, it is better that the Catholic partner come to this realization himself. These considerations merit attention, especially if it is true that the present form of the *cautiones* is not achieving its intended effect. But they scarcely solve the more basic problem.

THE SACRAMENT OF PENANCE

What is the proper age for the confession of youngsters? Renewed interest in this question as a pastoral-moral issue probably springs from the dis-

[121] B. Häring feels that advance agreement by the Catholic to have the child educated as a non-Catholic amounts to formal co-operation; this would seem to indicate that he regards the duty as of divine origin (*Lexikon für Theologie und Kirche* 7 [2nd ed.; Freiburg, 1962] 444).

[122] Leo J. Hayes, "Ideas of the 'Mixed Marriage' Promises," *Homiletic and Pastoral Review* 65 (1965) 574–80.

satisfaction of many, including parents, educators, and priests, with the results too often obvious in present practice. Many regret the routine and mechanical way youngsters are taught to rattle off a litany of horrors they did not commit and rarely understand. The effects of this can be disastrous. Here, it is claimed, we have the breeding ground of scruples, because youngsters steepen themselves in a narrowly moral attitude rather than in a genuinely religious one. The almost superstitious mentality with which the young often approach the sacrament prevents the building of a true personal and dialogical attitude toward this and other sacraments. Finally, many feel that early and indiscriminate introduction of youngsters to confession does not square well with contemporary evidence of human development.

Ludwig Bertsch, S.J.,[123] contends that in approaching this problem the key question is not the ability of the youngster to distinguish good from evil; rather it is his ability to make a genuine moral decision, to reach a sufficient development of freedom so that a basic option or commitment to ethical good (therefore, to the will of God) is possible. Thomas' "incipiens habere usum rationis"[124] is misleading here; for conscience involves more than just knowledge. It also involves "the vital conviction in one's inner self that the attitude assumed toward the good is bound up with one's own salvation or damnation."[125] This conviction, in turn, is dependent on the development of the whole man. Adopting a dynamic structure for this development, Bertsch sees a corresponding development in conscience—roughly, from early social and authoritarian conscience to personal conscience. It is only in the immediately prepubertal years that one can speak of a personal conscience, because only at this time does conscience disengage itself from those parental or peer influences and characteristics which suggest the term "authoritarian." Before this time, conscience decisions are, to a greater or lesser degree, mediated by others. Therefore it follows that the fundamental option which alone gives fully moral character to individual decisions is had only around the prepubertal years. Before this time, only the exceptional individual is capable of serious sin.

However, this does not mean that there are no moral choices (hence no sin) before this; for the development of a personal conscience is a gradual thing. Even in its earlier stages there can be a turning to God corresponding to the conditions of that age. The moral decisions possible at this age, when compared to fully personal moral decisions, suggest the relation between

[123] Ludwig Bertsch, S.J., "Der rechte Zeitpunkt der Erstbeicht," *Stimmen der Zeit* 175 (1965) 255–62.

[124] *Sum. theol.* 1–2, q. 89, a. 6.

[125] B. Häring, *The Law of Christ* 1 (Westminster, Md.: Newman, 1961) 139.

mortal and venial sin; that is, they are analogously moral decisions. Hence real but analogous moral conduct is possible.

Bertsch is convinced that the confession of youngsters must be adapted to the developmental character of the growth of conscience. He suggests, therefore, that seven-to-eight-year-olds should first be introduced to group expressions of sorrow and penitence. Eight-to-nine-year-olds could profitably then experience group sacramental confession. Shortly thereafter they will find themselves much better prepared for individual confession.

This suggestion is not new. Bishop Moors of Roermond (Holland) had directed that the first Communion be at age seven-to-eight, and first confession at age ten-to-eleven.[126] Before the first confession there would be careful preparation. First, there would be repentance celebrations to inculcate the basic attitudes of renewal and conversion. After this phase there would be "personal" confessions during a parish celebration with absolution given to the group. Here the idea would be to teach that confession is more than a mere imitation of what youngsters have been taught to say. Finally, truly private confession would take place.

