CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY: JANUARY–JUNE, 1967

OF PRINCIPLES AND DECISIONS

Vatican II suggested that "the ecumenical dialogue could start with discussions concerning the application of the gospel to moral questions."[1] Perhaps the Council was thinking of concrete moral questions such as the problem of racial justice, the problem of poverty, the problems of human sexuality, etc. However, such dialogue hardly begins when it happens upon the more fundamental problem of methodology. This is what the rather tired old discussion on situation ethics is all about. *Pace* Joseph Fletcher, it is far less concerned with Bertha's abortion than it is with the presuppositions of all of Bertha's decisions. It is both challenging and attempting to clarify the starting points for moral discourse. It is important to realize this; for if we reduce the discussion to a quibble over a few concrete norms, we miss its point and therefore its potential advantages.

Earlier, rather bellicose tactics ("legalist-relativist," "juridicism-antinomianism"[2]) are tending to disappear in favor of a calm attempt to understand what others are saying or trying to say. Such open and sincere attempts to understand can only lead to enrichment—whether this translates as honest disagreement, or reappraisal and eventual modification of one's theological categories.[3] Therefore, instead of casting up desperate alternatives and deepening the immobilism inseparable from extreme positions, recent literature appears to be engaged in the more creative task of balancing and unifying. This has manifested itself in at least two ways: the synthetic-conciliatory type of article, and the appearance of several attempts to formulate new principles.

First some examples of the former. Frederick S. Carney sees three basic positions in Christian ethics (principle at the center of Christian moral life; directional norms in Christian ethics; the relation of virtue to context) and contends that each of these basic positions has been arguing for something very important to the structure of moral decision.[4] In any adequate

[1] *The Documents of Vatican II*, ed. Walter M. Abbott, S.J. (New York: Association Press, 1966) p. 365.

[2] For an excellent treatment of the Pauline theology of law, cf. Joseph Fitzmyer, S.J., "St. Paul and the Law," *Jurist* 27 (1967) 18–36.

[3] A recent example is Norman H. G. Robinson's "Agape and Agapism," *Canadian Journal of Theology* 13 (1967) 79–85.

[4] Frederick S. Carney, "Deciding in the Situation: What Is Required?" *McCormick Quarterly* 20 (1967) 117–30.

theory each of these features must play its role. Nearly everyone will have reservations on Carney's suggestions as to how each of these elements can be understood to function within a single theory. However, the synthetic attempt is itself perhaps the most significant thing about the paper.

Louis Dupré examines two forms of situationism, one with a philosophical inspiration, one with a theological.[5] Each of these lines of thought he confronts with what he calls "objective" ethics. After presenting argument and counterargument, Dupré concludes that the "confrontation between objective morality and situation ethics calls for a theory that combines the subjective-creative with the objective-rational element of freedom. No moral system in the past has done full justice to both these elements." Dupré seems to be suggesting that situation ethics and objective morality represent only aspects of a totality and therefore that a dynamic concept of nature and a personal relation to God are not incompatible with absolute moral objectivity.

The adjustment Dupré calls for in both lines of thought strikes me as balanced and moderate. But it will probably appear to some as a sneaky bit of intrinsicalism. There is no question, for instance, where Dupré stands on one of the issues which, rightly or wrongly, is constantly catapulted into the heart of this discussion: the question of absolute concrete norms. He insists that the distinction between universal principles and less universal application of these principles "by no means implies that all concrete moral precepts allow of exceptions. Some acts are always and under any circumstances destructive of an essential human value." He gives adultery as an example.

John G. Milhaven, S.J., and David J. Casey, S.J., have presented a very useful summary of the theological background of contemporary contextualism.[6] They first summarize the works of its Continental precursors, then detail the position of individual contextualists such as Lehmann, Sittler, H. Richard Niebuhr, and Fletcher. The survey ends with brief sketches of the orientation of men like James Gustafson, John Bennett, and Paul Ramsey. The coauthors conclude that "a first view suggests that there is much here that could enrich the Catholic tradition and much that could be enriched by it." This is assuredly the case. Since Milhaven and Casey have crammed an enormous amount into a short space, it might be ungracious carping to suggest that they seem somewhat clearer on how contemporary contextualists could enrich Catholic tradition than vice versa.

[5] Louis Dupré, "Situation Ethics and Objective Morality," THEOLOGICAL STUDIES 28 (1967) 245–57.

[6] John G. Milhaven, S.J., and David J. Casey, S.J., "Introduction to the Theological Background of the New Morality," *ibid.*, pp. 213–44.

Much of the ground covered by Milhaven–Casey is spelled out in terms of the basic motifs or emphases in contextualist literature by James B. Nelson (United Theological Seminary of the Twin Cities).[7] Nelson concludes his careful summary by suggesting that further dialogue is needed, not only between contextual ethics and the behavioral sciences, but between Protestant contextualism and Catholic thought.

In an interesting ecumenical effort, George G. Christian, O.P., and Ronald E. Whittall, speaking out of two different traditions and tendencies, assert that the controversy which has arisen between supporters of a natural-law morality and those espousing a situation ethic is pointless.[8] They suggest that quite possibly both sides are speaking of the same moral reality and trying to convey the same message, but that they begin with a different logical framework and language. After separate position papers which, given their brevity, are hardly totally adequate, they attempt to reconcile the differences in their approaches through a doctrine of Christian personalism. It is their conviction that conscience is the actual locus for the encounter of natural law and reasonable (prudential) judgment of the circumstances.

It would be hasty and eventually unfruitful, I believe, to conclude that the only difference or even the major difference in contemporary discussions of contextualism is one of language. It might be much nearer the truth to say that increasingly the difference appears to be one of emphasis. Whenever we emphasize one aspect of moral decision, we generally fail to take sufficient account of another.[9] Our failure becomes all the more pronounced and incorrigible when this single emphasis comes under attack and becomes an object of defense. Defensive attitudes have never been anything but notoriously poor guides to theological clarity and balance. Contextualists have emphasized one aspect of moral decision, natural-law proponents another. It may be a huge oversimplification to put it this way, but it seems that far more than we have sometimes realized we all are and must be contextualists; and we all are and must be adherents of natural law, even if we eschew the name.

Contextualist James Nelson has illustrated this, perhaps unwittingly, in a thought-provoking article.[10] After discussing the assumptions of the

[7] James B. Nelson, "The Moral Significance of the Church in Contemporary Protestant Contextual Ethics," *Journal of Ecumenical Studies* 4 (1967) 66–91.

[8] George G. Christian and Ronald E. Whittall, "Natural Law and Situation Ethics," *Insight* 5 (1967) 4–11.

[9] Some commentators have seen an example of this in John G. Milhaven's "Be Like Me! Be Free!" *America* 116 (1967) 584–86.

[10] James B. Nelson, "Contextualism and the Ethical Triad," *McCormick Quarterly* 20 (1967) 104–16.

contextualist method,[11] Nelson turns to the method itself and does some balancing. With Gustafson he notes that some (e.g., Sittler) have become contextualists because of an understanding of the God whose actions toward and claims upon men are always concrete and specific. The contextualism of others (e.g., H. Richard Niebuhr) is rooted in a social and responsive understanding of selfhood. Nelson believes that regardless of where one begins, the other two elements of the ethical triad (God, self, neighbor) are immediately involved. Hence he argues for a contextualism based upon a richer understanding of this triad.

For example, if moral decision depends upon the interpretation of and response to God's action, it also depends on my assessment of my neighbor's need. Here Nelson is especially perceptive. He insists that the neighbor's need may or may not be identical with his subjective feeling or desire. More generally, the neighbor's need is defined by his potentialities. But such potentialities are not self-evident. "Thus, the neighbor point of the triangle is driven back to the God point, for it is not only through scientific investigation but also through God's revelation as Creator that we know the potentialities of created being; it is not only through interpersonal communication but also through God's revelation in Jesus Christ that we know what constitutes true man and authentic human need." This is not only good contextualism, but it could stand as the manifesto of the contemporary Christian natural lawyer.

Similarly, Robert O. Johann, S.J., has provided what could serve as a corrective paradigm in current discussions.[12] Rejecting the crippling automatism involved in the notion that the moral life is simply a matter of bringing our choices into line with pre-established principles, he insists, however, that genuine personal choices always involve, at least implicitly, the adoption of a principle of conduct. "To be concerned, therefore, about rules of behavior is not to be morally hidebound. It is an effort, rather, to bring out the full implications of our choices and to see if, then, we still want to make them."[13]

[11] One such assumption is a relational value theory. This means, Nelson says, that value does not exist in and of itself apart from relationships. He cites Fletcher's statement as asserting the same thing: "Good and evil are extrinsic to the thing or action. . . ." It seems that these are totally different statements. One can admit that value does not exist apart from relationships without admitting that it is totally extrinsic to action. This is so because some actions, at the level of their external concreteness, have a stable relational significance and therefore constitute a part (not the whole) of the relationship in which value can exist. In this respect cf. Louis Janssens, *Mariage et fécondité* (Paris: Duculot, 1967) 111–12; THEOLOGICAL STUDIES 27 (1966) 616; Thomas Wassmer, S.J., *America* 117 (1967) 132.

[12] Robert O. Johann, S.J., "Rules and Decisions," *America* 117 (1967) 61.

[13] Johann refers in the course of his essay to the "dwindling defendants of natural law

These are but a few examples of the type of literature which will probably increase in the near future. Others have approached the practical problem of decision-making, especially in difficult circumstances, by attempting to formulate new practical principles. We shall mention three here: the principle of tension, the principle of overriding right, and the principle of compromise.

Peter Chirico, S.S., has attempted to discover a third way which will do justice both to Christian moral tradition and to contemporary insights.[14] He finds this third way in a "tension morality." It is Chirico's contention that because of concupiscence man is incapable of affirming totally "his own being, his relationship to other men, and ultimately his relationship to God." He can only move toward such affirmation. Man's internal incapacity is externalized from time to time in concrete situations in which the various strands of the moral law are so interwoven that the performance of one imperative of the law renders the performance of another morally impossible. Thus the tension. In such circumstances the Christian's duty is to recognize and affirm (internally) all the values involved, and to attempt to implement them externally in so far as possible. The situation must be viewed as one of challenge to grow, to overcome gradually one's incapacity to the point where all values can be affirmed both internally and externally.

An example of the "tension" situation envisaged by Fr. Chirico is that wherein I am confronted with the obligation to speak the truth and the obligation to protect my neighbor's reputation by hiding the truth. Here are two values: my inner need to express myself truthfully, my concern for my neighbor's reputation. "Since I am morally incapable of manifesting these two values in the same response, I tell a simple untruth; for of the two values, the neighbor's reputation outweighs the moral imperative to be truthful."

However, Chirico does not regard such conduct as simply proper. Of the evasive tactic he says: "It is an untruth. It is a perversion of the expressive faculty." The only way one can avoid the harm involved (gradual loss of honest expressiveness) is to realize "that telling untruths, even in the circumstances involved, is an immoral aspect of a concrete act that must always be internally detested and externally avoided to the extent that this is possible." Why? Because one who lies, even for a good cause, helps make himself a liar. He harms himself. He can only counterbalance

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theology." Would it not be more accurate to refer to the dwindling defendants of a *certain type* of natural-law theology?

[14] Peter Chirico, S.S., "Tension, Morality, and Birth Control," THEOLOGICAL STUDIES 28 (1967) 258–85.

this harmful aspect of untruthful speech by recognizing the elements of the problem, affirming all the values (internally) in the situation, recognizing the real significance of the tension situation as revealing his own weakness and the need to grow. Finally, when a Christian does what he can in these situations, "there is no sin, for there is no wilful turning away from God and creation."

Chirico applies this principle of tension to the contraceptive situation. A contraceptive act is, he believes, always wrong "because it is a conscious attempt to deny life-giving capacity to an act that is directed toward life-giving." It is wrong because "it does personal harm to the moral human beings who practice it." That is, it lowers their reverence for life. However, this evil effect of the contraceptive act can be minimized, but precisely because contraception is recognized as evil—"just as the evil effects of lying on one's personality are minimized precisely when one recognizes the evil of lying and does so [lies] only reluctantly." Now, in married life there are situations where it is morally impossible to affirm externally all the values of married life, values one is held to affirm (e.g., the personal relationship of husband and wife, the procreation of children, the upbringing of children). In such a dilemma "their concrete contraceptive acts of intercourse have positive value in that they truly manifest the concern of the spouses for one another and their mutual love for their children, but at the same time the specifically contraceptive aspect of these acts does them personal harm. The act considered in its totality is not simply good but ambivalent; it is permitted because of the moral incapacity of the parties. . . ."

In summary, Chirico sees his "tension principle" as representing a position midway between what he calls the absolutist and the situationist. With the absolutist he insists on the existence of absolute moral norms whose infringement is always wrong "because conscious infringement always involves moral harm to persons." With the situationist he agrees that there are times when a person may contravene these absolutes. A person may do this without sin not because these imperatives have lost their validity in the specific case (as the situationist would claim), but because the person is in a moral dilemma in which he is morally incapable of living up to all the imperatives of the moral law. The act *in concreto* is without blame, even though there are aspects to it that contravene moral absolutes.

There are certain aspects of this fascinating paper which are very attractive. For example, it relates concrete moral norms to human weakness in a way which is very consoling to those of us who identify easily with Trent's declaration (*DB* 792) about concupiscence: "fatetur et sentit." Further-

more, it does indeed bring more than an *ad hoc* casuistry to some urgent modern problems. However, it seems that Chirico's "principle of tension" is not without problems. I see them as two: the suppositions of the principle itself, and its application to contraception.

As for the principle, there are times, Chirico asserts, when one must perform an act *with immoral elements in it* if one is to realize obligatory values in one's external conduct. Precisely here a problem arises. Chirico seems to suppose that unless an external act achieves all possible values, it is morally evil, in the sense that it contains morally evil elements. Does this not mean ultimately that he has measured the objective moral quality of an act by its relation to an individual value? Should not this basic moral quality, the moral specification, be derived rather from the relation of the act to the whole hierarchy of values? It would seem so.

Perhaps it can be put as follows. Because we are finite, all our acts are metaphysically imperfect. They do not and cannot embody all values. This radical metaphysical limitation will obviously manifest itself at the level of concrete external activity. An act of worship is neither an act of chastity nor an act of social justice. Furthermore, some acts will include even material privations. This means that the moral question is not whether an act includes some material defects or privations, but whether in its concreteness it relates properly to the hierarchy of values. It is this relationship to the hierarchy of values which gives the act its objective moral significance. If the proper hierarchy of values is observed, the act is objectively moral, even though it fails to incarnate all values and to slough off all privations. It is this relationship to the totality of value which explains why moralists have always found it much more than verbalism to distinguish between "taking another's property" and "theft," between "material untruth" and "a lie." The materialities of these actions are often indistinguishable, but their objective moral significance is totally different, basically because in the concrete circumstances they relate differently to the hierarchy of values.

