

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY 1977: THE CHURCH IN DISPUTE

RICHARD A. McCORMICK, S.J.

Kennedy Institute and Woodstock Theological Center, Washington, D.C.

This report is entitled "The Church in Dispute" because that seems an accurate reflection of much of the literature as I read it. Controversial public events with theological ramifications have abounded in the past year: ordination of women,¹ the rights of homosexuals,² Medicaid and abortion,³ the energy crisis, human rights and foreign policy, the Panama Canal, the B-1 bomber, etc. Beneath discussion about such events we inevitably find changing theological thought-patterns, those continuing struggles of thoughtful persons to rephrase the *magnalia Dei* in a world of change, conflict, doubt. As they always have, these struggles bring persons of good will into dispute. For instance, there are indications of an emerging face-off between the Tracy-Gilkey school and the Dulles-Berger point of view. In moral theology the matter is no different. The Catholic moral-theological community reveals various tendencies with diverging attitudes toward theology, authority, certainty, evidence, human conflict, the nature of moral argument.⁴ The disputes involve theologians with theologians, bishops with theologians, and hierarchies with governments. It should not be surprising that in the tenth-anniversary year of its publication, *Humanae vitae* is the vehicle for some of the concerns expressed.

It would be both tendentious and ungracious to attempt to characterize

¹ Alan Geyer, in his fine inaugural address (Churches' Center for Theology and Public Policy) referred to some of these concerns as "narcissism . . . a scandalous introversion of religious energy" (*Congressional Record*, Oct. 12, 1977, E 6236-6237).

² For some literature cf. *Anglican Theological Review* 59 (1977) 182-97; Theodore W. Jennings, "Homosexuality and Christian Faith: A Theological Reflection," *Christian Century* 94 (1977) 137-42; *Christianity and Crisis* 37 (1977) 116-44; James B. Nelson, "Homosexuality and the Church," *Christianity and Crisis* 37 (1977) 63-69; "Can Homosexuals Inherit the Kingdom?" (editorial), *Christianity Today* 21 (1977) 943-44; John Jay Hughes, "Homosexuality: A New Study," *Clergy Review* 62 (1977) 69-72; John Mahoney, "The Church and the Homosexual," *Month* 10 (Second New Series, 1977) 166-69; John F. Harvey, "Chastity and the Homosexual," *Priest* 33 (July-Aug. 1977) 10-16; Clifford Longley, "The Homosexual Challenge," *Tablet* 231 (1977) 322.

³ For differing views cf. *Christianity and Crisis* 37 (1977) 202-7.

⁴ Cf. William J. Parente, "A Conservative Response," *America* 137 (1977) 313. Parente reports on the establishment of the Fellowship of Catholic Scholars and states that the "CTSA work almost certainly served as a catalyst in the birth of the fellowship." For some of the questions this has raised, cf. Thomas Dubay, "Pluralism and Authenticity in Moral Theology," *Homiletic and Pastoral Review* 77 (March 1977) 10-22.

these tendencies. That should come from the literature. What is increasingly clear in the literature reported here is that what is probably more important than any single conclusion or argument or issue is the underlying perspective of which the surface differences are transparent.⁵ This edition of the "Notes" will probe at these underlying perspectives from several, often overlapping focuses of concern: moral norms, the double effect, human rights, and the CTSA committee report on sexuality.

THE CHURCH AND MORAL NORMS

The question of moral norms and their grounding continues to be a subject of lively interest in moral literature. Here I shall review but a few recent examples of this continuing discussion. Franz Böckle, in discussing the relation of faith to conduct, points out that to act responsibly means to act from insight.⁶ This does not mean that a person must see with perfect clarity the basic reason for a determined action. One can allow oneself to be led by competent authority. Rather, it means that "an ethical act must be, as such, basically able to be comprehended and must be understandable. Correspondingly, the *norms* (through which our conduct toward persons and the world is governed) must also basically stand open to human rational insight."⁷

This rational intelligibility of moral norms does not exclude the fact that the individual values that generate a norm can experience a special grounding and ratification in revelation. Quite the contrary. Thus, our faith that God loves each individual and calls each to salvation deepens our insight into the worth of the individual. But such a deepening hardly means that revealed morality is impervious to reason. "Rather, theological tradition says that the morality of revelation is the truly reasonable morality which receives its confirmation precisely in this way (by revelation)." Böckle insists throughout his study that while "there are mysteries of faith, there can be no mysterious ethical norms for action whose

⁵ This is made clear in a splendid paper by Walter J. Burghardt, S.J., on the task and difficulties of theology (see n. 143 below). In discussing the difficulties theologians encounter, Burghardt distinguishes two different notions of theology: justification (of magisterial statements) and understanding. Far too many people see the first as the primary and perhaps unique task of theology. Burghardt provides a response which is utterly persuasive. Much pastoral good would be achieved were his address widely disseminated.

⁶ Franz Böckle, "Glaube und Handeln," *Concilium* 120 (1976) 641-47.

⁷ Ibid. 642. Eraldo Quarello has an interesting article on certainty in moral judgments: "Riflessioni teologiche sulla certezza morale," *Salesianum* 39 (1977) 77-92. The certainty required in the direct formation of conscience must be understood in a broad human sense. It consists of a kind of convergence of evidence involving also the will, human sensibilities, and "the many other conditionings to which the human person is subject." He agrees with Schüller that it is difficult to defend the type of pure deontology that views an act "in itself" independently of consequences. Since consequences cannot always be foreseen with absolute certainty, they should be considered as "converging lines toward what is licit or illicit."

substantive (content) demand with reference to interhuman conduct is not positively intelligible (*einsehbar*) and clearly determinable.”

Böckle lists three ways in which faith exercises an influence on morality. First, faith in God's redemptive act in Jesus Christ gives to the radical act of self-determination (fundamental option) its basic ground and sense. This basic decision (*metanoia*) is the *fundamentum et radix* of the moral life and stamps all of our activity. Secondly, faith deepens and renders secure the insights important for individual acts. Here Böckle distinguishes “morally relevant insights” from “moral judgments.” Faith has a direct influence only on the insights, not on the moral judgments themselves.

Finally, Böckle argues that faith forbids the absolutizing of any created good. There follows an extremely interesting paragraph:

An ever larger group of moral theologians is convinced that moral norms in the interhuman area can be grounded only in a teleological way, that is, exclusively through a consideration of the foreseen consequences of the action. Their chief argument lies in reference to the fact that the goods with which our conduct is concerned are exclusively conditioned, created, and therefore limited values. Therefore the moral judgment of an action can be given only after considering the conditions attaching to the value as well as weighing the other concurring values. Certainly man is *unconditionally* obligated by the absolute value of the ethical; but as a contingent being in a contingent world, he can realize the absolutely obliging *bonum* only in and through *bona* which, as contingent goods or values, are relative and as such can never be shown a priori to be the greatest value which cannot concur with another value.⁸

For Böckle, then, the basic values or goods are utterly essential. But he insists that they cannot be absolutized in a way that excludes as unthinkable any weighing of goods (*Güterabwägung*), a point that is made by other studies (cf. Scholz, Weber, Schüller below). The formulation of moral norms must take this into account.⁹

Böckle next turns to the role of the Church in proposing moral norms for concrete conduct. No theologian denies that the Church has a role here. “The only debated question is: with what authority, with what reasons, and with what certainty the Church can speak and decide in concrete moral matters.” Both the First and Second Vatican Councils

⁸ Böckle, “Glaube und Handeln” 644.

⁹ Moral theologians, even when they do not advert to it explicitly, increasingly employ a teleological structure as they do applied ethics. A recent and excellent example of this is Guy Durand's “Insémination artificielle,” *Laval théologique philosophique* 33 (1977) 151-63. Durand (along with Häring, Rahner, Troisfontaines, and many others) accepts insemination by husband (AIH) but rejects donor insemination (AID). The acceptance is, of course, an alteration of the teaching of Pius XII, who himself had excluded AIH (“absolute eliminanda est”) precisely on teleological grounds (it would biologize marriage). It is the characteristic of teleological considerations that they are open to reassessment.

rooted the Church's competence in its mission to preach the faith (*fidem credendam et moribus applicandam praedicare*). The exact nature of this competence is to be sought in the structure of morality itself. "The natural moral law must in principle be clarified by argumentation." Neither revelation nor authoritative statement replaces human insight and reasoning. Böckle notes: "People will willingly trust themselves to competent leadership where they are convinced that for this authority objective reasons are its measure."

Böckle attributes the authority crisis since *Humanae vitae* to a failure in this area. Specifically, in moral matters the arguments are decisive. "If some theologians and the magisterium believe that they know more about a particular moral matter from other sources, then they must clearly inform Catholics and all persons of good will" as to the source of their greater certainty.¹⁰ Böckle believes that the Church will win moral authority precisely to the degree that it is willing to engage in open, argumentative discussion. Obviously he is suggesting that this has not been the case in some recent decisions.

Böckle is correct, I believe, providing we understand human insight and moral reasoning in its broadest sense. I mean to suggest that discursive moral reasoning cannot always (perhaps even ever) capture and reflect adequately the fulness of moral insight and judgment. There are factors at work in moral conviction that are reasonable but not always reducible to the clear and distinct ideas that the term "human reason" can mistakenly suggest. When all these factors are combined, they suggest that the term "moral reasoning" is quite broad and is defined most aptly by negation: "reasonable" means not ultimately mysterious.

Dario Composta reacts sharply against some of these contentions.¹¹ He sees the opinions of several authors (Böckle, Jacob David, Enrico Chiavacci) as chipping away at the legitimacy of the competence of the magisterium where the natural law is concerned. For instance, some of these authors contend that the magisterium expresses itself through "a general judgment that does not substitute for the conscience of the faithful but can aid" these consciences. These and other claims have the effect of denying a true binding power to the magisterium.

He then cites Böckle's contention that all concrete ethical norms are conditioned and must be applied in a conflict world where a preference is sometimes called for. The proclamation of a norm by the magisterium, according to Böckle, does not alter this conditioned character.

Composta responds to these statements by pointing out that the power to teach (*potestas docendi*) is not a mere evangelical ministry; it is above all an "*officium ecclesiasticum*, which implies the exercise of a

¹⁰ Böckle, "Glaube und Handeln" 646.

¹¹ Dario Composta, "Diritto naturale e magistero," *Euntes docete* 29 (1976) 365-77.

power to which corresponds the duty of obedience on the part of the faithful." The opposite opinion, he says, emphasizes the primacy of conscience. His response: that is correct "when one wants to emphasize the necessary interiorization of a norm . . . but it is false when the interiorization of the norm would exempt the faithful from obedience." For the teaching authority is *sacra potestas*, which issues in an *imperium*.

It is easy to agree with Composta that some formulations unduly reduce the teaching authority of the Church to provision of information or to partnership in a philosophical discussion. That is an overreaction and at odds with the Catholic idea. But Böckle's assertions do not do this. Specifically, if concrete moral norms are indeed conditioned, then the fact that the Church (e.g., the Holy Father) has genuine teaching authority does not alter this. And to say this does not diminish his genuine teaching authority. To say that it does reveals a one-sidedly juridical notion of magisterium—which is the notion one finds in Composta. For instance, he argues that the "pontifical magisterium does not per se demand the technical consensus of theologians," and he gives Pope Paul's rejection of the majority of his birth-control commission as an example.

Here several points might be suggested. First, it is assuredly true that when advisors are divided, someone has to make a decision, take a position. But here we must distinguish carefully between a division over practical policy decisions and division over the accuracy of teaching formulations in a concrete moral area. In the latter instance clarity is not achieved by mere authoritative decree. Secondly, when advisors are heavily against a particular formulation of a moral teaching, then only a highly legal notion of magisterium would argue that the Holy Father is in the same position as he is with a heavy consensus going the other way. Otherwise consultation is a disposable luxury.

Finally, and in any case, the authority of the teacher is not such that it generates absolute certitude. It enjoys, rather, the presumption of certainty. The only way to test whether that presumption is verified in a particular moral matter is through the evidence and arguments, if these terms are not too narrowly construed. There has been a tendency to deny this (e.g., Composta says little about evidence and analyses). Our attempt should be to walk a middle course.¹²

Bruno Schüller continues his discussion of moral norms in an article that pulls together much of what he has developed at length elsewhere.¹³

¹² For some further literature on the magisterium, cf. Hans Geisser, "Das römische Lehramt in protestantischer Erfahrung," *Freiburger Zeitschrift für Philosophie und Theologie* 91 (1977) 23–52; Francis E. King, "Avery Dulles on the Magisterium," *Homiletic and Pastoral Review* 78 (Oct. 1977) 9–17; E. Glenn Hinson, "The Crisis of Teaching Authority in Roman Catholicism," *Journal of Ecumenical Studies* 14 (1977) 66–88.

¹³ Bruno Schüller, S.J., "Typen der Begründung sittlicher Normen," *Concilium* 120 (1976) 648–54.

He notes that traditional theologians were familiar with the problems of deontological norms. Thus they indulged in restrictive interpretation to reduce the harmful effects of adhering to the norm. For instance, the concept of lying was so narrowly defined that broad mental reservation was not included. It was to be judged in terms of its consequences.

Similarly, the distinction between direct and indirect killing seemed to serve the same purpose. For instance, to interpret "Thou shalt not kill" literally and absolutely would at times involve more harm (deaths) than seems tolerable or necessary. Life itself would suffer in a conflict world from such an interpretation. Some recent theologians are interpreting the indissolubility of marriage as an ideal to be striven for (*Zielgebot*) rather than as a command to be conformed to (*Erfüllungsgebot*). If indissolubility is understood as an ideal, clearly it would not be included among deontological norms.

Catholic tradition, Schüller points out, used two different forms of argument to establish its deontological norms. The first form began with natural ends which were ascribed to speech and the sexual faculties. One saw divine providential wisdom at work in these natural purposes. *Deus (natura) nihil facit inane*. Thus, God gave us the faculty of speech so that through truthful speech we could live together in society. Falsehood frustrates this purpose. Schüller notes that basically this is a teleological perspective ("so that through truthful speech we could live etc."). When this natural end, by appeal to God's creative wisdom, was viewed as inviolable, the norm became deontological. In this way certain particular nonmoral values were elevated to the level of absolute preference. This happened with the integrity of the sexual (procreative) faculty.

Schüller admits that natural finalities do indeed reflect the Creator's providential wisdom. But "the extent to which these natural ends must be respected in individual cases depends on whether they must deserve the preference when in relationship with concurring values. To make that determination is, if one cares to put it that way, the natural end of the power of judgment given to man by God."¹⁴

The second form of argument used to justify deontological norms for certain actions was appeal to divine prerogatives. Suicide is the best example. God alone is the lord of life and death; man arrogates God's rights when he commits suicide. Schüller sees in this argument a *petitio principii*. That is, theologically the precise question is whether God does not dispose His lordship over life in such a way that He communicates the power to take life in certain situations.¹⁵ Sensing the circularity of

¹⁴ Ibid. 649.

¹⁵ It is precisely here that the weakness of W. May's formulation shows most clearly. About direct willing of certain evils he says: "It is accepted *and endorsed* by the agent, ratified by him. . . . In accepting it and in ratifying it, the doer shows his willingness to take, as part of his moral identity, the doer of evil" (*Becoming Human* [Dayton: Pflaum,

their arguments, theologians sought other arguments which were thoroughly teleological in character: e.g., making the prohibition absolute because of the general danger associated with not doing so (*lex lata ad praecavendum periculum generale*).

In summary, Schüller sees Catholic tradition as heavily teleological in its normative ethics. Only in a relatively few cases were norms seen as deontological, and the constant attempt was to narrow these norms to reduce the harm a broader interpretation would involve. The reasons given for reading these norms deontologically he sees as unpersuasive and false. But he believes that some traditional norms, which at first sight have all the characteristics of deontological norms, could be justified teleologically. Thus, he would argue that the prohibition of suicide could be justified teleologically, scil., lack of proportionate reason.

The remainder of Schüller's study is an engagement with William Frankena. A proper understanding of love would include in beneficence that distribution which Frankena calls justice. Therefore Schüller rejects the deontology based on the assertion that a principle separate from love (scil., justice) is required.

Gustave Ermecke will have none of this. He continues his extremely critical reaction to contemporary efforts to probe the meaning and limits of normative statements as found in Böckle, Schüller, *et al.*¹⁶ His brief essay concludes with a kind of moral-theological lament: "How far have some moral theologians already deviated from the ecclesial moral tradition, one never really refuted by anyone up to now! There is total silence about binding Church teaching! The moral confusion in theory and practice is in our time almost complete."¹⁷

What is behind this gloomy conclusion? Ermecke believes that theologians have abandoned as their point of departure the "nature of man" and adopted a functional perspective. The standard axiom *agere sequitur esse* is passed over in silence or denied, in favor of *agere sequitur actum*.

1975] 102). By this May means that there are certain acts which one cannot freely choose to do for any proportionate reason, simply because such acts are the kinds of acts that are inherently evil, so that one freely choosing to do them cannot not take on, as part of his moral identity, the identity of an evildoer (personal communication from May). To that I would say: if it is the *act itself* that makes me an evildoer by doing it, then how could God command it, e.g., command Abraham to kill Isaac? If God can command it, then clearly one does not take on the character of *moral* evildoer (and this is May's meaning) by doing it. May might respond by saying: Yes, but it is clear that for direct killing God does not allow it. And for that reason it is still inherently wrong. The obvious answer: that is the whole point of the discussion, scil., whether God does not communicate His lordship over life to us in certain exceptional instances. If He does, then the act is not inherently evil (as May uses the term). In summary, May's argument seems radically circular.

¹⁶ Gustave Ermecke, "Katholische Moraltheologie am Scheideweg," *Münchener theologische Zeitschrift* 28 (1977) 47-54.

¹⁷ *Ibid.* 54.

In other words, Ermecke accuses many theologians of abandoning basic human and Christian anthropology for an empty value morality that is a form of rationalism. He is particularly critical of any rules that attempt to establish an order of values (*Wertvorzugsgesetz*). This rationalism is not the *recta ratio* of tradition, which was not deaf to the resonances of being and order. It is a rationalism without a binding metaphysics.

This concentration on the analysis of individual acts, according to Ermecke, produces three thought-patterns in contemporary moral theology: (1) the exclusion of new material norms from the moral life, norms grounded in the New Testament and taught by the Church; (2) the narrowing of the notion of "reason" to a kind of "actionism"; (3) the abandonment of a deontologically understood essential order of things for a teleology of acts leads necessarily to the immoral principle that a good end justifies a means evil in itself. "This is the end of any solid and, above all, any Christian ethic and Catholic moral theology."