Pierre Ranwez, S.J., approaches the matter from a slightly different point of view.[127] The child must experience a double initiation: first into a sense of God, then into the meaning of sacramental symbols. The first initiation is "assured by the child's social life with its parents. They are the image of God, Father, Son, and Holy Spirit." Through parental love and tenderness the child is led to discover God's love. The second initiation can be achieved through "familiarity with reality-signs, by living in a well ordered home, where gestures, attitudes and realities stand out." What are these? Blessings, different bodily attitudes, meals together, material objects (door, table, book, etc.). Once this second initiation has been made, the child should be introduced to the totality of salvation brought to us in the economy of the sacraments; that is, he should receive confirmation, Holy Communion, and penance (this latter being a renewal of baptism).

Since the delay of sacramental confession is not infrequently based on the conviction that children cannot sin at the time they now learn to confess, Ranwez attacks the delay-solution here. The number of young children truly capable of sinning is probably rather low, he admits. But this is due to the type of education usually given. "It is not age . . . it is education which leads to liberty." Therefore, not delay but revision of approach is called for. This will include three elements: preparation, celebration, and

[126] J. Dreissen, in *Katechetische Blätter* 89 (1964) 494, as cited in Bertsch, p. 256.

[127] Pierre Ranwez, S.J., "The Sacraments of Initiation and the Age for First Confession," *Lumen vitae* 20 (1965) 9–24.

adequate subsequent education. Preparation refers, above all, to a home experience of affection, firm ruling, and forgiveness, where a child reaches a knowledge of God who calls, demands, and forgives. Conscience formation at this time should be general and positive, not the carefully docketed inventory of sins so common. As for celebration, Ranwez suggests a program very close to Bertsch's but without the delay. Subsequent education will include regularly arranged celebrations, emphasis on the social dimension of the child's fault, and the sacrament of penance.

I do not know what kind of reception these suggestions will receive in this country. They certainly merit serious study. But two remarks appear to be in place.

First, I believe that our confession discipline for the very young (supposing the possibility of some sin) should be based on the practical success or failure of the discipline in terms of over-all attitudes and fruits produced, rather than immediately on a theory of dynamic structure of conscience development which allows for a basic option only around the age of eleven or twelve. I would conclude this because even those who are convinced that a basic option is possible only in the immediately prepubertal years admit the existence of venial sin in youngsters before this time. In other words, there seems to be no necessary connection between the time of personal confession and the age of basic option.[128]

By this comment I do not mean to deny the value or validity of recent writings which take the position (which draws heavily from our increasing knowledge of the depth sciences and child psychology) that a basic option is possible only around the prepubertal years. Quite the contrary. This position corresponds very well with a widespread conviction that mortal sin is *practically* out of the question in the early years. I mean merely to point out that we are dealing with two distinct problems: (1) the time of the basic moral option and the criteria to determine this; (2) the confessional discipline for children. The problems are practically distinct, because all those involved in the discussion on the basic option admit the existence of true (if only analogous) moral acts, and therefore the possibility of venial sins, after attainment of the use of reason.[129]

[128] Whether psychologist Eve Lewis is excluding the possibility of sin in recommending delay of confession until at least the tenth year is not clear to me; cf. "Children and the Sacrament of Penance," *Month* 210 (1965) 28–36.

[129] Those who contend that a basic option is not possible until the prepubertal years face the problem of how venial sin is possible before this time—a fact which they admit. Those who contend that this basic option, being a profound, obscure, and preconscious thing made under the influence of grace, can exist without being accessible to direct human experience and the criteria of dynamic psychology face other problems. For example, why

