

## CURRENT THEOLOGY

### NOTES ON MORAL THEOLOGY

#### RENEWAL IN MORAL THEOLOGY

In its Decree on Priestly Training (*Optatam totius*) the Second Vatican Council stipulated: "Other theological disciplines should also be renewed by livelier contact with the mystery of Christ and the history of salvation. *Special attention needs to be given to the development of moral theology.* Its scientific exposition should be more thoroughly nourished by scriptural teaching. It should show the nobility of the Christian vocation of the faithful, and their obligation to bring forth fruit in charity for the life of the world."<sup>1</sup>

It would be hard to read the italicized words as a compliment to what we might call "traditional moral theology." On the other hand, it must be noted that there has been in the past twenty years a genuine flowering in biblical, liturgical, and dogmatic studies. A renewal of moral theology could hardly precede these, given the inherent dependence of moral science on these disciplines. But the task is now urgent.

That task will be made appreciably easier by the availability of what must be one of the most compact and carefully written yet ranging articles to appear in some time. Joseph Fuchs, S.J., has made the brief conciliar paragraph cited above the subject of a lengthy study.<sup>2</sup> Fuchs points out that the primary object of moral theology must be the elaboration of the excellence of the Christian vocation. This makes it immediately clear that the character of the moral life will be seen as one of Christian response. The main fruit of this response will be charity, a charity which, being concerned with the life of the world, is the soul of the social virtues. The dominant context of moral thought will be the mystery of Christ and the history of salvation. In the wrong hands the more thorough biblical nourishment which alone provides this context could become either an abstract supernaturalism or a type of poetry and preaching. Fuchs's own writings should be enough to allay the fear of such prescientific evangelism.<sup>3</sup> It would be

EDITOR'S NOTE.—The present survey covers the period from January to June, 1966.

<sup>1</sup> Cf. *The Documents of Vatican II*, ed. Walter M. Abbott, S.J. (New York: Association Press, 1966) p. 452.

<sup>2</sup> Joseph Fuchs, S.J., "Theologia moralis perficienda: Votum Concilii Vaticani II," *Periodica* 55 (1966) 499-548.

<sup>3</sup> Cf. Diaz-Nava, S.J., "Enfoque cristiano de la teología moral," *Sal terrae* 54 (1966) 242-56, for an article which relies heavily on Fuchs's work in general moral.

well if this essay were translated and put into the hands of everyone plying anything remotely resembling moral theology.

The same might be said for the well-documented essay of Edward Hamel, S.J., which examines more in detail the Council's phrase *scientifica expositio, doctrina S. Scripturae magis nutrita*.<sup>4</sup> After showing the failure of earlier moral theologians to become more than precursors *in voto* of a biblical renewal in moral thought, Hamel turns his attention to the use of Scripture in current moral theology. He argues that a "return to the Bible" must carefully distinguish between the gospel, preaching, biblical theology, and scientific moral theology if the Bible is to be a doctrinal treasure rather than a mere arsenal for *dicta probantia*. There will always be something of a tonal hiatus between the morality of the New Testament and its scientific elaboration.<sup>5</sup> But this only says that moral theology is a science and that the Bible is not. It does not say that this science can hope to reach Christian maturity if its beginnings and inspiration are not profoundly biblical. Like Hamel's previous work, this article is both balanced and forward looking.

Franco Festorazzi also insists that moral theology cannot be simply equated with biblical morality.<sup>6</sup> It is rather the investigation of biblical thought conducted through reason illumined by faith. After treating of some of the methodological problems, Festorazzi points out that it is the appearance of the young discipline of biblical theology which provides the meeting ground for the moralist and the exegete.<sup>7</sup>

The Council insisted that renewal in moral theology must not be equated with abandonment of its scientific character. One of the most fruitful areas of recent scientific analysis emerges from the literature surrounding what we might call the fundamental option. Several conciliar statements seem to suggest, even suppose, this analysis of moral activity. The term "fundamental option" is used by theologians to refer to the free determination of oneself with regard to the totality of existence, the fundamental choice between love of self and love of the saving Lord. Because man's eternal salvation, his basic position for or against the God of salvation, is at stake in such choices, they must involve a man's total disposition of himself, out of the radical center of his being. Since this is the case, these

<sup>4</sup> Edward Hamel, S.J., "L'Usage de l'Écriture sainte en théologie morale," *Gregorianum* 47 (1966) 53-85.

<sup>5</sup> This point does not come through as clearly as one would like in John L. McKenzie's "Law in the New Testament," *Jurist* 26 (1966) 167-80, at p. 171.

<sup>6</sup> Franco Festorazzi, "La Sacra Scrittura anima del rinnovamento della teologia morale," *Scuola cattolica* 94 (1966) 91-115.

<sup>7</sup> For a report of the conclusions of Spanish moral theologians on the renewal (especially biblical) of moral theology, cf. *Sal terrae* 54 (1966) 25-27.

choices will involve a depth of the person's being beyond formulating (or reflex) consciousness, and hence will escape adequate conceptual formulation.

This understanding of the root of moral activity has helped us immeasurably in understanding the meaning of mortal sin, and hence also the difference between mortal and venial sin.<sup>8</sup> It has also helped us to explain the so-called grades within the category of serious sin. It has deepened our knowledge of the meaning of conversion. Theological literature increasingly uses existential language in describing mortal sin and sees it as involving an act of fundamental liberty in the depths of the soul, where a man is totally present to himself and as such is called by God. Venial sin is, by contrast, a peripheral act committed at a less central depth of the soul and, as such, is compatible with the love of God still alive in the depths of the person. It is this existential concept of choice, not primarily the matter, which distinguishes mortal from venial sin. This doctrine is not new, of course; but one could say that it is being newly recovered and restored and its ramifications are being spelled out. However, its extension beyond the analysis of sinful conduct and its relationship to other dogmatic facts have not been carefully studied.

Bruno Schüller, S.J., discusses the fundamental option and attempts to show (with singular success, I believe) that it not only aids us in grasping more thoroughly the analogous character of mortal and venial sin, but also is the foundation for the analogy we must recognize in the area of good acts, of liberty, of law itself.<sup>9</sup> Thus, for example, we can and should speak of *honestum grave*, *honestum leve*. So, too, the notions of freedom and law are only analogous notions differing qualitatively when found in the area of grave or slight morality.

Take, for example, freedom, and specifically the freedom involved in venial sin. Suppose a man in the state of grace deliberately lies. He knows

<sup>8</sup> A recent example of an article which examines the pastoral, catechetical, and canonical implications of our deepened understanding of mortal sin is that of Robert P. O'Neil and Michael A. Donovan, "Psychic Development and Mortal Sin," *Pastoral Life* 14 (1966) 261-68. A choice involving a basic orientation of life demands an autonomy of judgment not achieved by children until the ages of 12-14. The authors' major conclusion is that confession should be delayed until this time. The authors seem to equate the sacrament of penance with *specific* and *private* confession. Until other possibilities (such as public penitential celebrations, eventually sacramental) are investigated, their conclusion does not recommend itself as necessarily the most helpful for the sacramental life of the child. Cf. *THEOLOGICAL STUDIES* 26 (1965) 654-58, and more recently J. Bulckens, "Première confession dans le cadre de l'école," *Collectanea Mechimiensia* 51 (1966) 192-226.

<sup>9</sup> Bruno Schüller, S.J., "Zur Analogie sittlicher Grundbegriffe," *Theologie und Philosophie* [bis 1965, *Scholastik*] 41 (1966) 3-20.

this is forbidden but he says to himself that his salvation is not involved. This means that he lies with his free will yet remains *conversus ad Deum* with the same free will which he used to disobey God. Moralists have frequently referred to such an act as *peccatum leve plene deliberatum*. Schüller believes that this gives away the fact that they are viewing freedom univocally. He insists that the freedom involved in mortal sin is qualitatively different from that involved in venial sin.

If one defines freedom as it is often defined (*positis omnibus ad agendum requisitis, potest* etc. . . .), it actually appears to be operative in an identical manner in mortal and venial sin, in grave or slight good acts, hence to be a univocal notion. But this is to define freedom incompletely, in a purely formal way as active indifference in the face of a limited good. If we remember that in acting man takes hold of himself in a responsible way, engages himself and becomes his act, we can recognize a new dimension to freedom and see this dimension as the inner constitutive of decision. We can no longer miss the qualitative difference between the freedom involved in mortal and venial sin. We can, therefore, no longer speak of a *peccatum leve plene deliberatum*, or at least we must understand it differently.

Schüller enlightens nearly everything he touches, and this is true here of such things as *fides informis*, resistance to temptation, the good acts of one in the state of serious sin, and the concept of the oughtness of law itself.

#### CONTEXTUALISM VS. PRINCIPLES

The Council at least implies that Catholic moral theology will profit from contact with other moralities.<sup>10</sup> If the literature is a valid indication, the most lively issue in "other moralities" has been the discussion which we may entitle, certainly for lack of a better phrase, "contextualism vs. principles."<sup>11</sup> Assuredly this polarization can be very misleading, because, as James Gustafson (Yale) remarks,<sup>12</sup> the umbrellas of contextualism and principles have become so sprawling that they include thinkers whose views are as significantly different from each other as they are from persons gathered under the other umbrella. However, James A. Burtness, of the Lutheran Theological Seminary in St. Paul, does not believe that the wide variety of

<sup>10</sup> Cf. *The Documents of Vatican II*, p. 453.

<sup>11</sup> Max L. Stackhouse (Harvard) observes a disenchantment among the younger writers with both of these methods. They are producing papers "the methodological presuppositions of which are perhaps still obscure." Cf. "Technical Data and Ethical Norms: Some Theoretical Considerations," *Journal for the Scientific Study of Religion* 5 (1966) 191-203, at p. 194.

<sup>12</sup> James M. Gustafson, "Context versus Principles: A Misplaced Debate in Christian Ethics," *Harvard Theological Review* 58 (1965) 171-202, at p. 173.

positions in each category, and the overlapping of context and principle in most positions, necessarily invalidates the use of categories as a helpful device to describe a general trend.<sup>13</sup> Be this as it may, apparently it was once thought that a serious confrontation with the issues raised by "the new morality" or "situation ethics" would contaminate the streams of Catholic thought.<sup>14</sup> It is not to underestimate this danger to assert that quite the opposite effect is a legitimate hope.

The literature on this subject is enormous, and nothing more than a synoptic treatment can be attempted here. A good introduction to the discussion, especially to its more profound theological and dogmatic roots, would be Gustafson's article "Christian Ethics."<sup>15</sup> It contains a full bibliography. Paul Ramsey's recent *Deeds and Rules in Christian Ethics* is also helpful.<sup>16</sup> It is a critical introduction to the thought of men like Robinson, Frankena, and Lehmann. Similarly, Gustafson's survey in the *Harvard Theological Review* is the kind of article it is a pleasure to read.<sup>17</sup> Gustafson shows himself a careful, precise thinker with sensitivity for and appreciation of a point of view he does not necessarily share.

Gustafson contends that there are four basic points from which discourse on Christian ethics can and does begin: moral principles; accurate social or situational analysis; theological affirmations; the nature of the Christian life in Christ and the proper expression of this in moral conduct. It is impossible not to move toward the other three bases no matter what base one accepts as primary. The debate on contextualism vs. principles has tended to assume that the matter of how moral decisions are made could be separated from other considerations. Gustafson insists that if one argues against contextualism, one has to direct his argument to the theological and ethical reasons given for stress on the context. Similarly, if one argues against principles, one has to be particular about many questions often sloppily disposed of with rhetoric: from what sources are the principles derived (natural law, biblical revelation, ethos of the Christian community), how are principles used (for direction to goals, or for determination of right conduct), how are they interpreted (as prescriptive or illuminative)?

What is behind the stress on context which has led to situational moral

<sup>13</sup> James H. Burtness, "The New Morality," *Dialogue* 5 (1966) 10-17, at p. 16. Nearly the entire issue is devoted to the New Morality.

<sup>14</sup> *AAS* 48 (1956) 144-45.

<sup>15</sup> James M. Gustafson, "Christian Ethics," in *Religion*, ed. Paul Ramsey (Englewood Cliffs: Prentice-Hall, 1965) pp. 287-354.

<sup>16</sup> Paul Ramsey, *Deeds and Rules in Christian Ethics* (Scottish Journal of Theology Occasional Papers 11; Edinburgh, 1965).

<sup>17</sup> Cf. *supra* n. 12.

thinking? The proximate reasons are theological and/or epistemological. But James H. Burtness believes it is important to see the so-called "new morality" as part of a much larger historical movement.<sup>18</sup> He sees this movement as a massive shift from what he calls a spatial dualism of nature and supernature to a temporal dualism of old and new. Before Copernicus, man's understanding of reality was spatial ("ups" and "downs"); after Copernicus, time began to shape his understanding of things. Thus, the biologist used to be almost completely concerned with classification of permanent forms of life; now he works rather with the development of one form of life to another. Formerly we attributed an absoluteness to the law of supply and demand; now the relativities of Keynesian economics shape government policies. And so on.

Spatial dualism, according to Burtness, also affected man's approach to God.

For vast numbers of people in the Church, God has been defined specifically as the changeless who dwells above change, the timeless untouched by time, the absolute over against the relative. And that has often meant that theoretical statements, because they are about a changeless God, are themselves changeless. Theology, in this case, has to do with the timeless: God defined in terms of his attributes; the Trinity defined in terms of ontological inner-relationships; the Lord's Supper defined in terms of the spatial problem of the intertwining of bread and wine, body and blood; sin defined in terms of breaking God's absolute laws.<sup>19</sup>

Now, however, theologians lean toward the functional rather than the ontological: the Bible is the book of the acts of God; Christ is the man for others; sacrament is the occasion upon which God approaches the recipient; sin is a description of man's situation. This theological shift from space to time is accompanied by an ethical shift from absolutes to situations. When man lives in history rather than in the "spatial supernatural," Burtness asserts that there are no such things as ethical absolutes; there is only responsible decision. Even Marshal Dillon is beginning to find himself in more ambiguous situations. The remainder of Burtness' essay is a survey of modern situational theologians (e.g., Bonhoeffer, Sittler, Lehmann).

In an age of mass communications it was inevitable that this discussion would shift from tome to table talk. In the process of its popularization it has lost some of its theological rootage and precision, but none of its liveliness. The three best-known popular exponents of a "situation ethics" are

<sup>18</sup> Cf. *supra* n. 13.

