

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY: 1978

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During the past year attention has been intensely focused on the deaths of two popes¹ and on the changes this might prefigure for the Catholic community. Much speculation—and it is just that—has centered on certain moral and pastoral problems (ordination of women, married priests, divorce and remarriage, birth control²). These and other problems are not faced simply by a changing of the guard, so to speak. They are prepared for by hard theological work. These “Notes” will touch on several areas where some of that work is being done. In order: (1) conscience and conflict; (2) *Humanae vitae* and the magisterium; (3) problems in bioethics. But before these specifics, the appearance of several important books that incorporate a good deal of contemporary work should be noted.³

CONSCIENCE AND CONFLICT

In a ranging article Archbishop Denis E. Hurley, O.M.I., addresses himself to some of the changing perspectives in Catholic moral theology.⁴ Much of the disarray in Catholic moral teaching is due to a “coming to grips with the massive increase of knowledge about man in the multiple dimensions of his being, his activity and his social evolution.” When one takes into account the many dimensions of the human situation (biological, psychological, domestic, social, and economic), the conclusions of moral reasoning are not always as clear as traditional theology would

¹ For the last speech of Paul VI, prepared for the feast of the Transfiguration (never delivered), cf. *Catholic Mind* 76, no. 1327 (Nov. 1978) 2–3. The Holy Father remembered those whose suffering he so often recalled and which he attempted so magnificently to reverse: the unemployed, the hungry, and “all those who in general find it hard to arrive at a satisfactory economic-social condition.”

² John Paul II authored a book in 1960 entitled *Amour et responsabilité* (Paris: Société d’Éditions Internationales, translation 1965). After discussing the meaning of procreation, he states: “Si l’on exclut des rapports conjugaux radicalement et totalement l’élément potentiel de paternité et de maternité, on transforme par là-même la relation réciproque des personnes” (215; his emphasis). He went on to add, as his syllogistic minor, that the use of contraception does this.

³ Timothy E. O’Connell, *Principles for a Catholic Morality* (New York; Seabury 1978); Philip Keane, *Sexual Morality* (New York: Paulist, 1978); Daniel Maguire, *The Moral Choice* (Garden City: Doubleday, 1978).

⁴ Denis E. Hurley, “The Quality of Life,” *Tablet* 232 (1978) 483–84, 507–8, 529–30.

lead us to believe. Hurley then stands back from some contemporary debates and views them in a more general light.

What is emerging from these debates is that Catholic ethics must give due place to a consideration that traditionally does not seem to have received enough attention, namely, that in complex human situations there can be a conflict of moral values in which the choice must be left to the conscience of the individual. The important thing in this regard is that moral values that can come into conflict must be thoroughly weighed to ensure that the more important ones receive the respect that is their due, for example, regard for human life.

Hurley's remarks strike me as an accurate and insightful account of what is actually happening in some recent debates.

Readers may be interested in a brief self-review by Joseph Fletcher.⁵ Fletcher looks back on his book *Situation Ethics* and tells us where he is now. His thesis has, he says, "been resisted by most of the church critics, accepted by most of the non-idealists in philosophy, and fully approved by those in the professions who have the responsibility of serious decision-making." What is that thesis? Let a few excerpts state it. "By rules we would hold that abortion or farm price supports are wrong (or right); by situation ethics we would say that whether they are wrong or right depends on the particular case." Or again: "In moral matters . . . judgments should be made, and are increasingly made, on the basis of the facts in each particular situation, rather than by rules already adopted before the situation." Finally: situationists "determine right and wrong quite practically in terms of gain or loss in human well being, in actual cases rather than broad generalizations or metaphysical-transcendental presuppositions."

Voilà! Case dismissed. Those who have residual problems with what Fletcher calls his "act-utilitarianism" are those who do not decide "on the basis of the facts" but "by rules already adopted before the situation." They are proponents of "doctrinaire ethics," of "ideology," of "metaphysical-transcendental presuppositions." I believe there are still a few moral theologians out there who are convinced that moral judgments are made "on the basis of the facts in each particular situation," yet that such judgments can yield norms that enlighten similar situations. And they believe that such norms need not make of them "doctrinaire" ethicists or "absolutists." Or, in lay terms, is the world really divided into only black hats and white hats?

Andreas Laun presents a summary of the German literature on the understanding of moral norms.⁶ He notes that a teleological direction is

⁵ Joseph Fletcher, "Love and Utility," *Christian Century* 95 (1978) 592-94.

⁶ A. Laun, "Teleologische Normenbegründung," *Theologisch-praktische Quartalschrift* 126 (1978) 162-68.

taken by "many authors" and correctly identifies them (B. Schüller, F. Scholz, F. Böckle, B. Häring, H. Küng, W. Korff, and many others).⁷ At the heart of this approach, he states, is the notion of a weighing of conflicted goods (*Güterabwägung*); for in the realm of worldly values there is question only of "relative values which cannot be elevated to absolute values" (H. Küng). This suggests a certain relativizing of concrete moral norms, a certain opening to consideration of situations of conflict. F. Scholz, for one, sees this as anything but new; it is pervasively present in traditional analyses but disguised by the language of direct and indirect action. When there was question of indirect action (double effect), there was really a question of direct action which is the result of a weighing of values (*Güterabwägung*).⁸ Bernard Häring has summarized this tendency as follows: "In many conflicting situations we cannot observe and realize all the desirable values at the same time, but we can and must give preference to those that are the most valuable and most urgent for both our own self-actualization and the actualization of the human community."⁹ Readers of these "Notes" will recognize well-rehearsed themes in such statements.

Laun then summarizes some anticipated objections to these approaches. For instance, it is no serious objection to argue with analytically obvious examples such as "it is never permissible to violate marriage" (*Ehebruch*), for there is a moral judgment included in the very description of the conduct. Equivalently, as Schüller has shown,¹⁰ this says: it is never permissible to act unethically. The question rather is: Is the sexual intimacy of one who is divorced and remarried a violation of marriage under all circumstances?

Similarly, to the objection that teleological theories know no exceptionless norms it must be stated that they do indeed. It is simply a question of stating specifically in the norm the value disproportion. For instance, abortion is never justifiable to avoid interruption of one's professional career.¹¹ Or again, teleological theories reject with St. Paul the doctrine that the end sanctifies the means if by evil means one means *morally* evil means. However, the authors of such theories insist that a weighing of values in conflict must precede the designation of a means as morally wrong.

To the charge that this teleology amounts to "situation ethics," the response is a resounding "no"; for the weighing of conflicted values

⁷ He could have added Joseph Fuchs, S.J., who brings together many of his previous reflections in *Responsabilità personale e norma morale* (Bologna: Dehoniane, 1978).

⁸ F. Scholz, *Wege, Umwege und Auswege der Moraltheologie* (Munich: Don Bosco, 1976) 103.

⁹ B. Häring, *Manipulation* (Slough: St. Paul Publications, 1975) 76.

¹⁰ Cf. Laun.

¹¹ Scholz, *Wege* 157.

“demands an objective, uncorrupted weighing of the relation of means to end” (a true judgment of proportion).¹² And so on.

Laun concludes his study with some critiques. First, there is lacking a coherent theory of values upon which to build. Second, Laun doubts that the terms “deontological” and “teleological” are central to the discussion; for teleologists hold that the action itself (“as it were, the ‘first consequence’ of the act”) is important and deontologists believe consequences are not insignificant. Actually, both are concerned with values in the discovery of norms. The difference, according to Laun, is that deontologists believe there are certain values associated with our conduct that must go untouched in every case *independently of further consequences*.

Laun believes that recent teleological perspectives cannot handle the case of judicial murder (the judge who convicts one innocent person of a rape to call off a rioting mob that will foreseeably kill many). Schüller had argued that not only is the life of one innocent person at stake (vs. perhaps five innocents lost in the rioting) but the whole institution of criminal law. Laun is dissatisfied with this, because could the injustice remain secret, the criminal law would not be at stake. If not, it would seem to follow that the one innocent person should be killed to save many as the lesser evil. He says: “The way that Schüller relativizes in the example the prohibition of killing on the one hand, yet on the other limits its practical consequences by appeal to the administration of justice, recalls the theses against which Pascal argued in his fight against laxism.”¹³ Laun also believes that the idea that premarital or extramarital sexual relations are always objectively wrong is untenable in teleological perspectives. Thus he generalizes: “The weakness of the theory lies clearly in the fact that every act can be justified if only in its behalf advantages to important ethical goods can be thrown into the calculus in a plausible way.”¹⁴

Laun also argues that a teleological understanding of norms would weaken rights, for a weighing of goods must be allowed in the area of rights also. He takes a case of abortion as an example. A white student has gotten an African pregnant. “Since there is no basis for marriage, a priest consulted for advice recommends a weighing of values to determine the lesser evil The problematic is clear: if abortion is not a morally evil means in every case, then the weighing of goods (and respectively evils) is the right way.”¹⁵ Contrary to this, deontologists, while admitting that ethical obligation can change in the face of higher competing values, “hold to prohibitions which cannot be removed simply by the presence of a concurring value.”

He concludes by challenging Böckle: “Does it clearly follow from the

¹² Scholz, *Wege* 157.

¹⁴ *Ibid.* 168.

¹³ Laun, “Teleologische . . . ” 168.

¹⁵ *Ibid.* 168.

fact that all earthly, morally relevant values are contingent that there can be no exceptionless prohibition against attacking this value?"¹⁶

Many will agree with Laun that the terms "teleological" and "deontological" are not central to this discussion. But I would respectfully disagree with his contention that in these recent writings "every act can be justified if only in its behalf advantages to important ethical goods can be thrown into the calculus in a plausible way." It is precisely the argument of recent writers that attempts to do this are not always plausible. For this reason, his example of abortion is hardly one to support his assertion that teleology can weaken rights. There is an objective difference between *any* reason and a truly commensurate (plausible) one.

In a long study L. Cornerotte, C.I.C.M., discusses conflict situations.¹⁷ He does this in two steps. First he discusses the various ways of formulating the morally right and morally wrong (whether in terms of laws, values, basic inclinations, etc.). There is, of course, no sharp exclusivity here, since laws or duties are derived from values or goods toward which we have basic tendencies or inclinations. Ultimately Cornerotte defines moral evil as "a free activity which destroys or damages the being of persons and which is contrary to or contradicts the basic tendencies of persons." The actual deprivations or damages (disorders) are, as such, nonmoral or premoral. They become moral evils by specification of an evil will.

Cornerotte then asks: Are there cases where a free agent may provoke such nonmoral disorders legitimately? Can one, for example, cause the death or deception of another without corresponding moral malice? Before approaching his analysis (his second step), he rightly notes that moral disorder can be found in either end or means.¹⁸ It is located in the end if one chooses a nonauthentic end—e.g., if life is organized around the acquisition of riches. It is located in the means if one fails to proportion the means to the end—e.g., if one surpasses moderation in taking nourishment or if one causes more damage than necessary in resisting an aggressor. Moral disorder may also be found in means which are disproportionate for another reason, e.g., one commits adultery to preserve a family inheritance.

Cornerotte then moves to his second step, the conflict of values. Any principles for the resolution of value conflicts rest upon a hierarchy of values. St. Thomas states such a hierarchy¹⁹ when he divides goods into

¹⁶ Ibid. 169.

¹⁷ L. Cornerotte, C.I.C.M., "Loi morale, valeurs humaines et situations de conflit," *Nouvelle revue théologique* 100 (1978) 502-32.

¹⁸ "Bonum humanae virtutis in ordine rationis consistit. Qui quidem principaliter attenditur respectu finis. . . . Secundario autem attenditur prout secundum rationem finis ordinantur ea quae sunt ad finem" (2-2, q. 161, a. 5).

¹⁹ 2-2, q. 152, a. 2.

exterior goods, goods of the body and the spirit, etc. Such beginnings were extensively developed by Max Scheler, Nicolai Hartmann, and Hans Reiner. Scheler, e.g., established a hierarchy on four levels: values of the agreeable, vital or biological values (health, vitality), spiritual values (beauty, right, justice), sacred values. Hartmann and, above all, Reiner developed preference principles for action when values are in conflict. These principles touch on the excellence of the value, the fundamental character of the value, its temporal urgency, its quantity, the chance of success, etc. These preference principles are present in traditional moral treatises under title of *ordo bonorum* and *ordo caritatis* (the determination of persons who deserve the preference).

On the basis of such a hierarchy, Catholic moral theology has developed what Cornerotte calls "operating principles" for the resolution of conflicts. He lists four. (1) *The principle of legitimate excusing cause*. This states that the obligation of positive law generally ceases where fulfilment is tied to a grave difficulty extrinsic to the law and proportioned to the importance of the law. Thus, one is excused from Sunday Mass when he/she must attend the sick. Clearly, an accurate appreciation of the respective values and duties is necessary.

2) *The principle of the double effect in the strict sense*. This involves situations in which an action aimed at a good effect is nevertheless accompanied by a negative dimension or result. Thus, a medicine necessary to health can produce sterility. In deciding what is a proportionate reason, preference principles (excellence, necessity, temporal urgency, quantity [common good]) must be considered as well as the principle of universalizability. Cornerotte says that the demand that the action be good or indifferent excludes actions that, taken in isolation, are moral disorders (lie) or premoral disorders (amputation of a limb). Thus he excludes from the rule of double effect actions such as shooting a person, hunger strikes, jumping from a high floor of a burning building, destruction of military installations in a just war. In all such cases the action is the direct cause of a premoral evil. For this reason "the will, although regretfully, is positively willing, and the premorally evil aspect is intended as the necessary condition of the appearance of the good effect." Cornerotte does not mean that such actions are morally wrong. He argues only that they cannot be solved by the principle of the double effect in the classical sense. And that brings him to his third principle.

3) *The principle of the double effect in the broad sense*. In this category of conflicts are situations whose resolution involves premoral evil. Cornerotte lists the following: cases involving the principle of totality (surgery, amputation); legitimate self-defense, capital punishment, just war; protection of secrets involving ambiguous statements and falsehood; taking the property of another when one is in extreme need. Moral

theologians have been unanimous in their conclusions about these instances but not in their justification. This means that traditional moral theology had not made explicit the deeper rationale for these conclusions.

