

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY: JANUARY–JUNE, 1969

The Notes which follow focus on five principal issues: (1) reactions to the Encyclical *Humanae vitae*, (2) theology and authority, (3) morality and the competence of the magisterium, (4) the ethics of political protest, and (5) genetic engineering.

HUMANAЕ VITAE—A ROUNDUP OF REACTIONS

Over the years these Notes have devoted a good deal of space—even at times a disproportionate amount—to the intramural discussion of birth control. One would like to declare a temporary moratorium on the subject, but the quantity of literature disallows this. However, the compassionate reader will understand and share the compositor's determination to allow a brief roundup to suffice.

It is probably safe to say that comments on *Humanae vitae* in the past semester run the gamut between Ermenegildo Lio's assurance that the Encyclical contains "immutable and absolute proposals"¹ to Robert Springer's remark that "contraception is no longer the issue."² Lino Ciccone's commentary on *Humanae vitae* is not only very long (it takes him fifty-three pages to deliver his thoughts on nos. 1–6 of the Encyclical), but the article concludes with the ominous threat "*(continua)*."³ Obviously we are getting a serialized version of what will be or could be a book—or three. But the suspense is not that great. It is very clear what Ciccone will be up to in forthcoming issues. The tone is set by his recall of what he styles "elementary reflections" on the magisterium, "since not a few theologians seem to be ignorant of them, at least in practice."

Edward MacKinnon, S.J., approaches *Humanae vitae* from the point of view of the principles of doctrinal development.⁴ Behind every proposition affirmed as true are a conceptualization of reality and distinct presuppositions required for the meaningfulness of the truth-claim. Thus, for example, in a primitive culture which accepts devil possession as the cause of epilepsy, the witch doctor's report that someone is possessed by the devil will be accepted as true. We would distinguish

¹ *Osservatore Romano*, July 26, 1969.

² Robert Springer, S.J., "Notes on Moral Theology," *THEOLOGICAL STUDIES* 30 (1969) 264.

³ L. Ciccone, "L'Enciclica 'Humanae vitae.' Analisi e commento," *Divus Thomas* 72 (1969) 3–58.

⁴ Edward MacKinnon, S.J., "*Humanae vitae* and Doctrinal Development," *Continuum* 6 (1968) 269–75.

between accepting this as an observational report and accepting the background commitments used to frame this report. But such a distinction is not meaningful to the native.

Thus, where *Humanae vitae* is concerned, the meaning of the general principle asserted (each act must remain open to procreation) depends in part on the conceptual framework within which it is embedded. MacKinnon finds three general principles operative as a conceptual framework. First, the purposefulness of certain biological acts is seen in their natural ordination to a specific end. Second, human nature in itself and its essential relations is fundamentally unchangeable. Third, an interventionist view of divine providence prevails. By this MacKinnon understands the attitude that if we trust in God, He will provide for all of our needs. The acceptance of these principles is prerequisite to acceptance of the papal principle on rational rather than authoritative grounds. It is MacKinnon's contention that this frame of reference has undergone a revolutionary change in modern times. He concludes: "One cannot help but conclude that the doctrine defended in the encyclical is meaningful and philosophically defensible only within a conceptual framework which has already, or almost already, become obsolete through a process of conceptual revolution."⁵

One of the more provocative discussions is a panel presentation involving Ph. Delhayé, Jacques Etienne, Victor Heylen, Louis Janssens, and noted exegete Joseph Coppens.⁶ Interestingly, Coppens, professor emeritus at Louvain, is the only one who seems to stand firmly behind the Encyclical. He believes that "the pope's main argument is not based in the first instance upon the guidance of the Spirit in his personal case, but upon the position that the teaching of the Encyclical is *constans ecclesiae doctrina*." Heylen rejects this completely on the grounds that we have identified as "tradition" what is little more than the persistence of a deterministic view of bodily functions tracing back to Galen. The teaching must be called constant within these limits. In an analysis close to that of MacKinnon, Heylen sees the basic issue as follows: "How can theological speculation break away from a scientific thought which limits it by closing off certain areas of reflection?"⁷

Among the many interesting points touched on by the panel, two stand out. First, several (Heylen, Delhayé, Janssens) emphasize the rather sharp differences between *Gaudium et spes* and *Humanae vitae* in their views of marriage and marital morality. Secondly, Delhayé and

⁵ *Ibid.*, p. 275.

⁶ "A Symposium on 'Humanae vitae' and the Natural Law," *Louvain Studies* 2 (1969) 211-53.

⁷ *Ibid.*, p. 226.

Heylen severely criticize the pastoral of the French bishops in terms of its use of the principle of lesser evil. Delhaye remarks that to maintain that, whatever the situation, it is enough simply to choose the lesser evil "is to ignore the existence of intrinsic disorder." For this reason Delhaye says flatly that "the French statement goes too far." Heylen adds: "I agree wholeheartedly. Taken literally the French statement would bring about complete moral relativism."⁸

Not so, says Michel Dayez in his continuing commentary on *Humanae vitae*.⁹ Indeed, such episcopal statements are really in agreement with the Encyclical but simply apply its message. It will be recalled that in no. 14 the Encyclical stated that "to justify conjugal acts made intentionally infecund, one cannot invoke as valid reasons the lesser evil" It then went on to explain that if it is sometimes licit to tolerate a lesser evil, it is never licit to do evil, "that is, to make into the object of a positive act of the will something which is intrinsically disorder . . . even when the intention is to safeguard or promote individual, family, or social well-being." Dayez believes it is incorrect to say that all recourse to the notion of lesser evil is excluded by this statement. Rather the document simply recalls that considerations advanced from the subjective order cannot justify on the objective plane. Thus, killing is objective disorder. But to kill in self-defense situates the *concrete moral quality* of the act, even though it cannot make it less of a disorder to kill anyone. Therefore Dayez sees no. 14 of the Encyclical saying that contraception is at times an inevitable evil, that a conflict of duties can exist which leads to the *tolerance* of a moral evil to promote a greater good or avoid a worse evil. To tolerate is not to take as a positive object of the will that which is intrinsic disorder. Rather it is to will positively a greater good, admitting that actually and concretely it is accessible only in *tolerating* an element of disorder.

It seems to me that Dayez has confused the issue and ultimately explained away the notion of intrinsic evil, whatever one might think of that term as a legitimate theological category.¹⁰ That is, his argument would go somewhat as follows. Contraception is objective disorder. But to contracept for the good of the family yields the *concrete moral quality* of the act, even though it cannot make contraception less of a disorder. What Dayez seems to overlook is that what is said to be intrinsic

⁸ *Ibid.*, p. 222.

⁹ M. Dayez, "Pour comprendre 'Humanae vitae,'" *Confrontations* 1 (1968) 375-403, 577-603. The article containing Dayez's own problems with the Encyclical had not reached me at the time of this writing.

¹⁰ For an interesting recent treatment, cf. E. Ranwez, "Intrinsèquement mauvais?" *La foi et le temps* 3 (1969) 289-95.

evil already has a basic *concrete moral quality* in traditional understanding. Specifically, contraception (traditionally and in the understanding of the Encyclical) is not a vague and general disorder like killing, which gathers objective moral quality by further circumstantial specification. It is precisely the meaning of the category "intrinsic evil" that it already has a basic moral quality.

Robert McAfee Brown finds what he calls the "fundamental principle" of the Encyclical (the inseparability of the unitive and procreative meanings of coitus) "false and grievously so."¹¹ So also Michigan's Carl Cohen, who says of this principle: "First, it is without good foundation. Second, it is false. Third, its denial is perfectly consistent with the larger doctrines of the Catholic Church regarding marriage. Fourth, it betrays an unwholesome, essentially instrumental view of sex. Fifth, it is a premise contradicted by the Church's own view of licit birth control."¹² In much more moderate tones Bernard Häring discusses the same principle and its consequences and finds it impossible to see, in terms of "openness to the transmission of life," how rhythm differs from contraceptive interferences.¹³ He admits that there is need for a thorough study of the relationship between the unitive and procreative meaning of the marriage act, but finds the Encyclical's understanding mechanical. Charles Curran criticizes the teaching in terms of the theory of natural law operative beneath it—one which defines the moral action in terms of the physical structure of the act.¹⁴

Thomas Gilby, O.P., on the other hand, is convinced that "the Pope sees the subject at greater depth than his critics."¹⁵ He believes that *Humanae vitae* faithfully represents and applies a constant tradition, scil., that sexuality is never to be taken as an exclusively interpersonal value. If this exhausts the message of the Encyclical, then surely Gilby is correct. But given its explicit language, is it not impossible to peel the document down to this message? P. E. Hodgson details the criticisms of the scientific world (*Nature*, *New Scientist*, *World Medicine*, *Lancet*, etc.).¹⁶ He notes that the Encyclical shows

¹¹ Robert McAfee Brown, "*Humanae vitae*: A Protestant Reaction," in *Contraception: Authority and Dissent*, ed. Charles Curran (New York: Herder and Herder, 1969) pp. 193-215.

¹² C. Cohen, "Sex, Birth Control and Human Life," *Ethics* 79 (1969) 251-62.

¹³ B. Häring, "The Inseparability of the Unitive-Procreative Functions of the Marital Act," in *Contraception: Authority and Dissent*, pp. 176-92.

¹⁴ C. Curran, "Natural Law and Contemporary Moral Theology," *ibid.*, pp. 151-75.

¹⁵ T. Gilby, O.P., "The Encyclical Abstraction," *New Blackfriars* 50 (1968) 94-102.

¹⁶ P. Hodgson, "Scientific Reactions to 'Humanae vitae,'" *New Blackfriars* 50 (1969) 338-42. Cf. also H. Koester, "Ärztliche Überlegungen zu 'Humanae vitae,'" *Stimmen der Zeit* 94 (1969) 217-30.

little trace of scientific consultation and asserts that "the scientists and others who labored so long and fruitfully might be forgiven if they were to feel that their time had been wasted."

Philosopher Timothy Potts sees two arguments in *Humanae vitae*, the consequentialist (no. 17) and the central argument (no. 12).¹⁷ The former he regards as valid only where large-scale and habitual contraception is concerned. The latter argument he finds logically inconsistent and he ultimately agrees with the Dutch Pastoral Assembly that "the encyclical's total rejection of contraceptive methods is not convincing on the basis of the arguments put forward."¹⁸ The same could be said for Heythrop's John L. Russell.¹⁹ He argues that in those instances where the preservation of physiological integrity clashes with the natural finality of the marriage as a whole, it is the latter which should prevail. Physiological processes are for the good of the person, not vice versa.

In his unhurried article, in which there is a good deal of casual wisdom, Gilby had suggested that the work leading to *Humanae vitae* was unsatisfactory. Specifically, he found the Minority Report wooden, the Majority Report woolly. Michael Dummett shares this judgment and claims that it was the impossibly bland tones of the Majority Report that may have led Pope Paul to his decision.²⁰ The minority presented, in Dummett's judgment, two serious problems which the majority treated with insufficient realism. These were (1) the argument from tradition and the effects of change on confidence in the magisterium, and (2) relationship and continuity with other areas of sexual behavior ("where do we draw the line?"). Since both of these problems have serious pastoral implications, he feels that the majority response to them had more influence in producing the Encyclical than the majority would care to think.

Philosopher James Good (University College, Cork) uses the Syllabus of Errors as an interpretative device in approaching *Humanae vitae*.²¹ The Syllabus was greeted in 1864 with widespread opposition. Dupanloup created the distinction between *thèse* and *antithèse*. For Dupanloup, the Syllabus was speaking of a *thèse* situation, the state of society where everything was organized perfectly along Christian

¹⁷ T. C. Potts, "The Arguments of *Humanae vitae*," *Month* 41 (1969) 144-55.

¹⁸ *Tablet* (London) 223 (1969) 67-68.

¹⁹ John L. Russell, "Contraception and the Natural Law," *Heythrop Journal* 10 (1969) 121-34.

²⁰ Michael Dummett, "The Documents of the Papal Commission on Birth Control," *New Blackfriars* 50 (1969) 241-50.

²¹ James Good, "'Humanae vitae,' a Platonic Document," *Tablet* 223 (1969) 386-87.

lines. In such a state the principles of the Syllabus would find their full expression. However, we do not live in such a condition, but in one where the actual represents a recession from the ideal. We live in the *antithèse*. Just as the Syllabus was talking about an idyllic and Platonic world, so is *Humanae vitae*. It simply cannot be translated into real life as it stands. For example, ideally the "natural rhythms" might be an adequate child-spacing agent. Actually they are not. The Encyclical, therefore, is a *thèse* which makes sense only in terms of an *antithèse*. This translation from ideal to real Good puts as follows: "Contraceptive intercourse is generally evil but in married life it is lawful where there are serious reasons for it." Or more positively, "contraceptive intercourse in married life is good, but it may be abused, e.g., by selfishness."²² Good admits that Dupanloup explained the Syllabus of Errors for a grateful Pius IX by explaining it away. His own reading does the same for *Humanae vitae*, but he is convinced that this is the only way one can live with its teaching.

In one of the more intriguing comments on *Humanae vitae*, Ieuan Ellis approaches the Encyclical according to a model suggested by the work of Reinhold Niebuhr.²³ Niebuhr had argued that Christian ethics is not concerned with a choice between an absolute belonging to a transcendental world or a relevant ethic attainable in this world. It is a compound of both and creates inescapable tension. Every moral decision places man "between an impossibility which constrains him and a possibility with which he must never be satisfied." The impossible ethical ideal is the law of love shown in the life of Jesus. Anything less would produce a relative moral effort, a second-best, calculative ethic.

Ellis suggests that this approach might be helpful in reading *Humanae vitae*. Pope Paul is also speaking about a dialectical situation. He has invoked what appears to be an impossible ethical ideal—the positioning of the transmission of human life in a transcendental context where these laws are seen as God's laws. But this ideal is to function dynamically by leading men to greater efforts, efforts which can be supported only by full participation in the life of the Church. Thus Ellis concludes that *Humanae vitae* represents a mode of ethical thinking which "is both a dynamic and more complex matter than some of the Pope's critics allow."²⁴

Edward Hamel, S.J., offers a long and thorough commentary on the

²² *Ibid.*, p. 387.

²³ Ieuan Ellis, "The Encyclical and Niebuhr's 'Impossible Possibility,'" *New Blackfriars* 51 (1969) 405-10.

²⁴ *Ibid.*, p. 410.

pastoral letters of the various episcopal conferences.²⁵ He concludes that there is no contradiction between these pastoral letters and *Humanae vitae*, but rather a legitimate complementarity. There is, he admits, divergence in interpreting certain particular points of the Encyclical. There are tonal differences, and some rather remarkable differences in scientific precision. But his ultimate judgment on this variety is that “*substantialia relinquit intacta.*” The Holy Father will be delighted to hear this—and perhaps a bit surprised.

John R. Quinn, Auxiliary Bishop of San Diego, has questioned some of the analyses presented in these Notes last year.²⁶ His Christian urbanity and the thoughtfulness of his essay make it a pleasure to exchange views with him. I shall not comment further on the biologized notion of natural law in the Encyclical nor on its discontinuities with *Gaudium et spes*. These criticisms have been made with almost tedious frequency by many reputable commentators. But two points do deserve notice.

After granting (*dato non concessio*) that the person is the exclusive factor in the determination of the meaning of human actions, Bishop Quinn wonders whose concept of person is to be normative. He writes:

The Pope assumes a definite perspective when he calls for an integral vision of man, man viewed not only in terms of earthly happiness and its demands, but rather in the light of man's calling to share in the Paschal Mystery, the communion of the Lord's death as well as His resurrection. If the person as the criterion for the meaning and morality of human acts is viewed apart from this dimension, purely in terms of earthly categories, then, of course, the Encyclical presents insurmountable problems, as indeed the Gospel itself does.²⁷

Two remarks. First, those of us who have had great difficulty with the reasoning behind the central conclusion of the Encyclical should not, I would hope, be regarded too easily as viewing the person “purely in terms of earthly categories” or “only in terms of earthly happiness and its demands.” Bishop Quinn seems to trace “insurmountable difficulties” precisely to this inadequate perspective. I feel sure that there are theologians who believe it is *Christian* wisdom which undergirds their dissent. Secondly, granted that we should all view the person

²⁵ Edward Hamel, S.J., “*Conferentiae episcopales et Encyclica ‘Humanae vitae,’*” *Periodica* 58 (1969) 243–349.