Unfortunately, Ermecke's recent writings strike this reviewer as almost totally exhortatory, and that within a Cassandraic mood. Even the formulations of his own Catholic tradition demand the type of analysis which he is here decrying. To newer probes he has nothing to offer but parenetic warnings about relativism, rationalism, abandonment of Church teaching. In other words, moral discourse to Ermecke is adherence to traditional formulations.

In another article Ermecke argues that beneath the conclusions of *Humanae vitae* is a concept of nature that is philosophical-theological in character.¹⁸ Therefore one cannot argue directly against the encyclical from the perspective of natural science. The sciences, he argues, deal with the *physis* of persons; ethics deals with the *metaphysis*, the essential reality of man. "And this essential reality may not be directly harmed." He believes that many arguments adduced against Church teaching confuse scientific facts with moral judgments. For example, he cites the instance of a physician from Bonn (Dr. von Eiff) who invited the German bishops assembled in synod at Würzburg (1974) to consider recent scientific advances just as seriously as they did the work of Ogino-Knaus. Ermecke uses this as the occasion to set forth both the contributions and limits of the human sciences with respect to moral norms. In general, he argues that the sciences tell us not the what but the how of our duties. For instance, we know that we have a duty to nourish ourselves. But how this is to be fulfilled at a particular moment in history will be made concrete by the contemporary sciences.

More specifically, scientific advances take on a moral character in so far as they restrain or injure persons in their core or their development.

¹⁸ Gustave Ermecke, "Wissenschaftlicher Fortschritt contra katholische Moral?" *Theologie und Glaube* 67 (1977) 55-70.

For example, certain military weapons, new abortion techniques, and "contraceptive devices that are contrary to nature" injure the basic *esse* of the human person. Ermecke then returns to Dr. von Eiff and says that he is correct when he notes that certain methods recommended by the Church offend against nature "if nature is understood in *Humanae vitae* in a purely biological way." It is not. "Nature," he says, "is not understood there, as unfortunately an *ad hoc* theological ideology repeatedly asserts, at the level of purely scientific data" or at the level of the *physis* which the sciences study. Rather, it appeals to the *metaphysis*, the essential being of man, in making its claims. Therefore one cannot argue against the encyclical on merely scientific grounds.

Ermecke concludes: "And this essential reality may not be directly harmed. The contrary assertions of a fashionable understanding of moral norms covering created values (an understanding which completely or very broadly denies deontological norms and grants validity only to 'teleological' ones) is false and moral-theologically misleading."¹⁹

Several aspects of this essay merit comment. First, there can be no doubt that when an action harms persons in their essential reality (what Ermecke calls *metaphysis*), then that action is morally wrong. However, Ermecke has simply asserted this of certain forms of birth regulation. What we need here is a reasoned and persuasive argument. Hence this aspect of his study begs the question in dispute, and therefore unavoidably leaves the impression that when he speaks of nature and "contrary to nature," the only thing these terms can mean is *biological* nature.

Secondly, Ermecke asserts of contrary views that they are teleological and therefore false. It is paradoxical to find him attacking teleological considerations when he himself proposes a teleological criterion to identify those scientific advances which are not advances at all, but morally wrong. He states: "Catholic moral theology must protect the whole man in his freedom and therefore . . . must declare certain scientific advances morally wrong *if they hinder or harm persons in their essential being or in the historical development of this essential being.*"²⁰ That is a perfectly acceptable criterion; but I submit it is teleological at root.

Finally, Ermecke concludes by lifting out what he calls the "unsatisfactorily answered question" which must be put to those who disagree with him: How can the Church declare overnight as invalid and even erroneous a prohibition that she has taught as pertaining to salvation for nearly two thousand years? Much could be said to that question—e.g., about the changing circumstances in which the substance of the Church's concern must be formulated. However, what is immediately evident here is that this question is a *different* matter from the question under

¹⁹ Ibid. 69.

²⁰ Ibid. 64.

discussion (whether an action is always injurious to persons in their essential being as persons). It is not a question of the natural moral law. But the fact that it leads Ermecke where it does shows how much our notions of such a law can be influenced by some hidden ecclesiological concerns. Whether that is regrettable or to be welcomed can be left to the reader.

Another author quite critical of these tendencies is B. Stoeckle.²¹ He approaches the matter under the name used by Tübingen's A. Auer: "an autonomous morality." He argues that such a term and such a notion only play into the hands of reprehensible modern notions of autonomy. As an example, Stoeckle gives the teleological grounding of norms which provides for a weighing of values (*Güterabwägung*) in conflict situations. He has several objections to raise. First, such an approach assumes that all precepts of a concrete kind "are contingent and therefore of a conditional character." They are not. There are some norms that must not be allowed to fall victim of any value-preferences (e.g., the indissolubility of marriage, the prohibition of adultery and premarital intercourse).²²

Secondly, Stoeckle argues that this point of view simply turns over to persons too much autonomy. "This position equips a person with a sovereignty that enjoins him to consider moral value as a matter for which he himself alone possesses competence."²³ Rather, he states, there are actions where we do not enjoy such sovereignty, actions which bind unconditionally. "That happens in phenomena like trust, mistrust, mercy, lack of mercy, uprightness, lying. These are withdrawn from the disposition of men. . . ."

Stoeckle's study is primarily concerned with the specificity of Christian ethics; but he does treat the matter of moral norms as an example of the poverty of the school he opposes.

Three points. First, Stoeckle sees a teleological understanding of norms (proportionate reason) as individualistic. No one holds, to my knowledge, that because in certain conflict situations a weighing of values must occur, this is to be done individualistically, as Stoeckle holds. Nor need one hold this. There are certain kinds of action for which the community may judge that, practically speaking, there is no proportionate reason. Being naturally social and Christianly communal, we look to our tradition

²¹ B. Stoeckle, "Flucht in das Humane?" *Internationale katholische Zeitschrift* 6 (1977) 312-25.

²² In this regard see also the thoughtful article of philosopher Robert Spaemann, "Wovon handelt die Moralthologie?" *Internationale katholische Zeitschrift* 6 (1977) 291-311. Spaemann uses indissolubility of marriage to confront recent tendencies. But he seems to overlook the Orthodox experience.

²³ Stoeckle, "Flucht in das Humane?" 317.

and to our community as the context in which moral learning is achieved, hence the context in which any weighing of values ought to occur. In summary, a weighing of values in conflict is not and should not be an individualistic weighing of values. Stoeckle attempts to get leverage by equating the two.

Secondly, Stoeckle commits the common mistake (about which more below) of giving actions a value definition, and indeed a very formal one (mercy, lack of mercy) when discussing actions always to be avoided. No one would disagree with him; but he is not addressing the question under discussion.

Finally, his entire discussion of the specificity of a Christian ethic calls out for distinctions. He argues (against Auer) that "Christian faith produces ethical content that is understandable and open to the reason of a believer but not to the reason of an unbeliever." Of course, there are things that are "reasonable to the Christian" that are not to the nonbeliever. For instance, the folly of the cross and the grace of the Spirit will lead individuals to conclusions that even other Christians may not share. But as I understand it, this is not the discussion. It pertains to *concrete* demands at the *essential* level, scil., a level stating demands considered valid for all persons. Stoeckle seems to overlook this. He would do well to give us a single example of a concrete act at the essential level that is in principle unavailable to human insight and demands faith.

In a long and very useful study, Louis Janssens sums up much of what is being said in recent studies on moral norms.²⁴ In order to understand the meaning and limits of concrete material moral norms, Janssens points out that we must take into account a double ambiguity in our actions. The first derives from the "presence and connection of premoral values and disvalues in reality, as well as in our actions." By "premoral values" he means life, bodily and psychic health, pleasure and joy, friendship, knowledge, technique, art, etc. "We call them premoral values (classically: *bona physica*). They are *premoral* because in themselves they are neither moral nor immoral. . . ." Similarly, realities such as hunger, thirst, illness, death, neuroses, ignorance, error, and violence are premoral disvalues (classically: *mala physica*). These values and disvalues are sometimes inseparably connected in our conduct, so that there are times when "we cannot realize a premoral value without admitting the inseparable premoral disvalue."

The second ambiguity results from the fact that our choices are limited. Choosing one thing, we necessarily omit another. Faced with these

²⁴ Louis Janssens, "Norms and Priorities in a Love Ethic," *Louvain Studies* 6 (1977) 207-38.

limitations, our choices must respect the order of priority in reality (*ordo bonorum*), and since such preferences affect the well-being of others, they must be situated within the *ordo caritatis*. In summary, Janssens writes: "In the situations where premoral values are unavoidably connected with premoral disvalues or where it is impossible to avoid all of the premoral disvalues which are inseparably blended, we ought to choose the alternative which indicates our preference for the lesser premoral disvalue. Otherwise we do not exclude premoral disvalues as much as possible."²⁵

Janssens gives several examples. One is the classical but now rare case where the physician is faced with the choice of losing both mother and fetus if he does not intervene, or of saving the one life (mother's) he can save. "If the doctor refuses to interfere, his free choice is a preference for an omission in which two lives (premoral values) are lost. If he intervenes, he chooses an action which expresses a preference for the lesser premoral disvalue, namely, the loss of only one life." Janssens correctly notes that this was the principle explicitly used by the Belgian bishops in their statement on abortion.²⁶

He applies this reasoning to other situations, e.g., prisoners of the Gestapo during World War II who took their own lives rather than be tortured or drugged into revealing secrets that could endanger the lives of others. Their actions were not only good because they proceeded from good intentions. "Their action was also morally right, because they preferred a lesser premoral disvalue (their own death) in order to save higher premoral values (many lives, important military secrets)."

Janssens then turns to concrete material moral norms. He makes several points here. First, such norms must employ only descriptive language, not "morally qualifying terms" such as "murder," "lie," "theft." For instance, a "lie is a morally qualifying noun affirming that a falsehood—descriptive word referring to a premoral disvalue—is uttered in an immoral way (without proportionate reason)."²⁷

Secondly, Janssens argues that both prescriptive and proscriptive norms are relative (scil., not always applicable). For instance, with regard to negative norms he states: "an action admitting or causing premoral

²⁵ Ibid. 214.

²⁶ Cf. *Documentation catholique* 70 (1973) 432–38. In a recent article M. Zalba, S.J., has followed a different path. He sees "therapeutic" abortions (to save the mother) as indirect. Cf. "El aborto terapeutico 'aborto indirecto,'" *Estudios eclesiásticos* 52 (1977) 9–38. Zalba concedes that many others have reasoned differently. Some use preference principles (Schüller, Dedek, Heylen, Molinski). Others appeal to compromise (Lopez Azpitarte, Curran, Martelet, etc.). Others argue that the true notion of absolutely prohibited abortion is not realized (Håring, Visser, Rotter, Troisfontaines).

²⁷ Janssens, "Norms and Priorities" 216.

disvalue is morally right when it serves a higher premoral value or safeguards the priority given to a lesser premoral disvalue. In other words, we can have a proportionate reason to depart from the norm."²⁸

Thirdly, this does not prevent some norms from being "practically exceptionless." This is the case when the action described in the norm practically always deserves the priority (e.g., render help to one in *extreme* distress) or "when there is an inner contradiction between the elements forming part of the description of what is done." An example of this latter is rape. Rape means the use of physical or psychic violence in order to compel somebody to sexual intercourse against his or her will. Violence is a premoral disvalue that must be justified. Here it cannot be justified; for "truly human sexual intercourse is an expression of love and thus a free, mutual self-giving which is radically opposed to the use of violence."

Since proportionate reason plays such an utterly crucial role in Janssens' thought, he is at pains to show the many considerations that must be attended to in its determination. He lists four. (1) The relevant sciences (sociology, psychology, economics, etc.) must be studied to appreciate the true significance of our actions. (2) We must differentiate instrumental actions (work) from those having a meaning in themselves (play, research, contemplation) and those that are expressive actions or *Ausdruckshandlungen* (giving a present). These latter have a meaning in themselves. They are signs of love, support, solidarity. (3) We must appreciate the institutional character of some actions (promises, contracts) and the importance of institutions for the common good. (4) In establishing priorities or preferences, we must attend to the *ordo caritatis* and the *ordo bonorum*.

The remainder of Janssens' essay is an excellent treatment of the *ordo caritatis* and *ordo bonorum*. It is impossible here to do more than indicate several points of interest and importance. For instance, in treating the *ordo bonorum* Janssens notes that "the moral goodness of the person is an absolute value." For this reason one may never ("whatever the consequences may be") induce a person to act against his conscience. Similarly, we ourselves must "always follow the maxim: *non sunt facienda mala ut eveniant bona*, on the condition that *mala* refers to morally wrong actions and not to premoral disvalues."

With regard to priorities within the *ordo bonorum*, Janssens notes some of the standard preference rules. For instance: (1) All other things being equal, a higher value deserves priority over a lower. (2) The more urgent and basic the value, the more it deserves preference (e.g., life itself). (3) Degree of probability of realizing a value in one's action must be taken into account. (4) The preservation and support of a value over

²⁸ Ibid. 217.

the long run must be weighed. Thus, a person could jeopardize a value by the type of single-mindedness that leads to poor health. (5) Special attention needs to be given to values protected by institutions, for social life is at stake. Thus, before performing actions that depart from institutional rules (contracts, promises), several tests are called for. Would I or someone else make the same judgment about the moral choice in any situation which is similar in the morally relevant aspects (principle of universalizability)? What would happen if everyone were to perform a similar action in a similar situation (principle of generalizability)? What would happen if others are influenced by our action to do likewise (wedge principle)?

These do not solve problems, for ethical rules are not recipes. But they do prepare the problem-solver for the exercise of prudence.

Janssens insists, with Fuchs and others, that it is impossible to make a moral judgment about the material content of an action without considering the whole act. "A judgment about moral rightness or wrongness is only possible with respect to that totality, because only concerning that whole is it possible to argue whether or not it expresses the priority of the lesser premoral disvalue or of the higher premoral value."²⁹

Nor is this new. Janssens argues that Thomas shares this same perspective. Thomas states that "there are some actions which, absolutely considered, involve a definite deformity or disorder, but which are made right by reason of particular circumstances, as the killing of a man . . . involves a disorder in itself, but, if it be added that the man is an evildoer killed for justice' sake . . . it is not sinful, rather it is virtuous."³⁰ Or, as Janssens words it more generally, "the whole action, considered in all its elements (circumstances) is morally right because there is a proportionate reason to justify the causing of a premoral disvalue."

Janssens concludes his long study with an examination of the Thomistic doctrine of sexual acts "against nature"—and therefore intrinsically wrong. He traces this to Thomas' notion of natural law as involving three levels of inclinations to goods. The second level is generic; that is, it refers to those inclinations we share with animals. At this level sexual intercourse is an *actus naturae* whose purpose is uniquely procreation. "As the use of food is not sinful when it is confined within a proper measure and order, in as much as it is subservient to the health of our body, so the use of the sexual faculty is not sinful if it happens in a right measure and order, in as much as it is subservient to its end, which is procreation."³¹

²⁹ Ibid. 231.

³⁰ *Quaestiones quodlibetales* 9, q. 7, a. 15.

³¹ 2/2, q. 153, a. 2. There is an extremely interesting literature this past year on natural law. For instance, Michael B. Crowe presents a helpful critical study about the status of

This perspective was, Janssens persuasively argues, abandoned by *Gaudium et spes*. But it is lingeringly present in *Humanae vitae*, *Persona humana* ("Declaration on Certain Questions concerning Sexual Ethics"), and the *Documentum circa sterilizationem in nosocomiis catholicis* ("Document on Sterilization in Catholic Hospitals").

I have reported this study at considerable length for several reasons. First, it brings together a great deal of writing and reflection that has occurred over the past decade (Fuchs, Knauer, Schüller, Böckle, Molinski, Weber, Scholz, etc.) in a clear and helpful way. Secondly, it explains why earlier authors (e.g., St. Thomas) who held the same general principles did not apply them in the same way. Concretely, because of their notion of natural law and the biology available to them, they could not. Thirdly, the study provides a fine vehicle for responding to some of the objections that have been leveled at the understanding of moral norms shared by so many contemporary Catholic moral theologians. That vehicle is a proper understanding of the term "proportionate reason."

An example will help here. Archbishop Joseph L. Bernardin sent a letter to all his priests on the recent CTSA-committee publication *Human Sexuality*. It contained and recommended a critique by moral theologian Donald McCarthy.³² McCarthy argues in his critique that "what does partially explain the direction taken here is this study's application of the controversial new theory of proportionalism in concrete moral

natural law ("The Pursuit of Natural Law," *Irish Theological Quarterly* 44 [1977] 3-29). Gian Darms, after rejecting an excessively loose understanding of natural law ("Entscheidungshilfen"), presents the moral law as found in Aquinas, scil., as building off natural inclinations ("Il problema delle norme oggettive dell'attività morale alla luce di S. Tommaso," *Divinitas* 21 [1977] 191-214). Dario Composta rejects the "existentialist anthropology" of some contemporary authors (J. Arntz, F. Böckle, E. Lopez Azpitarte, S.J., E. Schillebeeckx) and claims their notion of natural law is non-Thomistic; rather, it is "Rahnerian" ("Il diritto naturale tomistico nella più recente ermeneutica," *Doctor communis* 30 [1977] 82-100). Richard Bruch warns that "one must guard against drawing too much from the [Thomistic] natural inclinations" ("Intuition und Überlegung beim sittlichen Naturgesetz nach Thomas von Aquin," *Theologie und Glaube* 67 [1977] 29-54). A. Etchery approaches natural law phenomenologically and identifies two key constitutive elements of the human person: individuality and rationality ("Y a-t-il une nature humaine?" *Bulletin de littérature ecclésiastique* 78 [1977] 31-53). Paolo Valori, S.J., insists on the necessity of interdisciplinary dialogue in moral theology and outlines its stages ("Significato e metodologia della ricerca morale oggi," *Gregorianum* 58 [1977] 55-85). Albert Chapelle discusses the continuity in Jesus Christ between creation and redemption. This illumines the relation of natural law to the economy of salvation ("Naturgesetz und Theologie," *Internationale katholische Zeitschrift* 6 [1977] 326-36). Finally, Andreas Laun points to the danger of biologism in interpreting the *inclinationes naturales* and argues that actions are morally right "not because they correspond to the nature of the agent, but because they respond properly to the ethical importance of the object" ("Natur—Quelle von sittlichen Normen," *Die neue Ordnung* 31 [1977] 97-111).

³² The critique is public in character.

choices.”³³ Noting the contention of writers like Janssens and Fuchs that the whole action is the object of judgment, McCarthy continues: “What this means in effect is that sexual actions otherwise immoral may be rendered moral when the ‘subjectivity’ freely decides that proportionately greater good than evil effects will follow.” Thus he refers to the “inherent subjectivism” of this principle as one that easily leads to “ethical relativism and situationism.”

