

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY: JULY-DECEMBER, 1967

NEW DIRECTIONS IN MORAL

Moral currents in the period under review are manifold. If their meanderings are sometimes confusing, at least they are in motion and they do head in the right general direction, like rivers to the sea. Two of these currents are here surveyed: Christian ethics and the role of the magisterium. Hopefully the reader will move on to the original sources cited. A survey can do little more than record conclusions, not the evidence that produced them.

James M. Gustafson, Professor of Christian Ethics at Yale University, reviews Catholic moral theological developments of recent vintage as found in the writings of Gerard Gilleman, Joseph Fuchs, Robert Johann, and Bernard Häring. The position of Häring, e.g., he assesses as follows:

... a Biblical theological theme of incarnation, perhaps Johannine in its source, is coupled with the Pauline emphasis on Christians being in Christ, and with an emphasis on the vocation of Christians to be the disciples of the one through whom their life and their newness of life have come. But more than this is involved; natural law is present, though in increasingly historical terms, and there are marks of the value theory of Max Scheler, and the personalism that prefers the language of response and responsibility, of fellowship and love.¹

One major trend in Catholic theology singled out by Gustafson for approval is the concern for basic human and Christian issues, "How is God known? What is the place of Scripture in moral theology? Is it revelation of God in the human? Is it a revealed morality? What is man? . . . What ends or norms are proper? What new ways do we have to understand these? Authentic humanity? Growth in community?"²

The major portion of the article, however, is concerned with the writings of William van der Marck. The main strands of van der Marck's thought he finds to be: (1) a Christocentrism that sees the meaning of Jesus as "the revelation of God in humanity," thus clarifying the real significance of what it is to be a man, and downplaying the distinction of a Christian ethic from human ethics; (2) the nature of man as intersubjectivity, this *is* statement grounding the ethical *ought* of "communication, community, a share in common humanity, love, justice . . ."; (3) stress on man's corporeity and rejection of a body-soul dualism; (4) a theology of God's presence:

¹ "New Directions in Moral Theology," *Commonweal* 87 (1968) 617-23, at p. 617.

² *Ibid.*, p. 618.

Human reality is the form of incarnation and redemption brought about and taken on by God himself. . . . Apart from [Christ] there is no humanity, and all humanity there can possibly be exists in him. In other words there is nothing human that does not show forth the face of God, and it is the face of God himself that becomes visible to us in all that is human. Creation is seen to be incarnation—and redemption. . . .³

Van der Marck's thought is thus representative of the effort of recent theology to mend the breach which the traditional distinction between natural and supernatural too strongly cleaved. Grace is nature, with a difference. To be a Christian is to be human, but in a special way.

Gustafson's praise is discreetly muted, however, and his reservations to some extent point up the differences between the North American and the Continental varieties of Christian ethics. First, van der Marck is too essentialist. Intersubjectivity can be conceived, Gustafson recommends, by a more inductive approach and formulated on a "lower level of generalization." Our complex human experience "has implications for fundamental ethics . . . Too swift a move toward simple definitions of essence and nature might weaken the plausibility of a general theory. It might also render it less useful in orienting practice as one returns to the concrete."⁴

Secondly, Gustafson has reservations about van der Marck's theology of God's presence in the human. He suggests this approach instead:

Faith that God is in some sense present and active in the human is mediated in complex ways through human intentions, attitudes, dispositions, perspectives and reflections toward moral action. Faith is given content by belief, and beliefs about (as well as in) God provide grounds for interpreting human events and experiences both in terms of their significance, and in terms of what they ought to move toward or to be.⁵

Gustafson's disenchantment with essentialism and with a premature finding of the divine in the human isolates two characteristics of Continental thought as seen through American eyes. His own thinking is deeply rooted in the American tradition of ethical theory. Though American Catholicism over the years has enriched the tradition with the best of European writing, there was involved something of a slavish copying from another culture. Seminary textbooks in use for decades provide telling evidence of this. Epistemologically this was not totally invalid. We have shared Western culture from our European origins. But too heavy transcultural borrowing left the Catholic less well equipped to face life on this side of the Atlantic.

Compared to the European, American thought is more pragmatic and empirically oriented. Our situationist writers, e.g., lean more to a love ethic,

³ *Ibid.* ⁴ *Ibid.*, p. 622. ⁵ *Ibid.*, p. 623.

whereas their European counterparts build more on freedom. A fine sample of the love approach is an article by John G. Milhaven, "A New Catholic Morality?"⁶ The fears sometimes voiced of a love ethic being too vaporous to provide definite guidance are put to rest by Milhaven's insistence on responsibility and responsiveness.

The love-or-justice-oriented-ethics debate is aired in a special issue of the *Reformed Journal*, voice of the Calvinist tradition in this country.⁷ A Jewish view of the same subject is found in the *Reconstructionist*.⁸

As an example of the American stress on the empiric and on process, the article by Eugene Fontinell, "Religious Truth in a Relational and Processive World," is worthy of mention.⁹ The author's conception of the community as constitutive of the person, not merely as a service function to human needs, gives the lie to the charge of individualism leveled at personalism.

A second current in the recent literature concerns the role of the magisterium, the official teaching of the Church. Last year at this time in these "Notes" the need was pointed out of rethinking this question as a result of the issues raised by Bishop Simons of India and Archbishop Hurley of South Africa.¹⁰ We can now report on some fresh stirrings in this sector of theology. The occasion of this nascent development of the theological interpretation of magisterial teaching has been the contraception controversy. Theologians writing on the question imply that the controversy is now solved, not indeed on the level of the official Church, but in that part of the Church represented by theologians and others. They seem to presume that a change in the official position is forthcoming. Or they may be intending to provide a historical and epistemological basis for such change to be seen as growing out of the tradition. At any rate, the theological trend here reported does not stand or fall depending on what action Pope Paul takes. It rests upon two supports: the periodic need of theology to be reviewed and to develop, and the history of inadequate and defective teaching in the past.

Areas in which such teaching is found are alluded to by Fr. J. David: the *Syllabus of Errors*, Christian social teaching, the Bull *Unam sanctam*, and official statements on the state.¹¹ He also points to a new trend in official teaching as found in Pope John and Vatican II, a certain reserve or drawing

⁶ Soon to appear in the pages of the *Critic*.

⁷ "War and the New Morality," *Reformed Journal* 18 (1968) 9-33, especially the articles by Henry Stob and Paul Ramsey.

⁸ Myron Berman, "The 'New Morality' and the Jewish Family," *Reconstructionist* 33 (1967) 16-22.

⁹ *Cross Currents* 17 (1967) 283-315.

¹⁰ *THEOLOGICAL STUDIES* 27 (1967) 309.

