

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY: APRIL-SEPTEMBER, 1971

The present six-month survey will focus on four principal themes; (1) norms and consequences; (2) norms, experience, and the behavioral sciences; (3) divorce and remarriage; (4) theology and liberation. In each of these areas the literature is enormous, and some of it is quite significant.

NORMS AND CONSEQUENCES

Christian man is a being of principles. For he always has experienced and always will experience the need both to manifest his faith in action and to communicate to others the implications of his faith convictions. But to manifest and communicate an experienced value means eventually to formulate it into a value judgment or norm. Clearly, overemphasis on norms can degenerate into a neolegalism at odds with the Christian idea. Nevertheless, when cultures resist norms or formulate them badly, they begin to wallow in a bed of moral marshmallows. So while morality cannot be reduced to decisions¹ and the norms which guide them, still moral norms play an important part in any life that hopes to remain human.² But if normative statements are to function constructively in human life, they must be properly understood and interpreted. This takes us to the heart of methodology in theological ethics as it relates to decision-making. Last year these "Notes" reviewed several important contributions to this question.³ Here I should like to review at considerable length several articles which continue the discussion, particularly in terms of the key part played by consequences in the development of norms.

In another of his valuable and creative contributions, Bruno Schüller, S.J., discusses two understandings of moral norms and emphatically rejects the second.⁴ Both appeal to what is "according to nature" but use the phrase in remarkably different ways. The first understanding

¹ On this matter see the thoughtful suggestions of Stanley Hauerwas, "Situation Ethics, Moral Notions and Moral Theology," *Irish Theological Quarterly* 38 (1971) 242-57. Also D. F. O'Callaghan, "The Meaning of Moral Principle," *Furrow* 22 (1971) 555-63.

² Using a Kantian model of norm (as universal), Roger Mehl somewhat overdraws the distinction between an ethic of norms and an ethic of values. Properly understood, the two (values, norms) are complementary, not competitive. See his "Universalité ou particularité du discours de la théologie morale," *Recherches de science religieuse* 59 (1971) 365-84.

³ THEOLOGICAL STUDIES 32 (1971) 80-97.

⁴ Bruno Schüller, S.J., "Typen ethischer Argumentation in der katholischen Moraltheologie," *Theologie und Philosophie* 45 (1970) 526-50.

can be summarized as follows. The good of man comprises several values, e.g., knowledge, health, wealth. Only one such value is an absolute value: man's "salvation" or his moral good; for in this good man realizes the sense of his existence. It is without exception that value which deserves preference. Therefore one who wishes to seek the good of another *never* has a justifiable reason to lead a person to act against his conscience. Other values are relative. Whether it is morally good to realize a relative value in or for another depends entirely on the relationship of this relative value to other concurring values. Therefore ethical norms which impose the realization of a certain relative value always include a built-in exception clause. They have binding force unless the value they impose competes in the situation with a value which is to be preferred. For example, the norm imposing the keeping of entrusted secrets should be understood as follows: one must keep the entrusted secret unless the only way to prevent a greater evil is to reveal the secret. Obviously, the meaning and binding force of norms concerned with relative values is being determined consequentially here.

Now when man acts in this way, he is, says Schüller, acting "according to his nature," because he is acting according to the judgment of his reason. In taking the *ordo bonorum* as the determining factor of his choosing, man makes reason the binding measure of his activity. Therefore to act "according to nature" is simply a synonym for to act "according to reason."

The second understanding of norms makes use of "according to nature" (and "contrary to nature") in an ambiguous sense and is therefore guilty of doubling the middle term of its argument. This form of argument has frequently been used in the past and had a prominent place in the debates before and after *Humanae vitae*. An example will help. "Every action contrary to nature is morally evil. But falsehood and contraception are contrary to nature. Therefore falsehood and contraception are morally evil." It is Schüller's point that "contrary to nature" has a different meaning in the major than in the minor. In the major it must mean and does mean "unreasonable." In the minor it can only mean a "relative disvalue," even though the argument intends it to mean more. If that is the case, then the argument is simply invalid; for it equivalently says that to cause a disvalue is unreasonable. The heart of Schüller's case is that falsehood and contraception (e.g.) are only relative disvalues, and whether it is unreasonable and immoral to cause them can only be determined by seeing what disvalues would occur if we did not cause them, i.e., by a consequentialist calculus.

Last year, after reviewing some of Schüller's work, the compositor of these "Notes" stated: "If Schüller's ultimate justification for causing

or permitting physical harm is a preference-principle, it is not clear what role or importance the traditional notions of directness and indirectness play in his analysis."⁵ Schüller has now turned his attention to this problem.⁶ He points out that the direct-indirect distinction has been used in several areas: scandal, co-operation, killing, contraception. But it was used for a different reason where scandal and co-operation are involved than where killing and contraception are involved. Once we isolate this reason we will see the extent to which we can abandon the distinction, even though it will retain its descriptive function.

The sin of another, Schüller notes, is a moral evil and as such is an absolute disvalue. It would seem to follow that an action which has such a disvalue as a foreseen effect must be absolutely avoided. But this would lead to impossible consequences. No lawmaker, e.g., could attach a punishment to violation of law because he would know in advance that this would be the occasion of sinful bribery for a certain undetermined number of people. More fundamentally, it is hard to reconcile an absolute duty to avoid foreseen sin with the will of the Creator who created a being capable of sin. The way out of the dilemma has always been sought in distinguishing will, intention, and purpose from permission and toleration—or direct from indirect. The absolute disvalue of sin demands only that one not will and intend it under any circumstances. However, for a proportionate reason it may be permitted.

Schüller admits that there is something mysterious here but insists on the distinction where active scandal is concerned. But the reason the distinction is necessary is that we are dealing here with *moral* evil. The absoluteness of the disvalue forces some such distinction. However, where we are dealing with nonmoral evils (error, pain, sickness, death etc.), the reason for the distinction disappears precisely because these disvalues, fundamental as they may be, are relative disvalues. Concretely, sickness must be avoided but not at any price, not, e.g., at the price of plunging one's family into destitution. Schüller argues that when we justifiably cause a relative disvalue in our activity, we should not call it "indirect." Use of this traditional term flies in the face of the meaning of words. For instance, when one administers physical punishment to a refractory child from purely pedagogical motives, should we call the punishment and pain "indirect"? Hardly. Rather it has the character of a means and we speak of an intending will, a direct choice where means are concerned. We should not abandon this usage. Indeed, it brings out clearly the difference between the attitude to moral evil

⁵ THEOLOGICAL STUDIES 32 (1971) 94.

⁶ Bruno Schüller, S.J., "Direkte Tötung—indirekte Tötung," *Theologie und Philosophie* 47 (1972) forthcoming.

and nonmoral evil. For a proportionate reason we may *permit* a moral evil, but we may directly will and directly cause a nonmoral evil if there is a proportionate reason for doing so.

Schüller then turns to killing and contraception. Why did traditional theology feel it necessary to use “direct” and “indirect” when dealing with these subjects? It was because traditional theology viewed these actions as “evil *in se*.” This can be sustained, however, only if the death of a person is an absolute evil in the sense of a moral evil. Once it is granted that the killing of an innocent person is the destruction of a fundamental but nonmoral value, there is no need for the distinction direct-indirect. Rather the assessment is made “teleologically,” i.e., from consequences.

Schüller is correct, I believe. But the matter is of such practical importance that a rewording may not be out of place. Only if we study the origins of the terminology direct-indirect will we see to what extent it can be abandoned. It can be argued that its origins are in the value-conflicts inevitable in human choice. Whenever one chooses to do a good, he leaves another undone. Right reason tells us that we may choose to pursue this good of our neighbor only if it is at least as beneficial to him as the value we leave undone. This same analysis began to be applied also to the instance where human action caused a disvalue in a positive way, not simply by omission. Concretely, if some important value or good could be effected only by causing simultaneously some measure of harm, then that was judged morally proper if the good chosen was at least as important as the harm unavoidably caused. In other words, there was a proportionate reason for choosing the disvalue. The disvalue was not to be imputed to me precisely because it was unavoidable.⁷

Now what should not be imputed to one because it was humanly unavoidable does not enter his purposes and aims, or at least not in the same way as what is to be imputed. Therefore what should not be imputed to one should not be called voluntary, or at least not voluntary in the same way as disvalues which are to be imputed; for the moral order is properly the order of voluntary actions. This choice, as non-imputable, began to be called *indirecte voluntarium*. But it should be noted that “indirect” was (or should have been) first of all a way of saying that there was at least a proportion between the value pursued and the value left undone or the disvalue caused. It was not primarily a psychological analysis.

⁷ If there was no truly proportionate good at stake, it was and is reasonable to conclude that the disvalues caused were avoidable, hence that they were chosen not as unavoidable means to a higher value but for themselves (*propter se*), hence that they entered and infected the agent's purposes and aims—and were direct *in that sense*.

However, in the course of time the term began to be interpreted in a psychological way.⁸ It was natural, then, to associate it with certain forms of conduct that seemed to elicit this psychological intention. Thus eventually certain interventions into pregnancy came to be called direct killings and therefore illicit. That is, "direct" and "indirect" became terms which *decided* what actions are licit or illicit rather than terms used to summarize such a conclusion drawn on other grounds (presence or absence of proportionate reason).

In summary, if it is true to say that it is, above all, proportionate reason which gave rise to the terms "direct" and "indirect," it will be clear to what extent they can be abandoned. There is never any reason for choosing the sin of another in order to realize a "higher value," because there is no higher value. No good is greater for man than his moral good. Or negatively, sin is an absolute disvalue for man in light of which all other disvalues (e.g., sickness, poverty, death) are relative. Hence we may never choose and intend it as we may choose and intend other disvalues.⁹ And yet we know that at times sin will occur on the occasion of our pursuit of the good of another. The terms "direct" and "indirect"—or their equivalent—when applied to scandal still seem to be morally relevant and utterly essential.

Joseph Fuchs, S.J., has written a lengthy study which appears to contain a significant shift in his methodology toward a morality of consequences.¹⁰ As one would expect from Fuchs, the essay is a careful, subtle, ranging, and balanced piece of writing. There are times, however, when it is less than absolutely pellucid. Fuchs is primarily concerned to discover whether there are any concrete norms which are absolute, i.e., without exception. His key ideas can be distilled as follows.

First, he distinguishes premoral evil from moral evil and insists on the crucial nature of the distinction.¹¹ Killing, wounding, deceiving, sterilizing, etc. are premoral evils, not necessarily moral evils. "Whoever sets up negative norms, but regards exceptions as justified, by reason of overriding right, or warranted compromise, or for the sake of the lesser evil (or the greater good), shows by this that the *malum* repudiated by the norm is *not* (yet) to be understood as *moral* evil."¹²

⁸ Cf. P. Knauer, S.J., "The Hermeneutic Function of the Principle of Double Effect," *Natural Law Forum* 12 (1967) 132-62.

⁹ Thus it seems clear that direct and indirect are ultimately nonfunctional in Knauer's analysis.

¹⁰ Joseph Fuchs, S.J., "The Absoluteness of Moral Terms," *Gregorianum* 52 (1971) 415-58.

¹¹ Fuchs uses "premoral" where Schüller had used "nonmoral."

¹² Fuchs, *art. cit.*, p. 443.

Secondly, Fuchs asks: when do these premoral evils become moral evils? Or—which is the same—when is human action or the man in his action morally evil? His answer: when he “*has in view and effects a human non-good, an evil (non-value)—in the premoral sense, for example, death, wounding, wrong etc.*”¹³ The next question clearly is this: when must one be said to “*have in view and effect*” premoral evil? The answer: when he causes it without proportionate reason. Thus Fuchs says:

A surgical operation is a health measure, its purpose is to cure, but it is at the same time the cause of an evil, namely wounding. This, however, appears to be justified in view of the desired cure and is capable of being incorporated in the *one human* act—a curative measure. The surgical operation is *morally* right, because the person acting desires and effects only a good—in the *premoral* sense—namely, restoration of health. If the surgeon were to do more than was required in performing this operation, that “*more*” would not be justified by the treatment indicated; that is, it would be taken up *as an evil*—in the *premoral* sense—into the surgeon’s intention; it would be morally bad.¹⁴

Therefore for Fuchs premoral evil caused becomes moral evil when it is “*taken up as an evil into one’s intention.*” This happens when there is no proportionate reason for causing the premoral evil.

Obviously, then, intention has a great deal to say about the moral quality of an act. Indeed, Fuchs says that the moral quality of an act cannot be determined without reference to the intention. And in this sense he qualifies the traditional understanding of object, end, circumstances. Traditional moralists said that certain actions were morally evil *ex objecto* in the sense that no good intention could purify them. The basic morality of such acts was determined by the object. Fuchs says, in contrast, that “*a moral judgment of an action may not be made in anticipation of the agent’s intention, since it would not be the judgment of a ‘human’ act.*”¹⁵ In other words, the object must be taken with the intention before the meaning of the action, its true moral character, can be stated. In light of this Fuchs asks:

What value do our norms have with respect to the morality of the action as such, prior, that is, to the consideration of the circumstances and intention? We answer: they cannot be moral norms unless circumstances and intention are taken into account. They can be considered as moral norms only because we

¹³ *Ibid.*, p. 444.

¹⁴ *Ibid.*

¹⁵ To what extent this departs from the traditional understanding is not altogether clear. That depends on how many circumstances traditional moralists allowed to enter the statement of the *objectum* and how many Fuchs excludes.

tacitly assume to judge the action in the light of possible circumstances and intention.¹⁶

However, since this tacit advance judgment is theoretically impossible, we cannot rule out the possibility that in practice there will be an exceptional instance. Therefore, when treating of the traditional notion of intrinsic evil, Fuchs notes: "Viewed theoretically, there seems to be no possibility of norms of this kind for human action in the inner-worldly realm." For a behavioral norm universally valid would presuppose that those who arrive at it "could know or foresee adequately *all the possible combinations* of the action concerned with circumstances and intentions, with (pre)moral values and non-values."

Even though there can be no theoretically exceptionless norms of behavior, Fuchs sees a genuine practical worth in norms properly formulated as universals. First, they do point out values and disvalues. Secondly, certain norms can be stated as universals "to which we cannot conceive of any kind of exception; e.g., cruel treatment of a child which is of no benefit to the child." Thirdly, in a specific culture or society universal norms can develop which "suffice for ordinary use in practical living." However, the existence and validity of such norms does not mean that we are exempt from rethinking them. Such rethinking is warranted where faulty evaluations in the past generated faulty norms or where a norm grew out of a culturally conditioned situation which no longer obtains. In this latter case moral reformulation is not only conceivable but demanded.

Fuch's debt to Knauer and Schüller is obvious and acknowledged. Because I agree with so much of what he says, it might be helpful to indicate some remaining areas of unclarity.