Cornerotte formulates that rationale as follows:

In extreme cases, when a better solution is impossible, a superior obligatory value can, within limits, be protected by means of the active, even if regretful, sacrifice of a value of a lower order, or a value of the same order but one that is less urgent, on the condition that this sacrifice stand, in the present, in a connatural, necessary and duly proportionated relationship with the best possible protection of the values at stake, and, on the universal level, that the sacrifice not end up ultimately in a radical denial of these values.²⁰

Some such principle underlies the solution of many cases presented by traditional moral treatises, even though the principle itself does not emerge explicitly.

4) *The principle of heroic sacrifice.* The love of Christ can inspire us to forgo our rights and sacrifice our lives. Thus, rather than defend ourselves, we may suffer the aggression. Or, like Father Maximilian Kolbe, we may offer to take the place of a condemned person. Here one does not exactly kill oneself, but out of heroic love one abandons oneself to external forces (malice of others, forces of nature) which will destroy one.

It is clearly the third principle that is of most interest. Cornerotte calls it the “double effect in the broad sense” because “the negative effect can be called indirectly voluntary in a broad sense since it is willed only with regret and not for itself.” Cornerotte gives five positive rules or conditions for determining whether there is a *causa proportionata* for an action falling in this class. (a) There is an irreducible conflict of values. (b) There is an obligation to act, i.e., there is a preference which urges one to act in the present. (c) The means is ontologically proportioned to the protection of the obligatory, predominating value. By “ontologically proportioned” he means strictly and ontologically necessary. (d) Among the means, one must choose the least harmful, scil., the one best calculated to protect all the values. (e) The action does not amount to a denial of the values on the universal level.

In applying these conditions, Cornerotte lays special emphasis on condition (c), the ontologically necessary character of the means. A means is not ontologically proportioned if it destroys the very value it is supposed to affirm. For instance, an act of adultery demanded by a jailer as a condition of freedom for a married woman (Bergmeier case) is equivalently the denial of fidelity to her husband. Furthermore, it is not ontologically proportioned if it does not stand in a necessary relationship

²⁰ Cornerotte, “Loi morale” 518.

to the end. Thus, fornication and adultery are not proportionate means of self-defense, because they have no necessary relation to the preservation of life.²¹

In light of such possible exceptions, we must be careful to formulate negative moral principles properly; otherwise we will have forfeited their absolute character. Such principles (forbidding murder, lying, etc.) are absolute only in so far as they are well formulated, i.e., with exceptions included. For "the moral agent sometimes finds himself enmeshed in a conflict of laws all of which simultaneously demand his respect. Then it is a question of determining the greatest good realizable."²²

Cornerotte feels that the "principle of double effect in the broad sense" is more frequent than we realize. It is operative in the punishment of children, the measured anger of superiors toward the irresponsibility of subordinates, the quarantine of those with contagious diseases, the incarceration of delinquents, the revelation of faults and failings of aspirants to high public office. We do not advert to this, because we are accustomed to and have accepted their moral appropriateness. "But all of them involve a certain premoral evil and cannot be explained by the classic principle of double effect." Cornerotte concludes his study by applying it to several practical and controversial areas (birth control, conduct in war, abortion).

This is an interesting, careful study. Several comments are called for. First, Cornerotte is quite correct, I believe, in saying that traditional moral theology indeed supposed some such principle as he proposes in its casuistry without ever making it explicit. This is what the contemporary discussion is all about. It is an attempt to explicitate this principle for situations of conflicted values.

Second, it is misleading, in my judgment, to call this the "principle of the double effect in the broad sense." This terminology suggests that there is a fairly close relationship between Cornerotte's obvious teleology and the classic principle of double effect, the former being a kind of extension of the latter. That is misleading, for in the classical understanding of double effect one could intend the evil neither as end nor as a means. Clearly, Cornerotte holds that evil (pre-moral) may regretfully be intended as a means (*in se sed non propter se*) if it is appropriately proportioned to the end in the conflict case.

Furthermore, referring to such justified actions (e.g., falsehood to protect a professional secret) as justified by the double effect "in the broad sense" tends to confirm that classic doctrine (double effect, indirect voluntary) as morally decisive. Cornerotte holds this to be the case ("the principle of the double effect in the classical sense retains all of its validity

²¹ 2-2, q. 64, a. 7, ad 4: "non ordinatur ad conservationem propriae vitae ex necessitate."

²² Cornerotte, "Loi morale" 525.

in its own proper sphere"). Actually, if Cornerotte is right in saying that we may at times intend premoral evil as means, even if regretfully (as I think he is), this shows that indirectness of intent in the classical principle of double effect was not truly decisive in solving cases. Directness/indirectness as such become redundant. Bruno Schüller brings this out very clearly when he shows that permitting a nonmoral evil and intending such an evil as a means can both reveal the same basic attitude toward evil: disapproval.²³

Third, Cornerotte takes issue with the author of these "Notes" on the analysis of the direct destruction of civilians in warfare. I had argued that the moral wrongfulness is traceable to long-term effects.²⁴ This he sees as "sérieusement incomplète." I agree with this criticism and have modified the analysis since Cornerotte authored his article.²⁵ He sees direct destruction of innocents in warfare as involving a denial of the very value (the saving of lives) one is attempting to achieve. Furthermore, he sees such destruction as in no necessary ontological relationship with the protection of the other innocent lives one is attempting to protect. In this I believe he is correct, though a further analysis of the disproportion is possible.²⁶

Fourth, Cornerotte accurately applies his reasoning to the classical abortion case (abort or lose both mother and child). He says: "The intervention which saves the mother can be called 'the indirect cause in the broad sense' of the infant's death because this intervention is, in the circumstances, the only way to affirm one's respect for human life, and it is in a real, necessary, ontologically proportioned relationship with the charitable goal of saving one life rather than allowing two to perish."²⁷

²³ Bruno Schüller, S.J., "The Double Effect in Catholic Thought: A Reevaluation," in Richard A. McCormick, S.J., and Paul Ramsey, eds., *Doing Evil to Achieve Good* (Chicago: Loyola University Press, 1978) 165-91.

²⁴ *Ambiguity in Moral Choice* (Milwaukee: Marquette, 1973).

²⁵ "Notes on Moral Theology," *TS* 39 (1978) 107.

²⁶ *Ibid.* 111-15.

²⁷ At this point Cornerotte states of Pius XI: "In no way did he demand that the mother die together with her child." I believe this to be inaccurate. Pius XI's formulation excluded any *direct* abortion for any reason whatever. Direct abortion was understood in a very definite way in the tradition. E.g., a craniotomy in difficult birth situations was seen as a direct killing. Interventions into ectopic pregnancies were disallowed until it was argued that they were indirect. This means that there were situations where both mother and child must be allowed to perish rather than perform a direct abortion. This was the way the teaching of Pius XI was understood by theologians. "Better two deaths than one murder" was the translation. If Pius XI did not mean this, it would have been unconscionable to tolerate such misunderstanding of his teaching. As Karl-Heinz Weger notes of this rare case (whose rarity does not reduce its methodological importance): "The Church's magisterium—and honesty demands that this be said—has disallowed the certain death of the mother as a sufficient reason for abortion. In recent years, however, the opinion of the Church on this question has been modified. So we read in a recent writing of the German bishops: 'In

Correct. But why call the intervention "indirect"? In other words, Cornerotte has made a very important, and in my judgment correct, move but has not fully accepted its implications.

Finally, when Cornerotte applies his analysis to contraception, in cases of irreducible conflict, he accepts antioviulatory pills²⁸ but rejects some other artificial methods (diaphragm, condom) on the grounds that they destroy the symbolism of the natural self-gift contained in sexual intimacy. This argument is not new. For instance, Louis Janssens, in his first exploratory analyses,²⁹ argued in much the same way, but he no longer does so. The matter of symbolism is an important and tricky one. The question it raises is this: Should the symbolism of mutual self-gift be attached to mere physical artificiality in this way? Or again, is there not an infringement of symbolism if periodic continence is selfishly practiced? What must be avoided is a recrudescence of a narrow physicalism. Is the symbolism of self-gift not a matter of a whole cluster of factors, involving above all the generous openness of the couple toward childbearing? As one experienced and insightful lay person remarked, "There are many ways in which sex can be exploitative." And therefore many aspects have to be considered if it is to be nonexploitative. Is it not there (in over-all conduct) that symbolism is to be sought? However one answers, it seems that what is a denial of symbolism in this area is to be determined from experience. Finally, even if (*dato non concessio*) certain artificial interventions do reduce the symbolism of the self-gift, is it so clear that such reduction is always morally wrong? To be so, would it not have to have the character of absolute value?

In a compact and carefully wrought study presented to the Congress of Italian Moral Theologians (Catania, April 12-14, 1977), Enrico Chiavacci studies the foundations of moral norms.³⁰ The notion of the "foundation" of moral norms has two aspects. First, there is the question of the basic sense of life which our individual actions ought to realize or express. Without such a basic sense (a metaethical question) "any conversation about moral duty or ethics in general makes no sense." The second step is the move from this ultimate and unifying sense or value to the generation of moral norms (their legitimacy and criteria). He treats this second step first and asks: "Is the rule to be followed that which . . . best

irresolvable conflict situations where the decision is between losing both mother and child and losing just one, the medical conscience-decision is to be respected' " (*Schwangerschaftsabbruch: Kirche und Gewissen*," *Orientierung* 42 [1978] 66-69). Weger notes that this statement was meant as a help not only to doctors but also to the wife or spouses.

²⁸ On the proviso that they are not abortifacient in their method of operation.

²⁹ Louis Janssens, "Morale conjugale et progestogènes," *Ephemerides theologicae Lovanienses* 39 (1963) 787-826.

³⁰ Enrico Chiavacci, "La fondazione della norma morale nella riflessione teologica contemporanea," *Rivista di teologia morale* 37 (1978) 9-38.

approximates the basic sense? Or is it that which is rigorously deduced from this value? . . . We have, therefore, the possibility of a foundation for norms that roots in finality—teleological—or one that is deductive—deontological.”

Chiavacci correctly notes that these terms (deontology, teleology) have their difficulties. For instance, those who understand moral norms teleologically can hold absolutes. Thus, “never lie” can be argued on teleological grounds (lying undermines the possibility of social life), but then it becomes for all practical purposes a fixed deontological principle (“never lie, come what may here and now”).

Contrarily, a deontological ethic ought to admit some norms without any exceptions, come what may. But Chiavacci doubts that there really are any. Take lying, e.g., or, more exactly, speaking falsehood. The classical explanation was that the purpose of speech is to communicate true information. Thus any *locutio contra mentem* was contrary to nature and nature’s Author. “But in the same Christian and Catholic tradition there are many authors who admitted grounds for ‘exceptions’: the evil use another could make of the knowledge communicated; the lack of another’s right to make demands on me; the right of the accused not to betray himself; the grave harm that might come to others from knowledge of the truth.”³¹ Thus the categories deontological-teleological are not all that helpful. For the deontological understanding is clearly not one that takes no account of consequences; rather, it establishes once and for all the priority of certain consequences, or it establishes that certain forms of conduct produce more desirable consequences without excluding the possibility that in individual cases (not codifiable) that is not true.

Chiavacci notes that for Augustine and Thomas the teleological element prevails over the deontological in God Himself. Thus, the command not to kill oneself was “violated” by Samson through divine command. “But a command contrary to a deontological command can have no other justification than the prosecution of an end (good)—an end which as a rule ought to be achieved by observing the norm, but in individual cases, not generalizable, can be achieved by violating the norm.”³²

Chiavacci concludes this first section of his study by insisting that every norm is radically teleological (whether one tends to explain it deontologically or teleologically) “in the sense that it ought to represent conduct that better realizes (or compromises less) a certain development of the interior history of the individual and/or of the history of mankind and the world.”

Chiavacci grants that the form the foundation of norms will take depends very much on the basic sense or value one assumes as the remote foundation for norms. Thus, the second part of his study deals with this

³¹ Ibid. 18.

³² Ibid. 19.

ultimate sense of life or value, and from a specifically Christian point of view. Here he uses Balthasar's affirmation that "Christ is the concrete categorical imperative." For the believer, the unifying sense of life which finds norms is faith in the risen Christ—not mere intellectual faith (*fides quae*) but the faith of total personal self-commitment and choice (*fides qua*). This faith is knowledge of the ultimate reality and is the only way of knowing it. "To know that Christ, the perfect image of the Father, is already law and not just the legislator, is already categorical imperative and not just the font of further detailed imperatives, to have grasped this is, in my view, the decisive qualitative move of contemporary moral theology."³³

Why is this so? In what sense is Jesus "already law and categorical imperative"? He is the revelation of God's love. "In the New Testament the single duty of charity, of the self-gift to God seen in one's neighbor, is founded in the fact that God Himself is love." The mandate of love upon us is founded in nothing else but the love of God for us. "The fact that God . . . is love does not reach back for further justification; it is the ultimate fact." This is the background and root of the Christian moral life, the foundation of Christian ethics. In view of this, Chiavacci sees charity (the total gift of self) as the single supreme value, the ultimate "sense" of life which unifies all norms and is their Christian foundation.

For Chiavacci, it is also the Christian foundation of individual moral norms in the sense that individual norms are but concretizations of the demand of charity, the self-gift to God as encountered in others. As for "the process of the production" of these individual norms, Chiavacci argues that from the foundational value "there follows here a substantially teleological foundation for the process of the production of both precept and norm."³⁴ More specifically, he concludes:

The necessity of historicizing and making categorical the single precept or value (charity) is clearly opposed to a rigidly deductive process for individual norms, such as would be valid "come what may." It is precisely the peculiarity of the precept of charity which demands the weighing of the effects of our actions on others, so that what results is never morally irrelevant. It is precisely from this consideration that we have the substantially teleological form of the Christian ethic.³⁵

Chiavacci takes masturbation as an example of how norms must be viewed teleologically. This prohibition has been justified deontologically (to be observed no matter what, "accada ciò che puo") and was proposed in this sense by Pius XII. Thus, in the situation of sterility-testing the

³³ Ibid. 27.

³⁴ Chiavacci distinguishes precept from norm throughout. The norm is the precept as assimilated and applied by the individual in his/her circumstances.