<sup>19</sup> *Art. cit.*, p. 11.

Canon Douglas A. Rhymes,<sup>20</sup> Prof. Joseph Fletcher,<sup>21</sup> and Bishop John A. T. Robinson.<sup>22</sup> Since Rhymes and Fletcher have written during the past semester, my summary will consist of excerpts from their writings.

The first difficulty one encounters in making a précis and comments on Fletcher-Rhymes is the problem of rhetoric. It is here that Fletcher is at his best as a situationist. What he says of acts ("goodness is what happens to an act, it is not in the act itself") could be applied to his use of words: "meaning is what happens to a word, it is not in the word itself." Fletcher is dangerously close to the absolutism he abhors in adhering to this. Thus, Gustafson in his rather devastating review has noted that

"love" like "situation" is a word that runs through Fletcher's book like a greased pig. . . . Nowhere does Fletcher indicate in a systematic way his various uses of it. It refers to everything he wants it to refer to. It is the *only* thing that is intrinsically good; it *equals* justice; it is a formal *principle*; it is a *disposition*, it is a predicate and not a property, it is a ruling norm etc.<sup>23</sup>

Others have noted this same thing in Canon Rhymes. Robert E. Fitch, dean of the Pacific School of Religion, has gathered some of these phrases together under the rubric of fetish phrases: mature, adult, responsible, relational, provisional, contextual, etc. He refers to it all as "the flourishing of shibboleths. . . . We look up for the water of life, but are drowned under a cascade of clichés."<sup>24</sup> Similarly, Union Theological's Tom Driver, after calling attention to the neon words in this rhetoric ("maturity," "responsibility," "love"), asks simply: "Who can disagree with such statements?"<sup>25</sup> Bernard E. Meland, formerly of the University of Chicago, sees "maturity" and "responsibility" in Rhymes as weasel words. He asks: "Mature in what sense? Responsible to whom or what?"<sup>26</sup>

The matter of rhetoric is important beyond the fun poked at it by its critics. It constitutes a kind of methodology by incantation which makes it

<sup>20</sup> Douglas A. Rhymes, "The 'New' Morality," *Religion in Life* 35 (1966) 170-81. This article is a brief statement of the views expressed in Rhymes's book *No New Morality* (Indianapolis: Bobbs Merrill, 1965). Nearly the entire issue of *Religion in Life* is devoted to the New Morality and makes extremely interesting reading.

<sup>21</sup> Joseph Fletcher, *Situation Ethics* (Philadelphia: Westminster, 1966), as well as "Love is the Only Measure," *Commonweal* 83 (1966) 427-32.

<sup>22</sup> John A. T. Robinson, *Christian Morals Today* (Philadelphia: Westminster, 1964), as well as *Honest to God* (Philadelphia: Westminster, 1963) pp. 103-21.

<sup>23</sup> James M. Gustafson, "How Does Love Reign?" *Christian Century* 83 (1966) 654.

<sup>24</sup> Robert E. Fitch, in *Religion in Life* 35 (1966) 186.

<sup>25</sup> Tom Driver, *ibid.*, p. 200.

<sup>26</sup> Bernard E. Meland, *ibid.*, p. 194.

terribly hard to know what Fletcher is actually saying. Certainly he is against legalism; but we all are or should be. Certainly he is for maturity, responsibility, and love. But are we not all? The intent, then, is beyond dispute. When he spells out this intent, he waves before us a series of supposedly clear opposites which are neither clear nor clearly opposed: "brushing aside moral responsibility in favor of sticking to the rules"; "an ethic of responsible decision rather than obedience to law"; "love not law"; "principles are maxims not rules"; "love people, not principles." Rhymes uses many of the same couplets and asserts that Jesus does "not primarily call men to a code to be applied but to the demanding rule of love as the only absolute, to the working out of what love means in the existing situation."<sup>27</sup>

Obviously such rhetorical gestures cry out for several distinctions and it would be tedious to marshal them here. But their general effect is to jockey one into the position of not loving and caring in the situation if he insists on the validity of an absolute. This is the methodological point Paul Ramsey is constantly making when he talks about getting the terms of the debate straight. It is unsound to begin by defining what he calls "general-rule agapism" or "in-principled love" as readiness to obey a rule even though the action it calls for is seen not to be what love would directly require.<sup>28</sup> It is because in-principled love sees nothing of the kind that it adheres to its principles. It is precisely the love that is in it and which would be violated by departure from it which gives the principle its validity. Or as Ramsey himself puts it: "The fact that nothing other than *agape* makes a thing right or wrong does not mean that nothing is right or wrong."<sup>29</sup> To think otherwise would be to compromise love and actually to risk doing the unloving thing. Fletcher's rhetorical beginnings are, then, only justified if one has established their suppositions.

The only way to get at Fletcher's suppositions is through his conclusions. These conclusions, as I read them, could be stated in two propositions. (1) There is only one absolute: love. In whatever situation man finds himself, it is his call to work out the maximum response of love. (2) No negative principles have absolute validity in describing the character of this loving response.<sup>30</sup> Thus, practically, adultery may generally be immoral, but there can be the outside instance where it is the loving thing to do. No serious Christian moralist will quarrel with the first assertion. It is the second, or rather its suppositions, which constitute the heart of the matter.

<sup>27</sup> Rhymes, *art. cit.*, p. 178.

<sup>28</sup> Paul Ramsey, "Two Concepts of General Rules in Christian Ethics," *Ethics* 76 (1966) 192-207, at pp. 196-97.

<sup>29</sup> *Ibid.*, p. 195.

<sup>30</sup> I put it this way because, except for a few absolute negative prohibitions, I believe that Catholic moral theology is quite as situationist as Fletcher at his best.

Before one can defend this position other than arbitrarily, he must have answered the question: how does one go about making a moral judgment? As far as one can gather, Fletcher's answer to this would run as follows: evaluate the total situation, then do the loving thing. So far, no problem. But how does one determine what is the loving thing? Here Fletcher is very ambiguous. At one time the loving thing is the sum of the consequences of an act, so that if, by and large, more harm will result, the proposed activity would be unloving. At other times, as Herbert McCabe, editor of *New Blackfriars*, notes,<sup>31</sup> this caring is distinct from the act and its effects and seems to be only an inner psychological state. In other words, judgments of morality are assessments of the caring or loving thing to do in the situation; but it is not clear how one determines this. Obviously Fletcher has not made up his mind on how moral judgments are made. As long as this remains unclear, he can squeeze out of any epistemological corner, because he has none he calls his own. And as long as he has none he calls his own, one can only say that he has adopted a method (and its content-conclusions) without first solving the problems of methodology.

It would be ungracious to imply that no one else is guilty of this. We have all had our turn at it, and undoubtedly far more often than we realize. However, this cannot be allowed to blur the fact that rather than work his way back carefully to his premises, Prof. Fletcher has chosen to plug the holes where these premises begin to appear. Even when he unveils a premise, it remains a slippery word (e.g., nominalism) which he would prefer to bandy about rather than analyze. This is not to say that Fletcher is wrong; it is only to say that he has not shown satisfactorily on what grounds he could be right.

In his tightly reasoned *Commonweal* article, Fr. McCabe sets out to show why Fletcher is wrong in his suppositions. He begins by stating the issue: "Are there some things that you must never under any circumstances do?" If the answer is "yes," then Fletcher is wrong. The Fletcher-situationist says "no." McCabe's answer to this is a kind of *reductio ad dualismum*.

McCabe's basic point seems to be this. The New Moralist must contend in principle that every piece of behavior can pass as "loving." Therefore he must deny that any action is loving or unloving as such, specifically that any action is always unloving. McCabe sees this as an attack on the significance of human (bodily) behavior. He asserts: "I think that it is possible for them to hold this only because they believe that the adjective 'loving' is descriptive not of bodily behavior as such but of something else that accompanies it." If this is true, McCabe sees it rightly as inseparable from a

<sup>31</sup> Herbert McCabe, "The Validity of Absolutes," *Commonweal* 83 (1966) 432-37 and 439-40, at p. 439.

dualistic view of man, a view according to which values attach to events in an interior and invisible life which runs alongside of man's physical life. Love is not behavior; it accompanies behavior.

The accusation of dualism is, I believe, well aimed. If any activity can count as loving, we begin to sense that the word has lost its content, because human actions have lost their significance. To take but a single example—and that is all that is really needed<sup>32</sup>—is there a more disastrous sentence in recent theological literature than Fletcher's "sexual intercourse may or may not be an act of love"?<sup>33</sup> One can only make such a statement if he denies significance to this particular bit of human behavior. What Fletcher should have said (but could not on his suppositions) is: "this *act of love* may or may not be personally accompanied by appropriate sentiments of loving concern and othercenteredness, may or may not occur in circumstances which honor its meaning." Fletcher must deny that sexual intercourse as such is in any sense a loving act. For him it is neutral. It merits description as "loving" only when the parties put their minds to it. That means that ultimately it merits description as "loving" only *because* they put their minds to it. There have always been those who thought that sexual love were better off when confined to the mind. But have we not been battling such attacks on the significance of human behavior for centuries?

McCabe is right on target, therefore, when he points out that for Fletcher there is no such thing as sexual love; there is only sex accompanied by love. "Sex," Fletcher notes, "which does not have love as *partner* is wrong." The implications of this type of talk must be a terrible setback to all who feel that we have made genuine progress in extricating ourselves from the one-sidedness of the past in analyzing human love. For it is quite as effective an attack on the significance of human behavior as a narrow physicalism. On the other hand, perhaps we should not be surprised that our contemporary culture finds it more congenial to ask not *why* coitus is an act of love (an act which therefore makes demands of its participants), but *whether* it is.

But to McCabe's thoughtful essay one might apply the old axiom: *omnia dicta sunt vera, sed non omnia vera sunt dicta*. I mean that though McCabe has felled his demon, he has not shown, and did not really attempt to show, how one determines precisely what activities are always unloving and therefore generate absolute prohibitions. This is a far larger problem.

<sup>32</sup> If it can be shown that in one instance the situational suppositions involve an attack on the significance of human behavior, the method has been shown to fail. As Ramsey says: "A single exception to act-agapism and to summary-rule agapism would be sufficient to destroy these positions utterly and to establish general-rule agapism in at least some types of action" (*Ethics* 76 [1966] 196).

<sup>33</sup> *Commonweal* 83 (1966) 429.

It would be a serious mistake to treat Fletcher-Rhymes as mere ethical gaffies. I believe that they are saying something very important. First of all, over and beyond their healthy revulsion from mere conformism as the meaning of morality, they are articulating very persuasively what one can easily believe is the implicit moral position of the vast majority of Christian nonspecialists, especially when they face desperate situations. These writings, therefore, can speak a message to the theologian who sees his task as more than ivory-towerism. Secondly, they are raising a question for technical moral thought which has not been satisfactorily confronted by Catholic theologians—the problem of Christian moral knowing. Finally, one can suspect that the fact that this question has not received the attention in Catholic circles that it deserves stems at least partially from, and therefore passes judgment on, the working separation of moral theology from other theological disciplines.

John G. Milhaven, S.J., has turned his attention to this extremely interesting and important epistemological question and asked: how does one know inviolable values in this world?<sup>24</sup> One must know the answer to this question before the absoluteness of a moral position is clear. Failure even to ask the question has locked much modern Catholic moral thought in mere propositions without an adequately developed epistemology to support them. Fr. Milhaven suggests a two-pronged approach.

First, there are certain values which we recognize immediately and intuitively as absolute without need of further evidence of any kind. "If one discerns what can be the authentic love between a man and a woman, one recognizes its absolute worth. One sees that no man may seek to frustrate it or destroy it. . . . Once human love is understood, once the insight is had, man sees immediately its absolute worth." Milhaven feels that very few values fit this category. He mentions "love and honor and pity and pride and compassion and sacrifice." At another point he mentions the husband-wife friendship and *condigna prolis educatio* as absolute values.

Secondly, one recognizes acts as immoral when the empirical observation of a number of cases indicates that the act (e.g., divorce) will result in some absolute evil. By empirical evidence Milhaven means "the evidence of the probable or certain consequences of what is going to result from the act in question." It is only empirical evidence in this sense that shows that divorce will oppose the absolute values embedded in marriage. Moralists have been insufficiently aware of the decisive character of consequence-empiricism in most moral judgments, hence have remained wrapped in a rationalistic garb which is an unfashionable oddity to the contemporary thinker.

<sup>24</sup> John G. Milhaven, S.J., "Towards an Epistemology of Ethics," *THEOLOGICAL STUDIES* 27 (1966) 228-41.

I believe that Milhaven is right in asserting that too often we moral theologians have been content with derivative statements (e.g., "innocent human life is inviolable from direct attack") without examining the underlying epistemology. Such propositions do not establish a moral position, but simply formulate more or less accurately a moral position already taken. It is also beyond doubt that we have not always appreciated how many moral decisions are really dependent on the type of empirical evidence he describes.

But could it be that in making these quite valid points Milhaven has also raised a question to which his suggested epistemology does not adequately attend? I refer to the problem of Christian moral knowing. Perhaps one can outline the problem as follows. If the Church can and does go beyond the natural evidence of consequence-empiricism in her moral perceptions and teaching, this seems to mean a great deal for both theological methodology and epistemology.

As for theological methodology, it means that our analyses may not restrict themselves to consequence-empiricism, at least in those areas where this has happened. It also suggests that the function of empirical evidence is not merely probative, but also and perhaps even especially indicative. That is, such evidence also aids us—even where it is not "probative"—in arriving at insights. Finally, it suggests that the only type of evidence available for certain conclusions might be what Milhaven refers to as "rationalistic." Milhaven has asked for the "further evidence" behind some theological propositions. I am suggesting (and that only) that there may not be any of the type he seeks, simply because the theologian is only attempting to analyze and formulate a position which goes beyond available empirical evidence. Practically this means that we may be in situations where we must try to analyze as far as we can to the point of persuasion (using all evidence, even and especially empirical evidence) but not abandon a position for failure to arrive at a probative analysis based on empirical data.