First, because Fuchs has followed Knauer so closely, the question of what he means by "intending" pre-moral evil arises, much as it did with Knauer. Knauer, it will be recalled, proposed that when there is a commensurate reason for causing pre-moral disvalue, the evil is *indirectly* willed. When there is no commensurate reason, the evil caused is *directly* willed. As noted above, Schüller has rightly challenged the usefulness of this terminology. Fuchs states that when there is no proportionate reason, the pre-moral evil caused "would be taken up *as an evil*." He also says that pre-moral evil must not be "intended as such." Is "intending evil as such" equivalent to direct intent? Fuchs nowhere says this, but his heavy reliance on Knauer leads me to raise the question. Would it not be clearer and more precise to say that it is legitimate to intend pre-moral evil *in ordine ad finem proportionatum*? I may

¹⁶ *Ibid.*, p. 446.

choose and intend the pain of a child or a patient if it is the only way or the most reasonable way to secure his greater good. This "greater good" (proportionate reason) does not mean that the premoral disvalue is not intended; it means that it is not intended *propter se*. Therefore would it not be better to say that it is legitimate to intend a disvalue *in se sed non propter se*? When there is no proportionate reason, the disvalue caused is chosen and intended *in se et propter se*, and it is this *propter se* which makes the act immoral. I believe this is what Fuchs means by "intending evil *as such*," but his occasional use of the simple and unqualified word "intend" leaves the matter a bit murky.

The second question raised by Fuchs's analysis is closely connected with the first. It is also a question Knauer did not face satisfactorily. In treating premoral evil (wounding, deceiving, killing), Fuchs insists in the examples he gives that the evil or disvalue is not an isolated action "but only an element of the one act." Thus he notes: "In the *one* human action (health care, transplant) the performing of the evil is not an isolated (human) action, but only an element of the one action. Therefore, a morally bad (human) action is not being used as a means to a good end."¹⁷ The evil is justified because it "is capable of being incorporated in the *one human* act—a curative measure." The example of surgery serves Fuchs well, for obviously the harm (or "wound") is part and parcel of the one healing act or process.

Yet, if I understand Fuchs correctly, there is some unclarity here. There are two elements Fuchs appeals to in justifying the doing of premoral evil: proportionate reason and the fact that the evil is simply an element of one human action. What does it mean to say that the evil must be "incorporated in the *one* human act"? Does he mean to say that every time there is a proportionate reason, the act is really one by reason of the intent of this good, and therefore the evil caused is really only an element of one human action? Or does he mean that first we must discover whether there is in human terms one single action (as, e.g., in surgery) into which the premoral evil is "capable of being incorporated"? If Fuchs means the first alternative, it would seem that he is pushing language too far; for if an action is truly one human action, it is realistically describable as such. Thus we can say realistically that a leg amputation is a "healing action." If, however, the intended effect does not allow one to redescribe the action in terms of this effect, then are we still dealing with a single human action? If so, in what sense? Not all actions with good consequences are describable in terms of the intended results—a point Paul Ramsey has made very sharply.¹⁸ And

¹⁷ *Ibid.*

¹⁸ Paul Ramsey, *Deeds and Rules in Christian Ethics* (New York: Scribner's, 1967) p. 196.

when they cannot be so redescribed, can we really speak of the premoral evil caused and chosen as only an element in *one human action*? Or if we do, what does this mean? The earlier analysis of Knauer never got off this reef.

Take the now classic case of Mrs. Bergmeier. Can her extramarital intercourse and subsequent pregnancy (whereby she was able to achieve her release from a Soviet concentration camp) be said to be simply an element of one human action describable as "bringing her family happiness"? Can it be called this simply because this is her ultimate intent? Hardly, I should think. Not only does this stretch human language beyond its limits, but it ignores all the other possible or probable consequences and describes this act in terms of just one. Rather it seems we should say that she performed one human action (extramarital intercourse) which had, among other effects, the intended good consequence of bringing her to her family. If this is a correct rendering of the example, what does it mean to say that premoral evil must be only an element of "one human action"? The example of surgery is a bit too simple; for in surgery the very same physical act which amputates also removes a threat to life. Obviously the healing intent is present, but it is not precisely this intent which makes the amputation one human action.

Therefore how far is Fuchs willing to stretch this example? I am not sure what he would say to the case of Mrs. Bergmeier; but if the ultimate justification is that the premoral disvalues must be an element of "one human action," then this one human action should be describable in terms of the intended value—much as amputation can legitimately be called a "curative procedure." Perhaps Fuchs's insistence that the premoral evil be incorporated into the one act overstates the requirements a bit. However this may be, such insistence either (1) very sharply limits the premoral evils one may cause in the pursuit of good or (2) expands the notion of "one human action" to the point where human language will no longer sustain the unity.

The third reflection constitutes a matter of emphasis. In treating the notion of intrinsic evil, Fuchs rightly claims that theoretically "there seems no possibility of norms of this kind for human action in the inner-worldly realm." He refers to *behavioral* norms—i.e., norms which take a materially described action (killing) and say of it that it is always unjust. The reason for this: an action cannot be judged apart from circumstances and intention. This seems certainly correct, but three reflections are called for.

First, it must be said that the theological problem only begins here. For instance, a prohibitive behavioral norm (e.g., against killing) is based on the perception of the value of human life and the disvalue of

taking human life. Where exceptions are concerned, the real problem is to show that there are higher values involved, and what they might be. Fuchs admits this clearly when he says: "Hence the attempt on the part of moral theology to discover which values realizable in this world can justify 'killing' and which cannot."¹⁹ Circumstances and intention justify exceptions only when they are concerned with higher, nonpost-ponable values. If we moralists seriously propose exceptions as possible (and they are), our most basic task is to discover those values which do and do not justify causing the disvalue. Unless we do so, are we not inviting people to except themselves without providing any hierarchy which would make such a decision rational, and therefore promotive of greater humanization? The point is emphasized here because recent literature has understandably been concerned with the fact of exceptions, while it has almost never treated the extremely difficult and unfinished task of describing the kinds of values which alone make the causing of disvalues reasonable.

A second point. While it is true that it is impossible to foresee all the possible combinations of concurring values and disvalues (circumstances and intention), still through experience and reflection it is possible to foresee at least very many of them. Therefore Fuchs is certainly correct when he says of concrete behavioral norms that "they suffice for ordinary use in practical living." They "suffice" because they include the ordinary circumstances in practical living. This is the same as saying that the significance of the action (drawn from object and ordinary circumstances) is ordinarily clear. And this in its turn is the same as saying that *ordinarily* a person will achieve the greater good by following the norm, because it incarnates the greater good. Negatively stated, this means that one who makes an exception of himself has the burden of proof that his case is truly exceptional.

Thirdly, Fuchs does admit "norms stated as universals . . . to which we cannot conceive of any kind of exception." In this sense I suppose he is admitting a kind of "relative absolute."²⁰ But his example is "cruel treatment of a child which is of no benefit to the child." One could and should argue that cruel treatment of a child (or anyone) is never permissible, although a treatment which visits hurt, harm, or deprivation on someone need not be cruel. Here Fuchs has introduced a formal element (cruel) into the description; this makes his example a very poor one.

¹⁹ *Ibid.*, p. 450. Cf. also Franz Böckle, "La morale fondamentale," *Recherches de science religieuse* 59 (1971) 331-64, at 358.

²⁰ On this point cf. David Blanchfield, "Balancing in Moral Theology," *American Ecclesiastical Review* 164 (1971) 90-96.

A final observation. Fuchs has obviously taken a rather giant step in the direction of a consequentialist methodology. But how far this stride takes him is not altogether clear. In discussing the formation of concrete moral norms, he mentions that the significance of an action is a prime criterion. He then continues: "It is not only the 'meaning' itself of experienced realities that constitutes a criterion for the evaluating *ratio*, but also practical knowledge of the outcomes and consequences which determined modes of conduct can have. . . ."²¹

Here Fuchs seems to contrast meaning and practical knowledge of consequences. Actually these should not be contrasted in this way; for the very "meaning" of an action can only be gathered when all aspects of the action, especially its consequences, have been weighed as far as possible. The fact that Fuchs contrasts meaning and consequences implies that he is willing to speak of the meaning of an action apart from its consequences. This raises the question of just what importance he does want to attribute to consequences. The matter remains obscure.

Charles Curran rejects a morality of consequences (the so-called "teleological" model) as proposed by John G. Milhaven, i.e., one built on the same model which functions in the empirical sciences.²² His concern is to show that a model adequate for judging the empirical sciences is not necessarily adequate for judging Christian morality. That is certainly true. But need a teleological model evoke the technological model wherein all things are means for "man the artisan"? That is not clear. To indicate that a consequentialist model is insufficient, Curran appeals to the just-war theory. This theory maintains not only the principle of proportionality, where consequences play the decisive role, but also of discrimination, "which forbids the direct killing of innocents whatever the consequences."

Here one must ask, I believe, whether the principle of discrimination, rather than being in contrast to a consequentialist analysis, is not itself possibly a conclusion of such an analysis. Its meaning then would be: we can conceive of no proportionate reason for killing innocent people even during war. Behind such statements would be the conviction that even though certain short-term military advantages (in terms of saving lives) would possibly follow from killing the innocent, still the results in the long run would be more humanly disastrous and destructive. This is a possible rendering of the principle of discrimination and it is obviously consequentialist in character.

Putting the matter another way, Knauer-Fuchs-Schüller would have

²¹ Fuchs, *art. cit.*, p. 435.

²² Charles Curran, "La théologie morale et les sciences," *Recherches de science religieuse* 59 (1971) 419-48.

to say that the principles of proportionality and discrimination are really a single principle—much as Knauer has argued that the principle of totality in medical matters is really identical with the principle of double effect.

The two arguments Curran brings elsewhere against consequentialism do not seem decisive. They are: “No one can know beforehand all the consequences of his action, and there always remains the problem of appraising the hierarchical importance of the various consequences involved.”²³ These are formidable difficulties, of course, but they only point up the imperfect character of human norms, the need for careful homework and Christian sensitivity in working out a hierarchy of values within which one makes value judgments, the need for tentativeness, and the abiding readiness to admit a mistake and backtrack. Our norms are perhaps much more norms of responsibility than of morality.

Nicholas Crotty, C.P., in the course of a long study on conflict situations, exposes his methodology on rules and decision-making.²⁴ Since his original study appeared in this journal, a brief précis will suffice to recall the substance of his ideas. Crotty faults the manualists for a method and world view which denied the possibility of a conflict of moral values. For them, “moral value and moral disvalue consist respectively in the conformity and difformity of the moral agent’s will with the perfectly ordered demands of natural law.” Crotty agrees with many contemporary theologians that there are genuine conflict situations. These arise not only because of human limitations but because of the sinfulness of the world. Therefore “we need to be repentant not only of the sinfulness we bring to our conflict situations but of the very existence of these situations and the confusion, clash, and incompatibility of the moral values in any given response to them.”²⁵ Crotty then takes issue with those who would say that in such a world an act is “quite simply morally good” even though it involves the causing of disvalues. A love-centered ethic cannot tolerate this. Rather its prime concern will be “the actual implications and consequences of our behavior for human persons and human fellowship,” for its supreme norm is the “actual, concrete welfare of others.”

In light of this Crotty rejects the distinction between direct and indirect as morally irrelevant. What is morally relevant is that a harmful effect occurs or does not occur, not whether it occurs *per accidens* or

²³ Charles Curran, *Contemporary Problems in Moral Theology* (Notre Dame: Fides, 1970) p. 25.

²⁴ Nicholas Crotty, C.P., “Conscience and Conflict,” *THEOLOGICAL STUDIES* 32 (1971) 208–32.

²⁵ *Ibid.*, p. 215.

per se with relation to my activity. After all, it matters little to the enemy whether he expires as a result of my direct or indirect activity. Therefore the "justification or nonjustification must stem from an appreciation and assessment of all the values and disvalues in the total consequences of the behavior under consideration . . . regardless of how they relate physically to the good we are expressly intending."

In view of this consequentialism Crotty insists that on the level of concrete, specific actions there are no actions intrinsically evil, hence no moral absolutes at this level. That is, any action can *in principle* be the most loving response in a given situation. Our moral rules, therefore, are empirical generalizations, rules of thumb that arose out of the observation of a number of instances and are applicable only when the same values and disvalues are implicated in a way that is not significantly different. Therefore, in final analysis, decision-making "will be a matter of assessing all the moral good and all the moral evil implicated in each of the options available as feasible responses to one's situation and of electing and following out that alternative which appears most favorable to human welfare."²⁶

Crotty's piece has packaged a good deal of the contemporary discussion about norms in a way that is interesting and challenging, though not always free of caricature. Because I agree with the substance of Crotty's approach, it is all the more important to suggest some areas where a continuous exchange might hope to bring greater clarity.

1) *Use of the term "moral."* Throughout the article Crotty refers to the exclusion of values or the causing of disvalues as "moral evil." Thus, he says: "Where these implications and consequences are detrimental to persons and community, the behavior is to that extent morally evil behavior. The evil implications and consequences may be unavoidable. . . . But they are there and morally they are evil."²⁷ The obvious consequence of this usage—and one Crotty accepts—is that such morally evil consequences "need to be recognized and deplored in true Christian repentance." However, he notes that this repentance "will mean something different from the repentance we should have for moral evil that clearly flows from our own deliberate activity."

Crotty contrasts this position with the manualist usage. In this latter view, when harmful effects occur as the result of our activity (e.g., the death of another), they are not moral disvalues but simply "physical evils." Crotty seems to understand this as the rough equivalent of "not really humanly important." In my opinion this is certainly not what traditional theologians meant. True, the term "physical evil" is not the

²⁶ *Ibid.*, p. 231.

²⁷ *Ibid.*, p. 219.

best term for the unavoidable disvalues our actions or omissions produce at times. For one thing, it too easily restricts the notion to tangible and material harm. Secondly, it can indeed carry the aroma of "not really important," especially to those who rightly see man's moral good as his absolute value.

But the term "moral evil" is, if anything, worse yet. First of all, it is at least confusing to speak of human disvalues such as death, suffering, poverty—regardless of how they are caused—as *moral* evil; for the word "moral," while analogous, has always referred to the sphere of voluntariness, and more narrowly to the sphere of human freedom and responsibility. When we sever this relationship, we get into the absurd position of having to talk about events as moral which have no relationship to moral beings and their activity. Fuchs and Schüller have made this clear.

Secondly, I believe the usage is dangerous; for if the term "moral" is used of unavoidable disvalues, we are getting perilously close to a Protestant tradition of unavoidable sin. This danger is suggested by Crotty's call for repentance where human acts have caused unavoidable human disvalues, even though he distinguishes the notion from genuine repentance. Schüller and Trigg have recently insisted on the essential difference between true repentance and regret at causing human disvalues through our activity.²⁸ Furthermore they believe this profound difference should manifest itself in our language. I believe they are right. If there is such an essential difference in these two reactions, then there is certainly an essential difference in the human activity which gives rise to them and this difference should also manifest itself in our language. But to refer to human disvalues as "moral evil" whether they are avoidable or not is to neglect this distinction and plant the seed of confusion, perhaps even of false consciences.