²⁶ John R. Quinn, “‘*Humanae vitae*’: Forgotten Arguments on the Pope's Side,” *Priest* 25 (1969) 260–63.

²⁷ *Ibid.*, p. 261.

from the papal perspective—"in light of man's calling to share in the Paschal Mystery," as Bishop Quinn puts it—how does this perspective prohibit intervention in the biological processes to achieve the values of marriage? One does not answer this question by appealing to a perspective; he does so by reasoning within a perspective. It is always possible, even dangerously easy, to dismiss the cross of Christ in theological reflection. On the other hand, if one appeals to the Paschal Mystery without further ado as the perspective which generates a concrete prohibition, he should spell out how and why this is so. Otherwise he has methodically lifted reflection on morals out of human range.

Secondly, Bishop Quinn alludes to the place of revelation in the knowledge of natural law and cites Pope Paul VI's teaching on contraception as a "teaching founded on the natural law, *illuminated and enriched by divine revelation*." Bishop Quinn then says that "there arises for theology the task of showing how and where such a thing is contained in revelation." When faced with this problem of how and where this teaching is found in revelation, he suggests that we must give more attention to "pneumatic insight, the Church's ability to sense by the power of the Holy Spirit what is and what is not consonant with the Gospel teaching." Marriage is, after all, a sacrament for Christians and this leads Bishop Quinn to ask: "Could there be in the Magisterium an as yet unarticulated insight into some of these aspects of revelation?"

Several remarks are called for here. First, after saying that the papal position is founded on natural law *illuminated and enriched by divine revelation*, Bishop Quinn says that "there remains for theology, then, the task of showing how and where such a thing is contained in revelation." Haven't we moved a bit fast here? The task of showing how and where such a thing is contained in revelation is a task which follows upon certainty that it is contained in revelation. A natural law *illuminated and enriched by divine revelation* does not give this certainty. Moreover, once one realizes that theologians generally hold that revelation contains no new material moral content not present in natural law, the task will appear a bit formidable. Secondly, theologians would probably grant that there is such a thing as Harry McSorley's "pneumatic insight." But they might immediately add three postscripts. First, such insight is a heritage primarily of the *Church*—a point we shall return to later. Secondly, such "pneumatic insight" is chiefly concerned with the substance of the Christ-event, less obviously with detailed prescriptions of the natural law. Finally, past history shows us that there has also been in the pilgrim Church

some amount of what we might call "stubborn reluctance" in the face of change and new evidence. The only way to distinguish "pneumatic insight" from "stubborn reluctance" is to bring to bear on a venerable moral tenet the fulness of Christian wisdom and reasoning. This is itself risky, of course, and not immune from error. But if it is not done, and the matter is settled too hastily by appeal to "pneumatic insight," the conversation has again drifted out of human range. I would agree, therefore, with Bishop Quinn that whatever evidence there is from revelation for an absolute prohibition of contraception is indeed in the category of "an as yet unarticulated insight."

This chronicle must end here, not for lack of further literature, but in deference to the demands of space.²⁸ But not before two impressions are recorded. First, as the discussion of the issues surrounding *Humanae vitae* continues, it cannot be emphasized too strongly that Christian thought is now, as it always has been, a child of its times. Far more than a Christian, be he layman or theologian, can reflexly grasp, his culture is the soil which nourishes and subtly influences his thought. This has to scare us. For contemporary Western culture appears to be pansexualized to almost incredible depths. It is not hard to argue persuasively that sexual expression in our times is flirting with the danger of losing its viability as a human experience. At the very time we abstractly extol interpersonal relations and the importance of sexuality within them, we find many of these actual relationships in ruins all about us. Therefore a generous purchase on a self-questioning

²⁸ Cf. James Madden, "Cases on Contraception," *Australasian Catholic Record* 46 (1969) 52-59; John R. Connery, S.J., "Pastoral Practice and *Humanae vitae*," *American Ecclesiastical Review* 160 (1969) 55-59; S. Lener, "Matrimonio e amore conjugale nella 'Gaudium et spes' e nella 'Humanae vitae,'" *Civiltà cattolica* 120 (1969) 22-33; G. Higuera, "El mensaje teológico-moral y evangélico de la 'Humanae vitae,'" *Sal terrae* 57 (1969) 163-78; G. Kunicic, "La contraccezione non colpevole?" *Perfice minus* 44 (1969) 342-48; Biagio Russo, S.J., "Un' umile risposta all'invito del Pontefice," *Palestra del clero* 48 (1969) 393-414; G. Saraggi, "Ancora sull'enciclica 'Humanae vitae,'" *Palestra del clero* 48 (1969) 58-65; B. da Gangi, "Responsabilità del professore di morale," *Palestra del clero* 48 (1969) 385-87; W. F. Allen, "*Humanae vitae*: Expressions. Reactions," *Pastoral Life* 17 (1969) 37-43; "*Humanae vitae* and Mixed Marriages," *One in Christ* 5 (1969) 208-12; Robert Y. O'Brien, "Comment on *Humanae vitae*," *Journal of Ecumenical Studies* 6 (1969) 87-89; D. Fitch, S.J., "*Humanae vitae* and Teaching Authority," *Homiletic and Pastoral Review* 69 (1969) 272-76; D. Fitch, S.J., "*Humanae vitae* and Reasonable Doubt," *Homiletic and Pastoral Review* 69 (1969) 516-23; James J. Mulligan, "Confessor, Penitent and *Humanae vitae*," *Homiletic and Pastoral Review* 69 (1969) 507-15; F.-J. Thonnard, "La morale conjugale selon saint Augustin," *Revue des études augustiniennes* 15 (1969) 113-31; John J. O'Callaghan, S.J., "Reflections on *Humanae vitae*," *Theology Digest* 16 (1968) 317-27; John Mahoney, S.J., "The Development of Moral Doctrine," *Clergy Review* 54 (1969) 260-70; W. Dunphy, C.S.S.R., "Open to the Transmission of Life," *Australasian Catholic Record* 46 (1969) 129-36.

humility is in order for any realistic theologian as he weighs the importance of his own reflections in the area of human sexuality at this time in history.

Secondly, anyone who reads the current literature on *Humanae vitae* cannot help but notice that articles favoring the papal teaching manifest a heavy, almost exclusive concern with tradition and authority. Those which dissent are concerned largely with the analysis of evidence and reasoning. Obviously both aspects are important in Christian moral thought. But their relationship is still an uneasy and fragile thing in the Catholic community, especially at a time of escalating cultural antagonism to authority in general. And that is why much of the writing on the Encyclical is concerned with two headings which follow: (1) theology and authority; (2) the competence of the magisterium in the area of morals. Although there is some unavoidable overlapping in these headings, they may be treated distinctly.

THEOLOGY AND AUTHORITY

Biblical scholar John L. McKenzie, S.J., after distinguishing theology from proclamation, contends that the Church has no commission to theologize with authority.²⁹ She has a mandate to preach with authority. On the other hand, McKenzie admits that the Church has to theologize if she is to fulfil her mission of preaching. Otherwise she could not speak clearly to the world in which she lives. But the ultimate judge of the competence of the theologian is his peers. McKenzie believes, therefore, that theology will thrive best if it is carried on with that freedom which the private investigator has. Bishops should leave theology alone unless they are themselves theologians of demonstrated competence. Where they lack competence, bishops tend to use crozier-thumping as a theological argument.

Carlo Colombo takes a slightly different point of view.³⁰ On December 17, 1968, several European dailies published a "Declaration of 38 Theologians" in which the signatories insisted on the need for freedom of theological inquiry and suggested several practical steps whereby this could be assured.³¹ The document affirmed with conviction the existence of the magisterium of the pope and of the bishops which, "under the Word of God, is at the service of the Church and of its preaching." But it insisted that the pastoral magisterium of proclamation could not supplant or hinder scientific theology and it rejected coercion as an appropriate method for dealing with potential theologi-

²⁹ John L. McKenzie, S.J., "Q.E.D.," *Critic* 27 (1969) 6-7, 99.

³⁰ Carlo Colombo, "Magistero e ricerca teologica," *Civiltà cattolica* 120 (1969) 70-76.

³¹ *Documentation catholique* 66 (1969) 119-21.

cal error. It was this document which occasioned an article by Bishop Carlo Colombo on the magisterium and theological research.

After admitting the legitimacy of many of the statements in the Declaration, Colombo turns to what he regards as some "less clear points" in the document, the most notable of which is the relationship between the magisterium and theology. The Declaration had referred to the "pastoral" magisterium of the pope and bishops. Colombo argues that the nature and pastoral finality of the magisterium include also the authority to *judge* in matters of faith and the proclamation of the faith. The hierarchy, he insists, is not simply guardian of a deposit of faith; they are educators in the faith. They do not simply guard against error, but their more basic task is to form in the community a mentality of faith (*habitus fidei*). Therefore it is their right and duty to pass judgment on the pedagogy of the formation of faith in the community. Colombo thinks the theologian-authors of the Declaration have insisted unilaterally on their need of freedom and have ended up asking to be treated as a privileged class. They should have recalled more clearly the subordination of individual liberty to the demands of the formation of the faith in the community.

Here we have McKenzie objecting against crozier-thumping as a form of theological exchange and Colombo crying "privileged class" in the face of theological claims to freedom. Both points are well made, I believe. But they spring from an awareness of actual defects in the way theology and authority are relating. There have been ill-advised and coercive visits to the theological camp by ecclesiastical authorities, and there has been imprudent and untimely dissemination of theological speculation. But when these abuses are the focal point for further theoretical reflections on the relationship of theology to authority, we are likely to get a one-sided or at least incomplete statement.

For example, McKenzie is correct when he insists that theology is a scholarly affair, that its only authority is in its arguments and evidence, that one who will criticize it or its conclusions must avail himself somehow of scholarly tools, that therefore formal authority as such has no commission to theologize. But in his legitimate desire to reject incompetent meddling and bureaucratic brush-ups, has he unduly separated theology from proclamation? If theology is necessary for proclamation—a point McKenzie admits—and if the hierarchy are the authentic proclaimers of the gospel, then do they not have a legitimate interest in and concern for theology, even in some sense an authoritative concern? Therefore, rather than inviting the bishops to "stay out of theology," McKenzie should, I believe, urge them to translate

their legitimate concern into a vigorous protection of its freedom. Perhaps this is what McKenzie actually had in mind.

But to remove theology in theory and totally from all authority not theological seems inevitably to remove it from any living relationship to proclamation. And this is to trivialize it. The Church is not simply a society for the advancement of learning, like a historical or mathematical society. She is a community which proclaims the faith and passes it along. Theology is in the service of and subordinate to the demands of this commission. Therefore, just as ecclesiastical authority is not authority to invade theology, so neither is theological freedom the same as isolation from the Christian community in the dissemination of theological thought.

On the other hand, Colombo's antipodal concern with the rights of authority leads him to an emphasis which theologians increasingly regard as incomplete. To the suggestion that the Congregation for the Doctrine of the Faith be expanded to include theologians from all schools of thought, Colombo notes:

The faith and authority of the Apostolic See is not, in fact, to be conceived as a *result* of the co-operating convergence (*l'apporto*) of the entire Christian community in its various riches and expressions. It is an original fact (*un fatto originario*), founded on a specific promise of Jesus Christ and a specific charism. For this, the make-up of the organs through which authority acts and expresses itself can facilitate and render more perfect its exercise and render our adherence easier. But it is not the foundation of authority itself nor of our adherence to it.³²

Here it must be said that the fact that authority is "an original fact, founded on a specific promise of Jesus Christ and a specific charism" does not exempt this authority from the normal means of fulfilling its mandate. To underline authority as "an original fact" in the face of reasonable theological requests for more adequate curial representation all too easily suggests such exemption.

In summary, then, isolated insistence on his freedom can lead the theologian to undervalue the pastoral charism of the hierarchy and the benefits he derives from this as a Christian and a theologian. Isolated emphasis on the authority of the hierarchy risks devaluating the depth of theological work and the breadth of consultation required if the pastoral charism is to be exercised in a responsible and credible way. Something is always lost when friends pass unknowingly in the night. And that may have happened here. It is, therefore, the proper relationship of both indispensable charisms which insures the healthy

³² *Ibid.*, p. 75.

functioning of each.³³ In other words, freedom is expanded by relating itself properly to authority. Authority is strengthened by guaranteeing the freedom of those who can aid it in constructing the forms which render it relevant and contemporaneous. Therefore both magisterial authority and theological freedom must be viewed within the total and continuing teaching-learning process of the Christian community.

Another article attempts to clarify this viewpoint by approaching the relationship of theology and the magisterium through the notion of teaching.³⁴ In the past many cultural factors³⁵ produced a notion of teaching in the Church which manifested three characteristics: (1) it unduly distinguished and separated the *docens* and *discens* function with a consequent almost unique emphasis on the right to teach, little being said about the duty incumbent on the teacher to learn; (2) it unduly identified the teaching function in the Church with a single group in the Church (the hierarchy); (3) it unduly isolated a single aspect of the teaching function (the judgmental). This notion of teaching laid heavy stress on the authority of the teacher and a correspondingly lesser stress on evidence and the processes whereby it is gathered. It also generated a theology of response which was heavily obediential in tone.

Radical changes affecting these same cultural factors have produced a renewed notion of teaching in the Church. This renewed approach shows these characteristics: (1) it sees the learning process as an essential part of the teaching process; (2) it regards teaching as a pluri-dimensional function, only a single aspect of which is the judgmental; (3) it therefore sees the teaching function as involving the charisms of many persons, not just that of the hierarchy. The repercussions of this notion of teaching are only now beginning to appear in the theology of the magisterium and the suggested style of its exercise. For example, without negating the authoritative character of papal or collegial-episcopal pronouncements, contemporary theology devotes more attention to evidence and sound analysis in assessing the ultimate meaning and value of such teachings. In other words, teaching must persuade,

³³ A very helpful statement on this relationship is had in Ladislav M. Orsy's "Academic Freedom and the Teaching Church," *Thought* 43 (1968) 485-98.

³⁴ Richard A. McCormick, S.J., "The Teaching Role of the Magisterium and of Theologians," *Proceedings of the Catholic Theological Society of America* 24 (1969); pagination unavailable at time of writing.

³⁵ For instance: the self-definition of the Church, the influence of the mass media on the learning processes, the manner of exercise of authority in the Church, the educational status of laity and clergy, the state of relations between ecclesial groups, educational theories and styles dominant in a particular culture.

not only command. Furthermore, there is a developing theology of response to authoritative noninfallible teaching which emphasizes a docile personal assimilation and appropriation of authentic teaching as the appropriate immediate response, rather than an unquestioning assent. Finally, the creative reflection of theologians and the prophetic charisms of all Christians are seen as utterly essential if the hierarchy is to express the faith in our times in a meaningful, contemporary, and persuasive way.

After listing the processes which pertain to the teaching function,³⁶ the article suggests that these processes together constitute the teaching function of the Church as she goes about her task of preserving and deepening the faith committed to her. When these functions are related to individuals within the Church, it might be possible to say that the teaching function is composed of three distinguishable components: the prophetic charism (very broadly understood so as to include all competences), the doctrinal-pastoral charism of the hierarchy, the scientific charism of the theologian. It is the interplay of these charisms which constitutes the full teaching function of the Church. And it is the proper and harmonious interplay of these functions which yields a healthy, vigorous, and effective magisterium.³⁷

The article then argues that actually within the contemporary Church these functions are not relating harmoniously. That is, the style of teaching is seriously defective. And while there are many explanations for this, I have suggested that this lack of harmony can be attributed above all to the fact that the bishops have not concerned themselves sufficiently with the other (than judgmental) aspects of teaching. Specifically, too many have not taken with sufficient seriousness the other charisms involved in the total teaching function.³⁸ The article concludes that bishops must be much more involved in the learning processes of teaching than a preconiliar notion of the Church and of authority—hence of teaching—intimated. In our day

³⁶ (1) The search for new understanding by asking fresh questions, hypothesizing, testing old formulations, attempting new ones; (2) the discovery of the action of the Spirit in the Church by eliciting the insights of all competences, encouraging communication and dialogue among Christians, supporting individual charisms; (3) determination of the identifiable dimensions of Christian faith in our times by bringing the wisdom, reflection, experience of the entire Church to authoritative expression, either infallibly or in guidelines less than infallible; (4) the publication and circulation of this expression in an effective way through the various communications media.

