

## CURRENT THEOLOGY

### NOTES ON MORAL THEOLOGY: JANUARY-JUNE, 1968

#### OF SIN AND DEATH

Sin has been the subject of several recent studies. Kevin F. O'Shea, C.S.S.R., offers a criticism of the "saying no to God" catechesis of sin as insufficiently realistic, historical, and communitarian to convey the insights of biblical revelation on sin.<sup>1</sup> In biblical terms sin is the exclusion by an individual of the new covenant in his life. Similarly sin (better, Sin) is a powerful virus which entered the world as a personified force. It is a beaten but still violent power working itself out in history.

This reality, O'Shea argues, is not a matter of a single act. "It takes a whole lifetime, including death, to commit this kind of sin. Only then could there be, in an absolute sense, a final covenant rupture with the God of New Testament grace; only then could there be a definitive expression of the historical virus of evil in the personal life of a particular man."<sup>2</sup>

Upon this principle O'Shea builds an analysis of the sins committed during one's lifetime. During life there is the possibility of a genuine self-realization of the person against the God of covenant, "not in the total sense which can only take place in death, but in a true relative sense." If this occurs, several possibilities exist. First, sometimes the sin-act performed will involve ("dynamically and infallibly") a further course of personal life in a sin-state which leads to death-in-sin and the final sin. This sin-act is *mortal* sin. Secondly, during life there can be a true rupture of covenant with God without involving this sin-dynamism or sin-course unto death. This is *serious* sin. In this instance the spiritual or moral climate or atmosphere in which the person is immersed inhibits the inner character of the position taken from assuming its true proportions in that person. Serious sin represents a true basic option but "without the involvement of a life drive as a result." In a sin which is serious but not mortal, O'Shea sees the psychology as that of a person who wants to take a radical position before God and does so, "but at the same time he does not want to be that kind of person for good and all." A similar distinction is drawn between venial and slight sin. In venial sin there is a permissive attitude to the possibility of a serious crisis situation; in slight sin there is not.

<sup>1</sup> Kevin F. O'Shea, C.S.S.R., "The Reality of Sin: A Theological and Pastoral Critique," *THEOLOGICAL STUDIES* 29 (1968) 241-59.

<sup>2</sup> *Ibid.*, p. 247.

The emphasis in O'Shea's article is on the distinction between serious and mortal sin. His descriptions of various sin-states contain a good deal that is psychologically plausible. But before accepting the distinction between serious and mortal sin, one should weigh the theological implications carefully. Basic to the distinction is the "final-option theory" developed in the writings of Glorieux, Boros, Schoonenberg, Schmaus, and others.<sup>3</sup> This theory distinguishes mortal sin from sin-unto-death. Only in death, it is contended, is a man capable of a perfectly free self-determination wherein he accepts or rejects salvation definitively. If he rejects it, we have sin-unto-death. Other prior serious acts have both a provisional and a preparatory character. O'Shea accepts the fact that the decisive and total rupture of covenant can happen only "in the projected course of a human lifetime climaxing in the personal position taken in death." It is in light of this tenet that he can distinguish between serious sin and mortal sin. Therefore it is in light of this, too, that one must assess the acceptability of the distinction.

Bruno Schüller, S.J., in a tightly written article, raises several serious difficulties against the final-option theory.<sup>4</sup> We shall mention only two here. But before doing so, it must be recalled that basic to the final-option theory is the assertion that God must call all individuals without exception in death, since only in death is man capable of definitive self-disposition.

First, Schüller argues that the theory denies the grace of forgiveness. Where traditional teaching says that every mortal sin is *of itself* definitive and that it is provisional only in virtue of the free grace of divine forgiveness, the final-option theory says that every sin before death is *of itself* only provisional because it originates out of lesser insight and freedom than is required for definitive decision. Therefore the possibility remaining to the mortal sinner to convert is not seen in this theory as grounded in the forgiving grace of God, but in the imperfection of every free self-disposition of earthly man. This means that the final-option theory must render the grace of forgiveness superfluous. Why? Because looking at himself and his acts, the "mortal sinner" is certain in advance that he will have the opportunity to convert back to God. He is certain of this because he knows that he was able to dissociate himself only provisionally from God and therefore did so only provisionally. God, therefore, could dissociate Himself only provisionally from the sinner. Because the sinner's decision was not definitive, God simply must offer Himself again as salvation, not from grace but from

<sup>3</sup> Michael Schmaus, "Death as Fulfillment," *Continuum* 5 (1967) 483-88.

<sup>4</sup> Bruno Schüller, S.J., "Todsünde—Sünde zum Tod?" *Theologie und Philosophie* 42 (1967) 321-40.

justice. Summarily, the sin-unto-death as absolutely irrevocable is unforgivable; mortal sin prior to this, as not definitive, needs no forgiveness purely from grace.

Schüller urges the argument from a slightly different aspect. In the New Testament the grace of forgiveness is seen as that given against one's deserts. Forgiveness by grace means that a man has brought his salvation history to an end. He is (*von sich aus*) a definitively damned person, but God makes a radically new start. Forgiveness by grace is the conversion of the end into a radically new start. Therefore it can only become a reality after a genuine end has occurred. Since, therefore, the final-option theory denies to man the possibility of putting a real end to his history with God during earthly life, it implicitly denies that God needs to place any new beginning in His history with man. And this is to render forgiveness as we know it in the New Testament superfluous.

According to Schüller, then, mortal sin and sin-unto-death are, in so far as they depend on the sinner alone, irreparable and decisive. The qualitative difference between the two depends not on the sinner's self-disposition, but on a radically gratuitous act of God. To say otherwise, as the final-option theory must, is to attack this forgiveness.

Schüller's second argument is that the only-provisional-mortal-sin is really slight sin. The defenders of the final-option theory believe that mortal sins remain mortal sins even when man turns only "provisionally" from God in this life. Schüller denies this. Each act, he argues, receives its special character from that to which it turns (*actus specificatur ab objecto*). From the fact that in mortal sin man turns from God his last end we can conclude what kind of freedom must be present in mortal sin. Precisely because the last end is that which is sought before and in all, mortal sin can only be a turning from God as last end if man, in so far as it depends on him, totally and definitively engages himself in a free decision. But totality and definitiveness are precisely the qualities absent in any sin but the sin-unto-death in the final-option theory. Therefore these sins simply cannot be mortal.

A careful study of Schüller's article will give one great pause about the final-option theory. Because the distinction between mortal and serious sin suggested by O'Shea seems to depend on this theory, it would appear to represent theological haste to embrace the distinction without further study.<sup>6</sup>

<sup>6</sup> G. Higuera, S.J., concludes that the distinction between mortal and serious sin is in its theological infancy and needs much more work before it can be of pastoral use: *Sal terrae* 56 (1968) 132-39.

In an excellent piece of theological reflection, John W. Glaser, S.J., faces the problem of the apparently frequent transition from grace to sin, life to death.<sup>6</sup> He suspects that something is wrong with our categories of thought when we are led to regard this change as really frequent. Synthesizing recent writings on the basic option, Glaser indicates that there are several levels of freedom from which our acts can be performed. There is a more peripheral or superficial level which does not represent a total engagement of the person. This is the level of slight morality. But there is a core freedom where man acts out of the center of his being. It represents the area of grave morality. Since this use of freedom is a total and definitive disposition of self, it must have a considerable degree of stability. This excludes the possibility of frequent fluctuations between affirmation and negation. Hence when such a fluctuation does occur in the external order, it would seem that its source in the person would not be the core freedom, but the more peripheral level of freedom which constitutes the dimension of *moralitas levis*.

However, Glaser notes that this explanation does not totally solve the problem of fluctuation in the external order. For this fluctuation often occurs in an area of serious matter. Now serious matter is by definition that which can call forth the core freedom of man when he has knowledge of this seriousness. At this point and to answer this problem, Glaser analyzes more closely the nature of what we call in moral theology "matter." He argues that the object of man's freedom (the created medium in which God's offer of Himself to the individual realizes itself) is the individual himself in all his concreteness as God-given task. But this individual is a developing being. Glaser takes sexuality as an example of this development. Man moves through various sexual stages (infancy, latency, adolescent object-relationships, etc.) to maturity. Therefore sexuality is not present in the life of an individual in a univocal way. Even though in its mature stage man's sexuality is capable of being the medium of an ultimate call from God to the very core of the person, it does not follow that it is so at all stages. Just as sexuality develops, so too does its ability to be the medium of an ultimate call from God. This would mean "that a given dimension of man as nature—e.g., his sexuality—could move from being an amoral reality through various stages of intensifying *moralitas levis* to the point where it becomes *moralitas gravis*."<sup>7</sup>

Glaser concludes by returning to the common phenomenon of those who seriously try to live a good life and find themselves in a "habit of serious sin"

<sup>6</sup> John W. Glaser, S.J., "Transition between Grace and Sin: Fresh Perspectives," *THEOLOGICAL STUDIES* 29 (1968) 260-74.

<sup>7</sup> *Ibid.*, p. 270.

and who therefore "experience the utter gloom of sin and the sudden sunshine after confession—and this perhaps on a weekly basis." These people, he concludes, are experiencing two realities: (1) a genuine transition from sin to repentance on the level of *moralitas levis*; (2) a release from the sense of guilt (of superego origin) which does not represent a transition from serious sin to grace.

Glaser's essay, besides synthesizing and applying the best recent thought (Rahner, Metz, Schüller) on the nature of the moral act,<sup>8</sup> has some fine pastoral insights. A few points in the article would seem to merit comment.

First of all, Glaser has faced creatively the problem of what we call habitual sin. It should be fairly clear that he is thinking of phenomena like habitual adolescent masturbation. His suggested solution: the external fluctuations experienced by an adolescent do not reflect real transitions between grace and sin (i.e., no mortal sin), because they pertain to the area of slight morality, *moralitas levis*.

It should be noted that *moralitas levis* is of itself an ambiguous term. It can mean two things. First, it can mean that even though the matter is serious, the individual does not respond with a serious moral act. By and large, traditional theology has approached the problem of habitual sin in this way.<sup>9</sup> It has looked for and found reasons for seeing reduced imputability in the face of what it called serious matter. Secondly, *moralitas levis* can mean that the matter itself is calculated to evoke only a peripheral act of freedom. In this more objective sense it is slight matter. It is in this sense that Glaser would view certain instances of adolescent sexual expression. And he does so precisely on the grounds that man is a developing being whose sexuality does not present itself to him univocally throughout life. At certain developmental

<sup>8</sup> For further discussion on the basic option and some of its pastoral implications, cf. R. A. McComick, S.J., "The Moral Theology of Vatican II," in *The Future of Ethics and Moral Theology* (Chicago: Argus, 1968) pp. 7-18.

<sup>9</sup> Thus recently Giordano Kunicic, O.P., insists that any re-evaluation must occur only in terms of subjective responsibility and pastoral practice. He rightly insists on the objectivity of the moral order, but then proceeds to identify this with one understanding of the meaning and malice of self-stimulation. Cf. "Verso un ridimensionamento della gravità del peccato solitario?" *Perfice munus* 43 (1968) 222-29. F. M. Marchesi, S.J., also treats of subjective imputability only ("Su la gravità del peccato solitario," *Palestra del clero* 47 [1968] 513-16). He argues that there is a presumption that normal Christian youths in the Mediterranean environment do commit serious sin when they are involved in masturbation. Both articles take dead aim at some statements of Bernard Häring, whose occasional ineffabilities do indeed make an inviting target. But both articles strike this reviewer as a bit unrealistic.

stages it is not generally capable of being the medium of an ultimate encounter with God.<sup>10</sup>

This is a very interesting and possibly fruitful way in on the problem. Obviously a good deal of work remains to be done and many precisions need to be made.<sup>11</sup> It is important to note that behind Glaser's analysis is a different manner of determining the seriousness or slightness of matter. Traditionally the object of freedom has been presented as "something out there" which I choose. This immediately endows the object of choice with a good deal of immutability. Thus in traditional categories infant masturbation would have the same objective meaning, hence the same objective deordination, as masturbation in adulthood. It is not hard to suspect that something is wrong here. Recent writings, however, have seen the object of choice as the individual himself in all his concreteness and relationships.<sup>12</sup> I mention this here because such a shift in emphasis, without destroying the objectivity of morality, will have important consequences in assessing the meaning of human actions, and consequently their gravity, and not least of all in the area of ecclesiastical law.<sup>13</sup>

A second observation could be in place by way of completion of Glaser's remarks. He had suggested that a youngster is not sinning seriously in individual acts of habitual masturbation. He had argued this on the basis of the developing character of human sexuality. Here something should be added. Precisely because human sexuality—better, the human person as sexed—is evolutionary, it can be stagnated. Masturbatory activity and its causes can represent an influential factor in this arrest. A person's very

<sup>10</sup> For some up-to-date and thoroughly realistic comments on the subject of masturbation, cf. "Tercer coloquio de profesores de teología moral," *Sal terrae* 56 (1968) 48–59. There are several interesting remarks in this summary. First, methodologically the Spanish moralists insist that masturbation must not be situated on the sexual-genital plane but rather on the personal. Secondly, they suggest that the traditional thesis on no parvity of matter must be submitted to serious and conscientious re-examination. Thirdly, they contend that if masturbation is truly symptomatic behavior, its occurrence in candidates for consecrated celibate life must be weighed in terms of the underlying causes. That is, one should attempt to determine whether the underlying causes are compatible with priestly and religious life. These remarks suggest what many of us have been thinking: in assessing the meaning of masturbatory activity in candidates to the priestly or religious life, much more attention must be given to over-all personal stability.

<sup>11</sup> For example, it can be doubted that Glaser would want to say simply that all sexual acts at a certain developmental stage are incapable of constituting serious matter.

<sup>12</sup> B. Schüller, S.J., *Gesetz und Freiheit* (Düsseldorf: Patmos, 1966) p. 43.

<sup>13</sup> For some recent suggestions, cf. Kevin T. Kelly, "Mortal Sin and Grave Matter," *Clergy Review* 52 (1967) 588–606; W. F. Allen, "Mortal Sin: Its Essence and Meaning," *Pastoral Life* 16 (1968) 445–49.

growth to the stage of *moralitas gravis* can be at stake in the attitude he takes toward the habit. Therefore, is there not the possibility of serious matter in this attitude and determination?

Concretely, if a youngster simply decides to neglect the existence of the habit altogether and to indulge it at whim, he is feeding and strengthening the underlying causes of such symptomatic behavior. Often enough these causes are the multiple anxieties inseparable from the growing process. If the youngster's outlook is irresponsible, then is he not compromising his growth toward maturity and *moralitas gravis*? Such knowing negligence would seem to be serious matter in the fullest sense. Hence I would not care to use the phrase *moralitas levis* as covering the whole range of choices facing a youngster caught in a sexual "habit of sin." His basic attitude toward his habit can and does confront him with a serious choice. But once this choice is properly made and endures, there is increasing conviction that the inconsistencies which occur thereafter are not serious sin—whether because of slightness of matter (Glaser) or reduced imputability (the more traditional view). Whatever point of view one adopts, I believe that lack of serious guilt in these cases is a safe pastoral presumption.

Should the adolescent be told this? Yes, as a general rule he should be, unless, of course, the presumption is not valid in his instance, or unless the information would do him more over-all harm than good. The much more important, indeed crucial, matter is how he is told. I would suggest that he be told two things. First, "each act is not something here and now for which you will be punished eternally in hell. It is precisely your challenge to get to the point where you are genuinely mature and free in sexual expression." Secondly, "the problem of masturbation in your life is a serious thing. It is a problem you want to grow through. Because this habit represents a serious challenge to your growth, it demands a serious response on your part, a resolute and adult attitude. As long as you maintain this, you are on the right path and are responding properly to your challenge."

Even though the habit of masturbation does represent a serious over-all challenge, nevertheless sin should not be the focus of pastoral treatment. Rather the emphasis should fall on the growing process toward full maturity through growth in over-all personal responsibility.

#### THE THEOLOGY OF REVOLUTION

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that they can realize reforms for good. This is called 'revolution,' and if it is necessary for the realization of love of neighbor, then a Christian ought to be a revolutionary."<sup>14</sup> This conviction is increasingly being repeated, expanded, and refined throughout the Christian world to the point where it is almost a manifesto.

For instance, the March 27 issue of *Le monde* carried the conclusions of a conference on "Christianity and Revolution" held at Paris. It reads as follows:

The situation of violence which reigns in the world because of the domination and misuse of the capitalistic system in all its forms, the impossibility of resolving the contradictions inherent in this system . . . by means of gradual reform, constitute the objectively necessary conditions of revolution. But the subjective conditions of revolution depend on the will of the men collectively committed to promote it. Revolution appears to us, therefore, as the only way possible and it supposes a radical change of political and economic structures. But there will not be a structural revolution without a cultural revolution. We are perfectly aware of the fact that this revolution implies a questioning of Christianity in its forms of thought, of expression, and of action. We are convinced that our commitment ought to identify itself with the struggle of the classes and of the oppressed masses to achieve their liberation, in France and elsewhere. The revolutionary struggle ties itself closely to the prospect of the construction of the kingdom of God without identifying itself with this kingdom. We acknowledge the right of every Christian as well as of every man to participate in this revolutionary process, including armed struggle. We express, as a community, our support for the believers who, because of their commitment, are put aside by their local church and feel themselves alone in the faith.<sup>15</sup>

This paragraph draws on and summarizes rather well much of what is being said about revolution in theological literature. This literature rather commonly presents an analysis of sociopolitical structures, a theological interpretation, and draws conclusions on these bases. Revolution is going to occur with or without the Church. It was perhaps this realization which led Harvey Cox to state that "we are trying to live in a period of revolution without a theology of revolution. The development of such a theology should be the first item on the theological agenda today."<sup>16</sup> However, Bishop Marcos McGrath (Santiago de Veraguas, Panama) has stated that "we already have a theology of revolution thanks to the encyclical *Populorum*

<sup>14</sup> Cited in Gaston Zananiri, "L'Eglise et la révolution en Amérique latin," *Ami du clergé* 78 (1968) 187-92, at 189.

<sup>15</sup> Cited in "La tentazione della violenza," *Civiltà cattolica* 119 (1968) 313-17, at 314.

<sup>16</sup> Harvey Cox, *The Secular City* (New York: Macmillan, 1965) p. 107.

*Progressio*, but what we need is a theology of violence which makes precise that which is legitimate and that which is not."<sup>17</sup> The difference in these two statements probably lies in the understanding of the word "theology." By theology I suspect that Cox would mean the broad underlying perspectives of a social ethic which support the more practical statements of *Populorum progressio*.