Secondly, the epistemological question. If the moral perceptions of the Church go beyond the evidence of consequence-empiricism, one would expect this fact to affect our knowing processes. I mean that we would expect that, as a general rule, Church teachings would sharpen and sensitize our very perception of natural value. Human beings are dynamic beings who grow and mature in all aspects of their personalities, even their sensitivity to value. Furthermore, they are one, and it must be expected that their faith will affect their growth, including their knowing processes. Specifically, just as one would think that contact with the God-man in faith would enlarge and refine our sensitivity to human values, should we not also expect

that the aid provided by Church teaching over the centuries should favorably affect our perception of value?<sup>35</sup>

I should like to present a single example of what I mean.<sup>36</sup> Milhaven asserts that the decisive evidence for the morality of sexual acts must be empirical—and recall that he means by this only a calculation of consequences. The supposition underlying such a statement must be that other sources (above all, the accumulated wisdom of revelation and Church teaching) cannot lead us or have not led us, if only gradually, to a perception of the meaning of coitus which relates it to the love of man and woman. However, I wonder if there is not a meaning to human coitus which we perceive beyond what scientific empiricism might prove.

Concretely, why is it wrong to assert: anyone who knows what the true love of man and woman is will know that adulterous coitus is immoral? Or in Milhaven's words, "it [adultery] betokens *by definition* the absence of a quality (love and/or fidelity) whose absolute value is seen intuitively on understanding what it is." I am suggesting that human sexual intercourse has a sense and meaning prior to the individual purposes of those who engage in it, a significance which is a part of their situation whether or not the partners turn their minds to it. It is an act of love, and therefore has a definition which relates it immediately to the love of man and woman—with all the demands of this love. Furthermore I am also suggesting that we can

<sup>35</sup> Paul Ramsey puts the question as follows: "I should not myself deny that man's natural sense of justice and injustice is able to penetrate to the person and into the meaning of the good for him deeply enough to discern some quite general principles that discriminate between the humane and the inhumane. But even if this were false, surely Christian theologians ought not to dismiss out of hand—rather it is their specific business to explore—the possibility that Christian faith and love affords mankind more than probable knowledge *into ethics*" ("Two Concepts of General Rules in Christian Ethics," p. 194).

<sup>36</sup> Is direct abortion another example? Many (including the Council fathers; cf. *Documents of Vatican II*, n. 27, p. 226) think so. Perhaps human life is not an "absolute value," as Fr. Milhaven understands "absolute" and "value." However, there is a good deal of evidence that human life must constitute a basic value in any realistic epistemology. First of all, human life is the most basic good and, as many believe, the object of the most basic right of man. If any good is capable of generating absolute prohibitions, one would think it would be this good. Secondly, the very difficulty we have had in developing a totally acceptable theological rationale for our positions on capital punishment, warfare, and repulsion of aggression is a kind of negative indication of the existence of a primitive grasp on the good that is human life, similar to the grasp on the good that is honor, compassion, etc. Milhaven's suggested distinction between the inviolability of the human *person* and the inviolability of human *physical life* needs much more discussion than it has yet had in theological literature.

come to know this meaning even if the scientific empiricism of our time has not proved it and cannot prove it. Finally I am suggesting that it is probably the full Christian experience which produces this refinement of sensitivity to *natural* values.<sup>37</sup>

All of this is not to underestimate consequence-empiricism; it is rather to suggest that the Church has gone beyond it and that her teaching can and does affect our value-perception. Growth in this type of knowledge is not appreciated in the twentieth century, but does that negate its reality and its validity as a source of moral truth?

#### PASTORAL PROBLEMS

What is the proper theological and pastoral attitude of the priest in dealing with the unfortunate situation of a person whose former sacramental and consummated marriage has collapsed and who is now "married" to another person and has several children by this second marriage? Perhaps the case is one wherein the innocent party has been deserted and has already attempted unsuccessfully to persevere in a life of celibacy. There are any number of possible variants. We are all familiar with these second marriages and we know that many of them are characterized by genuine love, permanence, and spiritual aspiration. Indeed it is precisely these qualities which make the problem so intractable.

Since validation of the existing second marriage is presumably out of the question, we also know that the alternatives which face the couple are excruciating. Separation seems to neglect the rights of the child, his need for both parents and a familial climate in his growth process. On the other hand, continued cohabitation will leave the couple proximately exposed to adulterous conduct. Furthermore the relationship will continue to be regarded as adulterous by the Catholic community—if the community is true to its convictions—and hence will close the door to a sacramental life. The problem is anguishing, to say the least.

Four recent articles have dealt with this situation, all from slightly different points of view. Dennis Doherty, O.S.B., uses the problem as a stimulus to ask a whole series of theological questions.<sup>38</sup> What, for instance, is the meaning of consummation? Doherty is suggesting that if consummation might be viewed more broadly than as mere physical completion of intercourse, it is possible to ask: what degree or level of consummation would or

<sup>37</sup> The word "natural" is highlighted to indicate that these perceptions do not constitute *religious belief*.

<sup>38</sup> Dennis Doherty, O.S.B., "The Problem of Divorce and Remarriage," *Marriage* 43 (1966) 12-18.

should involve indissolubility? Or again, is it necessary to enlarge our concept of valid consent by taking into account the acknowledged immaturity of many who marry as teen-agers? The gist of these questions is not precisely that we change what we hold (rejection of divorce with remarriage) but that we attempt to understand it better. These are legitimate questions and no one wants to see them tabled. Each age must face them anew in light of its advancing knowledge of the person and his acts, if theology is to avoid stagnation. However, one only hopes that this continuing theological task can be acquitted quietly and unsensationally without offering the cruel comfort born of false hopes.

M. Huftier's approach to the problem is pastoral.<sup>39</sup> Adverting to the possibility of total or partial separation (this latter meaning abstention from acts of conjugal intimacy), he then rather wryly remarks that "il reste. . . la majorité des cas." For these he makes two general pastoral suggestions.

First, it is important that the couple be clear on why they cannot receive the sacraments, especially the Eucharist. Huftier accepts this as a foregone conclusion. In elaborating this conclusion he stresses greatly the sign-dimension of both the sacraments and social conduct.<sup>40</sup> In both cases we are in the world of signs and are governed by the norms proper to this external order. Thus, the reception of penance and the Eucharist are visible signs of reconciliation and community with Christ in the Church, a kind of profession of faith. Similarly but contrarily, an adulterous situation is a visible pattern of life at odds with this community and its beliefs about marriage, a kind of external denial of this ecclesial faith. To admit to the public profession of faith (inseparable from reception of the Eucharist) one whose exterior situation constitutes a contradictory sign would be to deny the social or ecclesial significance of the sacrament and render it mendacious. "The Church, therefore, cannot give the sacraments to those whose social comportment is a contradictory sign to this faith."

Secondly, Huftier insists that the pastor of souls approach the problem not in terms of what the couple must do to return to the sacraments but rather with the explicit aim of deepening their Christian faith. He will support their fulfilment of their duties toward each other and the children. Even if they cannot receive the Eucharist, the priest will point out that the Church does not reject them and he will encourage their assistance at Mass and their continuing manifestation of conscience to a priest.

<sup>39</sup> M. Huftier, "Sur la séparation de divorcés remariés," *Ami du clergé* 76 (1966) 201-207.

<sup>40</sup> A similar analysis of the sign-value of the sacraments is given by E. Marcus, "Qui doit-on laisser accéder aux sacrements?" *Collectanea Mechliniensia* 51 (1966) 54-78, at p. 74.

G. Rossino's brief statement focuses exclusively on the moral demands.<sup>41</sup> If the adulterous situation is known in the place where the couple live, Rossino sees no alternative to separation whenever this is possible. If it is impossible (because of children, etc.), cohabitation may be continued if there is a serious resolve to avoid demonstrations of conjugal affection. If the couple arrive at this resolve, they may even receive the sacraments, but only if the situation is occult and likely to remain so.

Three moralists, two of them from the Netherlands, have approached what they term the problem of *concubinarii* largely in terms of the permissibility of participation in the Church's sacramental life.<sup>42</sup> They conclude that not all *concubinarii* are excluded in principle from receiving the sacraments. Those who cohabit in a "marital state of mind" because cohabitation is their only practical option may be allowed to receive the sacraments. By a "marital state of mind" the authors mean that the couple "possess the mental and emotional dispositions which are proper to marriage itself." They "consider themselves as married to each other" and want to fulfil their duties to their children.

They arrive at this conclusion by attempting to show that the three reasons adduced for exclusion of such individuals from the sacraments (individual disposition, ecclesiastical unworthiness, scandal) are not of absolute validity. For example, with regard to what they call "ecclesiastical unworthiness," they accept Huftier's general analysis but "wonder whether this opinion does not overstress the visible expression of holiness of the Church. After all, is the unity and holiness within which the sacraments can be true signs an absolute and indivisible holiness? Might it perhaps be possible to accept a holiness which is 'more or less' rather than simple 'is or is not'? Would it not be possible to draw into this the essential imperfection of man and of all that is human?"

This last article is disturbing, not because it raises a delicate question and takes a nontraditional stand, but because in doing so it is rather wooly in its attitude toward this second "marriage." Two examples of this ambiguity will have to suffice here.

First, the article treats all cases of second marriages (which cannot be regularized) in the same way under title of "people invalidly married who are unable to convalidate their marriage." The authors refer to such instances as situations with no "juridical solution." This is certainly true. But

<sup>41</sup> G. Rossino, "La questione spinosa delle convivenze illegittime," *Perfice munus* 61 (1966) 130-33.

<sup>42</sup> B. Peters, T. Beemer, and C. van der Poel, "Cohabitation in a 'Marital State of Mind,'" *Homiletic and Pastoral Review* 66 (1966) 566-77.

it obscures the fact that this lack of a juridical solution is sometimes simply an extension of a basic doctrinal position on divorce and remarriage, at others rather a matter of jurisprudential policy surrounding this doctrine. For example, there is no juridical solution when *ratum non consummatum* proceedings break down for lack of proof, even though the petitioner knows in his conscience that coitus did not occur. In this juridical instance the moral position on divorce and remarriage is not at stake in the same way it is in other cases. By leaving "juridical" thus loose and ambiguous, the authors manage to attribute more weight to "the marital state of mind" than it deserves. This tends to solve the underlying problem by reducing its real proportions. Indeed there are times when one wonders just how the authors do regard the first sacramental and consummated marriage.

A second example is their discussion of the "good dispositions" of the *concubinariii*. Their norm for such a disposition is: "How much real living Christianity is present despite this situation? Is there, in view of the situation, a sufficient visibly-lived Christianity?" They then face the question as to whether abstention from all conjugal intimacy "belongs to the signs of a living Christian mentality." This is certainly the case, they state, "when the partners cannot consider themselves as a married couple." But when they actually are in a "marital state of mind," the authors assert that it would be biologism to make this demand of them. Since they may be obliged in conscience to stay together, "it is hard to see how the positive meaning of sexual relations in regard to the love-relationship is different in this 'cohabitation in marital state of mind' from the same in a real marriage."

From this one might conclude that the authors would find objective justification for sexual intercourse at times. But they state immediately that "complete sexual relations remain *per se* beyond the realm of their state of life." At one point they assert that the mentality to live as brother-sister cannot be demanded as an absolutely necessary sign of their Christian mentality. At another point they refer to the serious effort of the couple to arrive at sexual mastery, even though failures might occur. This type of verbal sleight of hand unfortunately pervades the piece.

It is easy to agree with Peters-Beemer-van der Poel that the "marital state of mind," the willingness to educate the children, and the desire for sacramental participation are assuredly important aspects of the situation. They must not be forgotten. But they are not the only aspects. There is always the danger that a one-sided emphasis of these aspects could lead both priest and couple to view the present impasse as a juridical mistake of the past only. However, the past sacramental and consummated but broken marriage is not simply a matter of the past; it is, if our doctrine on divorce

and remarriage means anything, as unavoidably a part of the *present* situation as the mature affection and the "marital state of mind." Here and now at least one of these *concubinarii* is irrevocably given to another. To allow the "marital state of mind" to obscure this fact or mitigate its demands is to analyze the present situation in terms of only one of its existential aspects. The present situation is not only a state of mind; it is a state of persons.

However, it is one thing to insist on this reality; it is quite another to say that its corollaries must receive immediate and emphatic attention. Where separation (total, or at least partial) is judged possible, this moral demand will be pointed out. On the other hand, many priests are convinced that some of these couples are not psychologically, morally, and spiritually equipped at the moment to do anything but live as man and wife. Any other alternative seems so often to represent a genuine moral impossibility for the present. To be sure, the moral demands do not thereby cease to exist; they are real, present, and crucial. But no less real is the present incapacity to meet them, sometimes even to understand them. Acknowledgment of this incapacity does not solve the dilemma, but perhaps it does suggest that a balanced pastoral approach might sometimes take the form of gradualism, which would view the moral demands as the term of a growth process. The wisdom of experience teaches us that the conclusions of moral principles often function more as goals toward which we must struggle than norms to which we can immediately conform—a point we moralists can easily forget.

If the gradual attitude just described is a sound Christian response to the situation, would not the general effort be to lead the couple to gather their strength through deepening of faith, that is, to lead them to the point where they can do justice both to the real claims of their present relationship and to the undeniably real meaning of their former ones? This process could easily take a good deal of time, and there is nothing in Catholic theology justifying anything but Christlike kindness and charity during this period of struggle and growth. But it must be conceived as a growth toward an ultimate resolution. Anything else is playing the ostrich.

The possibility that these trapped and suffering individuals could approach the sacraments is a question which can be legitimately asked. It is perhaps all the more legitimate when one considers the painful conclusion to which their growth must be expected to bring them. However, it is not clear to me how anything but a negative answer to this question is possible. Be this as it may, before one can answer the question about the sacraments, he must be clear on the moral status of these relationships, that is, that such couples are not truly husband and wife. Otherwise compassion and confusion will have become pastoral companions.<sup>43</sup>

<sup>43</sup> Two recent articles discuss historical aspects of indissolubility: F. Von Gunten, O.P.,

The number of articles appearing in recent years on the practical aspects of the sacrament of penance underlines what nearly everyone seems to be thinking: the discipline of this sacrament could stand reforming.<sup>44</sup> Before any reform can hope to be appropriate, the theology of the sacrament must be better understood. Brian Kelly, C.S.Sp., states the theological problem involved in the confession of devotion as follows: how can there be further forgiveness in the confession of devotion—and sacramental forgiveness at that—of what has already been forgiven?<sup>45</sup> The traditional explanation of the three reasons given in favor of devotional confession (occasion for direction of conscience, forgiveness of sin, increase of grace) do not answer this problem with satisfaction. Even Rahner's rather dazzling insights on the sacrament do not light up this more circumscribed issue.