As examples he cites adultery and infanticide. Adultery, McCarthy argues, is not wrong because of its “material object” (sexual intercourse). Rather, it is wrong because of specifying circumstances. That is, “adultery as intercourse *with the wrong person* and infanticide as killing *of the innocent*” (my emphasis). He then concludes: “Other extenuating circumstances or good intentions, as adultery for the good of marriage or infanticide to reduce population growth, can never make these actions good.”

McCarthy then turns to the language of “premoral” and “moral evil.” Of this he notes:

In such an ingenious solution the magisterial documents which speak of the evil of such practices as premarital sex or homosexual actions really only refer to “premoral evil.” Then the moral or pastoral theologian can still approve of these actions as morally good when performed with sufficient justifying circumstances and ends.

He rewords the matter as follows:

The Church’s tradition in moral theology has always recognized the possibility of human persons performing evil actions inculpably, but it has never conceded, *as proportionalists contend* [my emphasis] that these actions could coalesce into the species of morally good acts with the addition of further circumstances and ends.

Finally, McCarthy concludes by referring to the “key principle of ethical proportionalism” used in *Human Sexuality*. “It is,” he says, “a very recent version of the classical principle of double effect (less than twelve years old). Its status remains highly controversial because it seems so easy to permit the ends to justify the means in ethical decision-making.”

I am grateful that McCarthy made these points explicit, for they are likely to be entertained by a fair number of other theologians. However,

³³ This same statement is made by William May and John Harvey in their review in *National Catholic Reporter*, June 17, 1977; cf. also May and Harvey, “On Understanding Human Sexuality: A Critique of the CTSA Study,” *Communio* 4 (1977) 195–225; Gerald D. Coleman, S.S., “Human Sexuality: New Directions in American Catholic Thought,” *Priest* 33, no. 11 (Nov. 1977) 12–21.

I am convinced that they are an inaccurate interpretation of the direction present in so many contemporary writers on moral theology. Here I should like to detail a few of the problems I have with this interpretation of things in an attempt to clarify the issues.

1) *The CTSA-committee study and the principle of proportionality.* Whatever one thinks of the conclusions of *Human Sexuality*, it must be said that there is no *necessary* connection between those conclusions and the theoretical work on proportionate reason in the studies of theologians such as Schüller, Janssens, Fuchs, etc. What one concludes about concrete actions depends on how one reads one's proportions. That is key and has been traditional in Catholic theology for centuries. Thus, it is no indictment of the just-war theory to say that it was abused at times to justify Vietnam. Nor is it an indictment of the idea that promises made may conflict with more urgent supervening necessities (proportionate reason) if certain people interpret these necessities frivolously or uncritically. To think otherwise is to fall victim to a logical fallacy (*post hoc, ergo propter hoc*). Specifically, the indicted theologians might argue that, all things considered, there is no proportionate reason for engaging in strictly premarital relations. That is a quite acceptable formulation of the Church's substantial convictions on the matter.

2) *The subjectivism of proportionate reason.* This point was made above but deserves repeating. McCarthy refers to the "inherent subjectivism" of this form of moral reasoning. No theologian argues, as far as I know, that a reason is truly proportionate *because a particular individual thinks so*. Nor does any theologian argue that the determination of proportionality is the exclusive prerogative of the individual, as was noted above in dealing with Stoeckle. These would indeed be subjectivism. But there is nothing in the teleological understanding of moral norms that suggests such individualism. The preference principles which attempt to sort out the claims of the *ordo bonorum* and the *ordo caritatis* are the result of common reflection and discourse. Killing is a good example here, as Böckle points out. Over the centuries there developed the conviction that the only way at times to defend the public safety was through capital punishment. Thus it was concluded that such punishment was justifiable for certain crimes, scil., that the public safety was a proportionate reason for an exception to the general prohibition against killing. In our time we are, it seems, arriving at a different conclusion. But the point is that sorting out the claims of conflicting values is a community task subject to objective criteria. Because the individual must make such assessments at times does not mean that the assessment is correct *just because the individual has made it*. Thus, it is not proportionate to kill another just because I mistakenly believe it is.

3) *Value language and descriptive language.* This is the chief source of misunderstanding where the notion of proportionate reason is concerned. In effect, what one does is describe an action in value terms—e.g., adultery, theft, murder—and then indict theologians for accepting proportionate reasons that might justify it. Thus McCarthy writes: “Other extenuating circumstances or good intentions as adultery for the good of marriage . . . can never make these actions good.” Furthermore, he notes several categories of nonsexual actions described by Vatican II as “criminal” (genocide, slavery, abortion, euthanasia) and then adds: “It seems clear that the Church cannot open these actions to the kind of circumstantial justification that the ethical principle of proportionalism might allow. . . .” This is presented as if it were what Schüller, Janssens, Böckle, etc. are saying or must be implying. That is not the case.

When something is described as “adultery” or “genocide,” nothing can justify it; for the very terms are morally qualifying terms meaning unjustified killing, intercourse with the wrong person, etc. That is, they are tautological. The question contemporary theologians are facing is rather this: What (in descriptive terms) is to count as murder, adultery, genocide? We know from a long tradition that not every killing is murder. Therefore we know that some killings are justified. That is, we know that there is a proportionate reason for taking human life at times.

This confusion of value language with descriptive language is evident in many moral writings. It constitutes a bad argument, one known as *ignorantia elenchi*, missing the point. For instance, G. Martelet compares the evil of contraception with the use of violence and with a lie.³⁴ These latter are two remarkably different terms. The first is descriptive and presents a premoral disvalue (since violence is occasionally justifiable). The second is a morally qualifying term. Thus Janssens correctly concludes: “Should the first comparison be correct, the encyclical (*Humanae vitae*) would raise no problems. This cannot be said if the second comparison is to be maintained.”³⁵

This matter is extremely important; for if it is overlooked, recent studies do not get presented accurately or fairly. McCarthy notes: “The Church’s tradition in moral theology has always recognized the possibility of human persons performing *evil* actions inculpably, but it has never conceded, as proportionalists contend, that these actions could coalesce into the species of morally good acts with the addition of further circumstances and ends.” Here we see the error I am concerned with. An action is stamped as *evil* (and there is no doubt that this is a morally qualifying term, for it is associated with “inculpable performance”) and then it is

³⁴ G. Martelet, *L'Existence humaine et l'amour: Pour mieux comprendre l'encyclique Humanae vitae* (Paris: Desclée, 1969) at 140 and 149.

³⁵ Janssens, “Norms and Priorities” 216.

stated that proportionalists would contend that the action could be justified by further circumstances. Straightforwardly, so-called proportionalists make no such contention and their thought is misrepresented when it is put that way. They would say that all things have to be considered before an act is said to be morally evil.

4) *Proportionate reason and double effect.* McCarthy states that the "principle of ethical proportionalism . . . is a very recent version of the classical principle of double effect. . . ." That confuses two things: the notion of proportionate reason and double effect. The notion of possible exceptions to concrete moral norms by the presence of proportionate reason has been a staple of Catholic theology for many centuries. For that reason Schüller has correctly noted that Catholic theology is through and through teleological in character. What is recent is the examination into those areas excluded from such teleology. Such actions (e.g., direct killing of an innocent person) were seen as intrinsically evil. Thus, if innocent persons were killed as a result of my intervention, those deaths had to occur indirectly. Contemporary moralists are, indeed, examining the crucial relevance of the direct-indirect distinction in these few areas. But that hardly makes the notion of proportionate reason a "very recent version of the classical principle of double effect."

In contrast to the approach taken by Janssens, William E. May has argued for the intrinsically evil character of certain premoral disvalues described independently of end or circumstances, scil., of other concurring or colliding values.³⁶ His example is direct sterilization. He correctly points out that human sexuality has a twofold dimension (unitive, procreative) and that these two dimensions are inseparably joined.³⁷ He further argues—and again correctly, in my view—that the life-giving and love-giving powers are integral to the human person and ought to elicit from us a response of acceptance and love.

He then constructs the minor of his syllogism: but "to act contraceptively or to intervene by surgical sterilization for contraceptive purposes is, in effect, to choose to reject the goodness of this human power. It is to say, in effect, that this power is here and now an evil, a curse, not a blessing. . . ."³⁸ It is to "repudiate" these human goods. He concludes: "Sterilization is thus an act that of its very nature attacks the ethical or

³⁶ William E. May, "Sterilization: Catholic Teaching and Catholic Practice," *Homiletic and Pastoral Review* 77 (Aug.-Sept. 1977) 9-22. If the article seems to deal excessively with the author of these "Notes," it is because it represents a response to my paper (unpublished) on the subject.

³⁷ The word "inseparable" is perhaps not the most apt expression. For instance, J. Ford and G. Kelly once noted: "the marriage act has other natural and intrinsic ends in addition to procreation *which are separable* from actual procreation or any intention of actual procreation" (*Contemporary Moral Theology 2: Marriage Questions* [Westminster: Newman, 1963] 405, emphasis added).

³⁸ May, "Sterilization" 15.

moral good of the human person and that is, consequently, intrinsically evil."

May concludes with several supportive points and corollaries. First, to think that sterilization is even occasionally justifiable is to reduce the sexual power to a "merely utilitarian good" (*bonum utile*) and to a "merely biological function." Secondly, he sees his analysis as a good moral argument and believes that dissenting arguments have been "seriously challenged by competent theologians." Finally, since sterilization is intrinsically evil, it can only be tolerated (material co-operation) under stringent conditions in Catholic hospitals.³⁹

Here a few points to help put the question in sharper perspective. First, there is May's argument. The key assumption—and fatal weakness—is this: prevention of conception by artificial intervention involves one in repudiating the good of procreation. This associates an over-all personal attitude of mind and will (repudiation) with a physical act. All would grant that repudiation or rejection of a basic human good like procreation is morally wrongful. But many would argue that repudiation of this good must be located in over-all selfish and unjustified refusal to bear children, or in selfishly limiting them, or in irresponsibly multiplying them—not precisely in the nonabortifacient contraceptive measures one uses to keep procreation within the limits of responsibility. May is heavily reliant here on Germain Grisez's formulation that one may never "turn against a basic good directly." However, the key issue is: what is to count for such a turning?

When should one be said to "turn against the basic good of procreation," to use May's rendering? I prefer the structure of reasoning proposed by Pius XII. That pontiff made two moves. First, he proposed a general duty to procreate, on the basis that the individual, society, and the Church depend on fertile marriage for their existence.⁴⁰ He concluded: "Consequently, to embrace the state of matrimony, to use continually the faculty proper to it, and in it alone, and on the other hand to withdraw always and deliberately, without a grave motive, from its primary⁴¹ duty, would be to sin against the very meaning of conjugal life." But Pius XII immediately continued: "Serious motives, such as those which are frequently present in the so-called 'indications'—medical, eugenic, economic and social—can exempt from this positive, obligatory prestation (*prestazione*) for a long time, even for the entire duration of the marriage."⁴²

³⁹ In this May is in disagreement with W. Smith, who believes—erroneously, in my opinion—that in Catholic hospitals not even material co-operation may occur. Cf. "Catholic Hospitals and Sterilization," *Linacre Quarterly* 44 (1977) 107-16.

⁴⁰ For a development cf. Ford and Kelly (n. 37 above).

⁴¹ This terminology was dropped by theologians and Vatican II.

⁴² AAS 43 (1951) 835-54, at 845-46.

Several things are notable here. First, "to sin against the very meaning of conjugal life" is a fair rendering of "turn against a basic good." This failure is attributed to failure to fulfil a duty.⁴³ Secondly, the Holy Father acknowledges that one does not contravene this duty when the serious indications he mentions are present. In other words, whether one "sins against the very meaning of conjugal life" is determined by the presence or absence of these indications—which he later described as "in truth very wide."⁴⁴ This is a straightforward form of teleology. As Ford and Kelly wrote: "As for the expressions 'grave motive,' 'serious reasons,' etc. we believe that a careful analysis of all these phrases in the context would justify the interpretation that they are the equivalent of the expression 'proportionate reasons.'"⁴⁵ What this means, then, is that in the context of periodic continence Pius XII associated "turning against a basic good" with a pattern of actions, and the presence or absence of a proportionate reason. This is, I believe, as it should be. But why should it be otherwise when dealing with sterilization?

Put negatively, it is simply incomprehensible to many (theologians and others) that a couple who have seven or eight children, then encounter serious medical (economic, eugenic, social) problems that make any further procreation irresponsible, and choose sterilization as the means, must be said to be "turning against a basic good." One would think that such a "turning against" must be understood here just as it was by Pius XII when dealing with periodic continence, by looking at the over-all performance of the couple. By answering that contraception and sterilization do this of themselves, May has indulged in a *petitio principii*. Hence I do not see that May has provided us with a good moral argument or that recent revisionist efforts have been "seriously challenged."⁴⁶

There is a second point closely connected with the first. It is the assertion that sterilization involves reducing the procreative power to a *bonum utile*, a merely biological power. May sees this as dualistic. Actually, it is not at all clear that sterilization as such does this. Rather than reduce the sexual power to a *bonum utile*, those theologians who see sterilization as a sometimes justifiable premoral evil refuse to *abso-*

⁴³ I am not arguing that Pius XII saw this as the only failure. Clearly, he taught that contraception was a moral failure, but he based this on different grounds.

⁴⁴ AAS 43 (1951) 859.

⁴⁵ Ford and Kelly (n. 37 above) 425.

⁴⁶ Incidentally, if this is viewed as a good argument, it is interesting to note that one (Paul Ramsey) who shares May's general analytic approach about "never directly turning against a basic good" does not see that it applies here. Ramsey agrees that where the unitive and procreative values are concerned, proportionate reason rules. Ramsey removes the good of human life from such a teleological assessment; but it is not clear how he can do so or on what grounds, unless he absolutizes the value of life. My only point here is that, were the argument of May convincing, we would expect one like Ramsey to be espousing it. He does not. Indeed, he positively denies its application here.

lutize the *bonum honestum* that is the power to procreate. Indeed, they would retort—and correctly, I think—that the May position is the biologicistic (and therefore dualistic) one. Why? Because this position gives biological functions the exclusive determination of rightfulness and wrongfulness (accepting or rejecting a basic good), and therefore of significance. And if one cared to urge this point even further, it could be pointed out that it is precisely because contemporary theologians see sexual intercourse as having a meaning in itself (*bonum honestum*) that they refuse to allow it to be viewed as a *bonum utile*. This is a reversal from earlier times. It was, after all, a centuries-old Catholic tradition that held that sexual intimacy was morally right, beyond the needs of procreation, *ad remedium concupiscentiae*, to avoid sin, etc.

In summary, then, there are indeed two inseparable dimensions to sexuality. But, as Francis X. Meehan notes in a perceptive article, “it is another question whether both values have to be embodied in each and every action, regardless of possible conflicts of values.”⁴⁷

How this “other question” should be formulated and solved is, of course, the core of the contemporary discussion on norms. Helmut Weber approaches the question through the notion of compromise.⁴⁸ After distinguishing several senses of compromise, he turns to the notion as found in theology. It is especially associated with H. Thielicke. For Thielicke, compromise is “a kind of law of life.” Even the Christian cannot avoid compromise. But in his compromising he cannot appeal simply to the limited possibilities of the world. No, the world is sinful in its structures and we are responsible for it. Thus, for Thielicke, compromises we are forced to make are not only a personal failure but guilty ones. Behind this stands a notion of the corruption of the world and necessary sin. In face of this the Christian may compromise, because he/she is confident of God’s forgiveness. But such compromises do not correspond to God’s original will. They must be lived and experienced as a wound that cannot be healed.

When one turns to Catholic tradition, it does not seem that the notion of compromise functions in moral theological thought. Weber believes there are substantive parallels in the teaching on co-operation, doing and counseling the lesser evil, the double effect, and probabilism. All of these are, he argues, ways of explaining the doing of good while tolerating

⁴⁷ Francis X. Meehan, “Love and Sexuality in Catholic Tradition,” *America* 137 (1977) 230–34. This thoughtful study goes beyond the evidence when Meehan states: “I believe that the Catholic tradition has taught that sexual activity has at one and the same time a life-giving and a love-giving meaning, and that these two meanings are intrinsically related.” These insights and formulations are very recent. Cf. L. Janssens, *Mariage et fécondité* (Paris: Duculot, 1967).

⁴⁸ Helmut Weber, “Der Kompromiss in der Moral,” *Trier theologische Zeitschrift* 86 (1977) 99–118.

a measure of evil—or what modern terminology calls “compromise.”

Weber then compares the Reformed Protestant and Catholic traditions. The former tends to extend the notion of compromise as far as possible, while the latter tries to restrict it to exceptional instances. This difference is traceable to the different theological anthropologies at work (extent of corruption of nature). However, a position that sees compromise as more far-reaching than exceptional instances need not rest on such an anthropology. It need only amplify the notion of double effect the way Knauer has.

Weber does this and cites the work of Schüller, K. Demmer, and Joseph Fuchs as doing substantially the same. But Weber prefers to refer to his principle as that of compromise. He sees *all* of our choices as compromises in the sense that they achieve good at the cost of evil—even if that cost is the good left undone because of the limited nature of human choice. He rejects the Protestant Reformed notion of the sinful world and sinful self as underlying this. Rather, in Catholic theology “it is not the sin of man and of the world that is responsible for the situation but their limited character.” Seen from this point of view, compromise is morally beyond objection, even though not every compromise fits this category.

Weber is certainly to be counted among those who understand moral norms teleologically. He situates norms within a conflict model of decision-making, then uses proportionate reason to interpret their binding force—though he calls this compromise. One interesting point about his essay is the fact that he sees the notion of compromise as *substantively* present in Catholic tradition in the teachings mentioned above. This suggests that those authors who sometimes depart from the individual conclusions of this tradition are really in deep continuity with the tradition in their moral reasoning, *pace* Ermecke. Ultimately, however, I wonder what is achieved or illumined by referring to this teleology of method as “compromise.” This term too easily hides what is going on.⁴⁹

Norbert Rigali continues his contribution to this discussion.⁵⁰ He had earlier argued that *Humanae vitae* was a fitting historical response because the challengers failed to prove their case. He made two substantive contentions. (1) Charity might require something more in this area than is clear from natural law. (2) Contraception includes a *morally* negative element, because it is intrinsically incompatible with a degree of charity possible in this world. The author of these “Notes” questioned

⁴⁹ Cf. also Klaus Demmer, “Entscheidung und Kompromiss,” *Gregorianum* 53 (1972) 323–51; Mark Attard, O. Carm., *Compromise in Morality* (Rome, 1976); H. J. Wilting, *Der Kompromiss als theologisches und als ethisches Problem* (in *Moraltheologische Studien*, ed. Bruno Schüller [Düsseldorf: Patmos, 1975]).