Be that as it may, the first thing to be said about revolution is that the meaning of the word is ambiguous. G. Zananiri<sup>18</sup> lists four general senses the term can have: violent insurrection unleashed before having exhausted the possibilities of dialogue; violent insurrection justified as a response to violence and out of desperation; pacific action undertaken to accelerate urgently-needed reforms; pacific action undertaken progressively over a period of time more or less determined (evolution). Thus the term can refer to everything from a simple military *Putsch* with or without bloodshed to radical socioeconomic changes within constitutionally established processes. This ambiguity is never totally overcome in some of the literature, but increasingly the term is understood in a sense close to that stated by the seventeen bishops of the Third World in their excellent statement: "a break with some system that no longer ensures the common good, and the establishment of a new order more likely to bring it about."<sup>19</sup>

What is the nature of this break? Gustavo Pérez-Ramírez, approaching revolution from the sociological point of view, concludes that there are several components which distinguish a true revolution from a simple *coup d'état* and other forms of aimless subversion.<sup>20</sup> For example, he insists that in a true revolution it is the relationships of man to man and classes to classes that are primarily affected. The relationship of men to things is secondary. Thus the true revolution has as its aim that "man should be the agent of, and take part as a subject in the achievement of his own advancement." The most important element of revolution, however, is ideology understood as a complex of norms and values. Therefore revolution, when described in structural terms, is "the transition from one given social system, morally authentic but with now obsolete values, to a new order in which the new system of social

<sup>17</sup> Cf. José de Broucker, "Has the Church Opted for Revolution?" *New Blackfriars* 49 (1968) 540-43, at 543.

<sup>18</sup> Zananiri, *art. cit.*, p. 187. Similar distinctions are repeated almost everywhere that revolution is discussed.

<sup>19</sup> Cf. "Gospel and Revolution," *New Blackfriars* 49 (1967) 140-48, at 141. The document is also available in *Catholic Mind* 66 (1968) 37-46.

<sup>20</sup> Gustavo Pérez-Ramírez, "The Church and the Social Revolution in Latin America," in *Faith and the World of Politics* (= *Concilium* 36; New York: Paulist Press, 1968) pp. 124-35.

control is authenticated by values and norms formerly considered a source of dissolution." This understanding of revolution as involving a "complex of norms and values" relates it immediately to theology.

The emphasis in recent theological literature has centered on two points: the relation of Christianity to revolution; the relation of Christianity to revolutionary violence. Here we can present only a sample of the articles touching on these two points.<sup>21</sup>

### *Relation of Christianity to Revolution*

A good introduction to the study of the theology of revolution would be Paul J. Weber's excellent summary.<sup>22</sup> Weber highlights the premises and emphases of current theological writing in this area. For instance, the starting point of the Christian's approach to the total social fact of underdevelopment is a view of history. "Just-revolution" theologians reject a static view of history (creation is a finished work to be preserved) and build from the premise that history has a direction and that God is working in history. The biblical message shows us that this direction is toward greater justice, love, freedom. In working out this direction, God encounters human intransigence, especially as found in social structures which are oppressive and unjust and ultimately constitute a form of violence. It is this basic view of history which provides the substructure of the theology of revolution.

A specific example of this view of history would be a recent article by Johannes B. Metz.<sup>23</sup> Complaining of the privacy and individualism of transcendental, existential, and personalist theology, Metz calls for a "political theology."<sup>24</sup> Its primary task would be to reassess the relationship between eschatological faith and social life. "The eschatological promises of the biblical tradition—freedom, peace, justice, reconciliation—cannot be reduced to a private matter. They constantly force themselves into the sense of social responsibility." These promises are never simply identified with any given social situation, but we move toward them in social situations. Thus the eschatological promises render every social situation provisional and they necessarily render Christian attitudes toward social

<sup>21</sup> The literature used in this summary contains a rather full bibliography.

<sup>22</sup> Paul J. Weber, S.J., "A Theology of Revolution?" *Catholic World* 207 (1968) 220-23. For a different perspective, cf. Georges Morel, "Réflexions sur l'idée de révolution," *Etudes*, May, 1968, pp. 681-700.

<sup>23</sup> Johannes B. Metz, "The Church's Social Function in the Light of a 'Political Theology,'" *Concilium* 36 (n. 20 above) 2-18.

<sup>24</sup> This is also the emphasis of T. Westow, who states that "politics are the very heart of concern with the brother"; cf. "Violence and Brotherhood: A Case of 'trahison des clercs,'" *New Blackfriars* 49 (1968) 229-32.

situations critical. That is, because of its orientation toward the eschatological promises, faith develops a constantly fresh critical attitude toward its social environment. Metz sees the liberating function of the Church's criticism exercised in three ways: the defense of the individual, criticism of totalitarianism, and love as the principle of revolution. He argues that love must be interpreted in its social dimension and be made operative. "This means that it must be understood as the unconditional commitment to justice, freedom and peace *for others*." Understood in this way, love implies a criticism of mere force, but it may at times command revolutionary force.

Heinz-Dietrich Wendland (West Germany) argues that the gospel contains a revolutionary element.<sup>25</sup> He then seeks the connection between the revolutionary element in the Bible and revolution in history. This connection involves both an affinity and a distinction. As for the affinity, the Bible is at one with historical revolution in its eschatology. The coming of the kingdom confronts the Christian with the principle *societas semper reformanda*. This reformation is not precisely a Christian revolution, because the Christian's task is to humanize the secular orders. Or, in Richard Shaull's words, "as a political form of change, revolution represents the cutting edge of humanization."<sup>26</sup> The biblical revolution is distinct from historical revolution, because no historical revolution "opens the door to the reign of freedom, which at the same time offers the inexhaustible satisfaction of all human needs." Ultimately, therefore, Wendland understands the revolutionary element in the Bible as one with only indirect social repercussions. That is, the rule of God operates through the quiet and unarmed force of loving action and the service of Christian groups scattered throughout the world.

Princeton's Richard Shaull is one of the more prominent proponents of the theology of revolution in this country.<sup>27</sup> Shaull accepts the fact that God is at work in human history. And more specifically he states, with Dietrich von Oppen, that the revolutionary impact of Jesus is that all institutions lose their sacral character. They are merely functional and exist to serve men. If this attitude permeates a culture, then institutions will appear which are open, flexible, and subject to constant criticism. Creation of these institutions is the very context of human liberation; for they allow for the

<sup>25</sup> As in J. M. Lochman, "Ecumenical Theology of Revolution," *Scottish Journal of Theology* 21 (1968) 170-86. This article reports on the relevance of theology to revolution, discussions held at the World Conference on Church and Society (Geneva, 1966).

<sup>26</sup> *Ibid.*, p. 172.

<sup>27</sup> Richard Shaull, "A Theological Perspective on Human Liberation," *Ido-c*, no. 68, April 28, 1968. Cf. also "Theology and the Transformation of Society," *Theology Today* 25 (1968) 23-36.

discovery of selfhood and nourish a new will to shape the future. It is this discovery of selfhood and this new will to shape the future which are at the heart of the Negro revolution, the student uprisings, and the social unrest in the Third World. Because this is true, "then we should feel ourselves closely identified with this struggle and the achievement of this goal should be our central concern as Christians at this time." However, these movements have met with tremendous efforts on the part of those in power to preserve the *status quo*.

Shaull admits that one cannot prove the action of God in history. But to make the wager of faith is to bet that the symbols and stories which make up biblical tradition have the power to make transparent to us the deeper meaning of historical processes. Now the basic Christian symbols are death and resurrection. Personally, we move to maturity as we allow the old to collapse and the new to rise. This means that for the Christian birth is the fruit of death. We must understand not only personal but also social history in the light of these symbols. The collapsing of the old to allow the new to be born is a thought-structure connatural to the Christian. It is an outlook which suggests to him that he view social structures as functional and provisional, subordinate to the birth of the kingdom and human liberation. It is precisely *as Christians* that we are free of the self-imposed limitations of American liberalism (American liberals are for liberation of the depressed "as long as they do not upset too much the present system or run the risks of violence") and capable of shattering the systems of thought which give security but inhibit human liberation.

Some of these same emphases are present in the fine study of Rolland F. Smith, S.J.<sup>28</sup> Smith describes a historical Christianity as one which finds God revealing Himself in the events of history which are continually giving way to new events. The Christian distinguishes carefully the revelatory event from the Revealer, and is therefore continually ready to criticize and transcend particular revelatory events. Upon this notion of history Smith builds a distinction between revolution and rebellion. Revolution idealizes an event, whether past or future; it fixates forms and tends to absolutize them, whether these be political, economic, or religious. Rebellion, on the other hand, continually calls these forms into question. Following Camus, Smith sees the rebel as affirming a value in the present structures at the very time he is questioning and toppling them. The rebel, therefore, both criticizes the present and participates in it. Smith understands the new theology of hope with its stress on man's position between promise and

<sup>28</sup> Rolland F. Smith, S.J., "A Theology of Rebellion," *Theology Today* 25 (1968) 10-22.

fulfilment (Moltmann, Metz) as an attempt to set forth a historical Christianity and therefore a theology of rebellion.

These are but a few examples of the more speculative writings on the relationship of Christianity to revolution.<sup>29</sup> We may summarize by citing two sentences from the remarkable statement of the bishops of the Third World: "As soon as a system ceases to ensure the common good to the profit of some party involved, the Church must not merely condemn such injustice, but dissociate herself from the system of privilege, ready to collaborate with another that is better adapted to the needs of the time, and more just." Later the document asserts: "Christians and their pastors should know how to recognize the hand of the Almighty in those events that from time to time put down the mighty from their thrones and raise up the humble, send away the rich empty-handed, and fill the hungry with good things."<sup>30</sup> The first statement acknowledges the subordinate and provisional character of social structures. The second recognizes the action of God in the transformation of the structures. Such statements are straight out of the developing theology of revolution, and therefore tell us what it is at root all about: a search in the biblical message and symbols for a deeper understanding of man as a sociopolitical being. It is easy to agree with George Celestin<sup>31</sup> that these speculations are incomplete and sometimes simplistic. But even if there are loose ends, these beginnings are promising and exciting.

#### *The Relation of Christianity to Revolutionary Violence*

If Christian love involves an unconditioned commitment to justice, freedom, and peace for others, what concrete forms may this love take as it moves into the area of political and social structures? Vatican II stated: "Where public authority oversteps its competence and oppresses the people, these people should nevertheless obey to the extent that the objective common good demands. Still it is lawful for them to defend their own rights and those of their fellow citizens against any abuse of this authority, *provided that in so doing they observe the limits imposed by natural law and the gospel.*"<sup>32</sup> What are these limits? Can violence be justified as a means toward urgently needed social change?

This is not an easy question to answer. First of all, the term "violence"

<sup>29</sup> For outlines of an ethic built on hope, cf. V. Eller, "The Ethic of Promise," *Christian Century* 85 (1968) 963-65.

<sup>30</sup> As in *Catholic Mind* 66 (1968) 40.

<sup>31</sup> George Celestin, "A Christian Looks at Revolution," *Listening* 3 (1968) 137-44.

<sup>32</sup> *The Documents of Vatican II*, ed. Walter M. Abbott, S.J. (New York: Association, 1966) pp. 284-85, emphasis added.

covers a broad spectrum of actions and human experiences, as Ivan Illich has pointed out.<sup>33</sup> For instance, violence against property and things is different from violence against persons. Generalizations ignore these marked differences at their own risk. Secondly, in the circumstances under discussion the problem of force confronts the Christian in a relatively new form. We are no longer dealing with the open aggression of one sovereign state against another (war), but rather with the concealed, legally protected, complex violence endemic in oppressive social structures. Violent response to such systemic injustice raises new questions, both tactical and moral. For instance, does violence inevitably beget violence and turn out to be self-defeating—hence disproportionate in a moral sense? To what extent is violent response to sclerotic social structures compatible with love of the oppressor? On the other hand, does nonviolence in the face of injustice actually end up supporting the unjust *status quo*? Is G. Thibon right when he concludes that systematic refusal of violence can lead straight to the reign of absolute violence?<sup>34</sup> Or does the use of violence absolutize the social structure one proposes to introduce and thus compromise the transcendence of eschatological faith? These are only some of the knotty questions this discussion raises.

Many of the responses to these questions have merely stated a rather general position on force without analyzing it at length or attempting to apply it. A few examples of this type of statement will suffice here. Dom Jorge (the Bishop of Santo Andres, Brazil) said on television that “armed revolution by the people is justified when oppression rules and famine wages obtain.”<sup>35</sup> Similarly Mons. Fragoso (Bishop of Crateus, Brazil) asserted that “at times violence is the only possible way of liberating man from an established, permanent and grievous violence. We have to recognize that the mature conscience of the citizens has the right to opt for violence.”<sup>36</sup> At the World Conference on Church and Society (Geneva, 1966) most of the delegates from South Africa and Latin America approved the use of force at times. Delegates from the more industrialized countries were more reserved.<sup>37</sup> Ultimately the Conference urged Christians not to resort to force, even in the most unfavorable circumstances. But it added that a question could arise “whether the violence which sheds blood in planned revolutions may

<sup>33</sup> Ivan Illich, “Violence: A Mirror for Americans,” *America* 118 (1968) 568–70, at 570.

<sup>34</sup> G. Thibon, in *La Violence* (Paris: Desclée de Brouwer, 1967) p. 121.

<sup>35</sup> As cited in de Broucker, *art. cit.*, p. 542.

<sup>36</sup> Cf. Almeri Bezerra de Melo, “Revolution and Violence,” *Ido-c*, no. 68, July 14, 1968, p. 11.

<sup>37</sup> Cf. Lochman, *art. cit.*, p. 177.

not be a lesser evil than the violence which, though bloodless, condemns whole populations to perennial despair."

Johannes Metz believes that Christian love "may in certain circumstances command something like revolutionary force. Where a social *status quo* is so full of injustice that it might equal that created by a revolutionary movement, then a revolution . . . cannot be ruled out in the name of love."<sup>38</sup> Richard Shaull is on record with the statement that "there may be some situations in which only the threat or use of violence can set the process of change in motion."<sup>39</sup> Paul Verghese is convinced that Christians certainly cannot completely oppose the counterviolence of protest if this means allowing systemic violence to continue and be disposed of at a pace chosen by the oppressor.<sup>40</sup> The Theological Commission of the Christian Peace Conference allowed in its report for the use of force as *ultima ratio*. Their reason: existing social relationships represent a structure of power which uses force in the most varied, even if concealed forms, to maintain the *status quo*.<sup>41</sup> These are all guarded statements, and frankly they do not help a great deal, but they do manifest a drift of thought.

Several essays I have recently<sup>42</sup> encountered contain a longer reflection on Christianity and revolutionary violence. Bishop McGrath first states the problem as it is often formulated:

Where the few are established in power and this power is systematically used to augment their own interests and block efforts at improving the situation of the majority who are in need, then, these Christians say, violence is already present. To strike out against this violence requires no further ethical argument. It is merely self-defense.<sup>43</sup>

In commenting on this, Bishop McGrath makes several points. First, counterviolence can be against the system or against the persons enforcing the system. Generally it is against the persons. But it is precisely the system that needs to be changed. Furthermore, what will violence achieve? Certainly it will "throw the scoundrels out," but unless deliberately provoked revolution has clear goals and the means to reach them, it very easily represents another form of paternalism. It refuses to face the long uphill strug-

<sup>38</sup> Metz, *art. cit.* p. 14.

<sup>39</sup> As in Lochman, *art. cit.*, p. 176.

<sup>40</sup> Paul Verghese, "The Christian and the Revolutionary," *Theology Today* 25 (1968) 141-44.

<sup>41</sup> In "The Just Revolution," *Cross Currents* 18 (1968) 67-76, at 69.

<sup>42</sup> For an earlier study, cf. Karl Rahner, "The Theology of Power," *Theological Investigations* 4 (Baltimore: Helicon, 1966) 391-409.

<sup>43</sup> Marcos McGrath, "Development for Peace," *America* 118 (1968) 562-67.



gle the masses face before they can be brought to be the authors of their own improvement. McGrath also wonders whether Christians involved in violent revolution can maintain their values in whatever actions they initiate. Christians soon find themselves associated with those for whom terrorism and indiscriminate killing are a hobby. Add to this the fact that prolonged violence crushes the basic human and Christian values of life and respect for others. Adverting to the loss of mutual confidence in the people of Vietnam, Bishop McGrath asks: "How long will it take to rebuild the inner humanity of a people thus destroyed?" Finally McGrath rejects vehemently any generalization about the existence in Latin America of institutional violence of the kind justifying counterviolence.

Juan Luis Segundo, S.J., argues that to face realistically the question of violence in Latin America one has to demythologize certain notions and images.<sup>44</sup> First, it is true that the violence of the masses should be conceived of as a response to yet another existing violence under the guise of a legal regime. But things are not that easy. "Latin American social reality is not that of the jungle where violence is natural, nor is it that of developed countries where politics is concerned with the welfare of the people." Therefore the first problem with violence in South America is its very introduction. Life has to become so unbearable that the masses have nothing to lose. Then the right climate for revolution is created. But revolutionaries must take responsibility for creating this climate, since truly monstrous governments (e.g., Batista's in Cuba) are wisely avoided by those in power. There is a moral dilemma here.

Secondly, Segundo asserts that the real violence exercised by the unjust established order justifies in principle a violent response as self-defense. Yet how far can one carry this principle? That is, the general validity of the idea of self-defense does not tell us what means can be employed in self-defense. For example, certainly one threatened at gunpoint may draw in self-defense and fire on his aggressor. But could an individual, knowing his aggressor to be quicker on the draw, hide in the bushes and attack him from behind? Further, realizing his inability to take the aggressor by surprise in any way, could the innocent person kill one of his own friends and lay the responsibility on the enemy and get at him in this way? Segundo insists—and rightly—that Christ's message must guide not only causes but the means used.

Almeri Bezerra de Melo, a Brazilian priest, disagrees.<sup>45</sup> In an otherwise extremely interesting essay he grants that it is not difficult to demonstrate

<sup>44</sup> Juan Luis Segundo, S.J., "Christianity and Violence in Latin America," *Christianity and Crisis* 28 (1968) 31-34.

<sup>45</sup> Cf. de Melo, *art. cit.*

that the message of the Gospels is a message of peace and love, not of war and violence. But the Gospels also carry a message of liberation. "When we are considering the liberation of entire peoples, currently subjected to every kind of slavery, the end to be attained must take precedence over the means employed, and in the case under consideration these are revolutionary violence, armed insurrection." With the facile stroke of an *ipse dixit*, de Melo has adopted a principle which cuts him adrift from a long and cherished tradition. Not all traditions are wise, of course. But some of them are. And it is the peculiar danger of desperation to blur the distinction and render it ultimately irrelevant.