¹¹ *Noweaux aspects de la doctrine catholique du mariage* (Paris, 1967) p. 119; but cf. the whole chapter "L'Eglise et le droit naturel."

back, as compared with the more categorical pronouncements of Pius XI and Pius XII.¹² *Mater et magistra* does indeed speak forthrightly and elaborates social doctrine. But this is softened by reference to the different socio-economic conditions in various parts of the world. To these the doctrine must be differently applied, the Encyclical says. Vatican II develops this still further: "The Church guards the heritage of God's Word and draws from it religious and moral principles, without always having at hand the solution to particular problems."¹³

The answer to the difficulty of defective teaching in the past, David thinks, lies in the distinction between the Church's pastoral function on the one hand and her doctrinal role on the other. Affirmations about the content of natural law are an exercise of the pastoral function and are not infallible unless they also have divine revelation as their source. Questions of the existence of natural law, its knowability in its essential contours, or whether a given natural-law thesis is reconcilable with revelation, these pertain to the Church's doctrinal role. Only these latter teachings enjoy doctrinal certitude.¹⁴

Fr. Herbert McCabe indicates two sources of embarrassment for natural-law theory in its less happy periods: neglect of the evolution of man and of the human situation, and the naturalistic fallacy.¹⁵ The latter allowed the physical nature of man, rather than right reason, to dictate what may or may not be done. What man ought to do was thus made to coincide with what man is on the physical level. Areas of particular difficulty for Church teaching, McCabe finds, are marriage, commerce, communication, and war. Here he suggests:

The magisterium of the Church should not be quick as formerly to see in individual rules of behaviour which either prevail in society or are laid down by itself, immutable principles of natural law valid for all times and places. It should be readier to see more of these as good guides for the time being, perhaps to be modified later. Indeed the magisterium would largely spare itself the trouble of trying to distinguish between rules which are immutable as they stand and those which are not, if in moral matters it tried to be more of a pastoral guide to men, pointing out to them, under the inspiration of the love of God in Christ, the best means of living that it now knows, instead of a legal authority laying down universal laws and sanctions for them.¹⁶

¹² *Ibid.*, p. 118.

¹³ Constitution on the Church in the Modern World, no. 33 (*The Documents of Vatican II* [New York, 1966] p. 232).

¹⁴ *Op. cit.*, p. 117.

¹⁵ "New Thinking on Natural Law," *Herder Correspondence* 4 (1967) 347-52.

¹⁶ *Ibid.*, p. 352.

A promising new light on the moral scene, Fr. Bruno Schüller of the Jesuit school of theology in Frankfurt, Germany, makes a noteworthy contribution to this delicate subject.¹⁷ The theoretical possibility of error by the magisterium in the area of authentic, noninfallible teaching does not justify doubt about its truth. Such a position does not allow for the guidance of the Holy Spirit or the teaching authority of the Church. Doubt is justified only when the magisterium itself retreats from an earlier position, or when there is serious evidence, shared by many competent Christians, for a contrary view.¹⁸

Schüller goes further in his thinking. When both the magisterium and the Christian have access to the same basic evidence, the justification for holding a contrary position is notably increased. This is valid in moral matters, e.g., in the question of birth control. Secondly, when justification is had, those in possession of the contrary evidence are duty-bound to pass it on to the magisterium; an obligation to follow one's conscience on the issue involved may obtain. Schüller respectfully recommends that the official Church admit errors in teaching more swiftly than has been done in the past.¹⁹ Rapid communication in this age of the mass media, respect for the Church especially among the educated, and Christlike concern for the moral anguish of the less-educated buttress Schüller's suggestion.²⁰

All the authors cited above on the role of the magisterium preface their remarks with the precaution "for the theological fraternity only." No recommendation of immediate use of their lucubrations is made. They are to be commended for facing a painful issue with respectful courage. The earlier epistemology demanding "religious assent" to authentic teaching has been inadequate and in need of development.

OF PEACE AND WAR

A recurrent question heard these days asks: Why do not the moral theologians speak out on the war in Vietnam? Another form of the question says: Why do not the bishops tell us what to think about the war?²¹ The query may be a legitimate complaint or it may reveal an ill-formed conscience. First

¹⁷ "Can Moral Theology Ignore Natural Law?" *Theology Digest* 15 (1967) 94-99.

¹⁸ *Ibid.*, pp. 98-99.

¹⁹ "Bemerkungen zur authentischen Verkündigung des kirchlichen Lehramtes," *Theologie und Philosophie* 42 (1967) 534-51.

²⁰ Cf. also Kevin T. Kelly, "The Authority of the Church's Moral Teaching," *Clergy Review* 52 (1967) 682-94, 938-49.

²¹ Cf. the fine pages on the war in Vietnam and the draft by Richard A. McCormick, "Notes on Moral Theology," *THEOLOGICAL STUDIES* 28 (1967) 785-96.

we will consider the false form of the question, then we will try to show aspects of the war on which a clear stand can be taken.

The questioner may speak with a pre-Vatican II accent: "Tell us what to think, what decision to make." In a real sense, no one should answer the question in this form, for a personal conscientious decision is required which no one else can supply anymore than another can give one's consent to marriage. In the past, only the conscientious objector seemed to agonize over the dreadful decision: Do I support my government in this awful matter of taking human life? Most of us left responsibility to the government—or thought we could. This was poor democracy, inexcusable morality.

With remarkable inconsistency we asked in World War II dismayed and uncomprehending: How could Christians in Germany support Hitler and Nazism? Yet the lone voice in the Catholic community raised in protest over our bombing of German cities at the end of the war was Fr. John Ford's. We had trusted unquestioningly government policy; we forgot that approval at the outset of the conflict does not absolve from continuous reappraisal.

Had we kept government answerable to us, as it must be, we should not now stand guilty before the peoples of the world and before God for the monstrous sin of Hiroshima and Nagasaki. Though we may not have approved at the time, we did not disapprove. We should have—a striking confirmation of the adage, our great sins are those of omission. The conclusion remains, neither bishops nor moralists should tell us what to think about the war in Vietnam. This is a personal responsibility that no citizen may delegate to another.

To be fair, the question may reveal a degree of moral concern, a groping for information. The questioner then stands less guilty than those of us who do not even raise the question.

There is a second false form of the question. Behind it may lurk a methodological weakness, insufficient attention to the epistemology of moral science. We have not often enough in the past asked, how valid is the kind of evidence we possess, how reliable is the method we are following. Such scrutiny would have made us more conscious of three limitations of the just-war theory.

First, the method itself is limited, as is any method. Its limitations must then be supplemented by another approach, for example, the ethic of Christian love, which reacts with horror at the taking of human life even when this is a legitimate use of force. The enemy is still loved even as he is being punished. There is more sensitivity to alternatives to force in this approach than in an exclusive approach from the viewpoint of justice. This love ethic applied to war is more characteristic of Protestant thinkers than of Catholic.

We should, of course, heed the voices of other Christians in this ecumenical era.²²

Secondly, there is a methodological weakness in the way the just-war theory has been used. Supposedly, one had only to ask about a particular conflict whether it fulfilled all the conditions of the theory: Is it directed to the repelling of unjust aggression as a last resort after arbitration has failed? Is proper proportion preserved, only that degree of force used which is necessary to contain and set right the evil perpetrated? And so on. This process completed, one had either a clear answer or a doubtful one. The clear conclusion meant moral justification to fight or to abstain conscientiously, depending on whether the war effort was seen as just or unjust. In the second alternative, a doubt of conscience as to the legitimacy of taking up arms, one had recourse to the rule that in doubt the presumption favors the government, which was reasonably expected to be in possession of evidence and knowledge of the situation not had by the ordinary citizen.