³⁵ Chiavacci, "La fondazione" 33.

deontologist would say:

The couple must remain sterile, with all the nonmorally evil consequences (perhaps even morally evil) involved, rather than violate the precept. A teleological ethics which accepts the supremacy of the precept of charity would, on the contrary, say: in this hypothesis charity does not render masturbation only *licit*, but renders it *obligatory* when it is a question of saving or enriching the couple.³⁶

Chiavacci's study is careful and rewarding. He shows himself well read in Anglo-American philosophy as well as biblical exegesis. He has a fine sense of the conflict character of all moral decision-making and of the place and limits of the magisterium, of Scripture, and of moral reasoning. For instance, he asks: In the generation of moral norms, can other sources (Scripture, magisterium) *replace* moral reasoning? "My answer," he says, "is decisively negative." These sources are aids to, not replacements for, moral insight and reasoning and represent a kind of "exemplary pedagogy" for moral discernment.

It will come as no surprise that the compiler of these "Notes" regards this as a fine piece of analysis. Chiavacci is clearly to be counted among those (now a heavy majority of European theologians, if the literature is any indication) who interpret norms in a substantially teleological way. To my knowledge, he is the first Catholic to trace this explicitly in the way he does to the supreme value of charity in the moral life.

One small point. The example Chiavacci uses (masturbation for sterility-testing) would be explained differently by many theologians. It is not simply a matter of violating a precept for the greater good of the marriage. Rather, self-stimulation in these circumstances is a different human act and therefore does not involve the malice he correctly hypothesizes for the narcissistic performance of such an act.

The directions taken most recently by Cornerotte and Chiavacci and reported by Laun are linear descendants from Fuchs-Schüller-Janssens-Scholz-Böckle-Häring³⁷ *et al.* Not all are satisfied with these directions. Let two recent examples suffice: Frederick Carney and William May. Apologies are in order in advance for the inordinate use of the perpendicular pronoun—an unavoidable blemish, since these studies deal with my own reporting and writing.

Frederick S. Carney has written a detailed study of these developments as they have been elaborated and formulated by the compiler of these "Notes."³⁸ Carney describes himself first as a "surprised Protestant friend" when confronted with what he calls my "teleological monism."

³⁶ *Ibid.* 33.

³⁷ Cf. Joseph Omoregbe, "Evolution in Bernard Häring's Ethical Thinking," *Louvain Studies* 7 (1978) 45-54.

³⁸ Frederick S. Carney, "On McCormick and Teleological Morality," *Journal of Religious Ethics* 6 (1978) 81-107.

He says also that he is "perplexed." Ultimately he is overtaken by "sadness of heart." I am, of course, concerned that the tentative and humble gropings in these pages should so distress a friend and colleague. Such fluctuations of soul are, however, nonmoral disvalues. If they are the price of our more accurate grasp of moral truth, we must cheerfully, if regretfully, pay that price. In more familiar words, such disvalues should be visited on others only if, all things considered, there is a proportionate reason for doing so. Is there? That question depends on how we ought to conceptualize our duties when confronted with conflicts of values or goods.

Carney first very usefully describes four different types of teleology (teleology of virtue, of nature, of human institutions, of obligation) and correctly argues that the issue under discussion is the last form of teleology. One holds this fourth type of teleology if one asserts "that the moral rightness of an act . . . depends upon its being the most effective act (or rule) available within the designated circumstances for serving good ends or bringing about good (or less evil) consequences."

Secondly, Carney tries to understand what kind of teleology I am proposing. In an earlier study I had written that in conflict situations where harm will result from either of two alternatives open to the agent, the rule of Christian reason is to choose the lesser evil.³⁹ Carney rejects this: "Surely it is possible to choose between two acts on grounds other than the consequential good or evil that each act would produce." He gives as an example the resignation of his son from a coaching position. His son would be personally worse off; the swimming team would be less well off without his skills, etc. Yet Carney's son felt there were "matters of principle" at stake. Carney argues that his son did not choose the lesser evil. Rather, he made "a decision of principle." Similarly, to my contention that where nonmoral evil is judged morally acceptable in human action a single decisive element (proportionate reason) explains this, Carney says: "For some people (both scholars and non-scholars) do as a matter of fact sometimes judge evil to be acceptable without employing proportionate reason in doing so." Further, Carney argues that there are no Christian warrants for saying that the choice of the lesser evil in conflict situations is the "rule of Christian reason."

He next identifies the teleology he finds in *Ambiguity in Moral Choice* (and, by extension, in Fuchs, Schüller, Janssens, Böckle, *et al.*) as utilitarian ("unquestionably a form of utilitarianism"). He then argues that St. Thomas cannot be enlisted to support such pure "teleological monism." Finally, he offers suggestions as to why this path should not be followed. For instance, a teleological morality cannot account for the very basic moral institution of promising and promise-keeping. Moreover, such

³⁹ Cf. *Ambiguity in Moral Choice*, n. 24.

a theory collapses moral agents into calculators of futurity “hellbent on producing beneficent (or less maleficent) states of affairs in the world.”

Several points might be made to allow the issues to emerge more clearly. First, there is Carney’s example of his son. Rather than choose the “lesser evil,” Carney argues that his son’s resignation decision was a “matter of principle.” But that will not do. Specifically, what was this “matter of principle”? What goods were involved which were protected by this principle? For instance, if his son resigned because he insisted on green towels for all swimmers (his “matter of principle”), then his decision looks quite foolish, indeed looks like unnecessary harm brought on himself and others. If the principle were protecting some less trivial concern (e.g., honesty in reporting swimmers’ ages), then the choice to resign from coaching even if it involves nonmoral harms is fully justified, and is, I would argue, the choice of the lesser evil in the circumstances. The point is that Carney cannot say that his son did not choose the lesser evil until he tells us clearly what is behind his son’s “matter of principle.” When he does unpack that notion, it will become clear that the notion of the lesser evil is indeed an accurate, even if general, way of characterizing the decision. The fact that he can exclude (or hide) the goods behind the notion of “matter of principle” indicates how narrowly Carney reads the term “proportionate reason.”

That brings us to a second point: Carney’s understanding of the teleology I have suggested. He refers to this repeatedly as “pure teleology,” “teleological monism,” “a pure teleology of obligation.” This is then reworded and enfolded in some of the following ways: “an act is wrong if it is less productive than some other act in bringing about good consequences or serving desirable ends”; “the consequences would be on balance negative”; “rightness . . . depends on its being the most effective act available . . . for . . . bringing about good (or less evil) consequences”; “grounds other than the amount of evil (or good) their choice would bring about”; “morality of human action is to be made only by the assessment of the effects of the action.”

Such phrases show the narrowness of Carney’s reading of the term “proportionate reason” as this is found in Catholic tradition. He equivocates the term (which he erroneously calls a “moral norm”⁴⁰) to a weighing of nonmoral goods and evils which excludes many of the considerations which belong under a proper understanding of proportion. Thus he is

⁴⁰ It is a structure of reasoning in a Catholic tradition of many centuries but has no concrete normative content as such. Here it seems advisable to invite participants in this discussion to cease using the phrase “the ethics of proportionate reason.” That usage is terribly misleading. It suggests a whole system of ethics or moral theology. Actually, recent theologians are not concerned with “an ethics.” Rather, they are viewing human actions in so far as these involve us in a conflict of values. That such conflicts occur more frequently than we think is clear, especially in the writings of Janssens and more recently Chiavacci.

able to say that the term amounts to "pure teleology." But Carney's equivalence here is violent and invalid, for the usage "proportionate reason" must include many considerations which Carney seems to overlook in his quite simplistic understanding of the term.⁴¹ Once he has reduced the dimensions of the term to almost quantitative considerations, then it is an easy move to identify this teleology with "a form of utilitarianism." But even Carney seems to suggest that not all teleology is utilitarian, for at one point he refers to "all teleologies (including utilitarianism)." Presumably, then, not all teleologies are utilitarian.

To make this point, let me refer once again to a study by Charles Curran.⁴² Curran identifies three general approaches: strict teleology (utilitarian), strict deontology (e.g., Anscombe), mixed teleology (or mixed deontology). This last position differs from strict teleology because it maintains the following points: (1) moral obligation arises from elements other than consequences; (2) the good is not separate from the right; (3) the way in which the good or evil is achieved by the agent is a moral consideration. Curran rightly concluded that recent Catholic revisionist efforts (I include myself here) fit this last category because they insist that elements other than consequences function in moral rightness and wrongness.

William May, who strongly resists these developments, as we shall see below, refers to such theologians as "mixed deontologists."⁴³ He could as well have said "mixed teleologists." But Carney has no such term. Either one is a deontologist à la Carney, or one is a utilitarian. And that makes it fairly simple for him to qualify recent studies as utilitarian. Had he a more adequate, richer notion of proportionate reason, he might have sensed the inadequacy, even violence, of such categorization. Until he enriches his notion of *causa proportionata*, his analysis will not succeed. And if he does enrich his analysis, his argument will change.

John Langan, S.J., has brought this point out in his interesting review of a forthcoming book entitled *Doing Evil to Achieve Good*.⁴⁴ Of my explanations of proportionate reason, Langan notes:

These warnings show that McC. wants to avoid methods of justifying actions with evil effects that rely simply on intending good effects or achieving beneficial long-

⁴¹ Cf. *TS* 39 (1978) 88 and L. Janssens, "Norms and Priorities in a Love Ethic," *Louvain Studies* 6 (1977) 207-38. E.g., to be considered among other things: the distinction between instrumental acts, actions having a meaning in themselves, and expressive actions; the institutional character of some actions; the *ordo bonorum* and *ordo caritatis*.

⁴² Charles E. Curran, "Utilitarianism and Contemporary Moral Theology: Situating the Debates," *Louvain Studies* 6 (1977) 239-55.

⁴³ William May, "Ethics and Human Identity: The Challenge of the New Biology," *Horizons* 3 (1976) 17-37.

⁴⁴ John Langan, S.J., "Direct and Indirect: Some Exchanges between Paul Ramsey and Richard McCormick," to appear in *Religious Studies Review*, April 1979.

range consequences. They should lead critics to beware of treating McC. as a utilitarian, as Frederick Carney does; and they should lead us to expect McC.'s revisionism in moral theology to be conservative and clarifying rather than radical and simplifying.

Langan even suspects that I may be a "crypto-deontologist." Such is the malleability of human concepts and language. But I think Langan has got it exactly right.

A third point that needs attention is Carney's reading of the axiom "A good end does not justify an evil means." Or, as Carney words it, citing St. Thomas, "the effects . . . cannot . . . change a bad act into a morally right one." His example from Aquinas is that of a lie, and of it Thomas states: "A person deserves to be condemned if he does evil that good may come."⁴⁵ Of this Carney says that we have Thomas denying precisely what recent revisionists affirm, "namely, that a person may intend 'nonmoral evil if a truly proportionate reason for such a choice is present.'" Of course, if an act is described as a *moral* evil (lie), no intended good can justify it. But is every falsehood necessarily a lie? If Carney thinks so, he will have to deal with the exceptions mentioned by Chia-vacci—and, incidentally, with a considerable tradition which established (teleologically) such exceptions. In other words, and more generally, the axiom referred to is simply erroneous if it is read to include nonmoral evils. We cause (and intend) them all the time to achieve good purposes. So, when Carney reads Thomas as being "against *any evil* act . . . that good may be served thereby," I think he is simply wrong.⁴⁶ Thomas had to be referring to *morally* evil acts, as his use of the term "lie" would suggest; or else Thomas needs correction.

My fourth point concerns considerations of justice. Carney states that if I mean that such considerations "necessarily entail the weighing of consequences, then [I] simply [do] not understand what the philosophical writers referred to by Connery mean by justice." I would certainly maintain that necessary entailment, as would centuries of Catholic and, I hope, Protestant tradition. It is implicit in our long traditions on capital punishment, just warfare, self-defense, etc. We cannot define an individual's right (justice) in the abstract and with no reference to conflicted circumstances. Specifically, with regard to the right to life, why is not capital punishment a denial of the right to life? Does my right to life include a prohibition of my being "only indirectly" killed in war? Does my right to property (e.g., food) not get qualified if my neighbor is starving? The mistake of many discussants is to conduct conversation in terms of rights and justice *before* the rights and wrongs have been

⁴⁵ As cited in Carney.

⁴⁶ Cf. F. Scholz, "Durch ethische Grenzsituationen aufgeworfene Normenprobleme," *Theologisch-praktische Quartalschrift* 123 (1975) 341-55.

explored. It is only *after* such conversation that we can define the reach and limits of rights. And that conversation will include consequences (conflicted values); else it ceases to be Christian, that is, to be concerned about what happens to the neighbor.

My final reflection is to return this discussion to the key point: the moral relevance of directness and indirectness of intent in our actions involving nonmoral evil. Carney's position (gathered from what he says about "many deontologists" and the way he disagrees with Knauer-Schüller-Fuchs) is: "To intend an evil effect is morally wrong in itself." I suppose he would restrict this to some kinds of acts, such as killing, though I find no reason for such restriction. (And I have noted that he tends to describe an act in value or moral terms—the lie—in stating his position, which, of course, prejudices and even distorts the problem.)

Let the classic abortion dilemma be the occasion of my question to Carney. I presume that Carney would say that abortion in this case (lose both or at least save the mother) is morally right, perhaps even obligatory. In at least some of these cases, the abortion is straightforwardly a means, not an incidental by-product. Furthermore, it is a means that was equated with direct killing in recent tradition. Take the real case given by Ramsey of an aortic aneurysm ballooning threateningly behind the uterus. To get at it, the uterus must be evacuated. Traditional theology would call this—and did call it—a direct abortion and would disallow it. It allowed only the "indirect abortion" involved in the case of ectopic pregnancies and the cancerous uterus. Recent theologians, however, believe the abortion is direct but permissible. What does Carney think? There are three possibilities: (1) It is direct and morally wrong. (2) It is direct and morally right. (3) It is indirect and therefore morally right. If he holds the second position—as I think he must⁴⁷—we have a clear instance where one directly, even if reluctantly, may intend nonmoral evil as a means (*in se sed non propter se*). If that is the case, the redundancy of the direct-indirect distinction is exposed. That is, it is not morally decisive. Obviously, if one comes to that conclusion (that one may intend nonmoral evil as a means at times), then one is led into *some form* of teleology, though not necessarily what Carney calls "pure teleology" or "teleological monism."