One of the great "revolutionary texts" constantly appealed to is that of Pope Paul VI in *Populorum progressio*. There the Pontiff had referred to situations where whole populations are the victims of injustice. In such situations "recourse to violence, as a means to right these wrongs to human dignity, is a grave temptation." He then added:

We know, however, that a revolutionary uprising—*save where there is manifest, long-standing tyranny which would do great damage to fundamental personal rights and dangerous harm to the common good of the country*—produces new injustices, throws more elements out of balance, and brings on new disasters. A real evil should not be fought against at the cost of even greater misery.<sup>46</sup>

The italicized phrase above is frequently cited as a good description of what is the case in several Latin American countries. Hence Paul VI was being cited as a champion of violent revolution. Recently the Pope has returned to the subject to straighten the records. In his general audience of March 27, 1968, in a speech commemorating the first anniversary of the publication of *Populorum progressio*, Pope Paul stated:

Thus, so it seemed to some . . . that when We denounced in the name of God the very grave needs in which so much of humanity suffers, We had opened the way to the so-called theology of revolution and of violence. Such an error is far from our thought and language. Revolution is altogether different from the positive, courageous, and energetic activity necessary in many instances to establish structures of social and economic progress.<sup>47</sup>

<sup>46</sup> AAS 59 (1967) 257-99, at 272, emphasis added.

<sup>47</sup> AAS 60 (1968) 258. Earlier Pope Paul, speaking of Latin America, had said in his message to the Collegé of Cardinals at the end of 1967: "We invite the entire world to resist the temptation to violence in order to seek wisely and in a Christian way a dynamic and constructive peace, a source of development and civil progress" (AAS 60 [1968] 31). Similarly to the participants at the Conference of Teheran he once again rejected violence as a means to redress economic misery and ideological oppression (AAS 60 [1968] 285). In his August (1968) visit to Latin America the Pope reiterated his rejection of violent reform.

*Civiltà cattolica* jumped on the phrase "tentazione della violenza" as an opportunity to point out that what is characteristic about contemporary thought on violence is its theorization. Violence has always existed, but now we are theorizing it into a value.<sup>48</sup> Hence it is no longer contrasted with the evangelical spirit, but regarded as a consequence of it. In this sense the Christian is increasingly experiencing violence as a temptation, something presenting itself under the appearances of good. The editors of *Civiltà* rightly squirmed at this and warned against the temptation to extend the tolerability of violence beyond instances of evident and prolonged tyranny.

This inadequate roundup of opinion will indicate at least one thing: we are dealing here with one of the most exciting aspects of contemporary Christian thought. It is obvious that Christians are beginning to come alive to social responsibility. The tone is often militant, even at times somewhat unrestrained and uncritical. But beneath it all something wonderful is happening. To face this situation with a complete casuistry of licits and illicitus would be tantamount to substituting a kind of Western moral imperialism for the existing financial imperialism. On the other hand, to rule out moral reflection as irrelevant is to play the deadly game of spiritual suicide. If a Christian dare not absolutize law and order at the expense of justice, neither can he allow efficacy of means to be the supreme criterion; for this would only prepare the rationale for tomorrow's totalitarianism. The Christian absolutizes only the eschatological promises; and it is in light of these that he must formulate his basic ethical questions about violence.

As a person cast between promise and fulfilment, the basic posture of the Christian would seem to be that of "involved transcendence," as Paul Verghese puts it. His witness is "to be basically in sympathy with the protest yet not be drawn into the maelstrom of hatred and destruction that counter-violence generates."<sup>49</sup> The Christian will not absolutely disown the cross of violence, but only the hatred so often its twin. A good practical summary of the moral judgments involved in preserving his "involved transcendence" is supplied by Bishop McGrath:

Each Christian must form his own conscience, but with an accurate knowledge of the situation he is in and a clear grasp of the principles and the dangers involved. He should look well, very well, before leaping. There must be real justification—as to the end, as to the means, as to a program and as to the likelihood of success, not only of the overthrow of a regime but of the program to follow. Let him re-

<sup>48</sup> *Civiltà cattolica* 119 (1968) 313-17.

<sup>49</sup> Verghese, *art. cit.*, p. 143.

member that our greatest commandment is to love our neighbor. Even if violence may be chosen, we may not hate.<sup>50</sup>

#### THE ETHICS OF HEART TRANSPLANTS

The December 3, 1967 transplant of the heart of Denise Ann Darvall to Louis Washkansky at Grootte Schuur Hospital in Cape Town not only occasioned a flurry of similar attempts around the world<sup>51</sup> but also provoked a good deal of moral comment. The transplantation of organs had been rather thoroughly discussed in the literature over the past twenty-five years.<sup>52</sup> Hence the sudden resurgence of moral discussion of the subject at this time could look surprising. There are probably many reasons for this, but none seems more obvious than the symbolic character of the heart itself.<sup>53</sup> The

<sup>50</sup> McGrath, *art. cit.*, p. 567.

<sup>51</sup> The publicity surrounding the first heart transplants has been widely regretted as irresponsible. Science reporter John Lear referred to the "optimistic ballyhoo" surrounding Washkansky's surgery as masking "some curious diversions from the normal behavior of the medical community" (*Saturday Review*, Feb. 3, 1968, p. 55). See also *New England Journal of Medicine* 278 (1968) 395.

<sup>52</sup> The most recent thorough discussion is that of Augustine Regan, C.S.S.R., in *Studia moralia* 3 (New York: Desclée, 1965) 320-361, and *Studia moralia* 5 (1968) 179-200. Previous writing had stated that the principle of totality could not be used to justify organic transplantation. The only question was: did this principle exclude it? It is Regan's contention that transplantation *inter vivos* can and must be justified by the principle of totality. To do this, he must interpret the principle in a more personal way than has been customary. Rejecting that sense of community (so vigorously condemned by Pius XII) which sees it as a huge magnification of a physical organism in which the personal members are totally subordinate to the whole, Regan builds upon an understanding of person which sees "a natural order to other human persons that is in the very concept of human personality itself." By donating an organ, an individual can become (in carefully delimited circumstances) more fully a person; for by communicating to another of his very being, he has more fully integrated himself into the mysterious unity between person and person. The argument is carefully wrought, developed out of a wide acquaintance with previous literature, and—aside from a few quibbling points—very persuasive. In much the same sense G. Ziegler distinguishes between a physical understanding of the principle of totality and an altruistic understanding: "Moraltheologische Überlegungen zur Organtransplantation," *Trier theologische Zeitschrift* 77 (1968) 153-74. So also R. Egenter in *Münchener theologische Zeitschrift* 16 (1965) 167-78, and *Theology Digest* 16 (1968) 100-103; cf. also C. Bouchaud, "Réflexion morale," *Cahiers Linnec* 26 (1966) 41-45.

<sup>53</sup> Wilfried Ruff, S.J., "Die Transplantation von Organen," *Stimmen der Zeit* 93 (1968) 155-64. However, one must not equate this symbolic character with erroneous notions about the presence of the soul. Surely Thomas O'Donnell, S.J., is correct when he says: "The human heart is a most important organ arising from a special adaptation of part of the circulatory system, but it has, theologically, no more intimate relation to the 'soul' than have the viscera or the eyes" (*Linacre Quarterly* 35 [1968] 36).

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heart has been celebrated in song, story, and cult as the metonym for the person. And not without reason. Not only does it register human sensations and emotions in a dramatic way, but it is, as *Time* noted, "essential to life in a more immediate temporal sense than any other organ, even the brain. The human body can survive for years in a coma, with no conscious brain function—but only for minutes without a beating heart. So the presence of a heartbeat, along with breathing, has long been the basic criterion for distinguishing life from death."<sup>54</sup>

It is very likely the immediacy of this life-death motif which has occasioned so much moral concern and comment. The surgical virtuosity of the heart transplant represents a dramatic leap in man's power over life and death. A more extensive power over the life-death process means greater responsibility. And greater responsibility, if it is not to be muffed, demands a clear grasp of basic values. Thus the questioning and reappraisals. Or, as Sir Theodore Fox put it recently: "The more we know how to do things, the more we shall need to know just what we really want to do. . . . We shall have to learn to refrain from doing things merely because we know how to do them."<sup>55</sup>

Some of the moral comment has been flamboyant. For example, *Christianity Today* conjured up the ghoulish possibility of a black market in hearts and asked: "Might the mafia promise overnight delivery with anybody its prospective victim?"<sup>56</sup> The *Tablet* feared a horde of old men and women with other people's lungs, hearts, and kidneys, but their own ageing and senile brains.<sup>57</sup> Most intriguing was the vision of J. S. Hayes of a 130-year-old body consisting for the most part of prosthetic devices and lying partly in the hospital bed and partly on the surrounding shelves.<sup>58</sup> Most of the discussion, however, has been serious. It has settled around two general areas: the death of the "donor" and the prospects for the beneficiary.

### *The Death of the Donor*

Because the donor must be dead and because the surgeon wants his heart as fresh as possible (before deterioration due to lack of oxygen), it is imperative to know when death occurs. Doctors have asked this question before, of

<sup>54</sup> "The Ultimate Operation," *Time* 90 (Dec. 16, 1967) 64–72, at 71.

<sup>55</sup> T. Fox, "Purposes of Medicine," in *Lancet* as cited in G. E. W. Wolstenholme's *Ethics in Medical Progress: With Specific Reference to Transplantation* (Boston: Little, Brown, 1966) p. 79. This book contains many enlightening remarks plus an appendix of highly useful documents.

<sup>56</sup> *Christianity Today* 12 (1968) 24–26.

<sup>57</sup> *Tablet* 222 (1968) 73–74.

<sup>58</sup> Cited in the *Medical-Moral Newsletter* 4 (1968) 32.

course; but until recently it was nearly always aimed at discovering when one ought to cease defense of life. Now it is asked to determine when one may profit from death. Eugene Tesson, S.J., catches this change in attitude in the face of approaching death with the phrase "cette impatience difficilement surmontable."<sup>59</sup> Simply put, cardiac transplants can involve divided loyalty on the part of the physician. Kenneth Vaux concretizes the point by suggesting that Clive Haupt (the second of the South African heart donors) was immediately treated as a potential heart donor rather than as a present stroke victim.<sup>60</sup>

Dr. Leonard R. Kass, a researcher in molecular biology, has highlighted the confidence problem involved in this tension. "Confidence of the patient in his doctor, and in his chances for recovery, are important for the patient's will to recover and sometimes for the recovery itself. Even when—or perhaps especially when—recovery is impossible, it would be reprehensible to add to the pain and grief the suspicion that the dying patient was being sacrificed for his value as spare parts."<sup>61</sup> This problem of a possible divided loyalty has led any number of commentators to insist on the necessity of two distinct teams, one for the care of the donor, the other for the transplant.<sup>62</sup>

When, then, is a person dead? The answer to this question might appear to the layman to be fairly simple. But the literature reveals that it is anything but simple.<sup>63</sup> As cardiac surgeon Donald Longmore notes, the statute books of the 1930's would have said that a man is dead when he has no spontaneous breathing or heartbeat.<sup>64</sup> With modern supportive and resuscitative devices, however, both of these conditions are reversible today, at least sometimes. Therefore from the clinical point of view it is increasingly clear that death is a complicated process consisting of a series of biological and cellular shutdowns. At a certain point along the way it is legitimate to say that "this

<sup>59</sup> Eugene Tesson, S.J., "Les greffes du coeur," *Etudes*, March, 1968, pp. 322-28, at 323.

<sup>60</sup> Kenneth Vaux, "The Heart Transplant: Ethical Dimensions," *Christian Century* 85 (1968) 353-56, at 353.

<sup>61</sup> Leon R. Kass, "A Caveat on Transplants," *Washington Post*, Jan. 14, 1968.

<sup>62</sup> For instance, cf. Tesson, *art. cit.*, p. 326; Wolstenholme, pp. 68-69; Ruth K. Franklin, "The Question of Transplants," *New Republic*, March 16, 1968, p. 7, where it is stated that in British hospitals no physician who is to be involved in transplanting an organ may also be in attendance on a would-be donor. Cf. also the *Journal of the American Medical Association* 204 (May 27, 1968) 805-6.

<sup>63</sup> An introduction to the scientific aspects of the discussion can be had in the *Medical-Moral Newsletter* 4 (1968) 17-20. See also *World Medical Journal* 14 (1967) 143-46; *JAMA* 204 (May 6, 1968) 423; *JAMA* 204 (June 24, 1968) 1197; *New England Journal of Medicine* 278 (June 27, 1968) 1425.

<sup>64</sup> Donald Longmore and M. Ross-Macdonald, "New Hearts for Old," *Month* 39 (1968) 172-77, at 174.

person is dead" or "there is here no longer a human person." What is that point? Since organs function but it is the person who lives and dies, the determination of this point involves not merely clinical knowledge but also a grasp of the meaning of person upon or against which a definition of the absence of personhood can be made. There is room, therefore, for many competences in the construction of a general definition of death. But obviously such a general definition should be carefully distinguished from verification of this definition in an individual case. Both judgments are necessary, of course, for the determination of death in a concrete instance, and hence for the practical conclusion about licit heart removal. The following remarks gather a few samples of how moral literature has dealt with the problem of donor death where heart transplants are concerned.

It will be recalled that the criteria used by Dr. Barnard were: the heart is no longer working, the lungs are no longer working, and there are no longer any complexes on the ECG. Vittorio Marcozzi, S.J., has criticized these criteria.<sup>65</sup> First, he says, we must distinguish between true death and clinical death. True death for the believer refers to separation of soul and body. For the nonbeliever it designates that time when the processes of deterioration are irreversible. Clinical death, on the other hand, refers to lack of the basic vital functions (circulation, respiration, etc.). It is Marcozzi's contention, based on the authority of several eminent doctors, that Barnard's three criteria are not secure signs of real death, but only of clinical death. Citing German neurologist Walter Bushart and others, Marcozzi states that the brain can emit electric oscillations four days after the electroencephalogram is quiet. Barnard should, he says, have been aware of the bibliography on this point and aware of the fact that reputable doctors demand in addition to Barnard's criteria the test of time.

In a thoughtful article,<sup>66</sup> Eugene Tesson, S.J., applies the cessation of brain activity (the flat line on the encephalogram) as a criterion of death to two different situations: *coma dépassé* and *coma prolongé*.<sup>67</sup> In the former the cerebral system lacks all activity. Even if the other organs function (whether artificially or not), death is, he believes, beyond doubt. *Coma prolongé*, however, he describes as a slackening of cerebral activity, but not its total sup-

<sup>65</sup> V. Marcozzi, S.J., "Trapianto del cuore e problemi morali," *Civiltà cattolica* 119 (1968) 371-75.

<sup>66</sup> Tesson, *art. cit.*, and J. Daoust and R. Bourdon, "Les greffes du coeur," *Ami du clergé* 78 (1968) 217-18, which is a summary of Tesson.

<sup>67</sup> A similar distinction is made by Père Riquet as cited in *La foi et le temps* 1 (1968) 85-87.



pression. A return to consciousness is not excluded. Tesson sees a case of *coma prolongé* in that of the sick person whose survival will be brief, whose consciousness is lacking or at best intermittent. We are in this instance in the presence of a human being, and here medicine must fall back on its first principles.

Díaz-Nava, S.J., after adverting to the difference between clinical and real death, insists that surgeons must assure themselves of real death.<sup>68</sup> What, however, if the donor is not dead but is indeed totally past recovery? Díaz-Nava repeats the conviction of theologians that direct lethal intervention at this point must be viewed morally as homicide. He rejects the suggestion that there may be a parallel between hastening death here and heroic self-sacrifice for the neighbor. To this latter instance the practical rule of double effect can and must be applied. But hastening the death of the prospective heart donor resists such an analysis.

Stefano Tumbas, S.J., recalls the many possible definitions of death: clinical vs. biological, real vs. apparent, true vs. legal.<sup>69</sup> He acknowledges that modern medicine possesses the means to certify death but notes that there are shades of opinion as to what is considered essential to this determination. Arguing that organs function but man lives, Tumbas suggests that the fact that respiration and heartbeat can be continued artificially does not exclude the liceity of removing the heart—on condition that the cerebral functions are irreversibly destroyed.

In an article which is a model of lucidity and precision, John J. Lynch, S.J., has insisted with nearly all moralists that there must be "moral certainty of medical death."<sup>70</sup> Lynch states: "Real medical death may be defined as cessation of vital function beyond reasonable hope of resuscitation. But it is for doctors, not theologians, to determine the discernible signs by which real death can be verified in particular instances." It should be noted that Lynch has offered a general definition of death ("cessation of vital function beyond reasonable hope of resuscitation"). I believe that nearly everyone would accept this as a good working description<sup>71</sup> if vital function is understood in a very general way which allows it to be continually nuanced

<sup>68</sup> A. Faz. Díaz-Nava, "Ante el primer transplante de corazón humano," *Sal terrae* 56 (1968) 60-65.

<sup>69</sup> S. Tumbas, S.J., "Il trapianto del cuore," *Palestra del clero* 47 (1968) 298-302.

<sup>70</sup> John J. Lynch, S.J., "Ethics of the Heart Transplant," *America* 118 (1968) 194-95.

<sup>71</sup> Dr. M. F. A. Woodruff says: "I think it is important, however, to draw the attention of the non-medical people here to some of the difficulties. In the first place death cannot be defined as the loss of all vital functions because tissues removed from the body can be kept alive in cultures for possibly hundreds of years." Cf. Wolstenholme, p. 71.

by medical advances. Lynch's remarks show an enlightened sensitivity to the many competences involved where determination of death is concerned.<sup>72</sup>

Since many competences are involved in the construction of an acceptable definition of death, nearly everyone is calling for a high-level conference to establish practical guidelines. A move in the right direction was a committee established by Harvard University.<sup>73</sup> It included members from the faculties of medicine, public health, law, divinity, arts and sciences. The Harvard group concluded that a permanently nonfunctioning brain (irreversible coma) was criteriological of death. The flat encephalogram has "confirmatory value" in this determination. The following criteria of a nonfunctioning brain were offered: unreceptivity and unresponsivity (total unawareness of external stimuli and inner need, and complete unresponsiveness); no movements or breathing (one hour of observation is sufficient to satisfy this demand); no reflexes (eye pupils will not respond to direct bright light; no swallowing, yawning, or vocalization). It seems that the Harvard group has simply made concrete what Tesson refers to as *coma dépassé*.