2) *Direct and indirect intent.* Crotty's use of the term "moral" is possibly responsible for another imprecision. He rejects the notion of direct and indirect as morally irrelevant: "There is no ethical significance in the distinction, so basic to the manualist approach, between evil that is *directe voluntarium* and *indirecte voluntarium tantum* . . ." ²⁹ What he is after here is clear. Crotty is rejecting an understanding of direct-indirect which says that a disvalue directly caused is one which is therefore directly intended, and thereby part of our purpose or aim. In this I believe he is correct. The terms "direct-indirect" have gotten almost identified with physical causality and therefore with certain

²⁸ Bruno Schüller, S.J., "Zur Rede von der radikalen sittlichen Forderung," *Theologie und Philosophie* 46 (1971) 321-41, at 338 ff.; Roger Trigg, "Moral Conflict," *Mind* 80 (1971) 41-55.

²⁹ Crotty, *art. cit.*, p. 231.

concrete actions. But Crotty has rejected not only this distorted understanding but also "any ethical significance in the distinction." That this goes too far seem clear from Schüller's study noted above. Some such distinction is truly essential where scandal (involving the *sin* of another) is involved. But since Crotty does not distinguish moral disvalue from nonmoral or premoral disvalue, he can establish no difference between choosing someone's sin and choosing his physical hurt.

3) *The meaning of actions.* In his discussion of moral norms, Crotty proposed that at the level of concrete specific actions there are no absolutes, simply because at this level "actions . . . cannot be judged ethically without a reading of the situation in which they occur and of its demands in terms of Christian love." This is true, I believe, if it is carefully understood. In some earlier writings which commented on Joseph Fletcher, I had written the following:

I am suggesting that human sexual intercourse has a sense and meaning prior to the individual purpose of those who engage in it, a significance which is part of their situation whether or not the partners turn their minds to it. It is an act of love, and therefore has a definition which relates it immediately to the love of man and woman—with all the demands of this love.³⁰

This appears to cross swords with Crotty's statement about absolutes. And so he criticizes it as attributing to an action "significance independently of the human context in which it occurs." The statement, he contends, speaks of "sexual intercourse as such," which is to speak of mere physical behavior and give it a meaning. Rather, he notes, "we cannot say that sexual intercourse has, in itself as a physical act, a meaning that can be honored only in marriage," which means that "any argument against premarital sex cannot take its starting point from the nature of coitus."

We are faced here with an extremely interesting methodological point and it would be fruitful to pursue it. Those who speak of sexual intercourse (which is only an example) as having a meaning "prior to the individual purposes of those who engage in it" are not attributing a human meaning to an act described merely physically or in abstraction from its situation. What they are doing is supposing an underlying value judgment and formulating it in this way. Perhaps we could put the matter as follows. It has been and still is common to refer to sexual intercourse as "the marital act." There is here a hidden value judgment: this action ought to be restricted to the marriage relationship. The same is true of the usage "human sexual intercourse has a sense and

³⁰ "Human Significance and Christian Significance," in *Norm and Context in Christian Ethics*, ed. Paul Ramsey and G. Outka (New York: Scribner's, 1968) p. 619.

meaning etc.” What this really *au fond* says—or better, supposes—is that this action *should be* restricted to those who are in the relationship we know as marriage. This is the meaning of those who speak this way. If the underlying value judgment is correct, then it is quite proper to speak of “the marital act” and it is proper to say that “intercourse has a meaning etc.”

How legitimate is the underlying value judgment? That can, of course, be questioned. One who questions it immediately raises the more interesting methodological question: how was this judgment derived? It seems that it is the conclusion of long experience and reflection, especially about consequences. In other words, the experience of centuries has led us to conclude that unless this type of intimacy is restricted to the marriage relationship, the integrity of sexual language will be seriously threatened. Such a judgment is clearly a form of consequentialism. “What would happen if . . .?” It is precisely here that a consequentialist methodology appears to me absolutely correct. We are concerned with what is promotive or destructive of human welfare and we judge this by observing and reflecting on the effects of conduct on this welfare. But once it becomes clear from experience that the continuing viability of sexual language calls for the permanent and exclusive relationship of marriage, I think it is legitimate to speak of “the marital act” in this value-laden sense, i.e., this act should be restricted to marriage. And in so far as one can speak this way, he can also speak of the “nature of sexual intercourse.” It can even be said that “it has a meaning etc.,” providing we understand the roots of this judgment. This is all that is (or should be) meant by such usage.

This analysis leads to two additional reflections. First, traditional theologians over the past centuries were more consequentialist than their language at times would indicate. For instance, the standard approach to theft (“taking another’s property *against his reasonable will*”) is an approach which could have been refined in this way only by considering consequences. Similarly the whole treatment of excusing causes shows a sensitivity to the conflict of values, hence of consequences involved in formulating moral obligations. Consequentialist suppositions are so pervasive by implication in traditional treatises that the real question is why these suppositions were apparently resisted in the treatises touching innocent life and sexuality. In these areas we encounter concrete pieces of conduct one may never do regardless of the consequences. Perhaps it was because these are matters of great public concern. Perhaps it was the form of argument used—e.g., *ex defectu juris* where killing is concerned, as Schüller notes.³¹ At any

³¹ Cf. n. 6 above.

rate, it is true that traditional treatises were often only apparently more deductive (or deontological) than contemporary theologians.

Secondly, when one speaks of "the marital act" or (which is the same thing) when one attributes a sense to sexual intercourse, it must be understood that such value-laden language represents a cultural judgment; i.e., this normative judgment has been concluded from experience within a culture over the centuries. That is only to say that our sexuality, like everything else about us, is given to us by our culture. In this sense the meaning of our sexuality is indeed independent of our free choice. It would be as absurd to think we could live a Neanderthal sexuality as one proper to the year 5000 A.D. We cannot simply endow sexuality with any meaning we care to. To accept this fact is not to indulge in "merely physical descriptions" of behavior, as Crotty contends. It is to accept the value judgments concluded from experience and then to designate our behavior with normative language built on such judgments. It is not to describe actions "independently of the human context." It is simply to accept the fact that the dominating aspect of this context comes to us through our culture and is, in fact, monogamous marriage.

Obviously, if such underlying value judgments are cultural in character, they can change. One's sole concern then is whether the direction of the change is humanly promotive or destructive.

4) *Rules and situations.* In speaking of decisions in the situation, Crotty writes:

If they [acts of premarital intercourse] are to be condemned, such condemnation cannot rest on the fact that they do not do justice to the meaning of conjugal intercourse but only on the fact that, given the sort of persons we are and given the relationship that exists between this man and this woman in this situation, abstaining from intercourse serves better the cause of human welfare, their own and others', than engaging in intercourse. There must be, once again, a weighing of all the values and disvalues that are foreseen to flow from such behavior in the given situation. The moral agent must discern these values and disvalues, assess them, and decide in the light of them whether sexual intercourse constitutes the most loving of the options open to him as possible responses to the situation.³²

I have suggested that the two criteria mentioned by Crotty are really not different if one understands the intent and consequentialist underpinnings of the phrase "do justice to the meaning of conjugal intercourse." What is of concern here is rather the meaning of a general value judgment or rule of action in Crotty's view. If one has constantly to weigh all the values and disvalues of his situation, there seems to be no real utility in a rule or value judgment he brings to the situation. If moral

³² Crotty, *art. cit.*, p. 228.

rules are of any value at all, it is that they establish presumptions, a point Crotty himself makes. Why then this insistence on a constant personal verification of the rule in my case? Certainly we do not want to exclude the exceptional instance. But if our basic value judgment is correct, we would not urge weighing all the values and disvalues to see *whether* premarital relations are morally in order. Rather would we not have to challenge a couple to show convincingly on what possible grounds they are an exception to the rule?

This point has deep pastoral and educational as well as methodological implications. Perhaps the matter might be formulated as follows. Human sexual expression provides us with an unparalleled form of self-disclosure, sharing, and growth. Therefore we have always been concerned with the conditions for protecting and enhancing this mode of self-disclosure. If long experience and reflection have built the conviction that the profound human values involved in sexual intimacy are best protected and enhanced by conditions describable as marriage, then this means precisely that the values and disvalues of other options have already been sifted over the centuries. Must it not be supposed that the values the individual unmarried couple might find for initiating sexual relations are, by and large, the very values experience has weighed and rejected as sufficient to outweigh the eventual disvalues? To ask the couple to do this all over again is to suggest that reasons similar or identical to theirs had no part in the establishment of the norm. Contrarily, quite the opposite has to be presumed if we want to prevent a balanced empiricism from plunging into an unreal individualism.

Therefore, from the fact that concrete norms *can* have exceptions (or that certain actions do not fall within the norm properly stated), it does not follow that one must weigh all the values and disvalues in his situation to see whether he should follow the norm. *That* conclusion depends on how much strength, what content, and therefore what presumptions we give to the underlying value judgment. For instance, from the fact that killing is not always morally wrong it does not follow that there must be a weighing of all the values and disvalues that are foreseen to flow from such behavior in the given situation. That would only follow if the death of another were a relatively insignificant value frequently in conflict with higher values. Rather I enter the situation with a strong presumption that I may not kill, and I am budged from this conclusion only by the most extraordinary and tragic instances. Therefore, if Crotty is going to frame his advice as he has, it would be necessary first to get involved in a careful discussion of premarital relations to determine whether and why they are (1) most always destructive and wrong, (2)

generally not destructive and wrong. He should discuss the underlying value judgment and not presuppose this matter has been solved.

In summary, then, if a couple are to except themselves from an accepted norm, they bear a double onus: (1) to show that the values and disvalues they adduce are *different* from those which gave birth to the original value judgment, and (2) to show that these different values would outweigh the disvalues in this instance—in terms of both long-term individual and societal considerations.³³ They may, of course, choose a different route. They may argue that the norm was formed under certain one-sided and incomplete considerations of sexuality, or that times have changed and our culture needs a different value judgment.³⁴ Perhaps so. But these are different matters and they are far from established. Indeed, one need not be a latter-day Cassandra to suggest that just the opposite is the case and that the rush of contemporary attitudes and mores in this matter is toward trivialization.

NORMS, EXPERIENCE, AND THE BEHAVIORAL SCIENCES

One of the major problems with a consequentialist methodology is the value structure in light of which decisions are made. That is, if one concludes that more value than disvalue will come from a certain choice, how does one know that his evaluation of these consequences is objective? In an interesting article John G. Milhaven seizes this problem by the forelock and concludes that one's proportionate assessment of values can be tested only in experience.³⁵ Briefly, lived love or concern generates objective insight into the respective worth of values. But the problem still returns: "affective dispositions can generate what looks like objective insight but is in fact subjective illusion." How submit the affective experience to critique? Milhaven suggests, if I understand him correctly, that this critique will come by way of sharing experiences. Thus one whose formal education is complete might, through weekend visits to the poor, "break through his social prejudices, awake his com-

³³ That the individual couple might be precisely the ones least likely to make such an assessment with genuine objectivity seems obvious.

³⁴ For some recent literature, cf. Francis V. Manning, "The Human Meaning of Sexual Pleasure and the Morality of Premarital Intercourse," *American Ecclesiastical Review* 165 (1971) 18-28; Denis Read, "The Human Sexual Context," *ibid.* 164 (1971) 257-64; James R. Moore, "Sex and the Supernatural," *Christianity Today* 15 (1971) 7-10; Maurice Bellet, "Réalité sexuelle et morale chrétienne," *Etudes*, March, 1971, pp. 437-56; Richard R. Roach, S.J., "Sex in Christian Morality," *The Way* 11 (1971) 148-61, 235-42; Warren T. Reich, "Whither Sexual Ethics?" *Linacre Quarterly* 38 (1971) 184-92. This last entry occurs in an issue of *Linacre Quarterly* entirely devoted to questions of sexuality.

³⁵ John Giles Milhaven, "Objective Moral Evaluation of Consequences," *THEOLOGICAL STUDIES* 32 (1971) 407-30.

passion . . . and eventually make more objective his appreciation of the evil of their condition.”

Milhaven's emphasis on experience is certainly healthy. Sensitizing oneself to values and disvalues by experience and sharing is an essential step if moral reflection is to be anything more than hothouse concept-shuffling. But this sensitizing is only the first step—and in this sense Milhaven has not answered the question he put to himself, or at least not completely; for the precise problem was how to test the value judgments of those who have properly sensitized themselves through experience. At least two other steps seem essential.

First, we must reflect upon our experience and put it into as communicable a form as possible. Secondly, we must submit it to the testing of others' analysis and reflection. In these processes we may hope for the clarification of a moral policy which will best do justice to all the values involved. This is not to suggest that we are judging experience by prepackaged legal rules; we are only trusting that rational discussion will truly allow a blend and balance to emerge in our assessment of values. The supposition here is that while the concern of this or that individual may be illusory or unbalanced, and lead to erroneous judgments about what consequences are good, the possibility is reduced in the exchange of whole groups of intelligent and sensitive people.

Therefore, where there is question of determining what consequences are good, I would agree with James Gustafson's critique of Milhaven: "If there are disputes (and there are), then M. has to help us see how we should go about trying to settle them; for the answer to their settlement will not come from an appeal to 'experience' as a single entity."³⁶

I would like to urge this problem further in the hope that Milhaven would continue his already fruitful pursuit of the matter. Perhaps he did not intend to present experience "as a single entity" and has been misunderstood. But if he did, could not the approach easily open on the type of moralism not altogether absent from, e.g., *Humanae vitae*? It would be summarized as follows: "if you are open-minded, loving, and have a sense of marriage, you will see and accept the position proposed here." It is the constant temptation of people with deep conviction to think they can validate concrete moral conclusions by use of the broader themes which nourish their convictions. We see the phenomenon at the level of student protest, in political discourse, and in all kinds of liberation movements. Awareness of this does not deny that these broader themes are somehow operative in determining what is right and wrong. It is only to say that if this is all we can adduce to support a concrete conclusion, we have not as yet begun to do genuine ethics. For instance,

* Cf. THEOLOGICAL STUDIES 32 (1971) 524, emphasis added.

it is no rational argument to say that one who rejects *Humanae vitae* "has no sense of the Cross." Such an argument serves only to raise voices, but not the level of rational discourse. Rather we should say: if *Humanae vitae* is right, then one with a sense of the Cross will attempt to live up to it even though this entails suffering.

Let us put the matter another way. Suppose two highly sensitized, loving, mature people disagree on a value judgment. By what criteria or method can they resolve this? It is the precise task of theological ethics to explain why the accenting of certain values, the shadowing of others, is not arbitrary. There is surely a correlation between true understanding and "getting involved" (experience). But this correlation can be carried just so far. We know, e.g., that several genuine saints had rather dreadful views about sexuality. We know of the invincibly erroneous conscience, i.e., a loving, mature, experienced person who is simply wrong. Profound love and concern, while very helpful, are no guarantee for the objectivity of value judgments. Indeed, it is known that a too close involvement can hinder objectivity and that a certain distance must be preserved if the larger aspects of a problem are to emerge and be weighed proportionately.

Concretely, Milhaven says that "to know whether the Church has reached the moment in history to modify its position on divorce, the moral theologian must share, in particular, the experience of present-day people who have divorced, are debating whether to divorce, or have decided not to do so."³⁷ Yes, but if that is all he knows, he is just as likely to make a mistaken judgment as not. He must also understand thoroughly the why of the Church's traditional position. He must know whether or not, and to what extent, the personal experience of individuals takes account of the public good. He should know the effects of contemporary divorce practices on child-raising, on personal stability, and on religious living. He must be acquainted with contemporary psychological and sociological studies on marriage and divorce. And perhaps more.