To understand the confession of devotion, Kelly suggests, one must understand the notion of forgiveness. Forgiveness is not simply a legal statement of nonimputation; rather it is an interior refashioning whereby the sinner is both ontologically and psychologically set apart from sin. It is a many-sided process of liberation capable of indefinite increase and perfection. One's psychological opposition to sin, his spiritual distaste for it, his deepening inner revulsion is a part of the totality of this process. If forgiveness is viewed in this way, we must eventually define it as the production in the soul of the state of withdrawal from sin. In this sense the confession of devotion produces genuine forgiveness. Frequent confessions of devotion should, therefore, have the effect of increasing our spiritual antipathy to sin.

R. E. Modras contends that a faulty understanding of the efficacy of the sacraments plus an indiscriminating reading of authoritative encouragement given to devotional confession have led to formalism in confessional practice.<sup>46</sup> For many of the faithful, confession of devotion is a ritual regulated by the calendar rather than by a change of heart. "Unless his act of sorrow, his reaffirmation of conversion, is more intense than the previous conversion which characterized his supernatural condition, there is no actual increase of grace." Upon this Thomistic premise, Fr. Modras does not discourage frequent devotional confession, but he asks: "How many people are capable

"La doctrine de Cajétan sur l'indissolubilité du mariage," *Angelicum* 43 (1966) 62-72; H. Crouzel, S.J., "Séparation ou remariage selon les Pères anciens," *Gregorianum* 47 (1966) 472-94.

<sup>44</sup> If anyone has doubts, cf. Sister Lawrence, S.N.D., "The Sacrament of Penance—An Investigation," *Clergy Review* 51 (1966) 112-22.

<sup>45</sup> B. Kelly, C.S.Sp., "The Confession of Devotion," *Irish Theological Quarterly* 33 (1966) 84-90.

<sup>46</sup> Ronald E. Modras, "Frequent Devotional Confession," *Homiletic and Pastoral Review* 66 (1966) 650-58.

of having a change of heart or intensifying such a change once a week? Or once a month?"

This interesting article suggests two cautions. First, without gainsaying the theory which demands a more intense act of charity for an increase in sanctifying grace, one must be cautious about the meaning of the word "intense." When Modras questions the ability of people to "intensify their change of heart" weekly or monthly, he seems to locate the notion of intensity at the level of reflex awareness, perhaps even at the level of sensible feelings. Yet we know that our profound personal orientation toward God involves a depth of our person beyond the grasp of our reflex consciousness. Hence the acts which intensify this orientation will also reach to this depth. Therefore we dare not measure their intensity by our reflexly conscious experience of such intensity, as if intensity consisted of a kind of psychological muscle-flexing. Similarly it would be a mistake to identify our capacity for more intense conversion with a capacity we experience at the level of reflex awareness. And does not one do precisely this when he questions our ability to intensify our conversion more than once or twice a month?

Secondly, even though it may be true to say that an increase of grace takes place only "when a person strives for that increase by a more intense act of penance or love," this should not necessarily lead us to conclude to less frequent confession. For might not such an ultimate striving actually depend on a series of frequent confessions which do not in themselves achieve such intensity? Human growth is not discontinuous. It is easy to believe that we need a series of dispositive actions to prepare us for the type of act which would only occur as the culmination of such a series. In other words, routine acts performed with "equal intensity" can also deepen the stability of love or virtue, and this deepened stability may often be the springboard to greater intensity. This seems to be the way of growth—routinely, unobservably, day by day. This is the way the grass grows and it is the way marriages grow. Is it wrong to think that it is also the way love of God grows?

One could agree with Modras, therefore, that frequency of devotional confession is a highly individual thing and that some, perhaps many, devotional confessions are made in a magico-mechanical way. However, I would not regard the notion of intensity either as the heart of the problem or as the basis for a reduction in frequency. Other more tangible factors seem to govern frequency.<sup>47</sup>

The Apostolic Constitution *Paenitemini*, which completely reorganized the external penitential discipline of the Church, was promulgated Feb. 18,

<sup>47</sup> For some helpful remarks on making confession more meaningful, cf. A. Weigert, "One Art of the Confessor," *Review for Religious* 25 (1966) 484-88.

1966 in *L'Osservatore romano*.<sup>48</sup> The document is a beautiful summary of the Church's convictions about the nature and necessity of penance in general in the Christian life. One of the dominant concerns of the document is that penance, to merit the name, must spring from an interior disposition. In order to emphasize this, *Paenitemini* puts great stress on the personal responsibility and initiative of the faithful. Indeed, it was concern for precisely this personal responsibility which, according to Wilhelm Bertrams, S.J., led to the use of the phrase "substantial fulfilment" to describe the gravity of the law.<sup>49</sup>

Bertrams wrote in *L'Osservatore romano*, two days after the promulgation of the Constitution, what appears to have been a commissioned commentary.<sup>50</sup> He says:

What does "substantial violation" mean? We believe that the expression was deliberately chosen, above all to give greater prominence to the personal responsibility of each of the faithful before God, so that he may fulfil his mortification in a spirit of true sincerity and earnestness without insisting too much on the traditional limits of the distinction between a grave and a nongrave quantity for the violation of a precept. Consequently, a single nonobservance in the matter cannot be regarded as grave, while a repeated, habitual violation of the precept will certainly be regarded as grave.

Hence it must be said that the more sincere and serious one's will to observe the penitence on the days and in the manner established by the Church, the less serious should one consider a partial transgression. The graver the motive which excuses from observance, the less grave is nonobservance. If this reason is truly proportionately grave, all guilt undoubtedly ceases.

Bertrams is saying that the Constitution manifests the conviction that a casuistry of grave and slight *quantity* too easily defrauds penance of its interior spirit. But to regard a single day's violation as serious involves one immediately in this type of calculation. To avoid this, the phrase "substantial fulfilment" has been used to shift the undoubted gravity from the single day to the generality of the precept. The result: only a "repeated and habitual violation" is substantial nonfulfilment. Bertrams does not further specify what that might mean.

This reading of "substantial fulfilment" is presented by M. Zalba, S.J., Msgr. James Madden, G. Rossino, and "A. de B." of *Nouvelle revue théologique*.<sup>51</sup> As to what a substantial violation would concretely be, the ex-

<sup>48</sup> *L'Osservatore romano*, Feb. 17, 1966. The Latin text is also available in *AAS* 58 (1966) 177-98. An English translation is given in *Jurist* 26 (1966) 246-58.

<sup>49</sup> "Eorum substantialis observantia graviter tenet," *AAS* 58 (1966) 183.

<sup>50</sup> *L'Osservatore romano*, Feb. 20, 1966.

<sup>51</sup> M. Zalba, S.J., "La ley de ayuno y abstinencia," *Razón y fe* 173 (1966) 397-402;

pressions are deliberately left vague. A transgression on "one or other day" is not serious for Zalba. Madden says that he has "no desire to discuss how many Fridays in the course of the year would amount to a substantial number," though one could say that he had kept the Fridays if his omissions were occasional. Rossino leaves it at "habitual violation" and says of further numerical precision that "non mi sembra opportuno."

E. Regatillo, S.J., is altogether against this understanding of "substantial fulfilment."<sup>52</sup> Acknowledging that the phrase was chosen deliberately, he insists, however, that its meaning is not that the entire penitential discipline obliges gravely only *en globo*. The gravity applies to each day. His reasons are three. First, the word "substantial" does not mean what Bertrams says it means. Regatillo claims that the preparatory commission *De disciplina cleri et populi christiani*, of which he was a member, discussed whether fast and abstinence should be *sub levi* on each day and settled nothing. It was, he suggests, to avoid any residual doubt on the point that the expression used was chosen. Secondly, Bertrams' "habitual violation" would lead to so many varying interpretations that it would make the law ineffective, especially "if assessment had to be left to the conscience of the faithful." Finally, it is more reasonable that each day be grave because the fasts and abstinences have been reduced in number.

† G. Huguera, S.J., after presenting this difference of interpretation, states his awareness of the growing tendency to interpret ecclesiastical laws according to Bertrams' understanding and concedes that "the legislator could make and impose such a law in this way"—perhaps to reduce the number of grave sins for violations of merely human laws.<sup>53</sup> Has he actually done so? Huguera concedes that Bertrams may well have spoken a rather official message; but because of the great practical impact this interpretation would have on other ecclesiastical and civil laws, he would prefer to await an authoritative declaration or at least a unanimous gathering of authoritative opinions.<sup>54</sup>

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James Madden, "Changes in the Church's Penitential Discipline," *Australasian Catholic Record* 43 (1966) 137-52; G. Rossino, "Breve commento alla costituzione 'Paenitemini,'" *Perfice munus* 61 (1966) 258-62; *Nouvelle revue théologique* 88 (1966) 305-9.

<sup>52</sup> E. Regatillo, S.J., "Nueva ley de la abstinencia y del ayuno," *Sal terrae* 54 (1966) 194-209.

<sup>53</sup> G. Huguera, S.J., "La nueva ley sobre la abstinencia y el ayuno," *Sal terrae* 54 (1966) 323-42.

<sup>54</sup> Off in a corner by himself is Capuchin Bonaventure da Gangi. Not only is a single day substantial, but he specifies that grave matter on such a day would be seventy grams, because this was the milder doctrine taught until now by the authors. As if aware that he is alone on stage and that there are protesting voices in the wings, da Gangi adds: "Some-

Is it not rather disquieting that several commentators have seen in the word "substantial" a mitigation granted by the lawgiver? The same uneasiness is generated by the comments of Huguera and Regatillo. It seems all too easy to see in their remarks a rather voluntaristic concept of positive law—as if the lawgiver decides by fiat whether the thing prescribed is to bind gravely or not.<sup>55</sup> On the contrary, the lawgiver prescribes the thing, and its gravity is determined by its importance to the Christian way of life. It is the task of the responsible Christian (above all, the specialist) accurately to assess this importance.

No one has doubted the importance of external and communal penance, and the Church states her awareness of this in *Paenitemini*. Furthermore it is easy to see how fast and abstinence can retain importance as particular forms of penance.<sup>56</sup> The question is: what is important? I believe that increasingly experts will answer in this case: it is important that one's habitual conduct reflect appreciation and acceptance of this form of penance. By using the word "substantial," then, is *Paenitemini* doing anything more than acknowledging what the informed and sensitive Christian conscience should conclude? Rather than stating a mitigation of law, is not the Constitution only gently reminding specialists to take a long second look at their norms for interpreting obligation in ecclesiastical law—with a renewed appreciation of the responsibility of the individual if law is truly to achieve its aims in the Christian community?

If this reading of the document and especially of "substantial" is correct, then it is clear that this matter is important far beyond the issue which occasioned it. For the spirit behind *Paenitemini* will have repercussions on the reading of all ecclesiastical law and, of course, on the eventual revision of the code. In the meantime the least we can do is avoid the type of casuistry which obscures the interiority of genuine penance.

#### BUSINESS PROBLEMS

Any discussion of the practical problems relating to justice should begin with and constantly return to the positive and open attitudes so charac-

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one could cast ridicule on this number of grams. But until he presents a better way for determining grave matter without destroying or denying its very existence, or evading the question he derides, I do not think one can contest my opinion." Cf. *Palestra del clero* 45 (1966) 372-75.

<sup>55</sup> The point made here is discussed in Joseph Fuchs's "Auctoritas Dei in auctoritate civili," *Periodica* 52 (1963), 3-18, at p. 10.

<sup>56</sup> The Italian bishops have dispensed their people from abstinence except during Lent. In Taiwan full abstinence was restored. These dispositions show how the importance of particular forms of penance varies according to circumstances.

teristic of the pastoral Constitution *On the Church in the Modern World*. The document contains a rather fully elaborated social theory and doctrine of man. One of the positive attitudes referred to is the genuinely creative and Christian concept of justice embedded in the document. Edward Hamel, S.J., has presented a valuable synthetic study of this notion as it is elaborated throughout the Constitution.<sup>57</sup> According to Vatican II, rights and justice are rooted in man's vocation as a personal and social being and therefore are based on the eminent dignity of the human person.

Hamel's brief discussion of the relationship of justice and charity is excellent. Charity brings a perspective to justice totally beyond a sterile juridicism. In the Christian economy "acts of justice are mediations, expressions, and participations of charity itself"—of the charity poured into our hearts by the Holy Spirit. The most basic task of charity toward others is recognition of and respect for their rights. "For there can be no true union of charity except between persons who acknowledge each other as *distinct*." The article has many other helpful analyses, and it would make fine corollary reading to what assuredly must be a basic document in the training of the contemporary priest, the pastoral Constitution *Gaudium et spes*.

For the past few years businessmen and moral theologians have been attempting to project, discuss, and clarify the moral questions inseparably a part of modern business. A nucleus of well-trained and interested specialists has been promoting these discussions. Prominent on the list are Raymond C. Baumhart, S.J., William J. Byron, S.J., Richard Athey, O.P., Thomas F. McMahon, C.S.V., Brother Leo Ryan, C.S.V., Thomas Garrett, S.J., John W. Cousins, C.P., and Henry Wirtenberger, S.J., to mention but a few. The form this has taken is the conference-dialogue involving both moral and business experts.

A single example of this type of exchange is the 1966 Conference on Business Morality, which dealt with the labyrinth of pricing. The morality of pricing cannot begin to be securely assessed without in-depth knowledge of the mechanics of current pricing theory and practice. Administered prices, price leadership, differing industry price structures, government regulations and guidelines—all of these and a host of other complicating factors make the determination of the just price simply harrowing. The results of the Conference, which gave heavy emphasis to the drug and automotive industries, are now published under title of *Justice and Pricing*.<sup>58</sup> The issue raised by all the papers in one form or other is: can the traditional theory

<sup>57</sup> Edward Hamel, S.J., "Justitia in constitutione pastorali 'Gaudium et spes' Concilii Vaticani II," *Periodica* 55 (1966) 315-53.

<sup>58</sup> *Justice and Pricing*, ed. Thomas F. McMahon, C.S.V. (Chicago, 1966).

of just price be applied to the pricing problems of the modern American economy? The answer would be a rather resounding "no."