Secondly, there seems to be real merit in the advisability of the generic confession for the very young (e.g., "I have not always done what our Lord wanted of me"), and even perhaps in the suggested preparatory steps leading to private confession. At least it would be worth while seeing further serious studies of generic confession based on the reactions of all concerned. The emphasis is away from the syntax and mathematics of individual sins and is placed more easily on the sacramental contact with the forgiving Christ. This provides a healthy background for a later and more searching examination of conscience. The lack of precision in such a confession should occasion no concern about sufficient matter. Perhaps we have made a good deal more than necessary of the problem of *expression* of sufficient matter.[130] I would prefer instructional emphasis on genuine contrition in the earliest years. Here Ranwez makes eminent good sense:

> No confessor can be absolutely positive that he hears sufficient "matter" for absolution. All the more when a child recites a list of faults enumerated in a set examination of conscience can it be feared that this mechanical avowal hardly contains sufficient "matter." The child who makes a global accusation of his sins is certainly not doing worse. If his teachers have noticed that his moral conscience is sufficiently developed, there is reason to conclude that his behaviour has sometimes been that of a sinful Christian.

This consideration is sufficient for us to conclude that attempts to make the early confessional experience a sacramental one for the very young are reasonable and *propter homines* in the best sense of the sacramental axiom.

To suggest the possibility of generic confessions, especially group generic confessions for the very young, is one thing. It is hypothesized upon, among other things, the not unreasonable conclusion that mortal sin has not been committed. Generic confession for adults is, therefore, quite another thing. The suggestion of generic confession for adults as part of parish liturgical life has popped into the popular presses occasionally[131] and has been treated recently in at least two places.[132]

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could this option not take place at age two or three? For further literature on the type of knowledge involved in this option, cf. Jos. J. Sikora, S.J., "Faith and the First Moral Choice," *Sciences ecclésiastiques* 17 (1965) 327–37; M. Flick, S.J., and Z. Alszeghy, S.J., "L'Opzione fondamentale della vita morale et la grazia," *Gregorianum* 41 (1960) 593–619, especially pp. 599–600. Anciaux has called attention to the fact that "a moral conscience, very naive as yet, becomes possible around the sixth or seventh year.... With most it becomes a fully *reflexive* conscience during youth." Cf. "La conscience et l'éducation morales," *Collectanea Mechliniensia* 50 (1965) 21 (emphasis added).

[130] For some practical remarks, cf. G. Kelly, S.J., in THEOLOGICAL STUDIES 24 (1963) 644–49.

[131] Brother Philip, F.S.C., in *National Catholic Reporter*, Jan. 27, 1965.

[132] Francis V. Manning, "Private Confession—Pros and Cons," *Pastoral Life* 13 (1965) 227–30; Daniel Lowery, C.SS.R., in *Liguorian* 53 (1965) 47–49.

The advantages of general confession reflect, it is contended, the disadvantages of private confession. Private confession places too much emphasis on externals, is too often routine, is an obstacle to frequent Communion (through fear of confession), is a source of scruples and bad spiritual direction, is time-consuming for the priest and prevents in this way more profound and lasting guidance, encourages the fear-psychology in avoidance of sin, etc. General confession, on the other hand, would place the emphasis on interior conversion and at the same time would make the sacrament more easily available to greater numbers, thereby encouraging more frequent Communion.

Any realistic discussion of this matter must, as both Frs. Manning and Lowery point out, face the issue of integrity. Succinctly stated, this refers to the duty of the penitent to confess his certain mortal sins according to their lowest moral species and number. In the light of this duty, the alternatives are not general vs. private confession, but general vs. specific confession. Privacy of confession follows to a large extent—and rather understandably, I should think—upon the demand of specific and numerical integrity. It is this demand which is the heart of the discussion; for it seems clearly to be of divine law.[133]

Those who argue for general confession treat the matter of integrity a bit too lightly, it would seem. In fact, I am afraid they often manifest the very attitude responsible for some of the harm occasioned by private confession, harm which they correctly regret. This attitude is one which looks upon integrity as "merely a requirement," "a legal fulfilment," "not at the heart of, often in the way of, true repentance." If this is one's attitude toward integrity, clearly trouble is ahead.