To test in a rational way the value assessments implicit in our choices, we must have some structure within which to discuss our experience. A good beginning might be certain established preference-principles. The following are examples. (1) Other things being equal, a nonpostponable value is to be preferred to a postponable one. (2) In conflict situations we must give preference to the lower but more "foundational" value, even while continuing to acknowledge the higher as higher. For instance, we must feed a starving man before trying to preach the good news of salvation to him. (3) Other things being equal, the common good

³⁷ *Art. cit.*, pp. 427-28.

is to be preferred to the good of the individual. Obviously, great sensitivity and discernment are needed here to avoid a crushing collectivism. (4) Other things being equal, we should undertake tasks for which we are better suited than ones for which we are not. (5) Other things being equal, we should prefer the good of those with a special relationship to our responsibility.³⁸

Furthermore, this sifting and sorting of experience by use of preference-principles must be done in an atmosphere highly charged with Christian intentionalities such as the cruciform spirit of Christian life, resurrection destiny, the eschatological kingdom, the following of the poor and humble Christ. It is precisely the relation of these intentionalities to human value judgments that is an unfinished theological task. For instance, when Mr. Profumo (the British politician involved in adultery) lied and was later compelled to admit his actions, it was said that he was simply following the advice of Bishop John Robinson: he was lying to protect his family. Robinson replied that this has nothing to do with Christian love. He argued that love would not prevent the loved ones from bearing the burden and extending forgiveness. What is the bearing of basic Christian perspectives on situations of this kind?

Personal experience is but one ingredient of an adequate theological ethics. Another is the aid provided by the empirical sciences. There are very few theologians left who believe that theology can grow and mature in isolation from the social and behavioral sciences. These sciences are essential to an illumination of many morally relevant aspects of human activity. A truly contemporary theological ethics is impossible without them. But this is to say neither that scientific "findings"³⁹ constitute morality nor that the use of contemporary research is easy. James Gustafson, in his usual ranging and shrewd way, has in two places pointed out the problems involved in making use of empirical studies.⁴⁰ For instance, what interpretation of a field should be accepted and on what grounds? Does the theologian elect Rollo May or B. F. Skinner? If a moralist accepts one interpretation on its "scientific" adequacy, he has the burden of establishing the scientific grounds for this choice. If he chooses studies which have an affinity with his own philosophical or theological point of view, he must be ready to defend such points of view. How does he deal with the value biases of the studies he uses?

³⁸ For these suggestions I am indebted to Hans Reiner, *Pflicht und Neigung* (Meisenheim/Glan, 1951) pp. 166-72. The book is now out of print.

³⁹ "Findings" is put in quotation marks because the word would otherwise connote a measure of agreement among scientists and researchers which is not always there.

⁴⁰ James M. Gustafson, "The Relationship of Empirical Science to Moral Thought," *Proceedings of the Catholic Theological Society of America* 26 (1971); also "What is the Normatively Human?" *American Ecclesiastical Review* 165 (1971) 192-207.

Gustafson's counsel is not one of despair. But he insists, and rightly, that a theologian's use of empirical studies must be critical. When it is, "he is more likely to be a better moralist by being widely and deeply informed from the side of empirical research. But empirical research will never replace ethical arguments in the resolution of moral issues."

Charles Curran notes that although traditional theology was always open in principle to the contributions of other sciences, it often neglected this in practice.⁴¹ Now we realize more clearly the need for a greater openness. Why? Theoretically, contemporary theology sees a greater continuity between this life and the afterlife. Furthermore, we have moved from a classical world view to a more historical one.

What is the precise relationship between moral theology and the sciences? Besides saying it is close, Curran does not fully answer this question; he is content to cite R. Springer, K. Rahner, and Max Stackhouse. But he offers several important reasons for the limits of the contribution of the empirical sciences. First, moral norms are not simply statistical norms, because the Christian faith views the present in the light of the full salvation event, which embraces also the future. The eschatological pull of the future exercises a negative critique on every existing structure of reality. The sciences of themselves do not share this vision of man and the world. Secondly, there is the reality of sin. History shows us the operations of sin in the past, and there is generous evidence that the present is not immune to the effects of sin. Thirdly, there is an element of transcendence in man which surpasses the cold rationality of science. Finally, a single science gives us but a partial perspective of reality. In light of these limitations, Curran criticizes Milhaven's tendency to reduce morality to scientific findings.⁴²

These two sections may be concluded with the summary statement that contemporary theological writings have moved very markedly in the direction of a consequentialist methodology. It would be foolish to deny that there are problems in such an approach, a fact made clear by the decades-long discussion of utilitarianism. However, there is an important place for a balanced empiricism in theological ethics. If this place is to be achieved and if contemporary moral theologians are to avoid the traps of a secularist-individualist calculus, they must turn their attention to the problem that all recognize but few enlighten: the relationship of human values and disvalues to an over-all Christian concept of life, or the significance of the Christian ethos for evaluating consequences.

⁴¹ Charles Curran, "La théologie morale et les sciences," *Recherches de science religieuse* 59 (1971) 419-48.

⁴² Cf. also Charles Curran, "Homosexuality and Moral Theology: Methodological and Substantive Considerations," *Thomist* 35 (1971) 447-81.

DIVORCE AND REMARRIAGE

Last year these Notes discussed at length the problem of divorce and remarriage.⁴³ There has been no letup in the flow of literature during the past year. Both the profound importance of the problem and the groping character of earlier writings suggest that a continuance of the discussion is in place. The studies generally approach the question from one of three points of view: the power of the Church to dissolve sacramental and consummated marriages, revision of the notion of a sacramental and consummated marriage, the pastoral ministry to the divorced and remarried. An example of each type of article will provide an opportunity to bring the recent literature under review.

Johannes Gerhartz examines the internal theological reason for the juridical indissolubility of a sacramental-consummated marriage.⁴⁴ More precisely, must the absolute moral imperative (marriage *ought not* be dissolved) preached by Christ be translated into absolute juridical indissolubility (marriage *cannot* be dissolved)? The fact that the Church allows separation in certain cases shows that she recognizes in the juridical order that higher values can at times give spouses the right to separate. This is a dissolution of the marriage according to its positive content. The only obligation on the spouses is not to marry again. Therefore their marriage continues only in this single effect: the obligation not to marry. This indicates that the problematic of the broken marriage is the problematic of the impediment of the bond (*impedimentum ligaminis*). Can this bond be dissolved by the Church? If not, why not?

The traditional answer is, of course, no. But Gerhartz is dissatisfied with the underlying argumentation. For instance, the sacramentality of the marriage yields what Gerhartz calls *peculiaris firmitas* of the bond, but not *absoluta*. Other authors appeal to the divine positive law whereby God is said to grant dissolving powers to the Church, but not with regard to sacramental-consummated marriages. Gerhartz rejects this as a "positivistic" notion wherein God is seen as a human legislator. He finds it impossible to discover the objective foundation of the Church's practice in Scripture, natural law, the good of the children, or sacramentality. Rather the practice of juridical indissolubility must be argued from the common good. Here Gerhartz notes: "if the law of absolute juridical indissolubility of marriage is founded on the common good, it is founded on something essentially variable and hence it is essentially submitted to human judgment and power."

This means two things. First, it says that juridical indissolubility,

⁴³ Cf. THEOLOGICAL STUDIES 32 (1971) 107-22.

⁴⁴ Johannes G. Gerhartz, "L'Indissolubilité du mariage et la dissolution du mariage dans la problématique actuelle," *Revue de droit canonique* 21 (1971) 198-234.

while it traces back to the moral demands of Jesus and the sacramental signification of marriage, is ultimately a law established by the Church. Therefore no marriage is absolutely juridically indissoluble in itself. Such indissolubility exists only in virtue of regulation by the community. Secondly, it says that whether the community of faith should continue to maintain absolute juridical indissolubility is dependent on historical and empirical factors which are subject to change.

Bruno Primetshofer is in basic sympathy with Gerhartz' conclusion, though he does not argue the matter systematically.⁴⁵ He believes there is a real contradiction in an attitude which proposes a principle of indissolubility applicable to all marriages but narrows it to a single category (sacramental-consummated marriages). We are in a stage of transition during which the Church will (or should) become conscious of her power to dissolve all marriages.

An analysis different from but congenial to Gerhartz' is that of Louis de Naurois, S.J.⁴⁶ Extension of dissolving power to all marriage cases is often argued from a notion of delegation of divine powers to the pope which is embarrassingly anthropomorphic. God is envisaged in such doctrine as a temporal sovereign—indeed, one out of the Middle Ages. A heavy voluntarism underlies this analytic structure. De Naurois believes that if the Church judges that certain marriages are susceptible of dissolution, then the principle (law of God) is not simply indissolubility. The possibility of dissolution is not exterior to the law but included somehow in it. If some marriages are not susceptible to dissolution, it is necessary to say why. De Naurois does not think this has been done. But when he suggests that our conception of marriage, our juridical categories, our civilization and aspirations are not those of other eras, he is leaning toward a notion of indissolubility not far from that of Gerhartz.

J. M. Salgado will have none of this.⁴⁷ The cutting edge of G.'s presentation is the distinction between Christ's absolute moral imperative (*lex mere moralis*) and absolute juridical indissolubility (*les inhabilitans*). Gerhartz refuses to reduce Christ's teaching to an ideal; no, it is a true *Erfüllungsgebot*. But the question still unanswered is: how is this imperative to be interpreted in the juridical order? Salgado thinks that to make such a distinction would be to ask the Church to make of herself a laughingstock. She would equivalently say: "Christ demands

⁴⁵ Bruno Primetshofer, "Zerbrochene Ehe und Ehescheidung," *Theologisch-praktische Quartalschrift* 119 (1971) 117-30.

⁴⁶ Louis de Naurois, S.J., "Le problème de la dissolution du mariage par l'église," *Nouvelle revue théologique* 93 (1971) 50-77.

⁴⁷ J. M. Salgado, O.M.I., "La chiesa potrebbe, un giorno, sciogliere il matrimonio rato e consumato?" *Palestra del clero* 50 (1971) 339-49.

absolute indissolubility; but I can and will dissolve these marriages." He concludes that the Church has not touched sacramental-consummated marriages because to do so would be to remain untrue to the explicit will of Christ.

The *Palestra del clero* has never been accused, to my knowledge, of being a creative comet in the theological firmament. Salgado's essay will provide further protection against such accusations; for his rejection of Gerhartz' distinction fails to explain how the Church can accept Christ's imperative and still dissolve all marriages not *ratum et consummatum*. Surely her widening practice of dissolving true marriages demands some difference between Christ's imperative and its juridical implementation. In this sense the will of Christ is not in question. Rather the question is: what is the appropriate juridical vehicle for confronting men with Christ's imperative without inhumanly crushing them in the process?⁴⁸

Jean Bernhard may be taken as an example of the second approach.⁴⁹ He has problems with Gerhartz' point of view, because he fails to see how the sacramental marital bond can be reduced to a purely juridical abstraction—a reduction Gerhartz seems to make. Furthermore, Bernhard believes that it is not certain at all that the Church can dissolve this "juridical abstraction." Therefore he prefers his way in on the contemporary problem. This is an updating of the notion of consummation from a narrowly physical to a more existential one.⁵⁰

In summary, Bernhard's idea has two skeletal supports. First, the traditional notions of "consummated, nonconsummated" are profoundly modified to reconcile them with Vatican II. Even a new vocabulary is required. Bernhard suggests *mariage instauré* and *mariage consacré*. *Mariage instauré* would result from exchange of consents. Only those would be admitted to a religious marriage who consent to a fundamentally indissoluble union and promise to do all in their power to move to it. After the couple had achieved a certain level of human and Christian growth, their marriage would be *consacré* and absolutely indissoluble. Secondly, *mariage instauré* would be dissoluble by the Church in

⁴⁸ Cf. F. Böckle, "Morale fondamentale," *Recherches de science religieuse* 59 (1971) 353.

⁴⁹ Jean Bernhard, "Réinterprétation (existentielle et dans la foi) de la législation canonique concernant l'indissolubilité du mariage chrétien," *Revue de droit canonique* 21 (1971) 243-77.

⁵⁰ In an excellent article Walter F. Kenny shows how the basis for recent Rotal decisions in cases of homosexuality is moving away from older legalism—e.g., from *jus in corpus* as the formal object of the marriage contract to the community of life and love. Cf. "Homosexuality and Nullity—Developing Jurisprudence," *Catholic Lawyer* 17 (1971) 110-22.

case of breakdown. Such a dissolution would be both declaratory (of the irremediable failure of the marriage) and constitutive (in so far as it pertains to the Church to dissolve a bond created by the original consent).

Bernhard has written enough on this idea to get some feedback. He acknowledges two objections.⁵¹ First, it is all but impossible to translate this notion of *consacré* into juridical terms. Bernhard grants the point but argues that canon law must use increasingly fewer juridical formulae. Furthermore, it is easier than we think to discover that a marriage has not achieved this growth. Some provisional indications: brevity of common life, continual infidelity, absence of every conjugal and familial characteristic, intolerance of common life. Such signs, especially cumulatively, provide a presumption of nonconsummation. The second objection runs as follows: why hold to two states of marriage? Why not just say, as Gerhartz does, that the Church can dissolve all marriages? Bernhard sees his approach as more consistent with a fundamental kernel of tradition: the distinction between a consummated and nonconsummated marriage.

J. P. Jossua, O.P., seems to have in mind something similar to Bernhard's idea.⁵² He notes that "in life-long fidelity, clear-sightedly undertaken at the beginning and kept alive in spite of crises, the unremitting love of Christ for the Church and of God for men lives on and is borne witness to in the world. *This is the understanding of indissolubility in ancient tradition.*"⁵³ Therefore his distinction: "Man should not undo what God has built up, but that does not prevent its being undone in fact." Jossua feels keenly the need to set up in this matter a discipline that is "both new and traditional." He suggests the recognition of the ecclesial status of a second marriage by means of a "positive act re-

⁵¹ Cf. J. Bernhard, "A propos de l'indissolubilité du mariage chrétien," *Revue des sciences religieuses* 44 (1971) 49-62; and "A propos de l'hypothèse concernant la notion de 'consummation existentielle' du mariage," *Revue de droit canonique* 20 (1970) 184-92; THEOLOGICAL STUDIES 32 (1971) 110-12.

⁵² J. P. Jossua, O.P., "The Fidelity of Love and the Indissolubility of Christian Marriage," *Clergy Review* 56 (1971) 172-81.