These conferences were originally conceived as an opportunity for the moral theologian to inform himself of the theories and facts pertinent to a moral judgment. Richard L. Porter, S.J., takes a slightly different point of view.<sup>59</sup> He proposes seminars and workshops for businessmen where outside consultants are brought in. But "the effectiveness of such meetings will depend on the extent to which the businessmen get involved, find and work out moral principles for themselves and preach the value of these principles to each other." Specialists such as economists and moral theologians are available to the businessmen as resource persons, but the ultimate and major responsibility rests with the businessman himself.

If it is the businessman himself who must elaborate, with the aid of resource persons, a morality to fit his dizzily changing world, it is necessary that an awareness of the reality and complexity of his problems become a part of seminary training. For this we need a very special kind of specialist, one well enough versed in both morality and business that he can speak in simple but exact language to the nonspecialist seminarian. There is a growing body of literature useful for this purpose. One example would be Garrett's *Business Ethics*.<sup>60</sup> Further helpful entries can be found in *Economic Ethics Bibliography*, published by the Economics Department of South Dakota State University.

Many of the more difficult problems in business deal with decision-making and therefore are management problems. In a recent volume of *The Annals* totally devoted to moral issues, Arthur Selwyn Miller of George Washington University has discussed the moral problems of top management.<sup>61</sup> He contends that answers to questions about the ethical posture of American business demand reference to and analysis of the corporate nature of business. The giant corporations set the tone of American business. Hence business morality will be corporate morality. But executives and managers of corporations have multiple publics to whom they are responsible: shareholders, employees, consumers, suppliers to the corporation, the public at large, and so on. They must always seek to balance the interests of their several publics. Only a few standards for behavior are provided by officially

<sup>59</sup> Richard L. Porter, S.J., "The Economics of Business Ethics," *Advertiser's Digest* 31 (1966) 1-5.

<sup>60</sup> Thomas M. Garrett, S.J., *Business Ethics* (New York: Appleton-Century-Crofts, 1966).

<sup>61</sup> Arthur S. Miller, "Business Morality: Some Unanswered (and Perhaps Unanswerable) Questions," *The Annals* 363 (1966) 95-101. The volume also has interesting articles on the ethical aspects of insurance, advertising, and union policy.

imposed government rules (e.g., antitrust laws) and by the power position of the unions. Furthermore self-disciplining codes of behavior do not work, because "they would have no effective technique for enforcement and are written in such nebulous language as to leave large areas for interpretation." Miller concludes that until the modern corporation has been absorbed into political and economic theory by systematic analysis, one cannot hope to answer the basic moral questions of upper management.

The problems of middle management are perhaps even more anguishing. Middle managers are those executives who translate general policy and broader planning into workable procedures. In a very helpful study<sup>62</sup> Thomas F. McMahon, C.S.V., has pinpointed these moral problems as problems of pressure: from superiors for compliance, from family for time and affection, from peers in competition for advancement. For example, with regard to the first type of pressure, Fr. McMahon notes that top management can easily exert pressure through the common situations which require that the subordinate (1) produce "or else," (2) act unethically, (3) act ethically but without adequate provision to do so.

When middle managers are faced with a compliance contrary to their own moral convictions, they have three choices: (1) leave the company or resign their positions; (2) conform to their superior's wishes; (3) refuse to cooperate and thereby expose themselves to dismissal, demotion, or horizontal change where pressures are not so keen. McMahon states that most lower-echelon managers solve this type of problem by invoking "company policy." As for resignation, he suggests that "if resignation opens the position to unscrupulous individuals, I wonder if such an action is truly an example of Christian fortitude." McMahon wonders whether such a situation is not often analogous to that of the nurse assisting at immoral operations.

These are but two examples—and good ones—of articles which bring home to the theologian the forbidding complexity of the moral aspects of modern business. What is expected of the theologian in this area? At one point McMahon states that "it is my hope that moral theologians will suggest solutions to the problems of middle managers mentioned above." Perhaps it is only the wording one might regret here. It seems to suggest that the moral theologian should come up with practical moral solutions to these problems. Much more realistic are McMahon's subsequent remarks:

The work of theologians is to enlighten these consciences of businessmen about the moral aspects of their decision-making. Pertinent questions, elaboration of moral principles and the demands of the Christian vocation, and suggestions for alterna-

<sup>62</sup> Thomas F. McMahon, C.S.V., "Moral Problems of Middle Management," *Proceedings of the Catholic Theological Society of America* 20 (1966) 23-49.

tive courses of moral activity seem to fill the needs of businessmen more than do categorical pronouncements on issues of dubious relevancy.<sup>63</sup>

#### CIVIL DISOBEDIENCE

Civil disobedience is increasingly becoming a matter of moral concern. This is a healthy development if for no other reason than that it indicates a salutary respect for law and legal processes. However, the term "civil disobedience" is much more frequently used than clarified. It is applied, for instance, to practices which under analysis are neither precisely disobedient nor always civil. Such ambiguity in the use of the term means that the moral discussion of civil disobedience is often at sixes and sevens. Because one form of protest seems justified and has been called civil disobedience, it is sometimes alleged that all things loosely called civil disobedience are morally acceptable. For this reason one is often dissatisfied with the discussion without being able to pinpoint the source of his dissatisfaction.<sup>64</sup>

Mark R. MacGuigan, Associate Professor of Law at the University of Toronto, had earlier pointed out that there has always been a tradition within Catholic theology allowing for certain forms of disobedience.<sup>65</sup> St. Thomas held that, although per se there is a duty to obey civil law because political authority is derived from God, there are "some cases in which authority is defective in title or exercise and therefore not derived from God, and in such cases there is no obligation of obedience."<sup>66</sup> MacGuigan had indicated that this summary represents only a general attitude toward disobedience and its justification within a particular moral philosophy. It does not consider the forms disobedience might take. This is not to say that Thomas and later Scholastic thinkers did not allow active resistance; clearly they did, as their teaching on tyrannicide attests. But active resistance seems to have been reserved for the usurper of power. Only passive resistance (noncompliance with an unjust command) could be used against the

<sup>63</sup> In the pastoral Constitution *Gaudium et spes* we read: "Let the layman not imagine that his pastors are always such experts that to every problem which arises, however complicated, they can readily give him a concrete solution, or even that such is their mission. Rather, enlightened by Christian wisdom and giving close attention to the teaching authority of the Church, let the layman take on his own distinctive role" (*The Documents of Vatican II*, p. 244). Cf. also *America* 115 (1966) 182-184; *Time* 87 (1966) 82.

<sup>64</sup> An example of the type of statement which is in many respects healthy but ultimately dissatisfying is that of Waldo Beach, "Civil Disobedience and the Churches," *Christianity and Crisis* 26 (1966) 126-27.

<sup>65</sup> Mark R. MacGuigan, "Civil Disobedience and Natural Law," *Catholic Lawyer* 11 (1965) 118-29.

<sup>66</sup> For a recent popularization, cf. Timothy McDermott, O.P., "Must We Always Obey the Laws?" *New Blackfriars* 56 (1965) 418-22.

legitimate ruler who ruled unjustly in a given instance. The Scholastic tradition was developed outside the democratic context and hence did not deal specifically with resistance as a method of suasion.

It is only when nonviolent resistance to law is used as a form of suasion or advocacy that we have what modern writers call "civil disobedience." In the very interesting brochure, *Civil Disobedience*, attorney Richard Wasserstrom points out that the truly interesting thing about civil disobedience is "that its primary function is always an educative one."<sup>67</sup> Or as Harrop A. Freeman puts it, civil disobedience is "intentional action for ulterior reasons or goals,"<sup>68</sup> a democratic technique. For this reason the defense of civil disobedience has often been identified with the urgency of the goal.

The technique of disobedience-as-suasion can be used in a wide variety of circumstances. The general problem then becomes: in what circumstances is it morally acceptable to use violation of law as a form of advocacy? At this point it is only fair to say that this formulation of the question is in itself something of a point of view. It implies that mere advocacy of a just cause is not in itself enough to justify disobedience. Be that as it may, one can only hope to answer the question as stated (or frame it more accurately) if he has first determined the moral status of the individual violation of law in question. There are four points which continually recur in the recent literature. They may help us to isolate the issues and to assess the moral status of individual acts vis-à-vis the law.

1) *The claim of conscience.* All authors admit the duty to follow one's conscience when it forbids an act prescribed by law. In his helpful article on moral pre-emption, Joseph J. Farraher, S.J., discusses the attitude of the state toward conscience claims.<sup>69</sup> Since society is pluralistic and since the state is incompetent to judge the tenets founding conscience claims, the state "should respect any reasonable claim of conscience."<sup>70</sup> Farraher sug-

<sup>67</sup> Richard Wasserstrom, in *Civil Disobedience* (Center for the Study of Democratic Institutions, 1966) p. 18.

<sup>68</sup> Harrop A. Freeman, *ibid.*, p. 7.

<sup>69</sup> Joseph J. Farraher, S.J., "Moral Preemption: The Natural Law and Conscience-Based Claims in Relation to Legitimate State Expectations," *Hastings Law Journal* 17 (1966) 439-51.

<sup>70</sup> *Ibid.*, p. 443. With regard to conscientious objection to war, cf. *The Documents of Vatican II*, p. 292. The Council's statement is practical and does not enter the more problematic aspects of the matter. Some recent literature on conscientious objection: Andrea Piola, "Obiezione al servizio militare e diritto italiano dopo il Concilio," *Justitia* 19 (1966) 12-43; A. Messineo, "L'obiezione di coscienza al servizio militare," *Civiltà cattolica* 1 (1966) 263-67; L. Babbini, "Il Concilio Vaticano II e l'obiezione di coscienza," *Palestra del clero* 45 (1966) 649-50; Alan Geyer, "The Just War and the Selective Objector," *Christian Century* 83 (1966) 199-201; E. N. Beiser, "God and the Draft," *Commonweal* 83 (1966) 631-33.

gests that there should be evidence beyond mere assertion if the claim is to be honored as reasonable. One example of this evidence would be membership in a well-organized religion which publicly teaches the doctrine at variance with existing laws. If there is no sufficient evidence, the state need not honor the conscience claim and the individual is faced with the prospect of violation of law. If the conscience claim is genuine, there is no question of the subjective moral integrity of such violation.

Several authors have insisted that when this situation arises, there is not exactly a legal *right* to civil disobedience. As Bayard Rustin, long-time worker in civil-rights movements, puts it: "When a democratic society has willed through democratic processes to establish law, it is the duty of that society to insist that its members adhere to the law."<sup>71</sup> It is precisely the civil disobedient's willingness to accept suffering cheerfully that constitutes the force of his advocacy and gets other people to think about the wrongs of society.

2) *Procedural violation of law.* This refers to an open violation of law committed to provoke a juridical interpretation. The lunchcounter sit-ins in the South might be a good example of this. Mr. Freeman's long defenses of civil disobedience really seem to defend this type of thing. He shows, for example, that civil disobedience is a recognized procedure for challenging law or policy and for obtaining a court determination of the validity thereof. Furthermore, even when the highest court holds a law constitutional, the right of "disobedience" does not cease, for this would freeze as permanent law the Dred Scott, Plessy, and other decisions which have been reversed.

Several authors reject this as a proper concept of "disobedience." Though such practices are violations of an existing law, they are not, strictly speaking, disobedience. Thus, William T. Sweigert writes:

If the disobedience is under claim that the violated law—for example, a national or state statute or a local ordinance—contravenes the "supreme law" of the land and is, therefore, an "unconstitutional" impingement on some civil right, then, of course, the violation is more apparent than real and the issue must be resolved through the judicial channels provided by the state.<sup>72</sup>

Similarly Darnell Rucker contends that "civil disobedience is not a matter of challenging the legality of a law or of ascertaining the meaning of the law. It is a matter of a man rejecting a moral demand of his society at the same

<sup>71</sup> Bayard Rustin, in *Civil Disobedience*, p. 10. See also William T. Sweigert, "Moral Preemption: Claims of 'Right' under the Positive Law," *Hastings Law Journal* 17 (1966) 453-71, at pp. 461-62.

<sup>72</sup> Sweigert, *art. cit.*, p. 463.

time that he admits the legal right of his society over him."<sup>73</sup> Paul Ramsey and Wasserstrom have made the same point.<sup>74</sup> Therefore, in terms of legality only (and of morality in so far as it is affected by legality), true disobedience must be distinguished from a violation made under a genuine legal claim.

3) *The nature of coercion.* Everyone would admit that real violence must be excluded except in the most extreme circumstances where a society's structure is anarchical anyway. Indeed *civil* disobedience, besides referring to a violation of civil law, connotes nonviolent disobedience. However, some nonviolent acts not only violate a law but in doing so are or can be coercive. Such coercion must be taken into account if one is to judge the moral status of the violation adequately. But not all are agreed on the nature of coercion.

Joseph J. Farraher judged the lunchcounter sit-ins in the South morally justified "provided that the sitters were ready to accept service and pay for it if rendered, and that they were otherwise orderly and clean according to accepted custom . . ."<sup>75</sup> Fr. Farraher attends explicitly only to lack of on-the-spot violence. While few would disagree with his ultimate judgment, it is not clear whether he regards the sit-in as otherwise coercive and to what extent this coercion must be weighed in a moral judgment.

Paul Ramsey believes that it is impossible to distinguish in one's conduct between discrimination and those who discriminate.<sup>76</sup> Therefore, when one lets loose the coercive force of sit-ins and boycotts, however legally justifiable they may be, he also necessarily opposes with nonviolent force the evildoers themselves. Therefore Ramsey insists that for the Christian such forms of protest also and especially involve the ethics of the use of force. After showing that resistance in the form of violent warfare was an application of the basic principle of "neighbor-regarding love," Ramsey suggests that in so far as sit-ins, boycotts, etc. are coercive, they must also be subjected to "the ancient principles and limitations justifying a Christian in taking up any use of force." For Ramsey, therefore, the moral status of these actions is not judged only in terms of legality and absence of on-the-spot violence.

Prof. Harry Prosch of Skidmore College has taken a completely different view of the force involved in violation of discriminatory laws or trespass laws which can be used to buttress discrimination.<sup>77</sup> He sees the very viola-

<sup>73</sup> Darnell Rucker, "The Moral Grounds of Civil Disobedience," *Ethics* 76 (1966) 142-45, at p. 143.