⁵⁰ Norbert Rigali, “Dialogue with Richard McCormick,” *Chicago Studies* 16 (1977) 299–308.

these notions. First, I argued that Rigali had separated natural law from charity in a way tradition would not. Tradition repeatedly urged that "Christ did not add any single moral prescription of a positive kind to the natural moral law." Secondly, I argued that the disvalues that are sometimes found in our actions are not traceable to our imperfection in charity but to the conflict character of the world we live in. Therefore, it is inappropriate (at least) to speak of these disvalues as involving "a morally negative element."

Rigali now responds to these critiques. To the first point, he agrees with what tradition literally says, but makes two objections. He faults its notion of natural law as being static and essentialistic. Specifically, this traditional conception of natural law divided the moral call "between the demands of what might be called minimal decency and invitations to perfection." These latter invitations were seen as counsels. Rigali believes that when the Christian life is seen as Vatican II saw it (as a life of striving for perfection), then "what were traditionally regarded as *counsels* of perfection must be seen as *within* the moral law, not beyond it."

His second objection is the very question itself ("How does Christian morality relate to natural morality?"). He believes that moral theologians answer this question differently. Furthermore, the question itself contains "very questionable presuppositions." We should abandon it and concentrate on the basic question about what the moral law is, "the law of humanity called to one, supernatural destiny, the law that has always been a law of charity." Rigali sees this as opposed "to the notion that the moral law is or is essentially what the classical world view called 'the natural law' and understood as a law independent of supernatural charity."⁵¹ This section concludes with the following assertion: "Moral law (as historical consciousness must conceive it) makes specific claims that 'moral law' (= the classical worldview's conception of it) does not."

Rigali's response to my second objection is to question the meaning and legitimacy of the distinction between nonmoral (or premoral) and moral evil.⁵² "The traditional understanding of the distinction between physical and moral evil, created out of the classical worldview and

⁵¹ Here it would be well to recall the fact that "natural law" was used in two senses, one strict, one broad. In the strictest sense, it referred to natural rights. In the broad sense, it referred to the entire moral life. Or, as Etcheverry (n. 31 above) puts it: "Natural law extends to all our moral activity; natural right governs social relations and especially the practice of justice toward another" (31 n. 2) Cf. also J. Gründel in *Sacramentum mundi* 4 (New York: Herder and Herder, 1969) 157: "the natural law in a wide sense embraces the whole field of morality."

⁵² Rigali states that he finds no "adequate discussion of it in contemporary theology." Whether he will consider them adequate or not, I cannot say; but to be recommended are B. Schüller, *Die Begründung sittlicher Urteile* (Düsseldorf: Patmos, 1973) and L. Janssens (n. 24 above).

antedating philosophical personalism, must be rethought today." Thus, killing in self-defense is not just a "physical, nonmoral, ontic evil . . . it is a personal evil." On this basis he asks: "Does it really make sense today for moral theology to group together as the same kind of evil a surgical operation to remove cancer and killing in self-defense?" He then repeats his contention that contraception, as involving "a certain anti-personal element and as not completely compatible with the human fulfillment experienced through charity," contains a "morally negative element."

Rigali's kindness in attending to what I had written suggests reciprocity. As to his first concern—that the traditional view of the natural law artificially divided the moral call into minimal decency demands and counsels—I shall not contest it here.⁵³ Rigali, of course, uses this division to suggest that the moral law "might really be something more than what it (traditional view) conceived natural law to be." That may or may not be the case; but I think it is clearly not the issue. The issue is: Does Christian faith add concrete moral content to the moral law,⁵⁴ content that is in principle impervious to human insight and reasoning? That is an epistemological question.

If Christian revelation does produce such moral demands, then it must be said that they are mysterious precisely because unavailable to human insight and reasoning. I know of no moral theologian who has ever made that claim, though there are some who are coming perilously (and that is the right word, I believe) close to it. Specifically, if contraception is prohibited by the moral law—but at the level of what Rigali calls "supernatural charity"—this prohibition must still be available to human insight and reasoning, as Böckle noted above, even if this reasoning is informed by faith. Paul VI acknowledged this in *Humanae vitae* (no. 12): "We believe that the men of our day are particularly capable of seizing the deeply reasonable and human character of this fundamental principle." In summary, then, whether and how an adequate notion of moral law differs from the "classical notion" is not the issue. The issue is that a concrete moral demand, regardless of the notion of moral law that is its context, cannot be unavailable to human insight and reasoning.

I would disagree, then, with Rigali that moralists are asking the wrong question. Whether Christian belief adds concrete moral demands at the essential level not available to reason is enormously important. To the reasons already adduced for its importance,⁵⁵ this could be added: the reason-ability of concrete moral demands is a strong protection against abuse of authority in teaching morality.

⁵³ But cf. n. 51 above.

⁵⁴ Scil., at the essential level, the level applying to all human persons precisely as human persons.

⁵⁵ Cf. *TS* 38 (1977) 59.

That brings us to Rigali's second objection. Several points ought to be made. I know of no evidence that could support the assertion that the distinction between physical and moral evil is attributable to a "classical worldview." Some such distinction, even if in different words, is held throughout the contemporary philosophical and theological community. Secondly, when Rigali says killing is not just a nonmoral evil but a personal one, he is making a false comparison. Of course killing is a personal evil. It happens to persons, just as do deception, wounding, deprivation of property, harm to reputation. All theologians who use the terms "nonmoral," "ontic," and "pre-moral" understand these as personal evils. The question is only this: When is it morally right or wrong to cause or permit personal pre-moral evils? By insisting that they are personal evils, Rigali adds nothing to the determination of rightfulness or wrongfulness. If he thinks he does, then it would follow that it is *never* right to cause *any* evils in our conduct on the grounds that they are personal.

Thirdly, clearly a surgical operation to remove cancer differs from killing in self-defense. But are not both morally right? And if that is the case, then it means that the disvalues within these different actions are in the circumstances morally justified. And if that is the case, they ought not to be said to be *morally* evil. That is why contemporary theologians insist on calling a killing—until more is known about the circumstances—a pre-moral or nonmoral evil. In this sense both killing and amputation, while different, pertain to the same genre. For this reason I would deny that the antipersonal element Rigali finds in contraception is necessarily "not completely compatible with the fulfillment experienced through charity" and "is a *morally* negative element."

This section is already long and unwieldy. Before ending it, however, I would like to advert to two key notions in the discussion in an attempt to clarify continuing exchanges. They are "consequentialism" and "intrinsic evil."

As for so-called consequentialism, let the statement of William May introduce the matter. In speaking of what he calls "consequentialism," May writes that it is "at root a form of extrinsicism in ethics. It derives the meaning or intelligibility of human acts from their consequences or results, and these are not inherent or intrinsic to the acts but are extrinsic to them, added on to them. For the consequentialist, in other words, human acts are *of themselves* meaningless, neither good nor bad, neither right nor wrong."⁵⁶

In my judgment, several things are seriously wrong with that account, and I believe that it no longer serves the purposes of constructive moral

⁵⁶ William May, "Contraception, Abstinence and Responsible Parenthood," *Faith and Reason* 3 (1977) 34–52.

discourse to argue as May does here. First, the statement trades on the generic and misleading term "consequentialist." There are many forms of teleology, just as there are many forms of deontology. I do not see the service to moral science to volunteer, for example, that all deontologists are at root physicalists or are guilty of a kind of naturalistic fallacy. Some may be. The same is true of teleology. Some teleologists may be extrinsicists. But there is nothing in the notion that demands it, otherwise Catholic tradition for centuries must be accused of extrinsicism; for this tradition was teleological in its understanding of norms in nearly all areas.

Secondly, it is simply erroneous to assert that writers like Böckle, Janssens, Schüller, Weber, Fuchs, *et al.* (all of whom are "proportionalists" in their understanding of moral norms) derive the meaning of actions from something "extrinsic to them, added to them," and that for such writers "human acts are *of themselves* meaningless." What these writers are asserting—and I include myself amongst them—is that the inherent goodness (and therefore meaning) of a promise is a *limited* goodness and may concur with a more urgent value demanding value preference. Catholic tradition has held this for centuries. In other words, if a promise need not always be kept, that conclusion does not deny, nor can it be logically forced to deny, the inherent meaning and value of promise-making. It denies only that this inherent good and meaning is an *absolute* value. That is what these authors mean when they refer to "breaking a promise," "deceiving another by falsehood," "killing a person," as premoral (or ontic) *evils*.

Finally, May asserts that for these writers "human acts are *of themselves* meaningless." Here he must inform us what he has in mind when he refers to a "human act." Breaking a promise perhaps? Directly killing a person? Using a contraceptive device? Obviously, no one of these is a human act. They become human acts, and patient of a judgment of rightness and wrongness, only when sufficient circumstances have been added to complete the picture. Thus, one breaks a promise (e.g., to attend a wedding) in order to give a dying accident victim life-saving first aid. *That* is patient of a moral assessment and we would all agree that the action is morally right. Now, why cannot something similar be said of, e.g., sterilization? As yet, that is not patient of a final judgment of rightness or wrongness. Or if it is, it is so only on the ground that integral intercourse is an *absolute* good, one that, regardless of conflicting goods and circumstances, always deserves the preference. One can, of course, maintain that. But in doing so, he is saying something about the integrity of intercourse that Catholic tradition has been unwilling to say about life itself. In my judgment, that is exactly what W. D. Ross has in mind when he speaks of breaking a promise or uttering a falsehood as

prima facie (and that only) morally wrong.⁵⁷ In summary, proportionalists cannot be accused of holding, or being forced to hold, that actions have no meaning in themselves. They maintain only that no final assessment of rightness or wrongness can be made until more has been said of the action than that it is "breaking a promise." And if that is the case, they wonder, correctly, why this must not apply to all acts so described.

The second very misleading usage in this discussion is the central importance attributed to the notion of "intrinsic evil." Thus May, Stoeckle, Ermecke, *et al.* have accused Schüller, Fuchs, Janssens, *et al.* of espousing a methodology which does not allow for this concept, and hence one that allows for exceptions to norms proscribing, e.g., adultery.

Several things need to be said here. First, the notion of intrinsic evil has such a variety of understandings⁵⁸ that it is all but useless in contemporary discourse. Secondly, many contemporary theologians are primarily concerned with departing from the term *as it has been used in recent theological and magisterial literature*, a point that will become even clearer in the next section of these "Notes." In that literature, certain kinds of actions (directly killing an innocent person, direct sterilization) have been proscribed as always wrong regardless of circumstances or consequences. These theologians argue that these contentions have not been satisfactorily established. In other words, they are primarily discoursing with their own tradition, and arguing that one cannot isolate the object of an act and say of it that it is *always* wrong in *any* conceivable circumstances. One can, of course, begin to add a variety of circumstances to the description of an object so that such an action is always wrong. For instance: abortion of a fetus in order to avoid a medical (delivery) bill. That is always wrong—and, if one wishes, intrinsically wrong (scil., *praeceptum quia malum*, not *malum quia praeceptum*). There are a whole host of actions that fit this category; but when one says that, he must realize that he is no longer speaking of the object of the action *as used in recent theological and magisterial literature*.

Thirdly, and therefore, these theologians are arguing that when an action is always morally wrong, it is so not because of unnaturalness or defect of right (as recent tradition contends), but because when *taken as a whole*, the nonmoral evil outweighs the nonmoral good, and therefore the action is disproportionate. One can legitimately continue to call such an action intrinsically evil,⁵⁹ but I see no great gain in doing so. Indeed, it is confusing; for the term is associated unavoidably with its usage in recent tradition. This association suggests the validity of the analysis of

⁵⁷ W. D. Ross, *The Right and the Good* (Oxford, 1965).

⁵⁸ Cf. James Murtagh, *Intrinsic Evil* (Rome, 1973).

⁵⁹ Walter Jeffko does; cf. his careful study "Processive Relationism and Ethical Absolutes," *American Benedictine Review* 26 (1975) 283-97.

actions (described without circumstances) as morally wrong *because unnatural* (contraception) or *because of lack of right* (direct killing of an innocent person). Thus the term is tied to a kind of deontological understanding of moral norms that (a) has been persuasively argued to be invalid, and (b) has been shown to be inconsistent with the teleological grounding of norms in every other area of Catholic tradition.

These analytic differences between theologians should not blind us to the vast area of agreement we share and ought to be reflecting to the world. We are at one in treasuring basic human values such as life, the family, and childbearing, and it would be a pastoral disservice to allow our differences to usurp center stage; for more than ever in our time we need to support people in their desires and efforts to avoid failure "against the very meaning of conjugal life" (Pius XII).

THE PRINCIPLE OF DOUBLE EFFECT

For many decades, even centuries, some crucial moral conflicts have been approached and solved through use of the principle of the double effect. This is intimately associated with the discussion of moral norms, but it deserves separate treatment.

Franz Scholz approaches the moral relevance of the direct-indirect distinction through the study of two sets of notions: object-circumstances, essential effect and side effect.⁶⁰ In the narrow sense of the word, found in the manual tradition, "circumstance" referred to an aspect of human action which was "extra substantiam existens" (Thomas). Thus there grew a gradual association of the notion of circumstances with that of accident. But, as Scholz points out, some circumstances affect the very essence or substance of human action. This variability of circumstance is too easily overlooked when the idea is associated with "accident."

Scholz next turns to the notions of accidental and essential effects. Essential effects are those that proceed from the substance or essence of the action. Accidental effects are not produced by the substance but indicate that more than one cause is at work. Now when circumstances pertain to the very essence or object of the act, they cannot be said to produce side effects that are merely accidental. Thus the key question is: Which circumstances must in a given case be counted in the object itself, which remain accidental? This cannot be determined a priori; rather, reality itself is the test. Once we have determined this, we will know which actions are necessarily direct and which indirect.

To illustrate these rather fine speculative points (which he gives in considerable detail), Scholz cites three examples from the manual tradi-

⁶⁰ Franz Scholz, "Objekt und Umstände, Wesenswirkungen und Nebeneffekte," in *Christlich glauben und handeln*, ed. Klaus Demmer and Bruno Schüller (Düsseldorf: Patmos, 1977) 243-60. This is the *Festschrift* honoring Joseph Fuchs, S.J.

tion. (1) An unarmed person meets a deadly enemy intent on killing him. The only escape is by horse and on a road occupied by a group of blind and crippled persons. He rides down the road, killing and maiming many people as he escapes. Traditional manuals argued that the presence of the cripples was accidental; thus there is question of a circumstance that remains external to the object; hence the deaths were side effects. (2) Innocent persons are present in a fortress attacked by the enemy. The attacker says he does not will their deaths, but only the cause (the explosion) and not the effect. (3) A person performs an act *minus rectum* (scandal) and foresees that another will thereby be given an occasion of sin.

Scholz asks: Are we concerned with side effects in these examples, which are patient of indirectness? To the first two he says no; to the third, yes. In the first case, e.g., some authors describe the act as "fleeing down the road on a horse." By what principle do they set the boundaries between object and circumstances? Excluding the blind and the crippled from the object contradicts reality. Scholz sees this as "preprogrammed object." One degrades what is essential to the action to a side effect, but at the cost of a mistaken reading of reality. The presence of the blind and crippled on the road is of such significance that it pertains to the very *object*. And if it does, it is a part of essential effects, not side effects. The escaper cannot say he only "permitted" the deaths. The deaths and injuries are *means*. "But the means, just as the ends, can only be directly intended."⁶¹ We would have a true side effect if, in the case described, the victims threw themselves at the last moment unavoidably into the path of the horse. In that case the rider could say: "I must permit what I cannot prevent."

As for the second case, the attacking general might say that he wishes only to kill combatants. But actually the one natural effect of the bombing is destruction—of soldiers, civilians, beasts. His regret at the death of innocents means only that their deaths are not *propter se sed propter aliud*. Their deaths are a *conditio sine qua non*. But "he who is ready—under the call of the end—to realize the condition *sine qua non*, acts exactly as the one who chooses the appropriate means, scil., directly."⁶² Therefore, in these first two cases Scholz does not believe the deaths are indirect. Rather, they are a modified form of direct willing (scil., *secundum quid*, with regrets).

In the third case (scandal) we have a true side effect. He who seeks his goal by an *actio minus recta* does not cause the neighbor's sin. The operation of another cause is necessary for a true side effect. Therefore, the psychology of the will does not demand that the evil effect be willed either as a means or as a *conditio sine qua non*.

⁶¹ Ibid. 256.

⁶² Ibid. 257.

Since so many of the conflicts that were previously solved by the direct-indirect distinction really represent qualified forms of direct willing, Scholz moves to another model and espouses it: "direct, yes, but only for a proportionate reason." He sees this as not only more honest to reality but as advantageous. First, the direct confrontation of the will with the evil caused by it "ought to be to the benefit of a weighing of values" (*Güterabwägung*). Secondly, looking evil in the eye is healthy. It avoids development of an "exoneration mentality" associated with phrases such as "not directly willed," "only permitted." Finally, "the broken human condition with its tragic character appears more starkly. Unavoidably we become conscious of the fact that man not only cannot have, hold, and protect all goods simultaneously, but that he can be called, in the service of higher goods, to injure lesser premoral values, and that without any *animus nocendi*."⁶³

Here, then, is yet another theologian who argues that every human choice is the resolution of a conflict, that the direct-indirect distinction is only descriptive, and that when actions were legitimated *as indirect* permitting of evil, actually they were morally direct in most cases, even if in qualified form (*secundum quid*, with regrets: "I would not be prepared to do this unless I had to"). Hence Scholz is arguing that there is no morally significant difference between direct and indirect actions where nonmoral evils are concerned.

Albert R. Di Ianni, S.M., accurately reviews the work of Grisez, Schüller, Fuchs, Janssens, Van der Marck, Van der Poel, and myself in this area.⁶⁴ He makes two moves. One is a kind of terminological adjustment. The other, the second half of his long essay, exposes his own understanding of the importance of the direct-indirect distinction.

He first insists on the distinction between a nonmoral evil (death) and the free causation of that evil (homicide). Then of homicide he states that "the concept of the free causation of death has at least minimal *moral* meaning in itself prior to consideration of intention and circumstances." This minimal moral meaning makes the act "'intrinsically evil' though in a weaker sense than that of the tradition." That is, it would not always be forbidden regardless of the circumstances. And when it is tolerable, it will generate what Di Ianni calls "creative regret." Why does he insist on this "minimal *moral* meaning"? In his own words: "To treat it as a mere nonmoral evil leans too far in the direction of act-utilitarianism or situationism which demands the voiding of the intrinsic moral meaning of all action concepts."⁶⁵

⁶³ Ibid. 259.