⁵³ *Ibid.*, p. 176, emphasis added. With respect to the tradition of the first five centuries, cf. Henri Crouzel, S.J., "Remarriage after Divorce in the Primitive Church: A propos of a Recent Book," *Irish Theological Quarterly* 38 (1971) 21-41. Crouzel takes dead aim at Victor Pospishil's thesis that a distinct majority of the Fathers and ancient ecclesiastical authorities permitted the remarriage of husbands of adulterous wives, while generally they denied it to all wives, even the innocent. Crouzel's conclusion: "It is intolerable to hear so many respectable canonists affirming as an evident fact that the present eastern discipline concerning divorce and remarriage was substantially that of the Greek Fathers of the 4th and 5th centuries; in fact this is simply false" (p. 40). Pospishil returns to the fray ("Divorce and Remarriage in the Early Church," *Irish Theological Quarterly* 38 [1971] 338-47) and contends that Crouzel's conclusions are "at least extreme."

ceiving the partners back into communion." But he would not allow a full ecclesial second marriage; for something of the expression to the world of God's love is irretrievably lost in the breakdown of fidelity. "It is to signify this that marriage is indissoluble (as a demand), and the traditional refusal of sacramental re-marriage is the social expression of this demand."⁵⁴

U. Navarrete, S.J., in his continuing studies on marriage, finds Bernhard's notion of consummation unacceptable.⁵⁵ He distinguishes three dimensions in marriage: the existential, juridical, and sacramental. From the existential point of view, conjugal love should always continue to grow, be "consummated" more and more. But juridically speaking, one must first distinguish the formational process of marriage (*in fieri*) and constituted marriage (*in facto esse*). Once this distinction is made, it becomes clear that there must be a moment when marriage, with all its juridical effects, is fully constituted. This point is consummation. Therefore consummation, from a juridical point of view, is necessarily a determined and knowable act or deed, "since from it flow juridical effects, at least indissolubility." Navarrete argues that with Bernhard's notion of consummation, it would be necessary to say that no marriage is ever consummated, since it is always open to further growth and maturation.

Labourdette is certainly right when he suggests that there are still many problems to unravel in Bernhard's approach.⁵⁶ However, there is a good deal to be said in favor of the basic direction of Bernhard's work, a point Labourdette also admits. One thing to be said for an existential concept of consummation is that it reflects the way in which very many contemporary couples factually judge their marriages. This does not say everything, of course. But does it say nothing to us? In this sense Navarrete's objection gets things backwards, I believe. Whether this particular juridical effect (absolute indissolubility) occurs must indeed depend on a juridical determination, but on a juridical determination which attempts to reflect the realities of marriage at a particular point in history. If "consummation" is to be more than just a legal category, if it is to refer to a human reality, then its juridical meaning must take shape around this reality. Canonical clarity must not have the prime priority in making this juridical determination.

In other words, it is not at all clear that the existence of this particular effect (indissolubility) demands "a determined act or fact" as Navar-

⁵⁴ Jossua, *art. cit.*, p. 181.

⁵⁵ Urbanus Navarrete, S.J., "De notione et effectibus consummationis matrimonii," *Periodica* 59 (1970) 619-60.

⁵⁶ M.-M. Labourdette, "Problèmes du mariage," *Revue thomiste* 71 (1971) 99-120.

rete understands these words. That would only be true if it is utterly necessary to be able to say at any and every moment whether or not the juridical effect actually has occurred. Traditional jurisprudence felt bound to this type of clarity and certainty. But does a balanced Christian protection of the values of marriage in the juridical sphere really demand it? That is far from clear.

Nor can it be argued against Bernhard that an existential notion of consummation means that no marriage would ever be consummated since it is always open to greater growth. There is a difference—difficult as it may be to translate juridically—between a sufficient level of stability and the fullest measure of stability. If this were not true, one could never speak, e.g., of a virtuous man or a mortal sinner, since it is always possible to penetrate our acceptance or rejection of God from greater depths of our liberty.

The third approach is exemplified by H. Heimerl, George A. Maloney, S.J., Richard de Ranitz, O.P., and John D. Catoir. Heimerl speaks only of established second marriages which have reached stability and involve children while the first marriage is hopelessly broken.⁵⁷ There is in these situations a conflict of duties: on the one hand, to maintain and nourish the love so badly needed by the partners and the children; on the other, to respect the indissolubility of marriage. Because of this conflict, Heimerl believes that the spouses should be able to continue to live together as husband and wife, and receive the sacraments if scandal can be avoided. He insists that his solution be restricted to the internal forum, but asks bishops to give their priests guidelines to cover these tragic situations. The only thing new or different in Heimerl's pastoral approach is his analysis of consent. A true marital consent is present in such unions, a fact supported by the possibility of a *sanatio in radice* if the spouse of the first marriage dies. Because of this consent, Heimerl feels that it is inconsistent to allow the couple to remain together, yet not live as husband and wife.

In an extremely interesting presentation, George A. Maloney, S.J., argues that the Church must face the problem of marriage breakdown not through dissolution but by use of the principle of economy.⁵⁸ In this context the essence of economy is "the pardon through the Church of faults committed by children of the Church or those outside the Church who wish to return to the Church in order to facilitate a restoration to full Christian life." In marriage cases, Maloney argues, the Church

⁵⁷ Hans Heimerl, "Sakramentenempfang für Wiederverheiratete," *Theologische Quartalschrift* 151 (1971) 61-65.

⁵⁸ George A. Maloney, S.J., "Oeconomia: A Corrective to Law," *Catholic Lawyer* 17 (1971) 90-109.

should not divorce couples but mercifully recognize civil divorces and remarriages and restore couples in such marriages to full communion with the Church. Even though this second union would be an imperfect sign of Christ's love for His Church, still such a pastoral adaptation is necessary, especially in view of the "new forces in society that tend to make a long-range commitment to another person or way of life most difficult."

The pastoral perspective of Richard de Ranitz, O.P., never uses the term "economy," but his analysis moves in that direction.⁵⁹ The "stuff" of the sacraments (matter, gestures, and words) are an anthropological given. Revelation raises these aspects of man's life to be paradigmatic signifiers. This means that we must theologize not on the basis of what marriage is but what marriage is *today*. "The present phenomenological given must take precedence over the acculturated system of laws which developed from a past given"; for it is the present social phenomenon that must be seen as a paradigmatic symbol of God's continual loving presence. This phenomenon, however, has altered drastically in purpose, motivation, and meaning. "Marriage today is becoming the phenomenon of a man and a woman who choose to live together as growth motivated people in an interpersonal relationship of self-giving love. This is the 'stuff' of marriage which attains the paradigmatic symbolization of God's loving presence. Since it is the 'stuff' of marriage, when it ceases, marriage ceases." De Ranitz believes that ecclesial refusal of a second marriage when this "stuff" has ceased "would have far more dreadful symbolic consequences, both theologically and psychologically, than the broken symbol of a marital breakdown could ever have."

John Catoir, presiding judge of the Marriage Tribunal of the Diocese of Paterson, N.J., treats the "internal forum solution" in a balanced and prudent way.⁶⁰ Because of the imperfection of existing marriage law and the cumbersome character of tribunal procedures, there are many couples who deserve annulments but cannot get them. In these instances, Catoir argues (correctly in my opinion), these couples are justified in marrying civilly and such a marriage (if the partners are baptized) is a sacramental marriage. After such a marriage, Catoir suggests, a blessing-ceremony or renewal of vows before a priest is quite in place. However,

it would not be right for a priest to presume to marry the couple himself, i.e., to eliminate the need for a civil or religious ceremony outside the Church, because when acting as an agent of the state in the matter of marriage, the priest is under

⁵⁹ Richard de Ranitz, O.P., "Should the Roman Church Recognize Divorce?" *Listening*, Winter, 1971, pp. 60-70.

⁶⁰ John D. Catoir, "When the Courts Don't Work," *America* 125 (1971) 254-57.

oath to obey the laws of the Church judicatory to which he belongs. If the priest knowingly witnesses a union which is juridically invalid in the eyes of his Church, he is exceeding his rights under state law as well as Church law, and even the civil validity of the marriage could be challenged later in certain states.⁶¹

According to Catoir, therefore, a twofold remedy exists for the problems surrounding divorce and remarriage: the tribunal and the internal-forum solution. Catoir admits that this latter pastoral remedy is far from ideal. "It is patronizing and imperfect since it does not totally vindicate the deserving couple." But something is better than nothing.

Catoir's essay is an excellent piece of pastoral writing. I agree totally with his attitudes, analysis, and conclusions. Perhaps a few points call for additional comment. First, it is especially important that this type of study get into the more popular literature and be explained from the pulpit; for everyone writing on the problem of divorce and remarriage insists on the need of avoiding the scandal generated by misunderstanding. Catholics, therefore, must be educated to the idea that the tribunal system is severely limited in determining precisely what unions are truly binding and hence to the occasional legitimacy of internal-forum solutions. If they are properly educated, they will understand that there is no justification for shock or judgment when they see an acquaintance (divorced and remarried) receiving the sacraments. This education is particularly important for Anglo-Saxons, whose strong legal tradition accustoms them to view law as an exhaustive measure of what is possible and right. When this legal tradition combines with a highly juridical notion of Church, the result is the remarkable view that Church law provides the answer to all problems, the only answer and a fully adequate answer.

Secondly, when Catoir refers to a twofold remedy for divorce problems (tribunal, internal forum), he does not mean to propose a simple option. The internal-forum route is legitimate precisely in so far as the public forum is inadequate. This priority of the public forum (be it tribunal or other vehicle) is grounded in the indispensable necessity of social regulation of marriage. Without some such social regulation the integrity of marriage and the imperative of indissolubility would be seriously threatened. Therefore the internal-forum solution demands a threefold condition: (1) that there are good, though not legally demonstrable, grounds for challenging the first marriage; (2) that the public ecclesial forum has not worked or would not; (3) that scandal is avoided.

Thirdly, the first condition mentioned above emphasizes a point in Catoir's study. He repeatedly refers to "annulment," "invalid mar-

⁶¹ *Ibid.*, p. 256.

riage," etc. when speaking of the first union. At one point, however, he refers to a "broken marriage." There is a difference here. Not every broken marriage would fit the category of one whose validity could be challenged. It seems that some "dead marriages" have to be judged as true Christian marriages which collapsed after perhaps many years. It is clear that Catoir's analysis would not apply to these. It is possible to argue persuasively about many "dead marriages" that their death traces back to a radical incapacity to sustain the duties and obligations of marriage. Such incapacity, difficult as it may be to determine, argues to the invalidity of the marriage. But it can be doubted that *all* "dead marriages" automatically fit this category. For this reason I find it hard to agree with the sweeping statement of Stephen J. Kelleher: "Once a marriage is dead . . . the persons can responsibly marry again and continue to receive the Eucharist."⁶² This may eventually prove to be our discipline, as Maloney and de Ranitz suggest it should be; but Kelleher has given us no satisfactory reasons that it is so now. The basis for his conclusion seems to be his own personal espousal of the practice of the Orthodox Church. If that were enough for practical counsel and conclusions in the Roman Church now, the literature reviewed in this section would not exist.

Thus far the current literature; now to a personal reflection. It seems clear that a good number of tragic situations can be handled along the lines of Catoir's and Heimerl's suggestions. As for the more radical question raised by Gerhartz about the Church's power to dissolve sacramental-consummated marriages, two things strike one immediately. First, theologians have not succeeded in showing persuasively why a sacramental-consummated union is absolutely indissoluble. Gerhartz makes this quite clear. Secondly, the history of the Church's widening use of dissolving power reflects a *facit, ergo potest* pattern of justification in theological thought. These two considerations in combination suggest that we will probably learn whether power over sacramental-consummated marriage resides in the Church only if and when it is used. This is not to detract from the importance of Gerhartz' question. It is only to suggest that if his question is to be more than an exercise in abstract thinking, it immediately raises another and possibly more fruitful avenue of enquiry: *should* the Church use such power even if she has it? In raising the question of *can* in the face of contemporary pastoral problems, one is, almost willy-nilly, suggesting to some extent *should*. Otherwise why raise the problem?

The answer to this question is, of course, extremely difficult. It must be elaborated out of a rich experience and a careful reflection, not ex-

⁶² Cited in *National Catholic Reporter*, Oct. 8, 1971, p. 3.

cluding that of the Orthodox churches. But the basic structure within which the enquiry should proceed seems increasingly clear. I would propose it as follows. If there is a distinction between the radical moral demand of Christ and its sociojuridical implementation, there is also a deep interpenetration of the two. That is, how clearly and integrally the Church maintains and proclaims the basic moral demand will depend very much on how this is translated into a social or juridical policy. In this perspective the question of *should* (or *should not*) concretizes itself as follows: how much juridical dissolution of marriage (and in what circumstances) is compatible with the Church's proclamation of the moral imperative of indissolubility? Or again: would use of her dissolving power in sacramental-consummated marriage cases threaten the integrity of the teaching of Christ? If it would—in our time and culture—it seems clear that it is not a possible form of the Church's pastoral ministry of forgiveness, for it would undermine the common spiritual good. But before concluding that it certainly would, there remains the extremely challenging task of showing that the doctrine of Christ is threatened by dissolution of sacramental-consummated marriages, but not by the many other dissolutions currently practiced by the Church.

If I have framed the question properly, it raises the distinct possibility that the Church should really dissolve no marriages at all, that she erred pastorally in the past in doing so and should cease and desist in the future. We cannot reject this out of hand. The *facit, ergo potest* analysis is a deeply juridical approach to a question which extends far beyond juridical considerations. Furthermore, it is a juridical analysis which built heavily on a theory of divinely delegated power, a theory under heavy theological assault these days.

This all means that what the Church *can* do (*potest*) is very likely identical with what she *should* do. And this *should* is an empirical question involving the relationship of her acts of mercy to the integrity of her proclamation of Christ's demand. It just might be that she should look elsewhere (than in the dissolution of the bond) for pastoral solutions to marriage problems, a point of view advanced by Maloney and to a lesser extent by de Ranitz. A refusal to dissolve any true marital bond is not the same as refusing to accept and forgive those who have found it impossible to live the demands of this bond.

OF THEOLOGY AND LIBERATION

"The word 'liberation' is on everyone's lips today." Thus Pope Paul VI in an address to the participants of the 50th anniversary world congress of Pax Romana, July 21, 1971.⁶³ That the Holy Father was not just

⁶³ *The Pope Speaks* 16 (1971) 170.

noting a vocabulary but also endorsing it seems clear from his own increasing use of the idea. After adverting in the same address to Christ's concern with evils of all kinds that weigh on men, Paul continued:

But it is the profound cause of evil that Jesus attacks on every occasion; it is from sin that He wishes to free man: from the influence of evil which each person discovers within himself and which chains him to his selfishness, his pride, his sensual appetite. Christ wishes to free man from collective influences which multiply individual sin, and in which we must seek the source of oppressions and enslavements that human societies generate⁶⁴

This analysis—freedom from all enslavements, but above all from sin as the root of other oppressions—is identical with the conclusions drawn several years ago⁶⁵ and more recently⁶⁶ by Gustavo Gutierrez M.: "Christ thus appears as the Saviour who, by liberating us from sin, liberates us from the very root of social injustice." We shall return to this analysis shortly.

Liberation is indeed a much less antiseptic notion than development where the various social implications of Christianity are concerned. It better reflects the urgency of man's aspirations in the face of oppression. Furthermore, it is a notion which accommodates easily to areas other than the economic and sociopolitical.⁶⁷ For instance, an article submitted to the convention of the Catholic Theological Society attempted a critique of the contemporary notion of leadership in the Church by use of the notion of liberation.⁶⁸ There has been in the past a constant tendency to identify authority and leadership in the Church. When this identification is made in the thought patterns and day-to-day operations of a group, somewhat paradoxically a factual separation between authority and leadership begins to occur; for the more there is reliance on mere authority, the less one does those things required of true leadership. The result: as authority wanes, authority figures appeal all the more loudly to their authority and position.