Take a single example. Chirico's analysis supposes that a material statement of untruth is morally wrong, is a "perversion of the expressive faculty." The moral wrong, he says, lies in the harm done the speaker (loss of honest expressiveness). It is this supposition that one might want to challenge. In other words, what is harmful to self and others is not precisely material untruth, but the misuse of human expressive powers. Now what concretely constitutes a misuse of these powers can only be determined in relation to their meaning and purpose. This meaning and purpose must be defined

against the background of the hierarchy of values. This is, I believe, the basic insight of moral tradition over the years, though reflective reasoning has struggled mightily to reduce this to a viable formula.

"Material untruth" can only be said to be an invariable misuse of expressive powers if the adequately described purpose of speech is said to be "uttered truth." Such an analysis could easily appear to reflect a rather isolated and mechanistic notion of the finality of human expression, that is, one gathered without sufficient advertence to all possible specifying values. When one adverts to the hierarchy of values, one will conclude that the meaning and purpose of human expressive powers is not simply the communication of true information, but a communication between persons which respects and promotes their good precisely as persons in community.[15] Whether a particular utterance is a misuse of the power of expression will be determined, then, by weighing it against the demands of the total personal situation.

Therefore, when one utters an untruth—call it what we will: evasive tactics, mental reservation, or, less appropriately, a lie—to protect the professional secret, I see no misuse of speech. Therefore, I see no harm done the speaker or anyone else, and so I see nothing morally wrong. One who does this does not "make himself a liar" unless I have a prefabricated definition of a liar as one who utters untruths even when he should. He rather deepens his respect for himself, other persons, and also thereby for truth and truthful expression.

Summarily, where one's act observes the hierarchy of value, there seems to be no question of *moral* evil in the act. Chirico's "principle of tension" supposes there is moral evil in the act. A proper definition of our acts destroys this supposition.

A second difficulty with the "principle of tension" is its application to contraception. Use of the principle in this area supposes the solution of the very problem which has agitated us. Perhaps it can be put as follows. Either contraceptive intercourse embodies a denial of an absolute value or it does not. If it represents denial of an absolute value, then by definition this absoluteness will make it impossible to subordinate this value to any other, or to regard any other as prevalent. If the contraceptive act does not represent denial of an absolute value, then there is nothing immoral about it when it properly relates to the hierarchy of values. Our only problem is

[15] Dupré, *art. cit.*, p. 249. Dupré points out that the universal precept is not "to speak the truth under any circumstances" but rather "never to use language in a way which jeopardizes man's life in a community." There are times when material truth destroys the very values which veracity is meant to protect.

to learn to relate sexual expression more adequately to this hierarchy. Chirico, however, by making this subordination, has supposed that contraceptive intercourse does not embody a denial of an *absolute* value. This supposition may be right (and it is my opinion that it is). But then, why say there is anything immoral with contraception in the proper circumstances?[16] It is no more immoral than an "uttered untruth" to protect the professional secret. And if it is not immoral, then why is a "principle of tension" needed to justify it?

If the "principle of tension" seems to present certain difficulties, then perhaps Archbishop Denis E. Hurley's "principle of overriding right" can be of help.[17] Adverting to situations such as the killing of an unjust aggressor and the taking of another's property when one is in extreme need, the Archbishop concludes that what is normally wrong becomes in these instances morally acceptable because of a circumstance. The circumstance is a clash between a right and a duty where the right prevails. For example, I have a duty to respect the life of another and I have a right to preserve my own life. Where I am attacked, there is a clash between this duty and this right—and the right prevails. Similarly, "I have a duty to respect the property of another, but I have a right to preserve my life. If my life is in danger, my right to life clashes with my duty to respect the other's property. My right predominates." The Archbishop sees this reasoning as applicable to many other areas such as sterilization, transplantation, and contraception. For example, writing of sterilization, he sees "the right to health and conjugal union clashing with the duty to preserve bodily integrity." The former prevails.

It seems that one's basic objection against Archbishop Hurley's "principle of overriding right" might be that it is not a principle at all. That is, it does not provide the means of solving a problem, but simply formulates a solution at which one has already arrived. Under analysis, the "principle" only asserts that if one duty is more important than another and I cannot do justice to both, then I must discharge that which is more important. Fair enough. But that does not tell me and cannot tell me which duty is more important or why it is so. This a genuine principle should do.

For example, in the case of extreme need, to say that my right to life predominates over my duty to respect my neighbor's property is simply a

[16] Here the majority report of the Birth Control Commission is more accurate. It refers to the contraceptive act as involving "a material privation," "a negative element, a physical evil." Cf. *National Catholic Reporter*, April 19, 1967, and *Tablet*, May 6, 1967.

[17] Denis E. Hurley, O.M.I., "A New Moral Principle: When Right and Duty Clash," *Furrow* 17 (1966) 619–22. For subsequent discussion cf. *ibid.* 18 (1967) 167–70, 275–77.

way of saying that we have a basic grasp on the significance of human life and material goods and have decided, correctly of course, that material goods are for man. It is this judgment which is the basis for my decision—my principle, if you wish. Once we have understood the relationship between human life and material goods, we are able to assert the inherent limitations on the right to material goods. Therefore, it is only after I have taken a position on the hierarchy of values that I am positioned to see whether a certain form of conduct involving these values is promotive of human growth or not.

One could put the matter negatively as follows. Is it not precisely because we may have been one-sided or at least vague about the values of Christian marriage that we have been vague about the meaning of actions making procreation in marriage impossible? Would sterilization actually promote the long-run total good of the marriage in some instances or not? This is what the contraceptive controversy is all about. To say that "my right to conjugal union predominates over my duty to preserve bodily integrity" is not to offer a principle of solution to this question; it is rather to formulate a solution already arrived at on other grounds. And that is why Archbishop Hurley has not offered a principle at all.

What he does give us is a formulation. Is it a good formulation? I think not. It builds on the idea of a clash between right and duty. As the Archbishop says: "The discovery of the new . . . formula arose out of the realization that we have no general principle in our moral theology dealing with situations in which right and duty clash." This is true. But the reason is that a "precise statement of a moral duty takes account of such rights as may intervene in the matter concerned and, by delimiting both the right and the duty in conformity with the divine order from which they alike derive, it eliminates the very basis of a *contrary* right."[18] A genuine clash is only possible if there is no inherent limitation on rights and duties. But there are such limitations. Therefore, to adopt a formulation which speaks of a clash is both to suggest the illimitability of rights and duties and to entice others away from the hard work of delimiting such rights and duties. This is somewhat less than happy.

Charles E. Curran engages in a dialogue with Joseph Fletcher.[19] After faulting Fletcher on three ethical presuppositions (the notion of love, nominalism, and pragmatism), Curran wonders whether it is possible to

[18] L. L. McReavy, "When Right and Duty Clash—A New Moral Principle?" *Clergy Review* 52 (1967) 213–16, at p. 215.

[19] Charles E. Curran, "Dialogue with Joseph Fletcher," *Homiletic and Pastoral Review* 67 (1967) 821–29.

come to grips with difficult situations in a more realistic way than Catholic theology has hitherto managed to do. He proposes a theory of compromise based on the pervasive presence of sin in the structures of human existence.

> In the face of the sinful situation man must do the best he can. The destructive and disruptive influence of sin frequently prevents man from doing what he would want to do in the given situation. The businessman might be forced to make kick-backs in order to stay in business. The laborer might have to kick in so much a day to be hired. The word "compromise" seems to fit such situations quite well.

Curran bases this "principle of compromise" on the sinfulness of the situation. When a woman is forced to have an abortion to save her life, there is, he says, something wrong in that situation. Similarly, when one must kill to protect innocent victims of mass hatred, there is something radically and sinfully ajar about that situation. The notion of compromise takes this into account and concludes: from one point of view the action is good, because it is the best that one can do. From another viewpoint the action is wrong; that is, it manifests the sinfulness of the situation. "Every such decision indicates that sin is forcing a person to do what he would not do under other conditions."

Curran is saying something very important: we have overrationalized moral decision to the neglect of its prudential aspects. Furthermore, there seems to be no problem with an analysis of the situation which sees the source of many anguishing problems in the radical sinfulness of the world. Indeed, many of our rather traditional categories (e.g., material and formal co-operation, double effect, counseling the lesser evil) are, so to speak, categories of compromise. They suppose a sinful world and go about determining the meaning of actions inextricably bound up with human hurt and/or moral evil.

If the "theory of compromise" is only a way of saying that we are not always responsible before God for our conduct, there is no difficulty with it. But I believe that Curran wants the theory to say more than this. The difficulty one might have with the "principle of compromise" is similar to the problem one has with Hurley's "principle of overriding right." In a sense it is not a theory or a principle at all, for it does not tell me which compromises it is reasonable to make.

To say that a compromise is good because it is "the best I can do" is to imply a judgment on an opposite course of action or on other alternatives. It is this judgment and its foundations which rectify or, better, justify a compromise. Those who obeyed the genocidal orders of their superiors under Nazism did, in a sense, "the best they could." It was the only way of

saving their lives in a sinful situation. From this single example, however, one can see that "the best I can do" only means something acceptable in the moral order if I have decided that this "best" is better than its opposite or other alternatives. *This* decision I make on other grounds, not on a theory of compromise.

A compromising act, therefore, is only reasonable and possessed of minimal objective moral goodness if I know what values are being sacrificed, what preserved. Some compromises are worth making because only by compromise could my decision incarnate the greatest possible value. Others (see the example above) are not reasonably made. A theory of compromise does not tell me which. Therefore, to say that a certain act is "the best I can do" and then to say that this provides "the good aspect of the act" is to confuse the objective and subjective character of moral value—precisely because the buried judgment on alternative courses of action is left buried. In summary: in a sinful world, sometimes "the best I can do" is the very worst that could be done.

THE NATURAL LAW

Theological writing continues to reveal a vigorous interest in natural law. Undoubtedly there are those who still question why the *theologian* is concerned with natural law at all. Rather recently J. Ratzinger had argued that Christian social teaching, for example, should be developed not by natural-law considerations, but by mere submission of empirical social data to the "gospel as a value-measure."[20] Through such a procedure these facts would take on their ethically normative character. It was quite possibly Ratzinger, or at least the tendency exemplified in his suggestion, that stimulated Bruno Schüller, S.J., to return to his insistence on the existence and importance of the natural law for theological methodology.[21]

Schüller approaches the natural law from two points of view. First, he shows that the natural law (which he is careful to delimit and define in a way which allows a legitimate question to be put to Scripture) is a reality recognized in Scripture. Obviously, however, this does not mean that this reality is called by name in Scripture or that it can be identified with the teaching of the Stoa as found in St. Paul. If one would want more than

[20] J. Ratzinger, "Naturrecht, Evangelium und Ideologie in der katholischen Soziallehre," in von Bismarck and W. Dirks, *Christlicher Glaube und Ideologie* (Stuttgart, 1964) pp. 27 ff., as cited in Schüller.

[21] Bruno Schüller, S.J., "Zur theologischen Diskussion über die lex naturalis," *Theologie und Philosophie* 41 (1966) 481–503.

Schüller's own exegesis, then Schüller points to the fact that there are the likes of H. W. Schmidt, F. J. Leenhardt, J. Murray, C. K. Barrett, H. C. G. Moule, C. H. Dodd, and R. Bultmann to contend with.

Schüller's next question is: Is natural-law thinking and argumentation something Christian moral theology can dispense with? His answer is a resounding no. He repeats what he has written before, namely, that man is only capable of hearing and giving intelligent belief to the ethical message of the New Testament because prior (logically) to the revelation of God's word he already grasps and expresses himself as an ethical being. "From this experience all moral concepts and ideas receive their meaning for man." And it is precisely these moral concepts which form the only possible medium through which God can reveal the *lex Christi*. The fact that natural morality concerns him is for man his obediential potency that the law of Christ can concern him.[22] Hence theology itself can only progress in genuine understanding of the supernatural moral order when it critically reflects on that which is the necessary medium for the revelation of that order. Indeed, Schüller insists that the better theology understands the natural law, the more advantageously positioned it is to hear and understand the *lex Christi*.

Another major point made by Schüller is that natural-law reasoning is the only basis on which one can determine whether a revealed duty is transtemporal or time-conditioned. Suppose, for a moment, that the validity of a New Testament demand can only be known in faith. How could one know whether this is transtemporal in character or not? If the validity of the precept itself is guaranteed only through God's word, then also its continuing duration can only be guaranteed if this duration is an inner constitutive of the validity. But what New Testament demand carries with it a clear indication of transtemporality? However, if we understand a demand from its inner sense (natural-law reasoning), then we are positioned to discriminate between those things which oblige for all times and those which do not; for ultimately it is to one and the same reason that a demand owes its obliging force and the continuance of this obliging force.

Schüller's article is carefully wrought and deserves the serious attention of anyone trifling with the temptation to abandon the natural law as a luxury we can no longer afford.

Hans Rotter, a doctoral candidate in moral theology at Innsbruck, has

[22] Ratzinger's attempt to bypass natural morality and to use the "gospel as value-measure" is doomed according to Schüller; for man can only be in a position to understand the gospel as a value and a value-measure because logically prior to his belief he already has an interior grasp of what an ethical value is. But this grasp is precisely the content of natural law.

pursued Schüller's line of thought in an interesting article.[23] Since revealed morality is certainly intended to represent something more in our lives than an irrational gymnastic, the commands of Christ must be able to be grasped as values, specifically as possible realizations of love. Therefore, man must find in his own experience the ability to understand these demands. This much Schüller had said.

Now if this is so, how does revealed morality differ from natural morality? Schüller had pointed out that the imperatives of the two must be *verbally* the same. Rotter suggests that natural-law morality relates to the moral message of the New Testament in the same way that implicit faith relates to explicit faith. An act of faith contains more than is expressly formulatable. Similarly, the "yes" to the imperative of conscience contains theological and eschatological depths which can only be explicitated through revelation. Rotter believes, therefore, that the New Testament's moral message is a deepening and "radicalizing" of natural law. That is, it is precisely the radicality with which Christ addresses man, the unity of individual demands in love, that surpasses what we know naturally and in an explicit way. Ultimately, then, *as far as verbal content is concerned,* revelation in the area of morality brings an explicitation of the conscience-experience in a way and a depth not otherwise possible. It is in this sense that the moral message of Christianity brings no new (i.e., foreign to conscience) content—a point Schüller had also made.