<sup>74</sup> Paul Ramsey, *Christian Ethics and the Sit-In* (New York: Association Press, 1961) p. 41; Wasserstrom, *op. cit.*, p. 18.

<sup>75</sup> Farraher, *art. cit.*, p. 449.      <sup>76</sup> Ramsey, *op. cit.*, p. 104.

<sup>77</sup> Harry Prosch, "Limits to the Moral Claim in Civil Disobedience," *Ethics* 75 (1965) 103-11. A point of view ("body rhetoric") not dissimilar from Prosch's is found in John

tion as a use of force, and he sees force as a weapon leading to absurdity. He explains himself as follows. These actions are claims expressed in action, and the action is one which forces a response. "You are not coercing them by violence. You are merely putting to them a question . . . They must either act or not act in the face of your challenge . . ." Prosch sees this as a use of force, albeit nonviolent. "Even though your action is non-violent, its first consequence must be to place you and your opponents in a state of war. For your opponents have only the same sort of choice that an army has: that of allowing you to continue occupying the heights you have moved onto, or of applying force—dynamic, active, violent force—to throw you back off them." Because the resister has forced his opponent out of the possibility of contending in the nonviolent arenas of moral persuasion and political maneuvering, his tactic is military rather than political. The only force the resister has used, it is true, is the inertia of his own body, but it creates a situation of force, because the opponent must either allow him to protest by disobedience or forcefully carry him away.

Darnell Rucker, in a carefully reasoned response, contends that Prosch has confused *civil* disobedience with defiance of authority.<sup>78</sup> The man who attempts to escape both command and punishment is the anarchist. The civil disobedient peaceably accepts the punishment for his act—a point Prosch has overlooked. And by this oversight he has eliminated what has long stood as the last bastion of the individual against his society short of rebellion.

These considerations on the nature of coercion show how complex is the judgment of this aspect of a transgression of law.

4) *Violation of a just law or ordinance to further a cause.* In discussing civil disobedience, most authors simply suppose that the violation in question is of an unjust law. But because the term "civil disobedience" does not of itself make this clear, some proponents of civil disobedience defend violation of a perfectly just law to promote a just cause or to protest an unjust situation. This is very close to the Gandhian Satyagraha.<sup>79</sup> The publicized suffering of the resister (in our time, jail sentence) is the heart of this form of protest. A good example would be street lie-ins bringing arrest for traffic obstruction.

This form of disobedience has not often been the object of careful study. Two statements are currently available. Sweigert sees this as a form of

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H. Stassen's "The Rhetoric of Student Revolt," *Intercollegiate Review* 2 (1965) 200-207.

<sup>78</sup> Rucker, *art. cit.*, pp. 142-45.

<sup>79</sup> For an extremely interesting account of this, cf. Raghavan N. Lyer, in *Civil Disobedience*, pp. 19-25.

violence directed at the state and others in the state. "To say that unlawful interference with the person or property of others, or with the public property, need, or convenience, is a civil 'right' so long as others affected . . . are not physically injured or their property physically damaged, nor any great commotion created, is, to say the least, an attenuation of the word violence."<sup>80</sup> Such actions, therefore, must be tested by the same principles as are applicable to rebellion. Only a careful distinction between the liberally interpreted civil rights of advocacy and demonstration on the one hand, and civil disobedience on the other, will ultimately protect these civil rights.

Farragher comes to much the same conclusion.<sup>81</sup> He sees this type of activity as a form of pressure put on the general public to correct an abuse in another area and says that it is never justified. The means of pressuring the public to correct certain evils must not include "interference with their rights nor cause them a loss of business or even cause them mental and emotional suffering."

This impoverishing summary of mine reveals at least how misleading it can be to discuss civil disobedience in general without isolating the issues involved in concrete violations of law. This failure to be particular will mean that the moral question will be reduced to the broader issues of contempt for law and defiance of authority on the one hand, or to the overriding natural justice of, e.g., the Negro cause on the other.<sup>82</sup> Certainly these broader concerns will be operative in any adequate moral analysis, but of themselves it is not clear that they decide every issue. There is still a distinction between a worthy cause and the means used to promote it. The means attractive to our instinctive sense of justice must submit to rational reflection if they are to continue to be in the service of noble goals. To defend *any* act of civil disobedience as long as it is done under *some* claim of advocacy is, in my judgment, to defend anarchy. At any rate, discussion of civil disobedience should be viewed as an attempt to insure the success of justice by restricting its promotion to responsible means.

#### OF LIFE AND DEATH

In his introduction to Paul Ramsey's occasional paper entitled *Again, The Justice of Deterrence*, James Finn, director of publications for The Council on Religion and International Affairs, wrote: "No moral philosopher on this side of the Atlantic has given as consistent, long term, and disciplined attention to the ethical shaping of nuclear policy as Paul Ramsey."<sup>83</sup> Anyone

<sup>80</sup> Sweigert, *art. cit.*, p. 464.      <sup>81</sup> Farragher, *art. cit.*, pp. 445-49.

<sup>82</sup> Cf., for example, *Homiletic and Pastoral Review* 65 (1965) 655-61.

<sup>83</sup> Paul Ramsey, *Again, The Justice of Deterrence* (Occasional paper for the Council on Religion and International Affairs; New York, 1965).

familiar with the literature on nuclear policy would admit this. For this reason this section will carry the name of this genial gentleman more frequently than his modesty would permit.

For the Catholic theologian, certainly the most notable recent utterance on war has been that of Vatican II in the pastoral Constitution *Gaudium et spes*. Ramsey's sympathetic and thoughtful essay on the Council's statement finds in the document three successive climactic declarations around which the whole can be organized.<sup>84</sup>

The first of these is the condemnation of any acts of war "aimed indiscriminately at the destruction of entire cities or of extensive areas along with their population." Ramsey does not hide his delight that the principle of discrimination so decisively controls the Council's statement. And no wonder. He has been urging this point of view for years.<sup>85</sup>

The second key idea is the treatment given to the fact and morality of deterrence. Deterrence, it is true, maintains only a "peace of a sort" (*pax quaedam*), and this "peace of a sort" is a good which must be bent toward the better yet to come. Nevertheless deterrence does not fall below the floor of the morally permissible. Ramsey tweaks some of his colleagues "who are liberally on their way to forgetting" Reinhold Niebuhr's statement: "to serve peace, we must threaten war without blinking the fact that the threat may be a factor in precipitating war."<sup>86</sup>

The third great pillar of the conciliar statement on war is the duty of all in the work of political reconstruction needed to change the conditions making war possible. Ramsey sees as the central question behind which the Council wished to put the full weight of its spiritual authority the following: "Can anyone, citizen or political leader, who believes not and labors not for the radical political reconstruction of the nation-state system, can he also be saved?" This is strong language, but anyone familiar with modern weaponry and the Council's statement would have to agree that it is not too strong. One can only think Christianly about war in our time if one's thoughts are an extension of one's passion and search for peace, a point made also by Henri de Riedmatten in his study of the conciliar statement.<sup>87</sup> Or as Lawrence Cardinal Shehan put it in his brief but excellent pastoral letter: "Even

<sup>84</sup> Paul Ramsey, "The Vatican Council on Modern War," *THEOLOGICAL STUDIES* 27 (1966) 179-203.

<sup>85</sup> For theological opinion as it touches this principle, cf. Richard S. Hartigan, "Non-combatant Immunity: Its Scope and Development," *Continuum* 3 (1965) 300-314.

<sup>86</sup> Reinhold Niebuhr, "From Progress to Perplexity," in *The Search for America*, ed. Huston Smith (Englewood Cliffs, 1959) p. 144.

<sup>87</sup> H. de Riedmatten, "L'Enseignement du concile sur la guerre et la paix," *Etudes*, Feb., 1966, pp. 247-56, at p. 247, where he insists that the document's section on peace has "une valeur normative stricte."

though our hands are embattled, then, our hearts must remain steadfastly peace-loving. Otherwise, at the peril of an escalation which could end in annihilation, we may fail to be responsive to the possibilities of reasonable and honorable negotiations."<sup>88</sup>

Joseph L. Allen examines the relevance of the just-war doctrine for modern war.<sup>89</sup> At the heart of the doctrine as applied to modern war Allen sees the teaching on noncombatant immunity. He then imagines a case where only direct city-bombing or its threat would deter. His conclusion: because keeping the rule (prohibiting indiscriminate acts of war) "would produce disastrous results . . . it is at least morally ambiguous to view non-combatant immunity as an absolute rule." He opts for a more "flexible" consequentialist ethics. In his summary Allen states that "some people will choose to be irrelevant rather than to imagine they might ever threaten or attack cities." Many of us would prefer to word this differently as follows: "Some people will see in their refusal to threaten or attack cities a depth of relevance all the more crucial because so often unperceived by the contemporary strategist." Relevance, after all, extends beyond the rather algebraic scenarios of the tactician. If I cannot defend myself except by immoral acts, the only conclusion is that I cannot defend myself.

The Bennett-Ramsey exchange in *America*<sup>90</sup> is interesting because two articulate and highly regarded theologians present positions which, it is safe to say, gather up two of the major currents<sup>91</sup> of Christian reaction to war and especially to war in Vietnam. Union Theological's John C. Bennett contends that our military actions in Vietnam are morally intolerable and politically self-defeating. The moral intolerability he locates in the acts of inhumanity we perpetrate (bombing of villages in South Vietnam, poisoning of crops, and—through our South Vietnamese allies—the torturing of prisoners). This type of thing he describes as "intolerably evil in itself." As if this were not enough, what we are doing is leading us into a political blind alley. Bennett urges that we turn our attention to the presuppositions underlying our policies in Vietnam. These are two: first, an anti-Communist obsession; secondly, our insistence that the struggle there is a test case of wars

<sup>88</sup> Lawrence Cardinal Shehan, "The Christian's Duties toward Peace," in *Catholic Messenger*, July 14, 1966, p. 5.

<sup>89</sup> Joseph L. Allen, "The Relevance of Christian Just War Doctrine for Modern War," in *Aspects of International Order* (New York: Hudson Institute, 1965) pp. 119-40.

<sup>90</sup> John C. Bennett and Paul Ramsey, in *America* 114 (1966) 616-22.

<sup>91</sup> For another current cf. Gordon Zahn, "Catholic Conscientious Objectors: A Portrait," *Continuum* 3 (1965) 329-37; Gulbert G. Rutenber, "Pacifism Revisted," *Andover Newton Quarterly* 6 (1966) 38-52.

of liberation. If we withdraw here, we can expect only proliferation on other fronts. Both of these suppositions he rejects.<sup>92</sup>

Ramsey's rebuttal of the alleged "moral intolerability" centers around the principle of discrimination in acts of war. He believes Bennett is in error both in principle and in fact. He errs in principle because "one should not first define some political or military action as 'intolerably evil in itself' or as 'morally intolerable' and then make ready to perform it under some circumstances." If something is intolerably evil in itself, nothing can justify it. He is factually in error because he has not shown that the central war (as distinguished from peripheral acts) is "evil in itself." Ramsey attributes this to a failure to grasp the nature of guerilla warfare. The insurgent strikes the civil population to subvert it. He strikes as few military targets as possible. This, of course, is totally immoral on any reading. But by fighting between, behind, and over the civilian population, it is *he* who has enlarged the extent of foreknowable but collateral damage done by the counterguerilla. "The onus of the wickedness of placing multitudes of peasants within range cannot be shifted to counterinsurgency," any more than we can blame the Russians for the enormous collateral damage which would result from *our* locating missile pads in the heart of downtown Chicago. Ramsey concludes that "the main design of the counterinsurgency mounted in Vietnam need not be and likely is *not* an inherently evil or morally intolerable use of armed force." As for the self-defeating character of our policy, he offers some rejoinders and qualifications.<sup>93</sup>

The pastoral Constitution *On the Church in the Modern World (Gaudium et spes)* is remarkable for what it chose not to say on the morality of deterrence. It simply noted that the accumulation of arms does serve as a deterrent and then added: "Many regard this state of affairs as the most effective way by which peace of a sort can be maintained between nations at the present time."<sup>94</sup> The morality of nuclear deterrence is still hotly debated.

In *Peace, the Churches and the Bomb* Dr. Walter Stein of the University of Leeds (England) had attacked Ramsey's defense of a deterrent based on fear of collateral damage.<sup>95</sup> Stein referred to this defense as a "radical abuse of

<sup>92</sup> Bennett has also presented these points and others in detail elsewhere: cf. *Christianity and Crisis* 26 (1966) 13-14, 33-34, 69-70, 165-66; also *Christian Century* 83 (1966) 104-13.

<sup>93</sup> For Ramsey's views on policy, cf. *Christian Century* 83 (1966) 909-13.

<sup>94</sup> This need not refer to the type of retaliation envisaged in Herman Kahn's "tit-for-tat" counterercy deterrence. Cf. James C. Fleck, S.J., in *Christian Century* 83 (1966) 680-83.

<sup>95</sup> *Peace, the Churches and the Bomb*, ed. James Finn (New York: Council on Religion and International Affairs, 1965).

double-effect categories." Stein seems to mean that the collateral damage, once it is envisaged as a deterrent, would be directly willed and that this amounts to direct intent of evil that good may come of it. In the extremely interesting occasional paper referred to at the beginning of this section, Ramsey turns to the morality of deterrence in general,<sup>96</sup> and particularly to this objection. He agrees that "collateral deterrence" (deterrence through fear of collateral damage) does involve one in directly willing the deterrent effect, but that this is not necessarily to want or intend the damage itself.

To clarify his point Ramsey uses two analogies. The first is Dr. John Rock's experiments during the course of hysterectomies.<sup>97</sup> Over the years Rock had performed 211 hysterectomies. The operations were scheduled at a time when it was thought that the women would be ovulating. As a result Rock secured 34 ova, ranging from a two-day, two-cell egg to a 17-day ovum. Obviously a certain number of fertilized ova were going to be destroyed in this process. Since these deaths were the indirect effects of a properly targeted surgical action and unavoidable (a factual matter on which Ramsey passes no judgment), he asserts that the doctors could quite licitly "want all the goods in pure knowledge and for medical practice that were the immediate fruits of controlled attention to the indirect killing often involved in hysterectomies." One can bring the indirect, unavoidable deaths scientifically into prospect without directly willing them.