This careless identification of leadership with office yields two remarkable results. First, an independent value is attributed to mere office, with, of course, a dominant concern for the prerogatives of office

⁶⁴ *Ibid.*

⁶⁵ Gustavo Gutierrez M., "Notes for a Theology of Liberation," *THEOLOGICAL STUDIES* 31 (1970) 243-61.

⁶⁶ G. Gutierrez M., "Liberation and Development," *Cross Currents* 21 (1971) 243-56. The entire issue is devoted to "Latin America in Search of Liberation."

⁶⁷ Cf. the interesting article of Donald Evans, "Gregory Baum's Theology of Liberation," *Studies in Religion* 1 (1971) 45-60; also the volume *Christ the Liberator* (Downers Grove: Inter-Varsity Press, 1971).

⁶⁸ Richard A. McCormick, S.J., "Leadership and Authority," *Proceedings of the Catholic Theological Society of America* 26 (1971).

and a corresponding insensitivity to the goals it serves. Secondly, we begin to experience the "controlled" group or society. The symptoms of the controlled group are well known: dominance of the negative in teaching; oppressive centralization at the administrative level; avoidance of risk in decision-making; derivativeness and enslavement to the traditional formula in theologizing; secretiveness in the use of power. The personality traits of the controlled group are equally well known: fear, anxiety, joyless security, rejection of risk, apathy.

If leadership cannot be identified with office or authority, what is its basic element? The study proposes:

We have said that leadership can assume any number of forms: administrative, executive, charismatic. But beneath all of them and common to all of them (in so far as they are leadership and not control) is a single element: the release, stimulation, evocation, maximization of the potential of the individual. True leadership, in whatever form it is found, calls forth the best in those led. It *liberates* them into the fullness of their potential as individuals and as a group.

This concept of leadership can be seen clearly in the notion of theological leadership. A man is a theological leader because of the depths of his insights into the faith and the power of his communication of these. Now depth of insight and power of communication constitute leadership precisely because they liberate us from the confinements of our own imaginations and formulations, from our ignorance and doubts.

In an age of specialization and diversification, authoritative position is no longer the locus of many competencies. Competence has been cut up and spread around. It is in this context that authority finds its contemporary challenge to become leadership. Authority will begin to coincide factually with leadership in our times if it makes its overriding concern the liberation of others to be leaders in all areas where we recognize a true competence and a Christian concern. For instance, the bishop who makes it possible for a theologian to be a better theologian, the layman to be a better educator, parent, or community organizer, the priest to be a better apostolic instrument, is a true leader. He has conjoined authority and leadership because he uses authority to liberate the group into its maximum potential. The theologian whose work makes it possible for youth to grow out of the traps of fadism, whose research and writing make it possible for bishops to cut adrift from secular power-models of authority, whose insights free other theologians from the tyranny of a single formulation, has joined competence and leadership because he uses competence (office, so to speak) to liberate. And so on.

We are all victims of the oppression of our own limitations and need liberation to that extent. One of these limitations is the tendency to

experience another's need for liberation while not sensing our own. Nothing daunted, and with some risk of arrogance, I should like to underline a one-sidedly juridical notion of episcopal teaching authority as a contemporary form of episcopal captivity where some amount of liberation appears appropriate. As an example, I shall use an essay by the Most Rev. John F. Whealon, episcopal chairman of the NCCB's Committee on Doctrine.⁶⁹ This is chosen as an example because one may suspect that very many bishops would agree with its emphases while very many theologians would not, and because it deals with a matter of practical concern in the American church.

Speaking of ethical and religious directives for Catholic hospitals, Archbishop Whealon asks: "Who has the right to teach and to legislate concerning such moral and pastoral matters? The Roman Catholic Church places this right and obligation on the bishop of the local diocese, to the extent the he is in union with and in doctrinal harmony with the Bishop of Rome."⁷⁰ True enough, but not quite enough of the truth. The contemporary question is not precisely who has the right to teach, but rather what means must be used, what processes employed if that authority is to be used responsibly and effectively. Gregory Baum has correctly pointed out that a highly intellectualistic understanding of teaching has dominated the theology of the magisterium.⁷¹ This makes a juridical emphasis much easier to maintain. The right to teach does not tell us much about the manner of teaching. For one thing, this right does not eliminate but rather implies the duty to learn. And if a bishop must learn, presumably there are also other teachers from whom he can and must learn. And presumably these teachers have the right to teach also. Their right is their competence. The day is past when teaching can be defined by and reduced to authoritative position. But does not a uniquely juridical emphasis do just that?

Later Archbishop Whealon remarks: "Because of the moral content and teaching effect of the code, the approval of the Committee on Doctrine, NCCB, is essential." Would it not be a better account of things in the contemporary world if the statement were fleshed out as follows: "Because of the moral content and teaching effect of the code, the approval of the Committee on Doctrine is only meaningful if it is well attuned to contemporary medical and theological thought, and very sensitive to a host of values other than institutional conformity."

Finally, in discussing an individual Catholic who does not follow "the

⁶⁹ John F. Whealon, "Questions and Answers on the Ethical and Religious Directives for Catholic Hospitals," *Hospital Progress* 52 (1971) 70-75.

⁷⁰ *Ibid.*, p. 7.

⁷¹ Gregory Baum, "Does Morality Call for the Church?" *Proceedings of the Catholic Theological Society of America* 25 (1970) 159-73.

authorized code for Catholic morality," the Archbishop states: "It is possible to find these days a Catholic writer on speculative moral theology advancing in nearly every subject a theory contrary to traditional Catholic doctrine. You cannot 'follow' him because he is not an authorized leader of the People of God."⁷² Once again we encounter the authority emphasis. It is not precisely because one is an *authorized* leader of the People of God that one may or should follow him, but rather because being such and being collegially such, it can be presumed that his sources of wisdom and experience generate something closer to the truth than the resources of an individual. In this sense we may and indeed must follow anyone who speaks the truth, whether authorized or not. Whether he speaks the truth and by what criteria we know this is the question, and it is a question that cannot be collapsed into a question of mere authorization. Authorization, before it can be spoken of as a right, must first be seen as a responsibility to the many components of the learning process where truth can be discovered. I have belabored this point because I am convinced that before bishops can become the truly effective teachers we so badly need, they must be liberated from a one-sidedly juridical notion of their teaching prerogatives.⁷³

The status of women is another area where profound human (and thereby moral-theological) concerns are at stake. As Janet Kalven points out, women's liberation has come into existence against the background of the black movement, student movements, and the third-world emergence and has adopted very often their heady rhetoric, guerilla tactics, and shrill anticapitalist ideology.⁷⁴ But surely it would be a pity if these sometimes bizarre tactics and the violent rhetoric blinded us to the genuine moral dimension cast up by the new feminism. That we have a true moral concern here is clear from at least three facts. First, when half the population of a country is deprived of opportunity for full human development, we clearly have a moral problem. Secondly, to some extent or other the Church, in her theology and practice, has con-

⁷² Whealon, *art. cit.*, p. 75.

⁷³ In a similar vein, cf. Andrew Greeley, "After the Synod," *America* 125 (1971) 424-26. This same unfortunate juridical emphasis appears in the preamble of the recently approved *Ethical and Religious Directives for Catholic Health Facilities*. The last paragraph states: "The moral evaluation of new scientific developments and legitimately debated questions must be finally submitted to the teaching authority of the Church in the person of the local Bishop, who has the ultimate responsibility for teaching Catholic doctrine." Because the local bishop has "ultimate responsibility for teaching Catholic doctrine" hardly means that legitimately debated questions must be submitted to him for his evaluation. This heavy juridicism of outlook suggests that teaching really means "deciding" in the new directives. The ecclesiology operative here is, well, quaint.

⁷⁴ Janet Kalven, "Women's Liberation: Some Issues for Parents and Educators," *Living Light* 8 (1971) 6-19.

tributed to this situation of oppression. Thirdly, Daniel Maguire is certainly right when he says of women's liberation that it is "clearly one of the most important developments in the field of ethics today because it is dominated by the most fundamental of ethical questions: 'What does human mean?'"⁷⁵

Even the most recent literature on this subject is enormous⁷⁶ and difficult to organize. It might be helpful to approach it under three titles: the oppression, the causes, proposed solutions.

1) *The oppression.* In what sense do contemporary women really need liberation? What is the oppression? In his thoughtful article Maguire underlines the fact that they are victims of a bad myth: "*die Küche und die Kinder.*" Domesticity is woman's identifying essence. Cut off from the child-filled kitchen, she is a creature exiled from her natural habitat. Not only is woman defined in terms of this limited function, but we then proceed to distort this function. Maguire finds plenty of evidence for this distortion in early theological writings, right up to Thomas' teaching that the generation of women is due to the indisposition of the reproductive materials, or perhaps to adverse weather conditions.

Sidney Callahan, who has done some of the most insightful and sensitive writing on this subject that I have encountered, agrees with Maguire that women have been reduced to pure function: to satisfying men and to producing children.⁷⁷ Regardless of their differences, all women's-liberation people have one thing in common: "anger that women are socially defined and limited by male definitions." Women who aspire to something unrelated to men and children are said to be "masculine." Once a woman is defined in terms of sex-based stereotypes, the doors of political, economic, educational, ecclesiastical opportunity close in her face one by one. This "Myth America" is not only reflected but abetted by television. Kalven points out that woman is defined by six customary roles on the contemporary TV screen: mother-housewife, sex-seller, spender, secretary, civic actor, social psychotic.

The mother-housewife bears and rears the children, soothes her husband after his hard day's work, and seems to spend a great deal of her time learning from her

⁷⁵ Daniel C. Maguire, "Different but Equal: A Moral Assessment of Women's Liberation," *Living Light* 8 (1971) 35-47, at 35.

⁷⁶ E.g., the entire issue of *Journal of Marriage and the Family* 33 (1971) is given over to a study of "Sexism in Family Studies." Scholars from the women's-liberation movement examine the field of family studies critically and in a style often acerbic and polemic. A superb introductory bibliography is that of Peggy Ann Way, "Women, the Church and Liberation: A Growth-Oriented Bibliography," *Dialog* 10 (1971) 93-103.

⁷⁷ Sidney Callahan, "Feminine Response to Function," *Humanitas* 6 (1971) 295-310; also "Toward Liberating Families," *Living Light* 8 (1971) 54-60.

neighbor the secrets of spotless laundry, shiny floors, and perfect coffee. The sex-seller is slim, sweet-smelling, eternally youthful and alluring; her decorative presence is used to promote everything from cigarettes to farm machinery, and to encourage women to vast expenditures on cosmetics to achieve the approved image. The spender plays a crucial role in the consumer economy, fortifying her ego as she increases the sales volume in the shopping plaza The secretary is channeled into jobs that are essentially extensions of either the housewife or the sex-object role, e.g., receptionist, airline hostess, waitress, teacher, nurse (in these latter roles generally under male supervision). Then there is the civic actor, who finds an outlet for her energies in community work, only to discover that the work itself is often ineffectual, failing to reach the levels where the real decisions are made. Finally, when a woman is unable to find fulfillment in the accepted roles, she becomes a social psychotic, seeking escape in drink, pills, drugs, or perhaps the psychiatrist's couch. . . .⁷⁸

This scathing scenario is all too true and reveals a profound and dehumanizing (for both men and women) sex-based discrimination. It has led Susan Brownmiller to conclude: "Women are an oppressed class. Our oppression is total, affecting every facet of our lives. We are exploited as sex objects, breeders, domestic servants, and cheap labor. We are considered inferior beings whose only purpose is to enhance men's lives."⁷⁹

2) *The causal factors.* How did things get this way? It is often contended, as Jaroslav Pelikan points out,⁸⁰ that theology itself provided justification for the inferiority of women in the twofold assertion that Eve was created after Adam and was the one responsible for bringing sin into the world. Joseph A. Grassi reviews the New Testament evidence and concludes that "many statements about women are time-bound to the inferior economic, social and religious position of woman in the ancient world, as well as time-bound to an old theology that held this to be the result of woman's sin."⁸¹

Margaret Maxey traces much of the problem to the theological models of women which have prevailed.⁸² The first model was Augustinian and it placed woman somewhere between Eve and Mary. At the root of this model is the Augustinian equation of original sin, concupiscence, and sexual passion. Such an equation builds on a dualistic psychology which

⁷⁸ Kalven, *art. cit.*, pp. 12-13.

⁷⁹ Susan Brownmiller, "Sisterhood Is Powerful," *New York Times Magazine*, March 15, 1970, p. 27.

⁸⁰ Jaroslav Pelikan, Jr., "Eve or Mary: A Test Case in the Development of Doctrine," *Christian Ministry* 2 (1971) 21-22.

⁸¹ Joseph A. Grassi, "Women's Liberation: The New Testament Perspectives," *Living Light* 8 (1971) 22-34.

⁸² Margaret Maxey, "Beyond Eve and Mary: A Theological Alternative for Women's Liberation," *Dialog* 10 (1971) 112-22.

awards primacy to rational control as an index of man's superiority over women. Though St. Thomas sloughed off much of the sexual pessimism of Augustine, he continued the distortion in his own way. While woman is no longer the incarnation of lust, the carrier of evil and guilt, she is reduced in Thomas to a natural function (reproduction). In the contemporary Church, woman acquires theological significance because of her sexuality, but it is still a liability. This might be called a "utility model" in a male-dominated institution. According to this model, implicit as it may be, "women are considered an institutional liability and a personal impediment in the ministrations of an androcentric, power-oriented, hierarchically-controlled 'divine institution.'" Maxey concludes that we shall never liberate woman unless we can induce theology to liberate her.

Sidney Callahan argues that the view of Freud and the orthodox psychiatric tradition that "anatomy is destiny" supported the sexual reductionism that has imprisoned women.⁸³ However, this is being reversed by men like Erik Erikson who highlight other than sexual factors in human development, e.g., the need to be *somebody*. In this sense contemporary psychology is a powerful ally in women's protest at being reduced to sexual function. Their ego-based needs are being viewed as valid *human* aspirations.

It is widely argued that the Church has contributed more than her mite to the sexism of our culture by her long practice of fixed roles drawn up on the lines of sex (Grassi, Kalven, Callahan, Maxey, Bowers).⁸⁴ Perhaps the most telling statement of this is that of Mary Daly:

As long as the Church maintains a significant distinction between hierarchy and laity, the exclusion of woman from the hierarchy is a radical affirmation of their inferior position among the People of God. By this exclusion the Church is in a very real and effective way teaching that women are not fully human and conditioning people to accept this as irremediable fact. It is saying that the sexual differentiation is—for one sex—a handicap so crippling that no personal qualities of intelligence, virtue, or leadership can overcome it.⁸⁵

Esther Woo probably comes closest to a satisfactory explanation of the origins of sexism in history.⁸⁶ She points out that muscular strength was a prime value in primitive society because of the need for survival. The

⁸³ Sidney Callahan, as in *Humanitas* (cf. n. 77 above).