Carney has not seen this because he has chosen to enter this discussion at the lofty level of typologies, typologies which are more often than not uninformative categories.⁴⁸ This is not to demean typologies; they can be

⁴⁷ The first is held by practically no one any more. The third has no relationship to any traditional understanding of the terms "direct" and "indirect."

⁴⁸ I have other serious problems with Carney's study which must remain undeveloped. E.g., he cites my use of the *ordo bonorum* and states that this is "never explained." Were Carney more familiar with the manual tradition, he would understand that this is a classical notion (as is the *ordo caritatis*). Similarly, he states, without ever specifying, that Schüller's

helpful. But their logical elegance sheds very little light on some utterly practical problems. Until these problems are faced, their theoretical implications will remain imperfectly explored.

William May (Catholic University) continues his discussion of these trends in two articles.⁴⁹ I shall draw on both in detailing his objections. He considers his points serious and even "devastating objections," indeed so devastating that he characterizes Fuchs-Schüller-Janssens-Bockle *et al.* "situationists in the pejorative sense." "It is an ethics," he writes, "that sees the *moral* meaning of our acts as given to them by something extrinsic to themselves, namely the ends or goods intended by the agent, rather than by their intrinsic intelligibility."⁵⁰ Common to these authors, as well as Scholz, Weber, Di Ianni, Cornerotte, Chiavacci, *et al.*, is the tenet that nonmoral evil (e.g., killing) may at times be intended as a means. May's objections can fairly be summarized as follows.

First, according to this view one could never say that there are inherently evil acts. May gives three examples of such acts: "It is always wrong to have coition with a brute animal; it is always wrong to intend directly the torture of another human being; it is always wrong to use public moneys to pay one's mistress."⁵¹

careful critique of John Connery "is marred by Schüller's misunderstanding of the nature . . . of the arguments raised by Connery and his philosophical sources." Statements such as this should be carefully exemplified to strengthen us against the temptation of wondering whether Carney has consulted Schüller's writing firsthand.

⁴⁹ William E. May, "Modern Catholic Ethics: The New Situationism," *Faith and Reason* 4 (1978) 21-38; "The Moral Meaning of Human Acts," *Homiletic and Pastoral Review* 79 (Oct. 1978) 10-21.

⁵⁰ "Modern Catholic Ethics" 33. May mistakenly believes that my earlier criticism of this argument reveals "antipathy, indeed hostility." I regret that he has interpreted the critique in that way. The remark he finds offensive (that the objection "no longer serves the purpose of constructive moral discourse") means only that I believe the objection has been sufficiently and repeatedly answered. Thus, to say that a promise to attend a friend's wedding need not always be kept—may be broken if the life of an accident victim prevents fulfilment—does not mean that promises have no inherent meaning. It simply means that this meaning cannot be absolutized as against any other value, a point that has been raised in the German literature over and over again. Those who say this are hardly guilty of "eviscerating our acts of their human and moral significance." They are simply facing the fact that real conflicts of values do frequently exist in our lives. Do we not quarantine patients in order to prevent other persons from contracting disease? Do we not spank children so that in the future their conduct may be less self-threatening? Do we not kill in war to preserve our political freedom? That is the human scene.—Similarly, May has misread Walter Burghardt's statement about what May calls "two different types of theology," the one an "understanding" theology, the other a "defensive" one. Actually, Burghardt's statement and my use of it were in no way intended to discuss "kinds of theology," and still less to brand those who disagree with certain contemporary directions as "defensive." The Burghardt distinction, as the text will show, is discussing two *functions* of theology, both legitimate and necessary. He is suggesting—and I agree—that in the past one function was emphasized to the detriment of the other.

⁵¹ "Moral Meaning" 13.

Secondly, some writers have employed the phrase *in se sed non propter se* of the will's posture toward nonmoral evil justifiably caused. May argues that no one intends evil *propter se*.

Thirdly, the contention that no actions describable in nonmoral terms are intrinsically evil means that "the *moral* nature of a human act, then, is not to be discovered by discerning intelligently the intrinsic nature of the act; rather the *moral* nature of the human act is to be discovered by looking to the good that the act achieves, a good that is extrinsic to the act itself." Thus these authors are "extrinsicists." May sees this as the "major weakness" of the position.

Fourthly, to say that we may at times directly intend nonmoral evil means "that the agent is willing to take on, as part of his moral identity, the identity of an evildoer." May sees this as in direct contradiction to the very first principle of the moral law, "a principle that admits *no* exceptions, namely, good is to be done and pursued and evil is to be avoided." To the objection that Abraham was prepared at God's command directly to kill Isaac, May argues that "Abraham, in his readiness to obey God, was not intending an act of homicide." He says that were he himself to receive a command from God "to take a burning cigarette and burn the eyes out of an infant," he would refuse to do so, either because this command must be regarded as a hallucination or because the God giving such a command is not the *summum bonum*.

Finally, while May concedes that estimating proportion in conflict cases is not solely the prerogative of the individual and therefore is not necessarily subjectivistic, he does believe that this structure of moral reasoning is relativistic. That is, an act is not wrong "simply because the community deems that it is." To think so is "cultural relativism." Thus, capital punishment is not "objectively morally justifiable" but the human community failed to grasp this in the past.

A few points. As for May's examples of acts intrinsically evil, let one example suffice (direct torture of another human being). Is that unthinkable? Torture is a very slippery word. Does it mean *unjustified* pain inflicted on another? Or does it mean *any* pain inflicted on another? People talk as if the notion were clear. Actually, "torture" in most discourse refers to the type of pain that causes moral revulsion. In other words, in its most frequent usage it is a value term, already containing its own condemnation (disproportion) in the context or tone. Take an example. If I apprehend one of two thugs on their way to execute my brother or my sister (at the time, I am not sure which one), I would apply a very effective and increasingly painful armlock to find out which, so I could warn him/her. Is that "torture"? Or is it simply the *justified* infliction of pain against an unjust aggressor? I opt for the latter, and everyone to whom I have talked agrees. But they still reject "torture."

This is an indication that they are understanding the term in a particular way: e.g., torture as practiced in some South American countries by some tyrannical regimes, or the infliction of pain on political prisoners.

May's other example ("it is always wrong to use public moneys to pay one's mistress") is not to the point. Of course that is wrong, and intrinsically, if one wishes. But so are a thousand things, if we add enough circumstances to the description of the act. Thus, it is always wrong to abort a pregnancy in order to maintain a slimmer figure. It is always wrong to use public funds to obstruct justice and achieve a cover-up of malfeasance. When one says "to pay one's mistress," that use of funds is, of course, always wrong, because having mistresses is wrong. In other words, May is not describing an act in nonmoral terms.

Secondly, May argues that directly intending a nonmoral evil means "to take on, as part of his moral identity, the identity of an evildoer." The key word is "moral." The agent is indeed an evildoer, much as one who interrupts an ectopic pregnancy is an evildoer. That is, evil is done, and through the agent's activity. But that one is morally corrupted by this is not at all clear. Thus, to May's question about burning out the eyes of an infant with a cigarette if God commanded me to do so, I would not hesitate to say that I would do so, just as I would not hesitate to kill if God ordered it. All of us would assuredly have doubts about hallucinations and we would be very slow to conclude that this is a divine command. But *if it is clear that it is*, I would not hesitate. And I would not be taking on the character of a *moral* evildoer in the process, because it is incoherent to say that one rejects God in the very fulfilment of His commands. Thus, if God can command certain acts (such as killing—and I know of no one who doubts that He can), this shows that such acts are not intrinsically evil in May's sense, scil., that one necessarily takes on the *moral* character of an evildoer in performing them. One takes on the "identity of an evildoer" (May's phrase) when one causes *unnecessary* harm in his actions. Similarly, one violates the first principle of the moral law ("good is to be done, evil avoided") when one causes unnecessary or unjustified harm. Otherwise we could never go to war, we could not protect our secrets and our lives, etc., without violating the first principle of the moral law.⁵²

Thirdly, the phrase *in se sed non propter se* is, in my opinion, not a vehicle for suggesting that people choose evil qua evil (*propter se*). Clearly they do not. Rather, the phrase intends to underline basic attitudes of disapproval and regret which ought to accompany our actions

⁵² As for St. Thomas, we can recall Scholz's analysis (cf. n. 46 above) of the thought of Aquinas. He notes that "the sentence 'a good end can justify a physically evil means' stands in agreement with the thought of Aquinas, who sharply distinguishes moral evil from innerworldly (nonmoral) evil."

when harm is unavoidably intertwined with the promotion and protection of good in our actions.

Finally, a word about cultural relativism. May sees this as a problem for recent revisionists, scil., that they hold an act to be objectively wrong "because the community deems that it is." Of course that is untenable. But, to be blunt, no one says this nor is anyone who recommends communal discernment vulnerable to such accusations. We are a believing community; hence we learn within a community and form our consciences within a community. This does not imply that the community is always right. It says only that a realistic individual will understand the dangers of trying to discover moral truth alone, of deciding what is right and wrong in isolation from a pool of wisdom and reflection far greater than the individual's. If we err in such a communal discernment (facilitated by the magisterium), that is simply a sign of our imperfection as a community. Pilgrims are imperfect even when they join hands and minds. But no one of these reflections leads to the conclusion that an act is objectively wrong because the community thinks so.⁵³

HUMANAE VITAE AND THE MAGISTERIUM

In the tenth anniversary year of the issuance of *Humanae vitae* it was to be expected that we would see a good number of statements and studies on that controversial document. The expectation has not been disappointed. Public reactions differ from Andrew Greeley's ("a dead letter"⁵⁴) to John Cardinal Carberry's statement of gratitude to the Holy Father for these "courageous conclusions."⁵⁵ The late Pope Paul VI touched briefly on the matter in his address to the College of Cardinals (June 23, 1978). He said that this document "caused us anguish, not only

⁵³ Further literature in general moral theology would include the following: Allen Verhey, "The Person as Moral Agent," *Calvin Theological Journal* 13, no. 1 (April 1978) 5-15; James A. Fischer, "Ethics and Wisdom," *Catholic Biblical Quarterly* 40 (1978) 293-310; Leon Elders, "Morale chrétienne et nature," *Esprit et vie* 88 (1978) 187-92; B. Schüller, S.J., "Sittliche Forderung und Erkenntnis Gottes," *Gregorianum* 59 (1978) 5-37; Bernhard Fraling, "Grundwerte und Dekalog," *Lebendiges Zeugnis* 33 (1978) 5-27; Albert Ziegler, "Religiöse Grundwerte," *Lebendiges Zeugnis* 33 (1978) 28-41; Georges Thill, "Conflits en sciences et décision éthique," *Lumière et vie* 27 (1978) 53-60; Bernard Quelquejeu, "Les idéologies dans la décision morale," *Lumière et vie* 27 (1978) 61-78; Joachim Piegra, "Autonome Moral und Glaubensethik," *Münchener theologische Zeitschrift* 29 (1978) 20-35; S. Pinckaers, O.P., "Morale catholique et éthique protestante," *Nova et vetera* 53 (1978) 81-95; Hans Schwarz, "Toward a Foundation of Christian Ethics," *Religion in Life* 47 (1978) 162-70; Gustav Ermcke, "Grundwerte—religiöse, philosophische und ethische Begründung," *Theologie und Glaube* 68 (1978) 184-94; Walter Kerber, S.J., "Verallgemeinerung in der Ethik," *Theologie und Philosophie* 53 (1978) 65-69; H. Rotter, "Das theologische Argument in der Moral," *Zeitschrift für katholische Theologie* 100 (1978) 178-96; O. Höffe, "Bermerkungen zu einer Theorie sittlicher Urteilsfindung," *Zeitschrift für evangelische Ethik* 22 (1978) 181-87.

⁵⁴ *Catholic Chronicle*, Oct. 20, 1978.

⁵⁵ "U.S. Bishops at the Vatican," *Origins* 8 (1978) 91.

because the issue treated was serious and delicate but also—and perhaps especially—because among Catholics and public opinion in general there was a certain climate of expectancy that concessions, relaxations or liberalization of the Church's moral doctrine and teaching on marriage would be made."⁵⁶ He referred somewhat puzzlingly to "confirmations which have come from the more scientific studies."⁵⁷ He concluded his reference to the encyclical by repeating "the principle of respect for the natural laws, which—as Dante said—'takes its course from divine intelligence and from its art,' the principle of aware and ethically responsible parenthood."

One might ask whether the late Pontiff thought he was referring to one principle or two. In other words, did he mean to identify "respect for the natural laws" with "the principle of . . . ethically responsible parenthood"? Or are they distinct principles, one (respect) in service of the other (responsible parenthood)? Whatever the case, it is clear that Paul VI provided no reasons to think he had changed his mind on the question. And it is clear that the association of "natural laws" with "divine intelligence" tends to yield intangibility.⁵⁸

In his address at the opening of the spring meeting of the National Conference of Catholic Bishops (May 2, 1978), Archbishop John R. Quinn sensibly urged that the encyclical be read in a broader context: the integration of sexuality with the sacrificially selfless love that is the soul of the Christian life.⁵⁹ Quinn suggests that the tensions of "discussion, and sometimes painful and strident controversy" would be reduced in this way. I agree with his concern to provide a broader context for any ethic of sexuality. But at some point the question returns: can *Humanae vitae* be read as saying *only* this?

Cardinal Jean Villot wrote a letter in the name of Paul VI to participants in a natural-family-planning symposium (New York, May 23–24).⁶⁰ The letter emphasizes areas of papal concern: continued research; promotion of natural family planning ("in which the dignity of the human person is fostered"); personal commitment of husband and wife and

⁵⁶ "Paul VI Comments on Today's Church," *Origins* 8 (1978) 108–10.

⁵⁷ "Puzzlingly" because it is not clear what he means. Does he refer to the medical dangers associated with the pill? Or that there is now a better scientific foundation for periodic continence?

⁵⁸ In his homily of June 29, 1978, Pope Paul VI singled out *Humanae vitae* as a document that defends life, especially against the twin evils of divorce and abortion. "This document," he said, "has become of new and more urgent actuality. . ." (*Civiltà cattolica* 129 [1978] 181).