#### *Prospects for the Beneficiary*

The problem of distinguishing a general moral statement from a concrete application of this statement arises under this title also. Moral literature states unanimously that cardiac transplants must involve reasonable hope of substantial benefit for the recipient. Otherwise this radical surgery would amount to simple experimentation on the recipient. Not only would this represent a dehumanizing manipulation of the person, but in this instance it could easily be tantamount to an act of direct killing. Therefore two questions have arisen around the word "experiment": (1) What amount of surgical experimentation is permissible in principle? (2) To what degree is the heart transplant at the present time experimental? The ultimate moral assessment of heart transplants depends on both judgments. But where the second question is concerned, the moral theologian can only report.

As for permissible experimentation in therapeutic procedures, Tesson is surely correct when he says that experimentation is the price of advance and that ultimate success involves some less certain attempts at the beginning.<sup>74</sup> Some experimentation, therefore, is unquestionably permissible. Ruff agrees

<sup>72</sup> I cannot completely agree with Frank J. Ayd, M.D., when he says: "The medical profession now is looking for moralists who will provide further guidelines for establishing a specific criterion for certifying that a person is dead" (*Medical-Moral Newsletter* 4 [1968] 20).

<sup>73</sup> "A Definition of Irreversible Coma," *Journal of the American Medical Association* 205 (1968) 337-40.

<sup>74</sup> Tesson, *art. cit.*, p. 327.

that medicine eventually has to apply new techniques to man, but stipulates that, if this is to remain responsible, all other proportionate pretests must have occurred with at least some success. Furthermore, the surgical team may not heighten the risks for the present patient in the interests of future patients.<sup>75</sup> Because of the temptation to do this, Vaux urges that the "ethical imperative of the hour is that concern for an individual and concern for humanity enrich each other."<sup>76</sup>

Lynch faces the problem of experimentation by defining the meaning of "reasonable hope" and "substantial benefit." Reasonable hope is by no means to be understood as a guarantee, but merely as a well-founded medical expectation. Substantial benefit should be interpreted principally in terms of prolongation of human life over a period of time long enough to compensate for the risks presently entailed in heart transplantation. He then rightly insists that "only competent medical authority can judge whether and when this condition is fulfilled."<sup>77</sup> Marcozzi goes beyond this general judgment. Relying on the statements of some medical experts, he finds it "difficult to give a tranquil yes" to the surgery at the present time.<sup>78</sup>

To what extent is the heart transplant actually experimental? As noted before, this is a medical judgment.<sup>79</sup> And presently this judgment revolves chiefly around one point: the problem of immunological rejection. What stands as a triumph for surgery remains a headache and even a defeat for biochemistry. Here I can only report how a few spokesmen have judged the matter at the time of this writing.

Dr. Norman E. Shumway describes heart transplants as a "clinical trial."<sup>80</sup> Dr. Christian Barnard regards them as "therapeutic."<sup>81</sup> These statements very likely represent a difference in emphasis rather than a genuine opposition in point of view. W. J. Dempster and associates reconcile this difference when they speak of cardiac transplantation as palliative "in that no proof exists that any given allotransplant will function normally indefinitely. Such palliation must always be weighed against other priorities, especially when account is taken of the very heavy burdens that transplantation imposes on all departments of a hospital."<sup>82</sup> It was their own opinion that the state of the rejection problem then (January, 1968) did not justify heart transplants.

<sup>75</sup> Ruff, *art. cit.*, p. 161.

<sup>76</sup> Vaux, *art. cit.*, p. 354.

<sup>77</sup> Lynch, *art. cit.*, p. 194.

<sup>78</sup> Marcozzi, *art. cit.*, p. 373. A very similar judgment is given by Ziegler, *art. cit.*, p. 172.

<sup>79</sup> A. S. Fox, "Heart Transplants: Treatment or Experiment?" *Science* 159 (1968) 374.

<sup>80</sup> *Time*, Jan. 19, 1968, p. 51.

<sup>81</sup> *Saturday Review*, Feb. 3, 1968, p. 56.

<sup>82</sup> W. J. Dempster *et al.*, "Scientific, Technical, and Ethical Considerations in Cardiac Transplantation," *British Medical Journal*, Jan. 20, 1968, p. 178.

"Palliative" was also the term used by the conference of experts who met at the invitation of the Council for International Organizations of Medical Sciences in June, 1968. But the group did not exclude heart transplants.<sup>83</sup> It only concluded that they should be "resorted to only exceptionally at the present state of knowledge."

The Board of Medicine of the National Academy of Sciences referred to the procedure as "scientific investigation" not yet meriting the title "accepted therapy."<sup>84</sup> Hence, it continued, "the primary justification for this activity in respect to both the donor and recipient is that from the study will come new knowledge of benefit to others in our society." The Board regards cardiac transplants as falling under the "ethics of experimentation."

In summary, it can be said that there are some experts who regard cardiac transplants as medically unjustified in light of the present state of research on the immunological problem. Others are convinced that it is justified as palliative therapy in last-resort instances.

There are several other problems connected with heart transplants. One of them is the problem of supply if and when the surgery becomes an established form of therapy. Peter Riga contends that if a supply of hearts, kidneys, lungs, etc. cannot be guaranteed by voluntary donations, it would be quite possible (and moral) for the state to legislate that various organs be removed from all victims of violent death.<sup>85</sup> His reason: "Morally speaking such a legal procedure would only be an application of the state's prerogative and obligation to safeguard the *common good of the living*." There are many who would, I believe, shudder at this conclusion. The common good of the living is a very complicated matter. It involves not only material provisions but the manner of this provision. The already delicate balance between personal autonomy and social subordination would be, or at least could easily be, seriously threatened by such legislation. If this is the case, would it truly be for the common good? Riga's statement strikes me as a bit sweeping.

Another problem is that of hastening death. That jaunty polemicist Joseph Fletcher has declared that "speeding up a donor's death, when death is positively inevitable, may be justified if the transplant provides another human with valuable life."<sup>86</sup> This conclusion is consistent with Fletcher's sponsor-

<sup>83</sup> *New York Times*, June 15, 1968, p. 14.

<sup>84</sup> "Cardiac Transplantation in Man," *Journal of the American Medical Association* 204 (1968) 805-6.

<sup>85</sup> Peter J. Riga, "Heart Transplantation and Genetic Transmutations," *Catholic World* 207 (1968) 18-22.

<sup>86</sup> As in *Newsweek*, Dec. 18, 1967, p. 87. Much more cautious in this respect are the remarks of Charles Curran in "The Morality of Human Transplants," *Sign* 47 (1968) 22-29, at 28. Franz Böckle takes up the question whether it is permissible to remove organs

ship of euthanasia. But this latter thesis he has not really argued. He has simply promulgated it in a way describable as theological logomachy.<sup>87</sup> In this game a Mongoloid becomes an "embryonic anomaly." The decision not to use artificial means to sustain life becomes "bringing death about left-handedly." Euthanasia in certain instances is opposed to "just letting it all hang on chance" and is praised as "a responsible choice, a morally authentic decision." Those opposed to all of this are dubbed "vitalists" and "archaists." Fletcher clinches the argument with a few quick aphorisms: "Death is not always an enemy; it can sometimes be a friend and a servant." "Let the law favor living, not mere life."

These pyrotechnics can be tremendous fun. But ultimately it must be said that whatever case there is for hastening death, it cannot be made by appending the adjective "responsible" and "authentic" to what one wants to do. Not only is this slippery methodology; it is terrifying when the stakes get big. Consider the instance raised by Leon R. Kass.<sup>88</sup> A high-ranking governmental official suffers a massive heart attack and requires a new heart to survive. Might not even the best of physicians be tempted to ease up on the treatment of a critically-ill patient deemed less worthy? "Is it too far fetched," Kass asks, "to imagine that people might be asked to step forward and volunteer their organs under these circumstances? If no volunteers were available, would mercy-killing or murder be excusable in order to provide a new heart for the statesman? If we are willing to send men involuntarily to their death in battle for the welfare of their country, is it not conceivable that we may someday expand that notion of the general welfare to include the health of our leaders?"

I find in Joseph Fletcher's methodology and thought-patterns no strong resistance to this continuity of thought. Men have rejected such conclusions over the centuries not out of any blind vitalism, but out of a wholesome (if we may be allowed to play the game of adjectives this once) reverence for God's promises and presence to His human creatures—even His unconscious, preconscious, nascent, and dying creatures. In other words, they have in-

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when death, properly defined, is immediately imminent and its occurrence is, by all medical experience, certain. He argues that in these instances death has very possibly already happened; for we get full certainty only considerably after the occurrence. Therefore Böckle does not absolutely exclude the permissibility of beginning to remove organs at this point, "bevor die letzte methodologische Sicherheit gewonnen ist" (as in Ziegler, p. 171). Ziegler rejects this on the grounds that a probable prognosis before death cannot replace a certain one after death.

<sup>87</sup> Joseph Fletcher, "The Right to Die," *Atlantic Monthly* 221 (April, 1968) 62-64.

<sup>88</sup> Kass, *art. cit.*

sisted that the very quality of life that we seek to heighten depends, among other things, on an unshakable respect for human existence itself. Recent history has taught us that departures from such "archaism" lead quickly to barbarism.

In this connection Père Riquet has remarked that "on peut, aujourd'hui, donner jusqu'à son coeur."<sup>89</sup> He asserts that in the heart transplant both human solidarity and Christian charity find a new and remarkable expression. The meaning here is clear. But are there not limits to the value of this type of talk? Our language not only expresses our thought but affects it. If the use of a cadaver's heart is seen as a "donation" and a great act of charity, there is the temptation to redefine the removal of a heart from a living person as "heart donation" and an act of charity. It can be hoped that theologians will prove at least as resolute in their rejection of this as the medical world has shown itself to be.

These are but some of the questions raised by heart transplants.<sup>90</sup> In the final analysis, it would represent Christian and theological myopia were we to approach this latest medical spectacular as simply another case in medical ethics. The heart transplant should remind us forcefully that we live amidst a knowledge explosion in all areas. The use of this knowledge for the promotion of genuine human values is our larger challenge. Peter Riga is certainly on target when he says that it is crucial that the Church exercise her vigilant and prophetic role over these new procedures, not judicially, but "to bring God's word of love and justice to bear on them so they are not used to destroy or manipulate men."

James M. Gustafson provides some excellent moral and social directives for the implementation of this larger task.<sup>91</sup> For example, he insists on the need for public discourse "for the sake of developing the awareness of man's own worthwhileness in the light of which knowledge can be put to the service of man." He calls for new institutions to make interdisciplinary interaction possible. He asks for a clearer formulation of the very values in question, so that these values can function as signposts of the direction the uses of contemporary science must take. And elsewhere<sup>92</sup> he asks theologians to stop muttering woolly generalizations about humanization and openness to the modern world and to get on with the task of becoming informed and precise.

<sup>89</sup> Riquet, *art. cit.*, p. 87.

<sup>90</sup> For some more cf. G. Kunicic, "Trapianto del cuore: Considerazioni morali," *Persece munus* 43 (1968) 322-30.

<sup>91</sup> James M. Gustafson, "Christian Humanism and the Human Mind," in *The Human Mind* (Amsterdam: North Holland Publ. Co., 1967) pp. 85-109, at 106-8.

<sup>92</sup> James M. Gustafson, "Toward Maturity in Decision-Making," *Christian Century* 85 (1968) 894-98.

Medical progress has in the past contributed to the process of humanization. If Gustafson's suggestions are taken seriously, there is every evidence that it will continue to do so, even in unforeseen ways.<sup>93</sup>

#### MORALITY AND THE MAGISTERIUM

Shortly before the issuance of *Humanae vitae*, John Cardinal Heenan wrote of the magisterium that "there is no more delicate subject in contemporary theology."<sup>94</sup> Where the ordinary papal magisterium is concerned, Cardinal Heenan suspects that "an article in the periodical *Concilium* is at least as likely to win their [theologians] respect as a papal encyclical. The decline of the magisterium is one of the most significant developments in the post-conciliar Church." It is not surprising, therefore, that there has been a good deal of writing in the past semester on the magisterium, especially as it touches morality.

What is responsible for this crisis? Gregory Baum, O.S.A., proposed earlier that a mythical understanding of the magisterium is being challenged by recent developments in the Church, and this challenge is accompanied by a loss of authority on the part of the magisterium.<sup>95</sup> By a mythical notion of the magisterium Baum means the view that the divine truths of salvation are in the possession of pope and bishops and that therefore these are positioned to pass along divine answers to religious questions.

Behind the contemporary challenge to this notion Baum discovers many factors. For example, the doctrinal development at Vatican II shocked and surprised many Christians. Positions proposed authoritatively in the past by the magisterium were modified or even reversed. Another factor is the extraordinary fate of many well-known theologians in the Catholic Church. Those suspect in the fifties and unable to write were the very ones who played a crucial role in Vatican II. Then, too, there is the cultural pluralism of the Catholic Church. Because the Church embraces those belonging to different cultural and intellectual environments, the faith will be formulated in different ways. The magisterium usually expresses itself in a way closer to one theological tradition than to another, and this is seen as partiality by the diverging tradition. Furthermore, doctrinal questions have arisen for which

<sup>93</sup> C. Edward Crowther, "A Change of Heart?" *Center Magazine* 1 (March, 1968) 85-86. Crowther points up the many ironies involved in a transplant from the colored Clive Hault to the white Philip Blaiberg occurring in apartheid South Africa.

<sup>94</sup> John Cardinal Heenan, "The Authority of the Church," *London Tablet* 222 (1968) 488-90.

<sup>95</sup> Gregory Baum, O.S.A., "The Problem of the Magisterium Today," *Ido-c*, Doss. 67, 30/31/32/33.

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answers are not available. The necessary research on historical documents is just beginning. This means that there are authoritative doctrinal statements whose full meaning we do not know. Baum also mentions the antirationalism of contemporary culture, its positivistic mentality, and the spirit of rebellion as contributing influences in the crisis.

In a long article Daniel Maguire has turned his attention to the magisterium and morality.<sup>96</sup> It is Maguire's contention that "the term 'infallible' does not in fact aptly describe the nature or function of the moral magisterium and that we should discontinue using that term in discussing the moral magisterium." Eight reasons are offered to support this conclusion. For example, it is argued that "the very nature of truth should make us cautious in speaking of infallibility." Reality, Maguire says, exceeds our conceptualizations and our knowledge of it. Human knowledge is for *homo viator* "never complete or entirely error free." Furthermore, he contends that "there is a conflict in the concept of an infallible statement made through the medium of fallible language." Meaning has a tendency to slip out from under verbal formulae. A third point made is that not all the bishops were happy with the word "infallible" at Vatican I. Finally, the author argues that the term "infallible" has connotations that are offensive and confusing.

Maguire is certainly correct in asserting that the term "infallible" does not aptly describe the nature or function of the moral magisterium as we have experienced it. But a large qualification might be made at this point. Some of his arguments (i.e., the ones given above) are not only targeted on infallibility in the moral magisterium, but they explode against the whole idea of infallibility in general. This not only represents scattershot aim, but it tends to dissipate the force of the very valid point Maguire is establishing. For example, the fact that "meaning has a tendency to slip out from under verbal formulae" hardly supports the conclusion of a "conflict in the concept of an infallible statement made through the medium of fallible language." Does it not mean only that we must find out what the language meant at the time to know what has been defined?

Maguire also reviews the relationship of natural law to the gospel, especially in terms of the competence of the magisterium. At several points he chides the author of these Notes, and not without some reason. The positions he questions certainly call for some qualification, and I am grateful for Maguire's reflections. David Leigh, S.J., presents a good overview of the entire discussion just mentioned.<sup>97</sup> He concludes that the limits and meaning

<sup>96</sup> Daniel Maguire, "Morality and the Magisterium," *Cross Currents* 18 (Winter, 1968) 41-65.

<sup>97</sup> David Leigh, S.J., "The Church as a Moral Guide," *American Ecclesiastical Review* 158 (1968) 385-98.

of the Church's infallible authority over morals represent insoluble problems unless there is clarification in several other areas. For example, greater clarity is needed on the interpretation of moral principles and the epistemology of moral knowledge. Similarly there is an urgent need for clarification of the extent of revelation and the relationship of the natural law to the formation of a Christian way of life in early Christianity.

Ultimately, however, Maguire is right, I believe, in saying that the infallible competence of the Church does not imply the power to proceed infallibly through the multiple judgments and informational processes required to apply these natural and gospel values to highly concrete instances. This restriction does not solve the question about competence to define the natural law. It merely suggests that, regardless of what position one prefers on this point, he should distinguish between the natural law in its basic imperatives, and derivations or applications of this law. It also suggests that a more realistic and fruitful avenue of enquiry is the authentic noninfallible moral magisterium.

The second part of Maguire's article deals with the authentic noninfallible magisterium. He believes that the moral magisterium in our time should present two characteristics. First, it should be prophetic. That is, it should be distinguished by its insight into the present and should pierce the blinding clouds that inevitably envelop human consciousness. The social encyclicals were genuinely prophetic documents. They braved the charge of left-wing radicalism to call for social reconstruction. Secondly, the magisterium must be dialogical. The truth is reached not in solitude but in the processes of communitarian existence. The Church must recognize herself as a participant in these processes and "not enter conversation trying to say the last word."

These emphases are healthy, and if they can avoid the traps of unilateralism they will prove very helpful. Not the least of the theologian's problems in relating Christianly and creatively to the magisterium is to avoid being selective about what could be prophetic. And that brings us to what is surely one of the most delicate theological problems surrounding discussion of the noninfallible moral magisterium: the relationship of theological research and writing to the teaching office of the Church.<sup>98</sup> The problem received a new poignancy with the publication of *Humanae vitae*.

Here we can review some statements on only one aspect of this relationship, i.e., dissent. Facing the problem of the scholar who disagrees on a particular

<sup>98</sup> For some official statements, cf. the collective pastoral of the Italian bishops, "Théologie et magistère," *Documentation catholique* 65 (1968) 507-18. This is summarized in *Herder Correspondence* 5 (1968) 111-14. See also the collective pastoral of the American hierarchy in *The Pope Speaks* 13 (1968) 48-97, at 89-93. Cf. especially the "Report on Doctrine" of the episcopal synodal commission in *Furrow* 19 (1968) 106-12.

point with the ordinary noninfallible magisterium, Austin B. Vaughan, president of the American Catholic Theological Society, states that the scholar may withdraw internal assent if he finds contrary reasons still compelling after he has accorded proper weight to the noninfallible teaching of the magisterium.<sup>99</sup> Vaughan believes that the theologian "still may not oppose it externally (directly) unless circumstances indicate that the magisterium now regards it as a matter open for discussion." Vaughan is aware of the difficulties of this position, the most obvious of which is that chief among the circumstances leading the magisterium to regard something as open for discussion is scholarly publication questioning a teaching.