This procedure *as used* was aprioristic. It presumed that war is war in any age, and was insufficiently attentive to change in political situations and in military technology. In a word, it lacked historical consciousness. Proceeding from theory to reality, it was inclined to neglect the empiric. It was a simplistic forcing onto the present historical situation of a conceptual scheme elaborated from an earlier context. It should have been used as a conceptual tool, *mutatis mutandis* (due regard being had for situational change).

A further methodological weakness is the quest for certitude where certitude cannot be got. Who knows for sure to what extent Hanoi represents Pekinese communism, or to what degree it stands for the universal aspiration among developing peoples for legitimate nationalism? It would be comforting if the former was clearly the reality; we would then be reasonably certain that Hanoi is indeed part of a world-wide aggressive conspiracy and could feel secure in conscience that our military presence in Vietnam is justified. But we cannot close our eyes to the distinct possibility that the second alternative may be true. Certainty is had only when one is dealing with constants. The presence of variables immediately places the evaluation on the level of probability.

It was this false quest of certitude that John Courtney Murray, S.J., criticized in his address to the clergy of Toledo, Ohio, in May, 1967.²³ The

²² "Nor should we forget that whatever is wrought by the grace of the Holy Spirit in the hearts of our separated brethren can contribute to our own edification" (Vatican II, Decree on Ecumenism, no. 4 [*The Documents of Vatican II*, p. 349]). For the Protestant love-ethic approach, cf. Paul Ramsey, *War and the Christian Conscience* (Durham, 1961).

²³ *Catholic Chronicle*, May 5, 1967.

“classical mentality” he called it. Of the classicist he said: “Truth is so objective that it can exist apart from anyone’s possession of it. It is Platonic truth—with ideas always up there in heaven. Truth,” he went on to say, “is a possession of the human subject . . . an affair of experience, and in the perception of the truth the human intelligence has a function that must be conceived as being creative. . . . Somehow the mind creates truth in a sense.”²⁴

For the reader familiar with the recent philosophical development of subjectivity, the description holds no terror. For the classicist, this conception of truth holds only error, for to err is human. Individual conscience is often wrong. This, Fr. Murray pointed out, is “the cult of certainty, another characteristic of classicism which developed especially in the Cartesian era. It led,” he said, “to an excessive development of the whole notion of papal infallibility”²⁵—referring no doubt to the post-Vatican I theology which developed this notion independently of collegiality.

Another illustration of classicism Fr. Murray found in the minority report of the papal commission:

For the minority . . . the issue is not birth control but certainty. Those of the minority view . . . are still classicists in search of certainty, raising an issue of authority related to certainty. They transferred the problem of birth control from moral grounds . . . not arguing about birth control at all . . . to argue about certainty and the authority of the Church. These are two different problems—related but to be distinguished.²⁶

Historical consciousness is the counterpart of classicism. Murray found this mentality clearly dominating the recent Vatican Council, “which moved the Church clearly into world history. . . .” Not certainty but understanding is the goal of historical consciousness. Accordingly, its battle is not with doubt: “The war here is against the incomplete, the partial, the unilateral, the simplistic.”²⁷

Speaking in general, he identified the present crisis in the Church as a crisis of understanding:

The traditional affirmations of faith are still being made. The question is whether or not their historical context is adequate, whether we have had an adequate understanding of faith. This is what the theological fraternity is up to today. . . . The theological way of putting the question is not how certain are we. The question today is how much have we really understood.²⁸

Fr. Murray was not speaking specifically of the war in Vietnam. He was,

²⁴ *Ibid.* ²⁵ *Ibid.* ²⁶ *Ibid.* ²⁷ *Ibid.* ²⁸ *Ibid.*

however, addressing himself to an attitude characteristic of the Catholic community vis-à-vis matters of faith and morals. The war in Vietnam is a major moral issue facing us today. Doubt is no excuse for refusing to take a stand, on the specious grounds of waiting for the clouds to dissolve and the sun of certainty to shine through. In Vietnam there is no sun, only perpetual monsoon overcast.

This older quest for certainty—condemned to inadequacy because certainty cannot be had in the complex area of international affairs—is now giving way to a new feeling in the community. The new mood is one of distinct uncertainty, confusion. Who knows what is really going on in Vietnam? As many sources can be cited in favor of, as against, a given statement about the war. The situation is too ambiguous; one cannot take a stand. The moral danger latent in this position is that of ambiguity or inaction. The end result is the same as with the older error of certitude: government and the military continue on their undisputed way.

Ambiguism as a moral posture is less reprehensible; at least one has tried to reach the point of decisive action. It is, however, unacceptable, abandoning the course of the conflict to the determinism of historical forces. This is to withdraw the control of events from human decision and to deny the guiding inspiration of the Holy Spirit in the affairs of men.

VIETNAM

Let us see how the situational change renders morally suspect the relinquishing of total responsibility to government. First, the legislative branch with respect to the current conflict is not functioning as a sufficient check upon the executive. So very complex are the political, military, and economic aspects of the Vietnamese war that only a handful of legislators are able to keep abreast of developments.²⁹ The late President Kennedy in his book *Profiles in Courage* makes the point that the legislator today faces as many major issues in one year as his earlier counterpart did in the whole of his public career. Secondly, the human factor is operative as always. War industry in a number of states effectively muffles the voices of protest of elected representatives.

A third consideration likewise indicates the moral inadequacy of the

²⁹ Cf. "The War in Vietnam"; Report of the Republican Policy Committee under the chairmanship of Senator Hickenlooper, *Congressional Record* 113 (May 9, 1967) S6572-6585. This is admittedly not a totally unbiased source. Yet it contains much data that should enter into a conclusion about Vietnam, whether for or against the war. For that matter, my evaluation of the war is not unbiased. Admittedly it selects evidence from the "dove" literature which presents a clear challenge to conscience. A similar study of the "hawk" literature would no doubt provide instances where the use of force is justified.

former approach. The mass media are more developed and more extensive in their coverage than in any previous war. The horrors of battle assail our waking and retiring hours. Therefore we have more knowledge of Vietnam than of the Korean conflict, not to mention World War II. To whom more is given, of him more is expected. We can no longer play Pontius Pilate: "Let the government decide. I don't know what is going on."

This conclusion is not assailable on the grounds that the communications media are selective in what they report, yielding to public taste, resulting in an unbalanced view of the whole affair. Allowing for the imbalance, the limited access to data, military censorship, and a wide margin of error in reporting, the case for a better-informed citizenry still stands. Better-informed means more responsible, less able to leave judgment to another.

A further consideration condemns both the abdication of decision to government and the recourse to ambiguity. There are aspects of the war which are unambiguous, susceptible of clear evaluation by nonexperts. One of these is the misallocation of economic resources, with which the misallocation of brain power is closely tied. Another is the loss of innocent life and limb. A word about each in turn.

The economic argument does not speak in dollars and cents, of the intricacies of budgeting, of accountability for itemized expenditures, about which the ordinary citizen is hardly equipped to render judgment. It allows a margin of error of hundreds of millions of dollars, since we are here working with figures amounting to billions. It is rather a broad overview of worldwide annual military expenditures as compared with other appropriations serving the needs of mankind. The ethical question is: Does this square with the principle of proportion?