⁵⁹ *Origins* 8 (1978) 10–12.

⁶⁰ Jean Cardinal Villot, "La planification naturelle de la famille," *Documentation catholique* 75 (1978) 555–56. A similar letter was sent by Cardinal Villot to a conference in Melbourne on family planning (*Documentation catholique* 75 [1978] 257–58) and to the University of San Francisco (*L'Osservatore romano*, Aug. 3, 1977).

pastoral support for their efforts to lead a holy conjugal life.

The bishops of India issued a declaration (Jan. 17, 1978) commemorating the tenth anniversary of *Humanae vitae*. They note that the specific doctrines of the encyclical (on contraception, sterilization, abortion) are "integrated into a comprehensive vision of man, evangelical love, and responsible parenthood." After affirming their unqualified acceptance of *Humanae vitae*, they state that they have seen the fears of the Holy Father (about the powers that governments would have if contraception were approved) realized and his views vindicated "at least in some degree." They urge their priests to show great compassion but "from now on, they must avoid spreading any personal views which may be opposed to the teaching of the Church. This teaching is clear and admits of no ambiguity."⁶¹

Msgr. Matagrín, Archbishop of Grenoble and vice-president of the French Episcopal Conference, wrote in an article in *Le progrès* that *Humanae vitae* had stirred up controversy. Matagrín admits that the language used was, in the eyes of many, obsolete, but he underlines the validity of the profound intuition. Just as populations ought not to be manipulated, so procreation itself ought not to be ruled by physical and chemical means. In a time of ecological awareness we ought to be sensitive to the concerns of Paul VI for "the quality of life, the biological rhythms not simply of the universe but of man himself."⁶²

An anonymous moral theologian ("he will be risking his chair if his name is published, so it is withheld at his request and the shame of all of us"⁶³) from a "prestigious ecclesiastical establishment" summarizes the situation for the London *Tablet*. One of the results to settle in over the past ten years is the loss of confidence in Roman pronouncements on moral questions. This "special correspondent" believes that the *sensus fidelium* must be taken more into account in the formulation of doctrinal and moral teaching. He regards the early liberal dissent as counterproductive because it hardened the traditionalism of some theologians and bishops.⁶⁴ It would have been better to interpret *Humanae vitae* very flexibly—something the Vatican could live with, provided the document is accepted in principle. As for the future, "The time is not yet ripe for the theoretic formulation of an ecclesial consensus on all the complex moral aspects of human procreativity in the present-day world, simply because as yet there is no ecclesial consensus about them."

⁶¹ "Humanae vitae Ten Years Later," *The Pope Speaks* 23 (1978) 183-87.

⁶² Msgr. Matagrín, "Le pape d'*Humanae vitae*," *Documentation catholique* 75 (1978) 752.

⁶³ "After *Humanae vitae*," *Tablet* 232 (1978) 852.

⁶⁴ On this cf. Brigitte Andre, "*Humanae vitae*: riguer et compassion," *Informations catholiques internationales* n. 530 (Sept., 1978) 28-29. Andre mistakenly refers to "l'Université pontificale de Georgetown."

Dr. Denis Cashman, an English physician and former medical advisor to the Catholic Marriage Advisory Council, takes issue with *Humanae vitae* on some very practical issues.⁶⁵ Contraception, he believes, does not lead to loss of respect for women. The discipline involved in periodic abstinence is often a source of harm to marriages. He argues that the "observance of natural rhythms" will never be more than "marginally satisfactory."

This is certainly not the prevailing view. Arthur McCormack reports on a tenth-anniversary congress (its theme: "Love, Fruitful and Responsible") held June 21-25 in Milan.⁶⁶ It is of particular interest because two of its major presenters were Gustave Martelet, S.J. (widely considered one of the major influences on *Humanae vitae*) and Cardinal Karol Wojtyla.⁶⁷ Three points became clear in the discussions about natural family planning: (1) natural methods have been very much improved; (2) many more Catholic doctors and counselors are involved in teaching such methods; (3) these methods are now more competitive with contraceptive methods.⁶⁸

One of the more interesting points is McCormack's report of Martelet. It reads:

He said that paragraph 14 of the encyclical (which includes the ban on contraception) was only meant to clarify the position of the Church because of the "redoubtable volume of opinion in favor of contraception" which had developed in the sixties: it was not meant to harass individual Catholics who found themselves in the dilemma of having to limit their families but were unable to use methods allowed by the Church. He called their use of contraceptives a "disorder" which was not sinful if they acted in good conscience and had tried their best to obey the encyclical in the circumstances of their life.⁶⁹

Similarly, Diogini Tettamanzi, professor of moral theology at the Seminary of Milan, is reported to have "confirmed the possibility of the

⁶⁵ Denis Cashman, "Letter to Editor," *Tablet* 232 (1978) 852.

⁶⁶ Arthur McCormack, "*Humanae vitae* Today," *Tablet* 232 (1978) 674-76.

⁶⁷ One of Italy's most respected newspapers, Milan's *Corriere della sera*, carried an article (Oct. 18, 1978) on "The Thought of the Pope on Love and the Pill." According to many interpreters of John Paul II (as reported in *Corriere*), in the Pope's thought "a natural law that imposes itself as an absolute is unacceptable." Furthermore, it continues: "it is the phenomenological philosophical formation of Wojtyla that led him to this conclusion: that which counts most is the intention inspiring the acts of husband and wife. Simply put: the differences between the use of the pill and other contraceptive methods is secondary if, beneath all, there is always a loving act." Finally, the author, Dario Fertilio, states that many believe it to be the papal view that contraception is "sempre un 'male,' ma un male a volte comprensibile" ("always an evil but at times an understandable one"). I tend to think this is idle speculation.

⁶⁸ Cf. Rhaban Haacke, "Zur Frage der Zeitwahlmethode," *Münchener theologische Zeitschrift* 29 (1978) 64-70.

⁶⁹ McCormack, "*Humanae vitae* Today" 676.

use of methods other than natural ones in the service of this love when a couple decided in sincere conscience that this was necessary in their concrete circumstances." Moreover, three or four Italian moralists argued that the use of contraceptives by couples who felt that they must was not a question of choosing the lesser evil but rather "of making a choice within a hierarchy of values: the preservation of married love, of life together, of the welfare of the family being a greater good than the methods used to achieve it."

This is all quite puzzling; for of this conference McCormack notes that "no dissenters were invited." As I read this report, the conference was fairly crawling with dissenters⁷⁰ for *Humanae vitae* presented the contraceptive act as a *moral* evil, not just a "disorder."⁷¹ If it can be read to have said that it was a disorder (disvalue, nonmoral evil, ontic evil, etc.), many problems would vanish. Indeed, this is precisely the analysis that some prominent dissenters (Janssens, Fuchs, Schüller) have made. Furthermore, I am puzzled by the contrast stated between "making a choice within a hierarchy" and "choosing the lesser of two evils." These are simply various ways of wording the same thing, although one *sounds* better (scil., more positive).

Charles Curran rejects this approach. He does not think that contraception violates an ideal or involves premoral or ontic evil. "In my judgment both of these approaches still give too much importance to the physical aspect of the act and see the physical as normative."⁷² He sees these approaches as attempts to preserve greater unity in the Church. By contrast, Curran argues that the matter must be faced from the more radical perspective of papal error. "The condemnation of artificial contraception found in *Humanae vitae* is wrong." The remainder of Curran's

⁷⁰ This conference is also reported by Lino Ciccone, "Congresso internazionale sul tema 'amore fecondo responsabile a dieci anni dall' *Humanae vitae*,'" *Divus Thomas* 81 (1978) 177-87. He is very critical of McCormack.

⁷¹ This point is clear from many sources, most recently the Irish bishops. Of contraception they say: "L'enseignement de l'église est clair: elle est *morale*ment mauvaise" (*Documentation catholique* 75 [1978] 424-25). Furthermore, reporting favorably on a new moral textbook by Dom Anselm Günthör, Luigi Ciappi, O.P., states: "He accepts the pastoral provisions of the encyclical, without mentioning 'conflict of duties' or 'hierarchy of values' in married life. He shows in this way that he does not consider worthy of acceptance those interpretations given by some Pastoral Conferences, which had not offered a correct and acceptable interpretation of the document of the Sovereign Pontiff" (*L'Osservatore romano* [Eng. ed.] no. 43 [Oct. 26, 1978] 11). One could, of course, draw a different conclusion from that of Cardinal Ciappi. For instance: "Günthör shows that he does not even consider the conflict character of reality" or "that he has absolutized the physical integrity of sexual intercourse."

⁷² Charles E. Curran, "Ten Years Later: Reflections on 'Humanae vitae,'" *Commonweal* 105 (1978) 425-30; cf. also "After *Humanae vitae*: A Decade of Lively Debate," *Hospital Progress* 59, no. 7 (July 1978) 84-89.

study takes up the possibility and implications of dissent in the Church, and on a wide variety of topics. Curran grants that this means greater pluralism and that his model will somewhat reduce the prophetic role of the Church. He thinks the present situation, where official teaching is one thing and accepted practice another, is intolerable. It is clear where Curran thinks change is indicated. "If the hierarchical Church refuses to change here, there will probably be no change on other issues."

A different point of view is taken by Lawrence B. Porter, O.P. He has written a perceptive study comparing Martelet's work with *Humanae vitae*, particularly with regard to the underlying anthropology.⁷³ The study produces good internal evidence for saying that the "pope's response to the birth control controversy is indeed conceived in terms of Martelet's own thought." Rather than Curran's "physicalism," Martelet asserts in his study *Amour conjugal et renouveau conciliaire* (1967) that the "Church has never seen in nature or its functions a purely biological reality, but a living index of the demands of God and the spiritual being of man."⁷⁴ Martelet conceives the birth-control issue as a confrontation between technological domination on the one hand and human dominion on the other.

This is a careful study⁷⁵ and I have a great deal of sympathy for the broad anthropological perspectives Porter lifts out of Martelet. Technology can be inhumane and manipulative. The body does condition human love; and to avoid this does carry certain risks. But what that leads to is not clear. Martelet himself seems to have been aware of this; for he stated in *L'Existence humaine et l'amour* that "an encyclical is nothing other than a means by which the pope makes everyone and primarily Christians stop and think about something important . . ."⁷⁶ Furthermore, Martelet concedes the inadequacy of expression in *Humanae vitae*:

It is a fact, however, that this vocabulary of "intrinsically evil" used by both encyclicals to denounce in contraception something truly wrong, sadly allows one to believe that this always represents in itself the most grave failure of love. This is one of the *lacunae* of both *Casti connubii* and *Humanae vitae*, that neither one nor the other sufficiently protects its readers from the awful errors of such a misunderstanding.⁷⁷

A word here about Curran's rejection of the notion of contraception as

⁷³ Lawrence B. Porter, O.P., " 'Humanae vitae' a Decade Later: The Theologian behind the Encyclical," *Thomist* 42 (1978) 464-509.

⁷⁴ Cf. Martelet 43, as cited by Porter.

⁷⁵ At one point Porter is less than cautious. He writes: "As a dogmatist, and more than any moral theologian, Martelet was aware of the importance of . . . the comprehensive Christian anthropology that underlies *Gaudium et spes*' teaching" (483). That sweeping statement would be difficult to establish.

⁷⁶ Porter, " 'Humanae vitae' a Decade Later" 508.

⁷⁷ *Ibid.*

a nonmoral evil. That is technical terminology and it can strike people as "too strong," "misleading." What some contemporary authors are trying to do is discover a language which will recognize certain effects as deprivations or disvalues without calling them *moral* evils. For instance, when in the course of a just national self-defense certain enemy soldiers are wounded or killed, what are we to call those killings? They are certainly not the results of *morally* wrongful acts, for the defense is *ex hypothesi* just. Nor are they neutral happenings.

In this light we once again encounter the assertion that the basic message of *Humanae vitae* is (= ought to be) to caution couples who use contraception because they feel they must against the danger of confusing responsible parenthood with an unchristian hedonism or selfishness. In other words, it is a reminder that we are dealing with a disvalue, though not necessarily a terribly great one. In light of this, I have recently worded the matter as follows:

This, I believe, is very important. Some reactions to *Humanae vitae* framed the matter as follows: "contraception is wrong vs. contraception is right," this latter being the case since the argument for the former was seen as illegitimate. This is terribly misleading and, in my judgment, erroneous. It leaves the impression that contraception and sterilization are right, that nothing is wrong with them, and, eventually, that they are values in themselves. When compared abstractly to their alternatives, contraception and sterilization are nonmoral evils, what I call disvalues. To forget this is to lose the thrust away from their necessity. To say that something is a disvalue or nonmoral evil is to imply thereby the need to be moving constantly and steadily to the point where the causing of such disvalues is no longer required. To forget that something is a nonmoral evil is to settle for it, to embrace it into one's world.⁷⁸

An analogy may help here. While speaking before the United Nations, Pope Paul VI prophetically and powerfully urged "no more war, never." This plea, however, would be misread if it were taken as an invalidation of the just-war theory, as a condemnation of a forceful national self-defense as intrinsically evil. It was rather a very useful cry by a highly respected spiritual leader about the disvalue (nonmoral evil) that is war.⁷⁹ Something similar is in place where contraception and sterilization are concerned, scil., constant reminders that they are disvalues, yet allowance for the fact that there is, in a world of conflict, still place for a "theory of just sterilization."

⁷⁸ Richard A. McCormick, S.J., "Moral Norms and Their Meaning," in *Lectureship* (St. Benedict, Oregon: Mount Angel Seminary, 1978) 45.

⁷⁹ James F. Childress has written a fine essay on just war, using the categories "prima facie" wrongfulness and "actual" wrongfulness. He notes that this language is similar to the language of proportionate cause. Cf. "Just War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria," *TS* 39 (1978) 427-45.

In other and technical language, the issue is not "contraception is wrong vs. contraception is right"; it is rather "contraception is intrinsically evil vs. contraception is not intrinsically evil." This point is clear in the writings of Schüller, Janssens, Fuchs, and others.