In an article full of vintage certainties, Luigi Ciappi, O.P., touches on the duty of Catholics to adhere to the certain doctrine proposed by the magisterium of the Church.<sup>100</sup> The duty is grave, he says, because demanded by the duty of submitting oneself to the legitimate authority of the Church within the limits of its competence. "But, if in an exceptional case someone had clear arguments for doubting that the doctrine of the Church, not definitive and irreformable, is true, or that its decisions are just, he would not be held to internal assent, and yet the obligation of 'silent submission' would remain." Ciappi feels that the exceptional instance is realized not simply when a theologian is in the process of raising difficulties against magisterial teaching, but when new and convincing arguments are elaborated in favor of a contrary position. As for the publication of these findings, he believes that "one cannot admit good faith in one who discusses in public, especially if it is in books or reviews destined for the general public, the teaching or the decisions of the ordinary magisterium."

It is easy to agree with Daniel Maguire when he rejects this conclusion. He grants that the obligation not to contradict the doctrine of the magisterium in public speech and writing was a truism among Catholic moralists for years. But "it is hardly defensible today. . . . Presumably, if discussion is called for, theologians around the world can hardly communicate by word of mouth. They must write, and by now it would be obvious that there is no written word on theological subjects that might not be proclaimed from the housetops. Vital theological discussions can no longer be kept 'under wraps.' Pastoral difficulties result from this and must be met, but this new fact of life must be accepted."<sup>101</sup>

<sup>99</sup> Austin B. Vaughan, "The Role of the Ordinary Magisterium of the Universal Episcopate," *Proceedings of the Catholic Theological Society of America* 22 (1967) 1-19.

<sup>100</sup> Luigi Ciappi, O.P., "Crisis of the Magisterium, Crisis of Faith?" *Thomist* 32 (1968) 147-70.

<sup>101</sup> Maguire, *art. cit.*, p. 56. Bruno Schüller agrees that it is by no means self-evident that

In a remarkable article Bishop Carlo Colombo, president of the Theological Faculty of Milan, first describes the notion of freedom of research of the theological scholar.<sup>102</sup>

In this moment of research one is not obliged to start from the teaching of the authentic noninfallible magisterium as from a certain definitive datum: one can place it in discussion, using methodical doubt, as in any scientific discussion, and one is not obliged to arrive at conclusions always and under every aspect conformed to the teaching of tradition expressed in the ordinary magisterium. One could indicate in it some insufficiencies or perhaps even some errors of interpretation of divine truth. In such a case, which is not a daily occurrence, one would have the right and the duty not only of suspending his religious assent as a believer, but also of proposing the reasons which lead to doubting some truth of the common teaching, in order to aid the entire Church, and particularly its teachers, to attain a more exact knowledge of the truth.

Colombo next turns to the *right and duty* of the theologian to propose his reasons. Publication, he asserts, involves a delicate and important pastoral problem. It can re-enforce or diminish the faith of the community, depending on its manner and timing. Since the magisterium must guard not only the content but also the spirit and virtue of faith, it has a right of judgment and control over the pastoral aspect of theological publication.<sup>103</sup>

In a thoughtful essay George K. Malone reviews Colombo's remarks and argues convincingly that Colombo must be understood to be distinguishing between responsible and irresponsible publication of dissenting views.<sup>104</sup> Malone rightly contends that the Roman Catholic theologian enjoys full academic freedom with regard to the authentic noninfallible magisterium as long as commonly accepted academic standards are observed. This means that his publication is the result of scholarly research and that his conclusions (especially when they represent dissent) are offered with sobriety and circumspection. Of course, the mass media do pick up the results of such

one may not publicly dispute an authentic teaching when one has clear and convincing grounds for thinking the magisterium is in error. He rightly believes that there would seem to be an obligation to correct the error, unless a greater evil would ensue. And in assessing this greater evil, it must be remembered that a delay in retracting an erroneous decision could do great harm in the long run by undermining the faithful's confidence in the magisterium ("Bemerkungen zur authentischen Verkündigung des kirchlichen Lehramtes," *Theologie und Philosophie* 42 [1967] 534-51, at 544).

<sup>102</sup> Carlo Colombo, "Obbedienza al magistero ordinario," *Seminarium* 7 (1967) 527-42.

<sup>103</sup> For a balanced statement of this pastoral concern, cf. Stephen E. Donlon, S.J., in *New Catholic Encyclopedia* 6 (New York: McGraw-Hill, 1966) 122.

<sup>104</sup> George K. Malone, "Academic Freedom Revisited," *Chicago Studies* 7 (1968) 3-13.

research publication, and this can create difficult pastoral problems. Malone is convinced that the only alternatives to publication are unacceptable and ultimately provocative of more harm than good. Therefore he insists that in exercising its "right of judgment and control over the pastoral aspect of theological publication," the hierarchical magisterium must face the educative problem where it truly exists—at the pastoral level.<sup>106</sup> It may be seriously questioned whether "control . . . of theological publication" is in our day an apt means in any sense.

In an age when it is increasingly impossible to do theology exclusively in professional journals, theologians have a heavy responsibility in contributing to the solution of the pastoral problem just mentioned. They would go a long way toward discharging their responsibilities if in the diffusion of theological thought they scrupulously adhered to the pedagogical guidelines stated by the episcopal synodal commission on doctrine: "First of all, let what is certain and fundamental be proposed as the unshaken basis of the faith and of Christian life; then what is new should be presented in such a way that a fitting explanation will manifest the continuity in the faith of the Church; finally, hypotheses should be put forth with that degree of probability which they in fact enjoy and with attention to the ways in which it is foreseen it will be understood."<sup>106</sup>

John F. Dedek faces the problem of dissent by examining more closely the duties of a Catholic vis-à-vis authentic noninfallible teaching.<sup>107</sup> He sees two reasons why a Catholic is obliged to give religious assent to such teaching. First, prudence dictates this assent. The teaching of the authentic magisterium enjoys the presumption of truth. Secondly, assent is required by religious obedience; that is, the authentic teacher has authority from Christ "to bind the consciences of Christians in religious matters." Thus failure in this duty involves both temerity and disobedience.

Now neither of these reasons is absolute. The presumption can yield to

<sup>106</sup> Msgr. Philips has summarized the problem from the point of view of the theologian as follows: "No one forbids him to continue his investigations as long as he avoids throwing discredit, through spite or intellectual pride, on the declarations of the magisterium. In practice this man would have to observe great prudence in order to prevent a public debate in which sentence would be pronounced by a tribunal of incompetents. This attitude is demanded of him by the respect due not only to the magisterium, but also to his brethren in the faith whom it is not lawful to plunge rashly and without profit into inextricable conflicts of conscience" (*L'Église et son mystère au deuxième Concile du Vatican* 1 [Paris: Desclée, 1967] 323).

<sup>106</sup> Cf. *Furrow* 19 (1968) 111.

<sup>107</sup> John F. Dedek, "Freedom of the Catholic Conscience," *Chicago Studies* 7 (1968) 115-25.

contrary evidence. As for obedience, Dedek says that "the Church has the authority from God to command the faithful to accept with their minds certain doctrinal positions." But this obedience-motive brings us back to the juridical order, where the virtue of *epikeia* is operative. This means that it is the burden and freedom of conscience to judge the binding force and relevance of such precepts in one's own situation. Any other attitude would amount to mechanical obedience, which is no virtue at all and is fraught with dangers. Therefore, since the obedience-motive is one of the reasons calling for acceptance of noninfallible teaching, Dedek concludes that "the individual Christian conscience has the same kind of freedom before authentic noninfallible teaching as it does before Church law." That is, he must decide on other objective grounds the situational validity of authentic teaching. "He is first bound to judge and in the end to do only and always what he himself thinks is right." The precept to assent is "subject to the judgment of conscience."<sup>108</sup>

This is an intriguing analysis. It has unquestionable foundations in earlier dogmatic texts and in recent magisterial statements. Furthermore, a good case can be made for saying that some interventions of the magisterium reflect more the character of a decision, a practical *modus agendi*, than a teaching in the strict sense. Hence they would seem to invoke an obediential response rather than assent. However, where the *acceptance of teaching* is concerned, let us question for the moment the very existence of two distinct sources of duty (presumption of truth, obedience). In the face of teaching, the Catholic's duties, it would seem, are uniquely the consequence of the very existence of a teaching office in the Church.

The matter might be put as follows. Suppose that the command of obedience were actually a distinct reason for giving assent to noninfallible teaching. Obedience cannot be, as Dedek notes, mechanical. Therefore the individual "is first bound to judge and in the end to do only and always what he himself thinks right." In this case the object of the command would be to "accept with the mind," to use Dedek's phrase. Now the only reason for not "accepting with the mind" is contrary evidence. But does this not bring us back simply to the breakdown of the presumption favoring magisterial teach-

<sup>108</sup> A somewhat similar approach is presented by John G. Milhaven, S.J., in *National Catholic Reporter*, Aug. 7, 1968, p. 11. Milhaven writes: "If the authority can be wrong in the obedience he demands, then the subject can, in certain cases, be obliged to consider whether he is justified in obeying or whether, if he were to obey in this case, he would be abdicating his moral responsibility." I say "somewhat similar" because Milhaven seems to regard certain concrete actions as the object of the precept, where Dedek sees assent as its object.

ing? Similarly the binding force of this precept is, according to Dedek, "subject to the judgment of conscience." But what else can this mean except that such a command would be conditioned by contrary evidence? If it is not evidence that leads one to dispense himself from the command-to-assent, one's nonconformity with it would seem to be arbitrary. Therefore is it not difficult to see how the command postulated by Dedek adds anything not already present in the presumption based on the divinely constituted character of the magisterium?

On the other hand, perhaps the objection I have raised here overrationalizes the whole process of teaching and learning in the Church. Perhaps it cuts too fine and views the teaching process too uniquely from the point of view of the theologian rather than the ordinary faithful. Continued discussion of this point is certainly called for.

Nearly all of the literature touching on dissent from noninfallible teaching starts from the premise that such teaching generates per se a duty of "religious assent." This analysis has been with us for years and has a good deal to recommend it.<sup>109</sup> However, anyone familiar with theological literature will realize how difficult it has been for theologians to untangle the problems involved in this assent. Robert Springer, S.J., remarked in the June edition of these Notes that "the earlier epistemology demanding 'religious assent' to authentic teaching has been inadequate and in need of development."<sup>110</sup> Where Springer would locate the inadequacy is not clear, but most theologians would endorse his general statement, I believe, and would be in sympathy with attempts to rethink the question.

In reapproaching the relationship of the Catholic to noninfallible teaching, must we not begin by saying that our concept of the magisterium will be closely tied to our concept of the Church? The magisterium is, after all, the Church as she teaches. Now in the past a rather one-sidedly juridical model of the Church was common. Such a notion of the Church is bound to in-

<sup>109</sup> Vatican II spoke of "religiosum voluntatis et intellectus obsequium" but then added "ita nempe ut magisterium ejus supremum reverenter agnoscat, et sententiis ab eo prolati sincere adhereatur, juxta mentem et voluntatem manifestam ipsius" (*AAS* 57 [1965] 30). With regard to episcopal teaching, the faithful are told that they "religioso animi obsequio adhaerere debent" (*ibid.*, p. 29). Speaking to priests, Paul VI says in *Humanae vitae*: "Vos primi in ministerio vestro perfungendo exemplum sinceri obsequii edite, quod interius exteriusque ecclesiastico Magisterio tribuendum est" (*De propagatione humanae prolis recte ordinanda* [Rome: Typis Polyglottis Vaticanis, 1968] p. 35). Recently M. Flick, S.J., referred to "quel religioso ossequio di volontà e intelligenza" ("Teologia e magistero nel messaggio dell'Episcopato italiano," *Civiltà cattolica* 119 [1968] 333-42, at 341).

<sup>110</sup> Robert H. Springer, S.J., "Notes on Moral Theology," *THEOLOGICAL STUDIES* 29 (1968) 279.

fluence the theology of the magisterium—specifically the nature of authentic teaching and the response due to it. If a heavily juridical notion of the Church prevails, is it not inevitable that a heavily juridical notion of the magisterium will accompany this? This means that the teaching office of the Church could be easily confused, to some extent or other, with the administrative (or disciplinary) office. When this happens, Church teaching can gradually take on characteristics which do not properly belong to teaching as such. Thus in the past we have spoken of “the binding force of papal teaching”; we have referred to it as “imposed” and “commanded.” The response to teaching conceived in this manner is described with the terms “obedience,” “submission,” “acceptance,” “assent.” What I am tentatively suggesting is that assent, as the immediate proportionate response to authentic noninfallible teaching, could be a product of an overly juridical notion of the Church. Embedded in such a concept is a paternalistic attitude toward teaching where the teacher possesses the truth and the taught are dispensed from personal reflection and assimilation, and are asked simply to accept. The ultimate popular caricature of this juridical emphasis is: if you belong to the club, you keep the rules of the club.

The Second Vatican Council enlarged our notion of the Church by moving away somewhat from the juridical model. The dominant description of the Church became the People of God. If this notion of the Church is weighed carefully, would it not affect the notion of the Church as teacher? Just one of the effects would be a clearer separation of teaching and administration (discipline). In light of this separation, magisterial teachings would not be viewed as “imposed, commanded, demanding submission and obedience”; for these terms suggest disciplinary jurisdiction, not teaching authority. Rather, noninfallible Church teachings would be seen as offered to the faithful. Obviously, such teaching must still be viewed as authoritative, but the term “authoritative” would shed many of its juridical, and sometimes almost military, connotations. The proportionate response to authoritative teaching might not *immediately* be religious assent, even though such acceptance would generally follow.

Perhaps the matter could be put as follows. Because of its indisputable charism (we say nothing for the moment about the manner of its exercise), the hierarchical magisterium must be accepted as an authoritative teacher. That is, for a Catholic the teachings of the hierarchical magisterium enjoy an eminence not conceded to any other religious teacher. This means that its teachings will generate a presumption not enjoyed by other teaching authorities. In the past we have referred to this as a presumption that its teachings are correct, sound, and reliable.



It would seem that the *immediate* response to such a presumption in a concrete case is not assent, but rather more generally a religious docility and deference.<sup>111</sup> That is, the appropriate personal posture vis-à-vis an authoritative teacher and the presumptions generated by his authority is a kind of connatural eagerness to accept and adhere to his teaching. The actuation of this cast of mind and bent of will might be described in terms of a strong inclination which accompanies us as we go about the task of appropriating and assimilating a teaching. This strong inclination would concretize itself in several ways. First, it will mean respect and reverence for the person and his office, and continuing openness to his teaching. Secondly, it will mean a readiness to reassess one's own positions in light of this teaching, an attempt to see if this teaching can be supported on grounds other than those presented, and a humble realization of the limitations imposed by one's own background, etc. Thirdly, it will suggest a great reluctance to conclude that magisterial moral teaching is clearly erroneous even after one has concluded that the evidence, arguments, and analyses used to establish this teaching are inadequate. One would prefer, in all humility, to conclude for the present that the authentic teaching is positively doubtful rather than clearly erroneous. Finally, it will demand a style of external behavior which fosters respect and support for the magisterium. If a Catholic's conduct corresponds to these demands, he has brought to authoritative teaching a response he brings to no one else. He has, one would think, responded proportionately to the authority of the teacher. Such procedural respect and reverence will generally lead to assent, but assent is not the immediate proportionate response. And if dissent occurs, one would suspect that it could occur, as a general rule, only after the passage of a certain amount of time, since time is needed for the arduous reflection suggested here.

Ladislav M. Orsy, S.J., has argued for substantially the same idea as that presented here.<sup>112</sup> However, he retains the word "assent" and then defines it as follows:

It means to respect authority and to acknowledge it as coming from Christ. It means to be open to any teaching coming from authority and to acknowledge the charism of the Spirit in it; and at the same time it means to admit humbly that since the charism of infallibility is not in operation, the Spirit of God may well allow human fallibility to be present with divine wisdom.

<sup>111</sup> This would apply to those whose background and competence demands of them a personal reflection.

<sup>112</sup> Ladislav M. Orsy, S.J., "Questions about 'Human Life,'" *America* 119 (1968) 99. Cf. also the statement by twelve members of the Alma College faculty in *America* 119 (1968) 162-64.

If there is some merit to these skeletal suggestions (they certainly need much more rigorous analysis than space permits here), they would lead us away from the vocabulary of conformity which has dominated discussion about the noninfallible magisterium: "the binding force of an encyclical," "the obligation to assent," "obedience to the teaching." These are terms which all too easily reflect the magisterium of a Church conceived according to a dominantly juridical model. One can argue that obedience is not the proper word to describe one's reactions to a revered teacher, even a teacher revered out of the strong impulses of faith. Similarly, one could argue that authentic noninfallible teaching has no binding force strictly so called; it is simply teaching and enjoys the authority proper to the teacher in question.

If religious docility involving internal and external reverence, respect, openness, and careful reflection (generally issuing in assent) is the proper immediate response to authoritative noninfallible teaching, then several things would be clarified. First, the measure of one's loyalty to the magisterium is not precisely assent, but the docility and deference which generally (only this) issue in assent.<sup>113</sup> Secondly, since this is so, juridical sanctions against Catholics who conscientiously and responsibly dissent are out of place. Such sanctions only perpetuate a paternalistic notion of the Church and her teaching. Furthermore, by misidentifying the locus of loyalty, they might make genuine disloyalty harder to recognize and therefore ultimately easier to practice. Sanctions are in place for the reckless and irresponsible style of one's dissent. Thirdly, a doctrine which is offered in contrast to one which is imposed has the character of a gift. Our over-all concern should be to promote those conditions which facilitate a truly personal reception of this gift. For example, hierarchical concern and vigilance should be aimed above all at the education of the Catholic community: to the nature of noninfallible teaching and to the privilege that is ours in its possession; to the harsh responsibilities upon us of disciplined reflection if our personal reception of this gift leads ultimately to dissent; to an awareness of the many values and circumstances to be weighed where publicizing this dissent is in question.

This point of view suggests that achievement of the truth is a process in which all of us have a Christian responsibility. It is precisely and only by a truly personal appropriation of magisterial teaching that we will learn in the Church how our charity is to be expressed. If we simply hear and act, then the learning process of the Church will be short-circuited. The process of growth of knowledge in the Church demands that we hear, study, consult,

<sup>113</sup> This may appear to be a very subtle distinction from the traditional formulation. However, I believe it is significant. For to say that authentic moral teaching generates *per se* a duty of assent all too easily allows dissent to be confused with disloyalty.

and act. The result of this communal experience becomes the source of a new understanding and a fuller unfolding of basic human and Christian values. Dissent—honorable, respectful, responsible—is not so much a personal right (there are implied concessions of excessive juridicism in this type of talk); rather it is only the possible outcome of a respectful and docile personal reflection on noninfallible teaching. Such reflection is the very condition of progress in understanding in the Church. Dissent, therefore, as a possible outcome of this reflection, must be viewed as a part of that total approach whereby we learn. If it is seen as a challenge to papal authority or as disloyalty, we have by implication ruled personal reflection out of court and compromised our own growth in understanding.