Clearly, the relationship between revelation and natural law needs much more study. But it seems that the general lines of Rotter's thought might lead one to say that the magisterium has a teaching competence where natural law is concerned precisely because the Church is commissioned to teach revelation. Or again, the magisterium does not enjoy competence to teach natural law only because that law is extrinsically necessary for the protection of the basic gospel message. Rather, at one level there is and must be an identity between natural law and revealed morality. The command of love of God and neighbor is a specification—analogously, of course—of both natural morality and revealed morality. Similarly, even more concrete norms are—again, analogously—historical specifications of both natural and revealed morality. This is not to say that the magisterium of the Church may or should descend to detailed specifications of the demands of radical love.[24] An enlightened sensitivity to changing historical and cultural factors

[23] Hans Rotter, S.J., "Naturrecht und Offenbarung," *Stimmen der Zeit* 179 (1967) 283–92.

[24] On this point cf. the following for varying points of view: B. Schüller, S.J., "Die Autorität der Kirche und die Gewissensfreiheit der Gläubigen," *Der Männer-Seelsorger* 16 (1966) 130–43; F. Böckle, in *Concilium* 25, 3–6; Paul McKeever, "Theology and Natural Law," *Proceedings of the Catholic Theological Society of America* 21 (1966) 223–37.

suggests great caution here. It is only to say that here we have a point of view sharply distinguished from the separatism of those who divide morality into natural and revealed and invite the Church to concern herself all too exclusively with the latter.

But to affirm the existence of a natural moral order—that is, one grounded in the being of man as man—is to say very little about its content or the manner in which one determines this content. Most of the recent literature seems to represent an attempt to clarify these more specific points. And rightly so. One is understandably confused when one hears the "duty to respect one's neighbor" and "the prohibition of artificial insemination" both ascribed to the natural law, and without much distinction. The first is a formal, or at best a very general material, principle; the second is a rather detailed material norm. If a concept of the being of man and a moral order founded on it leads necessarily to such indiscriminate lumping of norms, then clearly it derives from a static concept of man which can never make its peace with contemporary sociology and anthropology.

Recent literature, then, represents a variety of attempts to formulate natural law in such a way that it is both founded on the being of man and yet appropriately aware of the historicity of this being. How this attempt is made differs with each author. Some emphasize especially the noetic aspects of natural law; others attempt to nuance the notion of nature. But a basic unity is discernible in the literature if one approaches it from the overriding concern mentioned above. We will mention only a few examples here.

At a three-day conference in 1965, German-speaking moral theologians discussed the meaning of natural law. Joseph Th. C. Arntz presented a carefully researched paper detailing the history of natural law within scholastic circles.[25] This interesting history reveals a snowballing process away from the balanced subjectivity of Thomas' presentation. Whereas St. Thomas understood by natural law in its strictest sense only the first practical principles (*principia naturaliter nota*),[26] subsequent theologians began to include in the notion also the conclusions derived from these principles. This is perfectly legitimate, of course; but increasingly these conclusions were thought to share the same timeless necessity as the principles and a certain immobilism set in.

In a brief essay Frederick S. Carney outlines, rather apologetically in-

[25] Jos. Th. C. Arntz, "Die Entwicklung des naturrechtlichen Denkens innerhalb des Thomismus," in F. Böckle, *Das Naturrecht im Disput* (Düsseldorf: Patmos, 1966) pp. 87–120. The book is summarized in *Stimmen der Zeit* 179 (1967) 383–85.

[26] For a recent study of natural law in Thomas, cf. Soeur Sainte-Marcelle-d'Auvergne, "De la matière du droit naturel," *Laval théologique et philosophique* 23 (1967) 116–45.

deed, a natural-law procedure for Christian ethics.[27] He believes that the only way the serious objections against natural law can be met is by a threefold clarification: the area of law, the meaning of nature, and the relation of human nature to law.

Where law is concerned, Carney suggests that the term "natural law" has suffered from association with physical laws (which are universal) and civil laws (which are established by the will of men). To counterbalance this, he proposes that we must be concerned with the relational aspects of the material norms of natural law—that is, with those aspects of life which are cultural and epochal. This does not mean that natural law is subjective. Contrarily, there is a criterion by means of which norms and then actions can be assessed. That criterion is preservation and fulfilment of human life in the context where it is found. But rather than emphasize law as a body of norms, Carney prefers to see it as a process of reflection upon the normal functioning of human nature.

As for nature, he proposes that we conceive this in a rather general, empty-container fashion as "the full dimensions of man's being." In filling out what this means, Carney insists that our formulas must sufficiently cover the whole range of man's existence, and therefore must adequately account for the social dimension in human existence.

Finally, the article is at pains to show that natural-law thinking as proposed does not draw normative conclusions from nonnormative premises; for man's perception of his world is not merely fact-perception, but value-perception. Carney suggestively speaks of a "thouness" in the primordial perception of reality. He refers to the "built-in presence of felt obligation that may reside in its disarmingly factual exterior."

J. Etienne, with nearly every informed modern writer, rejects a concept of nature which mirrors God as a transcendental engineer who has pre-plotted man's course and embedded this plan in a multitude of concrete persons.[28] Such a caricature is a result of human imagination. Rather, man's essential dignity is in his rationality. This is his prerogative and his fundamental responsibility. In the depths of his being, man becomes conscious of his rationality as his basic endowment, and therefore his basic task. It is in his life, in the "given," that man is beckoned to answer the call of the spirit. Etienne feels that there are certain immutable traits which oblige the spirit of man to take the same paths in order to develop itself and reach greater

[27] Frederick S. Carney, "Outline of a Natural Law Procedure for Christian Ethics" *Journal of Religion* 47 (1967) 26–38.

[28] J. Etienne, "La nature est-elle un critère de moralité?" *Revue diocésaine de Namur* 20 (1966) 282–94.

potential. But since these constants are overlaid with personal and cultural histories, they are extremely hard to determine.

In recent months Franz Böckle has made several attempts to clarify the meaning of natural law.[29] It is Böckle's contention that the notion of nature, as grounding natural law, has confronted us in four different ways: as noetic capacity (*natura ut ratio*), as a metaphysical essence (*natura metaphysica*), as the metaphysical structure of the human act itself, and as concrete nature (especially with its biological and physiological structures). The last three of these contain obvious elements of truth, but it seems to be Böckle's contention that they provide insurmountable difficulties in grounding and explaining a natural law.

Take, for example, nature as meaning the metaphysical structure of the human act. According to this point of view, the foundation of natural law derives directly from the action itself. But the invariable structure of an action is extremely difficult to determine; for the point of departure in determining this metaphysical structure must be concrete human experience and reflexion. Such experience and reflexion, however, are time-conditioned. Actually, different acts get their proper significance only as part of a total development, of a whole life. To give a metaphysical structure to an act is to rip it from its context. Thus, marriage does not get its meaning from individual acts, but the individual act derives its significance from placement within the totality that is marriage. Böckle does not want to conclude that an intelligible structure must be denied to human acts, but only that we must be more aware of the cultural-historical setting in stating what that structure is.

Böckle then turns to what he regards as a proper understanding of natural law. Natural moral law has two senses: the strict and basic sense (primary), and the derived sense (secondary).

First, the primary sense. The unavoidable primary insights (Thomas' *naturaliter nota*, in contrast to what is discursively known) constitute the natural law in its most basic sense. However, the importance of these principles is not only or especially that they are the first normative assertions or principles of conduct. Nor must one view them as simply the unchanging source of derived conclusions. Rather, in these evident insights man experiences a transcendental "oughtness." This "oughtness" does not refer simply to the unavoidability of the principles. Before all else it speaks a transcendental claim to self-realization. In these principles man is bid to take up his existence, to commit himself freely to the project of his own formation and

[29] F. Böckle. "Rückblick und Ausblick," in *Das Naturrecht im Disput*, pp. 121–50; *Grundbegriffe der Moral* (Aschaffenburg: Pattloch, 1966) pp. 47–55; *Concilium*, *loc. cit.*

development. It is precisely in man's responsibility, grounded in his reason, that he shares in God's providence (eternal law), because, like God Himself, man is *sibi ipsi et aliis providens*.[30]

Therefore, the natural law is not first and foremost a formulated law at all; nor is it a handing down of general, sempiternally valid principles out of which concrete law (*Recht*) is constructed. The heart of natural law rests in this unconditioned "ought" which lies at the center of man's being.[31]

Second, the derived sense. It is here that natural law appears as formulated law. It is the sum of the universally valid formulated demands based on universal structures. What are the enduring structures pertaining to the essence of man? To discover this, Böckle appeals to a transcendental deduction, i.e., from the activity of man to those things which are necessary to its possibility. The results of this process show that the social nature of man, his spirituality, his freedom of decision, and perhaps a few more characteristics belong to the essence of man. In so far as we can draw moral demands immediately from these structures, we can speak of timelessly valid norms. "This is what Catholic theology means when it speaks of ultimately timeless and universally valid demands of natural law."[32]

It is clear that Böckle's writing derives from a strong emphasis on the noetic aspects of natural law.[33] It is out of this emphasis that he says that there are four ways of conceiving nature which come down to us in natural-law thinking. This seems inaccurate. The noetic origins of natural law are but one aspect of natural law. The metaphysical foundation is another. The structure of the concrete act is still another. No theory of natural law will be complete without all aspects, simply because all are dimensions of reality. Thus it is incorrect to set those who discuss a *natura metaphysica* (e.g., Fuchs) over against those who speak of *natura ut ratio*. Fuchs himself has written, for example: "The natural law must be considered, not as the sum of external universal laws, but as *internal* law comprising the totality of that moral norm which corresponds to the totality of man's being."[34]

Böckle's own splendid treatment of premarital coitus can serve as a good

[30] 1–2, q. 91, a. 2.

[31] Böckle has summarized his position elsewhere (*Concilium* 25, 4) as follows: "The best way of understanding natural law is to take it as the inner content of any concrete regulation of law and morality. This content is only visible and tangible *in a concrete and positive regulation of law and morality*." He refers to this content as a kind of legal essence underlying any law.

[32] *Grundbegriffe der Moral*, p. 50.

[33] In this respect cf. also D. C. Duivesteijn, "Reflexions on Natural Law," *Clergy Review* 52 (1967) 283–94.

[34] Joseph Fuchs, S.J., *Natural Law—A Theological Investigation* (New York: Sheed & Ward, 1965) p. 134.

example of what I mean.[35] After an enlightening discussion of Christian morality as a radical love morality, Böckle turns to the area of sexuality and attempts to establish its significance. In particular, he rightly asserts that we must know the sense and meaning of marital intercourse if we are to understand its meaning during the premarital period. He finds three meanings in sexual intercourse. (1) It is a symbol of unity. (2) It is an expression of mutual love. (3) It is an act of mutual knowledge. Briefly, it is a sign of a total personal relationship.

With these meanings established, Böckle states that one confronts immediately a decisive supposition for the fully meaningful act of coitus: the mutual will or intent of unity.[36] It is this very intent to make a total and lasting self-gift which constitutes marriage.[37] If coitus is a sign of a mutual and total gift of the person, then the persons must actually be in this relationship. Before such a moment (i.e., before marriage) man cannot give himself unreservedly in a consciously responsible manner; for without the exchange of a full responsibility for each other, the self-gift cannot achieve its deepest and most proper sense. But Christian love demands an inner preparedness for this full meaning. Therefore, Böckle concludes, Christian love excludes premarital coitus. "Seen in this light, every premarital and extramarital coitus is and remains ultimately false and cannot be reconciled with the criterion of radical love."

Now, what has happened here? Böckle has described the meaning of coitus and upon this meaning he has built a moral norm. In doing so he has used what some authors have called the "metaphysical structure of the act"—though certainly there must be a better word for the significance of an act than that. In other words, Böckle is dealing here with natural-law reasoning. He disguises this fact by saying that it is precisely *Christian* love which demands the preparedness for full responsibility for each other. Christian love certainly makes this demand. But one would think that any genuinely human love would also demand that coitus be a marital act. Indeed, this demand can only be understood as Christian if it is first a human demand.

[35] Franz Böckle and Josef Köhne, *Geschlechtliche Beziehungen vor der Ehe* (Mainz: Matthias-Grunewald-Verlag, 1967) pp. 7–37.

[36] Böckle uses the terms "Wille zur Bindung," "die Bereitschaft zur Hingabe der Person mit dem Willen zur Übernahme der vollen Verantwortung," and "Wille zur gegenseitigen dauerenden Hingabe und Bindung." These terms do not immediately translate into consent, but it is clear that Böckle means this.

[37] At this point Böckle has an excellent exposition of the social character of marital consent and its relation to legal form. See also Jack L. Stotts, "Sexual Practices and Ethical Thought," *McCormick Quarterly* 20 (1967) 131–45.

In the last analysis, therefore, Böckle is dealing with a legitimate specification of what it means to "take up one's existence," to "become what thou art." And he has proceeded by analysis of the structure of the act. Briefly, he has argued to a material norm in a way which, when he discusses natural law in general, he seems eager to find problematic. On Böckle's own terms, therefore, does not the natural law have to take account of all the elements he mentions if we are to get a truly complete statement of it?

George M. Regan, C.M., presents a fine summary of recent trends in natural-law thought.[38] He is particularly concerned with the meaning of human nature. Reviewing the work of Fuchs, Monden, Columba Ryan, and Charles Fay, Regan points to an increasing tendency to emphasize what he calls "concrete human nature" in elaborating natural-law theory. Abstract human nature refers to man's metaphysical being and is consequently realized in a univocal, universal, and essentially immutable way. "Concrete . . . human nature," Regan says, "refers to man's physical being as realized existentially in different historical eras and in specific situations. In this latter usage, all man's being at a given moment becomes morally relevant." It is Regan's conviction that man in his concreteness deserves more stress in moral theory. "By continuing to emphasize this more concrete understanding of man, proponents of natural law may carry greater weight in the contemporary world."[39]

This is but a sampling. If one were to back away for a moment and attempt to generalize on the direction of natural-law discussion, he might conclude that it reveals three characteristics. (1) There is an increasing tendency to approach natural law more as a thought-structure than as a normative content. The basic assertion of this thought-structure would be: man's obligation is founded on man's being. (2) This thought-structure emphasizes, above all, rational creativity in human conduct. (3) It tends to recognize formal rather than material norms as universally valid principles of natural law. This last tendency undoubtedly stems from a renewed awareness of man's historicity, and reflects a desire to relate natural law more obviously to the totality of man's being.