⁶⁴ Albert R. Di Ianni, S.M., "The Direct/Indirect Distinction in Morals," *Thomist* 41 (1977) 350-80.

⁶⁵ Ibid. 362.

His second step is to explain positively why he believes the direct-indirect distinction (as in killing) is morally relevant. Some years ago I had argued that direct killing of the innocent, as in indiscriminate bombing, is wrong because of the long-term effects such killing would have, scil., life itself would be worse off by the brutalizing of sensitivities, the release of violence associated with it, and the ultimate unavoidable debasing of the moral currency.⁶⁶ Di Ianni agrees with this assessment of consequences but does not believe it is the reason the direct killing is wrong in the first place. It is wrong because it is violative of what he calls "dignity-values" (vs. "welfare-values"). What do these terms mean? "Values of welfare center about the fulfillment of whatever potentials for action and enjoyment an entity might have: life, health, pleasure, power, etc." Values of dignity have little to do with these things. "The values of dignity are such things as self-respect, autonomy, fidelity, justice, trust, integrity and the like."⁶⁷ These dignity values are of far greater importance and must be given greater weight in conflict situations.

What has this distinction to do with the direct-indirect distinction? Di Ianni sees the latter distinction as both valid and practically valuable. "It is valid because it generally generates conclusions which coincide with the conclusions generated by the more basic dignity/welfare value distinction. It is moreover practically valuable as a tool because of its greater tangibility."⁶⁸ By this he means that while value considerations are often murky, the direct-indirect distinction trades directly on the level of action. Concretely, Di Ianni asserts that to aim at an innocent person's death as an end or even as a means to a good end "is usually to treat him as an object, as a non-person (a non-freedom), as a mere means, whereas to aim at a proportionate good knowing that evil to another person will also arise as a not-aimed-at side-effect is to produce some illfare but is not a violation of dignity."⁶⁹

How far would Di Ianni carry this? Not, he says, to the extent of a theoretical behavioral absolute, so that direct killing of an innocent could never be done whatever the consequences. Rather, it is a practical behavioral absolute. He cites a "fantastic case where someone threatens to kill 100,000 if you do not kill one." Of this he says that an "overwhelming quantity of welfare may override a small consideration of dignity."

This interesting study deserves several comments. First, I want to put a question to Di Ianni about the moral relevance of the direct-indirect distinction. He argues that direct killing of an innocent person, in addition to visiting illfare upon him, also visits indignity on the victim, "whereas

⁶⁶ *Ambiguity in Moral Choice* (Milwaukee: Marquette Univ., 1973).

⁶⁷ Di Ianni, "The Direct/Indirect Distinction" 370.

⁶⁸ *Ibid.* 372.

⁶⁹ *Ibid.* 377.

indirect killing when there is a proportionate reason causes illfare alone." Why? Because, he says, direct killing is to treat him as an object, a mere means. Here it must be asked why this is not true also of foreseen indirect killing. Unless Di Ianni says more about the meaning of direct and indirect intent, that difference seems stipulative. That is, it supposes the very thing that is to be established, scil., that there is a *morally* significant difference in the two types of action. As stipulative, therefore, it seems to beg the question.

An indication of this is Di Ianni's statement that the distinction between direct and indirect "is valid because it *generally* generates conclusions which coincide with the conclusions generated by the more basic dignity-welfare distinction." Furthermore, he says that to kill another as a means is *usually* to treat that person as an object. If the distinction is valid as such, why is it not *always* applicable? The fact that it is not indicates that it is not the morally decisive element.

Secondly, Di Ianni has engaged the author of these "Notes" and disagreed with my explanation of the wrongfulness of, e.g., indiscriminate bombing. In this I believe he is correct. Through the kind criticisms of thoughtful colleagues, I have modified this teleological understanding of the wrongfulness of many direct killings, without, however, abandoning the teleology itself, as I shall attempt to indicate below. In other words, there is another understanding of proportionate reason than the one I gave.

Third, Di Ianni insists that actions such as homicide, prior to the addition of circumstances, have "minimal moral meaning." He contrasts this with the position on evil of Fuchs (pre-moral), Schüller (non-moral), and Janssens (ontic). These latter terms, he says, refer to "mere non-moral evil" and thus "lean too far in the direction of . . . situationism" because they void actions of intrinsic moral meaning. Actually, we have here a *lis de verbo*; for these authors all have obligational statements to offer about our attitudes and actions with regard to non-moral evils—scil., that they are to be avoided in so far as compatibly (with other conflicting values) possible. And all would agree with Di Ianni that there is a place for "creative regret." Several (e.g., Janssens) explicitly mention this.

Fourth, one might argue that Di Ianni has but an artificial distinction when he contrasts dignity values with welfare values. I mean that actions which assault or promote dignity pertain to one's welfare, are for or against a person's welfare. Certainly, the authors who appeal to proportionate reason as that which in principle justifies disvalues in our actions include in the notion of proportionate reason what Di Ianni calls dignity values. This is clear, e.g., in the insistence we find in Janssens and Schüller on the notion of expressive actions (*Ausdruckshandlungen*) in

measuring proportion. Therefore, dignity values do not eliminate teleology in the understanding of norms; rather, they form a part of it.

Fifth, it is necessary to ask Di Ianni how big a disaster would have to be before he is willing to call a direct killing of an innocent person “a small consideration of dignity.” If he proposes, as he does, that a hundred thousand lives saved would be an “overwhelming quantity of welfare,” why not one hundred, or even ten?

Sixth, it is clear that Di Ianni shares in the teleological tendencies of the theologians he cites, in so far as he rejects “intrinsic evil in the very strong sense.” How far he departs and in what areas would be much clearer had he said more about falsehood, sterilization, and other (than killing) problems. This strong sense of the term is the sense in the writings of authors like Paul Ramsey, Germain Grisez, and William May. This rejection of “intrinsic evil in the strong sense” is what is common to theologians like Fuchs, Böckle, Weber, Janssens, Schüller, and Scholz, and is where the discussion really originated. Furthermore, I believe it is the heart of the matter. But such a rejection necessarily implies *some form* of teleology. Whether it is useful to retain the term “intrinsic evil” at all once this move has been made is highly questionable, as was noted above.

This brings us to the notion of proportionate reason. Above I suggested that it is the crucial notion in this discussion. Di Ianni would agree in principle to that statement. There are many ways in which that term can be explained, just as there are many considerations that go into its proper understanding. That is why reference was made to *some form* of teleology. For instance, Schüller and Janssens have emphasized the importance of expressive actions and institutional obligations in reading proportion. The former are very close to so-called “dignity values.” The latter (institutional obligations) refer to duties that stem from the existence and necessity of institutions (like contracts) for stable social life. Thus, in the case of judicial murder (the judge who frames one innocent person to prevent a rioting mob from killing more in reprisal), Schüller argues that the action is morally wrong because the entire institution of criminal law is at stake.

Where proportionality is concerned, a further word about the term “consequences” is called for. Böckle noted above that an ever-increasing number of theologians trace rightness and wrongness to consequences. Many react immediately against such a notion, because it suggests to them all kinds of unacceptable things. It suggests, e.g., that torture or extortion or adultery may be morally right if they produce sufficiently good results or net good. In other words, it suggests in undifferentiated form that “a good end justifies an evil means.” Thus the reaction.

Actually, that is not what is meant by the term in recent Catholic writing nor what the term can be forced to mean. By referring to consequences, recent writing means two things. First, and negatively, it means a rejection of the notion of intrinsic evil *in the strong sense* (Di Ianni's phrase). This strong sense states moral wrongness of an action (e.g., direct sterilization) independently of consequences and circumstances. Secondly, and positively, the term "consequences" means that all things must be considered before a final moral judgment of rightness or wrongness can be made. By saying "all things must be considered," these authors do not mean *total net good* as this term is often understood (scil., mere welfare values). The usage "total net good" (or evil) too easily excludes from consideration factors that go into determining proportion (expressive actions [dignity values], institutional obligations, etc.).

Another study suggests possible ways of reading proportion.⁷⁰ The oft-repeated argument of some authors (e.g., Ramsey, Grisez, May) for resisting analyses such as those of Knauer, Janssens, and Schüller is that the basic goods are incommensurable. Those who shift the major emphasis in cases of conflict to proportionate reason are (so the argument goes) measuring the incommensurable. If one attempts to do that, he is unavoidably involved in a form of consequentialism that determines the moral wrongness and rightness of an action according to "greatest net good"—not only an incoherent notion, as the long philosophical discussions of utilitarianism have revealed, but also one that is at odds with some basic Christian convictions. In other words, one does not suppress one basic good for the sake of another one *equally* basic. The only way to cut the Gordian knot when basic values are conflicted is to only indirectly allow the defeat of one as the other is pursued. As Paul Ramsey words it in a forthcoming study:

My own view is that the distinction between direct and indirect voluntariness is pertinent and alerts our attention as moral agents to those moral choices where incommensurable conflicting values are at stake, where there is no measurable resolution of value conflicts on a single scale, where there are gaps in any supposed hierarchy of values, and therefore no way to determine exactly the greater or lesser good or evil. . . . Where there is no single scale or common denominator, or where there is discontinuity in the hierarchy of goods or evils, one ought not turn against any human good.⁷¹

Those who put the major emphasis on proportionality in situations of

⁷⁰ Richard A. McCormick, S.J., "Le principe du double effet," in *Discerner les valeurs pour fonder la morale* (= *Concilium* 120) 105–20. This is not available in English but only in French, Spanish, Italian, Dutch, and German.

⁷¹ Paul Ramsey and Richard A. McCormick, S.J., *Doing Evil to Achieve Good: Moral Choice in Conflict Situations* (forthcoming).

conflicted goods might respond in any number of ways. For instance, negatively they might urge that if proportionate reason involves measuring the unmeasurable, then what is the meaning and function of proportionate reason in the standard understandings of the double effect? They might ask why an "indirect killing" does not involve one in turning against a basic good? In other words, they would press the matter of the *moral* (not merely descriptive) relevance of directness as this was understood traditionally.

A concrete vehicle for bringing these questions into clearer focus is the classic, even if rare, obstetrical case where the physician faces two options: either he aborts the fetus and thus saves the mother, or he does not abort and both mother and child die. Both those who defend the moral relevance of the direct-indirect distinction in such instances (e.g., Ramsey, Grisez) and those who question it agree on the conclusion; that is not at issue. What is at issue is the reason for the conclusion. The defenders of the traditional distinction would argue that the conclusion is correct in so far as, and only in so far as, the death of the fetus can be said to be indirect. The revisionists, so to speak, would argue that the real reason for the conclusion is that *in such circumstances* the abortion is proportionately grounded, is the lesser evil. When one is faced with two options both of which involve unavoidable (nonmoral) evil, one ought to choose the lesser evil. To argue that the intervention is morally right because it is "indirect" is, on this view, to use a notion that is adventitious, unnecessary, and ultimately indecisive.

The common response to such an argument is that if this is true, then what is known in philosophical circles as "the Caiphas principle" is valid. That is, one is justified in sacrificing one innocent person to save five. The example often used is that of a sheriff or judge in a Southern town faced with the alternatives in a rape case of framing a black suspect (whom he knows to be innocent) or carrying on a prolonged search for the real culprit. The immediate indictment and conviction of the suspect would save many lives and prevent other harmful consequences. If an action's moral rightness is determined solely by the consequences (one innocent killed vs. many innocent killed), then it seems that the sheriff ought to frame the one innocent person—a conclusion that shocks our moral sensitivities, but one that a revisionist on the double effect would seem forced to draw.

At this point the revisionist would return to the insistence on the words "in these circumstances" in the abortion dilemma given above. In the abortion dilemma the situation is not simply a save-one vs. lose-two dilemma. It is not simply quantitative. It must be added that the deadly deed is intrinsically and inescapably connected with the saving of the mother's life, whether that deadly deed be a craniotomy or the removal

of the fetus to get at a life-threatening aneurysm. That is to say, there is in the very nature of the case no way of saving the mother. There is an essential link between the means and the end. By contrast, however, I argue that such a link does not exist in the sheriff instance. There is no inherent connection between the killing of an innocent person and the change of mind of a lynch mob. For those who hold to the notion of free will in the doing of evil (and good), there is never an inherent connection between killing an innocent person and changing the murderous mind of a lynch mob. In other words, in the abortion case one chooses to save the life that can be saved because in such circumstances that is the lesser evil, is proportionately grounded. In other circumstances it would not be the lesser evil, would not be proportionate.

The article further argues that seeing proportionate reason as the crucial element in situations of conflict need not at all involve one in measuring the immeasurable. There are times, of course, when genuine measuring in the strict sense is appropriate: e.g., when merely instrumental goods and basic goods conflict. One sacrifices the instrumental for the basic, because instrumental goods are lesser in the order of goods. Thus, one prefers life to property. This is a strict weighing of values.

But such is clearly not possible where basic goods are concerned. But neither is it necessary. While the basic goods are not commensurable (one *against* the other), they are clearly associated goods. Thus, one who unjustifiably takes human life also undermines other human goods, and these human goods, once weakened or undermined, will affect the very good of life itself.

Let marriage and birth control be another example. Two distinct but closely associated goods are involved: the procreative good, the communicative (unitive) good. With this in mind, Paul Ramsey justifies contraception as follows: "In these matters . . . there are no moral judgments for which proportionate reason is not the guiding preference-principle." He immediately explains this as follows: "Will not the manner of protecting the good (procreative) undermine it in the long run by serious injury to an associated good (the communicative good)?"⁷² The "manner of protecting it" means here periodic continence or the so-called rhythm method. Practically, this means that the possible ineffectiveness⁷³ and forced and perhaps prolonged periods of abstention can easily harm the communicative good and *thereby* the procreative good itself. The Second Vatican Council said something very similar when it stated that "where the intimacy of married life is broken off, it is not rare for its faithfulness to be imperiled and its quality of fruitfulness ruined."⁷⁴ That seems to

⁷² Cf. n. 71 above.

⁷³ I say "possible" in deference to those who urge that when properly practiced (precise and recent knowledge, high motivation) periodic continence has a very high rate of success.

⁷⁴ Cf. *Gaudium et spes*, no. 51.

me to be a reasonable account of things. It is precisely concern for the procreative good, but as related to and supported by the communicative good, that leads Ramsey to conclude to the moral rectitude of contraception and, if necessary, sterilization.

Clearly *some kind of measuring* is going on there. The incommensurability of goods (procreative, communicative) is reduced by seeing them in interrelationship. And it is this interrelationship that provides the context—a kind of single scale—in which decisions are possible and reasonable, and adoption of personal and community policies (hierarchy) is not completely arbitrary.

Could not something very similar be said of the case of the Southern sheriff above (and, by extension, of the immorality of obliteration bombing)? The manner of protecting the good (human life—by framing one innocent person) will undermine it in the long run by serious injury to an associated good (human liberty); for by killing an innocent person to prevent others from unjustly killing five innocent persons, one equivalently denies the freedom of these others. That is the very moral meaning of extortion. One supposes by his action that the cessation of others from wrongdoing is necessarily dependent on my doing harm. Such a supposition denies, and thereby undermines, human freedom. And because such freedom is an associated good upon which the very good of life itself depends, undermining it in the manner of my defense of life is undermining life itself—is disproportionate.

Here, again, one does not exactly weigh life *against* freedom; one merely associates the associable and reads proportion within such an interrelationship. That is why Schüller seems absolutely correct in insisting that in this and similar cases it is not simply a matter of the life of one versus the life of many others; the entire institution of criminal law is at stake. And that is how proportion must be read.

Let obliteration bombing be another test case. Those who would defend such counterpeople (vs. counterforce) attacks argue that they will save more lives. This was Truman's argument. The choice is seen as between taking a hundred thousand Nagasaki lives or losing double or triple that number from both sides in a prolonged conventional war.

If the article under review is correct (that proportionate reason reigns even where the taking of human life is concerned), then there must be a way of showing that Truman's understanding of proportion was wrong—if we hold it to be such, as I do. I believe there is.

Let us again use Ramsey's formulation. "Will not the manner of protecting the good (human life—by ending the war) undermine it in the long run by serious injury to an associated good (human liberty)?" Making innocent (noncombatant) persons the object of our targeting is a form of extortion in international affairs that contains an implicit denial of human freedom. Human freedom is undermined when extor-

tionary actions are accepted and elevated and universalized. Because such freedom is an “associated good” upon which the very good of life heavily depends, undermining it in the manner of my defense of life is undermining life itself—is disproportionate. John Locke understood this association of goods very well:

For I have reason to conclude that he who gets me into his power without my consent, would use me as he pleased when he got me there, and destroy me too, when he had a fancy to it. . . . He that in the state of nature would take away the freedom that belongs to any one in that state must be supposed to have a design to take away everything else, that freedom being the foundation of all the rest. . . .⁷⁵

Perhaps it would be helpful to put this in another way and in explicitly Christian terms. It is the Christian’s faith that another’s ceasing from his wrongdoing is *never* dependent on my doing nonmoral evil; for the Christian believes that we are truly what we are, redeemed in Christ. We are still threatened by the *reliquiae peccati*, but are free and powerful in Christ’s grace. We rejoice in our infirmities, that the grace of Christ may abound in us. And we know the powers of that grace—in Magdalen (and many Magdalens), in the martyrs, in the likes of Thomas More, Matthew Talbot, and a host of others. Others can cease their evil-doing without our connivance in it, without our doing harm to persuade and entice them. We are free. That is our Christian bet as persons who know our freedom in Christ.

That is why the *essential connection* between aborting and saving the one who can be saved is so important in the classical abortion case. No such connection exists in the instance of the rioting mob. They can cease their evil-doing without our doing harm to make them cease. To yield to their demands would be a denial to them of their own freedom. And that freedom is an associated good which must be asserted and protected if the good of life itself is to survive. We may lose some lives in sticking to this conviction, but that is where our trust in God’s providence is on the line. Because people can, with God’s gracious help, cease evil-doing, our doing harm to make them cease is unjustifiable, disproportionate. The judicious Christian reads his proportions not just by looking at numbers, but by looking at many other features of the situation within which the numerical must be interpreted.