³⁷ For an analysis very close to this, cf. Joseph E. Kerns, *How Does God Teach Us Morals?* (New York: Paulist, 1969) pp. 41-57.

³⁸ Cf. N. Schiffers, "Diskutiertes Lehramt: Kirchliche Autorität und Risiko der Gläubigen," *Theologisch-praktische Quartalschrift* 117 (1969) 22-38, at 31 ff.

the credible teacher is the most eager, humble, open-minded learner. But if this is to occur, there must be a radical change in the image and role of the bishop as we have come to experience it. The bishop can no longer be chosen above all for his ability to administer a sprawling, highly complex local institution. The effectiveness of teaching (and even more broadly, of episcopal leadership) in our day will depend on the effectiveness of the bishop in making his person and his position a rallying point for Christian thought and creative action. If this happens around the world, obviously the world will listen to (*obsequium*) the hierarchy, because it will be clear that the Church is speaking.

The question of the teaching roles of theology and the magisterium in the development of Catholic doctrine was raised concretely and dramatically by the dissent that followed *Humanae vitae*. Some observers felt that theologians who spoke a dissenting view were setting themselves up as a countervailing authority, a kind of competitive magisterium. Others accused them of sweeping, offensive, and unmeditated statements. The perspective of distance has allowed the dust to settle and created the atmosphere for a calm theological reflection on the forms and meaning of dissent. It is precisely this that Enda McDonagh provides in his thoroughly balanced and temperate evaluation of the situation experienced by theologians in the months immediately following issuance of the Encyclical.³⁹ He treats of the theologian's coresponsibility and notes that his work is for the community and must ultimately be tested by it. A "silence is safer" policy frequently means safer for the theologian, not the community. He therefore insists that open, competent discussion is a first responsibility of the theologian.

Undoubtedly, the dissent which provoked the most controversy was that originating in Washington and originally associated with "eighty-seven theologians."⁴⁰ It was rather unique because it was both public and organized. This style of dissent has been both defended and attacked. For instance, Ciccone believes that "affirmations as grave as this made after a simple reading of the Encyclical can be the fruit only of emotion, not of serious reflection."⁴¹ James J. Mulligan criticizes the Washington statement as playing to the press in an appeal which

³⁹ Enda McDonagh, "Coresponsibility and the Theologian," *Furrow* 20 (1969) 172-84.

⁴⁰ There were others, but at a later date: e.g., the *Declaration of Twenty European Theologians* (including men of the stature of Auer, Fransen, Janssens, Schoonenberg, Böckle, Beemer, McDonagh). Cf. Ciccone, *art. cit.*, p. 14.

⁴¹ Ciccone, *art. cit.*, p. 13.

became "more inflammatory than intelligible."⁴² Vincent Zamoyta believes that one aspect of the statement "oversteps the bounds of prudence in this very important matter."⁴³ G. Kunicic argues that dissenting theologians forget that individuals are not the custodians and interpreters of the natural law.⁴⁴ One searches his vocabulary in vain for language strong enough to disown the judgment of Colin Burns.⁴⁵ Seeking the why of the public dissent of some priests and bishops, he finds "the unpalatable answer to this is that even dedicated priests are not above the lure of personal popularity." One can only hope that this lapse in Christian courtesy got into the pages of the venerable *Australasian Catholic Record* through a printers' conspiracy.

On the other hand, there are many defenders of the Washington statement. The very fact that a considerable number of prominent scholars of demonstrated loyalty felt compelled to take this step gives one great pause in one's judgment. Those with whom I have discussed the matter support their decision from a wide variety of viewpoints. All of them root eventually, of course, in the conviction that the central assertion of the Encyclical cannot be accepted as it stands. A single example will suffice. Bernard Häring, convinced of the erroneous nature of the doctrine, saw little hope for a revised statement in Pope Paul's lifetime, "unless the reaction of the whole Church immediately makes him realize that he has chosen the wrong advisors and that the arguments which these men have recommended as highly suitable for modern thought are simply unacceptable."⁴⁶

Whatever one's individual judgment may be about public and organized dissent, it is clear that there are deep differences of opinion in the Catholic community on the incident. The matter is so complex and many-sided that it surely justifies the American bishops' request

⁴² James J. Mulligan, *The Pope and the Theologians* (Emmitsburg: Mt. St. Mary's Seminary, 1968) p. 66.

⁴³ Vincent Zamoyta, "On *Humanae vitae*: A Search for Human Understanding," in *To Be a Man*, ed. George Devine (Englewood Cliffs: Prentice-Hall, 1969) pp. 82-92, at 88. The statement Zamoyta disapproves is: "Therefore, as Roman Catholic theologians, conscious of our duty and our limitations, we conclude that spouses may responsibly decide according to their conscience that artificial contraception in some circumstances is permissible and indeed necessary to preserve and foster the values and sacredness of marriage."

⁴⁴ G. Kunicic, *art. cit.*, p. 348.

⁴⁵ Colin Burns, "A Medical Commentary on Some Present Theological Opinions on the Encyclical," *Australasian Catholic Record* 46 (1969) 45-51, at 47-48. For an earlier example of genuine theological courtesy, cf. Maurice Bévenot, "A Problem at Trent and *Humanae vitae*," *Heythrop Journal* 10 (1969) 134-45.

⁴⁶ B. Häring, "The Encyclical Crisis," in *The Catholic Case for Contraception*, ed. D. Callahan (Toronto: Macmillan, 1969) pp. 77-91, at 78-79.

for dialogue between theologians and bishops on "the ways in which theological dissent may be effectively expressed, in a manner consistent with pastoral solicitude."⁴⁷ The following remarks are offered as a groping attempt to provide a framework for discussion of the style of dissent.

Dissent from authoritative noninfallible teaching is but a single aspect of the learning process of the Church. That is, it is the terminus of a sincere attempt to assimilate authentic teaching. Therefore the style of public dissent (private dissent does not raise the question of "style") must be determined by positioning it within this total learning process.

As part of the total learning process of the Church, public dissent should both reflect this learning process and contribute to it. It will *reflect* it by embodying the qualities of a truly Catholic response to authentic teaching. These qualities are: respect for the person and charism of the authentic teacher, proportionate docility, honesty combined with an awareness of one's own limitations. Public dissent which manifests these qualities will be: always respectful, generally reluctant, clearly open to correction and persuasion. It will *contribute* to the learning process by supporting all the component elements of the teaching-learning process. It was noted above that the teaching function of the Church includes at least three distinguishable components: the prophetic charism of the Christian, the pastoral charism of the hierarchy, the scientific charism of the theologian. Since it is the proper interplay of these charisms which yields a healthy and vigorous magisterium, dissent must contribute to this proper interplay.

It would seem that for a proper interplay of these functions certain "atmospheric conditions" must exist within the Church. This atmosphere is constituted by the preservation of certain values within the teaching-learning process: respect for the authority of the teacher, the confidence of the faithful in the openness of the teacher, a passionate devotion to truth and its sources, the freedom of scholarly research and publication, the existence of broad consultative procedures as the basis for the exercise of authoritative teaching, good relations between the persons exercising the various functions within the teaching process. If public dissent is to *contribute* to the learning process, its over-all effect must be to support and strengthen these values which constitute the atmosphere just mentioned.

Whether a particular style of dissent will support or undermine

⁴⁷ *Human Life in Our Day* (Washington, D.C.: United States Catholic Conference, 1968) p. 18.

these values depends on many circumstances peculiar to each situation: for example, the way authority is being exercised in the Church at a particular time, cultural attitudes toward authority, the extent of consultation prior to teaching, the temper and stability of the Christian faithful, the repute of the dissenter, the importance of the teaching, the weight of authority summoned in its proposal, the condition of the communications media, etc.

A careful comparison of these circumstantial factors with the values to be preserved might lead to the following general assertion as helpful in our time: *where dissent is both public and organized, it carries with it special risks, and hence demands special warrants*. Some of the risks in our day are: it appears to many to attack authority itself; it tends to polarize the persons exercising the various charisms within the teaching function; it tends to undermine the confidence of the faithful in the charism of the hierarchy; it tends to anticipate and prevent a truly personal reflection on the teaching by the faithful; it tends to associate theology with popular media rather than with serious, scholarly reflection.⁴⁸ The *warrants* are two: (1) other forms of less sensational dissent are ineffective (2) in circumstances where an unopposed error would cause great harm.

This harm would be traceable to two sources: first, the personal suffering of the faithful occasioned by the teaching if it touched their lives on a frequent basis; secondly, loss of credibility of the magisterium. Here it should be noted that in former times the credibility and effectiveness of the magisterium were associated with and measured by a high degree of uniformity of thought and expression, and unity of practice. In times which emphasize philosophical pluralism, rapid communications, historical consciousness and the tentative character of human formulations, the complexity of moral issues, the wide variety of competences needed in their solution, freedom of expression, etc., the credibility of the magisterium is less associated with uniformity than with openness, utter honesty, collegial procedures.

Therefore, given the availability of other styles of dissent and the fact that public organized dissent may easily disturb the proper interplay of the various charisms within the teaching function of the Church, the burden of proof would seem to be on those whose dissent

⁴⁸ Such considerations are summarized by the Belgian bishops when they say of the competent dissenter: "He must also beware of creating an unhealthy unrest or, a fortiori, of questioning the very principle of authority." The German bishops say: "In adopting this [dissenting] position he will have to give consideration to the laws of intra-Church dialogue and try to avoid giving any scandal."

is both public and organized. This is not to say that it is never justified. It is only to say that, in general, organized public dissent can easily threaten to derogate from certain values profoundly associated with the common good. If this is so, the dissenter must show that the good to be achieved is at least proportionate to the foreseeable harm. If he does this successfully—in so far as this is possible in the circumstances—he has shown that the style of his dissent is both reasonable and Christian.

MORALITY AND THE COMPETENCE OF THE MAGISTERIUM

One of the questions of very lively debate surrounding *Humanae vitae* was the Pope's relationship to consultative and collegial procedures. Diametrically opposed positions have appeared in the literature. Three articles cover the range of reactions rather well. H. Paul Le Maire, S.J., in a strong but respectful essay, contrasts the spirit of the Encyclical with that of Vatican II.⁴⁹ He finds that the Encyclical departs from Vatican II in four significant areas. First, there is the question of dialogue (with the world, with Christian churches, between pastors and laymen). *Humanae vitae* showed little evidence of this dialogue in the face of Vatican II's strong desires for it. Secondly, the role of a truly responsible laity was neglected. "If the Holy Spirit operates in and through all members of the Church, then all members of the Church should be taken seriously and their voice listened to." Thirdly, collegiality "died a premature death" with the Encyclical. Finally, the work of theologians was rejected without justifying reason. Le Maire concludes that if the Church continues along this path, "it will become the Church isolated from the world in which it lives; it will become a Church where authority speaks only to itself."

Francesco Marchesi, S.J., takes a completely opposite point of view.⁵⁰ He disagrees with Karl Rahner on the basis for dissent. Rahner had said that the fact that many of the papal commission disagree could be an element in one's dissent. Marchesi believes that this is a problem only for those who erroneously hold that the Church is a democracy where decisions are made by majority vote. Rather, "in virtue of this primacy, the pope can decide even by himself, according to his prudent and reflective judgment." Marchesi insists that "it would be a grave error to hold that the pope is, by divine will, con-

⁴⁹ H. Paul Le Maire, S.J., "*Humanae vitae* and the Spirit of Vatican II," *Philippine Studies* 17 (1969) 133-45.

⁵⁰ Francesco M. Marchesi, S.J., "Qualche rilievo su 'Riflessioni' di K. Rahner," *Palavra del clero* 48 (1969) 100-108.

ditioned in his doctrinal decisions by a dialogue with bishops, and the bishops by a dialogue with their faithful."⁵¹

Somewhere between these positions is that of Michael Walsh, S.J.⁵² He grants that *Humanae vitae* was not a collegial act. But through the Encyclical and the enormous reactions to it, he senses that Catholics are becoming aware that all share in the responsibility of Christ's Church. This is the beginning of a lived collegiality. Walsh seems to be suggesting that perhaps it was a bit much to expect collegiality to burst fully mature on the scene. Rather we have to grope to it, and this may be the overriding meaning of the Encyclical-happening.

The question of the consultative and collegial relationships of the Holy Father has not stopped there. It has opened into a very interesting discussion of the competence of the magisterium in the area of morality. The discussion is immature as yet, but it is so vitally important that it deserves presentation at length, even if many loose ends remain.

Peter Huizing of Nijmegen endorses an analysis which those familiar with the literature will recognize as that of J. David, S.J.⁵³ Where the magisterium is concerned, it has a proper mission and competence in ethical questions in so far as these find an answer in the sources of revelation. In questions of natural law, the magisterium has only a negative competence. That is, it can teach that certain ethical assertions are in contradiction to revelation. But the more positive statements about specific natural-law demands do not pertain to the ecclesiastical magisterium (*Lehramt*) in the strictest sense. Rather they represent a use of the pastoral office (*Hirtenamt*), of a kind of directive power. This function of authority is purely subsidiary. When men reach sufficient maturity, the solution of natural ethical questions is to be left to their judgment and to the secular sciences. Huizing concedes that the community of the Church as a whole cannot in any historical moment neglect the technical-scientific aspects of moral questions, the concretizations of natural law. The Christian has a commission to form the world according to the specific content associated with a Christian vision. But this development of a natural innerworldly ethic is the task of the laity, not of the hierarchy.

Tübingen's Alfons Auer carries this line of thought even further.⁵⁴

⁵¹ *Ibid.*, p. 106.

⁵² Michael J. Walsh, S.J., "Collegiality and the Encyclical," *Month* 41 (1969) 168-75.

⁵³ Peter Huizing, S.J., "'Göttliches Recht' und Kirchenverfassung," *Stimmen der Zeit* 94 (1969) 162-73. For J. David's position, cf. *Das Naturrecht in Krise und Läuterung* (Cologne, 1967).

⁵⁴ Alfons Auer, "Nach dem Erscheinen der Enzyklika 'Humanae vitae'—Zehn Thesen über die Findung sittlicher Weisungen," *Theologische Quartalschrift* 149 (1969) 75-85.

He writes from the conviction that with *Humanae vitae* the curtain has fallen on a certain form of magisterial moral teaching. Auer develops his thought in ten "theses" which might be summarized as follows. Because morality is at root the claim which reality makes on the human person, man's basic morality is an innerworldly one. Neither the Old nor the New Testament presented a new concrete innerworldly ethic. Rather they took over existing norms and popular ethical models, situated them within new perspectives, and dynamized them with fresh (e.g., salvational) motives. Later moral theology, in using Aristotelico-Stoic categories, did the same thing. Therefore, for Auer, concrete moral directives are, as immanent innerworldly realities, a product of the human spirit and can be clarified totally by man. Nor has the Church disputed this. Her teaching on natural law has said just that.

Yet the Church has always claimed a special competence in this area, a kind of special knowledge. In Auer's view, the process of secularization is seriously questioning this competence at the present time. He believes that the imposition of detailed innerworldly norms pertains to the Church's subsidiary function, not to her original function. That is, she took over this responsibility at a time when it was culturally and historically necessary. But when a society grows to intellectual maturity, these tasks must be abandoned. The Church should not retain subsidiary functions any longer than necessary, because in doing so she courts the danger of jeopardizing her essential mission for the sake of the only putatively essential.

Auer does not deny the right and duty of the Church to have a say in the delineation of concrete moral directives. Rather this competence must be conceived in a radically different way. It is above all a *criticizing* function. Because of sin, even spiritual man can flounder in his notions of morality. The statements of revelation about human life and history are—even after being appropriately demythologized—so helpful and clear that they must always operate as a critical measure. When a concrete moral directive endures this confrontation, the Church can point out the possibility and necessity of its Christian integration. But it will remain the product of the human spirit.

Thus the Church can and must propose moral norms, but rather than claiming any original competence, she will take over autonomously developed ethical directives and present them as helpful models for Christian living. This implies two things. First, if the Church proposes innerworldly norms which are established neither through revelation nor through a historically validated ethical consciousness, then the claim can be imposed only to the extent that the arguments ground it. Secondly, since autonomously developed ethical

directives draw very heavily on experience, dialogue within the community must have a central position in the discovery of moral directives.