It is easy to agree with these emphases, if for no other reason than that they are appropriately corrective. Traditional theology, at least in its popularizations, has too often left the impression that when one deals with the natural law he is simply unpacking basic principles which, when shined up

[38] George M. Regan, C.M., "Natural Law in the Church Today," *Catholic Lawyer* 13 (1967) 21–41; cf. also *Vie spirituelle, Supplément*, May, 1967, pp. 187–324.

[39] Cf. Ildefons Lobo, O.S.B., "Toward a Morality Based on the Meaning of History: The Condition and Renewal of Moral Theology," in *Concilium* 25, 25–45.

a bit, will reflect a rather comprehensive kaleidoscope of norms. There has to be a reaction to this type of thing. On the other hand, in retreating from such instant certainties and allowing full range to man's historical existence and creativity, must we not retain the courage to be concrete? Otherwise we can be left with a natural law so refined that it contemplates with equanimity the notion that "one man goes in for handball while another likes killing Jews and that is all there is to say about the matter."[40]

PENANCE

The directions of Vatican II on the sacrament of penance were sparing. The Council simply stated: "The rite and formulas for the sacrament of penance are to be revised so that they give more luminous expression to both the nature and effect of the sacrament."[41] What form should this revision take? The question is important far beyond the few lines given to the matter by the Council. Revision of the sacramental rites and formulas involves historico-dogmatic problems, questions touching existing pastoral structures, and, not least, matters of great import for moral theology; for sacramental practice in this area not only reflects moral instruction but shapes it to some extent, as our experience has shown. The maturity or infantilism of attitudes toward the Christian moral life, the formation of conscience, social responsibility, etc., relate intimately to the discipline of the sacrament of penance.

At the twenty-seventh North American Liturgical Week, John E. Corrigan had proposed two forms of communal penitential celebrations.[42] The first involves common preparation (including readings, prayer, examination of conscience), then private confession and absolution, finally common execution of penance. This has been proposed before and has been tried in quite a few places already. There seems to be no serious problem with it, except the very practical problem of getting people to come and stay long enough to bring it off.

The second possible development Fr. Corrigan investigates is general absolution given after public generic confession. He admits that the major obstacle to this is Trent's teaching on integrity where serious sin is concerned. He approaches this difficulty from two points of view. First, since mortal sin is a reversal of a fundamental decision regarding one's whole relationship

[40] John R. Carnes, "Whether There Is a Natural Law," *Ethics* 77 (1967) 122–29, at p. 128.

[41] *The Documents of Vatican II*, p. 161.

[42] John E. Corrigan, "Penance: A Service to the Community," in *Worship in the City of Man* (Washington: Liturgical Conference, 1966) pp. 108–17.

with God, it has to be admitted that this type of change does not happen as often as we think. Indeed, Corrigan suggests that mortal sin is really rather rare. If such is the case, integral confession of mortal sin will not be a frequent problem. The second approach to the problem is, he suggests, the meaning of "divine law" in Trent. Perhaps the Fathers used the phrase in a rather sprawling and general way which did not imply in every case a revealed teaching.

It is easy, and rather pleasant, to be able to agree with Corrigan that mortal sin is probably not as frequent as we are sometimes led to believe. However, I am not sure that this neutralizes the problem of integrity as much as he suggests. For two reasons. First, even though mortal sin is regarded as less frequent, it still exists as a reality. Diminished frequency does not rinse us clean of the problem of integrity, but only reduces the number to whom it applies. Secondly, even though the radical and self-disposing option which is mortal sin is not an everyday affair, our knowledge of its occurrence and of our basic position before God is not totally accessible to reflex or formulating consciousness. Hence Trent could not have taught the necessity of integrity only insofar as I am clear and certain about the existence of a bad option in my action. We simply do not have this type of clarity. Rather, as Monden notes,[43] what the priest must know and what the penitent must tell him "is not an adequate description of the sinner's situation, a perfectly true insight into the extent of his sinfulness. What the penitent tells him is only a sign of what he tells God. The confession of sins is a sincere *signifying*, to the extent of his insight and according to certain rules prescribed by the Church, of his being a sinner." It is to this sincere signifying that the law of integrity must be understood to apply.

Tübingen's Walter Kasper shows that at the heart of the sacrament is a hearing and following of God's word.[44] Ecclesiastical tradition contains many forms of this hearing and following. The official sacramental form through exclusion from and then reincorporation into the community was really an extraordinary form of bringing the sinner back to God. In the high Middle Ages, lay confession was regarded as the ordinary means of making peace after minor sins and as the extraordinary means after major sins. Though he does not elaborate the distinction between "minor" and "major" sins, Kasper suggests that there are many (e.g., familial) situations where this type of lay confession could be used with great profit.[45]

[43] Louis Monden, S.J., *Sin, Liberty and Law* (New York: Sheed & Ward, 1965) p. 47.

[44] Walter Kasper, "Confession outside the Confessional," in *The Sacraments: An Ecumenical Dilemma* (= *Concilium* 24; New York: Paulist Press, 1967) pp. 31–42.

[45] For an interesting variant, cf. "Anybody for Group Confession?" *National Catholic Reporter*, July 12, 1967, p. 4.

He next suggests common generic confession followed by common absolution. After describing the advantages of such a procedure, Kasper notes that it should not lead to the demise or devaluation of individual private confession. "For truly major sins this should remain as obligatory as it is now . . . ." It is clear that he regards "major" sins as relatively rare ("a most unusual situation for a practicing Christian to be in"). Here, it would seem, he confronts the same problems Corrigan faced.

Many years ago J. B. Hirscher had approached the question of public or common confession not from the liturgical but from the moral-pastoral point of view.[46] His question: What must the sacrament be to provide the best help for the penitent to develop the virtue of penance? In a fine article[47] Albert Höfer continues in this pastoral vein and asks: What should the sacramental sign be to give the best possible assistance to its personal performance?

Höfer begins his own suggestions by pointing out that the acts of the penitent are the matter of the sacrament, that is, cocauses. The penitent is a coplacer of the sacramental sign, an active celebrant of the sacrament. The sacrament will be only as effective as this personal co-operation is rendered possible within the sacrament. Since the sacraments effect what they signify, and since the penitent is a coplacer of this sign, Höfer insists that the penitent has a right of voice in determining the best form of these acts. The ritual cannot be determined in an aprioristic manner.

Höfer then takes each act of the penitent and attempts to discover what procedure will be most productive of genuine penance. Thus, even where recognition of sin is concerned, if a man views his conduct in the mirror of the Ten Commandments, he perceives only amorality, not sin. To see one's conduct as sin demands faith, confrontation with the living God. In other words, a confession liturgy without proclamation of the living God is unthinkable. Otherwise the penitent is left alone with his "confession mirror."

Similarly with sorrow. It is an interpersonal happening. Man confronts his conduct and distances himself from it, but always in relation to a Thou. Sorrow, therefore, supposes that one is confronted not only with his acts and norms for these acts, but with a living Thou. This supposes preaching in some form. Even confession itself is an interpersonal event. I confess to someone as much as I confess something. The best liturgical form of an interpersonal confession, according to Höfer, is prayer—a good example of this

[46] Cited and reviewed by A. Exeler in *Eine Frohbotschaft vom christlichen Leben* (Freiburg, 1959) pp. 50–52.

[47] Albert Höfer, "Öffentliche Beichten werden in Vorschlag gebracht," *Der Seelsorger* 37 (1967) 95–102.

being St. Augustine's *Confessions*. Augustine is confessing to the world, but above all to God; hence he falls frequently into prayer.

Höfer concludes from his study of modern man that he must not be left alone in placing his acts. A public penance-liturgy best avoids this isolation and is therefore a great pastoral aid. Ultimately, of course, he admits that a public penance-liturgy finds its best justification in newly gained insights into the relation between the sacraments and the Church as the "first sacrament." This relation, as a theological datum, must be experienceable by the Christian as a liturgical event.

When Höfer touches on the problem of integrity, he remarks that in the prayer-form of confession there should be no question of perfect integrity. A confession is integral when it is genuine before God and hides nothing. One can wonder whether Höfer is facing the problem in its fulness when he puts the matter this way. To overlook the fact that confession takes place before the community in its official representative (Höfer minimizes this) is to miss the very ecclesial dimension of the sacrament which all recent literature underscores.

A.-M. Roguet, O.P., also discusses community penitential celebrations.[48] It is clear that he refers only to celebrations involving public preparation and conclusion—with private confession and absolution. Roguet finds many advantages in these celebrations, but above all they would return the sacrament of penance to a position within the framework of a celebration of the Word of God. The sacrament of penance, like all liturgical celebrations, is a proclamation of the Word of God—a point contemporary practice obscures. In contemporary practice confession means only the revelation of faults. Ideally it should rather conform to the notion of *confiteri*, which is a much fuller reality. One would best translate it by "celebrate." Thus confession is a celebration consisting principally in proclaiming the sanctity of God, recalling the radical exigencies of His law, manifesting our own sinfulness, and finally, in last place, enumerating our sins. If such an enumeration is not founded on a confession of God's sanctity and our fundamental misery as sinners, it risks losing its religious character. Roguet does not confront the issue of integrity simply because his suggested communal celebrations do not raise it.

Paul Anciaux offers several pastoral remarks as guidelines toward a reordering of private confession in the totality of Christian life.[49] First, he insists that all liturgical symbols of conversion and reconciliation are rooted

[48] A.-M. Roguet, O.P., "Les célébrations communautaires de la pénitence," *Vie spirituelle* 116 (1967) 188–202.

[49] P. Anciaux, "Privatbeichte und gemeinschaftliche Bussfeier," *Theologie der Gegenwart*

in the mystery of the Church as a sacramental reality and consist in an extension of baptism. In this sense all sacraments are signs of conversion and ratification of reconciliation. If we grasp this close connection between baptism and the other sacraments, we will see more clearly the appropriate liturgical forms for the embodiment of the various moments of a sacrament.

Secondly, public celebrations can be fully effective only within the context of a corresponding pastoral care. If the community dimension does not assume its proper position in other areas of pastoral care, these communal celebrations will remain disengaged curiosities. Thirdly, confession (especially of devotion) must be set in the context of a changing pastoral attitude. Formerly our pastoral care was largely paternal and authoritative. Now it must become more community-oriented and co-operative. Confession must share in this development. Finally, Anciaux feels that we must discover for our time intermediate forms of confession which symbolize the gradual or "step-by-step" return of the converting sinner.

From this short survey it is clear that one of the major problems of a renewed liturgy for the sacrament of penance is the problem of integrity. Carl J. Peter met this problem head on in his careful study of integrity in the Council of Trent.[50] He first notes that consistency with and conformity to the message of Jesus as elaborated in Trent is a condition for fruitful development in penitential doctrine and discipline. He then asks: Was Trent's teaching on integral confession an elaboration of revealed truth or a disciplinary law pure and simple? Peter approaches this question by attending to two points: (1) the dogmatic binding character of Trent's teachings, particularly in its anathemas; (2) the meaning of *jus divinum* in Trent.

After reviewing the work of Umberg, Lennerz, Favre, Lang, Fransen, De Letter, and F. X. Lawlor, Peter concludes that not all the canons of Trent reject heresy in the strict sense of the term. But what of that canon concerned with the integrity of confession? The same is true here, since these canons obviously include also matter of purely ecclesiastical law. But his study leads him to reject the conclusion that the duty of integrity is purely disciplinary. "But as to the basic, hard fact of integral confession, that comes from God. At least for the Fathers of Trent, integrity was not one of those elements arising solely from the Church's determination of the sacrament; it was contained in or followed from Christ's institution."

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10 (1967) 15–21. This article first appeared in its expanded form in *Collectanea Mechliniensia* 5 (1966) 606–17.

[50] Fr. Peter very kindly allowed me the use of his manuscript. It will appear in the *Proceedings of the Catholic Theological Society of America*, Twenty-second Annual Meeting, 1967.

Peter draws the same conclusion when he studies *jus divinum*. The phrase meant that integrity was not established by the Church. However, an object may be "established by God" (*jus divinum*) because at a particular point in history it is necessary for man if he is to enjoy the conditions required for salvation. Thus it represents God's will in these circumstances. Peter rejects this as the mind of Trent and states that integrity was willed by God as somehow established in His revelation through Christ. "To refuse to admit that this was the mind of Trent is hard to reconcile with the Acts."

Trent's message, Peter concludes, is that integral confession is a value revealed by God—neither absolute (there are other values and theology has always recognized them) nor merely of disciplinary ecclesiastical law. It must be approached in proper relation with other values. Could it be observed if there were generic confession and communal absolution with the obligation of confessing specifically within a definite period of time even though no strict necessity were involved? Peter refuses to judge the merits of such a proposal but does add: "I do not, however, think the Council of Trent can be invoked as an authority to exclude it."

Peter's excellent study makes it clear that Trent supposed some internal limits on the necessity of integrity. The precept is, in other words, an affirmative precept. Christ, and the Church authoritatively interpreting Christ's revelation, could not demand the impossible. Post-Tridentine moral teaching seized upon the concept of impossibility and built around it. Thus it has become traditional teaching that there is excuse from material integrity whenever an integral confession would be physically (e.g., the moribund) or morally impossible. It is morally impossible when it cannot be achieved without sacrificing some more important value, and hence without ultimately rendering the sacrament odious to men. In explaining this notion of moral impossibility, textbook theology has said that the notion is verified when there is simultaneously a need to confess and no confessor to whom one might confess without giving rise to the harm anticipated.

Therefore, when one approaches the question of public generic confession as it relates to integrity, he would probably ask two questions: (1) Does the contemporary situation correspond to a situation of moral impossibility? (2) If it does not, is moral impossibility the only justification for such generic confession?[51]

As for the first question, one might argue that the existence of only a single private penitential rite which fails to aid the penitent sufficiently in his acts (Höfer) and to emphasize the ecclesial character of sin and reconciliation

[51] For another and rather different approach, cf. F. J. Connell, C.SS.R., "Common Confession Rite," *American Ecclesiastical Review* 156 (1967) 409–12.

(Anciaux) constitutes a situation of moral impossibility. In other words, the values sacrificed by the absence of an occasional communal and generic confession are so great that such a confession is intermittently justified.