I suspect that Curran will still want to reject this analysis. But that only raises the question: Has his language of "physicalism" not possibly carried him too far? Has it possibly led him to deny *any* significance to the bodily involvement of our beings in these instances? After all, no one gets sterilized for the fun of it, but only for the purpose of it. Sterilization and (to a lesser degree) contraception remain undesirable interferences. People would welcome the chance to limit their families without them.⁸⁰ This suggests that sterilization is not merely a neutral technique. It is something people want to avoid if possible. Curran's admirable resistance to the idea of describing certain physical actions as morally evil prior to their contextualization and his term "physicalism" to convey this may have led him to deny any meaning to such interventions.⁸¹ At least the question deserves continued discussion.

One of the more interesting recent studies is that of Joseph A. Selling.⁸² Of the phrase *intrinsece inhonestum* (HV 14) Selling correctly remarks that "the text clearly shows that what the encyclical was speaking of was moral evil and not, as some commentators would have it, some category which would allow for choosing the lesser of two evils. The introduction of this reasoning runs directly counter to what *Humanae vitae* was saying . . ." Thus, some of the following categories used to mitigate its conclusions are at variance with the language of the encyclical: conflict of duties, lesser of two evils, *Humanae vitae* as an ideal, redefinition of totality, and "probably most important, the distinction between moral and pre-moral evil." I agree with Selling here.

Selling then provides a brief but accurate history of moral tradition in this area. It is summarized in three expressions: *actus naturae*, *natura actus*, *actus personae*. That is, the earlier tradition involving Augustine

⁸⁰ This is increasingly clear in the medical literature in its description of the ideal contraceptive. It must be simple, easily reversible, cheap, medically safe, etc., all of which point to the disvalues involved when such qualities are absent.

⁸¹ There is some indication of an overreaction in Curran's statement ("After *Humanae vitae*," n. 72) that he holds "artificial insemination with donor semen (AID) is not always wrong." Furthermore, in holding that contraception and sterilization are not disvalues, he reveals an inconsistency; for he says: "If contraception is morally acceptable, so is sterilization, although a *more* serious reason is required if the sterilization is permanent." If a "more" serious reason is required where permanent sterilization is involved, then clearly some reason is required even when it is not permanent. That is to say that it is not simply a neutral thing but has the elements of a disvalue.

⁸² Joseph A. Selling, "Moral Teaching, Traditional Teaching and 'Humanae vitae,'" *Louvain Studies* 7 (1978) 24-44.

and Aquinas viewed sexual intercourse as an *actus naturae* (with procreation as its biological finality). Over a period of time nonprocreative purposes were introduced and tolerated as long as the nature of the act was respected (*natura actus*). Finally, in *Gaudium et spes* the analysis became that of *actus personae*. This brief outline cannot do justice to the persuasiveness of Selling's account.

It is his contention that while the basic values of marriage remain constant, the way in which they are protected and explained has gone through a real evolution. In essence, "the realization of the procreative end had become totally detached from the individual act of intercourse. Sexual relations were licit on the basis of their connection with expressing conjugal love alone. Consequently, a new set of norms was necessary to evaluate those relations." Yet *Humanae vitae* represents a continuation of the notion of *actus naturae* and "represents a regression in the evolution of concrete norms which had been elaborated in Vatican II." Selling, therefore, feels that the document was dated at the time it was promulgated, because it repeated a "physicalistic interpretation of natural law."

He concludes by asking why Paul VI did this. It is Selling's opinion that he did so because he feared that any sanctioning of contraception would be interpreted as license for any form of sexual behavior. To change norms in one area would inevitably have repercussions in all other areas. Thus he believes that Pope Paul never "intended to condemn every form of artificial birth control for the mature, responsible, loving married couple." Rather, he feared the floodgates and took a "safe" position.

The broad lines of Selling's analysis have been drawn by others.⁸³ Hence no comment is called for except to say that his study will probably be greeted with hails or harpoons. Neither is appropriate; just calm study.

Two of the most serious studies on contraception appeared in this journal; hence they need not be extensively summarized here. John C. Ford, S.J., and Germain Grisez, in a long and careful study, argue that the Church's condemnation of contraception (what they call the "received Catholic teaching") has been infallibly proposed by the ordinary magisterium.⁸⁴ "We think that the facts show as clearly as anyone could reasonably demand that the conditions articulated by Vatican II for infallibility in the exercise of the ordinary magisterium of the bishops dispersed throughout the world have been met in the case of the Catholic Church's teaching on contraception." The long Ford-Grisez study ex-

⁸³ Louis Janssens, *Mariage et fécondité* (Paris: Duculot, 1967).

⁸⁴ John C. Ford, S.J., and Germain Grisez, "Contraception and Infallibility," *TS* 39 (1978) 258-312. A popular summary of this is found in Russell Shaw, "Contraception, Infallibility and the Ordinary Magisterium," *Homiletic and Pastoral Review* 78, no. 10 (July 1978) 9-19.

plains that conclusion by examining the conditions articulated in Vatican II for infallible teaching, the statements of the papal and episcopal magisterium, and objections against this position.

In the same issue of *THEOLOGICAL STUDIES* Joseph Komonchak reached a different conclusion.⁸⁵ He argues that three conditions must be fulfilled before a teaching is infallibly taught by the ordinary universal magisterium: (1) it must be divinely revealed or be necessary to defend or explain what is revealed; (2) it must be proposed by a moral unanimity of the body of bishops in communion with one another and the pope; (3) it must be proposed by them as having to be held definitively. Komonchak discusses these conditions at length and concludes: "I do not see, then, how one can reply to the question of the infallibility of the magisterial condemnation of artificial contraception with anything but a *non constat*."

It is noteworthy that these two studies are basically essays in ecclesiology.⁸⁶ It would be immodest for a moral theologian to attempt to referee such a dispute, though it is clear that many theologians (what Komonchak calls "something like a *consensus theologorum*") would favor the Komonchak thesis. There is one point I would like to raise here for reflection. In an essay on the changeable and unchangeable in the Church, Karl Rahner highlights the distinction between a "truth in itself and in its abiding validity" and its "particular historical formulation."⁸⁷ By this he means that dogmas are always presented in context and by means of conceptual models which are subject to change. He uses transubstantiation and original sin as examples. For this latter, e.g., those who accept polygenism must rethink what is meant by saying that Adam is the originator and cause of original sin. Rahner then applies this to ethics. He states:

Apart from wholly universal moral norms of an abstract kind, and apart from a radical orientation of human life towards God as the outcome of a supernatural and grace-given self-commitment, there are hardly any particular or individual norms of Christian morality which could be proclaimed by the ordinary or extraordinary teaching authorities of the Church in such a way that they could be unequivocally and certainly declared to have the force of dogmas.⁸⁸

This does not mean, Rahner states, that certain concrete actions cannot

⁸⁵ Joseph A. Komonchak, "*Humanae vitae* and Its Reception: Ecclesiological Reflections," *TS* 39 (1978) 221-57.

⁸⁶ Komonchak does, however, address the argument of *Humanae vitae*. Particularly enlightening are his reflections on pp. 253-56, where the *ordo generationis* is explained as a "total complex," not simply individual acts.

⁸⁷ Karl Rahner, "Basic Observations on the Subject of Changeable and Unchangeable Factors in the Church," *Theological Investigations* 14 (New York: Seabury, 1976) 3-23.

⁸⁸ *Ibid.* 14.

be prescribed or proscribed authoritatively. They can, as demanded by the times. But they pertain to man's *concrete nature* at a given point in history. And this concrete nature is subject to change. Rahner's analysis would deny the very possibility of infallible teaching where contraceptive acts are concerned. It would further invite us to discover—not a simple task—the abiding and unchangeable concern of the Church encapsulated in this vehicle (condemnation of contraception).

Several impressions are generated by this literature. First, there is praise for the "overall vision" of Paul VI, though that phrase is often left very general and unspecified; and there are invitations to read *Humanae vitae* within a broader context. Second, there is criticism of the language of the encyclical (*intrinsece inhonestum*), as if the pope did not find the proper vehicle for his message. Third, there is increasingly the suggestion that there is a middle position between *Humanae vitae* and some of its critics, one which would see a value in naturalness without canonizing it, which would see a relative disvalue in artificial interventions without condemning them as intrinsically evil. Equivalently, this view agrees that technology can be of great assistance to us but should not be allowed to dominate us. Finally—a personal reflection—there is need for a profounder analysis of sexuality in our time, a broad and deep systematic synthesis which can control and direct our reflections on family planning. When that is present, we may be able with greater assurance and fairness to retain what is of abiding importance in *Humanae vitae* and reformulate what is defective.

Nearly everyone who comments on the tenth anniversary of the 1968 encyclical calls attention to the fact that the past ten years have led to a reconsideration of authority in the Church, and particularly the nature of the magisterium. This traces, of course, to the fact that there was so much dissent associated with *Humanae vitae*. A few entries here will have to suffice.

Richard M. Gula, S.S., reviews the teaching of the manualists on dissent.⁸⁹ They do not see dissent as undermining the teaching of the ordinary magisterium, and at least one (Lercher) recognizes that suspending assent may be one way of protecting the Church from error.⁹⁰ Furthermore, Gula correctly notes that the responses to the *modi* on *Lumen gentium* (no. 25) state the very same thing. The charismatic structure of the Church further supports this notion. Gula argues that we must develop an approach to public dissent that is more realistic and adequate to our time.

⁸⁹ Richard M. Gula, S.S., "The Right to Private and Public Dissent from Specific Pronouncements of the Ordinary Magisterium," *Eglise et théologie* 9 (1978) 319–43.

⁹⁰ "It is not absolutely out of the question that error might be excluded by the Holy Spirit in this way, namely, by the subjects of the decree detecting its error and ceasing to give it their internal assent" (L. Lercher, *Institutiones theologiae dogmaticae* 1 [4th ed.; Barcelona: Herder, 1945] 297).

One of the more interesting statements on the meaning of dissent from authentic teaching of the magisterium was made by Bishop Juan Arzube at the Catholic Press Association Convention Mass.⁹¹ He notes that, in contrast to infallible teaching, ordinary teaching has sometimes to “undergo correction and change.” As example Arzube offers *Dignitatis humanae* and the teaching of previous popes on religious liberty. Such development could not have occurred “unless theologians and bishops had been free to be critical of papal teaching, to express views at variance with it” Our faculty of judgment cannot give assent to a proposition that it judges to be inaccurate or untrue. After detailing the conditions for legitimate dissent (competence, sincere effort to assent, convincing contrary reasons), Arzube argues that dissent must be viewed “as something positive and constructive” in the life of the Church.

Arzube’s statement strikes this reviewer as being realistic, calm, and theologically correct. It is particularly encouraging because it comes from a bishop. Theologians also received very warmly the remarks of Archbishop John Roach at the opening of the Catholic Theological Society of America meeting. Roach touched enlighteningly on the publics he felt obliged as bishop to listen to carefully, even if at times critically.⁹²

An entire issue of *Chicago Studies* is devoted to the theme “The Magisterium, the Theologian and the Educator.”⁹³ It is one of the finest issues of that seventeen-year-old journal that we have had. Here only a few highlights can be reported.

After Archbishop Joseph Bernardin’s introductory essay, there follow useful “setting the stage” articles by Carl Peter and John F. Meyers. Eugene A. LaVerdiere, S.S.S., has a fine treatment of teaching authority in the New Testament period. This is followed by John Lynch’s detailed study of the magisterium and theologians from the Apostolic Fathers to the Gregorian Reform. During this period it was the councils that promulgated creeds and dogmatic definitions, but “it was the theological teachers who carried on the vital interpretative task.” Indeed, with the exception of Tertullian, Origen, and Jerome, one cannot speak of a differentiation of the magisterial and theological functions. That came with the rise of the universities.

Yves Congar covers the following period up to Trent. It was in this period that a new form of teaching developed, “the ‘magisterium’ of the theologians, the schools and the universities.” This reflects what Congar calls “two different modes of teaching.” Thus, the University of Paris considered itself and was generally thought of as exercising an authentic

⁹¹ Juan Arzube, “When Is Dissent Legitimate?” *Catholic Journalist*, June 1978, 5.

⁹² John Roach, “On Hearing the Voices That Echo God,” *Origins* 8 (1978) 81–86.

⁹³ *Chicago Studies* 17 (1978) 149–307. The issue includes articles by Joseph L. Bernardin, Carl J. Peter, John F. Meyers, Eugene LaVerdiere, S.S.S., John E. Lynch, C.S.P., Yves Congar, O.P., Michael D. Place, T. Howland Sanks, S.J., Avery Dulles, S.J., Timothy O’Connell, and Raymond E. Brown, S.S.

theological authority in Christianity. As a result, properly theological terms were employed by the councils to express the data of the faith (*transsubstantiatio, anima forma corporis*). Trent achieved a balance between *inquisitio* and *auctoritas*, but a balance conditioned by four centuries of scholastic theology. The result: "The teaching of the magisterium has been woven with 'theology' which has gone far beyond the pure witness of the Word of God and apostolic tradition." Congar concludes that the distinction of charisms must be preserved but within a necessary and felicitous collaboration.

Michael Place traces developments in the relationship between scholars and what he calls "the authoritative hierarchical solicitude" (for the faith) from Trent to Vatican I. The upshot of these developments was a growing isolation of the papal and episcopal competency from the rest of the Church. Place outlines the political and theological threads that led to an increasingly powerful papacy. For instance, in the late eighteenth century the key category by which papal action in matters of faith was understood was that of jurisdiction—the concern of one who was not first a teacher but was to provide for unity. As Place puts it: "The theologian is the teacher. The papacy is the ruler that provides for the right ordering necessary to preserve ecclesial unity." However, early in the nineteenth century, categories from Germany (teach, rule, sanctify) were introduced rather than the powers of orders and jurisdiction. With this came also the usage "magisterium" around 1830, and it was "situated in a cultural milieu where the papacy is understood as having absolute spiritual sovereignty. . . ." In this new context the function of theologians is differently understood. He is now related not to the "governor of ecclesial unity" but to a supreme teacher. In such a context his role changes. It is Place's thesis that the relationship of magisterium to theologians is determined by the manner in which the Church perceives itself at a given time in history.