Louvain's Louis Janssens presents a point of view not too far from that of Auer, though it does differ in significant details.⁵⁵ After noting that the material content of Christian morality is identical with that of the natural law, he asserts that it is man's task to decipher and regulate the laws and values of created things. The Church certainly has a competence here, and for two reasons. First, the good of the community demands it. Authoritative proposal of moral norms is a pedagogical aid needed by sinful man. Secondly, the Church has a vocation, as the People of God, to be the living conscience of mankind. This vocation demands that the magisterium, in the name of the Church and as witness to the world, defend the poor, denounce injustice, and so on.

But in the discovery and proposal of concrete norms "dialogue is obviously demanded, *both* by the autonomy of man *and* the historicity of moral norms." By "autonomy" Janssens refers to the fact that the content of morality is within the domain of natural law. This being the case, if the magisterium proposes concrete moral norms, it places itself on the plane of human knowledge, "where the final word is given not to authority, but to the overriding validity of the reasons proposed." Even past errors of the magisterium indicate that in the domain of concrete moral norms it is not the argument of authority but the intrinsic value of the evidence which is decisive. By "historicity" Janssens refers to the fact that concrete moral norms develop in community through collaboration between those joined by fidelity to conscience. This fact also imposes dialogue as a means of discovering moral norms. "The magisterium, too, can intervene only after the fact, to compile norms which have developed in the life of the community, and to communicate them universally."⁵⁶ Janssens is close to Auer when he concludes by noting that if the pronouncements of the magisterium are the expression of the life of the People of God, they are heartily welcomed by both Church and world. If, contrarily, these pronouncements go against the lived experience of a great number of Christians and non-Christians, the reactions are negative.

Ph. Delhaye distinguishes two different domains where the magisterium operates, the doctrinal and the pastoral.⁵⁷ In this he echoes

⁵⁵ Louis Janssens, "Considerations of 'Humanae vitae,'" *Louvain Studies* 2 (1969) 231-53.

⁵⁶ *Ibid.*, p. 245.

⁵⁷ Ph. Delhaye, "Conscience et autorité ecclésiastique," *La foi et le temps*, Jan.-Feb. 1969, pp. 5-35.

Huizing, but explains things a bit differently. In the doctrinal sphere the magisterium is making statements of truth or falsity. In the pastoral sphere her statements are rather prudential determinations, where more basic principles are in confrontation with social structures of the moment, and hence are variable. Thus we notice a considerable shift in emphasis and even some discontinuity in *Rerum novarum*, *Quadragesimo anno*, and *Mater et magistra*. That is to be expected. Times change.

Where morality is concerned, it is Delhaye's contention that the magisterium is generally involved in the pastoral domain, and it would be a mistake to interpret the documents of the magisterium as if they pertained to the level of theoretical moral. Thus he regards the controversy surrounding *Humanae vitae* as largely due to those myopic authors who have read the Encyclical as a theoretical moral statement rather than as a prudential pastoral counsel. Using this epistemological perspective, Delhaye sees *Humanae vitae* as a loud and well-targeted protest against modern eroticism and pansexualism. Its basic message is to caution those couples who use contraceptives (because they can do nothing else) against the danger of confusing responsible parenthood with a destructive hedonism. For Delhaye, the term "intrinsic evil" used in the Encyclical is really only a pastoral affirmation whose basic meaning is: avoid contraception as much as possible and use it only to preserve higher values. This message, he believes, should not be tightened into a doctrinal statement.

If Delhaye's interpretation of the Encyclical is correct, then the vast majority of theologians and episcopal conferences have been deceived about the problem it was facing and the answer it was giving.

Robert L. Cunningham approaches the relationship of authority to morality by distinguishing between one who is *in* authority and one who is *an* authority.⁵⁸ In-authority pertains, for example, to an officer in the army or the manager of a firm. Pronouncements of in-authority are, in a sense and up to a point, self-authenticating. That is, the authority makes things appropriate by saying so. For example, those in authority in baseball decide what is to count as a balk. These rules call for obedience and are defeasible not by showing that the command is inferior to another possible one, but by appeal to higher authority.

An-authority, on the contrary, is established by the ability to cite

⁵⁸ R. L. Cunningham, "Authority and Morals," in *Truth and the Historicity of Man* (the brochure program of 43rd annual meeting of the American Catholic Philosophical Association) pp. 20-29.

facts, make distinctions, give explanations, make predictions—summarily, by over-all expertise. Acceptance or “belief” is the proper response to an-authority, and the pronouncements of an-authority are defeasible by appeal to the facts. Thus the two types of authority are different. Possession of in-authority does not mean that an individual is an-authority. The precise difficulty in the Church is the fact that there are in the same persons (the pope, bishops) both types of authority. When this is the case, Cunningham suggests that in-authority is too easily confused with an-authority and, indeed, sometimes substitutes for it where moral issues are concerned. A symbol of this is the disagreement between in-authority (pope and bishops) and an-authority (theologians) on certain moral questions.

Walter Kerber, S.J., in a thoughtful article on moral-theological hermeneutics, contends that the distinction between the *Lehramt* and the *Hirtenamt* (with the Church’s concrete moral declarations limited to this latter) is an unacceptable way to explain the concrete moral declarations of the magisterium, especially errors in magisterial teaching.⁵⁹ Among his several objections: Why should the pastoral office be less protected from error than the teaching office, when one sees its authority as genuinely theological rather than merely human? Secondly, for many years the Church has claimed a truly magisterial role in matters of moral law and bound the faithful to her statements. To have done this without competence would constitute a more fundamental mistake than any single declaration on a specific moral issue. Finally, the David-Huizing distinction does not sufficiently respect the profound inner relationship between revealed morality and natural law. Kerber concludes, therefore, that any past errors in Church teaching should not lead us to new limitations upon the teaching authority, but to a more adequate over-all theology of the teaching office.

We will not develop this more adequate theology unless we have a more exact notion of New Testament moral teaching. Kerber suggests that those who restrict the teaching competence of the Church in moral matters to revealed morality have an inadequate knowledge of the ethical message of the New Testament. They imply that New Testament morality is a rather full and enclosed moral system trans-temporally valid. This is not the case. Contemporary hermeneutics makes it quite clear that very many concrete Scripture statements cannot be read as ethical directives for all time. They represent rather

⁵⁹ Walter Kerber, S.J., “Hermeneutik in der Moralthologie,” *Theologie und Philosophie* 44 (1969) 42–66.

concretizations of the *lex Christi* within a definite time and culture. Furthermore, these normative concretizations have been forged with the help of Hellenistic, Jewish, and Stoic philosophy—that is, from the consciousness of the time. It is clear, therefore, that many New Testament assertions cannot be simply identified with the *lex Christi*.

Hermeneutics makes it possible to disengage the transtemporal from the historically conditioned and in this sense to see the parts in the light of the whole. Now underlying all moral obligation is a general knowledge of what man should be, but a general knowledge which is visible and tangible only in concrete situations. In other words, what we call “natural law” is the basic inner assumption provided by man’s understanding of himself, as Böckle has noted.⁶⁰ With the coming of Christ and acceptance of Him by the Christian as a model, this antecedent understanding, this horizon which underlies all obligations and persists through all concretizations, was profoundly affected. It is upon this basic inner understanding of man now deepened by Christ that New Testament morality builds, not upon everlastingly valid concrete propositions *ex clara scriptura*.

Franz Böckle has derived the teaching competence of the Church from precisely this notion of natural law. “Since Catholic theology lives in the conviction that, in Christ, something decisive has been revealed to man about himself, the Church is committed to the true image of man in this world. She must make an important contribution to man’s true understanding of himself. But this understanding does not thereby get detached from his historical conditioning.”⁶¹

Therefore both Kerber and Böckle are convinced that the Church has a doctrinal competence in the area of natural law. It would seem that they would argue the matter as follows. Because the natural moral law is at root man’s self-understanding, and because this self-understanding has been decisively affected by Christ, it is clear that the Church has a doctrinal competence about what we call natural law. Or again, the self-understanding to be concretized at different times and in different cultures is not simply one of “natural man,” but a self-understanding suffused with the influence of Christ. It is therefore one deeply influenced by revelation.

In this understanding natural law and revealed morality are very closely associated at the rather general level of man’s self-understand-

⁶⁰ F. Böckle, ed., *Understanding the Signs of the Times (Concilium 25)* (New York: Paulist, 1967) p. 4. Cf. also B. Schüller, S.J., “Wie weit kann die Moraltheologie das Naturrecht entbehren?” *Lebendiges Zeugnis*, March 1965, pp. 41–65.

⁶¹ Böckle, *op. cit.*, p. 4.

ing. If such an explanation of natural law is one way of establishing the doctrinal competence of the Church in this area, it also suggests two notable limits upon this competence. First, when this self-awareness is concretized in norms and directives, not only are we dealing with the use of man's very fallible reasoning processes, but also with norms and directives embedded in the contingencies of history. Therefore the competence, while genuine, simply cannot be final or infallible in instances of such concretization. Secondly, since it is man's self-understanding that is the source of concrete moral norms, the exercise of Church competence demands a broad dialogical procedure.

Donald Wuerl, in a tightly written article, touches some of the emphases seen in Kerber.⁶² He first shows that man's apprehension and delineation of a natural moral order (basic human responses and relational structures) is limited and conditioned. Not only are our perceptions filtered through our own situations and experiences, but we develop within a community and hence inherit the values which come to us from this community. Therefore, while we are capable of grasping a basic human value (his example: "thou shalt not kill the innocent"), specific questions remain. For example, who is innocent? The answer to such specific questions "will be mediated by the circumstances and the community in which man lives. And the specific direction given a man by his beliefs and experiences in a community will provide these conditions."⁶³

Just as Israel's encounter with reality was conditioned by the experience at Sinai of God's presence, so Christ's intervention in human history and His gathering of peoples from all lands to be His Church means that "any consideration of man's basic orientation and his basic responses will now, to some extent, be conditioned by this fact." That is, Christ has given a direction to human existence. Therefore both the evaluation of basic human orientations and their translation into specific and practical guidelines will be made in light of the Christ-event.

Wuerl then notes that "given the impetus of Christ to the direction of man's life in history and given the conditioning of man's approach to reality that this necessarily entails, the disciple should expect the Church to teach officially in the area of natural moral order."⁶⁴ Therefore, when the Church teaches in the area of natural law,

⁶² Donald Wuerl, "Natural Law, the Community and Authority," *Priest* 25 (1969) 272-82.

⁶³ For a similar analysis, cf. Daniel Callahan, "The Sanctity of Life," in *The Religious Situation 1969* (Boston: Beacon, 1969) pp. 297-336.

⁶⁴ *Ibid.*, p. 278.

Wuerl would contend that she is simply specifying basic human relational structures but within a value system. Sometimes these specifications are adequately known by reason and enthusiastically endorsed by all men (e.g., premeditated destruction of human life). But there are other areas where neither experienced reason nor revelation will yield a clear relation to basic relational structures. As Wuerl sees it, "we are in the wide areas of human responses that usually receive direction from competent authority, the authority that is competent to speak for the values that found and permeate the community."⁶⁵ In these areas it is the function of competent authority to interpret and apply the initial experience that gave rise to the community.

Ultimately, therefore, it would seem that Wuerl would understand certain specifications of Church teaching as value judgments best named "directives." Because this is their nature, he concludes that "acceptance of directives of the magisterium in matters of faith and morals no longer rests entirely upon the absolute internal intelligibility of those directives. Rejection of a given argument connected with the explanation of a moral imperative does not necessarily permit rejection of the teaching of the magisterium concerning that imperative."⁶⁶ In another paragraph Wuerl states that "he [the Catholic] is not free to reject the official and authentic teaching of the Church even if he concludes that the teaching in question depends heavily upon an intellectual position he rejects."⁶⁷ This is so basically because these directives speak the Church's living re-evaluation and application of the meaning given human life by Jesus.

Later I shall attempt to show why the affirmation that "acceptance of directives . . . no longer rests entirely upon the absolute internal intelligibility of those directives" is tenable not precisely because the directives represent the judgments of competent authority, but because, *if authority has proceeded correctly*, it is in possession of a wisdom which presumably surpasses the individual's.

Daniel Maguire views the competence of the magisterium in terms of the notion of teacher.⁶⁸ Authority, he contends, can serve but not substitute for any of the evaluative processes of moral inquiry. Thus the good teacher is one who inspires, stimulates, sensitizes, encourages. "Authority" is a poor way of stating this because it suggests a superior power of knowing which can bypass essential methods of ethi-

⁶⁵ *Ibid.*, p. 279.

⁶⁶ *Ibid.*, p. 281.

⁶⁷ *Ibid.*

⁶⁸ Daniel C. Maguire, "Teaching, Authority, and Authenticity," *Living Light* 6 (1969) 6-18.

cal reflection.⁶⁹ Maguire prefers "teaching influence" to "teaching authority" and says of the Christian teacher that his essential authority is his ability to perceive the truth and to transmit it. Therefore in the contemporary Church we have moved away from teachers who say the last word in an effort to close debate to teachers who seek to say important words calculated to enlarge and enrich the processes of debate.

It is clear that the articles summarized above start from different points of view, move in different directions, and sometimes even draw different conclusions. Yet when one stands back from them, I believe it possible to detect a single thread or theme running through nearly all of them: a much greater emphasis on human experience, reflection and analysis in the establishment of concrete moral norms, and a consequent insistence on broad consultative and collegial procedures. But in ecclesiastical documents the authoritative character of the declarations of the noninfallible moral magisterium is argued by appeal to the light of the Holy Spirit. Thus *Humanae vitae* (no. 28) stated that obedience is due to these teachings "not only because of the reasons adduced, but rather 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."

Any attempt to understand more adequately the role of authority in moral inquiry must attempt to relate these two elements. This should be done, it would seem, before drawing conclusions similar to those of Auer and Huizinga about the noncompetence of the magisterium in the area of concrete moral directives. I believe this suggests above all the need to examine the concept of the assistance of the Holy Spirit; for it is this assistance to which appeal is made to establish the authority of the teaching.

Maguire asserts that the notion of the Spirit's assistance to the hierarchical leaders needs a good deal of work by theologians. It is his own conviction that this notion as it appears both in presentations of Pope Paul VI and in Vatican II has two major defects.⁷⁰ First, it is tendentially quietistic. That is, it too easily implies a power to achieve truth outside of human processes. Secondly, it suffers from in-

⁶⁹ Alois Müller also rejects "obedience" as the proper word to describe one's moral duties where teaching is concerned. Cf. "Authority and Obedience in the Church," in *War, Poverty and Freedom (Concilium 45; New York: Paulist, 1966)* pp. 71-88, at 73. For an excellent recent discussion of teaching and authority, cf. Jos. A. Komonchak, "Magisterium and Religious Assent," in *Contraception: Authority and Dissent*, pp. 101-26.

⁷⁰ Daniel C. Maguire, "Moral Inquiry and Religious Assent," in *Contraception: Authority and Dissent*, pp. 127-48.

nocence of history. A chastening trip through history will reveal any number of erroneous positions proposed by the magisterium. In terms very close to Cunningham's, Maguire therefore rejects a juridically conceived magisterium which wills moral insights into legitimacy. He states that "there is need for teaching officers in the Church to give voice to the truest insights of the community by stimulating the magisterial potential of the whole Church."⁷¹

I believe it is correct to say that the notion of the assistance of the Holy Spirit needs a good deal of theological attention. If it remains as opaque as it actually is in the documents of the magisterium, it is likely that the voice of the hierarchical magisterium will continue to be loudest and clearest when it says "authority and special assistance" and that of others loudest when it says "evidence and reasons." Both emphases are important, of course, but if they are left unrelated, are we not still vulnerable to the dangers of a simplistic notion of assistance?

What, then, is the meaning of "the assistance of the Spirit" where the authoritative noninfallible magisterium is concerned?⁷² Anyone who undertakes to speak about the action of the Spirit, especially if he tries to explain how the Spirit works, realizes in advance that he is more than ever likely to end up with a theological foot in his mouth and make an utter fool of himself; for the operations of the Spirit are above all ineffable. Yet the possibility of gaining some understanding and the anticipation of charitable correction by others minimizes the arrogance of the attempt. With this in mind I should like to offer a possible approach.