Is this a valid and reasonable point of view? I do not think so. First, the benefits of communal generic confession can be achieved, as Roguet notes, with communal penitential celebrations which include private confession and absolution.[52] Secondly, the concept of moral impossibility seems to suppose that there is a desire here and now to confess integrally, but a desire which is impeded. No such desire need be or would be present in the communal services envisaged. Therefore, I do not see that the proposed group confession fits the category of a morally impossible situation excusing from integrity. Hence, if such confession is to be reconciled with Trent's teaching on integrity, one would have to look elsewhere for justification.

That brings us to the second question: Is moral impossibility the only justification for a materially nonintegral confession of mortal sin? It seems to me that one might argue that Trent was speaking of integrity in confession as Trent knew confession. But confession was private at that time. Therefore, it was within the one-to-one relationship of private penance-rites that the notion of impossibility arose and was developed. Could one not suggest, then, that impossibility as the sole excuse from integrity is based on the supposition that only a private confessional rite is in question? Where private confession is not in question, is impossibility the only category allowing excuse from material integrity? Could not one argue that the integrity of a *public* or *communal* confession is sufficiently fulfilled if there is the intent at the time of confession to submit any mortal sins privately at the next opportunity? The point can at least be raised, and I suspect that there may be competent conciliar theologians ready to defend it.

However, is the question raised by common generic confessions merely one of conciliar interpretation? It seems also to be a basic dogmatic question and not an easy one to answer. It can be submitted that we know very little about integrity. We know that there are situations when material integrity is not required. And we know in a negative way why this is so. But we do not know positively how there can be excuse from material integrity, what happens when there is, and what resubmission of the omitted sin really means and effects. I mean that we do not adequately understand why a generic confession of serious sin constitutes a sufficient sacramental sign in some instances but not in others. We shall only begin to understand this when we understand why integrity is required at all. That is the root problem.

[52] This is also the point of view of G. Rossino in "Verso una confessione communitaria," *Perfice munus* 42 (1967) 336–42.

For example, is integrity a preliminary but psychologically indispensable step for genuine contrition, as Schmaus proposed? Or was P. Charles, S.J., nearer the truth when he centered attention on the character of judicial pardon and insisted that it is not a mechanical act but a personal one demanding full knowledge of what one grants?[53] Some years ago Dumont contended that the demand of integrity must be elaborated out of an adequate understanding of *reconciliation* with the Church.[54] Reconciliation, if it is not to be mere amnesty, demands an opening of the sinner to the Church, and an active opening of the Church to the sinner.

Only when we understand better the relation of an integral confession of serious sin to the process of sacramental forgiveness will we adequately understand the meaning of excusation from integrity and the limits of excusation. And until we understand these better, we will not be in a position to say with security whether a rite of communal generic confession with later private submission of serious sin is in accord with the substance of Trent's teaching.

There are also many unresolved practical problems to public confession, especially the problem raised by Anciaux (pastoral structures). These problems we solve, it is true, by experiment and experience. But since a basic dogmatic question underlies these practical concerns, would it not be premature and imprudent at the very least if our conduct failed to conform to directives similar to those issued by the French and Canadian episcopates?[55] Both decreed that in any communal celebrations of penance, confession and absolution were to be given privately and individually.

CELIBACY

Pope Paul's Encyclical on celibacy (*Sacerdotalis caelibatus*) represents the most recent episode of a very important conversation within the Catholic community. This discussion has been at near intensity pitch for some years now. Before turning to the Encyclical, it would be well to summarize some of the more recent literature.

Tübingen's Alfons Auer has written as fine an exposition of the meaning of celibacy as I have seen.[56] The priest, Auer argues, shows forth Christ the mediator. This basic function of the priesthood is given an impressive clari-

[53] Cf. also P. J. Hamell, "Penance and Judgment," *Furrow* 18 (1967) 322–29.

[54] C. Dumont, S.J., "La réconciliation avec l'église et la nécessité de l'aveu sacramentel," *Nouvelle revue théologique* 81 (1959) 577–97.

[55] For the statement of the French bishops, cf. *Documentation catholique* 64 (1967) 665–66; for that of the Canadian bishops, cf. *ibid.*, col. 286–87.

[56] A. Auer, "The Meaning of Celibacy," *Furrow* 18 (1966) 299–321. This is a translation of Auer's *Vom Sinn des Zölibates*.

fication by priestly celibacy. Indeed, "the celibate state of the priest can have its meaning and foundation nowhere else than in the signification and representation of Christ the mediator." The ministry of Christ the mediator is present in the triple ministry (priestly, teaching, and pastoral) of the Church. Auer discusses at length and with insight how this threefold ministry of Christ and the Church is signified and represented in a special way through the celibate state of the priest. He grants that this analysis leads only to the high suitability of a celibate priesthood. But he does state "that it seems to us that the reasons in favor of celibacy possess a clear if not absolutely overwhelming preponderance."

At the last session of the Council Bishop Alfred Ancel, auxiliary bishop of Lyons, presented a rather thorough review of the celibacy question to the bishops of Brazil and other countries.[57] However, since that time he has developed his ideas in *La croix*.[58] This latter presentation seems to represent his more mature and definitive thought.

Of the many excellent points made by Ancel, one stands out: the question of freedom and its implications. "Either the commitment to celibacy is free, or it is worthless." This freedom can mean either of two things. It can mean that a man wants the priesthood freely and with the greatest possible awareness, but only resigns himself to celibacy as a condition. Or it can mean that one wants with the same eagerness and liberty both celibacy and the priesthood. Ancel confesses that he believed that only a commitment of this second type existed; but experience has taught him differently. Therefore, he insists on stating the meaning of commitment to celibacy without equivocation.

> If the hierachical authority, after having maturely reflected, thinks that it is more valuable for the fulfillment of the Church's mission that there be only celibate priests, it can decide thus, not in imposing celibacy on men who do not truly will it, but in choosing to be priests only men who, freely and in complete lucidity, directly will celibacy.
>
> Now the law of celibacy does not mean that celibacy will be imposed on men who do not will it, who would only resign themselves to it. . .in order to be able to be priests. It means only those men will be accepted for the priesthood who desire, at the same time and in a completely free manner, to commit themselves to celibacy and keep it voluntarily.[59]

G. Griesl summarizes the minutes of a committee of experts of *Das Institut für Europäische Priesterhilfe*.[60] The group first outlined the reasons for the

[57] A. Ancel, "Le célibat sacerdotal," *Documentation catholique* 64 (1967) 727–50.

[58] Cf. *Pastoral Life* 15 (1967) 389–97. [59] *Ibid.*, p. 391.

[60] G. Griesl, "Priesterberuf und personale Reife," *Theologie der Gegenwart* 10 (1967) 27–31.

appropriateness of the celibacy of the diocesan clergy, then the reasons for a change in law. Admitting that the Church has always regarded the relationship between ministry and celibacy as relative, Griesl details five reasons which might suggest change. Two of them stand out. First, the obligatory general connection between priestly office and celibacy actually can easily hide the charismatic character of celibacy. Secondly, a genuine personal decision or choice of celibacy might be better protected where celibacy is optional. Furthermore, such an option would actually increase the valuation of the celibate form of life, which loses some of its brilliance because it is imposed by law.

However, Griesl's group found great difficulties in any immediate change in law. Most problematic in their estimate would be the change in pastoral structures which is a presupposition for a change in law. A sudden change of law would make the already neglected care of priestly maturity even worse and give rise to problems among married priests far more tragic than those found among celibates. An appropriate transition would be experiment with a married diaconate. The heart of the problem, however, remains priestly maturity. This problem would not be lessened by a change in law.

Karl Rahner's most recent contribution adopts the literary form of a letter to a fellow priest.[61] The letter is impassioned, highly personal, and in places represents some of the strongest writing in the Rahnerian corpus. Rahner's remarks deal not so much with the possibility of a married priesthood as with the priest who is now a celibate. The priest's celibacy is not simply a barrier the Church has imposed. It is, under the grace of God, a free moral choice, a profound personal commitment. Celibacy represents a genuinely possible Christian existence only for those who will and choose it. Because we look too often to the future of Church law—hoping for a change—we reveal the fact that we have regarded celibacy, and perhaps lived it, more as an external conformism to an ecclesiastical injunction than as a personal choice. Thus the contemporary priest who discusses celibacy must distinguish celibacy in general from "my celibacy." The answer to the general abstract question is no answer to the individual's question. And the individual's question can be clarified only in conversation with God, by petitions for grace before the Crucified, and by a prayerful fight for preparedness to accept the folly of the cross.

Disowning the mantle of prophecy, Rahner makes four declarations of opinion. (1) He does not expect or wish that the Church will alter the discipline of celibacy for the Western rite. (2) The Church can and must im-

[61] K. Rahner, "Der Zölibat des Weltpriesters im heutigen Gespräch," *Geist und Leben* 40 (1967) 122–38.

prove the education of her seminarians to the meaning of celibacy. (3) She must be largehearted in her practice of dispensation. This is a matter of Church law only, and "Church law is not everything." (4) She can give the priesthood to married men. But ultimately Rahner is a strong voice for the appropriateness of a celibate ministry (we witness dramatically by our lives to what we proclaim). Of course, this witness can be given in other ways. But there can never be a true Christianity, he asserts, without a "no" to the obviousness of this world. Only the one who appreciates the radical nonconformity of Christianity will grasp the fact that this nonconformity must continually realize itself concretely.

Many of these same points are touched upon in other statements. Bernard Häring, for example, insists that priestly celibacy is a charism which has extraordinary value in our age of pansexualism.[62] Should those who definitively reject their celibacy be allowed to return to the active priesthood? Häring gives the same negative answer given by Ancel. After having made a solemn promise in which they affirmed their knowledge of celibacy and their free acceptance of it, how could they proclaim the morality of covenant, which is a morality of fidelity? A priest is not only a functionary; he is a witness of that which is at the heart of his message.

Cardinal Leger stresses the point made by Rahner: the discussion of a married clergy cannot be the occasion for irresoluteness about one's own priestly engagement and commitment to celibacy.[63] One looks back only to deepen his promise and to grasp its meaning more fully. Hence priestly fidelity to celibacy is a choice demanding constant rediscovery and renewal.

Felix Cardegna, S.J., discusses religious celibacy and finds in it a thunderous witness-value.[64] People are puzzled or intrigued by it, and may even ridicule it. "But very few, if any, can be neutral about it. It bothers them. *We* bother them. And that's exactly as it should be. It's in these moments that the whole thing is working as it should. Our celibacy is doing just what it should be doing. It's troubling others; raising a question in their minds . . . . " Cardegna has some highly salutary remarks about the meaning of loneliness and prayer in the celibate's life.

Charles Davis suggested earlier that the question raised by the celibate would be much more striking and effective if it were joined with a genuine poverty. "An eschatological sign is unconvincing when its bearer is securely ensconced in material comfort, whether personal or communal."[65] Such comfort simply shifts the accent of celibacy to the negation of sex.

[62] B. Häring, "Le célibat sacerdotal," *Documentation catholique* 64 (1967) 863.
[63] Paul-Emile Leger, "Le célibat ecclésiastique," *ibid.*, col. 155–62.
[64] Felix Cardegna, S.J., "Religious Celibacy," *Sacred Heart Messenger* 102 (1967) 16–19.
[65] Charles Davis, "Empty and Poor for Christ," *America* 115 (1966) 419–20.

By far the most intriguing study of a married priesthood is that of R. J. Bunnik.[66] Bunnik argues that the legal obligation of celibacy is only legitimate if ecclesiastical authority can give convincing proof that this particular law is necessary or at least very useful. If this proof is not at hand, then such a law must be viewed as an unlawful attack on human freedom and at best doubtfully valid.[67] After reviewing Scripture, history, theology, and the practical arguments *ex convenientia*, Bunnik concludes that "they do not lead to a conclusion that the unmarried state is necessary or evidently useful." He concludes that since the arguments are of limited value, "no obligation can be based on them. Consequently it must be doubted that the law of celibacy has any right to exist . . . ."[68]

Bunnik next turns his attention to the law invalidating the marriage of the priest (can. 1072). The right to marry is natural; the law of celibacy is disciplinary, and dispensation from this disciplinary law is dependent on a superior. But "it is extremely difficult to imagine that somebody's natural right to marry can be completely taken over by somebody else and can be made irrecoverable by a human law."[69] He concludes that the law, as unjustifiably impairing human freedom, represents an overstepping of competence on the Church's part, hence is an invalid law.

This very interesting article represents a rather radical challenge to existing discipline. But in my opinion it demands several important qualifications.

First, it is very misleading to state that the Church's present discipline, by demanding celibacy as a condition for ordination, represents a "disciplinary institution of charismata" or "creates or imposes charismata." Rather, the discipline insists that only those who have received this gift or charism should be allowed to take orders. This is not to "create" or "institute" charismata, and such journalese can only muddy the discussion. Indeed, it has muddied Bunnik's presentation at a critical point; for it leads him to distinguish the gift of virginity and the unmarried state in such a way that present Church law is read as imposing celibacy *even without the existence of the gift of celibacy*. Thus he concludes that "at present a candidate for the ecclesiastical ministry remains unmarried by virtue of legal prescript." Such a candidate "accepts a permanently unmarried condition only by virtue of

[66] R. J. Bunnik, "The Question of Married Priests," *Cross Currents* 15 (1965) 407–31; 16 (1966) 81-112. The article contains an excellent bibliography of the work done prior to 1965 and an appendix of selected citations from prominent churchmen on the matter of celibacy.

[67] This seems also to be the position of Hans Küng; cf. *National Catholic Reporter*, July 12, 1967, p. 5.

[68] *Art. cit.*, p. 97. [69] *Ibid.*, p. 102.

legal obligation—unless he has personally received the gift of virginity beforehand."[70] Strictly speaking, of course, this latter is a true statement of what can happen; but it is not a true statement of the meaning of the law.

Existing discipline must be read as demanding that only those who receive the gift of virginity should accept ordination and be accepted for it. Clearly this supposes that the gift of virginity will be generously offered by the Spirit. It also supposes that this divine invitation will be accepted and embraced personally. A priestly celibacy which is not personally received and nurtured into a chosen state quickly sinks to a very tragic and dangerous externalism. Bunnik admits this when he notes that "only the person who can fully see this decision as a personal choice will be able to bring this great task to a happy conclusion."[71] Obviously, then, such a personal choice or commitment is the only state of affairs Church law could reasonably envisage. Hence Bunnik's statements that the "secular minister is unmarried, not on the strength of a charismatic vocation, but on the strength of the ecclesiastical institution" and "celibacy is not a free choice in itself, but the inevitable consequence of a free choice of something else" are caricatures of the sense of the law, as Ancel has noted.