T. Howland Sanks, S.J., treats the relationship of theologians and the magisterium from Vatican I to 1978. He argues, rightly I think, that the conflicts that existed, and still exist, are between various forms of theology, various theological paradigms, not precisely or first of all between theologians and the magisterium. During this period (up to Vatican II) the ahistorical, Neo-Scholastic theology of the Roman school achieved an ascendancy. It got enshrined in official statements. It is present in Vatican I (*Dei Filius, Pastor aeternus*) and continued to be the official theology used by the magisterium in its dealings with the historically conscious leanings of Loisy, Tyrrell, and Pierre Rousselot. Furthermore, it was responsible for the suppression of Teilhard and John Courtney Murray (as well as de Lubac, Bouillard, and their colleagues at Fourvière). In *Humani generis* (Aug. 12, 1950) this ahistorical approach peaked.

Vatican II constituted a definitive break with such an approach, but Sanks believes the problem is far from gone, because this theology has “formed the thinking and attitudes of many of the hierarchy.”

Avery Dulles provides a theological reflection on the magisterium in history. His overall conclusion is that “the structures commonly regarded as Catholic today are relatively new and thus do not reflect God’s unalterable design for his Church.” Dulles passes in review the salient features of the models of the Church in various periods and uses these features to raise questions for our time. In the patristic period, e.g., what Dulles calls a “representational model” prevailed. The Catholic faith is identified with the unanimous belief of all the churches—and the bishops were the responsible heads of such local churches. The bishops were seen as teaching with full authority when they gather in councils representing the churches of the entire Christian world. On the basis of this model (not without imperfections) Dulles asks: can we reactivate the idea of a unity achieved “from below” through consensus? Furthermore, instead of thinking of the bishop as the representative of the Holy See, should we not see him more as the local community’s representative? Or again, Dulles wonders whether we can credibly view the bishop as the “chief teacher” in our time. This notion fits more easily the fourth and fifth centuries, when prominent theologians were bishops.

When he discusses the medieval model characterized by the rise of the universities, Dulles asks: “Could theologians, individually or at least corporately, be acknowledged as possessing true doctrinal or magisterial authority?” The notion, he insists, is well founded in tradition. He criticizes the excessive privatizing of theology as if theologians “indulge in nothing other than airy speculations.” He suggests that statements could occasionally be issued jointly by bishops and nonbishops, by the pope with the International Theological Commission. This would reduce the cleavage between the pastoral magisterium and theology.

The Neo-Scholastic period (nineteenth and twentieth centuries) saw the magisterium as a power distinct from orders and government. Thus it regarded the hierarchy not simply as judges but as true teachers, whereas in the eighteenth century teaching was viewed as a command or along more disciplinary lines. Under this Neo-Scholastic model the Holy See exercised a vigorous doctrinal leadership. But because papal teaching was drawn up by theologians of the Roman school, they “gave official status to their own opinions.” Vatican II changed many of the perspectives associated with the Neo-Scholastic approach, especially the identification between magisterium and jurisdiction. It neither affirmed nor denied a complementary magisterium of theologians. However, it is clear that Dulles (along with Congar) believes such a notion is valid. “The concept of a distinct magisterium of theologians, as we have seen, is not

simply a medieval theory; it is accepted in neo-scholastic manuals of the twentieth century.”

These papers were discussed at a seminar of the Catholic Theological Society of America (June 1978) in Milwaukee. Timothy O’Connell reports the results of those discussions in the same issue of *Chicago Studies*. The key issue in relating theology to the magisterium was seen to be doctrinal development. Specifically, the seminarists asked: How do we account for the various changes in teaching that have occurred in the past? Can we develop a theology of church teaching which accommodates without embarrassment the twin phenomena of divided opinion and ignorance?

The issue concludes with the address of Raymond Brown, S.S., to the National Catholic Education Association (March 29, 1978).⁹⁴ The prestigious exegete argues that the dispute among theologians and bishops has been “greatly exaggerated.” He identifies four fictions that surround the dispute: belief that the main opponents in matters of doctrine are the magisterium and theologians; that their prevailing relationship is one of disagreement; that theologians and magisterium can be spoken of as if they were monolithic groups; and that they conflict because even centrist Catholic theologians deny many matters of Church doctrine. Brown argues—persuasively, in my judgment—that third parties such as the secular media and the ultraconservative Catholic press are more damaging than any polarization of bishops and theologians. Furthermore, though there has been dissent (especially in matters of sexual morality), Brown asserts that this has been seriously exaggerated. With regard to centrist theologians denying many matters of Church doctrine, Brown insists that we must not inflate (as many do) what constitutes Catholic doctrine and we must realize that doctrines change. In his words, “seeking a new formulation to meet a new problem” is hardly a denial of a teaching.

Though his paper was delivered to religious educators, both theologians and bishops could read it with profit. Brown approaches delicate problems with a combination of precision, wisdom, and pastoral sensitivity that is admirable. Those on the extreme right or left will not be happy with his reflections. But that reflects more on the geography of their position than the accuracy of Brown’s analysis. One point might deserve more emphasis than Brown’s irenic analysis suggests: the differences on a single issue such as *Humanae vitae* have enormous implications with regard to moral theological method, notions of pluralism and authority, notions of the Church. Increasingly it is these issues that come to the fore in moral discussions and that perhaps accounts for the impression of polarization between some bishops and some theologians.

In another symposium (held in Philadelphia, Jan. 6–8, 1978) William

⁹⁴ Cf. also *Origins* 7 (1978) 673–82.

May discusses the moral magisterium.⁹⁵ He insists, quite rightly, that the Church expects that the faithful “will, in faith, make their own through acts of faithful understanding” the teachings of the Church. However, dissent remains possible. But this does not mean that there is a “double truth.” He takes issue with Congar, Dulles, and this compositor, who “speak of two magisteria within the Church.” The unity of the Church demands one magisterium, and the scholar must be willing to allow his/her positions to be judged by this one magisterium.

Any differences between May and myself on this subject appear to be nonsubstantial and a matter of emphasis. But two comments might be in place. First, while May admits the possibility of dissent, he does not carry this far enough. That is, he does not relate it to the development of doctrine. It remains privatized. Concretely, if dissent on a particular point is widespread, does this not suggest to us that perhaps the official formulation is in need of improvement? To say otherwise is to say that scholarly (and other) reflection has no relation to the Church’s ongoing search for truth and application of her message. As Bishop Arzube notes, we would never have gotten to *Dignitatis humanae* if the reflections of John Courtney Murray had been merely tolerated and not taken as a new source of evidence.

This leads to the second point: May’s rejection of two magisteria in the Church. It is easy to understand how this can be a confusing verbal vehicle, and I, for one, am not wedded to it. Raymond Brown notes: “Magisterium is a fighting word. I think the attempt to reclaim it for theologians will not succeed; and I personally do not think the battle worth fighting so long as, under any other name, the legitimate role of theologians in shaping the teaching of the Church is respected.”⁹⁶ I agree with that statement of things and with Brown’s subsequent addition: “All that I want is that scholarly evidence be taken into account in the formulation and reformulation of Catholic doctrine.”

What is important, then, is not the word; it is the idea beneath it. That is, the Church in its teaching makes use of (and probably must) theologies and philosophical concepts, as Congar repeatedly reminds us. In moral theology, an example would be *direct* killing, *direct* sterilization. These formulations are only more or less adequate and may even be wrong at times. It is one of theology’s (and philosophy’s) tasks to make that determination, not precisely the magisterium’s.

Here an example is in place. Masturbation for infertility testing has been condemned officially (the Holy Office, Pius XII). Yet, very few

⁹⁵ William E. May, “The Magisterium and Moral Theology,” in *Symposium on the Magisterium: A Positive Statement*, ed. John J. O’Rourke and Thomas Greenburg (Boston: Daughters of St. Paul, 1978) 71–94.

⁹⁶ Brown, as in *Origins* 7 (n. 94 above) 675.

theologians of my acquaintance see this procedure as having the malice of masturbation. When theologians say this, they are stating (at least they think they are) a truth, and in this sense they are teaching. Or must one wait until something is officially modified to recognize that it is true or false? Personally, I would have no hesitation in saying to an individual that that condemnation is obsolete, even if it has not been modified by the Church's more official teaching organs.

What theologians (and other scholars) have been searching for is a formula which would incorporate two things: (1) the practical admission of an independent competence for theology and other disciplines; (2) the admission of the indispensability of this competence for the formation, defense, and critique of magisterial statements. They are not interested in arrogating the kerygmatic function of the Holy Father and the bishops.⁹⁷ By "independent" I do not mean "in isolation from" the body of believers or the hierarchy. Theologians are first and foremost believers, members of the faithful. By "independent" competence is meant one with its own proper purpose, tools, and training. The word "practical" is used because most people would admit this in theory.

In practice, however, this is not always the case. This practical problem can manifest itself in three ways. First, theologians are selected according to a predetermined position to be proposed, what Sanks calls "co-optation." Second, moral positions are formulated against a significant theological opinion or consensus in the Church. Such opinion should lead us to conclude that the matter has not matured sufficiently to be stated by the authentic magisterium. Third, when theologians sometimes critique official formulations, that is viewed as out of order, arrogating the teaching role of the hierarchy, disloyalty, etc. Actually, it is performing one of theology's tasks. All three of these manifestations are practical denials of the independent competence of theology.

As for the third manifestation mentioned above, it ought to be said that when a particular critique becomes one shared by many competent and demonstrably loyal scholars, it is part of the public opinion in the

⁹⁷ William Cardinal Baum has a thoughtful paper on the episcopal magisterium. He suggests that the theology of this magisterium must be based on the evangelical notion of the proclamation of the kerygma and on the sacramental nature of the episcopal order. "The episcopal magisterium is thus not above, below, or alongside the role of theologians and others. It is a reality of a different order. It pertains to the sacramental transmission of the divine realities . . ." Cf. "Magisterium and the Life of Faith," *Origins* 8 (1978) 76-80. A similar analysis was made by the then Archbishop Karol Wojtyla. He emphasizes the magisterium of bishops as proclamation, leading people to Christ. Bishops are first of all *fidei praecones* and only secondly *doctores*. The faithful defense of the *depositum* and its proclamation "entails its growing understanding, in tune with the demands of every age and responding to them according to the progress of theology and human science." He argues that the magisterium "as systematic and doctrinal teaching should be put at the service of the announcement of the gospel." Cf. "Bishops as Servants of the Faith," *Irish Theological Quarterly* 43 (1976) 260-73.

Church, a source of new knowledge and reflection. Surely this source of new knowledge and reflection cannot be excluded from those sources we draw upon to enlighten and form our consciences; for conscience is formed *within the Church*.⁹⁸

An unsolicited suggestion might not be irrelevant here. Bishops should be conservative, in the best sense of that word. They should not endorse every fad, or even every theological theory. They should "conserve"; but to do so in a way that fosters faith, they must be vulnerably open and deeply involved in a process of creative and critical absorption. In some, perhaps increasingly many, instances, they must take risks, the risks of being tentative or even quite uncertain, and, above all, reliant on others in a complex world. Such a process of clarification and settling takes time, patience, and courage. Its greatest enemy is ideology, the comfort of being clear, and, above all, the posture of pure defense of received formulations.

In all fairness, at this point something should be added about theologians. Amid the variation of their modest function in the Church, they must never lose the courage to be led. "Courage" seems appropriate, because being led in our times means sharing the burdens of the leader—and that can be passingly painful. They should speak their mind knowing that there are other and certainly more significant minds. In other words, they must not lose the nerve to make and admit an honest mistake. They should trust their intuitions and their hearts, but always within a sharp remembrance that the announcement of the faith and its implications in our times must come from the melding of many hearts and minds. The Church needs a thinking arm, so to speak; but that arm is dead if it is detached.

PROBLEMS IN BIOETHICS

The field of bioethics has been livelier than ever. Besides the many studies that appear in such journals as *Hastings Report* and *Linacre Quarterly*, several areas such as life preservation⁹⁹ have received intense attention. This is particularly true of the now famous—perhaps "noto-

⁹⁸ In "The 'New Morality' vs. Objective Morality," *Homiletic and Pastoral Review* 79 (1978) 27-31, Joseph Farragher, S.J. states: "Most present-day liberals in both dogmatic and moral theology. . . treat his [the pope's] statement with no more acceptance than they would the statements of any individual theologian who disagrees with them." That statement is, I believe, simply false.

⁹⁹ Cf. Jim Castelli, "Death with Dignity," *Commonweal* 105 (1978) 525-27; Jacques Freyssinet, "Combien une collectivité doit-elle dépenser pour sauver une vie humaine?" *Lumière et vie* 27 (1978) 37-44; Steven E. Rhoads, "How Much Should We Spend to Save a Life?" *Public Interest*, no. 51 (1978) 74-92; James F. Childress, "Ethical Issues in Death and Dying," *Religious Studies Review* 4 (1978) 180-88; R. B. Zachary, "To Save or Let Die," *Tablet* 232 (1978) 174-75; Georg Ziegler, "Überlegungen zur Euthanasie," *Theologie und Glaube* 68 (1978) 168-83; H. Huber, "Sterbehilfe heute," *Theologisch-praktische Quartalschrift* 126 (1978) 38-46.

rious" is better—Joseph Saikewicz decision.¹⁰⁰ These studies can be referred to only in passing, since I want to stress the so-called "test-tube baby" as an instance calling for careful moral analysis and public-policy deliberation.

But first a general article of considerable importance. James Gustafson complains that in the study of the life sciences theologians have become moral philosophers.¹⁰¹ By this he means that ethical questions are getting merely ethical answers without theological input because moral theologians are no longer doing theology. This allows the questions to be framed exclusively by nontheologians. Gustafson acknowledges that the problem traces partially to a lack of consensus among theologians as to what theological issues really are. Moral principles have some precision (e.g., rules on consent) but nothing of comparable precision exists in the theological realm of discourse.

Gustafson believes that the importance of teasing out the theological dimensions of problems is that differences between people are often matters of belief and loyalties. Such differences are not settled or even addressed by refining ethical principles. Rather, it is convictions about the character of ultimate reality and life that have more bearing on answers than particular moral principles. This is seen in discussions of genetic research, where, without adverting to it, people are often discussing competing eschatologies. In summary, then, theology forces questions we ought to be aware of but frequently are not.