In facing this question two extremes must be avoided. The first would explain the assistance of the Spirit to the magisterium in a way which dispenses with human processes. The second would simply reduce this assistance to human processes. The first is the notion of a special assistance by the Spirit which represents a new source of hierarchical knowledge, arcane and impervious to any criticism developed out of Christian experience, evidence, and reasoning. Such a notion of assistance results in a form of fideism which makes it difficult, if not impossible, to see how any authoritative utterance is not thereby practically infallible. Furthermore, this notion of assistance

⁷¹ *Ibid.*, p. 148.

⁷² I am supposing a radical difference between the infallible and noninfallible magisterium, though it is probably true to say that we have theologized (and catechized) about the two within a framework of continuity rather than analogy. Certainly many generations of Catholics have been taught to view the noninfallible magisterium as "just a little less than infallible."

is a summary edict of dissolution for the scholarly and theological fraternity.

The second extreme is such an emphasis on analysis and reasons that the action of the Spirit is simply identified with the shrewdest thinkers in the community and ultimately imprisoned in the best reasons they can unravel. This is an extreme for many reasons, not the least of which is that it is a form of neorationalism which overlooks the complexity and developmental character of moral cognition, especially by bypassing the real significance of the communitarian aspect of moral knowledge, and especially of the *sensus fidelium*. If the action of the Spirit is primarily directed to the Church as a whole, and secondarily and in subordination to the needs of the Church, to its pastors as pastors, then surely this fact must influence the emergence of moral knowledge, the operations of the magisterium, and the notion of the special assistance of the Holy Spirit to the magisterium.

It would seem that any explanation of the assistance of the Holy Spirit to the magisterium (noninfallible) must be adequate to four factors: (1) the judgmental competence of the hierarchy within the whole teaching process, (2) the activity of the Spirit in the formation of such judgment, (3) the possibility and fact of error in these judgments, and (4) the relevance of the experience and reflection of the whole Church in forming these judgments.

I should like to suggest that the middle course we seek is one which would associate the activity of the Spirit with human processes without identifying it with them. The nature of this association can perhaps be illumined by a reflection on error. When error occurs in human judgments, it would seem to occur in either of two ways: in the gathering of evidence or in the assessment of the evidence. Obviously there can be many reasons why either of these processes would function inadequately, but it is the breakdown of one of them to which judgmental error can be traced. If this is true, then is it not reasonable to think that at least the proper implementation of these processes is generally required to avoid error in complex decisions?

When this is applied to the magisterium, we might say that error could occur either through evidence-gathering or evidence-assessing.⁷³ Hence at least adequate evidence-gathering and evidence-assessing are required if error is to be avoided. Evidence-gathering is inadequate when consultation is not broad enough to allow the full wisdom stimu-

⁷³ Evidence is not to be understood here as data gathered by the physical sciences, where no prior assessment is part of the data itself. Rather evidence should be taken as including the reflections and judgments of those constituting the evidence.

lated by the Spirit's activity in the whole Church to emerge. Evidence-assessing breaks down when consideration of the evidence is insufficient to allow the Spirit to aid in the emergence of its meaning.⁷⁴ In the contemporary world these inadequacies would seem to be traceable to a failure in the fulness of the collegial process at all levels.

Now the magisterium of the Church has special advantages to overcome these handicaps in arriving at moral truth. First of all, bishops *as pastors* are in a unique position to be in contact with the convictions, problems, beliefs, joys, sufferings, and reflections of all groups in the local church. That is, they are positioned to consult the experience and convictions (the wisdom) of their flock. As *collegial pastors* they are in a position to pool this wisdom and weigh it through a process of dialogue and debate. In this sense the episcopal and papal magisterium have sources of information which exceed those available to anyone else. Summarily: negatively, the magisterium is in a wonderful position to reduce the barriers which bind the Spirit; positively, it is positioned to engage the total resources of the community and thus give the Spirit the fullest possible scope.⁷⁵

Therefore, though we cannot capture in human categories the operations and assistance of the Holy Spirit, can we not identify the human processes within which the Spirit must be supposed to operate? And since the hierarchy is uniquely situated to implement these processes, is it not open to the assistance of the Spirit in a special way when it does so? That is, the ability of bishop-pastors (and through them the pope) to range beyond the isolation of their own reflections or those of restricted groups is the foundation for the confidence that in doing so they will be specially open to the Spirit and that their authentic pronouncements will show this.

Therefore who would doubt that when the magisterium actually draws upon the wisdom resident in the entire Church and actually submits itself to an adequate evaluative process, it is better positioned than any individual or group of individuals to relate this to Christian conduct? A prudent and sensitive Catholic would be willing to accept such conclusions precisely because (and providing that) he had the assurance that they proceeded from a store of wisdom far be-

⁷⁴ In an interesting article Gerard P. Kirk, S.J., maintains that *Humanae vitae* was a "crisis document" issued before true ripeness of the issues was achieved (*Continuum* 6 [1968] 288-94). This suggests the possibility that concrete moral directives are often in the category of more probable judgments. In the past we may have viewed them too often as virtually unconditioned judgments which settled matters definitively. This must be kept in mind in judging the meaning of error in moral teaching.

⁷⁵ Cf. Enda McDonagh, "Coresponsibility and the Theologian," *Furrow* 20 (1969) 184.

yond the solipsism of his own insights. And for this reason he would find it quite acceptable to say with *Humanæ vitæ* that acceptance of these judgments is owed "not only because of the reasons adduced, but rather 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." On the other hand, one may legitimately expect that this "light of the Holy Spirit" will manifest itself concretely in the "way the question itself is handled. That means in the solid presentation of proofs from human experience and with good arguments."⁷⁶

When pastoral leaders do not implement these human processes where the matter in question demands it, one can wonder to what extent they may lay claim to the assistance of the Spirit.⁷⁷ Furthermore, even after these human means have been utilized, genuine error (not to be confused with prudential directives to be adapted later in the light of differing circumstances) might occur. Men are men, even in their collaboration with the Spirit. But in this case three things are to be noted. First, this error would probably be detectable only at a considerably later date as *certain* error—precisely because the wisdom of the entire Church had apparently gone into its formulation. Secondly, since error must be attributed to human frailty and not to the Holy Spirit, the error would be traceable, on closer examination, to factors which inhibited the fulness of these processes we have mentioned, even though at the time they seemed adequate. Thirdly, the error would reveal itself, to a greater or lesser extent, in the reasons and analyses used to elaborate the teaching. This is why, among other reasons, theologians must continue to subject the principles and arguments used in magisterial documents to the most careful scrutiny and

⁷⁶ Häring, in *The Catholic Case for Contraception*, p. 82.

⁷⁷ Karl Rahner has pointed out that the Roman pontiff and the bishops have a moral obligation to take "apt means" for discovering the truth where the infallible magisterium is to be exercised. He lists these means as follows: "constant recourse to Scripture, the theological work of exegetes, historians and dogmatic theologians, and the free untrammelled exchange of views, living contact with the instinct of faith which cannot err in the faithful as a whole, and ecumenical dialogue. The 'hierarchy of the truths of faith' must be respected, the spiritual and theological heritage of the Eastern Churches must be revived, there must be a frank and courageous dialogue with the spiritual and social realities of each age, the charismatic element in the Church must be taken seriously. A constant effort must be made to overcome the restricted outlook of the various schools, each of which is legitimate in itself, but which are too easily tempted to identify themselves with the mind and doctrine of the believing Church. And finally 'public opinion' in the Church must be adequately taken into account" (K. Rahner, in *Commentary on the Documents of Vatican II* 1 [New York: Herder and Herder, 1967] 214). This would be true a fortiori where the noninfallible magisterium is concerned.

criticism. It is the human way of distinguishing between truth and error in moral judgments.

But does not this explanation of the manner of operation of the authoritative magisterium derogate from papal prerogatives, from the supreme magisterium of the Holy Father? Marchesi was cited at the beginning of this section as follows: "In virtue of this primacy, the pope can decide even by himself, according to his prudent and reflective judgment."⁷⁸ To say anything else Marchesi regards as "grave error." It seems to me that the over-all thrust of recent writings as reviewed in this section is to deny outright Marchesi's statement, if "decide by himself" means independently of the processes whereby evidence is gathered and assessed, or in the face of very considerable contrary evidence. In other words, contemporary theological writings reject the identification of "primacy" with the ability to "decide by himself."

But this is not to deny primacy or to derogate from the supreme magisterium of the Holy Father. It is rather to raise this question: Within what processes and with what dependence on these processes is primacy to be exercised in our times if it is to function in a more than merely juridical way? To understand primacy as the ability to "decide by himself" could easily represent the reduction of primacy to a juridical abstraction and its contraction to a cultural form no longer adequate to the complex moral problems of a changing world. By this same token, to liberate it from this contraction and to search for more suitable ways for its exercise is not at all to derogate from the primacy. It could be to defend it against decay.

The point is important enough to suggest the value of a rewording. The juridical powers of the pope are not in question. In other words, the issue is not what the pope *can* do. That is a simple juridical statement. The issue is what he must do to acquire the information, knowledge, and evidence essential to doing what he can do. Those who say that "the pope need not consult" or "need not accept the advice of his consultative commissions" are making purely juridical statements. It is true in a juridical sense that the teaching authority of the pope is not limited by collegiality. But the Holy Father is limited by the evidence in support of the truth. He *can*, as possessor of a supreme magisterium, teach that something pertains to the natural law. But the exercise of this juridical power supposes that there is persuasive evidence supporting the teaching. Collegiality and consultation function in service of this evidence. Therefore, when the pope rejects

⁷⁸ For a similar statement, cf. Zamoyta, *op. cit.*, p. 91.

the suggestions of his consultants, the presumption is that he has persuasive contrary evidence. Otherwise why consult in the first place?

Archbishop Denis Hurley put the matter quite well: "To be acceptable in our time, it seems to me that primacy must operate in accordance with the practices of communication and consultation accepted in modern, responsible society, but remembering my own attitudes of only a few years ago I can fully understand the attitude of mind of Pope Paul and the Curia. It is a mistake, however, to identify the primacy and the monarchical expression of it."⁷⁹

THE ETHICS OF POLITICAL PROTEST

On May 17, 1968, nine opponents of the war in Vietnam entered the local draft headquarters in Catonsville, Maryland, emptied four hundred 1-A files into wastebaskets, took them outside, and burned them with homemade napalm. On September 24, 1968, fourteen men, including five priests, removed nearly ten thousand 1-A draft files from Milwaukee's Selective Service boards and burned them with napalm in a square dedicated to America's war dead. On May 25, 1969, fifteen persons, including two priests and a seminarian, raided the draft files on Chicago's south side. Tar and red paint were poured over some files, others were taken outside and burned.

These incidents represent three of the more colorful acts of defiance in a growing series of obstructionist tactics which include everything from mill-ins and the blocking of traffic to the imprisonment of CIA or Dow Chemical recruiters. Reactions to these protests have been deeply divided. Some see them as an immoral invasion and destruction of private property and an infringement on the rights of others. Others see them as legitimate forms of "symbolic language" in the face of enormous injustices when other more democratic methods are of no avail. Whatever the effectiveness of the tactics of the Catonsville Nine (*et al.*) as an antiwar protest, there is little doubt that the action has made the ethics of protest a subject of keen interest.

Furthermore, raids on draft files have an importance beyond their own specificity. In a world where change is rapid, government huge and impersonal, the processes of persuasion (e.g., TV) out of the reach of most, legal processes tedious and cumbersome, sensitivity to suffering and deprivation sharper than ever, we may expect more situations where citizens will conclude that the only effective way to express their malaise is through an illegal form of dissent. For this reason it may be of some value to review the moral issues raised by the various forms of

⁷⁹ Denis Hurley, "Letter of Law and Lesson of Life," *Tablet* 223 (1969) 153.

protest. The recent literature touches on two points: the over-all morality of protest and the specific instance of raids on draft files.⁸⁰

Peter Riga describes the broader biblical perspectives of Christian protest.⁸¹ He finds the heart of truly Christian protest (as contrasted with mere political protest) in meekness. Therefore protest is not basically a tactic but an attitude, an attitude based on expectation and hope for the kingdom. The Christian witnesses to this hope and expectation by challenging the omnipotent demands and self-sufficiencies of human institutions. He is a protester by nature against egotism and hatred and their by-products: nationalism, racism, militarism, world poverty. And since the poor are always the victims of human institutional *hubris*, the whole Church must become the protesting spokesman for the poor in all their concrete needs.

The larger issues involved in protest are brought out in an almost classic confrontation between Abe Fortas and Boston University's Howard Zinn.⁸² Fortas encourages dissent and protest, but the methods must be within the limits of the law. It is Fortas' contention that "the definition of objectives and the selection of those which will triumph are of fundamental importance to the quality of our society, of our own lives, and those of our descendants. But the survival of our society as a free, open, democratic community, will be determined not so much by the specific points achieved by the Negroes and the youth-generation as by the procedures—the rules of conduct, the methods, the practices—which survive the confrontations."⁸³ Some procedures Fortas sees as never permissible. For example, violence is understandable but intolerable. Damage to persons or property is never justified. As for violation of law, civil disobedience which challenges a law believed to be unjust or unconstitutional is permissible. But "civil disobedience... is never justified in our nation where the law being violated is not itself the focus or target of the protest."⁸⁴ Obviously Fortas is convinced that in our country viable alternatives to these measures do exist.

Zinn disagrees with Fortas at almost every turn. But his most basic disagreement is with regard to Fortas' attitude toward law. For Fortas, law and "the rule of law" constitute a kind of supreme value. In Zinn's

⁸⁰ For a general treatment of protest, cf. Jerome H. Skolnick, *The Politics of Protest* (New York: Ballantine, 1969).

⁸¹ Peter Riga, "Toward a Theology of Protest," *Thomist* 33 (1969) 229-50.

⁸² Abe Fortas, *Concerning Dissent and Civil Disobedience* (New York: Signet, 1968); Howard Zinn, *Disobedience and Democracy* (New York: Random House, 1968).

⁸³ Fortas, *op. cit.*, pp. 119-20.

⁸⁴ *Ibid.*, p. 124.

judgment, Fortas does not relate law to the values it must serve. Ultimately, therefore, his treatment of dissent shows us only the legal limits of protest, not the moral limits. Fortas is, in Zinn's opinion, a legalist pure and simple.

Take violence as an example. Fortas had excluded it absolutely as a form of protest. Zinn argues that Fortas has given neither moral nor practical grounds for this exclusion. Zinn is not a promoter of violence. He only argues that law is instrumentally in the service of human goods and values. Therefore he begins by describing civil disobedience as the "deliberate, discriminate violation of law for a vital social purpose."⁸⁵ Its aim is always to close the gap between law and justice. Civil disobedience is not only justifiable, but necessary when a fundamental human value is at stake. For government and its laws are not sacred; they are instruments serving certain ends: life, liberty, happiness. "The instruments are dispensable, the ends are not."⁸⁶ In this light he allows for violation of laws which are not in themselves obnoxious in order to protest a very important issue. "In each case, the importance of the law being violated would need to be measured against the importance of the issue."⁸⁷ As for tactics, Zinn's rejection of violent protest is largely a pragmatic determination and therefore is far from absolute. Those who engage in civil disobedience should choose tactics which are as nonviolent as possible, "consonant with the effectiveness of their protest and the importance of the issue. There must be a reasonable relationship between the degree of disorder [in the protest] and the significance of the issue at stake."⁸⁸ When civil disobedience moves from mild actions to disorder, to violence, these criteria should be kept in mind: the violence must be guarded, limited, aimed carefully at the source of injustice, and preferably directed against property rather than people.

The Fortas-Zinn debate almost symbolizes the attitudes of two sharply opposed groups in the American community. It might be tendentious but is not altogether inaccurate to suggest that these attitudes are captured in the slogans "law and order," "law and justice." The value of the Fortas-Zinn exchange is that it brings to the surface and dissects the suppositions underlying these attitudes. The pivotal differences seem to be the following three: (1) the meaning, function, and

⁸⁵ Zinn, *op. cit.*, p. 119.