#### THE MAGISTERIUM AND CONTRACEPTION BEFORE "HUMANAE VITAE"

In the last installment of these Notes a discussion on the papal address of Oct. 29, 1966, concluded as follows: "Only an authentic teaching statement is capable of dissipating a genuine doctrinal doubt. 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."<sup>114</sup> This conclusion was based on the opinion that the Oct. 29 statement of Pope Paul was not an authentic teaching statement.

John C. Ford, S.J., and John J. Lynch, S.J., have challenged the conclusion that the teaching on contraception was practically doubtful (and subject to probabilism), and especially they have challenged it on the grounds on which I argued it.<sup>115</sup> The particular point at issue between us was the condition of certainty or doubt in the Church as this situation was affected by Vatican II and the papal address of Oct. 29. An analysis of the situation in terms of these two documents is no longer adequate since the issuance of *Humanae vitae*. However, the state of the Church from 1966–68 is very helpful, perhaps even necessary, for an understanding of the over-all significance of *Humanae vitae*. That is, an understanding of *Humanae vitae* and the cognate problems it raises will depend to some extent on how one assesses the situation in the Church prior to the Encyclical. Furthermore, because of the established competence and humaneness of the authors, and

<sup>114</sup> THEOLOGICAL STUDIES 28 (1967) 799–800.

<sup>115</sup> John C. Ford, S.J., and John J. Lynch, S.J., "Contraception: A Matter of Practical Doubt?" *Homiletic and Pastoral Review* 68 (1968) 563–74. That the article is a counter-statement to the conclusions I drew is made explicit in the July issue of *HPR*, p. 810.

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because the entire discussion touches sensitively on the matter of theological methodology, we stand to learn a great deal from a continuing exchange of views on this matter.

The Ford-Lynch argument was made in three steps: (1) the papal statement of June 23, 1964; (2) the doctrine of Vatican II; (3) the papal address of Oct. 29, 1966. The thrust of their paper was that these three documents prevented the existence of a contrary practical probability. A word on each of these documents is called for here.

With regard to the first point, I am in full agreement with Ford and Lynch. The Allocution of June 23, 1964 was an authentic noninfallible teaching statement. It was an authentic noninfallible assertion that the reasons adduced to that point were not sufficient to topple the norms of Pius XI and Pius XII. Those familiar with the articles published before that time would agree that they contained serious defects and inconsistencies, and that these shortcomings fully justified the judgment of Pope Paul.

As for Vatican II, Ford-Lynch state their conviction that the texts of the Council "deal with contraception and prohibit it." These Notes have discussed this matter at length before and it is unlikely that further prolonged discussion of the matter could do more than deepen trenches already dug and occupied.<sup>116</sup> However, since the discussion concerned not only the document itself but its relation to a practical doubt, several points bear repeating here.

First, it must be remembered that the Pope reserved the matter to himself. It is hardly likely, therefore, that the statement of Vatican II would be very definite or decisive. Indeed, those familiar with the *stylus curiae* recognize in the conciliar remarks a piece of masterful evasion. Hirschmann reminds us that the conciliar statement was very "cautious and open" and that the famous footnote 14 ends as follows: "With the doctrine of the magisterium in this state, this Holy Synod does not intend to propose immediately concrete solutions."<sup>117</sup> Such conciliar light-stepping is not to be wondered at when we read from a Council *peritus* and the editorial secretary of the subcommission which studied marriage questions: "The grave questions as to whether every act is subject to the end of procreation and whether an act of conjugal love in a generously lived marriage may not

<sup>116</sup> THEOLOGICAL STUDIES 27 (1966) 651.

<sup>117</sup> Johannes B. Hirschmann, "Eheliche Gewissenskonflikte und kirchliches Lehramt," *Geist und Leben* 41 (1968) 142-47, at 143.

find more independent expression are left quite open. *The Council deliberately refrained from giving a decision in this theological dispute.*<sup>118</sup>

Secondly, Ford-Lynch introduced two letters from H. J. Cardinal Cicognani to Alfredo Cardinal Ottaviani. One of their purposes in introducing these letters, the authors stated, was "to throw light on the meaning which Pope Paul himself attached to the conciliar text when he signed it." It can be argued that if such letters are needed to illumine the meaning a signatory attaches to a text, then the text hardly speaks too clearly and convincingly for itself. Furthermore, it must be said that the letters adduced throw light on the desires and intentions of Pope Paul, not precisely on the meaning he "himself attached to the conciliar text when he signed it," as the authors asserted.

Finally, if Vatican II spoke so clearly and decisively on contraception, one is puzzled by Pope Paul's later remarks about the conciliar statement: "The new pronouncement awaited from the Church on the problem of the regulation of births is not thereby [by the Council] given, because We ourselves, having promised and having reserved the matter to ourselves, wanted to consider carefully the doctrinal and pastoral applications which have arisen regarding this problem in recent years. . . ." <sup>119</sup>

The Council, then, was hardly the place to turn for the type of statement which would unequivocally and authoritatively settle a matter which it knew the Pope had reserved to himself. I cannot but agree with Donald Campion, S.J., when he asserts that it seems generally agreed now that the Council did not alter "the state of debate on the matter that had existed since Pope Paul's own announcement of June 23, 1964 of his creation of a commission to study questions in dispute about marriage and birth control." <sup>120</sup>

This brings us to the papal Allocution of Oct. 29, 1966. <sup>121</sup> It was the contention of these Notes that this Allocution did not represent a genuine teaching statement dealing with the doubts that had arisen since 1964.

<sup>118</sup> Victor L. Heylen, "Fostering the Nobility of Marriage and the Family," in *The Church Today*, ed. Group 2000 (Westminster: Newman, 1968) p. 117. This is also the conclusion of Michel Dayez: "En effet, le Concile n'a pas voulu condamner les nouvelles tentatives de solution selon lesquelles on peut, pour des motifs objectifs. . . recourir à la contraception. Il a même explicitement rejeté plusieurs amendements qui visaient à introduire dans le texte conciliaire lui-même des formulations favorisant la présentation classique de la doctrine" (*Revue diocésaine de Tournai* 22 [1967] 520).

<sup>119</sup> AAS 58 (1966) 1169.

<sup>120</sup> Donald R. Campion, S.J., and Gregory Baum, O.S.A., *Pastoral Constitution on the Church in the Modern World* (Westminster: Paulist Press, 1967) p. 43.

<sup>121</sup> AAS 58 (1966) 1166-70.

Ford-Lynch disagree with this conclusion. Their reasons are two. First, they are "mystified when any theologian imagines that a pope would attempt to deal with a problem like contraception by means of canonical legislation." I am too. But canonical legislation is not the only alternative to a teaching statement. It can be argued that the Pope was simply trying to calm the ruffled waters by suggesting an interim pastoral policy which would not make his genuine teaching more difficult than it should be. Still, a pastoral policy is not a teaching statement.<sup>122</sup>

Their second reason for regarding the Allocution as a doctrinal statement is that "Paul himself explicitly declares in the document that the norm he is insisting on is one which is 'constituted best and most sacred for everybody by the authority of the law of God, rather than by Our authority.'" Here we must recall two facts. First, Pope Paul did not at this time make his decisive statement. Alluding to the enormous complications and tremendous gravity of the subject, he said: "This is the reason why our response has been delayed and why it must be deferred for some time yet." Secondly, in an earlier Allocution to the Congress of the Italian Feminine Center, Pope Paul, referring to the ongoing work of his special birth-control commission, stated: "The magisterium of the Church cannot propose moral norms until it is certain of interpreting the will of God. And to reach this certainty the Church is not dispensed from research and from examining the many questions proposed for her consideration from every part of the world. This is at times a long and not an easy task."<sup>123</sup>

These two statements must be weighed in conjunction with each other. The following analysis is suggested. If the magisterium cannot propose (i.e., teach) moral norms "until it is certain of interpreting the will of God," then the traditional moral norms reiterated by Pope Paul at that time must have represented a *certain* teaching of the will of God. But if this was so, why would he have delayed his decisive statement and done so precisely on the grounds that time and research were needed to achieve certainty? The obvious conclusion would seem to be that the magisterium was not *certain* that these norms represented God's will. This conclusion is only re-enforced when one recalls the conclusions proposed by the majority of the papal study

<sup>122</sup> F. Bersini asks the following question: May someone in the meantime freely follow the opinion he holds better, as in the situation of doubt? His answer is interesting because it casts serious doubt on the teaching character of the statements of Vatican II and Pope Paul (Oct. 29, 1966): "La nostra risposta è negativa; perché, mentre la questione è posta allo studio dei competenti, il Concilio e il Summo Pontefice vogliono che nella *practica pastorale* si segua la dottrina tradizionale" (*Perfice munus* 43 [1968] 149-62, at 155-56, emphasis added).

<sup>123</sup> *AAS* 58 (1966) 218-24, at 219.

commission. If "to reach this certainty (*raggiungere questa certezza*) the Church is not dispensed from research," then surely the conclusions of this research group must have some bearing on the achievement or maintenance of certainty in this area. If it is argued that the papal delay was to be attributed to problems of pastoral presentation and not to uncertainty, we need only to return to Pope Paul's statement (Feb. 12, 1966) that the magisterium must be certain that it is proposing God's will when it proposes norms for conduct and that to reach this certainty "is at times a long and not an easy task."<sup>124</sup>

Summarily, then, if certainty is required to teach moral norms, and if research is required to achieve this certainty, and if the research sources produce anything but certainty, then the conclusion must be that the required certainty about these norms did not exist—hence that these norms could not be proposed (taught). And if this is so, how was the papal statement of Oct. 29, 1966 a true teaching statement? This would not mean that the traditional norms were seen to be incorrect. It simply means that it is not clear how they could then be taught as certainly interpreting God's will.

Let us put it this way. Given the certainty necessary to teaching binding moral norms (a certainty asserted by the Pope himself), what was one to think of the Pope's assertion that "the thought and norm of the Church are not changed"? This might have meant two things. (1) The traditional thought and norm are *certainly* the will of God. The evidence seems heavily weighted against such a reading if Pope Paul's statement about certainty and its indispensable sources is given due consideration. That is, if in February, 1966, the Pope needed the studies of the commission to achieve (*raggiungere*) the certainty necessary to propose moral norms, and if having received the majority report of the commission he achieved or maintained a certainty contrary to it, then perhaps we need a long, long discussion about the nature of the magisterium. We shall return to this point shortly. (2) The thought and norm just mentioned are not certainly the will of God, but they have not yet been formally reversed or formally admitted to be doubtful. The magisterium was not at that time prepared either to reverse these norms or to admit their doubtful character. In other words, the magisterium was certain only that it did not yet want formally and explicitly to modify or recall these norms. Such hesitation was, in my judgment, very understandable and very prudent. But certainty that the norms should not yet have been formally modified was not the same as certainty that they represented the will of God. The latter is a doctrinal certainty, the former is

<sup>124</sup> John Cardinal Heenan found the root of delay in the character of the devices which fall under the general term "contraception": *Tablet* 222 (May 18, 1968) 489.



not necessarily such. Expression of the latter certainty is a doctrinal or teaching statement, whereas expression of the former is not necessarily such.

What then of the papal insistence that "they [traditional norms] demand faithful observance"? In 1966 this conclusion only raised the question: why?<sup>125</sup> In other words, if the traditional norms were not clearly enough the will of God to allow a decisive statement to that effect, then the assertion that "the norms are still valid" simply had to rest on something other than the conviction that they were certainly the will of God. Consequently this assertion constituted something other than a doctrinal or genuine teaching statement. It was this line of reasoning that led me to the conclusion that the real doubts which had arisen since 1964 had not encountered a true teaching statement.<sup>126</sup> This in turn led to the assertion that contraception was in a state of practical doubt.<sup>127</sup> This still appears to me to have been a very defensible position.

We have dwelt at considerable length on this matter because of its importance to an understanding of the nature and function of the magisterium. In this perspective the discussion is far broader than the single issue which occasioned it. When weighty considerations are introduced against traditional norms of the natural law, and when a highly competent research group

<sup>125</sup> By simply referring to the 1964 statement, the Pope does not thereby issue a similar statement in 1966; for the 1964 statement was a teaching statement on the reasons adduced to that time. If the 1966 statement were to have had a similar force, it would have to have passed authoritatively on the theological thought since then, and specifically on the report of the commission. The Pope said of the commission's conclusions only that "they cannot be considered definitive."

<sup>126</sup> Cardinal Heenan's remarks do not appear to be those of a man faced with a genuine teaching statement; cf. *Tablet* 222 (1968) 489.

<sup>127</sup> Dayez (*art. cit.*, p. 520) held explicitly the conclusion of practical doubt: "Given the state of doctrinal research, given the evolution which is developing, given the positive and reasonable doubt touching the statement that 'every contraceptive method is *de se* evil,' it appears to me that a confessor cannot *demand*, under pain of refusal of absolution, that the penitent renounce a contraceptive method motivated by grave reasons of conjugal life." Hirschmann gingerly avoided saying explicitly that probabilism was operative where contraception is concerned. But his whole treatment implied this conclusion. For example, he insisted that probabilism does not amount to minimalism or laxism. Furthermore, he suggested that clinging to a teaching which did not by any means clearly raise the claim of last authority can lead one to place himself in the path of a fuller appearance of the truth and thereby inhibit the final dynamic of the Spirit in the Church (*art. cit.*, p. 145). These conclusions, it must be noted, do not resemble those which drew from the French episcopal commission on the family the following castigation: "Even though the work and research of moral specialists are legitimate and necessary, still it is astonishing that some Catholic authors allow themselves to solve the question authoritatively in advance of papal teaching" (*Documentation catholique* 65 [1968] 533).

is assembled to sort out these problems, and when this group fails to uphold traditional norms, and when a subsequent episcopal commission produces the same results, then the contention that the norms are still certain (certainly the will of God) because the magisterium has not yet modified them would seem to be a contention which asks the magisterium to bear a burden it can hardly carry. Is it not asking it to be certain independently of the ordinary sources of clarity and certainty? At some point or other such a notion of the magisterium is all too easily a caricature of the teaching office of the Church.

Could we not put it this way? If a modification of traditional teaching is only plausible on the supposition that the inadequacy of traditional norms had already become clear *before the papal statement*, then it is not the official papal statement alone which gives this clarity. Norms are not certain up to the moment of modification, then suddenly uncertain or changed with the modifying statement. To say so is to adopt a theory of "magisterium by fiat."<sup>128</sup> Now if the state of uncertainty is not produced by a papal statement of modification, but is the condition of its possibility, this means that the state of uncertainty is gathered from the best available evidence prior to such a statement. This in turn suggests that the state of certainty is gathered from the best available evidence, not from a papal assertion about the state of certainty.<sup>129</sup> To imply anything else is once again to adopt a theory of magisterium by decree and to deny the validity of Pope Paul's assertion that research is required to achieve certainty.

In summary, what very probably underlay the exchange between Ford-Lynch and the compositor of these Notes was the relationship of the magisterium to theological investigation. This relationship constitutes what surely is one of the most important theological problems of the day. In broader

<sup>128</sup> Some of these same reflections can be urged against the guidelines produced in several American dioceses prior to the issuance of *Humanae vitae*. After calling attention to the direct and supreme jurisdiction of the Pope over all members of the Church, and referring to the Pope's insistence on the validity of existing (then) norms, the guidelines say: "In the light of that statement it is clear that neither priest in the confessional, nor Catholic teachers in public or private instruction, may say or imply that the teaching of the Catholic Church either permits or condones the use of means of contraception, be they mechanical, chemical or simply behavioral." The guidelines mentioned greater understanding and compassion; "we repeat, however, that he [the confessor] may not permit or condone the contraceptive practices mentioned above" (*National Catholic Reporter*, July 3, 1968, p. 6). A somewhat different emphasis is found in the letter of Bishop Bernhard Stein (Trier) to his priests (cf. *NCR*, May 22, 1968) and in the remarks of Bishop Sergio Mendez Arceo of Cuernavaca (cf. *Davenport Messenger*, May 16, 1968).

<sup>129</sup> The state of certainty, it would seem, is a fact, not precisely a doctrine about which the magisterium can teach.

perspective, it is simply one aspect of a changing notion of the magisterium. The style and structure of authority in the Church (not excluding teaching authority) are undergoing development. Not all aspects of this development are clear, but at the root of it there seems to be a growing decentralization. It is possible, of course, to carry this too far; it is also possible not to allow it to occur at all. Somewhere in the middle lies the truth. But at a time of painful and groping transition it is hard to find this middle. It is quite possible that it was these larger issues which were operative in our disagreement. And that brings us to *Humanae vitae*.

#### THE ENCYCLICAL "HUMANAE VITAE"

The problem prior to *Humanae vitae* was whether the positive doubts surrounding traditional teaching had encountered a true teaching statement. To view the problem in this way was, of course, to approach it from the restricted viewpoint of classical categories. Specifically, it was to imply that a true teaching statement would have destroyed, at least temporarily, any contrary practical probability. The focus of attention was on pastoral practice, once one had granted the existence of a genuine doctrinal doubt. It should not be forgotten that this discussion supposed the existence of a true doctrinal doubt. The problem after *Humanae vitae* is the extent to which this document, obviously a teaching statement, has truly solved the doubts.

Perhaps it were better to say that this is one of the problems occasioned by the Encyclical; for if anything is clear, it is that *Humanae vitae* is inseparable from questions far more basic than the issue which occasioned it. These larger issues have been stated very clearly by a group of theologians at Marquette University in the following way:

- 1) In the areas of human understanding which are proper to human reasoning, such as natural law, what is the function of the Church as the authoritative teacher of revelation?
- 2) What are the sources for the formulation of binding moral doctrine within the Christian community?
- 3) What is the precise role of the Pope as an authoritative teacher in these areas?
- 4) What is the role of the bishops, of the body of the faithful, and of the Church's theologians in formulating such moral teaching?
- 5) What qualifications may be attached to the individual Christian's assent to admittedly fallible statements of the merely authentic magisterium, especially when this involves practical judgments of grave consequence?<sup>130</sup>

These questions, touching as they do on the central nervous system of

<sup>130</sup> Cf. *Our Sunday Visitor*, Aug. 18, 1968.