It may factually be true that some priests, perhaps even more than some, have not really chosen their celibacy, but are only grittily grinning and bearing it as part of a package deal. One can only say that such tolerated celibacy remains a bad choice and is certainly not the situation envisaged in the Encyclical *Sacerdotalis caelibatus* and the discipline it reiterates.

Secondly, when Bunnik sets about to seek proofs for the usefulness of the existing law, he is therefore seeking proofs for a law which he reads as imposing celibacy on the majority of diocesan priests *even when the gift of virginity is not present.* This is tantamount to searching for the nutritious value of food I have already described as poison. Very few proofs are needed to disown such a law from the outset. Its interment would be tearless; for it is a law perpetuating a nonvalue, even a harmful existence. But Bunnik understands celibacy in this way, and since he does, one would expect his judgment of the values associated with a celibate ministry to be less than enthusiastic.

Be this as it may, it is the usefulness of the law properly understood which he should be attempting to assess. And this is assuredly a thoroughly legitimate question. When Bunnik seeks to weigh this usefulness, he naturally turns to the relationship between celibacy and ministry. No one contends that this relationship is necessary and Bunnik expressly concedes this. However, he seems to demand that celibacy be in a necessary relationship to

[70] *Ibid.*, p. 425. [71] *Ibid.*, p. 97.

ministry before it can be prescribed; for when he faces the possibility (which is the actual state of affairs) that the Church wants the prospective priest to choose both ministry and celibacy, he remarks that this is "beating around the bush, because it is still based on the supposition that *ministry and celibacy are necessarily connected.*"[72]

By no means. It is based only on the supposition that this connection is highly suitable and highly effective, and therefore is considered to incarnate a great value. It need not be a necessary good to be prescribed as obligatory—unless Bunnik would want to challenge the validity of all laws which do not impose a necessary good.[73] It need only represent a genuine value. In human affairs, of course, the choice and preservation of one value often mean the loss of others. The choice of general celibacy will certainly mean the sacrifice of other values (e.g., the witness of a married priesthood;[74] the presence of perhaps many highly qualified men in the ministry). Whether the present law is desirable depends on whether the over-all effectiveness of the general celibate witness properly compensates for these losses. This is the question we should be asking.

However, making this assessment is extremely difficult. One would suspect that in this area we are more than ever liable to the inducements of an unrecognized utilitarianism. Celibacy participates in the mystery of Christ and in the folly of the cross in a way which at least partially resists analysis by theological argument and counterargument. Furthermore, as a form of witness, its effects are in the spiritual order and impervious to the type of empiricism we cling to so ardently. Does this not mean that the full value of celibacy is terribly hard to come by? Does it not therefore mean that a

[72] *Ibid.*, p. 100.

[73] Perhaps he does wish to challenge such laws. At one point (p. 97) he states that "possibility, legitimacy, or usefulness have become necessity and obligation." Bunnik would seem to imply that necessity (by law) can only legitimately exist where necessity has existed before law. It is precisely this concept of law which one can challenge. The ordinary process of law is that a useful means (among several useful alternatives) has by reasonable determination of legitimate authority become law—hence necessary or obligatory. A useful (in itself) means does not become a necessary (in itself) means by legal prescription. A useful means first becomes law and then it becomes necessary—but in a totally different sense. It becomes morally necessary for those under the law. That is the way it is with law.

[74] I cannot agree with John A. O'Brien when he writes that "perhaps the major consideration which should prompt a re-examination of the celibacy requirement is the profound and far-reaching change which has occurred in recent years in the Church's thinking concerning marriage and specifically the conjugal act" ("Celibacy: Compulsory or Optional?" *Pastoral Life* 15 [1967] 398–410, at p. 408). The impression too easily left by this article is that we now give up marriage because it was thought in the past to be merely a concession to human lust and frailty. It is precisely when marriage appears in all its Christian splendor that celibacy makes its best sense.

judgment of the obsoleteness of a law requiring universal celibacy would be a very harrowing undertaking?

I would not conclude from this that a conclusion of obsoleteness can never be drawn, or that it will not become clear one day that a celibate priesthood is a luxury we cannot afford. This is a possibility and we must remain open to it. I mean rather that there are value-factors about celibacy and a generally celibate priesthood which run rather deep. It is deceptively easy to be triggerhappy when discussing the usefulness or uselessness of a law which, drawing on these value-factors, prescribes celibacy for all priests.

These are but a few examples of the writing which preceded Pope Paul's Encyclical *Sacerdotalis caelibatus*.[75] The timeliness of the Encyclical has been challenged,[76] and not without some reason. Without attempting a thorough analysis of the Encyclical, I should like to list six key affirmations around which it develops.

1) The gift of a priestly vocation and the gift of celibacy are distinct (n. 15). This point had been made by nearly all the literature prior to the Encyclical. Indeed, as Rahner notes, if the Church cannot recruit enough priests in general or in certain areas, she *must* renounce the demand of celibacy; for the duty to provide a sufficiency of pastoral care takes precedence over the legitimate desire that this care be witnessed to by the celibate commitment. However, even though a vocation to ministry and the gift of celibacy are distinct, a vocation is not definitive or operative, the Pope insists, without being tested and accepted by those who bear responsibility for the community.

2) Pope Paul constantly refers to celibacy as "suitable" (n. 18), "fitting" (n. 31), "appropriate" (n. 40), "helpful" (n. 44). In other words, the Encyclical is making no attempt to view celibacy as essentially or necessarily connected with the ministry. The eminent suitability of celibacy is based on its Christological, ecclesiological, and eschatological significance.

3) Celibacy is repeatedly referred to as a gift (nn. 34, 44, 60, 62, 63, 81), even a "very special gift" (n. 44) and one that we can only prepare for (n. 63). The Encyclical disowns any notion that the legislative arm of the Church can bring into being by fiat either the invitation to celibacy or the profound personal response of acceptance. But even though celibacy is a gift, Pope Paul asserts what the Council affirmed: his confidence that the Father will liberally grant this gift if the whole Church humbly and perseveringly begs for it.

[75] The citations used here are from the version issued by the United States Catholic Conference. The numbers refer to paragraph numbers.

[76] For example, cf. *National Catholic Reporter*, June 28, 1967.

4) Celibacy is a gift, but it must be personally chosen. For example, the Encyclical states that "in virtue of such a gift, corroborated by canon law, the individual is called to respond with free judgement and total dedication . . ." (n. 62). Again later Pope Paul refers to celibacy as a man's "total gift of himself" and adds: "The obligation of celibacy, which the Church adds as an objective condition to Holy Orders, becomes the candidate's own accepted personal obligation under the influence of divine grace" (n. 72). The Pope refers to existing discipline as "the law requiring a freely chosen and perpetual celibacy . . ." (n. 42). From these statements it is clear how unfortunate it is to refer to the celibacy of the diocesan clergy as based "not on the strength of a charismatic vocation, but on the strength of the ecclesiastical institution" (Bunnik). Celibacy by ecclesiastical discipline and celibacy by charismatic vocation are not mutually exclusive. The Church, it is true, cannot create charisms by law; she can, however, demand in her discipline (as long as it is fitting) that only those who feel charismatically called to celibacy present themselves for priestly ordination.

5) There is some indication in the Encyclical that the inchoate priestly or ministerial call and the call to consecrated virginity are not only distinct but quite definitely temporally separable. Thus candidates for the priesthood do not necessarily have the call to celibacy as yet. Indeed, the Encyclical is careful to insist that seminary education be such that it is favorable to the reception of this gift.[77]

6) Pope Paul acknowledged the fact that married ministers from other confessions have been and will continue to be admitted to the priesthood in special instances. This fact, however, must "not be interpreted as a prelude to its [celibacy] abolition" (n. 43).

The question of a married priesthood will almost certainly continue to be a touchy and controversial issue in the Catholic community. It concerns the intimate lives of individuals in a profound way, touches the public life of the Church, and has implications for some of the deepest ecumenical aspirations of the People of God. The issue is certainly not closed with the issuance of *Sacerdotalis caelibatus*, simply because discipline of its very nature invites

[77] For recent discussions of problems relating to priestly training, maturity, and celibacy, cf. C. W. Baars, M.D., "Love, Sexuality, and Celibacy," in *Sex, Love, and the Life of the Spirit* (Chicago: Priory Press, 1966) pp. 56–81; B. Gardey, O.P., "Conditions nouvelles d'un célibat permanent," *Vie spirituelle, Supplément*, Sept., 1966, 435–59; J. B. Rosenbaum, "A Psychoanalyst's Case for Celibacy," *Catholic World* 205 (1967) 107–10; F. D. MacPeck, S.J., "On the Significance of Celibacy," *Pastoral Life* 15 (1967) 209–16; E. Kennedy, "A Quiet Catholic Question," *America* 116 (1967) 147–48; F. J. Kobler, J. V. Rizzo, and E. Doyle, "Dating and the Formation of Religious," *Journal of Religion and Health* 6 (1967) 137–47; *Vie spirituelle, Supplément*, Feb., 1967, pp. 22–175.

constant re-examination. Such questions can be considered closed only at the terrible price of stagnation. Hence respectful and responsible discussion of these questions is a desideratum even after the Encyclical—but hardly without a thorough knowledge of the document.

To remain truly responsible,[78] it would seem that such discussion should not obscure, and hence undermine, the fact that ordained priests do *presumably* have a charism, and that *presumably* they have personalized this by deliberate choice, and that therefore they have a factual commitment in the moral order. This presumption can, of course, yield to the facts. If some priests have not assumed their celibacy by deliberate internal choice, or are incapable of doing so, their situation is indeed anomalous. It is that of one destined to wait out his days in a spiritually sterile and sclerotic bachelorhood. Such "reluctant" celibates, whether still active in the ministry or not, deserve the full compassion and charitable understanding of the Christian community. Something can and should be done for them in the juridical order. I am suggesting that they should be allowed to marry, or that their previous attempt to marry be recognized in the juridical order. This would not compromise a commitment. It would simply recognize juridically that there never was one. Juridical provisions, if they are in a balanced and healthy condition, attempt to conform to moral realities—to educate to them, to support them, and to recognize their limits. Or, as Cardinal Leger notes, "there are backward movements which are not infidelities, and the Church herself is today more understanding and more solicitous to correct these erroneous choices."[79]

OF WARS AND DRAFTS

In the literature touching war, two moral issues have received intensified attention. On one of them (selective conscientious objection) there is growing unanimity; on the other (the moral aspects of the war in Vietnam) there is deepening disagreement. A bit about each.

Recent Selective Service statutes establish three criteria to determine eligibility for the status of conscientious objector. (1) The objection must be based on religious training and belief. (2) It must be conscientious, i.e., sincerely held as binding in conscience. (3) The objection must be against all wars or war in any form. In *United States* v. *Seeger* (1965) the Supreme Court interpreted the first criterion as satisfied by "a given belief that is

[78] One is disappointed that a great weekly could not state its forthright disagreement with the decision of the Encyclical without betraying, in its choice of title, a sniggering arrogance; cf. "Bachelor Psychosis," *Commonweal* 86 (1967) 436.

[79] Cf. n. 63 above.

sincere and meaningful [and] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption." In other words, the Court broadened the functional definition of religion to include Seeger's agnosticism and love of humanity. Subsequent decisions, therefore, granted conscientious-objection status to those opposed to all wars on religious or humanitarian grounds.[80]

In a helpful review article[81] Lawrence Minear studies the history of conscientious objection and concludes that since the last three centuries manifest a growing sensitivity to the complexities of conscience, our next logical step is, among other things, to provide protection to the conscience of the religious-humanitarian objector to a particular war—that is, to the selective conscientious objector.

It is precisely this position which has gained increasing support from theologians and religious leaders over the past few years. Paul Ramsey espoused it back in 1961.[82] In May, 1966, the 178th General Assembly of the United Presbyterian Church, U.S.A., urged Congress to examine proposals dealing with "those who cannot conscientiously serve in a particular war." The General Board of the National Council of Churches recommended on Feb. 23, 1967, the extension of present provisions "for those who are conscientiously opposed to a particular war, declared or undeclared." In April, 1967, the Methodist Board of Social Concerns also asked for statutory protection for the selective objector.

In several places Union Theological's Roger L. Shinn gathers these and similar statements and argues the case of selective conscientious objection.[83] The case rests basically on the fact that Christian tradition, in distinguishing just and unjust wars, has "put upon its people the moral burden of distinguishing between the justifiable and the unjustifiable war." It is true that many will conclude that the wars of their own country are righteous. But should all get locked into this majority judgment? "The rest of us must say that men of conscience have a right and responsibility to make moral decisions that may differ from those of the government." This is the heart of the issue, I should think.

Shinn agrees, of course, that it is impossible to go "all the way down" any road, whether it be the road of unlimited individual freedom or unlimited government. On some issues, he says, it is reasonable to let society have its

[80] For a scathing criticism of the theology involved in present provisions, cf. Michael Novak, "Draft Board Theology," *Commonweal* 86 (1967) 467–68.

[81] Lawrence Minear, "Conscience and the Draft," *Theology Today* 23 (1966) 60–72.

[82] Paul Ramsey, *War and the Christian Conscience* (Durham, N.C.: Duke Univ., 1961).

[83] Roger L. Shinn, "The Selective Conscientious Objector Again," *Christianity and Crisis* 27 (1967) 61–63; also *Testimony on Selective Conscientious Objection* (New York: Council for Christian Social Action, 1967).

way. Shinn does not explain where one draws the line, and it is precisely here that some opponents of selective conscientious objection have balked. Perhaps we can put the matter as follows. Can a line be drawn once selective conscientious objection is recognized by law? In other words, would not young men begin to take selective stances with respect to other laws (e.g., tax laws)? If conscience should be operative vis-à-vis all laws, would not the government have to respect conscientious objection in all cases?

Hardly. There is a rather sharp distinction between a tax law, for example, and draft laws which could involve one in killing. Contributing to a war by my taxes is one thing; killing in a war is another. The difference is that between more or less remote co-operation toward and direct participation in. Just as the common good strongly suggests that the government respect sincere selective conscientious objection to a particular war, so it is the same common good which will strongly suggest to the individual that rights in society (here legal protection of conscience claims) must be limited. A government can respect every conscience claim against any law only at the price of its own disappearance. The community consensus has affirmed in the past the reasonableness of a limitation on rights. I believe it will continue to do so. Hence it will admit the reasonableness of a distinction between more or less remote forms of co-operation in a cause one regards as unjust, and direct participation in this cause. And even if certain individuals fail to honor this distinction, serious thinkers and more sensitive citizens will, precisely because it is necessary for the preservation of that social stability which alone guarantees any freedom.