If, of course, Rock and associates had deliberately encouraged those patients requiring hysterectomies to get themselves pregnant shortly before the operation, or if the women had wanted to co-operate by securing in themselves an impregnated ovum, then there would have been complicity in bringing human life under the knife. In this instance death itself would have been radically wanted. It is Ramsey's contention that Stein conceives collateral deterrence in this second way, but he argues that it need not be so conceived.

Ramsey's second analogy, and the one he regards as the closest, is the case of a woman with a scarred uterus which will not carry another pregnancy to term. However, it is supposed that this medical determination is not made at the time of her last cesarean section, but afterward. The required hysterectomy is scheduled, but the woman subsequently discovers that she is pregnant. If the operation is performed, the death of the non-viable fetus would be indirect. However, because of the threat to her child, the woman resolves to attempt to bring it to viability. She is "deterred" by

<sup>96</sup> He also discusses deterrence by the ambiguity of the weapons themselves and by ambiguity about our intentions in their use.

<sup>97</sup> John Rock, M.D., *The Time Has Come* (New York: Knopf, 1963) pp. 184-85.

the “menace” to her child. And she can be deterred without wanting the death of the child. It is precisely the latter that she wants to avoid. She does not want the child menaced, but since the child is irremediably subjected to indirect menace, “she can without any malice at all *want the menace* to help her sustain the courage she will need in the months ahead.” Just so with the menace to populations involved in the prospect of unavoidable collateral deaths.

I believe that Ramsey is unquestionably right in his basic contention that unavoidable collateral deaths need not be directly willed when I accept and desire the deterrent effect their prospect creates. But several points in this intriguing study merit comment.

First, Ramsey has at times worded the matter badly. He is a subtle and exact thinker. But as he hones his thought to precision, he builds hyphenated words, multiple parentheses, neologisms, and qualifications into a mounting tension where release, but not always clarity, is achieved with the period. What I think Ramsey means to say is this: it is morally legitimate to want the enemy to be moved (deterred) by the thought of the damage that may unavoidably and indirectly be visited on him as I perform a perfectly just act of war. To say this, Ramsey chooses the word “menace” and says, for example, that we may “want the menace that is there for its assured pressure.” The word “menace” is ambiguous,<sup>98</sup> and hence the phrase “wanting the menace” will share this ambiguity and confuse rather than clarify the distinction Ramsey is trying to make. It too easily suggests directly intended damage as a threat. This is important, for I think that it is probably here that he has misled Stein and could easily mislead others.

Secondly, analogies are doomed to remain analogies. The difficulty with Ramsey’s second analogy (the woman deterring herself during pregnancy from a hysterectomy) is what it suggests about the meaning and workings of deterrence. Indirect but unavoidable civilian damage associated with my legitimate acts of war can deter the enemy, or deter me from unloosing such a strike. The question is: when we speak of collateral deterrence, are we speaking of deterring ourselves or deterring the enemy? The latter, I should think. We deter him and, if he is capable of such a strike, he deters us. We do not exactly deter ourselves by the damage we might cause him. This

<sup>98</sup> Taken *actively* it can mean that I threaten you with damage and death. The active sense here (I will do something to you) carries the connotation of direct intent. Or it can mean that I want you to be moved by what I may have unavoidably and indirectly to do in the course of a perfectly just act of war. Taken *passively* it can refer to the damage and deaths themselves, either direct or indirect. Or it can refer to the fear and caution that will be present as a result of indirect, unavoidable death.

would be very noble (and is even an essential moral factor in weighing the decision to strike), but is it the way deterrence actually works? If it is not, then Ramsey's analogy has not illumined the problem of collateral damage.

Thirdly, in developing the first analogy (the Rock series of hysterectomies) Ramsey viewed the death of fertilized ova as indirect, hence as morally legitimate if unavoidable. Granted. But *unavoidable* is the issue. Ramsey wrote: "There is no universal affirmative obligation that women requiring hysterectomies should cease from the performance of the marriage act lest they become pregnant." Is there not a clear duty to do all that is reasonably possible to prevent the death of the fertilized ovum? This would indeed mean abstention from marital relations when morally possible if the probable effect of such intercourse would be the conception of human life. The point is important; for otherwise Ramsey is equivalently saying that there is no duty to try to avoid collateral civilian damage by warning the civilian population to evacuate areas around legitimate target sites. I believe there is such a duty whenever this is compatible with achievement of the military objective. This reflection points to the fact that use of collateral damage as a deterrent, while it is perfectly justifiable on paper, is or can be a very dangerous way of thinking in practice.

This is but a sampling of the enormous literature on war and peace. It will have to suffice for the present.

From killing the enemy to killing babies may appear to be an illegitimate jump. Indeed there are many who apparently see no connection between the two. This raises the suspicion that our indignation at the killings-in-combat may be far less *moral* indignation than we believe. Too often the very ones who protest most strongly against all killing in war are the very ones who not only silently tolerate abortions, but plead a liberalization of laws which, on all available evidence, would increase their number. This inconsistency is a curious restriction of humane and liberal thinking.

Francis Canavan, S.J., sees in the rush toward more liberalized abortion laws the workings of a kind of historical inevitability.<sup>99</sup> Infanticide is the next step to be taken. This inevitability is not the outgrowth of the logic of legal processes, for law does not work logically. Rather "it is because all the forces pushing us to this step are already in existence and there seems to be no force that can effectively resist them." The forces listed by Fr. Canavan are: secularism, liberalism, skepticism, distrust of absolute principles, abhorrence of suffering, the mass media, slogans and arguments; and most importantly, the motives for infanticide are already operative in the minds and

<sup>99</sup> Francis Canavan, S.J., "History Repeats Itself," *America* 114 (1966) 738-42.

hearts of many people. He sees all of this as symptomatic of a major shift in the value structure of our society.

Only one cloistered from the literature of the past several years will disagree with Fr. Canavan that it is a veritable campaign-for-abortion that is being waged. Of the countless articles that have come to my attention in the past months, that which appeared in the *Chicago Tribune*<sup>100</sup> followed exactly the structure outlined by Fr. Canavan.

In his straightforward article Herbert Ratner, M.D., sees this campaign at work even in the literature of Planned Parenthood.<sup>101</sup> In its pre-1964 editions of a pamphlet on birth control (*Plan Your Children*) the editors had asked: "Is it [birth control] an abortion? Definitely not. An abortion requires an operation. It kills the life of a baby after it has begun. It is dangerous to your life and health. It may make you sterile so that when you want a child you cannot have it. Birth control merely postpones the beginning of life."<sup>102</sup> These statements are omitted in the 1964 revision, and Ratner sees in the omission a "drastic shift in position."

There has been no lack of suggestions as to what should be done in face of this campaign.<sup>103</sup> Certainly one would hope that an increasing number of serious thinkers would become properly informed on all aspects of abortion. Toward this end it would be helpful to read Russell Shaw's fine booklet *Abortion and Public Policy* and Paul V. Harrington's series of articles.<sup>104</sup> Shaw makes a point (easily overlooked in this discussion) that the state has the duty to protect innocent human life. Existing laws at least represent an attempt in the direction of due process. In this connection one can wonder why those who oppose liberalization of abortion laws are accused of attempting to impose their "religious beliefs" on others. The fact, for example, that Vatican II has made a strong statement on abortion does not constitute one's position a religious belief.<sup>105</sup>

<sup>100</sup> Shirley Motter Linde, "Abortion: The Facts, the Controversy, the National Dilemma," *Chicago Tribune*, Feb. 13, 1966, pp. 16-20 and ff.

<sup>101</sup> Herbert Ratner, M.D., "A Doctor Talks about Abortion," *Report* 3 (1966) 20-22; *Catholic Mind* 64 (1966) 45-50.

<sup>102</sup> As cited in Ratner, *art. cit.*

<sup>103</sup> For example, *Commonweal* 83 (1966) 685; *National Review* 18 (1966) 308.

<sup>104</sup> Russell B. Shaw, *Abortion and Public Policy* (Washington: Family Life Bureau, 1966); Paul V. Harrington, "Abortion," *Linacre Quarterly* 32 (1965) 339-45; 33 (1966) 81-92, 153-169. With regard to psychiatry and abortion, cf. *Medico-Moral Newsletter* 2 (1966); *New Blackfriars* 47 (1966) 374-79; *Homiletic and Pastoral Review* 66 (1966) 643-49.

<sup>105</sup> "Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or willful selfdestruction . . . all these things and others of their like are infamies indeed" (*The Documents of Vatican II*, p. 226).

Whether IUD contraception is certainly abortifacient is apparently still not known with certainty. The matter was unclear at the 1962 Conference on Intra-Uterine Contraceptive Devices—a conference which gathered many of the doctors (e.g., Margulies, Lippes, etc.) actively involved in studies on the devices.<sup>106</sup> Rudolph H. Ehrensing, M.D., has a long two-part article on the IUD, especially its method of operation.<sup>107</sup> He states that there are three possible modes of action: (1) local disruption of the already implanted ovum, (2) prevention of implantation, and (3) decrease of opportunities for the meeting of ovum and sperm, probably by stimulating the peristaltic action of the Fallopian tubes. His conclusion is that “the best evidence to date indicates the IUD acts as a safe and effective contraceptive, with a mode of action that could be recognized by the Church as moral.”

However, even if the IUD operates by preventing implantation of the young embryo, Ehrensing contends that it is not killing human beings. His basis for this assertion: in human procreation and development, the individual mimics or re-enacts the development of the species. Thus “the developing embryo reaches the border of the spiritual in perhaps a few weeks or months, accomplishing what originally took millions of years.”

Julian Pleasants, of Notre Dame’s College of Science, takes strong exception to this analysis.<sup>108</sup> The idea presented by Ehrensing was popularized by Haeckel but it has been discredited by evolutionary biology, comparative embryology, and modern genetics. “The newly fertilized ovum has as much genetic information as the adult it will eventually be.” All it needs from that time on is adequate nutrition and beneficent climate for it to reach its potential. Pleasants is saying that, as far as science is concerned, there is simply no reason for denying the humanity of the newly fertilized ovum.

While Pleasants agrees that the fertilized ovum is a human being, he argues that aborting such a fetus directly is not necessarily direct killing. “The act of abortion leads to the death of the fetus only when modern medicine does not know how to maintain such a fetus outside the womb.” Because medicine may *in the future* be able to support the lives of fetuses outside the womb, Pleasants concludes that abortion is not *now* direct killing. It is passing strange that a student of the life sciences would understand the

<sup>106</sup> *Intra-Uterine Contraceptive Devices*, ed. Christopher Tietze and Sarah Lewit (New York: Excerpta Medica Foundation, 1962). This remains the situation, according to Robert E. Hall, M.D. In “Intrauterine Contraceptives: Questions and Answers,” *Current Medical Digest* 33 (1966) 495–97, he says: “How does the IUCD work? This is still unknown.”

<sup>107</sup> Rudolph H. Ehrensing, M.D., *National Catholic Reporter*, April 20, 1966, p. 6, and April 27, 1966, p. 6.

<sup>108</sup> Julian R. Pleasants, *ibid.*, May 11, 1966, p. 4.

term "direct killing" in such an unrealistic and basically static way. We may eventually be able to repair the heart pierced by a bullet, but until such happy days I am afraid that we shall have to continue to talk of direct killing when bullets pierce hearts and are intended to do so.

#### CONTRACEPTION

What is the status of the traditional teaching on contraception? This is, because of its enormous practical consequences and its unavoidably controversial character, an extremely delicate question. Furthermore one approaches the question with the foreknowledge that his remarks may be obsolete by the time they appear. At this moment in history the compositor of these Notes might well plead that since a papal statement seems imminent, it were better to allow the literature to go unreported. In the post-Sullivan era<sup>109</sup> he might also plead his celibacy. However, since understanding of the issues has been, still is, and will remain at the heart of the problem, neither of the above pleas will find support in sound theological methodology. It appears to me that an accurate answer to the question raised at the beginning of this paragraph must take into account three factors: (1) recent professional literature on contraception, (2) the conciliar statement, and (3) Pope Paul's statement of 1964.

The literature on contraception shows no tendency to abate. Quite the contrary. During the past semester it has been huge.

What are the issues involved in the contraceptive discussion? It has become increasingly obvious that they reach far beyond the moral liceity of contraceptive acts. They touch, for example, the nature of the Church and the teaching magisterium, the knowledge of natural law in general, the theological import of *consensus fidelium*, and the meaning of doctrinal development. Elsewhere I have tried—certainly not without revealing the limitations of a point of view—to develop these larger issues.<sup>110</sup>

In a remarkably short space Denis O'Callaghan has managed to summarize very accurately the theological differences of opinion in the Church.<sup>111</sup> He sees these differences as centering around principle, tradition, and authority. Indeed a reading of current literature would simply provide footnotes to his valuable summary. A brief sample will illustrate this.

Bishop Josef Maria Reuss continues to argue against Demmers, Kraus,

<sup>109</sup> Dan Sullivan, "Beast in the Belly vs. Union with the Beloved," *National Catholic Reporter*, June 29, 1966, p. 6.

<sup>110</sup> Richard A. McCormick, S.J., "Practical and Theoretical Considerations," in *The Problem of Population* (Notre Dame: University of Notre Dame Press, 1965) pp. 50-73.

<sup>111</sup> Denis O'Callaghan, "Dilemma in Birth Control," *Irish Ecclesiastical Record* 105 (1966) 232-45.

and Günthör that it has not been shown that every act of sexual union must be somehow ordained to procreation.<sup>112</sup> Hence he insists that the procreative orientation of coitus does not play a decisive role in the solution of the problem of contraception. L. Beirnaert also challenges the ordination of each individual coital act to procreation.<sup>113</sup> When one considers both the natural infecundity of the vast majority of sexual acts and the specifically human character of procreation ("the child is the fruit of dialogue"), Beirnaert contends that it becomes clear that the procreative aspect of coitus is not tied to individual acts.

Contrarily E. Garrigou sees marital intercourse as of itself apt for procreation and apt to express the mutual gift and love of the couple.<sup>114</sup> These two inbuilt purposes are inseparably united, so that "all contraception constitutes a desacralization of love. Voluntarily to separate the natural expression of love from its openness to life is to reduce the mutual self-gift to a simple possession."