⁸⁶ *Ibid.*, p. 120. This same emphasis is found in William Sloane Coffin, Jr. He urges that it is a Christian task to respect what is legal but to be more concerned with what is right. On these grounds he asserts that man never has the right to break the law, but upon occasion he may have the duty to do so. This is the case with the Vietnam war in Coffin's opinion (*Christianity and Crisis* 28 [1968] 8-11).

⁸⁷ Zinn, *op. cit.*, p. 120. ⁸⁸ *Ibid.*, p. 121.

uses of law; (2) the effectiveness of the ordinary democratic processes of persuasion and protest; (3) the urgency of the social issues being protested.

While both books score good points on these differences, Zinn's is the more challenging presentation in my opinion. But he leaves several key questions unanswered. For instance, he states that "if a specific act of civil disobedience is a morally justifiable act of protest, then the jailing of those engaged in that act is immoral and should be opposed, contested to the very end." This is a vast oversimplification. The "moral justifiability" of a protest is the precipitate of many complex judgments: the relative importance of the value at issue, an assessment of the state of its realization or deterioration in a particular society, the state of democratic processes in this society, the level of violence existent in the society, the prospective support to be won by the protest, the sensitivity of the society to the value of law, etc. When such judgments are the necessary ingredients of a conclusion about "moral justifiability," it is clear that this conclusion is a prudential judgment, with a fairly high level of risk.

Therefore "morally justifiable" must mean that a person (or persons) has submitted to the processes of justification demanded of any socially responsible person. It does not mean, because of its complexity and prudential character, certainty that the protest is objectively justifiable. To insist that it is immoral to jail a "morally justifiable" protester is to forget this and grant a degree of clarity to the notion of "moral justifiability" which it rarely possesses. Such unreal and abstract thinking has the effect of absolutizing the right to dissent to the point where it negates another's right to an opposite opinion—another's right to dissent from the dissenter. It is clear that such thinking is, therefore, ultimately and in principle self-destructive. It is one of the functions of law to protect the right to dissent by refusing to absolutize it out of existence.

In a long and thorough study of political disobedience, Leslie J. Macfarlane of Ruskin College (Oxford, England) shows that those who engage in political disobedience must successfully pass through a four-stage process of justification: of the cause served by disobedience, of the rejection of political obligation, of the form of disobedience practiced, of the expected consequences.⁸⁹ Macfarlane does not set out to produce a well-defined set of principles. Rather his analysis aims at disclosing "a number of relevant points which are capable, after subjection to critical appraisal and refinement, of forming the basis for the

⁸⁹Leslie Macfarlane, "Justifying Political Disobedience," *Ethics* 79 (1968) 24-55.

establishment of conditional principles of political disobedience."⁹⁰ He succeeds eminently.

Macfarlane makes many excellent points along the way, but it is his treatment of the means of protest which is most immediately pertinent to our discussion. Once ground for rejection of obligation has been shown, Macfarlane states that it is not difficult to justify that disobedience aimed at publicizing the cause and gaining public support. This objective itself will rule out many of the more questionable forms of violent action, because they would result in loss of adherents. Violent protest in the form of sabotage and wrecking runs the risk of injuring the innocent, but Macfarlane feels that against highly oppressive regimes (e.g., South Africa) it can be used. The same would be true where a state refuses to permit constitutional methods of protest and uses brute force to suppress them. But Macfarlane argues that failure to secure objectives through ordinary channels does not thereby justify political disobedience. It may only suggest the need to re-evaluate one's cause. The ability of other causes to realize their objectives in part or in whole suggests that effective constitutional machinery exists which could be utilized.

"Refusal to permit constitutional methods of protest" is a sprawling phrase. Brute force is not the only way this refusal can be achieved. A cramping institutionalism can be so effective in rendering dissent and protest ineffective that it might amount to "refusing to permit constitutional methods of protest." Robert B. Thigpen and Lyle A. Downing (Department of Government, Louisiana State University) suggest that precisely such an institutionalism is behind the rash of disruptive behavior we are experiencing on the American scene.⁹¹ They claim that disruptive tactics must be seen not merely as dissent but above all as a desire to participate in making policy decisions. Thus Dean Rusk and other official spokesmen for the administration's policy in Vietnam were shouted down because they represented power, and a power which attempted to limit popular participation in decision-making. In this light the disruptions we witness must be regarded as demands for the power to participate, not as interferences with the rights of others to free expression. To the counterargument that truth comes from dialogue and discussion the authors respond that this confuses discussion with decision-making. Truth comes from the former, policy from the latter. In

⁹⁰ *Ibid.*, p. 53.

⁹¹ Robert B. Thigpen and Lyle A. Downing, "Power, Participation, and the Politics of Disruption," *Christian Century* 86 (1969) 973-75.

our time the power to participate in decision-making is a minimal prerequisite for popular acceptance of policy decisions.

The Thigpen-Downing article raises the obvious question: To what extent does institutional life in America (at all levels: governmental, collegiate, etc.) actually stifle participation in decision-making?

Lawyer-journalist John B. Sheerin, C.S.P., summarizes the main points of the Fortas-Zinn exchange.⁹² He agrees with Fortas that a just law may not be violated to call attention to an unjust law, for "our big cities would be utterly chaotic if individuals were allowed to break laws that are just." But justice would be better served if grand juries and ordinary juries were given more discretion to consider the question of justice as well as the letter of the law in arriving at their decisions. As for violence, Sheerin does not reject it in theory or absolutely but contends that it is not permissible in our country here and now because "our democratic system is not beyond redemption."

Readers of these Notes familiar with the shrewd and insightful commentaries of John R. Connery, S.J., in the 1950's, will rejoice at his return to active writing on moral questions.⁹³ After stating that the right to protest is not absolute but must be exercised within the limits of justice and charity, Connery details what these limits are. His general statements about protest (justification of cause, calculus of effects, etc.) are very close to those of Macfarlane and represent good common sense. When he turns to the interesting question of methods of protest, Connery offers a general principle very similar to Zinn's: "From a moral standpoint the methods used should be proportioned to the values at stake."⁹⁴

Connery then asks about the morality of violating just laws as a means of protesting injustice. His answer: if this were the only effective means of preventing serious injustice, it would be acceptable. In this perspective he is closer to Zinn than to Fortas. But he believes that there are so many legal avenues available that this situation would arise only very rarely. Furthermore, this procedure tends to alienate other citizens from the cause one espouses.

As for violent protest, Connery admits the difference between violence against persons and against property. But to leave the distinction there, as do some advocates of violent protest, is unsatisfactory because

⁹² John B. Sheerin, C.S.P., "Civil Disobedience," *American Ecclesiastical Review* 160 (1969) 351-56.

⁹³ John R. Connery, S.J., "The Morality of Protest," *Jesuit Educational Quarterly* 32 (1969) 21-31.

⁹⁴ *Ibid.*, p. 26.

"it is precisely because of its relationship to a person that the violation of property takes on a moral aspect...."⁹⁵ This is an important point, I believe. One can get at a person very effectively through his possessions. It is precisely this close relationship of person and property which explains why Christians have always viewed beneficence as an act of charity toward the *person*, and theft as an assault on the *person*. Or, as Connery notes, a shopkeeper would often prefer a beating to the burning of his shop. Connery's conclusion is that violence against property to protest injustice is morally unacceptable.

I am not sure of Connery's reason for this conclusion. It seems to rest on a twofold basis: on the fact that traditional principles have never permitted violence against property except in defensive-warfare conditions, and on the judgment that we are not, whatever the injustices of our society, in a warfare situation. On the other hand, since he does allow for violation of a just law if this were the only effective means of preventing continued injustice, it is reasonable to believe that Connery would say the same of proportionate violence if it were the only effective means available. Perhaps he would call a situation which had degenerated to this extent a prewar situation.

One of the most interesting discussions of protest is that of Barbara Deeming.⁹⁶ Rejecting the violent tactics of people like Stokely Carmichael, Floyd McKissick, Andrew Kopland, and Carl Oglesby, she is at pains to show that the alternative is not meek petitioning. It is an open use of power which frustrates an antagonist's actions and policies. Yet it remains essentially nonviolent, because it refuses to injure the person of the antagonist. And this refusal to injure the person is precisely the genius of nonviolence. As Deeming puts it:

We can put *more* pressure on the antagonist for whom we show human concern. It is precisely solicitude for his person *in combination with* a stubborn interference with his actions that can give us a very special degree of control (precisely in our acting both with love, if you will—in the sense that we respect his human rights—and truthfulness, in the sense that we act out fully our objections to his violating *our* rights.⁹⁷

Thus a double pressure is exerted on the antagonist: the pressure of defiance and the pressure of our respect for his life. This double pressure has the advantage of inhibiting the action of the adversary, but modulating his ability to strike back. Thus it contains the escalation of force.

⁹⁵ *Ibid.*, p. 29.

⁹⁶ Barbara Deeming, "On Revolution and Equilibrium," in *Delivered into Resistance* (New Haven: Advocate Press, 1969) pp. 18-49.

⁹⁷ *Ibid.*, p. 28.

Deeming has some intriguing insights into nonviolence and its tactical advantages. But there is one key point where her analysis seems less than adequate. It is the distinction between violent and nonviolent action. Deeming regards all actions which do not injure another's person as nonviolent. This solicitude for the person of the adversary is said to consist in a respect for his human rights. So far so good. But at this point the ethical legerdemain begins. Deeming defines what are basic freedoms, what are not. She says: "Some freedoms are basic freedoms and some are not. To impose upon another man's freedom to kill, or his freedom to help kill, to recruit to kill, is not to violate his person in a fundamental way."⁹⁸

There are many who would reject the description of their participation in war as an exercise of their "freedom to kill." Obviously there is no such freedom. But just as obviously, if there is such a thing as a just war, then there is such a thing as freedom to participate in it. Or to reword Deeming: "To impose upon another man's freedom to go to war in a cause he judges just is to violate his person in a fundamental way." Summarily, Deeming's "refusal to injure the adversary" gives precious little assurance of genuine nonviolence if she retains competence to tell the adversary what his rights are and when he is really injured. This becomes all the clearer and more disconcerting when, in exercising this competence, Deeming skins property rights to the bone.

Now to the specific instance of draft-file raids. It is perhaps understandable that there have been very few outright defenses of these acts, probably because the odds against success are rather steep. But there have been reactions fitting midway between comment and support.

In several places Richard Shaull has called attention to the significance of draft-file raids.⁹⁹ He believes that the decisive factor is the realization by many of the participants of a basic colonialism in the structure of "the American way." In its relationships with other countries the United States dominates and uses these peoples for its own purposes. Similarly at home we have a situation he describes as "internal colonialism." We are a managed society with no opportunity to choose or shape our own future. This has been particularly true of the blacks. Therefore "what is required of us is not a shift of loyalty from one institution to another, but the re-structuring of social organizations and institutions from the ground up."¹⁰⁰ If we are to respond creatively to this situation, we must first realize our own part in this exploitation,

⁹⁸ *Ibid.*

⁹⁹ Richard Shaull, "Resistance and the Third World," in *Delivered into Resistance*, pp. 60-64; "Realism and Celebration," *Christianity and Crisis* 28 (1968) 272-73.

¹⁰⁰ "Resistance and the Third World," p. 62.

both as perpetrators and as victims. Once we do, we are in a position to break with the system in the very center of our beings, to reshape our values, to form communities which offer new collective self-identity, and to build new political power capable of confronting our present structures. Therefore Shaull sees the draft raids as symbolic actions announcing a break with an old order and an identification with the victimized.

One has the uneasy feeling that Shaull's interpretation of the draft-file raids dovetails a bit too neatly and conveniently with what he has been saying over the past three or four years about colonialism of structures. On the other hand, the documents produced by the various groups of file raiders do speak a language remarkably similar to Shaull's. The Catonsville group destroyed draft files not only because they represent misplaced power aloof from public dissent, but above all "to illustrate why our country is torn at home and is harassed abroad by enemies of its own creation."¹⁰¹ It then issued a stinging condemnation of the quality of American life and reproached the "religious bureaucracy" for being an accomplice in war, hostile to the poor, and racist. The Milwaukee group protested against "the American way of death," a way which gives property greater value than life. It found the roots of the Vietnamese struggle converging in the soil of American values and priorities, and then undertook a scathing criticism of these values. The Chicago group referred to the "freedom [of the powerful] to increase their fortunes through exploitative foreign investments." In other words, while the groups were indeed protesting and resisting the war, they seemed to see it as only a single symptom of a whole exploitative system. It was this system and its values to which they were saying no, though it can be doubted whether all in the groups shared such sentiments.

Staughton Lynd reflects on these incidents with three questions.¹⁰² (1) Is it right to destroy property? (2) What is the justification of disruptive resistance? Why not work for reform within the system? (3) Why did the perpetrators permit themselves to be arrested?

Lynd never really answers his first question. But he does get around to facing an obvious objection to property destruction. It is this: if a protester or resister who believes himself right and moral can do this, then he is inviting his adversary to do the same thing. This results in a "trial of brute strength" situation, an escalation to nowhere. Lynd believes that the draft-file raiders, by practicing disruption in a way which

¹⁰¹ Cf. *Delivered into Resistance*. For the Chicago group, I rely on distributed mimeographed material.

¹⁰² Staughton Lynd, "Letter from Jail: Telling Right from Wrong," in *Delivered into Resistance*, pp. 11-17.

kept the spirit of dialogue alive, avoided this. This they did precisely because it is their conviction that all people should act out their convictions more than we do in our society—as long as the distinction between damage to life and damage to property is accepted as a fundamental ground rule. Thus Lynd proposes that those who disagree with the Catonsville Nine should be able to burn the files of the American Civil Liberties Union.

As to the why of disruption, Lynd admits the extreme character of the act involved and admits that it might make change more difficult in the long run. To explain it, he distinguishes civil disobedience into two types: reformist and resistant. The reformist attempts to energize the conventional machinery into decision-making. Item: he breaks a law to create a constitutional test. Rejecting revolution (which attempts to destroy existing powers), the resistant explores the twilight zone between reform and revolution. His activity is suited to a prerevolutionary situation. He is involved in attacking evils which cannot be solved by administrative decision because they are too deep-seated. Not relying on the electoral process, the resistant undertakes “an experiment, a probing operation, which determines if revolution is required.”

The resistant knows he will alienate some people. But Lynd finds it impossible to discover a yardstick which will measure the appropriateness of the tactic. Ultimately he concludes:

Perhaps the best that can be said is that if a person believes “deep in his heart” that he must take a certain action, if he has meditated over the act or if the act, suddenly presenting itself, still flowers from a deep root of reflection, above all if it is an action *he* will take, the consequences of which will fall first on his own shoulders—then any other person can only stand aside and let his friend go on.¹⁰³

Perhaps this is the best that can be said after all. But there are those who will judge it a very weak best. Furthermore, there are times when Lynd’s essay reads as a more structured apology for the draft-file raids. As such it rests on two basic points. First, it builds on the distinction between personal and property damage and the acceptance by a society of property damage as a reasonable way to act out one’s convictions. This is terrifying if one generalizes it to the extent that Lynd does. Civilized societies reject this conclusion, doubtless because of a firm grasp of the intimate relationship between property and person. It is sadly ironical that the most outstanding examples of this relationship are the very victims of American economic imperialism in whose behalf these protests occur. These victims suffer *personally* because they have been systematically despoiled by exploitative practices.

¹⁰³ *Ibid.*, p. 14.

Secondly, Lynd's apologia rests on the assumption that we live in social conditions so desperate that they are describable as prerevolutionary. This is a judgment, of course, which some might care to contest.

The most interesting and enlightening statement I have seen is that of William Kunstler, chief counsel to the Catonsville Nine.¹⁰⁴ He makes a strong case for the power of jurors to follow their consciences in rendering their verdict—that is, to judge the law as well as the fact. There are times when a government so involves itself in a wretched policy that it has to be extricated by popular repudiation in a forum more immediately available than a ballot box. This forum is nullification by a jury. If the jury could judge both fact and law, then it could express the deep desires of the community it represents. Kunstler argues that the jury is, by its own inherent structure, the safety valve that must exist if our society is to accommodate itself to its own internal stresses and strains. Ultimately, therefore, Kunstler does not attempt to justify the act. Rather he suggests that whatever justification there is must be decided by the jury acting as the conscience of the community. In this sense the draft-file burners were throwing themselves on their fellow citizens.