Here are the raw economic data as presented by Prof. Kenneth Boulding, economist at the University of Michigan.³⁰ Annual expenditures for war industry by the governments of the world are in excess of 120 billion dollars. Much of this is not used in actual war, but to sustain threats, to deter. 120 billion dollars thus represents moral force, power calculated to inspire fear. Its presupposition is the lack of trustworthiness among nations, the need, therefore, of force to preserve peace. As such, it serves to create distrust; threat systems then have a low-return potential in terms of ultimate world goals of peace, understanding, and co-operation between nations. An astronomical figure, then, sustains the threat system operative in international activity.

Other elements of global activity, of which the threat system is part, are

³⁰ *The Impact of the Social Sciences* (Rutgers University Press, 1966) pp. 57-60.

the exchange system (negotiation of trade agreements, treaties, alliances, diplomatic and economic activity) and the integrative system (cultural exchanges among peoples, propaganda, UN activity, the international labor organization, UNESCO, etc.). Compared with the 120 billion sustaining the threat system,

the resources which are put into the world integrative system are almost trivial. The total budget of all the international organizations . . . and . . . agencies only amounts to about a third of a billion dollars, or about .3 percent of the world war industry. Even the amount spent on cultural exchange, international education, and so on, likewise is relatively insignificant, so that it is not unreasonable to state that the threat system completely dominates the international system at present.²¹

To this misallocation of resources we must add misallocation of intellectual resources: "Just as the client wants the best lawyer, a nation wants the best armed force. This results in an enormous waste of intelligence devoted to the means of destruction or the threat of destruction."²²

To express the argument in explicitly ethical terms, the function of money is the fulfilment of human needs—in the present instance, the needs of world peace, of agricultural improvement, of industrialization, world health, and raising the level of education. Admittedly, an earlier world, with its divisions, inveterate mistrust, and traditional enmities between peoples, required more threat activity to keep the peace and promote human happiness and growth. Today's world, however, is in the era of transition to a one-culture, one-political-economic system, one world. Can the enormous disproportion between the outlays for the threat system on the one hand, and the integrative and exchange systems on the other, be justified? Note that the argument does not say peace is not worth 120 billion dollars. It says such expenditure of wealth, of human ingenuity and brain power, channeled into low-yield threat activity is out of all proportion to the higher-yielding integrative and exchange systems. Though stated in economic terms, the argument is reductively ethical. The question facing us is this: Do we as citizens ratify and approve this international policy for which our government is in large measure responsible? If not, what steps should be conscientiously taken?

Another aspect to the Vietnam war—again avoiding complex issues involving military and political science, which only professionals are capable of judging—may be summed up in one word: overkill. The attack on life, limb, and land is attested to by reporter Frank Harvey, invited in 1966 by the Seventh Air Force in Saigon to make a definitive survey of the air war

²¹ *Ibid.*, pp. 59–60. ²² *Ibid.*, pp. 110–11.

in Vietnam.³³ The resulting book was hardly complimentary to the Air Force. The Pentagon expressed its displeasure. These circumstances provide us with more hard facts for moral analysis and assurance of objectivity than is usual in war reporting.

If a peasant whose livelihood is being poisoned has the temerity to get a rifle and take a shot at the defoliation plane, the consequences of his rash act will prove to be catastrophic. The accepted procedure at this moment is for a crew member to throw out a smoke grenade in the direction from which he thinks the shot came; within minutes and in sometimes seconds an aircraft the size of a Martin B-57 convair bomber, riding shotgun in the region, will explode onto the scene and saturate the area around the smoke with a fire power no American soldier has ever experienced.³⁴

What this fire power is like is exemplified by the antipersonnel bomb, the BLU-36B: “. . . clusters [of this bomb] dumped from one fighter bomber in one pass over a village can shred an area a mile long and a quarter of a mile wide with more than one million balls of fragments of steel.”³⁵ Or the strategic, high-altitude bombing by the B-52's setting fire to fifty square miles:

Nothing will live in those fifty square miles. Even a turtle burrowed in the mud at the back of a cave will become only an ash. Used in this fashion the B-52 comes perilously close to a weapon of genocide. According to Harvey and other reporters, our B-52 operations using three thousand pound bombs . . . have done as much to create the two million five hundred thousand to three million refugees in South Vietnam as any other American action.³⁶

Moralists used to say that modern weapons do not add a new ethical dimension to killing, compared with musket or arrow. Modern fire power can kill more quickly, therefore more mercifully. This judgment could be questioned, but more important is the issue how the weapon is used.

Harvey was appalled to find it [napalm] being used routinely against such targets as Hooch lines (rows of houses along a road or canal) in suspect areas, on individual houses, and even in rice paddies. . . . The margin for error in such use is very large. . . . Before the general use of napalm the Vietnamese, like the Algerians, were learning to live with the war by digging little bomb shelters under the floors of their houses. With napalm, which can flood or trickle down into the holes, a sanctuary is converted into a family incinerator.³⁷

³³ *Air War, Vietnam* (Bantam Books, 1967), reviewed by Robert Crichton, “Our Air War,” *New York Review of Books* 9 (Jan. 4, 1968) 3-5, from which I excerpt. Another informative and reliable report on the war is Douglas Pike's *Viet Cong* (M.I.T. Press, 1966).

³⁴ *Ibid.*, p. 3.

³⁵ *Ibid.*, p. 4.

³⁶ *Ibid.*

³⁷ *Ibid.*

Another air tactic is executed by helicopter. A smoke grenade is dropped where the pilot thinks something suspicious *might* be going on. "If the people run from the smoke and explosion, the pilot is then entitled to *assume* he has flushed Charlie and to call in any means of destruction at his disposal."²⁸ Where positive signs of suspicious activity on the ground exist, re-con by fire is used.

Evasive action by the people down below *entitles* the pilot to *assume* he has spotted Viet Cong. Thereupon if people rush into their huts, standard procedure calls for napalm; if in the paddies, they are sprayed with minnie guns from copters, capable of six thousand rounds per minute. If the minnie fire is sustained on a person in a paddy he will be shredded. . . .²⁹

This is the total-war concept in operation. Not total war in the military sense, the fact that modern weapons can reach everyone, but in the ethical sense: everyone may be the target of legitimate attack. But no one may be the target of direct attack unless he is party to the unjust activity. Not that the moral condemnation of total war draws the line with military personnel. Among the legitimate targets of direct attack are not just combatants, but those guilty of proximate co-operation with the war effort. The point is, in some operations our policy does not draw any line in Vietnam.

Such operations as Harvey describes are tantamount to turning weapons on the people in the tenement houses during a street riot in order to kill snipers suspected to be within; or, more accurately, setting fire to the tenements and mowing down the people who scurry out of the buildings with the suspected snipers. We would not tolerate such tactics at home. May we allow them in Vietnam?

Nor can this be termed incidental, unintentional loss of innocent life. One cannot fire indiscriminately into a crowd of onlookers among whom are suspected assassins and say: "I do not mean to hurt the spectators, only the assassins." This is direct attack on the innocent, morally inexcusable. The most that can be said for the perpetrator is that he would not shoot the innocent if they were not with the evildoers, a contrary-to-fact condition. But his desire to save the innocent is a mere whim. His real intention is to do the inevitable, shoot the bystanders along with the guilty.