Something very similar can be said, I believe, about the conduct of warfare. But before saying it, we must recall the teaching of Pius XII, the most extensive and detailed papal elaboration of the just-war theory

⁷⁵ John Locke, *An Essay concerning the True Original Extent and End of Civil Government*, in *Of Civil Government* (New York: Dutton, n.d.; no. 751 of Everyman’s Library) 125.

in all of history. Pius XII, contrary to some earlier theological formulations, restricted the *jus ad bellum* (the just cause for going to war) to national self-defense. War, he taught, can be justified as a response *ad repellendas injurias* (to repel injury or aggression), not for settlement of other disputes, even the most serious (*ad vindicandas offensiones, ad recuperandas res*). Now the implication of this limitation of just cause to self-defense means that the other nation is the aggressor—in short, is engaged in wrongful conduct. It may at times be difficult to say who was the original aggressor, but that does not eliminate the need of an aggressor as the sole justification for going to war.

If a nation is wrongfully aggressing, once again it is the Christian's faith, and a well-founded one, that that nation can and must cease and desist from wrongful aggression without our doing harm to noncombatants to make that nation do so. There is no *necessary connection* between our doing harm to noncombatants (e.g., killing innocent civilians to stop that nation) and that nation's ceasing unjust aggression. To say that there is would be to insult the humanity of the aggressor by denying his liberty; for unjust aggressors are free to cease unjust aggression. Christ did not invent that idea, of course, but by his graceful redemption he powerfully restated it to a world that too often came to terms with its inhumanities as "necessary," "culturally imposed," etc. And by denying the aggressor's freedom, we deny our own by implication, thus removing the conditions for any rationality in war. That is why, I believe, the Christian judges attacks upon noncombatants as disproportionate.

Ultimately, then, the article concludes, revisionists admit a descriptive difference between actions involving nonmoral evil directly and indirectly. That is, the directness or indirectness of an effect tells us what is being sought and by what means and in what circumstances. These in combination reveal the significance of the action. Whether the action is, as a whole, morally right or wrong depends on this significance; for significance reveals what other values are at stake, and therefore whether the manner of the pursuit of the good here and now is destructive of it or not. In other words, it reveals whether in the action as a whole the good outweighs the evil, whether there is a truly proportionate reason or not. And it is the presence or absence of such a reason that determines whether the attitude of the agent is adequate or not, whether he is choosing rightly or wrongly, whether he remains open to the basic goods or closes one of them off in pursuit of another, whether or not one chooses against a basic good, or, in Pius XII's words, whether one "sins against the very meaning of conjugal life."

This analysis is quite tentative. But it seems not without points to recommend it. Moral theologians will undoubtedly clarify their analyses

as this exchange progresses. But one thing seems increasingly clear: there are fewer and fewer theologians ready to defend "intrinsic evil in the strong sense," as Di Ianni phrases it.

THE CHURCH AND HUMAN RIGHTS

The advent of the Carter administration with its heavy priority on human rights has coincided with a continuing interest in human rights as embodied in liberation theology, and the concern of the Church more generally in this subject. Here I shall review a few more general statements and then turn to several specific areas where human rights have been involved.

During August 1977, twenty-two theologians (ten Catholic, ten Protestant, two Orthodox) from the Third World (Latin America, Asia, Africa) met in Tanzania at the University of Dar-es-Salaam. They issued an interesting manifesto on theology in the Third World.⁷⁶ After scoring the colonizing character of Christian roots on these continents and highlighting contemporary Christian strivings for genuine liberation from all enslavement (especially foreign), they make a strong theological protest. The theologies coming from Europe and North America, issuing as they do from situations proper to these countries, represent a form of cultural domination in the Third World. Questioning the pertinence of these theologies for their countries, the theologians declare themselves "prepared for a radical rupture in the epistemological area, in order to make engagement the first act of theology..." The task of theology in their countries, they insist, is to "practice a self-critique with regard to the condition of theology itself." For them, this means that theology must better represent God's invitations and purposes as seen in the needs of the oppressed and the poor. A very interesting, if sometimes simplistic manifesto.

The International Theological Commission has issued a long study on liberation theology.⁷⁷ It is an attempt to deal with basic issues touching the relationship between human development and Christian salvation. This attempt acknowledges that no one should condemn liberation theologies "if he or she is not listening at the same time to the cries of the poor and seeking more acceptable ways to respond." The report then asks whether "the types of theological reflection currently in vogue are, in their actual methodology, the only way of responding appropriately to yearnings for a more human world of brothers and sisters."

The report first presents the basic outlines of liberation theology. This theology maintains the profound unity that links the divine history of salvation to efforts for the welfare and rights of people. Thus, although

⁷⁶ "Pour une théologie dans le Tiers-Monde," *Relations* 37 (1977) 42-45.

⁷⁷ "Human Development and Christian Salvation," tr. Walter J. Burghardt, S.J., *Origins* 7 (1977) 305-13.

secular history and salvation are not identical, they should be conceived in the first instance as a unity. The construction of a just society is, in a sense, the inauguration of God's kingdom in anticipation. For this reason, Christian faith is to be understood principally as a historical praxis whereby sociopolitical conditions are changed and renewed.

The reports admits that there are here "many elements of great value." But it issues two caveats. First, the gospel of Jesus Christ must not be consolidated with secular history. The dynamism of God's word must not be reduced totally to its "function of stimulating social and political change." Secondly, theological theories attempting to build a more humane society must use sociological theories. There are risks here, particularly that of uncritically accepting the assumptions of Marxism.

There follows an excursus into biblical theology on the notion of liberation. Finally, the report attempts a systematic analysis of God as liberator and man's liberating action. It is impossible to summarize this careful study, but I think it fair to say that the following are some salient points. (1) Only God is properly liberator. (2) By His grace He sharpens our consciences to form a more just world. (3) Liberation must begin with *metanoia*. But full liberation is not accomplished in the course of earthly events. (4) The power of sin does penetrate social and political institutions. These unjust structures must be reformed.

The final point analyzed by the Theological Commission is the relation between human development and divine salvation. Here we see a series of *sic et non* assertions. For example, human activity and Christian hope must be neither "divorced" nor seen in terms of "evolutionary optimism." Or again, the earthly city and the heavenly city "ought to penetrate each other." Still again, there is unity between human effort and eschatological salvation, but a distinction. The report adverts to the usage of the 1971 Synod of Bishops which stated that the process of transforming the world must be seen "as a constitutive element (*ratio constitutiva*) of the preaching of the gospel." It grants that *ratio constitutiva* is controverted but concludes that, strictly speaking, the phrase means "integral part, not an essential part."

This document is well informed and carefully wrought. It deserves meditative study. My own reading of the document leads me to believe that the members of the Commission, while maintaining an unyielding unity that links human effort to eschatological salvation, felt it necessary "to spell out again with even sharper clarity the distinction between them." Should we conclude that this is a reflection on the emphases present in the works of other theologians? A good question.⁷⁸

⁷⁸ One of the finest brief introductions to the theological emphases of liberation theology is that of Monika Hellwig, "Liberation Theology: An Emerging School," *Scottish Journal of Theology* 30 (1977) 137-51. Cf. also Michel Schooyans, "Chemins et impasses de la théologie de la libération," *Esprit et vie* 87 (1977) 81-94.

At any rate, there can be little doubt that the formulations of the Theological Commission ("integral part") reflect the views of Pope Paul VI. In the course of a general audience (Feb. 23, 1977), the Holy Father addressed a group of missionaries and reminded them that at the heart of evangelization is the proclamation that salvation is offered to all in the blood of Jesus.⁷⁹ He then added: "However, there is no doubt that everything that touches human promotion, that is, the work for justice, development, and peace in all parts of the world, ought also to be an *integral part* of the message. . . . Do not separate human liberation and salvation in Jesus Christ, without however identifying them. . . ." Salvation, in Pope Paul's words, "is an end that both transcends and at the same time orients all human liberation."

In a background paper preparatory to the Commission's deliberations, Hans Urs von Balthasar discusses the notion of salvation, and especially that of the kingdom of God.⁸⁰ It is within that broader concept that liberation must be viewed. He sees modern history as a succession of attempts to secularize the message of salvation in various forms of "auto-liberation." While critical of the notion of "sinful structures," von Balthasar is far from denying the reality this term tries to articulate. Indeed, he urges that "now more than ever, competent Christians have to be engaged in the social, economic and political sectors. . . ." The conclusion of this interesting essay:

The critique to which liberation theology is submitted does not question the urgency of the practical preoccupations that inspires it. But the totality of divine revelation to the world cannot in any case be confined to political and social liberation, nor even to the general notion of freedom. The theology of liberation has its specific place in the midst of a theology of the kingdom of God. It presents *an* aspect of all of theology. . . .⁸¹

For a contrasting view, see that of S. Kierkegaard in the interesting study of Patrick Hanssens.⁸² Kierkegaard, while insisting that faith and ethics were tightly interdependent, felt that the expression of charity in political activity was a waste of time. "In his eyes the realization of a more just social structure had no immediate Christian significance."

A consultation on the theology of human rights was held in 1976 by the Department of Studies of the Lutheran World Federation. At this

⁷⁹ Paul VI, in *Documentation catholique* 74 (1977) 307.

⁸⁰ Hans Urs von Balthasar, "Considérations sur l'histoire de salut," *Nouvelle revue théologique* 99 (1977) 518-31.

⁸¹ *Ibid.* 531.

⁸² Patrick Hanssens, "Ethique et foi," *Nouvelle revue théologique* 99 (1977) 360-80. For some considerations on justice and its relation to charity, cf. Cl. Mertens, "Charité, vérité, justice," *ibid.* 391-405.

consultation Prof. Heinz-Edward Tödt (Heidelberg) presented a study on this question.⁸³ He noted a “nuclear structure” of human rights that has persisted more or less clearly amidst diversities over the past two hundred years. That is, there are three essential elements in the basic rights-pattern: freedom, equality, and participation. All codified human rights turn out in any given case to be a concrete form of this basic pattern. For example, the habeas-corpus group of laws (inviolability of the person, protection against arbitrary arrest, right of fair trial, etc.) are related to freedom, even though questions of equality are inextricably interwoven. The prohibition of discrimination on the basis of race, sex, color, religion, or class relates to the right of equality, while the claim to have some control in and share of public affairs is based on a right to participate.

But after reading Tödt’s study carefully several times, I am far from clear what his basic idea is. He is clear that human rights in the legal community are not founded on or based in theological considerations. These rights cluster around the notions of liberty, equality, and participation. Tödt sees parallels of this in the Christian community. For instance, as a human right equality asserts that individuals deserve equal protection before law. The grounds for this are often obscured in real life, because it is precisely the inequality of persons that so often practically obtrudes. Theologically, however, the Christian community has learned that “you are all sons of God in union with Christ Jesus. . . . There is no such thing as Jew and Greek, slave and freeman, male and female . . .” (Gal 3:26 ff.). Something similar is true of participation. By his inherent worth the individual claims a share in his own governance and in public life. In the Church the believer becomes a full participator (priesthood of the Christian) by baptism.

Yet, while there are similarities in the legal sphere and the Christian sphere, Tödt sees differences too. Let liberty be the example. In the civil sphere an individual’s freedom has its limit in another’s freedom. However, “the Christian view takes love of the neighbor into the very concept of freedom itself. . . . Instead of being just a limitation on one’s own freedom, the neighbor is on the contrary also the opportunity for its fulfillment.”⁸⁴ In other words, these notions (liberty, equality, participation) have a different quality in the Christian community than in the legal community.

What does Tödt make of this? If I understand him—relief from his density comes only with interpretative reading—he is saying that “human rights are an expression of something which is meant to be achieved *in a specific way in the community of believers.*” This “specific way” is the

⁸³ Heinz-Edward Tödt, “Theological Reflections on the Foundations of Human Rights,” *Lutheran World* 24 (1977) 45–58.

⁸⁴ *Ibid.* 55.

theological basis on which we approach human rights. What does this mean for a Christian's approach to the worldly problem of rights? Tödt is, in my judgment, very obscure here. It seems that what we might conclude is something like this. Those qualities expressed in civil rights (liberty, equality, participation) are or should be present *eminenter* (similarly but differently) in the Christian community. Therefore, the Christian community ought to be especially sensitive to the actual deficiencies in contemporary life. With such sensitivity, the Christian can or should be able to exercise a particularly constructive critical function vis-à-vis human rights; for he knows in belief that to which they point, their fulfillment.⁸⁵

Human rights have received persevering attention in episcopal literature. On Feb. 24, 1977, the Episcopal Conference of Brazil published a lengthy document to commemorate two anniversaries: the twenty-fifth year of the Brazilian Episcopal Conference (CNBB) and the tenth anniversary of *Populorum progressio*.⁸⁶ It is a ringing social charter that merits careful study (it was the object of more than five hundred amendments before its publication). The Church's task, the document begins, is to proclaim salvation in Jesus Christ. While this will be achieved fully only in the Father's house, it must begin to show its fruits here on earth. In accomplishing its mission, the Church orients itself according to the criteria of faith, "which complete the demands of reason and of human nature." The political order is judged by the demands of the moral order, and the Brazilian bishops insist that, as pastors, they have a right and duty to lay out the basic demands of the moral order in the social sphere. This they do in the remainder of the document.

The bishops first point out that any number of models of the state are possible and that no model is perfect and beyond discussion. "Authentic dialogue is fettered when regimes pretend they are beyond discussion and when they repress all reforms beyond those they themselves instigate." After discussing the rights and duties of the state, the bishops turn to what they see as the chief negation of the common good: marginalization. This is found above all in the lack of power to liberate oneself from situations of poverty, hunger, and deprivation.⁸⁷

The document then turns to the remedies for this type of marginalization. It puts great emphasis on participation in the political, social, economic, and cultural processes of the nation—and, above all, on free speech. Regimes too easily perpetuate themselves in the name of security.

⁸⁵ For an excellent introduction to two recent philosophies of right, cf. John Langan, S.J., "Social Justice: Rawls and Nozick," *TS* 38 (1977) 346-58.

⁸⁶ "Exigences chrétiennes pour un ordre politique," *Documentation catholique* 74 (1977) 315-19.

⁸⁷ *Ibid.* 317.

The bishops insist that while economic development has a price, that price cannot be the isolation of wealth in restricted geographic zones. Nor can it mean the denial of basic rights. The document concludes with a strong challenge:

A people develops itself when it progresses in liberty and participation; when it sees its rights respected, or at least when it retains recourse to defense (as in the rights of habeas corpus); when it disposes of the mechanisms capable of exercising control over executive authority; when it counts on the respect of intermediate representative government and the right of self-organization of social institutions such as political parties, unions, and universities.⁸⁸

There can be no doubt that the bishops were stressing deeply disturbing aspects of Brazilian social and political life—and bravely so. If there is any doubt about this, one need only read the “Pastoral Message to the People of God” published Nov. 15, 1976, by the National Conference of Brazilian Bishops’ executive committee.⁸⁹ It is one of the most beautiful and powerful pastoral statements I have ever read. It is an unflinching confrontation, out of gospel perspectives, with the cruelties and injustices associated with “the doctrine of national security,” a doctrine that, in the name of protecting the nation from subversive activity, runs roughshod over basic human rights.

On May 7, 1977, the Argentinian bishops issued a similar critique of the ideology of national security.⁹⁰ They criticized the killings, kidnappings, and detention without trial that have grown so frequent in Argentina, and insisted that the maintenance of order, when it requires some abridgment of liberties, must be done within the limits of the law. Another courageous piece. Similar documents of protest have come from the bishops of Chile,⁹¹ Peru,⁹² Nicaragua,⁹³ and El Salvador.⁹⁴

Several other documents appeared in conjunction with the anniversary of *Populorum progressio*. For instance, the Pontifical Commission for Justice and Peace issued an essay in which it underlined the changed world situation during the ten years since the issuance of *Populorum progressio*.⁹⁵ These changes (e.g., famine, environmental and energy crises, monetary crisis [inflation, unemployment], political malaise) have stimulated the poor countries to move from the notion of development to a more global vision symbolized in the term “new world order.” The

⁸⁸ Ibid. 319.

⁸⁹ *Catholic Mind* 75, no. 1312 (April 1977) 55–64.

⁹⁰ *Origins* 7 (June 2, 1977) 20–22.

⁹¹ Latinamerica Press, 1977, April 7, 3–5, and April 14, 3–5.

⁹² Ibid., Oct. 14, 3–5.

⁹³ Ibid., Feb. 24, 4–5.

⁹⁴ Ibid., April 21, 3–7.

⁹⁵ “‘Populorum progressio’—Note de la Commission pontificale Justice et Paix,” *Documentation catholique* 74 (1977) 473–75.

Commission sees this as in profound continuity with the aspirations of *Populorum progressio*. This and similar documents indicate one thing very clearly: the Church's concern with rights is focusing with increasing sharpness on the national and international systems which are the context for the existence and exercise of rights and therefore either foster or undermine such rights.

Now to some specific disputes over rights. In the Oct. 3 issue of *Christianity and Crisis* there appeared "A Call to Concern."⁹⁶ It was signed by 209 scholars, most of them Christian ethicists. The document is the assertion of an "alternative position" to what it calls the "absolutist position" on abortion and abortion funding by Medicaid. This alternative position includes the following: support for the Supreme Court decision of 1973; rejection of the "absolutist position" on abortion because of its cost in human misery; support of concern for quality of life at all stages; support of Medicaid payments for abortions; sorrow at "the heavy institutional involvement of the bishops of the Roman Catholic Church" (an involvement the document sees as "religiously based" and violative of the deeply-held religious convictions of other individuals and groups); a call to other religious leaders to speak out against "the dangerously increasing influence of the absolutist position."

This is an important document and should not be taken lightly. It is the first time I know that so many religious ethicists have endorsed such a statement. Furthermore, the signatories include very highly respected names in the field of Christian and Jewish ethics. For these reasons, in addition to the important and unyielding character of the abortion problem, we might well expect this statement to be a showpiece paradigm of how serious ethicists go about facing a delicate and potentially divisive problem. There have been some reactions to the statement and I will draw upon them in organizing my own response.

The "Call to Concern" has, in my judgment, the following characteristics: (1) *rhetorically* inflammatory; (2) *factually* mistaken; (3) *legislatively* uninformed; (4) *politically* inconsistent; (5) *argumentatively* unpersuasive; (6) *ethically* unenlightening; (7) *ecumenically* destructive. In summary, it is a very poor statement on all counts. My surprise at the number and distinction of the signatories remains unabated. The following paragraphs will begin to say why.

1) *Rhetorically* inflammatory. One position is described with the following terms: "absolutist," "inflexible," "rigid," "compel the conscience," "blind," "dangerous," "extreme." The alternative position is fleshed out with the following: "moral," "sound," "responsible," "candor," "loving."

⁹⁶ "A Call to Concern," *Christianity and Crisis* 37 (1977) 222-24. This was eloquently responded to by James Burtchaell, C.S.C., with his "A Call and a Reply," *Christianity and Crisis* 37 (1977) 270-71, and Robert Hoyt in *Christianity and Crisis* 37 (1977) 265-66.