Nearly everyone has a strong opinion on symbolic actions like these. They touch some of our most sensitive ideological nerves. Yet to elaborate a well-rounded moral judgment of them is extremely difficult. And this for two reasons.

First, they are full of contradictions. Their deep concern for some men seems like unconcern for others. They are accompanied by a profound and admirable passion, but also by an annoying rhetoric and even at times by a self-consciousness bordering on arrogance. There is some truth to nearly all the contentions of the resisters: that legal forms of protest are often ineffective in the ear of a government hard of hearing and sclerotic, that American economic policies frequently have oppressive effects, that the war in Vietnam may well represent a tragic misjudgment and a deep injustice, that Christian leadership has not always responded with proportionate vigor. Yet their statements reveal inescapable strains of political naïvete and too frequent doses of overkill. As tactics, such destructive actions alienate vast numbers of people, yet they find the young sympathetic. They strain one's concepts of rights, yet they do so in the pursuit of righteousness. They look like anarchy, yet they are acted out like peaceful liturgies. And so on. In short, these actions are at the periphery of free expression and they show all the inconsistencies of the borderline instance.

¹⁰⁴ William Kunstler, "Dissent and the Jury," in *Delivered into Resistance*, pp. 50-59.

Secondly, their claim to legitimacy rests on judgments about several very complex issues: the condition of democratic processes in our society, the justice of the war, the oppressiveness of our economic policies, the tolerance of a particular society for violence, the effect of this or that tactic, the apathy of the religious establishment, etc. These are extremely difficult questions.

It is not surprising, therefore, that it is both easy to defend these tactics and easy to condemn them. But it is easy only if one lifts out a single aspect of these actions and establishes this as crucial in his evaluation. This is precisely what has happened so often. For instance, the defender often talks exclusively in terms of the injustice of the war, but he ends up neglecting the real value played by law in the fabric of social security and stability. The condemner speaks only of property rights, and he generally fails to put these rights into the wider context of their social setting. Another defender talks of the systemic injustice of American economic policy, but he generally fails to acknowledge the enormous benefits, actual and potential, of American wealth. The condemner talks exclusively in terms of law and its violation, but he generally fails to relate law to its moral purposes.

Perhaps two points could be made by way of conclusion. First, one cannot judge such actions *in abstracto* as licit or illicit, even though there is a strong antecedent presumption against their licitness. Rather he must judge first the conditions or causes of protest and the effectiveness of other democratic processes in producing change. It is against this twofold consideration that these actions will be seen as proportionate or not. I believe it would be true to say that nearly everyone approves in retrospect the attempt made on Hitler's life. We could not do so if the taking of life had an absolute moral illicitness independent of circumstances. The same is true with the lesser destruction of property. If the protesters are right in their evaluation of the issues (especially the injustice of the war), and if effective means are no longer available to bring about a change within a reasonable time, then property damage, as a tactic and means of communication, would seem to be proportionate. But these are big ifs, and it probably takes a prophet to be sufficiently sure. The very definition of a prophet is one who sees clearly now what others only come to see later.

These men may be prophets in their assessments. They also may be deluded. Be this as it may, the prophet, genuine or deluded, has always suffered, and will continue to suffer in his time, simply because organized social life can only exist when it shapes itself around the national conscience.

And that brings us to a second remark. If these actions can be judged satisfactorily only in light of complex prior evaluations, what attitude should be taken after the fact? It is here that I believe Kunstler's point is well made. He had argued that the jury be allowed to judge such instances in terms of their consciences. On the presumption that the jury is a true reflection of the national conscience, what Kunstler is saying is that the morality of these borderline acts cannot be determined abstractly in every instance. Rather they must be judged in light of the evils they protest and the availability of other effective means of change. And for such an evaluation the national conscience may be the best guide; for even if the national conscience cannot compose and balance the many complex judgments to be made with certainty, still it can determine the practical limits of tolerable expression at a given point in history. The willingness of the resisters to submit to the jury judgment (if it is a true conscience judgment and fairly representative of the national conscience) is a test of their basic respect for organized social life.

But if the conscience of the nation is to be the basis of the judgment (as brought by a jury), it is important that the issue protested be sharply defined. Here one might fault some of the resisters. They have gone after the "system" of which the war is, in their judgment, a symbol. Their case becomes much less persuasive when it is dispersed in this way. Furthermore, it must be stated candidly that the resisters, by dressing their convictions in an enormous amount of rhetoric, have narrowed the basis of their appeal. Kunstler, in other words, is often much more persuasive than the groups he represents.

GENETIC ENGINEERING

Present medical techniques are enabling people with genetic deficiency to live and reproduce, and thus to add to the degeneration of the genetic pool. In this sense it has been said that the human race is bending under the burden of a genetic load. The situation is viewed with varying degrees of concern by the initiated—from bemused pooh-poohing to doomsday alarm. For example, according to Paul Ramsey's reading of the late Nobel Prize winner H. J. Muller, this degeneration amounts to a horrendous cul-de-sac. Muller sees the world after a few million years as one enormous hospital system wherein pitiful genetic relics spend their waning energy propping up their own feebleness. Mankind is doomed under its genetic load unless positive steps are taken to unburden it. Similarly Stanford's William Shockley sees the threat of genetic deterioration as one of the three chief threats dim-

ming our bright future.¹⁰⁵ Others point out that man has been successful over a half-million years precisely through his variability and hybridization.¹⁰⁶

Whatever the sane view may be, it is clear that with the cracking of the genetic code in our time by men like Crick, Watson, Nirenberg, and others, a whole new field of molecular medicine has been opened up.¹⁰⁷ There is a divergence of scientific opinion as to when some of the more exotic genetic interventions will be technically feasible.¹⁰⁸ But few doubt that within a relatively brief period genetic engineering will be a reality. The enormous importance of this can be stated in many ways. In the most general terms it can be said that man has uncovered secrets which give him control over human growth and evolution. Perhaps it was the profound and far-reaching implications of this that François Houtart had in mind when he stated, in a discussion on the moral concerns of the Church, that "the problem of tomorrow is the control of genetics."¹⁰⁹ If genetics is the problem of tomorrow, it is already the problem of today if we are to wrest from technology the dictation of policy in this vitally important sphere.

The possibilities laid open by research into the DNA molecule are many. But the most engaging and all-inclusive is human eugenics. Eugenics has been with us for some time, of course. But it has never really gotten off the ground—probably because, as Kingsley Davis notes, the social structures most relevant to genetics are those having to do with health, and with marriage and the family.¹¹⁰ Briefly, with

¹⁰⁵ William Shockley, "Population Control or Eugenics," in *Genetics and the Future of Man*, ed. John D. Roslansky (New York: Appleton-Century-Crofts, 1966) pp. 65-105, at 70.

¹⁰⁶ Dimitri B. Shimkim, "Further Thoughts on the Biological Revolution," *Atlantic* 223 (1969) 46.

¹⁰⁷ For a good overview of the problem of genetic control and the options in facing it, cf. V. Elving Anderson, "Genetics, Society, and the Family," in *Birth Control and the Christian*, ed. W. O. Spitzer and C. L. Saylor (Wheaton, Ill.: Tyndale House, 1969) pp. 343-54.

¹⁰⁸ Cf., for example, Donald Fleming, "On Living in a Biological Revolution," *Atlantic* 223 (1969) 64-70; Edward L. Tatum, "The Possibility of Manipulating Genetic Change," in *Birth Control and the Christian*, pp. 51-61; P. Overhage, "Manipulationen an der Keimesentwicklung," *Stimmen der Zeit* 183 (1969) 32-44; K. H. Degenhardt, "Probleme der genetischen Manipulation," *ibid.*, pp. 375-82.

¹⁰⁹ F. Houtart, *The Eleventh Hour* (New York: Sheed and Ward, 1968) p. 46. Similarly Kingsley Davis says that "the deliberate alteration of the species for sociological purposes will be a more fateful step than any previously taken by mankind" (*Genetics and the Future of Man*, p. 204). Peter J. Riga spells out the anxieties being experienced over the new discoveries: "Modern Science and Ethical Dimension," *Catholic World* 209 (1969) 213-17.

¹¹⁰ *Op. cit.*, p. 182.

mortality and reproduction. Profound human and religious convictions underpin these social structures and hence they resist easy modification.¹¹¹ But with a new awareness of genetic deterioration and new abilities to deal with it, these human and religious convictions will again be tested. Thus the appearance recently of moral writings on genetics.

In the literature we shall bring under review, eugenics is described as either positive or negative. Though this terminology is somewhat slippery and inconsistent at times, in general it can be said that negative eugenics refers to the correction or straining out of defective hereditary material. Obviously this could be done in the interests of individual or family health, or as part of an over-all eugenics program with the gene pool in mind. Examples of negative eugenics would be sterilization of a person with defective genes, or genetic counseling discouraging reproduction. Positive eugenics refers to the programming of desirable traits into the population as a whole, the achievement of human betterment by selective breeding of superior individuals to improve the gene pool. Now to a brief roundup of the moral literature admittedly still in its infancy.

Dr. Kurt Hirschhorn, after reviewing the various methods of genetic control and commenting on their feasibility, concludes that neither positive nor negative eugenics can improve the gene pool and simultaneously allow for adequate evolutionary improvement of the race.¹¹² Take donor insemination (AID) as a form of positive eugenics. Hirschhorn shows that fertilization of many women by a few men would tend to have adverse effects on the advantages present in genetic variability. The population would tend to be more alike in genetic characteristics and lose flexibility in adapting to environment. Such flexibility is one of the major factors in satisfactory evolutionary development. As for negative eugenics, attempts to reduce the fertility of sizable portions of the population would also prevent the passing along to future generations of favorable aspects of evolution. Improvement of the population through evolutionary selectivity demands a gene pool containing enormous variability. Hirschhorn, therefore, sees negative eugenics as helpful only on a restricted basis for individual cases.

His final ethical judgment is that "all maneuvers of genetic engineering must be judged for each individual and, in each case, must take

¹¹¹ For a ranging theological criticism of much eugenic utopianism and many eugenic values, cf. P. E. Hughes, "Theological Principles in the Control of Human Life," in *Birth Control and the Christian*, pp. 93-149.

¹¹² Kurt Hirschhorn, "On Re-doing Man: The Ethics of Genetic Engineering," *Commonweal* 88 (1968) 257-61.

primary consideration of the rights of the individual. This is impossible by definition in any attempt at positive eugenics."¹¹³

Interesting and balanced as Hirschhorn's essay is, it calls for several comments. First, there is an unreal separation between a judgment of practicality and a moral evaluation of some suggested programs. Perhaps this is to be expected from one who is professionally a scientist, not a theological ethician. The major portion of the paper is taken up with faulting positive and negative eugenics for the improvement of the gene pool. Hirschhorn sees the various proposals (e.g., Muller's sperm bank with AID) as inefficient for the very purposes envisaged, and this inefficiency is found in the lack of sufficient gene variability to allow evolutionary improvement. Hirschhorn regards this rejection as a judgment of mere inefficiency; for when he turns to an ethical judgment, he excludes positive eugenics on the grounds that it cannot consider the rights of individuals. However, it would seem that any eugenics program judged impractical because of adverse and deleterious effects on man's evolutionary development is thereby judged to be a massive attack on the human race in some sense, much as atomic fallout would be. This is not, I would think, a judgment of mere inefficiency. Does not such inefficiency amount to a radical violation of man's responsibility to his progeny, a kind of futuristic social injustice?

Secondly, the exclusion of such programs in terms of effects only (even after I admit that these effects are downright unjust) contains a hidden methodological suggestion, scil., that it is uniquely in terms of effects that the morality is to be assessed. There are still many moralists whose ethical judgments will not be strait-jacketed to a determination of effects, at least as this determination is often explained. Specifically, even if a massive program of AID were to prove beneficial for the genetic pool over the long haul, there are many theological ethicists who would reject it on other grounds.

Gabriel Fackre, after reviewing the kinds of control of life facing us (preventive manipulation—e.g., electrode implants in the brain; instant pacification—e.g., by sprays and gasses; prenatal programing—e.g., genetic surgery), seeks in the resources of Christian faith perspectives for decision-making.¹¹⁴ He finds three crucial themes: responsibility, futurity, and realism. By responsibility Fackre means the motif asserting that man is to shape his own future. Futurity refers to the future-orientation of the Christian, the bent to and struggle for the *eschaton*

¹¹³ *Ibid.*, p. 261.

¹¹⁴ Gabriel Fackre, "Ethical Guidelines for the Control of Life," *Christianity and Crisis* 29 (1969) 68-72.

of peace, justice, and freedom. Realism is an acknowledgment of the lethal presence of sin in our cosmos, always ready to render man's best efforts ambiguous and discordant.

On the basis of these perspectives, he argues that it is not possible to accredit the prenatal programming of value choices that biological engineering may soon make possible. Mechanizing the choosing capacity is a violation of what is central to man's humanity. He means here the programming of value choices, but he leaves open the question of pre-designing social skills in certain cases. As for instant control by police forces, Fackre views this as immoral in light of Christian realism about the corruptibility of monolithic power. Finally, he allows for biotechnical manipulation within the boundaries of self-control, that is, those which will release from imprisonment and expand freedom of choice.

There are two aspects of Fackre's interesting paper which are noteworthy: first, the way he proceeds from basic Christian motifs or values to the concrete judgment; secondly, the fine sensitivity he shows to the many ways the *humanum* can be violated.

Union Theological's Roger Shinn offers a stimulating discussion of genetic manipulation in terms of the methodology underlying contemporary discussions of the matter.¹¹⁵ He distinguishes two questions: What is possible in this area? What is desirable?

The most obviously ethical question touches desirability. Here Shinn calls our attention to the difficult questions underlying any assertions we might make. For example, he himself is favorably disposed to negative eugenics. But the question remains: How do we determine what is harmful and disposable? Heredity must be related to its environment before it can be called desirable or undesirable. As for positive eugenics, who shall determine and by what criteria what is a desirable endowment? Shinn feels that fallible men already impose enough erroneous judgments on their progeny without rushing in to add a more fateful hereditary load.

Shinn is a balanced thinker whose message is a wise one of caution about the unanswered questions and the assumptions underlying answers we might give. He comes closest to stating the values in light of which he might articulate these assumptions when he notes that genetic manipulation may enhance or threaten freedom. The problem, then, is to determine how much manipulation, what kind, etc., will enhance freedom. When properly fleshed out, freedom is an excellent criterion. But Shinn would admit, I am sure, that until we have described more in detail the nature of human freedom, we have not es-

¹¹⁵ Roger Shinn, "Genetic Decisions: A Case Study in Ethical Method," *Soundings* 52 (1969) 299-310.

caped the perils inherent in genetic manipulation done in the interests of freedom; for until human freedom is related to the being of man, it almost certainly will be read by many as a loosening from the very goods and responsibilities that will assure human growth.

After a beautiful statement of the biblical understanding of man and his future, B. L. Smith proposes to see whether this view needs modification, particularly in view of the young disciplines of molecular biology, microbiology, and biochemistry.¹¹⁶ What does the Christian say in face of the possibility of taking a strong hand in the biological formation of his own future?

Smith suggests three things. First, he recalls that man's function is to exercise dominion. If this includes control of our environment and other so-called eutenic changes (use of eyeglasses, surgical procedures), it can conceivably include genetic manipulation and the development of intellectually and physically superior types. Secondly, because we are sinful, we are always prone to abuse every advance in knowledge. And as our ability to affect our own personalities increases, so does the potential harm through abuse. Thirdly, the future of man has been shown in Christ. Christ is the one toward whom we press. Smith admits that these three are not issues on which biology can pronounce; but they are issues to which every biologist must give attention and to which he must make a full response.

It is not clear what Smith would say to various forms of bio-engineering or genetic control. He did not set himself this task. Yet there are those (e.g., Paul Ramsey, as we shall see) who would join issue with Smith over the implication that these three things are all that a Christian can say. Does not our past experience—including the gospel heritage, our failures and successes, our reflective history and growth—give us both the ability and the courage to be more concrete than Smith seems willing to be?

To this question Paul Ramsey responds with a resounding affirmative in the most thorough and satisfying study of the moral aspects of genetic control that I have yet seen.¹¹⁷ Ramsey's thought, it is well known, is like spun glass—complicated but ultimately clear. He approaches

¹¹⁶ B. L. Smith, "Biology and the Christian Faith," *Christianity Today* 13 (1969) 627-30, 683-86.