Robert Crichton, World War II veteran and author, comments on Harvey's facts:

. . . If this is the kind of action the government chooses to take, then not only should one withhold support of that action, but it becomes one's duty to resist

²⁸ *Ibid.*; emphasis added.

²⁹ *Ibid.*; emphasis added.

efforts by the government to make one help fight such a war. . . . Proponents of the President's policy should not be allowed to hide behind the question of our involvement in Vietnam, for which a case can be made, but should be forced to defend our conduct there, which, on examination, becomes indefensible.⁴⁰

Justice must be consistent. At Nürnberg we punished such criminal acts of war. Not only the general who gives the order but the subordinate who executes it is guilty.⁴¹

Sooner or later the military people who have authorized and condoned such tactics as re-con by fire should be made to account for these acts before the American people. It is inexcusable that men such as Westmoreland have been able to appear on television programs and at news conferences and have not been forced to account for the kind of tactics and weapons being used on the people of both Vietnams.⁴²

Even if such direct killing of the innocent were not objectionable, we can take a stand on still other grounds, the violation of the principle of proportionality in the loss of civilian life. Moral theory and the common sense of decency tolerate the loss of some civilians incidental to achieving a military objective, perhaps even several hundred in destroying a large military force. Compare this with the ratio of civilian-to-military casualties in South Vietnam. Estimates vary from 3 to 1 to 5 to 1. Admittedly, these are not hard facts; accurate figures are not to be had. But need we have hard facts to come to a moral decision? Allow a wide margin of error. Let us say two civilians for every soldier, or one to one. Is this ethically tolerable? Imagine the moral outcry if the police killed as many bystanders as rioters in Watts. At the very least, does the absence of hard facts excuse from the moral duty of ascertaining the facts, when so great a toll of innocent life seems to be exacted?

One last issue on which conscience can take a stand: the Christian vocation to bear witness to the imperative of peace among men.⁴³ This is but part of our larger calling to bring Christ's redemption to mankind, to show God's loving presence on earth. The witness to peace is a duty in season and out, during wartime and between wars. The duty varies in intensity, however,

⁴⁰ *Ibid.*

⁴¹ "Therefore, actions which deliberately conflict with these same principles [of the natural law], as well as orders commanding such actions, are criminal. Blind obedience cannot excuse those who yield to them" (Vatican II, Constitution on the Church in the Modern World, no. 79 [*The Documents of Vatican II*, p. 292]).

⁴² "Our Air War," pp. 4-5.

⁴³ Cf. Constitution on the Church in the Modern World, no. 78 (*The Documents of Vatican II*, pp. 290-91).

in proportion to the expectation of results. At present, Russia and the U.S. have reached an atomic standoff. France has seen the folly of force in Vietnam and Algeria. Our might is mired in the swamps of the delta. Now is the acceptable time.

These are, then, four considerations requiring conscientious decision: the misallocation of economic and intellectual resources, the disproportionate loss of civilian life, total war in the use of new weapons, and the imperative of peace. In the light of these, the only unreasonable decision is to make no decision regarding the war in Vietnam.⁴⁴

SEXUALITY AND MARRIAGE

Our tradition has long held that sexual acts, whether internal or external, are morally neutral, neither good nor evil in themselves. Sexual actuation receives its moral quality from the circumstances and purpose which accompany it. Moreover, the purposes of the human heart are notoriously elusive and complex, as the empiric psychology of motivation clearly shows. Circumstances include the consequences of our acts for ourselves and others. Consequences, involving as they do a number of variables, are often difficult to foresee with more than probability. As moral theology opens up to behavioral scientific data, certain conclusions reached in the past become less certain and new conclusions are reached. It is well to recall this essential neutrality of sexual actuation, and the explosion of scientific knowledge in this age of the computer, as we look into theological research on masturbation, premarital intercourse, homosexuality, and direct sterilization.

Fr. Charles Curran, in a careful and commendable study, re-examines the theological sources regarding masturbation and objectively grave matter.⁴⁵ "With regard to masturbation itself, there is no conclusive proof that Scripture mentions the malice (let alone the always grave matter) of masturbation. The fathers of the Church are practically silent on the simple question of masturbation."⁴⁶ Exegetes corroborate Fr. Curran's reading of Holy Writ. For example, the word *molles* (literally "the soft"), which we had interpreted "masturbators" in 1 Cor 6:9, who are excluded from the kingdom of heaven, actually connotes homosexuals—another instance of interpolating into Scripture from our cultural background a meaning that was not there. Had we opened our moral science sooner than we did to the data of anthropology

⁴⁴ For a forthright editorial opposing the war in Vietnam, cf. *National Catholic Reporter*, Jan. 3, 1968, p. 3.

⁴⁵ "Masturbation and Objectively Grave Matter: An Exploratory Discussion," *The Catholic Theological Society of America, Proceedings* 21 (June, 1966) 95-112.

⁴⁶ *Ibid.*, p. 107.

and evolved a transcultural ethic, we would not now be embarrassed at losing the scriptural basis for our teaching on masturbation.

This is not to say that there is no moral objection to this sexual practice. Curran is too careful a theologian to say this. Rather, his tentative conclusion is: "Masturbation is not an action *ex toto genere suo* grave" (always objectively grave matter).⁴⁷ His conclusion, therefore, goes beyond recent textbook teaching, which admits only that grave subjective imputability is frequently lacking, though the matter remains objectively grave.

Actually, an older manual opinion implicitly came to a like conclusion. Palmieri cites with approval the earlier view of his predecessor Sanchez, that nature does not prohibit deliberate ejaculation of semen to save one's life.⁴⁸ One's imagination is strained to see how the act could be lifesaving in reality. But no matter; the authors are speaking speculatively. Moreover, Palmieri concludes by rejecting the opinion, but he does so on the extrinsic grounds of the abuse that would result in practice: it would lead to sexual excess contrary to the common good. The conclusion, however, remains: these respected theologians held that masturbation is not intrinsically evil.

Moral theology does not draw solely on Scripture and theological opinion as its sources. There is the voice of the magisterium to be heard. Curran searches Church teaching of the first ten centuries and reviews the major pronouncements of the subsequent period to the present. He concludes that this teaching is not of the irreformable, matter-of-faith kind. He also finds that "inadequate and distorted notions contributed to the importance and gravity attached to individual masturbatory actions," and cautions that in the present atmosphere of *Playboy* philosophy "Catholic teaching must uphold the dignity and importance of human sexuality."⁴⁹ The evidence he adduces from empiric psychology and his historical reevaluation of the theological teaching merit serious consideration.

Fr. Dennis Doherty re-examines our theological tradition of sexual morality and finds much to be commended.⁵⁰ He is, however, chiefly concerned with unearthing certain inconsistencies in theological speculation and casuistry in order to correct them and determine what the true tradition is. For example, theologians for centuries have rightly held that sexual actua-

⁴⁷ *Ibid.*, p. 95.

⁴⁸ Ballerini-Palmieri, *Opus theologicum morale* 2 (Prati, 1899) nos. 1035-36.

⁴⁹ *Art. cit.*, p. 106.