Actually, however, the demand of integrity must be understood from a consideration of the place of the Church in the lives and sacramental penance of Christians. The Church, holding the place of Christ, must judge authoritatively about concession of reconciliation to a penitent and direct his penance within the Church, because, as Rahner shows,[134] the sinner has sinned also against the Church. Only in such a framework does her binding (banning) and loosing yield real meaning. The demand of integrity rests directly on the ecclesial character of the sacrament of penance. Hence one who treats it lightly is really insensitive to the ecclesial character of the sacrament(s)—which is quite an insensitivity.

On the other hand, the fact that reconciliation with God must occur in an ecclesial and judicial context which demands integrity and highlights

[133] *DB* 899, 699, 574a.

[134] Karl Rahner, S.J., *Theological Investigations* 2 (Baltimore: Helicon, 1963) 135–74, esp. pp. 136 ff.

the *communal* aspect of grace, sin, and repentance, should not blind us to the fact that specific accusation of sin is also for our own good. Being men, the sincerity and depth of the contrition and purpose of amendment that we bring to the sacramental event can be intensified greatly through its externalization in accusation. To take any other point of view could easily underestimate our human condition.

If it is argued that general confession should be restricted to devotional confession, with the mortal sinners confessing privately and specifically, we are faced with the uncomfortable situation where those who seek private confession would ultimately be regarded as needing it. It is difficult to think of a more effective way to bring odium upon the sacrament in our time. Fr. Manning concludes that although integrity is not an open question (and therefore to that extent neither is general confession), much can be done to rethink and revise present discipline surrounding private confession. Specifically, he suggests that we could rethink frequency of confession, the age of the first confession, the law limiting the Eucharist by confession (scil., after commission of mortal sin), the possibility of face-to-face confession more frequently, education of penitents, and so on.

It is clear that public sacramental absolution was being practiced in Holland in some places. The Dutch bishops issued two documents on the point, one a general letter to the faithful (read in all Dutch churches March 28, 1965), the other a set of instructions to the clergy.[135] These documents are extremely interesting. Several points stand out. First, public penitential celebrations have a definite place in the life of the Church and are to be encouraged; for, besides emphasizing the ecclesial aspects of responsibility, sin, and forgiveness, these celebrations can and should act as a school for the faithful toward a more profound personal (and private) confession of sin. But by no means should private confession fall into desuetude as a result. Secondly, the documents warn against mechanical haste in private confession, thus underlining, it would seem, what seems to be the major source of the "problem of private confession." Thirdly, the bishops reaffirm the obligation of confessing expressly and privately mortal sins.[136] Fourthly, the use of the formula of absolution which the Church reserves for private confession is not justified in these public celebrations. Finally, as for the

[135] "Deux lettres collectives de l'épiscopat hollandais," *Documentation catholique* 62 (1965) 1170–79.

[136] To the faithful they refer to "l'obligation d'avouer *expressement* tout péché grave en confession" (1174). To the clergy they say: "Nous devons maintenir fermement l'obligation de confesser *en privé* les péchés graves . . ." (1175). These are practical statements; that is, while integrity does not *de se* demand private confession, the duty of integrity does indeed practically issue in private confession.

sacramentality of these public celebrations, the bishops urge the clergy to refrain from any pronouncements on the matter, since this is a theological problem still under discussion. These documents strike me as being very balanced and useful, especially in their insistence on the ecclesial dimension of sin and private confession.[137]

With the introduction of the vernacular in the form of absolution, a number of dioceses are urging penitents to recite the act of contrition before entering the confessional, so that, after confession of sin, they can listen attentively to the form of absolution. Eugene J. Weitzel, C.S.V., treats the problems which might arise in the mind of the confessor from this practice.[138] One such problem is sufficient external expression of contrition. He rightly concludes that once there is internal contrition, the mere fact of making one's confession is sufficient external expression to constitute a valid sacramental sign. A slightly different question is the following: What expression of sorrow is necessary that the confessor may make the pastoral judgment as to sufficient sorrow? In organizing his answer to this question, Fr. Weitzel first cites the (privately obtained) opinion of John C. Ford, S.J., on the matter. While admitting that the "ordinary signs" enumerated in moral literature (spontaneous confession, sincere and humble accusation, a confession made in spite of difficulties, resolve to follow the confessor's advice, etc.) are sufficient assurance for the confessor, and insisting that a routinely recited act of contrition would not necessarily give the confessor the assurance he needs, Fr. Ford expressed the general opinion that it "is nevertheless advisable that penitents express their sorrow explicitly in confession,