¹¹⁷ Paul Ramsey, "Moral and Religious Implications of Genetic Control," in *Genetics and the Future of Man*, pp. 109-69. For further reflections by Ramsey, cf. *Hospital Progress* 49 (1968) 13; also his forthcoming "Shall We Clone a Man?" in *Ethics in the Medical and Technological Context*, ed. Kenneth Vaux (Fortress, 1969). We await eagerly the publication of Dr. John Fletcher's (Protestant Episcopal Theological Seminary, Alexandria, Va.) doctoral dissertation on the subject. It was worked out under the direction of Roger Shinn and is bound to be good.

the problem in two steps. First, he lifts up to view certain aspects of what it means "to intend the world as a Christian." Since being a Christian is a mode of being human and will affect one's values and ethical judgments, Ramsey first contrasts Christian eschatology with what he calls "genetic eschatology." Secondly, he then focuses on the question of means to be used in genetic control.

How does "intending the world as a Christian" affect one's ethical judgments where genetic control is concerned? To answer this, Ramsey first notes that the genetic crisis can be faced out of any number of basic interpretations of the meaning of man and his world. And out of this interpretation emerge the values which found one's ethical judgments. The Christian viewpoint will yield two results, one general and pervasive, the other more precise. First, the Christian will face the situation in faith. No matter how great the problem, no matter how gruesome the details of the genetic apocalypse, the Christian has known all along that an end must come, that one day there will be none like us to come after us. Therefore Christian hope in and for the future does not depend on denying the seriousness of lethal genetic mutations. The Christian hopes on in faith.¹¹⁸

Secondly, one who is, in Ramsey's words, oriented on the Christian *eschaton* and not exclusively on the genetic cul-de-sac knows that he is not bound to succeed in preventing genetic deterioration at all costs, any more than he is bound to prevent cooling of the sun at all costs. This means that he knows an ethic of means. Ramsey is quick to add that "this does not mean that he will do nothing. But it does mean that as he goes about the urgent business of doing his duty in regard to future generations he will not begin with the desired *end* and deduce his obligation exclusively from this. He will not define *right* merely in terms of conduciveness to the good end."¹¹⁹

Ramsey concedes that other interpretations of the world also put limits on the means of genetic control. But it is his point that underlying many of the eugenic proposals being made by geneticists is a view of man which is the fruit of "intending the world as a scientist or geneticist." In this view the basic human values are freedom and thought. The means of genetic control must always respect these values—for example, sterilization must always be voluntary. Ramsey, rightly I believe, sees these two values as an incomplete picture of the *humanum*. Man is more than the repository of thought and freedom. One who

¹¹⁸ Cf. also P. E. Hughes, *op. cit.*, pp. 140-48.

¹¹⁹ Ramsey, "Moral and Religious Implications of Genetic Control," p. 139.

views the world as a Christian will discover more elements in the nature of man deserving of respect and removed from human trespass.

Specifically—and here Ramsey moves to his second point, the evaluation of means of genetic control—it is the Christian teaching concerning the union of the two goods of sexuality which will largely preside over one's assessment of the means of control. By the "union of the two goods of sexuality" Ramsey means that the *spheres* of personal love and procreation should not be put asunder. He derives this inseparability of spheres from a Christian reflection on the Prologue of John and Ephesians 5. We procreate new beings like ourselves in the midst of our love for one another and "in this there is a trace of the original mystery by which God created the world because of His love." Therefore Ramsey concludes that "to procreate from beyond the sphere of love [AID, for example, or making human life in a test tube] or to posit acts of sexual love beyond the sphere of responsible procreation [by definition, marriage] means a refusal of the image of God's creation in our own."¹²⁰

In the light of this principle Ramsey judges both negative and positive eugenics. As for the first, he accepts genetically motivated birth control. Secondly, where "genetic surgery" is concerned (direct action on the genotype to allow a couple to bear a child without some defective gene), Ramsey has no problem. If treatment to cure infertility is morally acceptable, then why not treatment to enable a couple to bear a child without defect? Thirdly, as for AID from genetically clean sperm frozen in banks (Muller's suggestion), Ramsey utterly rejects it as illicitly separating what God has joined together—the spheres of personal love and procreation. When he turns to positive eugenics, it is his judgment that there are too many problems and risks in this type of thing to make it acceptable. That is, we cannot prevent the goal-setting from drifting and oscillating out of control. To establish a process with this uncertainty would be irresponsible.

Perhaps the most radical moral evaluation of genetic programming is that of Michael Hamilton, canon at Washington Cathedral.¹²¹ Hamilton's basic theological assumption is man's authorization to exercise dominion over the natural world, including his own body. Working off this assumption, Hamilton finds little difficulty with negative eugenics. Such decisions are, he contends, in principle similar to decisions about

¹²⁰ *Ibid.*, pp. 147–48.

¹²¹ Michael Hamilton, "New Life for Old: Genetic Decisions," *Christian Century* 86 (1969) 741–44.

the use of new drugs and are controlled by the norms governing experimentation.¹²²

Positive genetics are, of course, another thing. But Hamilton's enthusiasm scarcely abates here. Should we raise the I.Q. of our children by genetic intervention if this becomes feasible? He is convinced that we should, "because intelligence is clearly an asset in coping with our world and is in line with the evolutionary trends we are capable of discerning." In fact, he points out that this goal has been tacitly accepted by AID parents. He then provides his basic moral norm.

I believe that the guiding and limiting principles in positive eugenics should be the enhancement of health and intelligence and the preservation of the unique quality of man. That quality I take to be his capacity for free, conscious, and personal relationships with God and his neighbor. A man may lose his appendix, have a transplanted heart in his chest, improve his eyesight and hearing, choose the sex of his children, and for all these possibilities we should be grateful. But so to affect healthy men's minds that they were no longer capable of loving and hating or worshipping and repenting would be to destroy their nature as human beings, and therefore, in my judgment, would be wrong.¹²³

Hamilton then turns to a more sinister venture, the growth in vitro of parahumans (cyborgs). He understands such beings as animal rather than robots and presents the word of an anonymous scientist that they would "look like humans, would be very good for domestic service, but are not really humans." Hamilton finds no a priori theological objection to production of these beings but regards their creation as impractical because cybernetic systems would probably have made them undesirable as a labor force by the time their production is feasible.

As to experiments in vitro with human material, he accepts them in the early stages of growth, "because they will cast light on normal pregnancies and will yield some information on how chromosomal mutations take place."¹²⁴ When confronted with the Christian conviction

¹²² For some recent entries on experimentation, cf. *Daedalus*, Spring 1969, entire issue; R. Kautzky, "Scientific Progress and Ethical Problems in Modern Medicine," in *Dilemmas of Tomorrow's World* (*Concilium* 45; New York: Paulist, 1969) pp. 75-90. Unfortunately there is very little new in this latter article. It is, sad to say, becoming all too typical of the material appearing in *Concilium*, which increasingly leaves the impression of extraordinary haste rather than extraordinary diligence.

¹²³ *Art. cit.*, p. 743.

¹²⁴ See also "Human Life in a Test-Tube," *Tablet* 223 (1969) 200-202. G. Higuera, S.J., discusses fertilization in vitro with the sperm of the husband and the ovum of the wife. In his judgment it is immoral in its circumstances, that is, unnatural by reason of place and method. Even though the sciences have much to say about "naturalness," the Church has the competence to describe this naturalness. For Higuera, fertilization in vitro presents the same moral objections as AIH ("Fecundación en laboratorio y moral," *Sal terrae* 57 [1969] 337-56, 403-16).

(stated so powerfully by Ramsey) that the spheres of responsible loving and procreation are inseparable, he responds: "I believe that the demand of love in relation to parenthood is fulfilled in ensuring that all children born into this world, by whatever means, be reared in a family."¹²⁵ This conclusion is based on the assertion that "parenthood in its deepest sense is not a biological but a *human* function—of a man and wife accepting responsibility for caring for and rearing a child."¹²⁶ It is to be expected, therefore, that Hamilton would raise no a priori theological objections against "cloning"—the vegetative, asexual production of a man from a single cell, the rough equivalent of the growth of a rose bush from the slip of another rose bush.

The interest of Hamilton's article lies not in the particular conclusions or judgments but in the implicit methodological assumptions and dominating values. Perhaps the best way to unpack these assumptions is to begin with a particular statement. He writes: "Parenthood in its deepest sense is not a biological but a *human* function—of a man and wife accepting responsibility for caring for and rearing a child." It was on this basis that Hamilton concluded that the demand of love in relation to parenthood is fulfilled in ensuring that all children born into this world, *by whatever means*, be reared in a family.

Here several things must be noted. In Christian conviction the same sexual love that generates becomes the parental love that nurtures. Parents do not love their children simply because the children are there and need love. They love them because they have loved each other and because the children are the visible fruit and extension of this love. That is why we have always said—sometimes clumsily to be sure—that conjugal love is by its very nature "ordained for the procreation *and education* of children, and finds in them its ultimate crown." Just as education is, in a sense, a continuation of procreation, so there is a basic identity and continuity in the love that procreates and the love that nurtures. Therefore to separate the acts which nurture from the act which generates and then to associate parental love only with the former is to undermine the very foundation of the love which nurtures. To limit the notion and love of parenthood to "caring for and rearing a child" is therefore a radical attack on several basic humano-Christian values (the meaning of human sexuality, the meaning of marriage and parenthood).

Secondly, Hamilton has provided some clue as to how he came to his remarkable conclusions. He has said that parenthood is not a biological but a human function. He then identified this human function with accepting responsibility for rearing a child. Summarily, caring for and

¹²⁵ *Art. cit.*, p. 743.

¹²⁶ *Ibid.*

rearing a child is human, procreating him is biological. But since parenthood and parental love are obviously human, procreation as such does not pertain to them.

Here we are face to face once again with an all too familiar and pernicious dualism, where men love and care in many ways, but not in their sexual intercourse. Ultimately this assertion roots in a principle which depreciates the body and disallows its participation in the specifically human. In the area of human sexuality it has been a long uphill struggle for Christianity to slough off the enticements of one or other form of dualism. Vatican II succeeded eminently when it referred to the child as the fruit of conjugal love. It was saying that man is not a parent or a loving parent only with his nurturing. He becomes a parent and a loving parent also in his sexual expression. It was insisting in principle that man does not relate, love, and hate with his mind exclusively or with his body exclusively. He relates, loves, and hates as man, as a mysterious psychosexual totality that is the "I." Some hint of Hamilton's dualistic instincts is seen in his assertion: "But so to affect healthy men's *minds* that they were no longer capable of loving or hating. . . ."

Thirdly, Hamilton's uneven bout with dualism brings him perilously close to a morality of goals. This means that if the goals are or appear to be desirable, then the means are evaluated as they move toward the goal. Hamilton does not quite go that far, but he is leaning. Thus experiments *in vitro* with human material are supported in the early stages because of the light they will cast on other pregnancies. "Cloning" is ultimately (but only temporarily, I must assume) rejected because present work with animals has resulted in a large percentage of monstrosities. Even should these be eliminated, "the advantages of such procedures would still be limited." This direction of thought is understandable; for if procreation does not pertain to parenthood or parental love but is something "merely biological," then we are only a quick illative away from seeing the product of conception as "something merely biological," at least up to a certain stage of development. And if this is the case, obviously experiments on this "something" will be assessed in terms only of the goals and ends.¹²⁷

¹²⁷ Abortion is obviously a radical form of genetic control. While space does not permit a review of the recent literature on abortion, still it is difficult to leave unnoticed the wise remarks of Leroy Augenstein, chairman of the biophysics department at Michigan State University. Augenstein contends that abortion laws are a paradigm. That is, how we handle the question will determine how we handle or mishandle other life-issues such as genetic manipulation; for they are of a piece. And there is little question in his mind that we are badly mishandling the legal issue. It is his conviction that once we set up the apparatus for making a decision, we then almost insure what that decision will be, or at

Even a cursory reading of the literature on genetic control will make it clear that decisions in this area put in the balance some rather basic human values. For instance, V. E. Anderson ominously notes that "the more freedom of choice is allowed, the less effective any program toward a defined goal will be."¹²⁸ Donald Fleming remarks that according to the eugenic planners the control of biological inventory "is or ought to be a question of social policy rather than individual indulgence."¹²⁹ Up to now, many have viewed contraception as a right of the couple. It will increasingly be viewed by statesmen and biologists as a duty. Some genetic planners question the very nature of parenthood and the family. For example, Kingsley Davis finds the most fundamental obstacle to genetic control through reproductive selection in "a curious fact," the retention of the family.¹³⁰ A system where people are connected socially by birth and in which responsibility for the rearing of children is primarily given to those who procreate them is said to be "a very primitive mode of social organization."¹³¹

Furthermore, nearly everyone who writes on genetic controls is concerned about the kind of thoroughbred considered desirable, and especially about the persons and processes qualified to make this determination. These questions are all the more urgent when one recalls the total detachment from religion ascribed to many biological revolutionaries. Fleming, for example, cites Nobel Prize winner Francis Crick to the effect that "there is going to be no agreement between Christians and any humanists who lack their particular prejudice about the sanctity of the individual, and who simply want to try it scientifically."¹³²

The stakes, then, are enormous. But here I should like to advert briefly to another issue in this discussion which can easily be over-

¹²⁸ *Op. cit.*, p. 352. ¹²⁹ *Art. cit.*, p. 68. ¹³⁰ *Op. cit.*, p. 183.

¹³¹ *Ibid.* ¹³² *Art. cit.*, p. 67.

least what values will be brought to bear in making it. The current proposals have almost totally ignored this fact. Hence they are setting patterns for our procedure in other areas (L. Augenstein, "It's Later Than We Think," *Ecumenist* 7 [1969] 41-43). Further recent literature on abortion includes: J. McLaughlin, S.J., "Abortion: Sweden and the U.S.," *Catholic Mind* 67 (1969) 24-32; "Illinois Bishops on Abortion," *ibid.*, pp. 59-64; *Documentation catholique* 66 (1969) 49 (Canadian bishops on abortion); J. O'Connor, "On Humanity and Abortion," *Natural Law Forum* 13 (1968) 127-33; John T. Noonan, "Deciding Who Is Human," *ibid.*, pp. 134-40; James E. Kraus, "Is Abortion Absolutely Prohibited?" *Continuum* 6 (1968) 436-40; James M. Gustafson, "The Transcendence of God and the Value of Human Life," *Proceedings of the Catholic Theological Society of America* 23 (1968) 96-108; R. F. Drinan, S.J., "Catholic Moral Teaching and Abortion Laws in America," *ibid.*, pp. 118-30; Richard A. McCormick, S.J., "Past Church Teaching on Abortion," *ibid.*, pp. 131-51; T. J. Harrington, "Legislation and Abortion," *Homiletic and Pastoral Review* 69 (1969) 685-90; James C. Fleck, S.J., "Canada Debates Abortion and Homosexuality," *Christian Century* 86 (1969) 354-58.

looked. It is the underlying one of theological methodology. Two previous entries (Ramsey, Hamilton) concretize the problem. Here we have two Christian thinkers in profound disagreement about the means of genetic control. When faced with the possibility of fecundation in vitro and AID, Hamilton states that he can find no a priori theological reasons for excluding such things. Ramsey, on the other hand, had insisted that a contemporary Christian reflection on Scripture leads us to conclude to the inseparability of the spheres of procreation and conjugal love. He then used this norm to exclude certain procedures of genetic control. In other words, he did find a priori theological reasons for excluding these things.

The issue of ethical theory suggested by this disagreement has been stated very well by James Gustafson: "Are there limits to man's tampering with human life which have a more direct relationship to religious beliefs?"¹³³ He rewords the point as follows: "It is clear that one does not have to have a Jewish or Christian theology in order to value human life. But does a Jewish or Christian theology which supports the moral principles which protect life in any way set limits, safeguards, or restrictions to what men are permitted to do with other human lives?" If one's answer here is yes—and I suspect that for most theologians it will be—he must then show how he derives these normative restrictions without becoming a biblical fundamentalist or a narrow natural-law legalist. This task is far from complete in the community of Christian moral theologians.

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¹³³ James M. Gustafson, "Commentary on *The Sanctity of Life*," in *The Religious Situation 1969*, p. 347.