⁵⁰ "Sexual Morality: Absolute or Situational?" *Continuum* 5 (1967) 235-53. Fr. Doherty is author of *The Sexual Doctrine of Cardinal Cajetan* (Regensburg, 1966), part of the prestigious German historical series *Studien zur Geschichte der kath. Moraltheologie*. This whole issue of *Continuum* is devoted to sexual morality.

tion must be so exercised that it is conducive to generation. It was on the strength of this argument that masturbation was judged immoral. The male semen was wasted. This too-exclusive emphasis on potentiality for generation historically created difficulty in determining the malice of female masturbation.

At any rate, with regard to this procreative emphasis of the tradition, why is it, Doherty asks, that masturbation for a sperm count has been ruled out by the Catholic theory of sex? It is obviously ordered to generation by the infertile husband who desires a child. The objection raised to this was sexual pleasure outside the context of conjugal love. But, Doherty states correctly, a wife was allowed in the tradition to enjoy this pleasure after coitus, when her husband had achieved sexual climax before her. This was judged not to be masturbatory on her part because it was considered to be still within the context of the previous coitus. This concept of "within the context of marital coitus" should be broadened, Doherty suggests, to include self-actuation by the husband for the purpose of a sperm count and eventual procreation.

The direction of present moral research, viz., less attention to acts and more to the underlying disposition whether of generous fertility or of selfishness, lends credence to Doherty's recommendation of moral re-examination. The author adds other considerations to support this conclusion. The insistence on no exceptions to the rule that every deliberate ejaculation of semen must be in the context of coitus, leads to illogical conclusions. Masturbation was unnatural, the argument ran, because contrary to the natural finality of the semen. As unnatural, it was held to be a greater evil in this respect than fornication.

Contraceptive fornication was held to be a greater sin, because against nature, than fornication according to nature. Such judgments, Doherty points out, ran counter to the common estimate of men. The manual authors unfortunately held this common estimate to be in error. Since Vatican II's emphasis on the theological role of the laity and on experience, we dare not dismiss so cavalierly the moral sense of the faithful.

In this re-examination of sexual morality a serious pastoral problem is involved that merits serious attention. Here are several considerations that address themselves to the problem. First, this is speculative theology, a matter of theological research. Theologians are not proposing them for classroom or pulpit presentation. Pastoral use of such ideas requires another distinct discipline, religious education, for which universities have distinct departments, courses, and degrees. Specialization has made its way into the groves of academe. Moralists no longer claim to pronounce the last word on both theoretical and pastoral levels.

Secondly, this theorizing is largely in the area of epistemology, a testing of the validity of moral conclusions by reassessing the evidence from all sources, scriptural, magisterial, experiential, and historical, with a view to preserving and developing the tradition. For an example, take the matter of contraception. Biological evidence not known at the time of the formulation of the Church's teaching indicates that most acts of coitus are not biologically generative.⁵¹ A woman is fertile about three days in the lunar month. About nine times as many acts of marital love have no probability of conception as those that do. Must, then, the Christian couple be taught not to interfere in any act with the possibility of conception, when nature herself so seldom provides for generation?

But this is not to say that generative finality is absent from the biological structure of man, or that it may be ignored in the pattern of the sexual expression of love. The distinction is clearer if we borrow from sociology the terminology of values and norms. Values are the goals to be preserved in any culture, whether in man's familial, religious, or public life. Norms pertain to the concrete implementation of the values, necessary for the latter to be realized. Thus, the value of the child must be retained (actually a cluster of values: human and Christian existence for the child himself, the growth of husband and wife in unselfish and responsible love, the good of the children already born, the contribution to the community of a new person and child of the Father in heaven). Now the expression of this value by the Church in various epochs pertains to the category of norms, e.g., the condemnation of infanticide in ancient times, the prohibition of artificial contraception in *Casti connubii*.

An important point to be remembered in this sociological approach is that the values measure the norms, not vice versa. Accordingly, a new theological formulation must incorporate the total value of the child to himself and to others as described above or be rejected. *Casti connubii* is adequate or not depending on how successfully it insures the same total value. If this method is followed, ought we not feel content and reassured that nothing of value in our human and Christian heritage is being overlooked? We are lost, though, if we identify our norms with the values we want to keep. This leads to the absolutizing of the secondary element, the norms, to the detriment of the values themselves, as their implementation (norms) becomes defective from the changes in the human situation. Thus, the older formulation of the contraceptive doctrine has failed to communicate the value of the child to most married and still fertile Catholics in our culture, as statistical studies

⁵¹ Cf. Thomas L. Hayes, "The Biology of the Reproductive Act," *Insight* 6 (1967) 12-19. This is part of a special issue on birth control.

have shown. Should not theologians then try to restructure norms that communicate the values more effectively?⁵²

But is this not to sacrifice truth, a value in itself? Truth is simply an expression of a value. As an expression, it is a norm, not a value (except in an instrumental sense of insuring intrinsic value). Does not our tradition recognize the perfectibility of truth when it says that God is Truth and any human conception of it is but a finite, limited reflection of the divine? Therefore any human expression of Truth is imperfect, subject to development, while still containing something of the true which is to be conserved. In theological terms, we must keep the tradition and augment it.

Because much of moral theological investigation at present is historical, i.e., discovering certain inconsistencies and purifying the theological tradition of them, it has not yet reached the point of a systematic moral theology for our times.⁵³ This further stage has been entered upon, but long is the way yet to be traversed. Conclusion: we cannot interpret an epistemological study of premarital intercourse, a question of norms, as an attack on chastity, the value to be preserved. What theologians are asking is, are our norms imperfect? If so, let us work out a more effective set of norms—to promote the virtue of chastity!

With our sociological distinction we can more readily understand the restudy of homosexuality, premarital sex, and sterilization. Actually, the Church's prohibition of direct, and the allowing of indirect, sterilization was normative in the sociological sense we have just seen. The value which the Church has always sought to protect is the power to procreate new life. The fact that the magisterium permitted indirect sterilization, e.g., irradiation of cancerous gonads, was an implicit recognition that the value of potential life is not absolute. It may be sacrificed to a higher value, the actual life of the person with the cancer. If the value itself is not absolute, a fortiori may not the norm, the prohibition of direct sterilization, be sacrificed if a more accurate and effective formulation can be found?

If, for example, the life of a mother and the rearing of her children depend on the prevention of future pregnancy by the most effective means known to medical science, because she is in the advanced stage of Rh negative blood, may not her Fallopian tubes be tied, all other factors, medical and psychological, being weighed? If the total value of actual life outweighs the total

⁵² John T. Noonan, Jr., reaches the same conclusion from historical study of Church teaching on usury and contraception in "Authority, Usury and Contraception," *Insight* 6 (1967) 29-42.

⁵³ But cf. E. Schillebeeckx, "Changes in Christian Conceptions concerning Marriage," *Information Documentation on the Conciliar Church*, dossier 66-4.

value of potential life, and both cannot be saved, is it unreasonable to sterilize? Is it sterilization at all, or is it not unreal to call such a mother still fertile? The meaning of the traditional "proper generation and education of offspring" is not just the ability to conceive a child but to bring it to birth with the mother in the condition of being able to raise it.

Doherty's re-examination of homosexuality is a positive step forward. He does so in the context of the traditional emphasis on sexual actuation as ordered to generation. With this argument for rejecting the invert's way of life, the tradition actually understated the case against homosexuality. He is supported in this judgment by those who oppose a change in the Church's contraceptive teaching. They have objected: a change in the teaching opens the door to the justification of homosexuality, for to break the connection between conjugal love and procreation paves the way to sex as a means to self-fulfilment. To this the homosexual appeals for justification of his life style.