⁸⁴ Marilyn Bowers, "Women's Liberation: A Catholic View," *Theology Today* 28 (1971) 24-35.

⁸⁵ Mary Daly, *The Church and the Second Sex* (New York: Harper & Row, 1965) p. 155.

⁸⁶ Esther Woo, "Theology Confronts Women's Liberation," *America* 124 (1971) 257-59.

priority of this value carried, however softly, the implication of the inferiority of women. Now once a value is established, it tends to perpetuate itself. Psychologically we grow in the image of what we feel and are made to feel. Hence the gulf between male superiority and female inferiority became wider and wider until machines began to take over for muscle. Perhaps Woo should also have adverted to the basic value of fecundity. The urgency of both muscle and fecundity suggests how functional definitions along sexual lines could settle and become stereotypes. In this light perhaps it must be said that the myth of female inferiority does not trace to religious sources and theology, but was only supported and perpetuated by them.

3) *Some proposed solutions.* How will change come about? Sidney Callahan, arguing that *la petite différence* must be preserved, rightly insists on the other hand that the bedroom is not the boardroom.⁸⁷ There must be equality and neutrality in certain areas of life. Some slight headway can be made by attempting to live this equality in one's own family, but ultimately institutions must provide massive support to these isolated family efforts. Callahan suggests (with several others) that women bishops, priests, chancery officials, etc. would help. Child-care centers, maternity leaves, greater availability of higher education, equality in job promotion—these are but a few of the practical steps that must be taken. Ultimately, however, Callahan believes that change will come about only through the growing example of women who are happily married mothers and lawyers, doctors, engineers, and so on.⁸⁸

Janet Kalven suggests several ways in which parents and educators can purge our attitudes of misogynist prejudices and our structures of institutional sexism.⁸⁹ We must, e.g., emphasize the primacy of individual persons over the generic sex roles, avoid linking temperament

⁸⁷ Sidney Callahan, as in *Living Light* (cf. n. 77 above).

⁸⁸ There are those who associate abortion with women's liberation, especially abortion-on-demand. Just how "liberating" abortion-on-demand would be is, at best, highly questionable. For the fetus it would be liberating, but only in the sense that it would free him definitively from parents who would do this to him. For the mother it could easily represent a subtle form of enslavement to male sexuality. Some recent literature on abortion: Paul W. Rahmeier, "Abortion and the Reverence for Life," *Christian Century* 138 (1971) 556-60; Rachel C. Wahlberg, "The Woman and the Fetus: 'One Flesh?'" *ibid.* 138 (1971) 1045-48; Howard Moody, "Abortion: Woman's Right and Legal Problem," *Christianity and Crisis* 31 (1971) 27-32; Kenneth J. Sharp, "Abortion's Psychological Price," *Christianity Today* 15 (1971) 4-6; *ibid.*, pp. 36-37; R. Troisfontaines, S.J., "Faut-il legaliser l'avortement?" *Nouvelle revue théologique* 93 (1971) 489-512; Hans Rotter, S.J., "Die Geistbeseelung im Werden des Menschen," *Zeitschrift für katholische Theologie* 93 (1971) 168-71. The *Review for Religious* carries an ongoing bibliography which contains many entries not mentioned here—on all matters of concern to the theological ethicist.

⁸⁹ *Art. cit.* (n. 74 above).

and qualities to sex roles, avoid sex-typing of occupations, promote the idea of marriage as partnership. Interestingly, several studies (Callahan, Bowers, Kalven) note that the celibacy of religious women can be a strong affirmation of the value of the person independently of sexual roles. Paul VI, referring to a "fictitious equality which denies differences established by the Creator Himself," still urges that there must be laws which "recognize [woman's] due measure of personal liberty and her equal rights to participate in cultural, economic, social and political life."⁹⁰

Gregory Baum recently underlined the fact that the Church teaches powerfully through her institutional policies and priorities.⁹¹ Nearly every writer on the new feminism asserts that the Church must drastically revise her institutional policies on women. For instance, Grassi notes that "there is no reason in the New Testament to keep the Church from moving as quickly as possible, locally and internationally, toward complete equality of women with men in all that concerns the ministry (especially the priesthood) and leadership in the liturgy and life of the people."⁹² This is supported by Callahan, Bowers, Maxey, and a host of others. Furthermore, there must be much greater discretion in the use of biblical images (God the Father, God the Son) which reflect the male dominated culture of biblical times.

Paul Palmer, S.J., argues convincingly that Jesus made a radical contribution to the liberation of women in reversing the old double standard where divorce is concerned.⁹³ In the cultural setting at the time of Christ, the husband enjoyed the right to divorce his wife, but not vice versa. The wife belonged to the husband, so that adultery was not infidelity toward the wife, but was viewed exclusively as a violation by another man of the husband's right over his wife. Jesus reversed this: "Whoever divorces his wife and marries another commits adultery against her" (Mk 10:11). Palmer does not draw the implicit conclusion but he could have: the double standard should be eliminated everywhere else too. Pelikan believes that Christianity undermined the inferiority of women by the image of Mary, the highest of creatures. He believes that a more constructive view of women must involve a development of this tradition.

I hope it is not male chauvinism to say that the most fascinating article on women's liberation from a theological point of view is that of

⁹⁰ In "Octogesima adveniens," *The Pope Speaks* 16 (1971) 144.

⁹¹ Cf. n. 71 above.

⁹² Grassi, *art. cit.*, p. 32.

⁹³ Paul F. Palmer, S.J., "Christian Breakthrough in Women's Lib," *America* 124 (1971) 634-37.

Carl Braaten.⁹⁴ Braaten first insists that liberation is a misnomer. Money and careers can be the gauge of justice in society, but not of liberation. If women's liberation does nothing more than loose women into the job market, it will simply transfer their enslavement to a new locale. Real liberation will come about when we discover new ways to realize the full human potential envisioned in the high Christian ethic of sex, love, and marriage. This will sound like heresy to some within the "movement," but Braaten refuses to pull his punches. Therefore he sets out to offer the conditions under which the liberation movement ought to proceed.

Since *vive la différence* is a biblical concept, and since male and female in their sexual differences are an image of God, Braaten argues that "sexuality is not the source of sin; overcoming it is not the way of liberation." After describing the fickle, fleeting, and frustrative character of libido and eros, he centers his attention on *philia* (friendship). It is friendship that generates constancy, loyalty, fidelity. What is at stake, then, in true liberation is the chance for *philia*-love. "This is the criterion of real liberation." This *philia*-love must itself be supported by the forgiving love of *agape*, the quiet acceptance of the challenge to fulfil the other person. "The quest for liberation not carefully guided by the demands of love in its multidimensional reality will only lead to new forms of alienation and oppression . . . Our contention is that women's power can bring justice, as it is doing in all fields, but only love can bring liberation."⁹⁵

Hinging liberation on love, not just justice, links it immediately to marriage and the family. These structures can be liberating frameworks or confining straitjackets. But Braaten is convinced that marriage must be a norm in the quest for liberation of women. "If marriage is getting in the way of women's liberation, then liberation is wrongly conceived or marriage is not realizing its potential." And it is clear that Braaten does not mean serialized monogamy, but a vigorous countercultural union lived in the promise of lifelong fidelity. However, he argues that a variety of patterns in the concrete ordering of marriage is possible and desirable. A new type of family situation "is what I think women are looking for." Braaten suggests new family structures where children can grow up also with the elderly and single people, wherein domestic chores are shared, and new collective homes with a network of supportive relationships; for everyone is in need of liberation, and all will be liberated together or no one will be liberated—a note sounded by much recent literature. If we

⁹⁴ Carl Braaten, "Untimely Reflections on Women's Liberation," *Dialog* 10 (1971) 104–11.

⁹⁵ *Ibid.*, p. 108.

do not find new ways to realize the potential envisioned in the Christian ethic of sex, love, and marriage, liberation will turn out to be a subhuman venture.

In summary, it can be said that theology has an important part to play in facing the moral problem of women's liberation, though I believe its contribution can be exaggerated. The task is at least threefold. First, as Margaret Maxey notes, theology must critique past models dominating women's self-interpretation and reconstruct new models out of the richness of the Christian tradition. Secondly, theology must put its own house in order by encouraging the emergence of women theologians of competence and influence in far greater numbers.⁹⁶ This will occur only if theological positions are open to women on an equal basis with men—e.g., in colleges and seminaries. Thirdly, theological disciplines are very well positioned to insist that the Church, the continuation of the human Christ, must teach what it is to be human by her own inner life. If her own structures and ministry continue to speak of humanity in terms of but one sex, must we not think that the Church is seriously compromising her mission in the contemporary world? I believe so. Granted, there are hosts of practical pastoral problems to work out; but here is a chance for genuine leadership. Too often in the past the Catholic community has almost reluctantly accommodated after everybody else has shown the way. If the "official Church" continues to turtle across the finish line in this way, is she not but a pale image of her radical and innovative Founder? In an age of faceless impersonality and bureaucratic hugeness, we long for the fresh, the bold move. However, the number of black bishops in this country gives little cause for optimism about the Church's promotion of women's liberation.⁹⁷ Nonetheless, we have here a serious moral problem and, it would seem, an idea whose time has come.⁹⁸

⁹⁶ Cf. *Christian Century* 88 (1971) 648.

⁹⁷ The subject did surface at the recent Synod of Bishops (1971). And some very promising interventions were made, particularly by Cardinal George Flahiff (Winnipeg) and Archbishop Leo Byrne (St. Paul-Minneapolis); cf. *Catholic Chronicle*, Nov. 12, 1971. Bishop John Gran (Oslo) and Archbishop Samuel Carter (Kingston, Jamaica) were also very positive. In light of this opening, one can wonder whether Mary Daly is totally correct when she says that "the religious dimensions in the movement are going to be outlined by the women inside it and not by Church authorities outside it" ("The Church and Women," *Theology Today* 28 [1971] 349-54, at 353).

⁹⁸ On women's ministry cf. the excellent articles in *American Ecclesiastical Review*: John J. Begley, S.J., and Carl J. Armbruster, S.J., "Women and Office in the Church," 165 (1971) 145-57; Agnes Cunningham, "Women and the Diaconate," *ibid.*, pp. 158-66. The Armbruster-Begley study concludes that "the question of ordination of women is not theological but pastoral ('What is best for the service of the Church and mankind?')." It is clear that Armbruster and Begley move in the direction of the ordination of women; yet they are balanced and realistic in their assessment of the situation.

From women's liberation to "Gay Liberation" may seem an enormous step. Be that as it may, the proponents of the "lavender revolution" have come out of hiding, have turned militant in anything but a limp-wristed way, and have laid their cause ("Gay is Good") at the door of the Church. As Elliott Wright points out, "the Church will have to make some response, even if it is total, negative silence."⁹⁹ What is this response to be? Both Wright and John A. Coleman¹⁰⁰ report the contemporary attempts at dialogue with and/or ministry to the homosexual.

The *Christian Century* gave its directions to the churches when it editorialized:

it is time to get out of the business of being judgmental about our fellow human beings It is important to take a stand in support of homosexuals' freedom from discrimination and persecution. Moreover, it is essential to move from words to deeds. On this level nothing less than full and complete acceptance will serve: not tolerance, not sympathy—these smack of judgmental self-righteousness.¹⁰¹

The responses to this were predictable: applause and indignation.¹⁰² The basic weakness of the editorial appears if we juxtapose "their bid for acceptance as normal human beings" with the exhortation that we "take a stand in support of homosexuals' freedom from discrimination and persecution." For the militant homophile community, any judgment which does not accept their condition as normal is discriminating and an act of persecution. A correspondent caught this and noted that the inner logic of the *Century's* position would lead to the removal of the homosexual condition from critical clinical assessment. Anything else would be "judgmental self-righteousness."

As the *Century's* editorial showed, the word "acceptance" is slippery and extremely difficult to deal with in this context. If it means full acceptance of the person in spite of the condition, there should be no human or Christian quibble with it. If it means freedom from oppression and dehumanizing persecution, still no quibble. If, however, it means acceptance of the condition as normal and good (and this is the only

Cf. also *Clergy Review* 55 (1971) 866-93. This section of the issue is devoted to "God and the Feminine." Also Sarah B. Doely, ed., *Women's Liberation and the Church* (New York: Association Press, 1970).

⁹⁹ Elliott Wright, "The Church and the Gay Liberation," *Christian Century* 88 (1971) 281-85.

¹⁰⁰ John A. Coleman, "The Churches and the Homosexual," *America* 124 (1971) 113-17.

¹⁰¹ "To Accept Homosexuals," *Christian Century* 88 (1971) 275.

¹⁰² Cf. *ibid.*, pp. 497-500.

rendering the militant homosexual will accept, because he believes his self-integrity demands this), that is a different thing. Whether a condition (and the acts consequent upon it) is "good and normal"—and hence promotive of an individual's good and growth—is subject to a closely related double scrutiny: clinical and moral. To ask a Christian to accept a condition as "good and normal" without such scrutiny is asking him to act irresponsibly and ultimately uncharitably. For if the condition is "good and normal," impartial enquiry will establish this and help to blast the stereotypes so oppressive to homosexuals. If it is not "good and normal," then to call it such would be to imprison the homosexual in a reverse sort of sexism and make any true liberation impossible.

Francis H. Touchet has caught this point very cleanly.¹⁰³ The homophile organizations (such as Gay Liberation Front, Gay Activist Alliance, The American Church) ignore the prime focus on persons for a chosen focus on sexual preference and in doing so are guilty of an enslaving sexism. This monochromatic view jeopardizes any acceptance of the homosexual and in this sense the homophile militants are their own worst enemies.

What is the proper attitude of a Christian in this matter? Much depends on how one reads the evidence. A brief sampling of recent literature will reveal this. For instance, Paul Popenoe shows no hesitation or uncertainty in his judgment.¹⁰⁴ The homosexual should change "for the same reason that society tries to change other persons who are sick with a dangerous communicable disease." Relying on Irving Bieber,¹⁰⁵ Popenoe states flatly that "where he *wants* to be changed, he can be changed." It is because so many therapists are behind the times in techniques that the condition has been judged irreversible. His final judgment: "Homosexuality is, for every possible reason, neither necessary nor desirable. It is a definite evil, from every point of view, and should be looked on as much."¹⁰⁶

Joseph A. McCaffrey has a different report to make.¹⁰⁷ Under the dominating influence of Freud, homosexuality has long been viewed as symptomatic of a serious flaw in the personality. Recently, however, it is seen as indicative only of an erotic impulse toward the same sex. "There is no research which categorically indicates that homosexuality is *per se*

¹⁰³ Francis H. Touchet, "A View from the Other Side of the Garden," *Listening*, Winter, 1971, pp. 42-48.

¹⁰⁴ Paul Popenoe, "Are Homosexuals Necessary?" *Marriage* 53 (1971) 38-43.

¹⁰⁵ Irving Bieber, *Homosexuality* (New York: Basic Books, 1962) p. 358.

¹⁰⁶ Popenoe, *art. cit.*, p. 43.