Perceptive ethicists know what is going on in this type of cheerleading.⁹⁷

Beyond such colorful language, there is loose language. Thus, the Supreme Court is said to have decided not to “compel the conscience” of those who believe abortion is morally right. In ordinary usage, we “compel the conscience” when we force persons to do something they judge to be morally wrong. We do not and should not use this to describe constraints from doing things that many see as offensive. Otherwise let us cease and desist from outlawing polygamy, and skyjacking of planes by those who think they act justifiably in a noble revolutionary cause.

2) *Factually* wrong. The document is factually wrong on several counts. First, the moral and legal position opposed is presented as one held and pressed “on religious grounds.” Several popes and many hierarchies around the world have made it clear repeatedly that the position they propose is not religiously derived, even though religious perspectives will support and deepen it. It is a matter of the moral law making claims on all persons, a matter of basic rights and duties at the heart of social life. The abortion position is no more religiously based than the position of the bishops on farm-workers’ rights, the Vietnam war, capital punishment, and a host of other concerns.

Secondly, it is simply wrong—and at some point slanderous—to assert that the abortion position they oppose means “total preoccupation with the status of the unborn” and renders it “blind to the well-being and freedom of choice of persons in community.” The past and present history of social concern of the indicted groups is sufficient to destroy such an accusation. The American bishops have consistently linked unemployment, the condition of the aged, food rights, etc. to their stand on abortion. I would invite the signatories to read a fine recent example of this by Archbishop Joseph Bernardin.⁹⁸

Finally, the position opposed is described as “absolutist.” Individuals are never identified, but the impression is unavoidable that the Roman Catholic Church is the “absolutist” group. It should be known to “writers of religious ethics” that no position associated with Catholic papal and episcopal statements, and contemporary theological ethicists, can be described accurately as absolutist—scil., one judging *all* abortions to be morally wrong. As Burtchaell notes: “Ethicists are expected to restrain themselves from misrepresenting positions with which they disagree.”

3) *Legislatively* uninformed. The “Call to Concern” states that there is “no clear majority opinion on these fundamental issues.” Prior to 1973, forty-six states had laws restricting abortion. Furthermore, in state-wide referendums which allowed the public to speak—as the Wade and Bolton

⁹⁷ Cf. Burtchaell, “A Call” 270.

⁹⁸ Joseph Bernardin, “Human Rights: Do We Practice What We Preach?” *Origins* 7 (1977) 201-4.

decisions do not—every instance showed rejection of abortion on demand as now protected by our highest court. Moreover, in a *New York Times*/CBS poll, only 38% thought a woman should be helped with government funds if she wanted an abortion; 55% said no.⁹⁹ Finally, the report, in speaking of a legal right, passes over in silence the enormously important distinction between a right not to be interfered with (a right to pursue) and a right of entitlement.

4) *Politically* inconsistent. The document regrets the involvement of the Catholic episcopate in the abortion issue, especially with regard to an amendment. It is seen as “a serious threat to religious liberty and freedom of conscience.” An amendment would “violate the deeply held religious convictions of individual members and official bodies” about the beginning of personhood. Three points. First, this invitation to the bishops to absent themselves from the problem is asserted at the very time the signatories are getting in—and on religious grounds. Perhaps the bishops also have convictions that could be violated by the actions of the signatories. Secondly, the document admits “the legal right of all individuals and groups, both religious and secular, to seek laws that reflect their religious and ethical beliefs.” Why, then, is the institutional involvement of the Catholic episcopate “inappropriate”? The document nowhere answers this. Such stipulation has the effect of disenfranchising certain persons from the democratic process. Thirdly, if denial of Medicaid funds is a “public censure of a medical service” which has the moral support of major religious groups, provision of such funds is a “public censure” of the position that argues that it is offensive to use our tax money for this purpose.

5) *Argumentatively* unpersuasive. The document is clearly not an ethical argument; it is a political manifesto. But even so, when charges so serious (“serious threat to religious liberty”) are uttered, some moral reasoning ought to be given. Furthermore, the report does take a moral position (“abortion may in some instances be the most loving act possible”). It does this on the basis of “the well-being and freedom of choice of persons in community.” Unless “well-being and freedom of choice” are carefully specified, I am afraid that in principle they may justify far more than the authors envisage (e.g., infanticide). Moreover, the authors take a stand on Medicaid funds on the grounds that denial of funds “makes it difficult for those who need it most to exercise a legal right.” If this is to be persuasive, it must weigh this admitted difficulty against the loss of fetal life that *presumably* would occur through provision of funds.

6) *Ethically* unenlightening. The manifesto simply takes a position; it does not enlighten it. Indeed, in doing this, it obscures ethical issues. Item: it rejects a more demanding stand on abortion because of “its cost

⁹⁹ Cf. *Christianity and Crisis* 37 (1977) 205.

in human terms," and sees this as the "most compelling argument." Nothing is said about the cost to the fetus. That is not to enlighten a hierarchy of values; it is merely to promulgate a conclusion that is at odds with centuries of Christian tradition. Item: abortion is described as both "tragic" and "loving." Why is it ever tragic in the authors' perspectives if the basic warrant proposed is the "convictions of individual members and official bodies . . . about when human personhood begins"? If abortion is not about taking human life, why the tragedy?

7) *Ecumenically* disastrous. Candor is never ecumenically destructive. Nor is disagreement. Indeed, this author disagreed with the United States Catholic Conference in some of its procedures during the presidential campaign. What is destructive to ecumenism is latent anti-Catholicism. I honestly believe that this does not represent the attitudes of the signatories. But the document has been widely perceived in this way by intelligent, open, and sensitive people, both Catholic and non-Catholic. The conclusion is hard to avoid that there are elements in it which form the basis for such a perception.

My remarks have been vigorous and candid because I respect the signatories. Furthermore, documents such as this one have methodological importance beyond the issue they discuss. They are transparent of the way we go about moral discourse. And on this score the document is a disaster. As *America* editorialized: "The theologians who signed this document have done themselves no honor."¹⁰⁰

Donald McCarthy discusses the use of DES (diethylstilbestrol) after rape.¹⁰¹ He accepts the purely contraceptive use of DES, rejects the abortifacient (interference with implantation), but wonders about instances where it is not clear whether ovulation had occurred in the 12-24 hour period. Therefore, one does not know whether by administration of DES the outcome is contraceptive or abortifacient. Thus the problem: the use of DES with contraceptive intent but uncertain outcome. He suggests (and only that) that the use of this drug might be justified by the principle of double effect.

In responding to this study, William A. Lynch, M.D., points out that recent studies undermine the factual assumption in McCarthy's study, scil., that postcoital estrogens suppress ovulation.¹⁰² Rather, they are "interceptors" that interfere with implantation. Therefore he rejects the use of DES as abortifacient.

Practically, on Lynch's factual assessment there is no problem. DES is

¹⁰⁰ "Another Double Standard," *America* 137 (1977) 274.

¹⁰¹ Donald McCarthy, "Medication to Prevent Pregnancy after Rape," *Linacre Quarterly* 44 (1977) 210-22.

¹⁰² William Lynch, "Comments on 'Medication to Prevent Pregnancy After Rape,'" *ibid.* 223-28.

abortifacient and its use must be judged as such. Interestingly, however, McCarthy raises a problem with which traditional theologians were familiar, but in a different set of circumstances. It is the problem of acting when one is factually doubtful about the effect of one's action. For instance, it was asked decades ago whether a physician could remove an abdominal mass to save a woman's life when he was uncertain as to whether this mass was a tumor or a fetus. The answer given commonly, though not universally, was negative.

To the best of my knowledge, no author attempted to justify the intervention by appeal to the double effect, simply because, as Vermeersch noted,¹⁰³ the effects are disjunctive—scil., either one or the other occurs, but not both. Those who did defend the intervention argued that *ordinarily* action taken in doubt of fact about the presence or existence of human life is unwarranted temerity and unjust. Thus, it would be morally wrong for a hunter to shoot at an object in the bush that is probably an animal but probably also a person. But several theologians pointed out that the case would be different were we dealing with a *starving* hunter whose life was at stake. It would not then be unwarranted temerity to risk harm to the only probable person because of the presence of a proportionate reason.¹⁰⁴ The case was approached, in other words, in terms of the justifiable or unjustifiable character of risk-taking.

That seems to me to be the proper approach to the question under discussion. It breaks into two questions: (1) How does DES (or other rape-treatment medication) work? (2) What is the status of the embryo immediately after fertilization? On all available evidence, DES administered to rape victims prevents implantation of the fertilized ovum. At this point the second question becomes crucial. What claims does human life at this stage make upon us and why?

In a long study, Gabriel Pastrana, O.P., has very competently and objectively reviewed the literature on this point.¹⁰⁵ He first reviews and critiques the opinions of major discussants (Noonan, Grisez, Ramsey, Curran, Hauerwas, B. Häring, Callahan, Sissela Bok, Tooley, Engelhardt). Pastrana next turns to the available biological data on the zygote and morula. Especially to be noted are the phenomena of twinning and conjunction (recombination of two fertilized ova), cell pluripotentiality of the blastocyst until the appearance of the primary organizer. "If this

¹⁰³ A. Vermeersch, *Theologia moralis principia-responsa-consilia* 2 (Rome, 1926-28) 589. In the ordinary case, therefore, it is true to say that doing and the risk of doing are morally equivalent: "Idem est in moralibus facere et exponere se periculo faciendi." Cf. Vermeersch, n. 103.

¹⁰⁴ V. Heylen, *Tractatus de jure et justitia* (ed. 5; Mechlin, 1950) 664.

¹⁰⁵ Gabriel Pastrana, O.P., "Personhood and the Beginning of Human Life," *Thomist* 41 (1977) 247-94.

organizer does not appear, or if it is removed, no subsequent differentiation will occur." That is, the behavioral characteristics and activities of the cells before and after the appearance of the primary organizer are specifically different.

He next applies to such data a philosophical analysis. Pastrana is concerned with two questions. First, when is the developing being an individual human being? Secondly, when is it a person? Using the traditional scholastic concepts of matter and form, Pastrana points to "from the second to the third week (14th to 22nd day) after fertilization as the time of the appearance of the biological individual human being, or, more strictly, indicating its nonappearance before that time. . . ." In this conclusion he is very close to Paul Ramsey and Charles Curran.

He then turns to the notion of person and, after rejecting purely psychological (consciousness) and moral (relation to others) definitions of person for an ontological one, concludes: "the product of conception should be considered a human person." Pastrana's study is well informed, meticulously documented, and carefully analytic. It must be taken seriously. One minor point needs clarification. On the basis of his analysis, Pastrana should have formulated his conclusion somewhat more precisely, scil., that the product of conception should be considered a person after around 14–22 days, the time at which individuation is established. This is certainly what he meant to say.

Pastrana's conclusion is parallel to that of James Diamond, M.D., who claims that "the scientist has an almost insuperable inclination to identify hominization as being positable no earlier than the blastocyst stage."¹⁰⁶ Practically, that means not before 7 days and probably not before 14–21 days. This matter has very grave consequences. Let the treatment of rape be a single instance. In the literature reported above (McCarthy, Lynch), the assumption is that we are dealing with personal life from the moment of fertilization. The discussion, therefore, concerns the manner of operation of DES. Pastrana's conclusion (which he shares with Curran, Ramsey, and others) undermines the assumption.

I incline toward Pastrana's conclusion.¹⁰⁷ The numerous biological events converging during the earliest days (7–21)—e.g., twinning, possibility of recombination, appearance of the primary organizer, number of aborted fertilized ova—strongly suggest that the ontological status of

¹⁰⁶ James Diamond, M.D., "Abortion, Animation, Hominization," *TS* 36 (1975) 305–24, at 315.

¹⁰⁷ For a contrary view, cf. Michael A. Vaccari, "Personhood before Implantation," *Natural Family Planning* 1 (1977) 215–28. The moralist, to the extent that his conclusion relies on the phenomenon of recombination, is utterly dependent on empirical data. Vaccari is at pains to show that there is no evidence to indicate that recombination has occurred in humans. Others (e.g., Andre E. Hellegers and Kurt Benirschke) contest this.

human life at this stage may be different than after this period. What may one conclude practically from this? In my judgment, extreme caution is required here. I would suggest tentatively that there is sufficient doubt about the claims of nascent life at this stage to say that the use of interceptors (which prevent implantation) in emergency treatment of rape cases is not clearly and certainly wrong.

Two phrases are noteworthy here: "sufficient doubt," "emergency treatment of rape cases." In combination, these suggest that in *normal* instances of doubt about the extent of our obligations, life deserves the benefit of the doubt. But in cases of tragic conflict (rape), given the facts currently available, it would not be what earlier theologians called "temerarious risk" to draw the conclusion suggested.

We may learn more about this matter as the discussion continues. This implies a readiness to modify our judgments. But one thing needs saying: the abortion position firmly and constantly proposed by the Church is so sound and healthy, in my judgment, that it would be a disservice to it to extend its clarity and certainty into areas where there are reasons for genuine doubt.¹⁰⁸

Another area where the Church finds itself in dispute is the matter of women's ordination. Rights are involved here, but in a nuanced sense. That is, if there is no persuasive theological or pastoral reason to exclude women from ordination, then the continued exclusion of *an entire class on the basis of sex* would be an injustice. Obviously, no individual can claim an unqualified right to ordination as a priest. But a class of persons could argue that, if there is no solid theological justification, this exclusion is a denial of a kind of *jus ad rem*—a right not to be *unfairly* interfered with in the *pursuit* of a possession or goal.¹⁰⁹

The abundant literature in response to the document of the Sacred Congregation for the Doctrine of the Faith cannot be reviewed here.¹¹⁰

¹⁰⁸ At the legal level, it is clear that any law or amendment which proscribes intervention from the moment of fertilization is totally unworkable. It would represent conspiracy law. Why? Because pregnancy is not diagnosable until several weeks (at least) after fertilization. That means that the law would have to prosecute for the *intention* to abort—which is conspiracy law.

¹⁰⁹ A *jus in re* is understood as the right one has to his/her own property.

¹¹⁰ Cf. Robert J. Egan, S.J., "On the Ordination of Women," *Commonweal* 104 (1977) 589-91, with Michael Novak's reply, 591-93; Michael Novak, "On the Ordination of Women," *Commonweal* 104 (1977) 425-27; "Inter insigniores" (declaration on the ordination of women), *Documentation catholique* 74 (1977) 158-64; Christian Howard, "Ordination of Women," *Ecumenical Review* 29 (1977) 234-53; "Women and the Priesthood" (editorial), *Month* 10 (New Series, 1977) 75-76; Karl-Heinz Weger, "Endgültig keine Ordination der Frau?" *Orientierung* 41 (1977) 64-67; Albert Ebnetter, "Keine Frauen im Priesteramt," *Orientierung* 41 (1977) 25-26; "The Ordination of Women Controversy," *Overview*, April 1977; Luc J. Lefevre, "Sur l'admission des femmes au sacerdoce: Un document de Rome," *Pensée catholique* 167 (April 1977) 5-17; "The Ordination of Women" (English version of

But two statements from the American scene deserve attention. One was a dissent registered by the (virtually) entire theological faculty of the Jesuit School of Theology at Berkeley.¹¹¹ It is carefully worded and stems from a "profound love for the Church and for the Vicar of Christ." The other was composed by John R. Donahue, S.J., a distinguished Scripture scholar. Donahue critically probes the arguments and citations used in *Inter insigniores*.¹¹²

Theologians are not accustomed to perceive their writing in terms of rights. But a recent instance merits attention. It is the silencing of John McNeill, S.J., by the Sacred Congregation for the Doctrine of the Faith.¹¹³ This may appear as an isolated instance. But all theologians have a stake in this happening. That is true whether one agrees or disagrees with McNeill's thesis—and I have substantial disagreements with it. Furthermore, the entire Church has a stake in such happenings.

Two questions that must be publicly answered are: (1) Why was this done? (2) How was it done? The first question does not intend to deny that drastic action is sometimes called for against what is thought to be pastoral irresponsibility. It means only to suggest that the parameters of such irresponsibility must be spelled out carefully, publicly, and in advance of their application.

But of perhaps even more urgent concern is how this was done. Before a person's ministry is publicly terminated or abridged in the Church—especially if that ministry is one of scholarship and the exchange of ideas—certain procedures of due process seem utterly essential if the Church is to retain its credibility as a "zone of truth." Among these procedures we must surely include discussion of the matter (especially the offending ideas, the pros and cons) *with the defendant*. Unless this occurs, suppressive measures will appear to be and actually be self-inflicted wounds by the Church—a community whose trust in the protective action of the Holy Spirit is second to none, and therefore a community where the free flow of ideas ought to occur in an atmosphere of unthreatened tranquility. This is especially true at a time when episcopates in many Third World countries are protesting prophetically and vigorously the denial of rights, among them the suppression of free speech.

the document of the Sacred Congregation for the Doctrine of the Faith), *The Pope Speaks* 22 (1977) 108-22; Karl Rahner, S.J., "Priestertum der Frau?" *Stimmen der Zeit* 195 (1977) 291-301; H. Küng and Gerhard Lohfink, "Keine Ordination der Frau?" *Theologische Quartalschrift* 157 (1977) 144-46. Leonard and Arlene Swidler have gathered many reactions to the Vatican's declaration in *Women Priests* (New York: Paulist, 1977).

¹¹¹ "An Open Letter to the Apostolic Delegate," *Commonweal* 104 (1977) 204-6.

¹¹² John R. Donahue, S.J., "Women, Priesthood and the Vatican," *America* 136 (1977) 285-89.

¹¹³ For McNeill's response (a letter to Dignity), cf. *Origins* 7 (1977) 218-19.

At the bottom of this particular dispute may lurk different perceptions of the meaning and importance of public discussion in the Church, especially in areas where there are officially formulated teaching statements. And that brings us to the report of a committee of the Catholic Theological Society of America on sexuality.