To argue from generation, Doherty points out, is to overemphasize propagation of human beings, something that can be either responsible or irresponsible, as we know too well in these times of poverty and overpopulation. Furthermore, it is to imply "that the only things men and women *really* need each other for is reproduction—and this is to stop short with what man has in common with animals. . . . Men and women *really* need each other as persons."⁵⁴ This need is writ large in their sexual complementarity and perfectibility on all levels, biological, emotional, spiritual. It is precisely the denial of each other as persons, Doherty concludes, that condemns the homosexual union. He thereby puts his finger on the only adequate answer. Like it or not, only personalism shows the way out of the impasse.⁵⁵

Doherty's restudy of the traditional emphasis on generation was needed. The doctrine is capable of making a person a mere means to an end. Think of the overburdened mother of eleven, or of three for that matter, who needs sexual love and cannot use rhythm effectively. The primary-secondary ends of marriage formulation says to her: you must have more children. She becomes a mere instrument for human generation. Her need as a person for love may not count.

On the subject of premarital intercourse, it should be made clear at the outset that theological examination of the question is concerned only with those who are engaged to be married. No reputable Catholic theologian

⁵⁴ *Art. cit.*, p. 246

⁵⁵ Cf. John G. Milhaven, "Homosexuality and the Christian," to appear shortly in the *Homiletic and Pastoral Review*.

thinks of the teen-ager in this context. All the evidence is against it. Hardly an area of human conduct is characterized by more selfish exploitation and irresponsibility.⁵⁶ Anthropologist Margaret Mead, who has no objection to intercourse by Samoan boys and girls, finds this unthinkable in our culture. Such intimacy works against the long years of formal education required for a person to take his place in society. Dr. Mary Calderone, an outspoken exponent of sexual openness, advocates telling young people they are not mature enough to have coitus. They find from experience "that something was missing—true abiding love, which he or she is as yet too young to recognize and define."⁵⁷

A second prefatory remark: theologians studying the question are not *recommending* intercourse to the engaged. They are asking whether the prohibition of coitus before the wedding is a universal, i.e., are there no circumstances when it is possibly justifiable? On epistemological grounds, e.g., St. Thomas' theory of secondary principles of natural law, they have reached the tentative conclusion that it is not universal. Thirdly, they carefully modify this conclusion with such expressions as "apart from religious teaching."⁵⁸ Further study still remains of the Church's teaching on fornication.

The restudy of this matter begins with the question, when is marriage? The moment of the wedding consent, or when the engaged couple pledge themselves to permanent life together, to mutual support, to the raising of a family, etc.? Juridical requirements, of course, demand the public consent of the spouses to give the added assurance by the witness of the Christian community to their private pledge of fidelity, an element quite necessary in times such as ours when marriage is too lightly entered upon.

Added to this are the values in waiting until after the wedding before expressing their love by intercourse. On the testimony of the married, this notably heightens the initial experience and strengthens conjugal love. Postponing intercourse also gives deeper assurance of fidelity after the wedding. There is the further value of the expectation of unselfish love by both parties when he or she did not demand genital sex before marriage.

The values in waiting are very real, and values make demands. Further research is needed to determine what these values and others add up to. In

⁵⁶ Cf. Lester A. Kirkendall, "Sexual Revolution—Myth or Actuality?" *Religious Education* 61 (1966) 417; or better, his lengthy empiric study *Premarital Intercourse and Interpersonal Relationships* (New York, 1961).

⁵⁷ *Release from Sexual Tensions* (New York, 1960) p. 88.

⁵⁸ Restudy of religious sources has begun. Apparently, fornication in Scripture means promiscuity, public prostitution, and the like—which hardly fits the engaged.

the meantime two conclusions have already been reached that merit being reduced to practice. (1) A decision made in the light of the values involved is more mature than if it were made solely from a motive of authoritative prohibition. (2) From the viewpoint of pedagogy alone and at the risk of being turned off by the younger generation, we ought to take this more positive approach with those who are reaching adult maturity. The fear of pregnancy can no longer be counted on for any high-yield motivation.

We can go further than this. We need not wait upon theological research regarding the technical moral questions surveyed above. We can adopt now those more pastoral orientations of recent development which stand on their own merits independently of the answers finally reached by research and an ultimate systematic moral theology.

Take, for example, the adolescent boy on the beach who finds himself attracted by the sight of a comely girl's body. He confesses later that he was tempted by unchaste thoughts and desires but that he resisted them. Alphonsus Jansen points out that it does not suffice to say a word of congratulations and encouragement for victory over temptation.⁵⁹ He should be calmly told the root of his problem: he experiences girls as sexual objects, not as persons. Relating to a girl as person, Jansen tellingly shows, means making an acquaintanceship of the chance seashore encounter, discovering her name, the school she attends, the number of brothers and sisters she may have, and the like—in a word, developing an interpersonal relationship.⁶⁰

Spiritual guidance which goes beyond the level of acts to the pattern of the boy's heterosexual relations and influences his attitudes towards others is promoting growth into mature personhood and full Christian stature. This is, for the spiritual guide, an exercise of paternity par excellence.

Or take the perennial question, how far may I go on a date? The one who voices this query reveals an attitude which can only be described as legalistic. He is willing to stop short of sin. The question is unacceptable, for it says, what can I get out of this association with another person? It should be asking, how can I make my companion happy, both at the time of the date and in the long run, how contribute to his or her total growth, spiritually, emotionally, esthetically, and so on?⁶¹

The questioner is not so much to blame as his preceptors. The moral textbook of yesteryear asked the wrong questions. It worked out accurate measurements in terms of actions that directly or indirectly willed sexual

⁵⁹ *The Meaning of Love and Marriage* (Techny, Ill., 1966) pp. 69-79.

⁶⁰ Cf. Lester A. Kirkendall, "Sex Education" (Sex Information and Education Council of the U.S., Discussion Guide no. 1; New York, 1965).

⁶¹ Cf. Jansen, *op. cit.*, p. 72.

pleasure, that strongly lent themselves to veneral commotion or only lightly moved in that direction, etc. The orientation represented thereby was precisely, how far may one go on a date?

Because this pastoral approach operates on the deeper level of attitudes and orientation, the literature available on the subject is found in books rather than articles. The latter do not ordinarily have sufficient length to elaborate a new orientation. Nor can a survey such as this convey in capsule form the message of whole books.

MARRIAGE AND DIVORCE

It has been two years since a controversial article first introduced a controversial issue to the English-speaking world.⁶² The subject was Catholics in a second marriage without the blessing of the Church. The question raised was, must such persons be considered as living in sin and therefore unworthy of receiving the sacraments of penance and the Eucharist? The tentative answer presented by the authors for discussion in the theological fraternity was a guarded "certain persons who live in such co-habitation in a marital state of mind can be morally justified before God and the Church. . . ." ⁶³

Though the question is not settled—indeed, precisely because it is being discussed in the literature under review—attention should be given it here. A second reason is that it serves as a good illustration of the theory of the importance of moral attitudes (as compared with too-exclusive attention to moral acts) currently being developed in moral theology. Certain conclusions, moreover, can be drawn at the present time, though further research and especially discussion in the Christian community are necessary for the new view to be accepted. Other conclusions must wait upon the action of the Spirit moving all ranks in the Church: magisterium, theologians, and (last but not least in a matter involving their direct experience) the married faithful. Finally, several questions not yet injected into the discussion will be raised. Today moralists give fewer answers and ask more questions than was their wont.