Bernard Häring, C.S.S.R., continues to focus his attention on the more general issue of responsible parenthood.<sup>115</sup> He very correctly distinguishes responsible parenthood from the cold reckoning of mere economic planning. John C. Ford, S.J., repeats his conviction that "the Church will not and cannot accept a radical revision—that is, a substantial change—in her basic traditional teaching."<sup>116</sup>

John T. Noonan contends that in so far as authority is concerned (scriptural, patristic, conciliar, papal), the condemnation of usury is more impressive than that of contraception.<sup>117</sup> He does not deny the authoritative character of the teaching on contraception, but wonders—in the light of our past experience with usury—how it might best be approached. He suggests that

<sup>112</sup> Josef Maria Reuss, "Zeugungsziel und eheliche Vereinigung," *Der Seelsorger* 36 (1966) 249–59. Reference to Demmers, Kraus, and Günthör can be found in Reuss's article.

<sup>113</sup> Louis Beirnaert, "Régulation des naissances et sexualité humaine," *Etudes*, Jan., 1966, pp. 21–31.

<sup>114</sup> E. Garrigou, "Immoralité de la contraception," *Ami du clergé* 76 (1966) 207–8. The same point is put in the form of a question by Vienna's Karl Hörmann; cf. "Moraltheologische Sonderbehandlung der Sterilisation?" *Theologisch-praktische Quartalschrift* 114 (1966) 31–35. Cf. also William F. Drummond, S.J., "Contraception Frustrates Nature," *Catholic World* 203 (1966) 202–6.

<sup>115</sup> Bernard Häring, C.S.S.R., "Responsible Parenthood," in *The Vatican Council and the World Today* (Providence: Brown University, 1966), pages not numbered.

<sup>116</sup> John C. Ford, S.J., *ibid.*

<sup>117</sup> John T. Noonan, Jr., "Authority, Usury and Contraception," *Cross Currents* 16 (1966) 55–79. See also "Contraception," *Catholic World* 203 (1966) 153–56, where Noonan repeats in popular form some of the same ideas.

we must treat the absolute prohibition of contraception as a working rule but not as unchanging moral law. Specific moral rules enacted by the Church should be taken as sure guides for the periods for which they are enacted, but "they are not beyond reexamination and revision to preserve their purpose and to protect the permanent goods they safeguard."

Perhaps these examples will suffice to show that much recent literature merely repeats points previously made or pursues nuances previously suggested. The same is not true of the interesting article by R. S. Pendergast.<sup>118</sup> Fr. Pendergast begins by insisting that the structures of the world are indeed normative for man, and in this sense the traditional analysis was fundamentally sound. But what do the structures of the world tell us about how man's sexual activity can best further the work of building the world which God has given us? The answer given by the traditional analysis did not adequately answer this question. It attributed a finality to the *sexual mechanism* as such. This is erroneous, because mechanisms do not have finality; they simply do what they must do and are not normative for anything. Pendergast does not reject finality. Rather it is his thesis that only if we attend to the evolutionary concept of man do we enlarge the context sufficiently to determine this finality adequately. Once we have done this it will be clear, he contends, why a mechanistically conceived finality must be rejected and also why an analysis of contraception based on such finality is inadequate.

To enlarge the context of thought, Pendergast points out that evolutionary variations occur in the interests of survival. That is, some variations have greater survival value than others, and therefore are selected and propagated. In man it is the entire pattern of sexuality and conjugal life which has survival value, and it is this entire pattern which man must use his intelligence to further, not just one part of it (scil., procreation). Furthermore survival is survival in an environment and in harmony with that environment. Hence the purpose of man's sexual powers must be a pattern of action compatible with, harmonious with, the environment in which he lives.

Against this general background, Pendergast states that the over-all "substantial" purpose for man's sexual powers is the procreation and rearing of an ecologically optimum number of high-quality offspring. But this general purpose is specified in different environments. A birth rate which would have been optimal one hundred years ago no longer is, but it rather tends to bring man into conflict with his environment. Therefore the finality of

<sup>118</sup> R. S. Pendergast, S.J., "Some Neglected Factors of the Birth Control Problem," *Sciences ecclésiastiques* 18 (1966) 205-27.

sexual powers can be put as follows:

The organs and tissues which under one aspect constitute a sexual mechanism have genuine finality only insofar as they express and realize the general purpose for which the universe produced them, namely, the total pattern of conjugal life, and the particular specification of that general purpose which the intelligence recognizes as reasonable in relation to the here-and-now state of the world around them.

This being said, Pendergast concludes that the ultimate test of the worth of a sexual act is indeed its finality, but in this larger sense, scilicet, "whether it serves the purpose for which the universe produced man's sexual structure."

Pendergast next turns to the liceity of contraception. The sexual gift of one person to another must have real value. The act will have value, he says, if it contributes in a positive way to the pattern of sexual life between the spouses. All the coital acts should contribute to uniting the spouses in a procreative relationship, that is, a love relationship which is given a special character by the fact that it is intended to result in procreation and full education of an optimum number of high-quality human beings.

What acts actually contribute to uniting the spouses in this procreative relationship and build up their conjugal attitudes?

A morally good sex act must confirm the man and woman in their reproductive roles by either commemorating or foreshadowing occasions on which those roles are realized more fully in intercourse that is actually fruitful (insofar as the intention of the parties involved is concerned). An act in which the parties play roles that are essentially the same as they would play in a homosexual relationship is intrinsically evil because it goes contrary to the finality of sex.

The question which logically occurs here is the following: what acts allow the couple to play roles which are truly conjugal (and not homosexual)? Pendergast answers: those which do not disturb the symbolism of the act. If they disturb this symbolism and to the extent that they do, justifying causes are required for their use.

Pendergast's article is carefully wrought and deserves serious attention. It does not simply reject a traditional analysis by captious and ultimately confusing debating techniques, but brings to the discussion a dimension (evolution and its implications) not present in previous literature. I should like to put a single question to Fr. Pendergast in the hope that he will treat it more in detail at a future date: what constitutes the symbolism of the

act? His own analysis thins out when he deals with this question; unless I am mistaken, it is a crucial point.

What did the Council say about contraception? This has been the object of a lively debate. Certainly the Council reaffirmed the teaching on contraception. But what does "reaffirm" mean? Several theologians understand this reaffirmation as a simple condemnation. This seems certainly to be the position of M. Zalba, S.J.<sup>119</sup> Unless I misread him, this is also the position of John C. Ford, S.J.<sup>120</sup>

However, others have seen this "reaffirmation" in a different light. They have seen the conciliar statement as a reminder that the tradition is with us, and that we cannot discuss the matter without taking cognizance of this tradition. The famous footnote 14, these authors would contend, simply calls attention to this tradition as the starting point for any realistic contemporary discussion. In their own way John L. Thomas, S.J.,<sup>121</sup> Gregory Baum, O.S.A.,<sup>122</sup> Donald Campion, S.J.,<sup>123</sup> and others have presented this approach to the Council's statement. It seems that John J. Lynch, S.J., is not far from this understanding of the document when he writes: "It would be reading entirely too much into the conciliar Constitution to maintain that the doctrinal status was affected in any substantial way by Vatican II."<sup>124</sup> It was this second sense of "reaffirmation" that I had in mind when I wrote in *America*: "The document, as everyone knows, did not decide the 'contraceptive question' simply because it did not intend to . . . Thus no reading of the conciliar statement that attempts to squeeze from it either a resounding affirmation or a practical change on contraception will be very realistic."<sup>125</sup> The very intricacy of Ford's expert presentation of an opposing view

<sup>119</sup> M. Zalba, S.J., "De dignitate matrimonii et familiae fovenda," *Periodica* 55 (1966) 381-429. He refers to the conciliar statement as a "ratificationem documentorum istorum" (pp. 423-24) and adds (in footnote 32) "improbavit denuo improbatas vias quas memoravit." Throughout the article he rejects completely the idea of the existence of a practical doubt where contraception is concerned.

<sup>120</sup> John C. Ford, S.J., in *America* 114 (1966) 103-7 and 553-57.

<sup>121</sup> John L. Thomas, S.J., "What Did the Council Conclude on Contraception?" *America* 114 (1966) 294-96.

<sup>122</sup> Gregory Baum, O.S.A., "Birth Control—What Happened?" *Commonweal* 83 (1965) 369-71.

<sup>123</sup> Donald Campion, S.J., in *The Documents of Vatican II*, p. 256, n. 172.

<sup>124</sup> John J. Lynch, S.J., "The Contraceptive Issue: Moral and Pastoral Reflections," *THEOLOGICAL STUDIES* 27 (1966) 242-65, at p. 249.

<sup>125</sup> Richard A. McCormick, S. J., "The Council on Contraception," *America* 114 (1966) 47-48. It was this idea which was clumsily worded as follows: "The constitution On the Church in the Modern World says nothing explicitly about contraception." It should have read: ". . . says nothing explicitly of any great significance about contraception."

corroborates this reading. If the Council intended to condemn contraception in any significant way, one can only conclude that it failed to execute its intent.

As to the June, 1964 statement of Pope Paul VI, several remarks are in place. First, I believe that Ford and Lynch are unquestionably correct in their contention that this document referred especially to the pill. This was the issue at the time, and Paul VI addressed himself above all to that issue.

In the second place, it seems difficult to maintain that the statement was merely disciplinary. Why? For two reasons. First, one can doubt the competence of the Church to establish disciplinary decrees to regulate the intimate sexual lives of the faithful. Secondly, a disciplinary decree would have, in the circumstances, made little or no sense. As everyone knows, disciplinary decrees, like Church laws, are subject to excusation through proportionate reason. As disciplinary, the decree would have bound only in so far as there was no legitimate excusing cause. As soon as a couple would experience hardship from its observance (and what couple would not?), it would cease to bind them. Practically this would mean that Pope Paul had issued a disciplinary decree which would not bind in at least very many cases—hence which would be practically meaningless. One is hesitant to accuse the Supreme Pontiff of perpetrating an all but meaningless decree.

The statement was, therefore, a doctrinal one at least in its basic assertion. Its basic assertion was the present validity of norms established by Pius XII. "We say frankly that We do not so far see any adequate reason for considering the relevant norms of Pius XII superseded and therefore no longer obligatory." This was an authentic but noninfallible assertion by the Pontiff that there were no sufficient reasons in 1964 for modifying the norms of Pius XII. But he immediately added: "They should, therefore, be regarded as valid, at least as long as We do not consider Ourselves obliged in conscience to modify them." What is the present import of this statement?

Many interpret this as meaning that the norms of Pius XII must be said to be valid and binding in conscience unless and until the Pontiff says otherwise. On this understanding, these authors have found it impossible to grant the status of probability to opinions proposing a different point of view than the traditional. Or again, they have found it impossible to admit the existence of any practical doubt where contraception in general and contraception by pill in particular is concerned.

Without for the moment asserting the probability of any opinion or the existence of any practical doubt, I should like to offer an alternate approach to the statement of Pope Paul VI. The Pontiff must be understood to be

asserting three things. (1) At the present time (1964) the arguments against the norms laid down by Pius XII are not persuasive or sufficient to bring traditional teaching into doubt. As noted above, this is a noninfallible but authentically magisterial declaration and will have practical effects for those who count it a privilege to share the enlightenment which Church teaching brings to human affairs. (2) As long as the arguments remain unpersuasive, these norms must be regarded as obligatory. (3) We (Pope Paul) are the *ultimate* judge as to whether the arguments and analyses against traditional norms are persuasive and conclusive.

But the statement cannot mean that only if and when the Pope speaks will it become clear that arguments are sound and persuasive. It cannot mean this simply because it could become clear that former arguments and positions are inadequate even without a papal statement. Furthermore, if the Pontiff were going to issue a modification of traditional teaching, such a modification would be plausible only on the supposition that it had already become clear *before his statement* that traditional teaching was inadequate. Certainly the Pope would not wish to reserve to himself the ability to recognize this clarity. And if it has become clear even before a papal statement, then can there be any objection to a couple's use of this clarity in their own conjugal life? Hardly.

The question, then, reduces itself to a matter of fact, to an assessment of the force of new (since 1964) analyses and arguments. Are these sufficiently cogent to have superseded the norms laid down by Pius XII—and also Pius XI—or at least to have rendered them doubtful?

There are many theologians who believe that recent analyses, together with the beginnings provided even before 1964, are sufficient to establish at least the probable moral liceity of contraception. It is not clear to me whether they mean by this (1) only that traditional arguments are inadequate or (2) that, even beyond this, it can be shown persuasively that contraceptive acts are positively permissible as justifiable by a sound and consistent analysis of conjugal intimacy. The point is important. If it is clear only that traditional arguments will not support the traditional conclusion, one might only be able to conclude (given the strong presumption in favor of the traditional position) that theologians had not done their homework sufficiently well. This is all the more understandable in light of the strong curial controls which, in the view of many, prevented adequate free discussion of this matter for a fairly prolonged period.

At any rate, it is easy to see how many priests might share the feelings of Msgr. Ralph J. Tapia when he says that "one might still be tempted to

wonder, notwithstanding contrary opinions, whether the existing laws on contraception are the object of a purely theoretical doubt, which is admitted by all, or whether a practical doubt—ultimately freeing conscience—may legitimately be posited.”<sup>126</sup>

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<sup>126</sup> Ralph J. Tapia, “Burning Issues of Schema 13,” *Homiletic and Pastoral Review* 66, (1966) 739–53, at p. 747. Msgr. Tapia has, I believe, worded his point unhappily when he says that “the main doubt revolves precisely around the divine or human origin of such laws.” It would be more accurate to say that the substance of the law is certainly divine, although it may be questionable whether we have captured that substance in our formulations. Tapia’s cautious insinuation that a practical doubt might surround traditional Catholic teaching on contraception should not be confused with the pastorally oriented remarks originally attributed to Julius Cardinal Doepfner (cf. *Documentation catholique* 63 [April 3, 1966] 669–70). In a letter to John Cardinal Heenan, Cardinal Doepfner points out that the remarks were not his own, but directives which appeared, not without his knowledge, for the use of marriage counselors. As for the content of the directives, “il s’agit uniquement d’un jugement subjectif porté sur l’attitude de personnes mariées qui s’efforcent honnêtement de vivre conformément à la loi de Dieu, mais qui éprouvent des difficultés de conscience en raison des circonstances concrètes de leur vie” (*Documentation catholique* 63 [May 15, 1966] 960).