THE CTSA COMMITTEE REPORT ON SEXUALITY

Few events of recent years have prompted as much reaction as the publication of *Human Sexuality: New Directions in American Catholic Thought* on June 20, 1977.¹¹⁴ The reaction has come from many sources: the press, Catholic bishops, theologians. Even the *New York Times* deemed it advisable to editorialize on the study. It viewed it as "dramatic evidence of fresh currents in the Catholic community" and concluded that "such a profound note of dissent among those entrusted with teaching the young cannot fail to have significant implications for the Catholicism of tomorrow."¹¹⁵

The New York Archdiocese (document issued under the signature of Msgr. Joseph T. O'Keefe, chancellor) took a harsh view of these "fresh currents."¹¹⁶ The study of the CTSA committee tips the balance between objective law and subjective conscience, between action and intention, and gives "a purely subjective definition of sexual love" by abandoning the procreative dimension. Theologian James Burtchaell sees the book as a "fatuous report by people who have no real scholarly standing."¹¹⁷ Book reviewer Thomas P. McDonnell believes that *Human Sexuality* is "garbage under the guise of progressive enlightenment."¹¹⁸ The *National Catholic Register* wrote that the "book is so bad it is almost good because it will undoubtedly drive the Catholic community... to seek from the bishops a thorough housecleaning."¹¹⁹ The *Catholic Standard* (Washington, D.C.) referred to the study as "this infamous report" and saw it as an "insidious attack on fundamental Catholic moral values."¹²⁰

Theologian William B. Smith, in an extremely black review, feels the book deserves an "X" rating, "not for pornography, but for violence—the extreme violence done to the sources of Sacred Theology: Sacred Scripture, Sacred Tradition, and the Magisterium of the Church."¹²¹ Richard

¹¹⁴ Anthony Kosnik *et al.*, *Human Sexuality: New Directions in American Catholic Thought* (New York: Paulist, 1977).

¹¹⁵ *New York Times*, July 7, 1977.

¹¹⁶ *Catholic News*, July 14, 1977.

¹¹⁷ *Newsweek*, July 11, 1977.

¹¹⁸ *Church World*, June 23, 1977. A rather thorough roundup of these citations may be found in *Overview*, Sept. 1977.

¹¹⁹ *National Catholic Register*, May 29, 1977.

¹²⁰ *Catholic Standard*, Nov. 24, 1977.

¹²¹ *Catholic News*, June 9, 1977.

McBrien argues that the fundamental methodological shift—from unitive-procreative to creative-integrative—is not justified.¹²² Editor-in-chief Albert Nevins of *Our Sunday Visitor* referred to the study as “this new aberration of the paramagisterium” and concluded that it “cannot do anything but great harm.”¹²³ Six members of the CTSA view the work as “partisan in outlook, poor in scholarship, weak in argumentation and fallacious in its conclusions.”¹²⁴

On the other hand, theologian F. X. Murphy notes that *Human Sexuality* “marks the arrival at maturity of the U.S. theological community.”¹²⁵ The principal achievement of the study consists “in its having set in a new perspective the traditional teaching of the Church on all modes of sexual expression.” Journalist Frank Wessling argues that if the book is read completely, “it will vibrate as reasonable and true to the experience of most thoughtful persons.”¹²⁶ Even though he offers several reservations, he concludes that “the book . . . is so good that it is the only one I can think of that I would recommend to my children as openers for a dialogue on sexuality.” Rosemary Ruether sees the book as a “major effort to shift the basis of sexual ethics from act-oriented to person-oriented principles. . . . Traditional moralists will be acutely discomfited by these principles.”¹²⁷ Giles Milhaven praises the report as the result of listening “to that large segment of the Catholic people, growing larger each year, that live sexual lives in ways different from what the Church sanctions.”¹²⁸

Tom Driver of Union Theological Seminary applauds *Human Sexuality* as “the best book I have ever read that was written by a committee.”¹²⁹ The book will make fur fly because it is predicated upon an understanding of human nature as dynamic. Joseph Cunneen, even amid several criticisms, judges the study as “a courageous and long-overdue achievement. Any fair reading of the text will make clear that its authors are moderates in their approach to theological ethics and that they are concerned to preserve a continuity in Catholic teaching even while presenting a more contemporary person-oriented rather than act-oriented approach to sexuality.”¹³⁰

These are but a few examples of the early press and theological

¹²² *Church World*, July 14, 1977.

¹²³ *Our Sunday Visitor*, June 26, 1977.

¹²⁴ Cf. *Overview* as in n. 118 above.

¹²⁵ F. X. Murphy, *Tablet* 231 (1977) 695–96.

¹²⁶ *Catholic Messenger*, July 7, 1977.

¹²⁷ Rosemary Radford Ruether, “Time Makes Ancient Good Uncouth: The Catholic Report on Sexuality,” *Christian Century* 94 (1977) 682–85.

¹²⁸ *National Catholic Reporter*, June 17, 1977.

¹²⁹ Tom F. Driver, “A Stride toward Sanity,” *Christianity and Crisis* 37 (1977) 243–46.

¹³⁰ Joseph Cunneen, “Two Rousing Cheers,” *Christianity and Crisis* 37 (1977) 247–49.

comments on this study. There are many more. It would be tedious to multiply them. Two things stand out rather clearly in the many responses I have read. First, they are sharply divided. Second, they seem to reveal as much about the perspectives of the responders as they do about *Human Sexuality* itself. That is, they lay bare what the responders expect and desire to find in a theological study of sexuality. These expectations and desires are transparent of certain attitudes toward human nature, Church authority, moral norms, the maturity of people, etc.

The response of bishops to *Human Sexuality* deserves special attention. Here we see the duly authorized pastoral leaders of the Church reacting to a theological study on a matter of concern to all, and one on which the Church has some rather well-known authoritative formulations. One can scarcely conceive a situation more likely to expose the thoughts of many hearts (Lk 2:35).

Of special interest is the response of the Committee on Doctrine of the National Conference of Catholic Bishops (NCCB).¹³¹ After encouraging theological research in this area, the committee made several substantive points. First, it rejected the idea that a tentative study could be the basis for pastoral guidelines and conscience formation. Second, it scored the "rather impoverished concept" of the Word of God in the study. Third, it repeated Vatican II's analysis of the procreative and unitive dimensions of sexuality and criticized *Human Sexuality* for abandoning this. The study's "creative growth toward integration" is "too vague to apply with any kind of precision or assurance." And its second-level values (self-liberating, other-enriching, etc.) "offer little guidance." Finally, the Committee on Doctrine believes the study is deficient in relating the empirical sciences to value judgments and in its sensitivity to the "supernatural aspects of marital love." By this latter phrase the bishops underline the difference between moral claims rooted in Christian symbolism (marriage as symbolizing Christ's love of the Church) and those that are described as "a minimal sexual morality" or "simple duty or obligation."

The document of the Committee on Doctrine strikes this reviewer as courteous, moderate, and balanced—and happily purged of the nervousness, anger, and fear that is evident in some other episcopal responses. I believe the doctrinal committee is correct in noting the vagueness of the criteria central to the book (creative, integrative). No one will question the idea that healthy sexual expression ought to be creative and integrative. Therefore, it is not the case that these criteria are erroneous. But is that all we can say about sexuality? Such criteria apply to one's prayer life, dietary habits, athletics, study, etc. That is, they say little that is illuminative of sexuality as such. For this reason it seems that abandonment of the unitive-procreative analysis is unwarranted.

¹³¹ The text is given in full in the *Catholic Standard*, Nov. 24, 1977.

Similarly, the doctrinal committee seems correct in questioning the second-level values (self-liberating etc.). Once again, it is not that these are wrong. Rather, it is the impression that these post-factum second-level values have to be applied in each case before an action can be said to be morally inappropriate. Have we not learned that certain kinds of actions are precisely denials of these qualities? And is that not the very meaning of the norms we have developed proscribing certain forms of conduct?

The one aspect of the doctrinal committee's response that is puzzling is its distinction in the sexual sphere between "simple duty or obligation" and the "supernatural aspects of marital love." It would have been helpful had the committee attempted to give concrete examples of this difference in the sexual sphere. I can think of none; for "duty" or "obligation" surely includes *all* aspects of the rightness or wrongness of our conduct, whatever the warrants adduced for the rightness or wrongness. And by adding "simple" to the term "duty" one does not alter that.

Individual episcopal pastorals vary all the way from excellent to embarrassing. In this latter category is the pastoral of John King Mussio (Steubenville).¹³² While exhorting his people to "stick with Christ and His Church," Bishop Mussio stamps the authors of *Human Sexuality* as "prideful people," "free-wheeling people who in intellectual conceit strive to twist the Word of God. . . ." They are "destroyers," "self-excommunicates." Finally, and inexcusably, the authors are said to uphold "false doctrines they contrive out of their efforts to gain worldly renown."

Archbishop John Quinn, president of the National Conference of Catholic Bishops, makes several points in his statement.¹³³ First, he notes that "some of the positions taken in the committee report are erroneous" and to be rejected as "in conflict with the faith and moral teaching of the Church." As an example in the sexual sphere of an absolutely binding precept he states: "sexual activity must be confined within the loving covenant of valid marriage."

Archbishop Quinn also believes the committee report erroneously concludes that traditional Catholic moral teaching paid little attention to the "personal factors which must enter into the consideration of moral right and wrong." Contrarily, he asserts, tradition always emphasized factors such as fear, neurosis, habit, passion, and force.

Finally, Archbishop Quinn concludes with a supportive statement for the work of theologians in the doctrinal development of the Church. However, "neither theologians nor bishops work well in isolation." He suggests that the report would have greater value and wider perspectives if bishops had collaborated in it.

¹³² *Steubenville Register*, July 7, 1977.

¹³³ *Origins* 7 (1977) 94-95.

One small point—and this could be made about several of the episcopal statements. There are two types of “personal factors” in human conduct. The first concerns sin and guilt, and these are the factors mentioned by Archbishop Quinn (fear, force, etc.). The second refers to the individual qualities of conduct that do affect moral right and wrong: respect, courtesy, communication, tenderness, other-concern, etc. Such personal factors were indeed neglected in traditional treatises on sexual morality.

John Cardinal Dearden and the assistant bishops of Detroit regret that a speculative study is offered as “pastoral guidelines.”¹³⁴ This leaves the impression that the findings of the work are conclusive and final. Secondly, many of the tentative conclusions are not in accord with Church teaching. The Detroit bishops suggest the pastoral of the American bishops (*To Live in Christ Jesus*) as an object of study and reflection. Finally, Cardinal Dearden’s document concludes with an excellent paragraph that deserves citation.

A third point we wish to stress concerns the role of the theologians in the teaching responsibility of the Church. We recognize and are grateful for the invaluable service that theologians provide the Church in seeking ways to express Catholic moral teaching in ever more understandable terms for people of today. In this regard, human sexuality is but one of the areas of morality that demand always more carefully formulated guidelines and prudent counsel. . . . We must be patient with one another’s attempt to formulate the truth.¹³⁵

John Cardinal Carberry, with the four assistant bishops of St. Louis, issued a letter to all priests of the archdiocese.¹³⁶ It differs markedly in tone from the letter of Cardinal Dearden. First, it regrets the secrecy surrounding publication of *Human Sexuality*. “We find this a strange manner indeed for the CTSA to ‘dialogue’ with theologians and bishops.” Secondly, it calls attention to errors in the study (denial of absolute norms, radical subjectivism). “The book represents a serious diluting of the basic demands of the Gospel of Jesus Christ.” The very subtitle of the book “implies that there is a so-called ‘American’ Catholic thought which can arrogate to itself the authority to flaunt the clear teachings of the universal Church.” This, the letter continues, is a serious error, “for it overlooks the fact that the bishops with the Holy Father are the magisterium, the official teaching authority of the Church.” The letter concludes by noting that the principles and opinions in *Human Sexuality* are not to be used in guidance and the hearing of confessions, “not to be preached nor sustained either publicly or privately.”

Humberto Cardinal Medeiros published a lengthy statement in the *Pilot* covering both *Human Sexuality* and the defiance of Archbishop

¹³⁴ Courtesy of John C. Nienstedt, secretary to Cardinal Dearden.

¹³⁵ Cf. n. 134 above.

¹³⁶ *St. Louis Review*, Sept. 23, 1977.

Marcel Lefebvre.¹³⁷ Both constitute “irresponsible attacks on the Church’s teaching authority” and result in “weakening the allegiance in faith owed by Catholics to the Holy Father.” Cardinal Medeiros cites *Lumen gentium* at length on papal and episcopal teaching prerogatives and notes that it is wrong “for a group of professed Catholic theologians to suggest that the teachings of Vatican II have opened the way for a completely new formulation of the Church’s position on problems relating to human sexuality.” The Medeiros letter ends with a paragraph of great interest to theologians. It reads as follows:

It is the responsibility of the teaching authority of the Church to listen to theologians and to judge whether their informed consensus is in harmony with the faith of the Church, and then to accept any fresh insights into the faith for the advancement of the Kingdom of God. And it is the responsibility of theologians to work within the Church—and not to speak to the Church from the independent platforms of the secular academic world, as if they were non-believers. The Church suffers greatly when Catholic theologians, claiming the right to speak independently of ecclesiastical supervision—seeming to reject the service of authority given to the Church of Christ—continue to present themselves as molders of Catholic opinion and as authentic counsellors for Catholics in the formation of their judgments of conscience. When theological science thus takes on the forms of secularized scholarship, Catholic theologians who speak its language find themselves usurping the authority of the Church’s hierarchy as they become publicly identified with secularized efforts to legalize sexual aberrations and to make immorality look respectable. May the Holy Spirit enlighten those who inflict such pain and confusion on the Church, fragmenting it against the will of Christ.¹³⁸

Entirely different was the reaction of Archbishop Francis T. Hurley. “Personally, I welcome the report. I commend the authors for grappling with the almost impossible task of trying to develop in writing and for public review what is more easily and safely done in the one-to-one privacy of the counselling situation.”¹³⁹ Hurley criticizes the hucksterism of the publication of the book, the vagueness of the guidelines, and the overreliance on empirical evidence which the report itself says is skimpy. The move from traditional norms to new ones Hurley sees as a “gigantic leap” that is unwarranted. But the report has generated “dialogue, heat and controversy. That is to the good, even if it does cause us bishops to squirm a bit.”

Bishop James J. Hogan sees the conclusions of *Human Sexuality* as “contrary to the law of God and in conflict with the authentic teaching of Christ’s Spirit-guided Church.”¹⁴⁰ Its principles he qualifies as “situational ethics,” which are a threat to the family. He is especially concerned

¹³⁷ *Pilot*, July 8, 1977.

¹³⁸ *Ibid.*

¹³⁹ *Inside Passage*, July 29, 1977.

¹⁴⁰ *Cf. Overview* (n. 118 above).

that one of the authors is a seminary professor and another the president of the CTSA. When one openly and designedly rejects hierarchical teaching, "that dissenter acts immaturely and irresponsibly." Bishop Hogan then notes: "Theological pluralism has its place—and its limits. Legitimate dissent may be countenanced. But when in the name of loving service to the flock and of higher loyalty to the Church, clear Church teaching is challenged, there is neither service nor loyalty...."

I am somewhat confused by that wording. It is said that legitimate dissent may be countenanced. But when "clear Church teaching is challenged," then we are faced with something different—presumably, illegitimate dissent. This suggests the puzzling notion that dissent may be legitimate and countenanced when the teaching is not clear. That seems remarkable.

These are but a few examples of the many pastoral letters that have been issued in response to the CTSA committee report. They differ markedly in attitude and tone. Some of them leave this writer with several impressions. First, it seems that no matter what was said by the CTSA committee and with what arguments, it would be criticized *if it departed from official formulations*. I say this not because I agree with the authors' criteria or conclusions (in substantial ways I do not). Rather, the concern is for the task of theology and the notion of doctrinal development. If something is erroneous simply because it disagrees with existing official formulations, that says something very important—and deeply troubling—about theology's task and the possibility of doctrinal development.

Secondly, many of the pastorals are heavily preoccupied with authority: fears that authoritative positions would be weakened, fears that theologians are usurping pastoral authority, assertions that it is the pope and bishops who have authority to teach, etc. I am sympathetic with these concerns. But continued emphasis on them reveals one of the major difficulties in this entire discussion: to discourse about sexuality, not authority. This difficulty is not limited to the Catholic community, but it does surface there in a peculiarly intense way. There are all types of "authorities" subtly maneuvering for the final word: ecclesiastical, psychiatric, sociological, experienced, theological, etc. As long as this remains the context in which reflection on the mysterious gift of sexuality is done, I am afraid that the truly enlightening word will remain unspoken. For this reason one cannot but applaud Archbishop Joseph Bernardin's recent appeals for dialogue between bishops, scientists, and theologians.¹⁴¹

¹⁴¹ Archbishop Bernardin's remarks were made Oct. 17 in a speech at the world Synod of Bishops and were widely reported in the Catholic press. In an address to the National Conference of Catholic Bishops (Nov. 14, 1977) he repeated his "special plea that we establish a closer relationship, both as a Conference and as individual bishops, with theologians and social scientists and other scholars."

“Official, authoritative, authentic” vs. “nonofficial, nonauthentic, paramagisterial.” We constantly encounter these polarities and get locked into them. Eventually they assume the shape of theologians versus bishops. Is there no way out of such a conceptual and destructive impasse? Another article argues that there is.¹⁴² It views the magisterium as the precious vehicle of our shared experience and knowledge. But three aspects of the hierarchical magisterium are often overlooked. First, it is pastoral in character. That is, it is concerned with prudential determinations where more basic principles are in confrontation with changing social structures and changing times. This can be seen in the difference in nuance in *Rerum novarum* and *Populorum progressio*. Secondly, the magisterium is philosophical-theological in character. That is, it uses a thought-system and a language that root in a philosophical and/or theological perspective. These systems are time- and culture-conditioned and therefore limited and imperfect. That means that the formulations of the magisterium at a given time are only more or less adequate. Thirdly, the documents of the magisterium are addressed to believers of different cultural backgrounds and with different value perspectives.

Together these three characteristics mean that there is a difference between the substance of a teaching and its formulation. This was explicitly acknowledged by John XXIII and *Gaudium et spes*. If there is a distinction between the substance and formulation, there is also an extremely close, indeed inseparable connection. They are related as body and soul. The connection is so intimate that it is difficult to know just what the substance is amid variation of formulation.

Let premarital intercourse function as an example. The following assertions have been made at one time or another about such behavior. (1) It is morally wrong, scil., there is always something missing. Hence it should be avoided. (2) It is intrinsically evil. (3) It is so because it is violative of the procreative finality of sexual exchange, scil., violative of responsible procreative atmosphere. (4) It is seriously wrong in each act. (5) There is a presumption of serious guilt in each act. From these five assertions, to what is the Church committed? What is its *substantial* teaching? The article suggests that it is contained in the first statement. The other statements variously involve philosophical and theological concepts and the data of empirical sciences, all subject to modification and change.

The article then suggests several conclusions. For instance, what the Church is teaching (the substance) cannot always be identified with a particular formulation. Thus formulation of conviction in the Church is

¹⁴² Richard A. McCormick, S.J., “Conscience, Theologians and the Magisterium,” *New Catholic World* 220 (1977) 268-71.