To be fair to the authors, we must make clear what people they are talking about. What is the "marital state of mind" of which they speak and which would be required as a necessary condition for reception of the sacraments?

⁶² B. Peters, T. Beemer, C. van der Poel, "Co-habitation in 'Marital State of Mind,'" *Homiletic and Pastoral Review* 66 (1966) 566-77, earlier reviewed in these pages by Richard A. McCormick, *THEOLOGICAL STUDIES* 27 (1966) 620-24. Cf. also John T. Catoir, "The Church and Second Marriage," *Commonweal* 86 (1967) 113-17.

⁶³ *Art. cit.*, p. 577.

They are concerned solely with those remarried Catholics who live together in mutual self-sacrifice, who intend to be faithful forever to each other and to have children (or are already raising children in the love and service of God). In a word, all that marriage connotes is present with the exception of canonical validity.

Excluded are Don Juan and Promiscua, people who are living in a temporary sexual liaison, as well as immature partners in an unstable union characterized by some elements of love, but who are unsuited for marriage. The couple cannot be canonically married. When an existing impediment to marriage can be dispensed from, or divorce from the prior marriage granted, according to existing legal practice of the Church, recognition of ecclesiastical authority over marriage requires that this be done.

This delimitation of subject matter still leaves a whole spectrum of marital situations in all of which the marital state of mind may be verified. They range from cases where the prior marriage was certainly invalid but this fact cannot be juridically established for lack of proof, to a first marriage which was certainly valid. An example of the former is a shotgun marriage into which the young man was forced by the girl's father, to which he internally refused consent, but the father will not admit the constraint. The latter is exemplified by the young husband in a perfectly valid union whose wife deserts him and all measures—legal, psychological, family mediation—have failed to restore union. In-between are other couples in whose case the legal status of the first marriage is more or less valid, more or less capable of juridical proof.

The authors have much more to say on the subject than this. Had they gone only this far, they would still have rendered signal service to the Christian community, for they have done a much-needed piece of moral analysis to replace the too-exclusively juridical one that has prevailed. Necessary as is legal categorization, it is not an adequate presentation of reality. Unfortunately, it outlawed from the community and consigned to the same ecclesial hell all those Christians described in the paragraph above—along with the Don Juans and Promiscuas. The legal norm against which solely they were all measured was, is the present union canonically valid? Yet how different they are as seen by theological analysis and before God.

We branded them all as "living in sin" or concubinage. Was not this judgment by Christians on Christians self-righteous? And was not this attitude contrary to Scripture: "Judge not, that you be not judged"?⁶⁴ Who is married in the sight of God? The official Church herself is often not sure and says so. The jurisprudence of the ecclesiastical courts is sprinkled with

⁶⁴ Mt 7:1.

non constat de nullitate matrimonii (it is not certain that the marriage in question was invalid). That some evidence of invalidity exists in these cases is implicit in the fact of their acceptance by marriage tribunals for adjudication. No doubt, it is to correct this unloving and unchristian attitude that the new Dutch Catechism says: "Christians should not pass judgment on each other in such matters, much less condemn each other, because it is not granted us to know infallibly who is really married in Christ and who is not."⁶⁵ Though we may not have sinned formally in so thinking of second-marriage Christians, the fact that we harbored such a materially sinful attitude is testimony to our sinfulness.

A further issue that should enter into the discussion is that of the antiquated legal machinery of Church courts. Some of these people, after submitting their case to the Church, wait several years, some as many as eight and ten years, to receive an answer to their plea. Is it always right that they should be deprived of the sacraments all this time when the Church too is at fault? May there not be a conflict with divine law here, Christ's command that His people receive the bread of life? At any rate, the delay involved because of antiquated legal procedures is the institutionalized Church at her unchristian worst.

The matter just discussed is, of its nature, only a stopgap solution to a widespread pastoral problem involving the happiness of many faithful, parents and children. The solution proposed by the authors cannot remain an under-the-table arrangement in conflict with the law and practice of the Church. The law itself must be revised to take into account what is established to be of validity in the new view. Canonical rethinking of this question has already begun, though much research remains to be done, especially in Scripture, the history of canon law, and historical theology.⁶⁶

The Catholic Theological Society of America has initiated steps in this direction. One of the main themes of its June 1967 meeting was divorce. Fr. Anthony Bevilacqua, historian and canonist, presented a lengthy survey of the teaching on the indissolubility of marriage in the Fathers, the councils, papal legislation, and the writings of theologians and canonists for the first ten centuries A.D. He concluded to the "almost unanimous defence of indissolubility in the Latin Church," but found rare exceptions¹ allowed,

⁶⁵ *A New Catechism* (New York, 1967) p. 396. Cf. also Louis Monden, *Sin, Liberty and Law* (New York, 1965) pp. 133-35.

⁶⁶ Cf. Rosemary Reuther, "Divorce: No Longer Unthinkable," *Commonweal* 86 (1967) 117-22, and Germain Grisez, "Rational Ethics Says 'No,'" in the same issue of *Commonweal*, pp. 122-25. Cf. also the special issue of *America*, "Marriage, Divorce and Canon Law," 118 (1968) 216-31.

chiefly in the penitential books, for divorce from sacramental and consummated marriage.⁶⁷

In partial conflict with this finding was the conclusion of Fr. Bruce Vawter, Scripture scholar, from his study of the Old and New Testaments. Scripture does indeed inculcate permanent and exclusive marriage with one person, but as something normal and ideal. "What is 'ideal and normal' does not, of course, thereby fall within the category of inflexible law."⁶⁸ Divorce in the Old Testament, an "institution which it took for granted as one of the facts of imperfect human existence," was transcended by the ideal of monogamy and permanent union found in the historical and sapiential books.⁶⁹

In the New Testament, Vawter concludes, marriage takes on a new meaning and dignity. Divorce was "not merely inhibited but rejected in principle," though "it [the new ideal] was not formulated as law in any juridical sense of the term: quite to the contrary, its literary form might be regarded as that of anti-law."⁷⁰

The historical and scriptural research already done still leaves whole areas yet to be studied: e.g., the practice and theory regarding dissolution of sacramental and consummated marriage since the year 1000 to the present, the theology and canonical practice of the non-Latin Church, to mention only two major areas.⁷¹

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⁶⁷ Cited from "CTSA: Chicago, 1967: Summaries of Papers," p. 4, the *Proceedings* not having yet appeared.

⁶⁸ *Ibid.*, p. 2.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p. 3.

⁷¹ In the light of such commendable research, open to new theological development, it is interesting to speculate on a reverse trend found here and there among certain dioceses, whereby prospective marriage couples are required, either orally or in writing, to promise they will follow official Church teaching on contraception before they may have a Catholic wedding. Is not marriage such a basic right that in such an instance they could go before a Protestant minister? Would canon 1098 be applicable?