¹⁰⁷ Joseph A. McCaffrey, "Homosexuality in the Seventies," *Catholic World* 213 (1971) 121-25; "Homosexuality, Aquinas and the Church," *ibid.*, pp. 183-86.

symptomatic of severe emotional problems." As for the attitudes within the Church toward the homosexual, McCaffrey believes they were given shape by St. Thomas. Aquinas viewed homosexuality from the perspective of a narrowly procreational sex ethic. McCaffrey wants to reopen the question within the context of orthodox Church thinking. He asks: "What is the evidence which so strikingly and clearly condemns the practicing homosexual? No answer at present which purports to defend the Church's position is solidly based. In fact, it is precisely at the juncture of *sound reasons* that Church theorizing collapses."¹⁰⁸

Two things remain dissatisfyingly unclear in McCaffrey's essays. First, what is to count as evidence or sound reasons? McCaffrey notes the inadequacy of Thomas' sexual ethics. Furthermore, he repeatedly states that "there is nothing in the literature that proves that where there is homosexuality there is mental illness." The inference seems to be that once it is established that Thomas' approach was inadequate and that homosexuality does not *per se* involve mental illness, there remain no "sound reasons" or "evidence" for hesitancy about homosexuality. That is a bit much. Secondly, it is not clear what kind of approval McCaffrey's reopening of the question would call for.

Charles Curran, in an extensive study, notes that there are three Christian positions on the morality of homosexual behavior.¹⁰⁹ The first states straightforwardly that homosexual acts are wrong. Generally this is based on the basic procreativity of sexuality. Moral theologian John Harvey is cited as an example of this approach. Secondly, a small but significant group sees homosexual acts as neutral. Thus *Towards a Quaker View of Sex*¹¹⁰ argues that homosexuality is no worse than left-handedness. Some who argue neutrality are rather unnuanced,¹¹¹ others more informed.¹¹² Still Curran, rightly I believe, rejects these approaches as contrary to the radical significance of human sexuality, which "has its proper meaning in terms of the love union of male and female." There is a meaning to man and his relationships which cannot be described as totally neutral.

The third position is a "mediating" one which states that in general homosexual acts are wrong but that homosexual behavior for some might not fall under the condemnation. Curran agrees with the con-

¹⁰⁸ McCaffrey, *art. cit.*, p. 186.

¹⁰⁹ Charles E. Curran, "Homosexuality and Moral Theology: Methodological and Substantive Considerations," *Thomist* 35 (1971) 447-81.

¹¹⁰ *Towards a Quaker View of Sex* (London: Society of Friends, 1963) p. 26.

¹¹¹ E.g., Robert W. Wood, *Christ and the Homosexual* (New York: Vantage Press, 1960).

¹¹² E.g., Neale A. Secor, in *The Same Sex* (Philadelphia: Pilgrim Press, 1969) pp. 67-79.

clusion, but not the reasoning. For example, he faults H. Kimball Jones (who judges homosexual acts legitimate at times because there is nothing else a person can do) for a notion of sin which overwhelms original structures.¹¹³ "There is a basic meaning of human sexuality which sin neither eradicates, neutralizes nor reduces to the same ethical significance as homosexual relations." Similarly Curran rejects John McNeill's idea that some homosexual acts can be viewed as falling under the principle of choice of the lesser evil,¹¹⁴ for "in this opinion the act is still objectively wrong." Rather Curran returns to his principle of compromise. Sin forms a part of objective reality. "The presence of sin means that at times one might not be able to do what would be done if there were no sin present." In one sense, then, the act is not objectively wrong, "because in the presence of sin it remains the only viable alternative for the individual."

John Harvey, O.S.F.S., objects to this compromise approach.¹¹⁵ His objection does not seem to be against the principle of compromise as such, but against its application to the homosexual situation. Briefly, homosexual activity is not the only viable alternative. First, Harvey believes that "a homosexual accepting and living a fully embraced chastity out of love for God and nourishing that life in prayer and community can sublimate freely homosexual tendencies." Secondly, Harvey appeals to recent studies and argues that therapists have found that the young homosexual who is strongly motivated to change his orientation "has an excellent chance of success." Therefore to approach his situation with a principle of compromise is a pastoral disservice to him.

This face-off between Curran and Harvey is basically factual: whether there are humanly viable alternatives for the homosexual. Situating the problem at this point means that both Curran and Harvey view homosexual activity as a deviation from the ideal or normal. Little evidence that I have seen would seriously shake that view. Therefore the heart of the pastoral problem seems to be the existence of viable human alternatives. This has to be settled before individuals or the community (Church) can hope to adopt a constructive pastoral attitude; for until this matter is clear, pastoral attitudes featuring rejection or modified acceptance of the homosexual condition could be equally inhuman and therefore equally nonliberating.

¹¹³ H. Kimball Jones, *Toward a Christian Understanding of the Homosexual* (New York: Association Press, 1966).

¹¹⁴ John J. McNeill, S.J., "The Christian Male Homosexual," *Homiletic and Pastoral Review* 70 (1970) 667-77, 747-58, 828-36.

¹¹⁵ John F. Harvey, O.S.F.S., "The Pastoral Implications of Church Teaching on Homosexuality," *Linacre Quarterly* 38 (1971) 157-64.

Two phenomena make the discovery of the truly human and Christian path more difficult than it should be and both originate from the homophobic community itself. One is the unilateral emphasis on sexual preference and genital sexuality to the neglect of the broader personal aspects of the problem. The second is the militant insistence that the condition is irreversible, or, at any rate, good and normal.¹¹⁶ These emphases will only tend to mobilize societal resistance, and delay liberation from oppression. More importantly, since they by-pass the key problem, they attempt to gain civil liberation at the serious risk of deepening enslavement at a far more profound and more human level.

McCaffrey is certainly right when he concludes: "If society meets the homosexual with a factual understanding, the seventies will witness a much more humane, cogent, and healthy statement of the place of the homosexual in the United States."¹¹⁷ But if liberation is to prove more than a cruel slogan, the emphasis must fall heavily on the word "factual."

Another area where the concept of liberation is proving extremely rich is that of social ethics. Some very interesting literature has appeared recently. Only a few items can be reviewed here.¹¹⁸

Two recent working papers use liberation as their key organizing concept. One is "Justice in the World," submitted by the Secretariate of the Synod of Bishops to the national hierarchies.¹¹⁹ The other was produced by William F. Ryan, S.J., and Joseph Komonchak for the Inter-American Bishops' Meeting in Mexico City (May 18-21).¹²⁰ At several points there is a remarkable similarity in both papers in the way they present the Church's social mission.

First, both draw upon an incarnational view of the Church as the basis for social action and social ethics. For instance, the synodal document notes that the Church was intended by its Founder to be a sign of, a

¹¹⁶ That there is a measure of inconsistency in arguing irreversibility and normalcy seems clear.

¹¹⁷ McCaffrey, *art. cit.*, p. 125.

¹¹⁸ Cf. also Edward G. Bozzo, "The Relevance of Hope for a Person-centered Moral Theology," *American Benedictine Review* 22 (1971) 326-52; *American Ecclesiastical Review* 164 (May, 1971) entire issue; Louis de Vaucelles, "Nouvelles perspectives chrétiennes en matière socio-politique," *Etudes*, Aug.-Sept., 1971, pp. 241-52; J. Ermel, "Y a-t-il une éthique sociale chrétienne?" *La foi et le temps*, May-June, 1971, pp. 257-87; William H. Lazareth, "The Church as Advocate of Social Justice," *Lutheran World* 18 (1971) 245-67; Charles C. West, "Salvation: Divine and Human," *Princeton Seminary Bulletin* 64 (1971) 14-21; Bradley C. Hanson, "The Church's Mission in a Secularized World," *Religion in Life* 60 (1971) 225-35; Fernand Arsenault, "L'Éthique sociale chez Teilhard de Chardin," *Studies in Religion* 1 (1971) 25-44; Rubem A. Alves, "Some Thoughts on a Program for Ethics," *Union Seminary Quarterly Review* 26 (1971) 153-70.

¹¹⁹ Cf. *Catholic Mind* 64 (1971) 29-42. For comment quite critical of the more practical aspects of the document, cf. *Idoc*, June 26, 1971, pp. 51-76.

¹²⁰ Cf. *ibid.*, pp. 13-28.

means to, God's presence among men. But "Christ died and rose again to liberate man from sin and death. This liberation ought to be realized here in this world, as an anticipation of our definitive salvation." In this same spirit the Ryan-Komonchak study states that "authentic Catholic tradition has always resisted tendencies to separate human enterprise from the divine. Creation and redemption, nature and grace are complementary, not competitive." On this basis the study asserts that whenever man fulfils his nature, God's kingdom is realized on earth. Thus, "God's will for each person is fulfillment through human efforts, rooted in the enabling gifts of grace." For this reason the "kingdom begins to be realized wherever the poor and the weak experience justice and peace."

Secondly, both studies see unjust social structures and systems as the embodiment of sinfulness and selfishness, a point that was mentioned at the outset of this section. For instance, Ryan-Komonchak note that "structures and systems, the ambiguous creations of ambiguous men, embody mankind's collective failures and sinfulness." Thirdly, both documents agree that "the Church's principal mission is to manifest, in its teaching, its life and its activity, the liberating work of Christ." Fourthly, as Ryan-Komonchak note, this liberation is twofold: "the rescue of the enslaved, both rich and poor; and the conversion and development of all. One is not less a missionary responsibility than the other. They are inseparable in an integrated, incarnational Christianity." Fifthly, both agree that the role of the Church is not to provide technical solutions, ready-made, to injustices that exist. Rather it is to be the conscience of the world, denouncing sin wherever it reigns, "whether over an individual's selfish heart or throughout an unjust social order." Finally, the two insist, in the words of the synodal study, that "the Christian who fails in his earthly obligations fails thereby in his obligations toward his neighbor, more so still toward God Himself, and he endangers his eternal salvation."

What is particularly satisfying in these papers is the integral view of man which is their basis. Christian theologians have too often in the past been unable to provide a satisfying theological foundation for social ethics.¹²¹ They have vacillated between a natural-law perspective (which too easily neglects the eschatological perspective of Christian action as well as the existence of sin) and a narrow biblicism (which at times

¹²¹ As witness to this, cf. *Christian Social Ethics in a Changing World*, ed. John C. Bennett (New York: Association Press, 1966). Of Catholic social doctrine Oswald von Nell-Breuning states: "it is . . . almost entirely social philosophy and only in a limited way social theology. It needs further development on the theological side" (*Sacramentum mundi* 6 [New York: Herder and Herder, 1970] 108).

became so other-worldly that it was inhuman). The concept of liberation is an excellent vehicle for synthesizing these false polarities. For (1) if personal sin embodies itself in unjust and enslaving structures, (2) if Christ is the liberator supreme, (3) if the Church is the continuance of His liberating presence, then clearly the Church's main task is one of liberation and clearly this means freedom from *all* enslavements—both its roots in sin and its appearance in unjust human structures. The two are not separable; they are continuous. In other words, just as there is a continuity between sin and social enslavement, so there is a continuity between inner personal liberation through grace and concrete Christian social action. To conceive of the good of man in terms of only one is to misread reality as Christ illumined it.

One of the finest social statements I have seen from an American prelate is that of Most Rev. Humberto Medeiros.¹²² Archbishop Medeiros notes that an ethic which hopes to appeal to the conscience of contemporary men must be both "comprehensive in scope and consistent in substance." The remarkable aspect of the Archbishop's text is its repeated emphasis on the fact that consistency in an ethic of life demands a strong stand on issues touching the quality of life. Thus, "if we support the right of every fetus to be born, consistency demands that we equally support every man's continuing rights to a truly human existence." Medeiros applies this down the line to problems of housing, education, welfare, race, warfare, etc., where the quality of life is continually threatened. An excellent example of a truly holistic perspective.

It is the annual experience of the compositor of these Notes that they never really end. They simply grind to a halt. This means that a good deal of valuable literature has been necessarily omitted in organizing the overview. Perhaps partial compensation can be made by listing some of the more significant entries.¹²³

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¹²² Humberto Medeiros, "A Call to a Consistent Ethic of Life and the Law," *Pilot*, July 10, 1971, p. 7. Unfortunately this fine address seems otherwise unavailable.

¹²³ Michael Moloney, S.J., "Sin and Christian Morality," *African Ecclesiastical Review* 13 (1971) 122-26; Thomas F. McMahon, C.S.V., and Raymond Fecteau, "The Morality of Whitelisting," *American Ecclesiastical Review* 164 (1971) 171-84; Daniel Callahan, "What Obligations Do We Have to Future Generations?" *American Ecclesiastical Review* 164 (1971) 265-80; Michael Allsopp, "Authority of Conscience," *Australasian Catholic Record* 148 (1971) 116-26; Robert Hall, "Legal Toleration of Civil Disobedience," *Ethics* 81 (1971) 128-42; Bruno Ribes, "Ethique, science et vie," *Etudes*, June, 1971, pp. 823-43; Clyde L. Manschreck, "Control and Freedom: The Individual and Society,"

Encounter 32 (1971) 183-207; Denis O'Callaghan, "The Meaning of Conscience," *Furrow* 22 (1971) 78-86; "Christ and Conscience," *ibid.*, pp. 188-97; "Boston Province Bishops on Vietnam War," *Idoc*, Aug. 28, 1971, pp. 91-96; P. J. McGrath, "On Not Re-Interpreting 'Humanae vitae,'" *Irish Theological Quarterly* 38 (1971) 13-143; George A. Kanoti, C.R., "Ethical Implications in Psychotherapy," *Journal of Religion and Health* 10 (1971) 180-91; Wm. R. Albury and Richard J. Connell, "*Humanae vitae* and the Ecological Argument," *Laval théologique et philosophique* 27 (1971) 135-49; Hugh Trowell, "The Good Death' versus 'Euthanasia,'" *New Blackfriars* 52 (1971) 346-51; B. Downing, "The Case for Voluntary Euthanasia," *ibid.*, pp. 351-54; E. Hamel, S.J., "Lux evangelii in constitutione 'Gaudium et spes,'" *Periodica* 60 (1971) 103-20; George C. Kerner, "The Immorality of Utilitarianism and the Escapism of Rule-Utilitarianism," *Philosophical Quarterly* 21 (1971) 36-50; Richard G. Henson, "Utilitarianism and the Wrongness of Killing," *Philosophical Review* 80 (1971) 320-37; William J. Tobin, "Personal Character of the Moral Act," *Priest* 27 (1971) 78-80; Walfred H. Peterson, "The Courts and Freedom of Conscience," *Religion in Life* 60 (1971) 247-56; William F. Allen, "New Approaches in Moral," *Pastoral Life* 20 (1971) 28-35; G. Bourgeault, "La spécificité de la morale chrétienne selon les Pères des deux premiers siècles," *Science et esprit* 23 (1971) 137-52; Ph. Delhaye, "Dogme et morale: Un cas de fédéralisme théologique," *Seminarium* 11 (1971) 295-322; R. Hofmann, "Anthropologie de la morale," *Le supplément* 97 (1971) 141-49; C. Robert, "La situation de conflict." *ibid.* pp. 150-75; Peter Harris, "Faith and Morals," *The Way* 11 (1971) 211-18; Charles A. Joël, "Die therapeutische Insemination," *Zeitschrift für evangelische Ethik* 15 (1971) 215-26.