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Catholic belief and life, explain why *Humanae vitae* caused such a profound reaction in the Catholic community.<sup>131</sup> Obviously we cannot discuss these major theological themes here.<sup>132</sup> However, only their full discussion will position us to understand the phase of development we are presently experiencing. We can address ourselves only to the single assertion which is at the heart of the Encyclical: every contraceptive act is intrinsically evil. The following remarks may be gathered under three headings: (1) the analysis and argument of the Encyclical; (2) the relation of theological analysis to a doctrinal conclusion; (3) some pastoral notes and conclusions.

### *The Analysis and Argument of the Encyclical*

After stating that each marriage act must remain open (*per se destinatus*) to the transmission of life, Pope Paul presents the following analysis.

That teaching, often set forth by the magisterium, is founded upon the inseparable connection, established by God and unable to be broken by man on his own initiative, between the unitive and procreative meanings, both of which are present in the conjugal act.

For by its intimate structure, the conjugal act, while most closely uniting husband and wife, also capacitates them (*eos idoneos etiam facit*) for the generation of new life, according to laws inscribed in the very being of man and woman. By safeguarding both of these essential aspects, the unitive and the procreative, the use of marriage preserves in its fulness the sense of true mutual love and its ordination to man's exalted calling to parenthood.<sup>133</sup>

The Encyclical argues, therefore, that coitus is a single act with two aspects or inner meanings, the unitive and procreative. It further argues that these two senses are by divine design inseparable, so that one who deliberately renders coitus sterile attacks its meaning as an expression of mutual self-giving. Thus we read later that contraceptive intercourse

<sup>131</sup> This reaction was not without its human inconsistencies. For example, one wonders whether the issue of collegiality would have been raised quite so sharply had the decision of Pope Paul been different. This issue should have been raised by theologians at a much earlier date. Similarly, in earlier days the celibacy of the theologian defending traditional teaching was underscored. This same celibacy seems a bit more tolerable where the theologian is presently a dissenter. Or again, the very ones who dissented most vigorously when *Mater et magistra* appeared are now the ones fervently urging that Rome has spoken.

<sup>132</sup> For example, the word *ecclesia* is used thirty-four times in the Encyclical, according to my hasty count. It would be interesting to study the theological implications of its various uses.

<sup>133</sup> *De propagatione humanae prolis recte ordinanda* (Rome: Typis Polyglottis Vaticanis, 1968) no. 12. This is a Latin version of *Humanae vitae*. Subsequent references will be to this text and by paragraph number.

removes, "licet solum ex parte, significationem et finem doni ipsius" (n. 13). It seems that the whole weight of the Encyclical's teaching that a contraceptive act is "intrinsece inhonestum" (n. 14) derives from this analysis. In fact, Pope Paul says just that. Because this is so, several remarks are in place.

First, the above analysis is not new. It will be recalled that *Casti connubii* approached the expression of marital love as a motive for sexual intercourse. In the years prior to the Second Vatican Council it became clear to theologians that this was an incomplete and imperfect analysis. They began to speak of the expression of marital love as one of the very inner senses (*finis operis*) of coitus. Several allocutions of Pius XII adopted this point of view.<sup>134</sup> In recent years Joseph Fuchs, S.J., was more than anyone else associated with systematizing this notion. Speaking of the relationship of the two meanings or aspects of coitus, Fuchs wrote in 1963:

The Creator so arranged the sexual act that it is simultaneously both per se generative and per se expressive of intimate oblation love. He has so arranged it that procreation would take place from an act intimately expressive of conjugal love and that this act expressive of conjugal love would tend toward procreation. Therefore an act which *of itself* does not appear to be apt for procreation is by this very fact shown to be one which does not conform to the intentions of the Creator. The same thing should be said about an act which *of itself* is not apt for the expression of oblation love. Indeed, an act which is not apt for procreation is by this very fact shown to be one which is *of itself* not apt for the expression of conjugal love; for the sexual act is one.<sup>135</sup>

Many of us accepted this approach for a number of years and argued that contraceptive interference could not be viewed as a merely biological intervention.<sup>136</sup> Rather, we argued, it was one which affected the very foundation of the act as procreative and hence as unitive of persons; for by excluding the child as the permanent sign of the love to be expressed in coitus, one

<sup>134</sup> For example, *AAS* 43 (1951) 850; *AAS* 48 (1956) 470.

<sup>135</sup> Joseph Fuchs, S.J., *De castitate et ordine sexuali* (3rd ed.; Rome: Gregorian Univ. Press, 1963) p. 45. Speaking in another place (p. 80) of the separability of the two aspects of coitus asserted by some non-Catholics, Fuchs wrote: "They do not sufficiently grasp that the Creator *united* this double aspect. The sexual faculty has but *one* natural actuation in which the generative and oblation aspects specify each other." These same analyses are present in the earlier edition (1959, p. 61) of Fuchs's work.

<sup>136</sup> Cf. R. A. McCormick, S.J., "Conjugal Love and Conjugal Morality," *America* 110 (1964) 38-42, and "Family Size, Rhythm, and the Pill," in *The Problem of Population* (Notre Dame: Univ. of Notre Dame Press, 1964) pp. 58-84.

introduced a reservation into coitus and therefore robbed it of that which makes it objectively unitive.

This analysis, even though it represents a genuine advance, rests ultimately on the supposition that every act of coitus has and therefore must retain a per se aptitude for procreation.<sup>137</sup> This supposition is accepted and clearly stated in *Humanae vitae*. The Encyclical's formulation and repetition of traditional teaching speaks of the necessity that each marital act "ad vitam humanam procreandam per se destinatus permaneat" (n. 11).<sup>138</sup> Furthermore, the Encyclical speaks of the restriction of man's dominion over the genital powers "because of their intrinsic ordination toward raising up life, of which God is the principle" (n. 13). Also, of coitus we read that "by its intimate structure coitus . . . capacitates them for the generation of new life . . ." (n. 12). Now the immediate and often-stated difficulty with such a contention is that, starting with an obsolete biology, it attributes a meaning to all coitus on the basis of what happens with relative rarity.

Unless I am mistaken, *Humanae vitae* reflects the strength of this difficulty in what appears to be almost a contradiction within the Encyclical. Speaking of coital acts during infertile periods, the Encyclical says that they are legitimate "cum non cesset eorum destinatio ad conjugum conjunctionem significandam roborandamque" (n. 11). The rather clear implication here is that any *destinatio ad procreationem* ceases. Otherwise why did the Encyclical not say "cum non cesset eorum per se destinatio ad procreationem"? Why did the document use the phrase "non cesset" of a single aspect of coitus, thereby implying that the other of the two ordinations or aspects did indeed cease? The unstated but obvious reason is that any *destinatio ad procreationem* is absent in infertile acts. And if it is absent, it is clearly separable from them. In these infertile acts the unitive and procreative aspects are separable. This means that at one point the Encyclical seems unwittingly to imply a factual separation of the unitive and procreative aspects of individual coital acts during the infertile period. At another (n. 12) the doctrine that each act must remain open to new life is said to rest on the inseparable connection between the procreative and unitive meanings "quae ambae in actu conjugali insunt."

A second point must be noted here. Theologians have found the per se aptitude for procreation of each act of coitus an extremely difficult analysis

<sup>137</sup> For a refutation of the validity of the argument, cf. G. Grisez, *Contraception and the Natural Law* (Milwaukee: Bruce, 1964) pp. 34-35.

<sup>138</sup> This wording seems to represent a great broadening of the notion of a forbidden contraceptive act. In *Casti connubii* those interventions were condemned in which the act was deprived of its natural power to procreate: *AAS* 22 (1930) 560.

to sustain, because it seems to imply and demand an unacceptable criterion for the assessment of the meaning of human actions. The criterion apparently inseparable from this analysis is an approach which measures the meaning of an act by examining its physiological structure. In any number of places in the Encyclical biological structure and the processes of nature are accepted as the determinants of meaning.<sup>139</sup> They are said to represent God's plan and therefore to be morally normative.

Contemporary theological thought insists that the basic criterion for the meaning of human actions is the person, not some isolated aspect of the person. Vatican II, while speaking of marriage and responsible parenthood, pointed out that the moral character of any procedure must be determined by objective standards "ex personae ejusdemque actuum natura desumptis."<sup>140</sup> It is interesting to note the shift in emphasis found in *Humanae vitae*. There the criterion is "ipsa matrimonii ejusque actuum natura" (n. 10).

It is important to understand what it means to say that the person is the criterion of the meaning of actions. Authors have always admitted that the total object (or significance) of an action cannot be identified merely with the physical object. Physical objects as such have no relation to the moral order. Thus "taking another's property" is only a physical act; it is not yet a moral object. Similarly "uttering an untruth" is only a physical act or object. The Majority Report points this out in the case of arms, whose use is good when in self-defense, but evil when turned to unjust killing.<sup>141</sup> The materiality of the act is not the same as its meaning.

If, however, "taking another's property" contains an attack on persons or a person, it contains the malice of theft (and is an unloving act). If "uttering an untruth" jeopardizes man's life in community, it contains the malice of a lie. After examination of the goals and conditions of the human person (his potentialities and relationships as known from all sources—above all, revelation), we have concluded to the meaning of material goods and man's relation to them. The basic common destiny of material goods allows us to conclude to the inherent limitations on property rights. Only those actions

<sup>139</sup> "Deus enim naturales leges ac tempora fecunditatis ita sapienter disposuit . . ." (no. 11); "humana ratio . . . biologicas deprehendit leges, quae ad humanam personam pertinent . . ." (no. 10); "actum amoris mutui, qui facultati vitam propagandi detrimento sit, quam Deus omnium Creator secundum peculiare leges in ea insculpsit . . ." (no. 13); ". . . leges conservans generationis . . ." (no. 13); ". . . conjuges legitime facultate utuntur, sibi a natura data; in altera vero, iidem impediunt, quominus generationis ordo suos habeat naturae processus . . ." (no. 16); "Qui limites non aliam ob causam statuuntur, quam ob reverentiam, quae toti humano corpori ejusque naturalibus muneribus debetur . . ." (no. 17).

<sup>140</sup> *AAS* 58 (1966) 1072.

<sup>141</sup> *Tablet* 221 (1967) 512.



which violate genuine property rights constitute an attack on persons and merit the name of theft. We say genuine property rights, i.e., rights as defined and delimited within the whole hierarchy of personal value. This relationship to the hierarchy of personal value we have encapsulated in the phrase "against his reasonable will." Therefore only those acts which take another's property against his reasonable will constitute the category of theft, and represent an attack on the person through those things which are necessary to personal growth and good. It is the total good of the person which has determined which physical acts are theft, which not. The same might be said of speech.

Clearly, then, significance does not refer to mere physical acts; rather it is an assessment of an action's relation to the order of persons, to the hierarchy of personal value.<sup>142</sup> This same methodology must also apply in the area of sexual ethics. The significance (the total moral object) must be determined as in other instances, by relating the physical act to the order of persons and by seeing it as an intersubjective reality.

Of course, sexuality is founded in biological realities, and just as obviously sexual intercourse, materially considered, has some orientation toward fecundation. We are not calling these "thresholds of objectivity" into question here. We are only suggesting that the meaning of sexual activity cannot be derived narrowly from biological materialities; for this does not take account of the full range and meaning of human sexuality. It is not the sexual organs which are the source of life, but the person. As the Majority Report noted, "the biological process in man is not some separated part (animality) but is integrated into the total personality of man."<sup>143</sup> Thus the material fecundity in this process gets its moral meaning from its finalization toward the goods which define marriage. This is what it means, one would think, to draw objective standards "ex personae ejusdem actuum natura." Just as we refuse to identify "taking another's property" with theft, so we must refuse to identify the physiological components with the full meaning of sexual actions.

The third point to be made about the argument of the Encyclical is its handling of the analysis made by the now famous Majority Report. This report had suggested that infecund acts (even those deliberately made such) are incomplete, and derive one aspect of their moral quality from their relationship to the fertile acts already placed or to be placed. This analysis is rejected by the Encyclical on the grounds that an act deprived of its

<sup>142</sup> W. Van der Marck, O.P., refers to this personal aspect of the act as "intersubjectivity" (*Toward a Christian Ethic* [Westminster: Newman, 1967] pp. 48-59).

<sup>143</sup> *Tablet*, loc. cit.

procreative power is intrinsically evil. But this is precisely the point to be shown. In my judgment the Encyclical does not succeed in doing this.

*Relation of a Theological Analysis to a Doctrinal Conclusion*

If the analysis and argument used in an authoritative moral teaching on natural law do not support the conclusions, what is one to think of these conclusions? Concretely, *Humanae vitae* taught the intrinsic immorality of every contraceptive act. At least very many theologians will agree that there are serious methodological problems, even deficiencies, in the analysis used to support this conclusion. What is one to say of the conclusion in these circumstances?

The Encyclical itself, after exhorting priests to be examples of loyal internal and external *obsequium*,<sup>144</sup> stated: "That *obsequium*, as you know well, obliges not only because of the reasons adduced, but rather (*potius*) because of the light of the Holy Spirit, which is given in a particular way to the pastors of the Church in order that they may illustrate the truth" (n. 28). This statement summarizes the accepted notion of the authoritative but noninfallible moral magisterium. It says in effect that the authoritative character of the teaching is not identified with the reasons adduced for it. On the other hand, it clearly implies that the certainty of the teaching cannot prescind from the adequacy of the analyses given. Establishing the proper balance is the problem we face.

It might be helpful to point out the extremes to be avoided where authoritative noninfallible teaching is concerned. One extreme is that the teaching is as good as the argument. This makes the pope just another theologian and destroys the genuinely authoritative character of the papal charism. It also implies a one-sidedly rationalistic epistemology of moral cognition. The other extreme is that the teaching is totally independent of the argument. This makes the pope an arbitrary issuer of decrees and edicts. It dispenses completely with the need of theological reflection and ends up ultimately as an attack on the *teaching* prerogatives of the Holy Father.

It is important to stress this point. If a teaching is considered valid independently of the reasons and arguments, then the possibility of objectively founded dissent is eliminated on principle. That is, if noninfallible teaching must be accepted independently of the reasons supporting it (understanding "reasons" in a broad, not excessively rationalistic, sense), on what grounds is dissent still possible? And if dissent is impossible, in what sense is the teaching noninfallible? At this point the truth of the teaching is

<sup>144</sup> I have left the word *obsequium* untranslated because a satisfactory English equivalent is lacking. Several Latin scholars have suggested that "obedience" is too strong.

simply identified with the authority proposing it. And who has greater moral authority than the Sovereign Pontiff? Many of us will find it uncomfortable to live with a notion of noninfallible teaching which demands that it be treated as practically infallible. Somewhere between these two extremes lies the truth.

The middle ground between these extremes has traditionally been formulated in terms of a presumption to be granted to authentic noninfallible statements. This is a presumption that they are correct.<sup>146</sup> The strength of this presumption will vary in individual instances according to many circumstances too numerous to detail or discuss here. We have already suggested that the response generated by this presumption is religious docility of mind and will. Furthermore it was suggested that this docility would concretize itself in several ways. These ways include a readiness to reassess one's own position in light of the teaching and an attempt to discover whether the conclusion taught might be established on grounds other than those adopted by the magisterium. Finally it was stated that such steps will generally lead to full and grateful acceptance of the teaching. And this acceptance will manifest itself in one's decisions.

But precisely because we are dealing with noninfallible teaching, the steps which express one's radical docility and submission could end somewhat differently. This will not happen often; otherwise the magisterium would cease to be truly authoritative.<sup>146</sup> But if the very possibility is excluded on principle, then are we really dealing with noninfallible teaching? Now if the steps stimulated by docility are carefully and conscientiously taken, and one still finds it personally impossible to justify the doctrinal conclusion, it seems to me that the presumption supporting the doctrine prevails until a sufficient number of mature and well-informed members of the community share this same difficulty. Until this stage is reached, our difficulties will suggest to us our own limitations, if we are honest and realistic. But once it becomes clear that a large number of loyal, docile, and expert Catholics share this same difficulty, then it would seem that the presumption supporting the certain correctness of the teaching would be weakened, at least to the extent that the doctrine could be said to be doubtful. If the presumption would not be weakened in the instance just described, when would it ever be? At this point one would wonder whether such a doctrine could give rise to a certain obligation in conscience.

<sup>146</sup> Here some further precisions are probably in place. When the word "correct" is applied to moral teaching, it could mean "speculatively true," "a valid value judgment," "a justifiable jurisdictional act in protection of moral values," etc.

<sup>146</sup> G. Baum, O.S.A., "The Right to Dissent," *Commonweal* 88 (1968) 553-54.

How does all of this apply to the doctrine of *Humanae vitae* that a contraceptive act is “intrinsically evil” (n. 14) and “always illicit” (n. 16)? By way of preface it must be said that a theologian’s answer to this question is only his own honest, conscientious, but very fallible opinion. He submits it to his colleagues for appraisal and correction, and then to the bishops for their prayerful consideration. It seems necessary to make this point because in recent years theological opinions, including some in these Notes, have occasionally been used as if they enjoyed doctrinal status. This being said, we may attempt an answer to the question raised by proceeding in stages.

First, in the past years a good number of theologians, after literally thousands of hours of diligent study and discussion, had concluded that the traditional norms as proposed by Pius XI and Pius XII were genuinely doubtful. That is, there were serious and positive reasons against them. I am convinced that for many of us the word “doubt” meant just that.<sup>147</sup> It did not mean certainty one way or the other, though increasingly many of us viewed the analysis presented in the Majority Report as by far the more probable and persuasive view. Hence, when *Humanae vitae* appeared, we read it eagerly looking for the new evidence or the more adequate analyses which led Paul VI to his reaffirmation of traditional norms.

Secondly, a rather well-educated guess would say that the vast majority of theologians will conclude that the analyses of *Humanae vitae* build upon an unacceptable identification of natural law with natural processes. That is, they will assert that the argument does not justify the conclusion.

Thirdly, at this point the theologian’s docility will stimulate him to ask: Can the intrinsic immorality of contraception be established in some more acceptable way, and on other grounds? Possibly. But in the past six or seven years of intense discussion we have experienced little success, and not for lack of trying, to be sure. It is not that the arguments do not conclude with the force of mathematical demonstration. Few ethical arguments do, even the most suasive. It is rather that there seems to be no argument capable of sustaining the intrinsic malice of contraceptive acts, and a good deal of evidence which denies this thesis. Indeed, past attempts to establish the doctrine have imprisoned us, step by inexorable step, in totally unacceptable presuppositions.