[137] Th. van Eupen, C.SS.R., reviews three books which deal generally with the "crisis of the sacrament of penance in Holland" in an article "Biecht en Boeteviering," *Theologie en Zielzorg* 61 (1965) 113–18. The reviewer regards the first book, by J. Bommer (*De biecht in leer en praktijk—Een nieuwe benadering*), as not of great importance. The second (*De biecht—Verkondiging over de biecht*, by L. Bosse, O.F.M., and H. Borgert, C.SS.R.) reports the discussions of a commission appointed by Bishop Bekkers of 's Hertogenbosch to study the sacrament of penance. The book deals largely with the manner of presentation of the sacrament to the people and suggests emphasis on several points: e.g., what is sin, what not; the ecclesiastical dimension of the sacrament of penance. But the principles of practical celebration of the sacrament do not emerge clearly. Van Eupen devotes most of his article to the third book, by F. Heggen (*Boete-viering en private biecht*). Heggen proposes public confession, points to the fact that there were various forms of confession in the past, insists that penance must be an act of the community. Van Eupen criticizes the book on several scores: the confusion of the ecclesial with the community aspect of penance; the minimalizing of Trent's decree on penance; overdependence on Bonhoeffer and Robinson for its concept of sin. Finally, he contends that Heggen has adduced no real argument for the sacramentality of a penitential celebration without confession.

[138] Eugene J. Weitzel, C.S.V., "Judging Contrition in the Vernacular Confession," *Homiletic and Pastoral Review* 65 (1965) 307–13.

even by means of a formula, for this gives the priest a good presumption of sorrow."[139] Fr. Weitzel would prefer to say that in the confession of a well-instructed penitent there is no need to insist on explicit expression of sorrow. Only in cases where the penitent is either poorly instructed or doubtfully contrite would Weitzel recommend an express act of contrition.

Msgr. James Madden discusses the same question[140] and concludes that the formal recitation of an act of sorrow during the confession itself is useful for the more fruitful reception of the sacrament. But this does not mean that the recitation should occur during the imparting of absolution. Msgr. Madden would prefer to retain the custom of explicit contrition but before the imparting of absolution.

My own opinion is very close to that of Msgr. Madden. I would prefer to base a policy-conclusion to retain explicitly expressed contrition not precisely on the fact that expressed sorrow "gives the priest a good presumption of sorrow"[141] (which I would accept as sufficiently and generally present from other indications), but rather on the fact that not a few penitents seem to derive from the act of confession itself and from the subsequent exchange with the confessor a type of understanding and motivation which can aid them in eliciting a more profoundly sincere and satisfying act of sorrow. Furthermore, listening to the absolution meaningfully imparted will give the penitent a clearer idea of what the sacramental event should be, hence will provide a basis for deepening his contrition for future confessions. One might care to think twice, therefore, before adopting a general policy which would prevent penitents either from hearing the form of absolution or from eliciting an act of contrition after they have confessed.

Bellarmine School of Theology RICHARD A. MCCORMICK, S.J.

[139] *Ibid.*, p. 308.

[140] James Madden, "The Act of Contrition at Confession," *Australasian Catholic Record* 42 (1965) 123–27.

[141] Francis J. Connell, C.SS.R., in *American Ecclesiastical Review* 152 (1965) 200–201, strongly urges "some explicit expression of contrition, so that he [the confessor] may be morally certain that the sacrament is being administered validly." I would place less emphasis on explicit expression for the reason given by Fr. Connell, because I doubt that it is that functional with regard to validity.