Recently John M. Swomley, Jr.,[84] and Harvey Cox[85] have supported the basic position of Shinn. Cox notes that protecting the selective conscientious objector "would conform to the fact that conscience seldom operates in the categorical way the law now requires but responds to different situations with different levels of moral approval or disapproval."

In November, 1966, the National Conference of Catholic Bishops emphasized the place of personal responsibility in decisions about war.[86] While the Catholic bishops took no explicit position on selective conscientious objection, they espoused the principle on which it rests. "No one is free to evade his personal responsibility by leaving it entirely to others to make moral judgments."

Vatican II's endorsement of laws which "make humane provisions for the

[84] John M. Swomley, Jr., "Conscience and the Draft," *Christian Century* 84 (1967) 833–35.

[85] Harvey Cox, "Reappraising the Draft," *Christianity and Crisis* 27 (1967) 73–74.

[86] "Statements of the National Conference of Catholic Bishops," *Catholic Mind* 65 (1967) 55–64, at p. 62.

case of those who for reasons of conscience refuse to bear arms" is probably too general to apply clearly to the selective conscientious objector. However, its teaching clearly supposes personal moral decision and responsibility. After condemning actions designed for the methodical extermination of an entire people, it stated that these actions, "as well as orders commanding such actions, are criminal. Blind obedience cannot excuse those who yield to them .... The courage of those who openly and fearlessly resist men who issue such commands merits supreme commendation."[87] To state that blind obedience is unacceptable and cannot excuse those who yield to immoral orders is clearly to imply the necessity of personal responsible decision in one's actions. The Council was saying unequivocally that no one may turn his conscience over to the state.

It was against such a background of mounting unanimity that the President's National Advisory Commission on Selective Service (Marshall Commission) made its report to the President in February, 1967.[88] During the deliberations of the Commission, two proposals were submitted to its membership for consideration. The first argued that the Selective Service Act be amended to eliminate the requirement that conscientious objection must be lodged against war in all forms. The second proposal suggested that the conscientious objector to a particular war should be excused from combatant service, but should be required to serve in a noncombatant military capacity under conditions of hardship, and even hazard, for a period perhaps even longer than the combatant.

It is not hard to believe that the first proposal was drafted under the guidance of the late John Courtney Murray, S.J. It reflects both his reasoning and his happy precision of formulation.[89] The proposal was structured on three assertions. First, the present statute incorporates the moral position of absolute pacifism. However, such a view does not represent the moral consensus of the American people. Hence, even though such a position should continue to be honored in a revised Selective Service Act, it should not be accorded its present position of privilege. Secondly, the classical doctrine on war holds that not all uses of military force are inherently immoral. A war may be just; it may also be unjust. Thirdly, though it is true that the decision to make war is the prerogative of duly established government and its decision founds for the citizen a presumption in favor of the legiti-

[87] *The Documents of Vatican II*, p. 292.

[88] *Who Serves When Not All Serve?* Report of the National Advisory Commission on Selective Service (Government Printing Office, 1967) pp. 48–51.

[89] J. C. Murray, S.J., *We Hold These Truths* (New York: Sheed & Ward, 1960) pp. 249–73.

macy of the war, "the citizen still is personally responsible for his own moral judgments on matters of public policy. He may not abdicate his own conscience into the hands of government. In making his moral judgment on the legitimacy of war he must assess the political and military factors in the case, but the judgment itself is to be a moral judgment."[90]

It is this principle which has led an increasing number of responsible spokesmen to speak in favor of selective conscientious objection. It is most unfortunate, therefore, that the Marshall Commission's majority report recommended against statutory recognition of selective pacifism. In doing so, it failed to deal realistically with the need and sanctity of personal responsibility. Its reasoning was even more unfortunate:

> A determination of the justness or unjustness of any war could only be made within the context of that war itself. Forcing upon the individual the necessity of making that distinction—which would be the practical effect of taking away the Government's obligation of making it for him—could put a burden heretofore unknown on the man in uniform and even on the brink of combat, with results that could be disastrous to him, to his unit, and to the entire military tradition.[91]

Commonweal bitterly editorialized (and rightly, I believe) that "in a matter-of-fact tone and with virtually no dissimulation of language, the Marshall Commission simply says that individual moral responsibility is a threat to the nation."[92] It should not be too surprising, therefore, that the subsequent Military Selective Service Act of 1967 will satisfy no one. As *America* noted,[93] it not only perpetuates the injustices of former legislation, but eliminates the clause which allowed the Supreme Court in *U.S.* v. *Seeger* to broaden the definition of the religious conscientious objector to all wars.

The case for statutory protection of selective conscientious objection is, I believe, very strong. To a nation which has drawn so much of its vigor and creativity from freedom of conscience it should appear almost unassailable. Obviously, execution of such humane provisions would involve a mountain of practical difficulties. But these practical headaches, when weighed against the inescapable importance of personal moral responsibility, should operate merely as a challenge to American pragmatism and optimism. The Nuremberg trials indicate clearly that we expect individuals to exercise this responsibility. Vatican II indicates the very same thing. A nation that expects and honors personal responsibility in the face of commands which led to Nuremberg should recognize that it can do so consistently only if it expects

[90] *Op. cit.*, p. 49. [91] *Ibid.*, pp. 50–51.

[92] "The Draft and Conscience," *Commonweal* 86 (1967) 139–41. Swomley criticizes the majority recommendation on other grounds; cf. *Christian Century* 84 (1967) 465–68.

[93] "The Selective Conscientious Objector," *America* 117 (1967) 73.

and honors personal responsibility in those choices which can lead to such ultimate instances. Or again, one who does not honor conscience claims about the morality of a particular war is a bit inconsistent in appealing to these claims when they touch the morality of acts within a particular war.

Since, therefore, personal responsibility is a requisite at all times, the government should do everything possible to give statutory recognition to conscience convictions. In doing so, it is not only supporting and educating to personal dignity, but serving its own best interest; for a government which penalizes sincere conscience objection to a particular war—as our government currently does—is one which is in principle penalizing the only court of appeal against commands such as those which led to Nuremberg. History shows how unenlightened and self-destructive this is. It is axiomatic that a parent who treats a child like a puppet is training a monster. It is altogether proper, therefore, that we continue to urge two points: (1) the individual's personal moral responsibility where participation in war is concerned;[94] (2) legal protection of conscience judgments representing the sincere exercise of this responsibility.[95]

When individuals exercise their personal responsibility by attempting moral judgments on the war in Vietnam, there is not nearly the unanimity that there is about the legal respect due to such judgments. The moral judgment of a particular war will bear on two aspects of that war: (1) the justice of the nation's cause; (2) the measure and manner of the force used. Both of these aspects elicit disagreement. Space permits only an example or two.

The justice of the cause. Philip Wogaman points out that the essence of traditional just-war doctrine, as a marginal morality in a sinful world, is that the presumption of the Christian must be against, not for, every particular war.[96] He centers his own attention on the condition that the war must be declared and waged by a duly constituted, or legitimate, authority. It is precisely here, he contends, that American intervention in Vietnam is wanting in moral legitimacy.

Wogaman presents several reasons for his conclusion. First, the origins of guerilla conflict trace back to popular revolution against the essentially irresponsible French rule in Indochina. The present government, with which we are aligned, is a lineal descendant of French rule, of an imposed rule.[97]

[94] For an extremely interesting and helpful list of questions aimed at a moral assessment of Vietnam, cf. *Ave Maria* 105 (1967) 6–15.

[95] For educational efforts to acquaint students with their right to conscientious objection, cf. " 'No' to the Draft," *Christian Century* 84 (1967) 715–16.

[96] Philip Wogaman, "Vietnam: A Moral Reassessment," *ibid.*, pp. 7–9.

[97] Gerhard A. Elston would also support this reasoning; cf. "Vietnam: Some Basic Considerations," *Catholic World* 205 (1967) 78–82.

Secondly, the settlement of 1954 provided for popular elections in July, 1956. The United States was not a signatory of this agreement and concurred with the Diem regime in disregarding this arbitrament by ballot. Thirdly, subsequent regimes in South Vietnam have derived authority from *de facto* possession of power, not from the concurrence of the people. Finally, U.S. intervention has no basis of authority beyond that of its own judgment and the invitation of irresponsible South Vietnam regimes. Summarily: the U.S. imposition of power serves neither the manifest wishes of the people nor the manifest judgment of the majority of peoples of the world.

Contrarily, Quentin L. Quade argues that the legitimacy of American policy in Vietnam must be judged with constant reference to one's estimate of the stakes involved.[98] It is Quade's contention that Vietnam generates far wider ripples than is readily appreciated.[99] If the force threatening Vietnam is merely indigenous with no further repercussions, then it would be hard to justify U.S. presence. But if the force is more than indigenous, then there are greater values at stake and a larger significance to the anguishing situation.

What is the larger significance, what are the greater values at stake in Vietnam? Without accepting any automatic "domino theory," Quade contends that China has raised the stakes beyond the confines of Vietnam because she (and Russia) have consistently viewed Vietnam as a test case for wars of national liberation. If the U.S. had not intervened in Vietnam, it would have been confronted with comparable, perhaps even more ominous, choices at a later date.

Quade sees a pattern in Communist activity. Its expansionist ambitions toward Western Europe, Greece, and Turkey were not simply given up; they were frustrated. Similarly, China's aspirations in Taiwan and Korea were not just abandoned; they were first contained. Quade believes, therefore, that we must approach the wars of liberation, elaborated by Krushchev and Lin Piao, in light of the expansionist aspirations of contemporary Communism. There will be no successful wars of liberation if they are contained. Our containment-war involves, therefore, the many values inseparable from the frustration of expansionist aims.

These summaries inevitably blunt the subtlety and range of both articles. And obviously they hardly make all the points that can and should be made. But they indicate serious attempts by concerned citizens to bring moral judgment to bear on American policy.[100] From a reading of this type of

[98] Quentin L. Quade, "Vietnam: Is the Price Too High?" *America* 116 (1967) 805–9.

[99] William V. O'Brien would agree with this; cf. "Comments on the Vietnam Debate," *Catholic World* 205 (1967) 169–70.

[100] For the assessment of the American bishops, cf. *Catholic Mind* 65 (1967) 62–63; see also *America* 116 (1967) 32.

article—and they are countless—it must be clear that the justice of a nation's cause can only be assessed when one commands a rather thorough knowledge of contemporary history and political realities.

The measure and manner of the force used. Alan Walker refers to attacks on noncombatants and concludes that "on this ground alone the Vietnam conflict is immoral and unjust because of the vast civilian suffering it is causing."[101] Furthermore, the measure of force employed in Vietnam is altogether disproportionate. In a just war the gains of victory must exceed the evils visited by war. It is Walker's belief that the destruction of life and devastation of land infinitely outweigh any ends that could be attained by victory. "Thus before the bar of Christian judgment the Vietnam war stands condemned."

The University of Akron's D. Gareth Porter claims that our prosecution of the war is limited only if one defines limited war in terms of the political aims which the government has proclaimed.[102] The restraining limits have not touched the means used. The United States has undertaken a bombing policy "which assumes as its primary effect an ever-increasing level of death and destruction in residential areas." Since our professed aim is to "force them to move toward negotiations" (in the words of Secretary McNamara), then the bombing can hardly be limited to surgical strikes against military targets which hardly touch Hanoi's willingness to pursue the war in the south. The bombing "must deeply affect civilian life itself."

Peter L. Berger distinguishes between the ambiguity of political decisions and the clarity of the moral horror in Vietnam.[103] Our prosecution of the war is simply criminal because its methods involve the killing of large numbers of helpless people. "There is no justification for methods of warfare that are in themselves criminal. And if a war cannot be fought except with these methods, then this war must be stopped—regardless of political costs."

Harvey Cox's position on the use of force in Vietnam seems clear.[104] He compares Vietnam to the 1937 (April 27) bombing of the Basque capital of Guernica. At that time "the indiscriminate bombing of women and children worked a wave of revulsion and rage around the world." However, we use incomparably more bombs on Vietnam in one night than the Germans used in the entire Spanish operation. "But we are incapable of an appropriate measure of abhorrence."

[101] Alan Walker, "Vietnam: Reappraisal from Down Under," *Christian Century* 84 (1967) 835–36.

[102] D. Gareth Porter, "Is This a Limited War?" *Commonweal* 86 (1967) 9–11.

[103] Peter L. Berger, "A Conservative Reflection about Vietnam," *Christianity and Crisis* 27 (1967) 33–35.

[104] Harvey Cox, "Our Own Guernica," *Commonweal* 86 (1967) 164–65.

Michael Novak speaks of the bombing of children and scorns as any defense for civilian damage the idea that "you can't put a bomb in a barrel."[105] Jay Neugeboren refers to the "murderous fact of U.S. actions," "the horror which goes on every day in Vietnam," and calls for massive civil disobedience.[106]

On the other hand, Ernest W. Lefever of the Brookings Institution contends that the term "indiscriminate bombing" has been indiscriminately used.[107] Of the bombing in the north he states that "it is in fact the most discriminating bombing in the history of aerial warfare." The problem in the south is, he admits, totally different. There the Vietcong have used civilians, including women and children, as protective cover for their terror activities.

> For this reason the Americans go to extraordinary measures (i.e., beyond anything in previous warfare) to protect civilians, including warning, safe conduct, resettlement, emergency relief, economic assistance, and medical care. These measures, undertaken for political and humanitarian reasons, often interfere with military efficiency and result in greater United States casualites. *No national army in history has operated under stricter rules of political self-restraint than the Americans in Vietnam.* Even so, there are, regretfully, thousands of civilian casualties.[108]

The main lines of Paul Ramsey's thought are known to those familiar with the literature on the morality of war. He has put his thought clearly and concisely in a recent summary.[109] Ramsey is convinced that liberal religious and academic spokesmen have been hurling around the terms "murder," "inherently immoral," and "indiscriminate" in a way which hardly reflects their ordinary precision of thought and language. A just-war theorist, Ramsey accepts as the cardinal principle governing just conduct in war the principle of discrimination—the moral immunity of noncombatants from deliberate direct attack. Noncombatancy, however, is always a function of the current organization of nations and forces for war.

In insurgency warfare as we know it, the guerilla chooses to fight between, behind, and over the peasants, women, and children. He lives among the people like fish in water. It is *he*, therefore, who has enlarged the extent of foreknowable but collateral civilian damage. He has brought his own population into range and the onus for this should not be shifted to counterin-

[105] Michael Novak, "Humphrey at Stanford," *Commonweal* 86 (1967) 7–8.

[106] Jay Neugeboren, "Disobedience Now!" *ibid.*, pp. 367–69.