This is not to say that a strong indictment of contraception is out of place. Quite the contrary. For very many people contraception could easily represent a way of life springing from and reflecting the materialism and

<sup>147</sup> We say “many” here because there are certainly some, perhaps quite a few, theologians who are convinced of the complete moral integrity of contraception, at least in certain circumstances.

secularism of Western man. We live in a contraceptive world where the pill (etc.) has assumed the character of a human panacea. Contraception cannot be viewed in isolation from basic attitudes toward life and sexuality. There is mounting evidence that in contemporary culture contraception is part and parcel of an attitudinal package that includes sterilization (even coerced), abortion, artificial insemination, and ultimately euthanasia. Furthermore, contraception might be associated with a certain amount of marital selfishness, marital infidelity, and premarital irresponsibility, though we must be careful here to document any generalizations we would make.

Perhaps it was a cultural criticism such as this which Paul Ricoeur had in mind when he wrote:

What gives force to the anti-contraceptive position are not, in my opinion, the arguments based on the meaning of "natural" and "unnatural," but an argument which is rarely made use of: the knowledge that contraception risks destroying the quality of the sexual act by making it facile and ultimately insignificant. I would develop the implicit argument of those who oppose contraception in these terms: Of course, birth control is necessary, but there is the danger that the meaning and value of sexuality will disappear. Today we are perhaps more worried about overcoming the fatality of reproduction. The price of this victory—a price costly from the point of view of psychology and spirituality—will inevitably become apparent. It may be that tomorrow's greatest problem will be to preserve the expressive and meaningful value of sexuality. But if this is tomorrow's problem, is it not already today's? Must we not, come what may, retain the distinction between natural and unnatural, not because this distinction is of value in itself, but because nature itself proposes an exterior limit to a man's demands on sex, and also maintains the sole objective bulwark capable of sustaining the quality of the sexual act?<sup>148</sup>

Ricoeur then added that

the partisans of birth control should be aware that contraception, considered as a simple technique in general, helps to precipitate sexuality into meaninglessness; it is probable that a rational use of contraception can only succeed where men are spiritually aroused to the need for maintaining the quality of the sexual language.<sup>149</sup>

Clearly Ricoeur himself believes that contraception can be put at the disposal of a responsible conjugal ethics and that it can be in the service of rational fertility rather than sterility. I am not arguing here that this approach to the question is persuasive or that it will lead to the conclusions of *Humanae vitae*. I am only suggesting that it seems to represent the only kind of approach left toward those conclusions. One might argue that we live in a

<sup>148</sup> *Cross Currents* 14 (1964) 246-47.

<sup>149</sup> *Ibid.*, p. 247.

culture where very many are not spiritually aroused to the need for maintaining the quality of sexual language. Sexual expression is more facile and insignificant than ever. Its increasing mechanization poses a serious threat to its viability as a human experience.

If we approach the question of contraception from this point of view, could we arrive at the conclusion that it is intrinsically evil? I doubt it. We would conclude only that it is dangerous and that the duty of the individual couple is subject to their ability to detach the practice from these poisonous concomitants. However, the dangers might be so considerable that ecclesiastical authority would wish to impose a norm of conduct in virtue of its jurisdictional authority. There is some indication in the documents of the magisterium that propositions about natural-law matters do at times conform more to jurisdictional precepts than to teaching.<sup>160</sup> If this were the case, it would seem that the teaching would be, to use Daniel Maguire's phrase, "open to the soothing influence of epikeia."<sup>161</sup> In any event, these reflections do not lead to the conclusion of the intrinsic immorality or absolute illicitness of contraceptive acts.

If theologians have not been able to sustain the conclusion of intrinsic malice, and if increasingly they have found sound theological reasons to justify contraception at least in some instances (cf. the Majority Report), on what grounds did the Pope reaffirm traditional teaching? It is not from arrogance that one seeks to discover how Pope Paul VI arrived at the conviction that he must reaffirm traditional norms. Only when one knows what factors were operative in this decision is he positioned to appropriate the decision as fully as a docile and intelligent Catholic would desire. We are dealing here, after all, with the natural law, as the Encyclical states. This means that the exclusion of contraception is a demand based on man's being as man. Now the demands of natural law are determined by evidence gathered from many competences and evidence available to all of us. This evidence either yields a reasonably convincing case or it does not.

If it does, should this not recommend itself to the reflections of at least very many devoted and reflective Christians, and manifest itself in the convictions of a majority of expert theologians and episcopal advisors, even

<sup>160</sup> For example, Pope John XXIII wrote in *Mater et magistra*: "It is clear, however, that when the hierarchy has issued a *precept or decision* on a point at issue, Catholics are bound to obey their directives. The reason is that the Church has the right and obligation, not merely to guard the purity of ethical and religious principles, but also to intervene authoritatively when there is question of judging the application of these principles to concrete cases" (AAS 53 [1961] 457).

<sup>161</sup> *Art. cit.*, p. 57.

though our formulations of this may be awkward? <sup>152</sup> It did not. How, then, are we to explain the reaffirmation? Pope Paul VI gives some hint of an explanation when he refers in *Humanae vitae* to the work of the Birth Control Commission. He states that its conclusions could not be considered definitive and gives as the special reason for this (*praesertim*) "because certain criteria of solutions had emerged which departed from the moral teaching on marriage proposed with constant firmness by the teaching authority of the Church" (n. 6). There are many other indications in the Encyclical that the Holy Father felt keenly the weight of tradition. <sup>153</sup> Ultimately, however, one must conclude that the constant proposal of a teaching by the Church guarantees not its absolute correctness (unless it is infallibly proposed) but only its longevity.

At this point perhaps the theologian ought to ask himself whether he has read the Encyclical properly. Certainly, before anyone concludes that the teaching of *Humanae vitae* is gravely doubtful or even in error, he must determine what that teaching is. To do that, he must have some hermeneutic for papal documents. We are familiar with the contention of theologians that earlier authoritative condemnations must be understood as condemnations of a teaching or tenet as it was then understood (e.g., religious liberty). Pius XII's elaboration of the principle of totality had to be read, theologians argued, in light of the totalitarian abuses of which he was so acutely aware and which he wished to counteract. And so on.

A concrete application of this method to *Humanae vitae* might suggest the following approach. Beneath the explicit and dated language of faculties and processes, of intrinsic evil and per se ordinations, there is a message which carries beyond these categories. Perhaps the document should be read as one which points a general direction and prophetically defends the great values of life and marital love. In other words, perhaps it can be read as delineating an ideal toward which we must work. Just as marriage is growth in unity, so the expression of marriage (marital intimacy) is an activity whose purity and

<sup>152</sup> Here it must be noted that many reactions to *Humanae vitae* were couched in terms of support or nonsupport for the Pope, of acceptance or rejection of his authority. Hence they cannot be reckoned a truly accurate guide of Catholic conviction on the issue at stake.

<sup>153</sup> For instance: "... ut saepenumero Decessores Nostri pronuntiaverunt ..." (no. 4); "... Ecclesia congrua dedit documenta ..." (no. 4); "... hinc constans Ecclesiae doctrina declarat ..." (no. 10); "... quam constanti sua doctrina interpretatur ..." (no. 11); "huiusmodi doctrina, quae ab Ecclesiae Magisterio saepe exposita est ..." (no. 12); "... sicut Ecclesiae Magisterium pluries docuit ..." (no. 14); "Ecclesia sibi suaeque doctrinae constat ..." (no. 16); "Cum Ecclesia utramque hanc legem non conderit, ejusdem non arbitra, sed tantummodo custos atque interpres ..." (no. 18).

perfection we have not reached but for which we must constantly struggle. It is quite possible that we are collectively insensitive to this ideal.

However, if this is the basic message of the Encyclical, if it is outlining a horizon toward which we must move rather than a casuistry to which we must conform, then the integrity of marital relations would be determined by the couple's acceptance or rejection of this ideal in their present situation. If contraceptive acts were performed without a resolve or desire to grow toward this ideal, then they would be immoral. But as long as the couple resolve to do what they can to bring their marriage (and societal conditions) to the point where the fullness of the sexual act is possible, their practice of contraception would not represent moral failure.

I am not suggesting here that the Encyclical can or should be read in this manner. I doubt that it can. I am only attempting to illustrate how the theologian will exhaust every reasonable means to understand and defend authoritative teaching before he ultimately questions its validity. In this instance one feels particularly reluctant to develop a hermeneutic in the face of the practical statements of *Humanae vitae* precisely because such attempts will almost certainly provoke immediate howls that they are devious and ignominious attempts to water down the clear teaching of the Encyclical. And up to a point this reaction is justified. But those who insist on reading the Encyclical with theological literalism must live with the presuppositions of the theological literalism. And in this instance that would be a hard life.

In the light of these reflections it is the opinion of the compositor of these Notes that the intrinsic immorality of every contraceptive act remains a teaching subject to solid and positive doubt. This is not to say that this teaching of *Humanae vitae* is certainly erroneous.<sup>154</sup> It is only to say that there are very strong objections that can be urged against it and very little evidence that will sustain it. One draws this conclusion reluctantly and with no small measure of personal anguish. With proper allowance made for one's own shortcomings, pride, and resistance, what more can a theologian say? He can say, of course, that the teaching is clear and certain simply because the papal magisterium has said so. But ultimately such an assertion must rest on the supposition that the clarity and certainty of a conclusion of natural-law morality are independent of objective evidence. In the discussion that has followed *Humanae vitae*, those who have supported the conclusions

<sup>154</sup> That is why I stated in the *National Catholic Reporter*: "I am not prepared to say that it is the only way traditional norms could be established and that therefore this teaching is *clearly inadequate*. More time and study are required to reach such a conclusion" (August 7, 1968, p. 9). "Gravely doubtful" is not the same as "clearly inadequate." This latter suggests reasonable certainty of error. There are other theologians whose position would be far stronger than this.



of the Encyclical have argued in just this way. I believe this is theologically unacceptable.

If other theologians, after meticulous research and sober reflection, share this opinion in sufficient numbers, if bishops and competent married couples would arrive at the same conclusion, it is difficult to see how the teaching would not lose the presumption of certainty ordinarily enjoyed by authoritative utterances. However, the ecclesial value of dissenting judgments in the present circumstances remains a problem in its own right.

Because of the proximity of the Encyclical and some unfortunate reactions associated with its issuance (unfortunate because agreement was allowed to be equated with loyalty, disagreement with disloyalty), one's honest expression of his theological opinion risks appearing as a kind of private magisterium that has entered into conflict with the authoritative papal magisterium. John Reed, S.J., was assuredly correct when he noted that "whatever the limits on one's obligation to accept the judgment of the latter [magisterium of the Church], one is certainly not entitled, either singly or in company with other theologians, to enter into conflict with it."<sup>165</sup> It is very difficult in the present circumstances to question the papal magisterium in one form or another without seeming to be in conflict with it. But the two notions (dissent from, in conflict with) are radically different. The theologian who conscientiously questions a particular teaching of the magisterium is deeply convinced that he is actually supporting and contributing to the magisterium. Indeed, the continuing health of the magisterium depends on his ability to do just this.

But he will be disinclined to discharge his duty of personal reflection if the results of his study are viewed as a private and defiant magisterium. The only ones capable of preventing this are the bishops. They are the magisterium in a way no theologian can claim to be. They must be in close contact with theologians (and the sources theologians draw upon), so that the best and most responsible Catholic thought will feed into the magisterium and shape its authoritative directives. If a much closer working relationship between the episcopal and theological community fails to mature, the theologian will be faced with only two alternatives, both of which are disastrous for himself and the Church: to abandon his honesty and integrity of thought, or to keep it and to become a private magisterium distinct from and sometimes in conflict with the genuine magisterium of the Church.

#### *Some Pastoral Notes and Conclusions*

We are too close to the neurological issue and too far from the solution to the great theological problems inseparable from the Encyclical to lay down

<sup>165</sup> THEOLOGICAL STUDIES 26 (1965) 59.

pastoral directives with any degree of confidence. Furthermore, such a task is properly that of the bishops. However, certain avenues of approach may be suggested here with the hope that they will stimulate others to make them more precise. We may touch on three points: bishops, bishops and priests, priests and the married.

*Bishops.* It is a mistake for an individual bishop or the conference of bishops to accept this, or any noninfallible teaching, without serious personal reflection and consultation. The teaching charism of bishops demands of them a truly personal reflection. The Dutch bishops gave us an example of this. They stated: "It is obvious, therefore, that your bishops will be able to give the guidance you so badly need only after consultation with theologians and other experts. This guidance will undoubtedly be given, but cannot be given until after some lapse of time."<sup>186</sup> It would seem that decisions to "support the Pope" without a true personal reflection are policy decisions. Such decisions can all too easily deprive the Pope and the faithful of the wisdom they have a right to expect from their bishops. They also fail to tell us whether the bishops are truly accepting and teaching a doctrine rather than just enforcing it. In this connection it must be said in all candor that the statements of several American bishops fail to distinguish "accepting the authority of the Pope" from "accepting what is authoritatively taught."

*Bishops and priests.* Given the fact that the teaching is noninfallible and error is possible (though one does not start with this emphasis in his own reflections), it is a mistake for bishops to insist on assent from their priests. We shall only grow in knowledge and understanding in the Catholic community if acceptance of this or any teaching is completely uncoerced, and if it represents, as far as possible, a truly personal assimilation, even though this assimilation may be somewhat delayed.

It would seem more appropriate that bishops, in dealing with their priests, should insist on a basic Christian and religious docility and the need for arduous reflection, study, and consultation. Bishops should do everything possible to encourage and facilitate a personal assimilation of authoritative teaching on the part of their priests. Secondly, they should insist on responsible conduct, whether one's study has issued in acceptance or dissent. Responsible conduct would include the following: respect for the Pope and his office; respect for the fact that he has a personal charism authoritatively to teach and lead the faithful. In other words, a priest's conduct will reflect a realization that the virtue of faith may not be weakened in the process of discussing one teaching which does not pertain to the faith.

*Priest and faithful.* It seems to me that the priest's first task is to distinguish for his faithful between his own personal opinion and authoritative

<sup>186</sup> *National Catholic Reporter*, Aug. 14, 1968, p. 5.

teaching. The Church needs the reflections and opinions of all of us. But our assimilation of any teaching is subject to our own imperfections and shortcomings. Concretely, if a priest in his professional capacity (confessor, preacher, counselor) asserts that "it is legitimate to practice contraception in certain circumstances," this is his opinion. If he presents it as any more than this, is he not equivalently setting himself up as a teacher in conflict with a far more authoritative teacher? It is precisely the impossibility of doing this which constitutes the problem we are now facing.

The priest's second task is to aid the faithful toward a personal reflection and assimilation of the Encyclical. Just as growth in understanding in the Church depends on a careful reflection by the authentic teachers in the Church (the bishops), so their reflections remain incomplete if they are not informed by the uncoerced reflections of those most vitally concerned and most directly involved in the question—the married. Therefore anything a priest says must represent an aid to the faithful in forming their consciences. He should not attempt to form their conscience for them. This would represent a form of paternalism detrimental to personal and corporate growth.

Thirdly, we come inevitably to what in the past we have referred to as "confessional practice" or its equivalent. Perhaps the matter could be approached in the following way, pending further developments.

a) When asked, we must unambiguously state that the present but non-infallible teaching of the papal magisterium is that every contraceptive act is immoral. This conclusion should, of course, be stated within the context of a rounded assertion of the positive values contained in *Humanae vitae*.

b) The dissent of reflective and competent married people should be respected and the teaching on contraception should not be made a matter of denial of absolution.

c) The truly anguishing aspect of the problem has been put well by the National Association of Laymen Executive Board. They state: "We are, therefore, not concerned for ourselves but for the millions of silent Catholics on whom this decision will fall as an unnecessary and harsh burden. They will obey because this is the main thrust of their religious training—to obey. They have not been allowed to reach spiritual adulthood, so they have no way to make independent judgment. For them to disobey or ignore this edict would destroy the very root of their religious belief."<sup>157</sup> There is no genuinely satisfactory solution for these people in terms of a practical conclusion. Indeed, if there were such a solution, the problem would not exist in its present poignancy. But here we may propose two suggestions which may help priests structure their pastoral practice.

<sup>157</sup> *Ibid.*, Sept. 14, 1968, p. 2.

First, in the present circumstances (widespread public confusion, episcopal and theological dissent, difficulty of the doctrine, frequent good faith, unclarity of related theological questions, etc.) this teaching should not be allowed to become an issue of refusal of absolution. When the problem arises in the confessional situation, the faithful should be encouraged, and they should be urged to exercise Christian patience and confidence as the unanswered questions and difficulties connected with this problem work themselves out.

Secondly, if a couple are trying to live responsibly their married life as defined by the values stated in *Humanae vitae*, a strong case can be made for saying that their individual acts of contraception should not be viewed by them or judged by the confessor to be subjectively serious sin.<sup>158</sup> Furthermore, the statement just made suggests to theologians the need to determine more precisely and satisfactorily what constitutes serious matter where the practice of contraception is concerned. I realize that these pastoral notes do not solve the basic underlying problems of the Encyclical and its application to daily Catholic practice. But they do not intend to do this. They intend only to formulate possible approaches—tentative and imperfect—during difficult, transitional, and therefore challenging times.

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<sup>158</sup> Three considerations suggest this conclusion. (1) *The difficulty of the faithful in understanding the doctrine.* Consider the following factors: confusion from priestly and theological discussions; a sensate, pansexualized culture; hardness of the doctrine; discussion before *Humanae vitae* and the expectations associated with it; subtlety of the argument; "asperas vitae conditiones" of families and nations (no. 19); "sine dubio multis talis videbitur, ut nonnisi difficulter, immo etiam nullo modo servari possit" (no. 20). (2) *The difficulty in practicing the doctrine.* Note: "multosque labores postulat" (no. 20); "asceseos sit opus" (no. 21); the grave difficulties of married life (no. 25); the fact that married people tend to judge the importance of an act by its relation to the goals and values of married life, not by a physiological openness, etc. (3) *The compassion and understanding urged by the Encyclical.* "In their difficulties may married couples always find in the words and the heart of a priest the echo of the voice and the love of the Redeemer" (no. 29). Similarly, "if sin should still keep its hold over them, let them not be discouraged, but rather have recourse with humble perseverance to the mercy of God" (no. 25). The Belgian hierarchy, after referring to attempts of Catholics in difficult circumstances to adapt their behavior to the norms of *Humanae vitae*, stated that "if they do not succeed immediately, they should not, however, believe they are separated from God's love" (*Catholic Chronicle*, Sept. 6, 1968). In this connection cf. the interesting remarks of John Dedek, "*Humanae vitae* and the Confessor," *Chicago Studies* 7 (1968) 221-24. Dedek believes that true evaluative cognition would be lacking in very many instances in the present circumstances.