[107] Ernest W. Lefever, "Vietnam: Joining the Issues," *Catholic World* 205 (1967) 72–77.

[108] *Ibid.*, p. 73. On this cf. the comments of General Earle G. Wheeler, *U.S. News and World Report* 62 (Feb. 27, 1967) 42–43.

[109] Paul Ramsey, "Is Vietnam a Just War?" *Dialogue* 6 (1967) 19–29.

surgency. Therefore, the application of the principle of discrimination in insurgency warfare cannot be settled by a body count. Ramsey repeats his conviction 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."

Elsewhere he asserts that our bombing, by its main design, has been directed at raising the cost of infiltration.[110] Thus it is against the infiltration, against the combatancy as such. However, on March 10, 1967, there was an air raid over North Vietnam no longer describable in these terms. It was the bombing of the Thainguygen iron-and-steel complex. War products constituted only a small percentage of the plant's output. "This," Ramsey insists, "was a blow against North Vietnamese society and against the will of that country's rulers by striking its people's stake in their future economic development." He sees it as a large step up the slope leading to total war; for we were no longer involved in raising the cost *of the infiltration* (and thus in meeting the combatancy), but we were involved in raising the costs *to North Vietnam.* Once this becomes our criterion, we have made ourselves conditionally willing to do inherently immoral things (Hiroshima, Nagasaki, etc.) if raising the costs upon Hanoi requires it.

I believe that Ramsey's analysis of the Thainguygen bombing (whether it is factually correct or not) points up a factor very important for moral analysis: the *temptation* to involve civilians as targets. The Vietnam war has two major characteristics. First, it is drawn out, frustrating, and dirty. It is not, by and large, a war made up of major set-piece battles. Rather, its ingredients are snipers, booby traps, napalm, underground fortresses, rice paddies, mortar lobs, snakes, disease, and civilian treachery. Secondly, it is a war of containment where our overriding aim is to tighten the noose around the enemy and bring him to the conference table. This combination of characteristics means that there is the inbuilt temptation to work on the enemy's morale—and therefore on his civilians. This is not to say that this has often happened or will necessarily happen. It is simply to say that the temptation is there. It is all the more urgent, therefore, that our own moral categories be capable of distinguishing collateral civilian death from direct strikes on civilians.

Two things have struck the compositor of these notes as he reviewed the recent literature on the moral aspects of the Vietnamese war. Both have to do with the principle of discrimination in the use of force.

First, it is clear that the notion of "inherent evil," "intrinsic evil," is with

[110] Paul Ramsey, "Over the Slope to Total War?" *Catholic World* 205 (1967) 166–68.

us to stay—at least for the duration of the war.[111] The very ones who reject the category when dealing with theological methodology are the ones who cling to it when discussing Vietnam, especially when condemning the war on the grounds of civilian loss.

Secondly, the use of these terms is terribly loose. They are used interchangeably with "slaughter" and "atrocity," and generally translate to mean dead or maimed bodies, dislocated civilians, etc. To remain human and promotive of the values we treasure, our outrage and indignation at the effects of the use of military force must be structured upon the cardinal principle of discrimination. Otherwise, as Ramsey notes, our vocabulary (and our indignation) is exhausted and spent when a genuinely immoral use of military force does occur.

The essential distinction is that between direct and collateral damage in the use of force. Our judgments may differ as to the actualities—whether certain military strikes are directly visited upon civilians or not. But to allow our outrage to build without benefit of this basic distinction is to plant the seed of total warfare in our own attitudes; for to identify civilian casualties with direct civilian slaughter is reductively to identify any killing with murder. It is, in Ramsey's phrase, to identify tragedy with wickedness. Such a confusion of categories forces one either to adopt absolute pacifism or—since this is unacceptable to the vast majority of us in our sinful world—to support countersociety strikes and obliteration bombing when they are necessary.

It is precisely here that some religious and academic spokesmen do their own cause most harm. We all shudder at the suffering and death brought by war. We all want a quick and lasting peace in Vietnam. But to agree with some spokesmen in their flabby and imprecise expression of this desire is to renounce in principle any use of force that ends up with maimed civilians. If there is anything which approaches indiscriminate bombing, it is *indiscriminate* horror at the evils of war; for here we have the mentality which breeds total-war thinking. In principle, such thinking forces us to abandon our basic freedoms to no defense or to an immoral one. Since Christian tradition has refused to accept this narrowing of options, it must resist the mentality behind it, a mentality revealed and made public by indiscriminate indignation. That is why Wogaman is so utterly right when he says that the breakdown and seeming irrelevance of the just-war doctrine in times of war

[111] For a recent study of intrinsic evil, cf. Thomas Wassmer, S.J., "Is Intrinsic Evil a Viable Term?" *Chicago Studies* 5 (1966) 307–14.

is not due to the doctrine itself, but to "the disinclination of Christians to perfect and apply it."[112]

CONTRACEPTION

In reaction to the rather inconclusive remarks of *Populorum progressio*[113] on birth regulation, the *Christian Century* editorialized that "Pope Paul has his hand on the doorknob. Will he open the door?"[114] Perhaps a better question, or at least a more theological question, would be this: Is the door locked or unlocked? Robert H. Springer, S.J., suggested in this journal that it is not only unlocked but already half open.[115] That could well be the case. Even so, the literature on marriage in general and on contraception in particular has continued to follow its rather fertile old ways.[116] Here I shall mention only two points which have come up for discussion in the past semester: the documents of the Papal Commission and the address of Pope Paul of Oct. 29, 1966.

The documents of the Papal Commission[117] represent a rather full summary of two points of view. They incorporate most of the important things which have been said on the subject of contraception over the past three or four years, plus a few very interesting and important nuances. The majority report, particularly the analysis in its "rebuttal," strikes this reader as much the more satisfactory statement. Many theologians are convinced that only an *act* analysis can do justice to the tenets of Christian tradition and the findings of contemporary empirical studies. It is precisely such an act analysis that the majority report attempts to develop and it is this analysis

[112] *Art. cit.*, p. 8.

[113] *AAS* 59 (1967) 257–99. Cf. also *Documentation catholique* 64 (1967) 1027–33; B. Sorge, S.J., "Come leggere l'enciclica 'Populorum progressio,' " *Civiltà cattolica* 118 (1967) 209–23, at pp. 212–13.

[114] *Christian Century* 84 (1967) 460.

[115] Robert H. Springer, S.J., in THEOLOGICAL STUDIES 28 (1967) 327–30.

[116] Cf. M. Huftier, "Morale chrétienne et régulation des naissances," *Ami du clergé* 77 (1967) 193–208, 209–12; G. M. Sirilla, S.J., "Family Planning and the Rights of the Poor," *Catholic Lawyer* 13 (1967) 42–51; J. Dominian, "Vatican II and Marriage," *Clergy Review* 52 (1967) 19–35; D. Quartier, "De verantwoorde methodes van geboortenregeling," *Collationes Brugenses et Gandavenses* 63 (1967) 126–35; J. Villain, "Un rapport sur la régulation des naissances," *Etudes*, March, 1967, pp. 338–43; D. Hickey, "The 1966 Theological Problem," *Furrow* 18 (1967) 91–99; *Palestra del clero* 66 (1967) 544–48, 612–13; M. Dayez, "L'Etat et le planning familial," *Revue diocésaine de Tournai* 22 (1967) 80–95, 130–43; *Sal terrae* 55 (1967) whole issue; J. Rötzer, "Empfängnisregelung—nur eine Frage der Technik?" *Theologisch-praktische Quartalschrift* 115 (1967) 164–76; L. Berg, "Von Ehe und Familie," *Trierer theologische Zeitschrift* 76 (1967) 54–58.

[117] Cf. n. 16 above.

which provides its most interesting feature. In sketchy and impoverishing outline I would say that the report seems to build in the following way.

1) The morality of sexual expression in marriage must be concluded from the meaning of the action.

2) The meaning of the action is gathered not from the implications of an intact biological structure, but from the essential meanings of human sexuality. These meanings can be stated as follows: responsible and generous fecundity, expression of mutual union and love. These are two of the basic values of conjugal life.

3) If these values are properly realized in the individual act, the act has good moral quality or objective rectitude. They are so realized if (*a*) the action is a dignified expression of mutual self-giving; (*b*) there is responsible fertility in the whole conjugal life.

4) Therefore, in so far as procreation as a value specifies the individual act, it is the fertility of the whole married life which does so. That is, infertile acts receive one dimension of their meaning or moral specification not from their individual procreative aptitude, but from the procreativity of the marriage as such. This means that, in one sense, infertile acts are incomplete and constitute with fertile acts one moral choice. Therefore, they receive their full moral quality from the relation to the fertile act—basically because the love they individually express culminates in fertility.

5) Therefore, if the fertile act is irresponsibly excluded, other infertile acts derive a bad specification from this single irresponsible decision until it is rectified. Hence the enormous responsibility on parents to make their decisions about family size truly responsible Christian choices.

One could, I believe, summarize the analysis operative in the majority report in the following syllogism. Each act of sexual union is, in its external concreteness, an expression of marital love. But this love culminates in fertility, and therefore finds a basic meaning in fertility. Therefore, each act gets a moral quality or specification from this fertility (i.e., the choices which pursue it or exclude it).

Obviously, this analysis provokes a great number of questions. There is much more work to be done in this area. But these beginnings look very promising. Side by side with the increasingly patent inadequacy of an analysis rooted in the notion of *actus naturae*,[118] these beginnings could lead one to believe that the position espoused by the majority report should be regarded as intrinsically the more probable and acceptable opinion.

That brings us to the matter of pastoral practice. Does the state of affairs

[118] Cf. Louis Janssens, *Mariage et fécondité* (Paris: Duculot, 1967).

as we now (August, 1967) find it justify the conclusion that the Church's traditional teaching on contraception is a matter of practical doubt? The current sticking point is said to be the address of Pope Paul VI to the Italian Society of Obstetricians and Gynecologists (52nd National Congress, Oct. 29, 1966).[119] In that statement, it will be recalled, Pope Paul reminded his hearers that "the norm until now taught by the Church, integrated by the wise instructions of the Council, demands faithful and generous observance. It cannot be considered not binding, as if the magisterium of the Church were in a state of doubt at the present time, whereas it is in a moment of study and reflection concerning matters which have been put before it as worthy of the most attentive consideration."

It was this statement, together with preceding teaching, which led Nicholas Halligan, O.P., to conclude that there is no practical doubt on the matter of contraception.[120] "When . . . authoritative pronouncement or authentic judgment has been made in matters related to faith or morals, this [doubt] can no longer obtain." It is obvious that Halligan regards the October statement as either an "authoritative pronouncement or authentic judgment."

John Noonan has taken up the question of the October statement and sensitively disowned several scabrous attacks on the Holy Father's intelligence and good faith.[121] Because of Noonan's prestige, his analysis of the current situation will be studied carefully. His position can be stated in two propositions. (1) The rules governing the conduct of Catholics are not in doubt. (2) There is a doubt as to whether these norms constitute divine law.

Unless I am mistaken, this position presents grave problems to the theologian, if not to the lawyer. The problem can be outlined as follows. Noonan has argued, in his magisterial tome on contraception, that the Church's proscription of contraception might be read as a practical rule in support of abiding values. When the rule no longer functions as a support, it can and should change.

The term "practical rule" is ambivalent. It can mean at least two different things. First, it can refer to a simple legal directive. In this sense it would pertain to what we know as a disciplinary prescription. Second, it can refer to a time-conditioned understanding of a divine-law demand. That is, it can enuntiate what the Church understands the divine law to demand *in these*

[119] For English versions cf. *American Ecclesiastical Review* 166 (1967) 136–40; *Catholic Mind* 65 (1967) 59–62.

[120] Nicholas Halligan, O.P., "Doubt or No Doubt—The Papal Question," *American Ecclesiastical Review* 166 (1967) 257–67.

[121] John Noonan, "The Pope's Conscience," *Commonweal* 85 (1967) 559–60.

circumstances. Noonan accepts this second sense as the proper meaning of "practical rule" when he treats of the history of the teaching on contraception.

Yet, when he confronts the present situation, he contends that the traditional norms still bind certainly and will continue to bind until the Pope says otherwise, *even though there is a doubt as to whether they represent divine law*. Could it be that Noonan has begun to regard his "practical rule" as a mere disciplinary ruling? I believe so. And here is where the theologian balks.

Theologians would contend that the precise obliging force of papal statements on contraception is their doctrinal force. That is, authoritative Church interventions on questions of natural law are educative in the moral order. This educative aspect is the basic source of their obligatory power. In other words, the Catholic recognizes in the magisterium a divine commission to teach, to enlighten consciences. Because of this divine commission and the promise of aid in its execution, authentic noninfallible Church interpretations of natural law enjoy the presumption of correctness, and it is this presumption which founds the duty in prudence to accept in a human way these teachings; for we are all bound to prudence in the formation of our consciences. The obligation is not the result of a legal directive.

It seems that if Noonan is going to hold that the moral duty to avoid contraception is certain even though the divine-law duty is doubtful, he must regard the source of obligation to be a legal directive of some kind. This is what is theologically difficult to admit.

Once it is shown, therefore, that there are intrinsic reasons (good and probable) why the Church may change her teaching on contraception, it would seem that the foundation for a certain obligation has ceased to exist—precisely because the obligation never derived in the first place from a legal directive, but from a teaching or doctrinal statement. If the teaching statement becomes doubtful, does not the obligation also? And if the pertinence of past norms to divine law is doubtful, is not the teaching statement doubtful?

But, it has been claimed, the address of Pope Paul VI on Oct. 29, 1966, repudiated the existence of a doubt. Verbally, yes. But a careful reading of this address (wherein the Pope said explicitly that he was not making his decisive statement on contraception) will lead one to the conclusion that it could not have been a doctrinal or teaching statement. Noonan admits this when he asserts that the Pope was actually admitting a "doubt as to the divine immutable character of the law."[122] Only an authentic teaching state-

[122] *Ibid.*, p. 560.

ment is capable of dissipating a genuine doctrinal doubt.[123] And that is why I would agree with the many theologians who contend that the matter of contraception is as of now, at least for situations of genuine conflict, just where it was before the papal address—in a state of practical doubt.[124]

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[123] One could, of course, challenge the existence of a doubt prior to Pope Paul's 1966 address; but that has become a difficult thing to do.

[124] For example, cf. B. Häring, "Aber wir Beichtväter . . .!" *Theologie der Gegenwart* 10 (1967) 40–43, at p. 41; *Sal terrae* 55 (1967) 128.