This is a somewhat uncharacteristic addition to the Gustafson corpus. But I believe that beneath the sometimes querulous tone Gustafson has a valuable point; perhaps more accurately, he is raising a serious question. Our loyalties and beliefs, which are profoundly stamped by religious faith, do affect our perspectives and analyses of practical bioethical problems. And, Gustafson would argue, they should. It is the theological task to make this clear.

My question to Gustafson is: How is this to be done in contemporary reflection on these problems? Is the one person he cites (Paul Ramsey) really changing or altering the questions by explicit theological themes? Or is he but warranting reasonable (scil., able to be reasoned) positions by theological supports? Gustafson is really raising the question of the relation between explicit religious faith and moral reasoning. His own answer to the question is that such faith changes answers by expanding

¹⁰⁰ Cf. John J. Paris, S.J., "Withholding of Life-Supporting Treatment from the Mentally Incompetent," *Linacre Quarterly* 45 (1978) 237-48; André E. Hellegers and Richard A. McCormick, S.J., "The Specter of Joseph Saikewicz," *America* 138 (1978) 257-60; John R. Connery, S.J., "A Comparison of the Saikewicz and Quinlan Decisions," *Hospital Progress* 59 (1978) 22-23.

¹⁰¹ James M. Gustafson, "Theology Confronts Technology and the Life Sciences," *Commonweal* 105 (1978) 386-92.

questions.

The Catholic tradition has generally been content to refer to "reason informed (not replaced) by faith." In this tradition it is not exactly moral philosophy *or* theology; it is moral philosophy *and* moral theology issuing in "reason informed by faith." That terribly important word "informed" has been in practice the object of systematic neglect or at least oversight. For that reason Catholic moral theologians have too often been content to face problems as moral philosophers. This is especially true since their tradition has been one with a heavy emphasis on natural law.

However, once that legitimate point has been granted, it could be suggested that there are any number of ways that "informed" can be approached. For instance, Stanley Hauerwas' procedural model is increasingly aesthetic. For him, theology is like writing a novel. One must be dominantly concerned with the character of the agent and the community, and the stories that have formed them. That is a fruitful way of getting at "informed by faith," but it is not the only one. Similarly, the theology of Augustine or Thomas (or anyone) can be a helpful way of enfleshing the notion of "informed by faith." But it is not the only way. To think so is to reduce theology to its genetic dimension. There are many helpful ways of moving toward an evaluative description of our religious experience. This seems fairly clear from the fact that those who use explicitly religious warrants rarely if ever come to concrete judgments that cannot be supported on other grounds. At least this question should be raised. In raising it, I want to suggest two extremes to be avoided in framing an answer. The first is a neorationalism which would consider Gustafson's point impractical and would forget that the term "reason" includes many dimensions of human experience. The second is a neosectarianism (or elitism) that would so soak bioethical problems in theological concepts and language that they would be beyond sharing.

And now to *in vitro* fertilization with embryo transfer. The birth of Louise Brown (July 25, 1978) at Oldham, England, was greeted with a sensationalism that rarely accompanies bioethical problems. In country after country articles announced that now thousands of couples have new hope. As I write, Louise Brown has been followed by another "test-tube baby" in Calcutta.¹⁰²

This procedure has not only moral aspects but public-policy dimensions. What is to be thought of it? Initial reactions varied.¹⁰³ For instance, Bishop Augustine Harris, president of the Social Welfare Commission of the English and Welsh Catholic Bishops' Conference and auxiliary bishop of Liverpool, stated: "Some married couples have a deep desire for children but are unable to conceive. Science can support the loving and

¹⁰² *Washington Post*, Oct. 6, 1978, A16.

¹⁰³ For journalistic reactions cf. *Overview* 13 (Nov. 1978).

natural ambitions of the couple to produce new life."¹⁰⁴ Similarly, Cornelius Lucy, bishop of Cork, stated: "Offhand, I don't see anything wrong with childless couples using the test-tube method if there is no other possible way for them to have babies."¹⁰⁵

Meanwhile in Germany, in a spirit somewhat different from the above, Dr. Joseph Stimpfle, bishop of Augsburg, responded: "Technical manipulation with human eggs and sperm is worse than the atom bomb."¹⁰⁶ While avoiding the atomic imagery, Gordon Cardinal Gray, archbishop of St. Andrews and Edinburgh, stated his "grave misgivings" and noted that "the Church holds that a child should be the product of a loving union between husband and wife."¹⁰⁷ Milanese moral theologian Diogini Tettamanzi stated that the test-tube technique is not acceptable.¹⁰⁸ Archbishop Francis T. Hurley warned against "quick-order answers to moral questions." He very wisely suggested that "it would be immoral or at least irresponsible to condemn or bless the procedure out of hand without first anguishing over both the short and the long range implications of what has been wrought."¹⁰⁹

Carlo Caffarra, a member of the International Theological Commission, argues that test-tube conception involves a radical separation between the sexual act and procreation and that this separation "could induce or confirm a substantially partial vision of sexuality, passing from one extreme to the other—from a vision of sexuality as function of the species to a vision of sexuality substantially and practically debiologized."¹¹⁰ Archbishop Johannes Joachim Degenhardt (Paderborn) said "the limits of the right of human intervention were transgressed" in the Brown case. He based himself on the teaching of Pius XII. But moral theologian Johannes Hirschmann said he does not believe that Pius XII is the "last word on the subject."¹¹¹

Rabbi Seymour Siegel noted that "if nature played a trick, as it has in this case, if we can outsmart nature, that is theologically permissible."¹¹² He later expanded on this by stating that the Jewish view is related to mitzvah. "If conception cannot be accomplished in the usual way, then let it be done artificially as long as no third party is involved."¹¹³

¹⁰⁴ *Washington Post*, July 27, 1978.

¹⁰⁵ *Catholic Review*, July 28, 1978.

¹⁰⁶ Cited in Johannes Gründel, "Zeugung in der Retorte—unsittlich?" *Stimmen der Zeit* 103 (1978) 675–82, at 675–76.

¹⁰⁷ *Washington Post*, July 27, 1978.

¹⁰⁸ *Catholic Review*, Aug. 4, 1978.

¹⁰⁹ *Inside Passage* 9 (Aug. 4, 1978) 2. For Bishop Mark Hurley's comments, cf. "The Test-Tube Baby," *Origins* 8 (1978) 224.

¹¹⁰ *Catholic Chronicle*, Oct. 6, 1978, 14.

¹¹¹ *National Catholic Register*, Sept. 10, 1978.

¹¹² *Washington Post*, July 28, 1978.

¹¹³ *United Synagogue Review*, Fall 1978 (pagination unavailable).

What is of more importance than one's conclusions is how one got there. And that brings us to the ethical and moral theological literature.

Dr. Andre Hellegers and this author attempted an overview of the issues.¹¹⁴ The essay urges that the problem be seen not merely in terms of individual benefits but above all in terms of social implications. At the level of act analysis, we argue that artificial insemination (AIH), and to that extent *in vitro* fertilization with embryo transfer, "cannot be analyzed in a morally decisive way by exclusive appeal to the design of the conjugal act." The study then lifts out areas where there are nagging questions and problems: embryo wastage, possible fetal damage, readiness to abort, extension of technique beyond the married couple, medical priorities, publicity.

The editors of *Commonweal* have an interesting response.¹¹⁵ They identify three ways of thinking about the procedure: (1) the anathema response (it is unnatural, therefore wrong); (2) the assimilation response (the means are but an extension of interventions we already accept; therefore proceed); (3) the apprehension response, which is made up of a great number of worries and questions. This last is *Commonweal's* position. It lists the following apprehensions: loosening of procreation from its personal determinants; the possible moral mischief involved in third-party ova and sperm; the readiness to abort defectives ("quality control"); consumption of precious medical resources together with stimulation of false hopes. These reservations are so serious that "the proper step now is to maintain HEW's moratorium on *in vitro* fertilization experiments and to broaden it with legislative and professional restrictions. Then let the researchers argue their case."

Moral theologian John Mahoney, S.J. (Heythrop College, London) recalls the two criticisms of Pius XII against husband insemination (masturbation to obtain semen; conception should occur as the result of the natural act of marriage).¹¹⁶ He rejects both, the first because it is difficult to see how obtaining semen in this way frustrates the procreative purpose of sexuality. As to the second, he argues that while the child should be the expression of parental love, it is not through the marital act alone that the couple engages in married loving actions. As for risks (of deformity), Mahoney believes they can reach a tolerably low level. A couple can be justified in running certain risks even in the process of normal fertilization. His article is one of caution, not condemnation. In a subsequent study¹¹⁷ Mahoney asserts that what is striving for expression

¹¹⁴ André E. Hellegers and Richard A. McCormick, S.J., "Unanswered Questions on Test Tube Life," *America* 139 (1978) 74-78.

¹¹⁵ "Test-tube Babies," *Commonweal* 105 (1978) 547-48.

¹¹⁶ John Mahoney, S.J., "Test-tube Babies," *Tablet* 232 (1978) 734.

¹¹⁷ John Mahoney, S.J., "Ethical Horizons of Human Biological Development," *Month* 249 (1978) 329-33.

in Pius XII's statements is the idea that the procreation of a new human being is from a union not just of bodies but of spirits also. Marital intercourse is not the only vehicle of such creative love. He then explores the pros and cons of *in vitro* fertilization in a very balanced and honest way and emerges with a cautious approval. As will be obvious below, I find myself in substantial agreement with Mahoney's perspectives and conclusions.

Thomas A. Shannon faults the Steptoe-Edwards achievement on several counts.¹¹⁸ First, he sees a great deal of money and effort expended for the benefit of a few individuals, and this at a time of increasing population and diminishing resources. Second, the procedure involves risk of harm to an unconsenting third party. Furthermore, what is to be done with the mistakes? Abort? Finally, Shannon sees the combination of a couple's desperation and the scientific competitive urge to be the winning team as a powerfully explosive combination.

Johannes Gründel approaches the problem by viewing the Church's teaching on artificial insemination.¹¹⁹ This teaching (Pius XII) condemns artificial insemination outside of marriage and in marriage with a third party (AID). Furthermore, Pius XII rejected even AIH. Thus, even though these statements did not envisage *in vitro* fertilization as we know it, their implications are negative toward it.

Gründel believes that more must be said here. He notes that, notwithstanding *Humanae vitae*, many theologians believe that it is the marriage, not the individual act, that must remain open to procreation. Therefore a mere citation of ecclesiastical documents is insufficient. Something similar must be said about artificial insemination by husband. As a general rule, the child should be conceived as the result of an act of personal sexual communion. However, Gründel does not see this as an absolute rule. Where there is "absolute" sterility in the marriage (e.g., absence of sperm), adoption is the answer (not donor insemination). Where, however, the sterility is merely functional, Gründel believes that we cannot "consider the individual act in isolation." Rather, the marriage as a whole must be weighed. When it is, "artificial insemination serves only as completion of such an act of love and of the marriage as a whole." From this perspective, AIH is not destructive to marriage at all, but rather a support. "This wholistic evaluation with a consideration of the consequences would correspond with the type of analysis widespread in contemporary moral theology—an analysis that considers not only the individual act but the entire happening including consequences . . . as the decisive element for moral judgment."¹²⁰

¹¹⁸ Thomas A. Shannon, "The Case against Test-tube Babies," *National Catholic Reporter*, Aug. 11, 1978, 20.

¹¹⁹ Johannes Gründel, "Zeugung" (n. 106 above).

¹²⁰ *Ibid.* 680.

With that as background, Gründel turns to *in vitro* fertilization with embryo transfer. If one sees personhood as identical with conception, then, Gründel believes, the process is morally questionable experimentation. Many, however, hold that this is not necessarily the case. For instance, if we accept Boethius' definition of person (*individua substantia rationalis naturae*), we must deal with the twinning phenomenon. Ultimately, then, Gründel does not believe that the status of the zygote gives us a definitive answer. He warns, however, of other considerations: risk to the child, extension beyond such technology, genetic manipulation of the zygote, etc.

James Sellers argues that the acceptance of the Steptoe-Edwards achievement has been uncritical. It is not just "a way of helping out with a little fertility problem."¹²¹ He raises five areas of ethical concern: (1) When human life begins—for many embryos are lost. (2) Experimentation without consent. No one can say what will happen to Louise Brown. Sellers feels that the first several hundred petri-dish babies should have been simians. (3) Interference with nature. He rejects the "Catholic" argument that mere artificiality is enough to condemn the procedure, but argues that there may be limits (in terms of justice and fitness) to what we ought to do to initiate life, just as there are for prolonging it at the end. (4) Some motives could be misguided. (5) Allocation of scarce resources.

Allen Verhey (Hope College) believes that the discussion has been too restrictedly conducted in terms of consequences.¹²² Some see nothing but good; others quake at the creation finally of a real London Hatchery and Conditioning Center. Verhey is agnostic about the future and any script, whether optimistic or pessimistic, that argues inevitability. Therefore he thinks that moral analysis and public discussion should concentrate on the means, the procedure itself.

He rejects both techno-logic (one may if one can) and the extreme-unnaturalness analysis associated with the arguments of Pius XII. He ends up in the middle: "We are children of nature and children of spirit, and the course of moral wisdom is surely to forget or ignore neither side of our lineage." Thus, in agreement with Ramsey and Kass, he sees this procedure as suppressing "biological, sexual, bodily meaning of marital love." To do that is no less dangerous than its reverse, the trivialization of sex by suppressing its spiritual and personal components. But, he says, this leads only to caution, not to prohibition. "We may neither make the natural processes normative nor dismiss them cavalierly as merely physical."

¹²¹ James Sellers, "Test-Tube Conception: Troubling Issues," *Christian Century* 95 (1978) 757-58.

¹²² Allen Verhey, "Test-Tube Babies," *Reformed Journal* 28, no. 9 (Sept. 1978) 13-16.

Ultimately, Verhey faults the Steptoe-Edwards procedure on three grounds: lack of respect for life (zygotes created to be destroyed); the readiness to abort misfits (the very design of the procedure); experimentation without the child's consent. It is immoral on these grounds and "I hope that upon public discourse society will refuse to permit it."

In a companion piece to Verhey's, Lewis B. Smedes (Fuller Theological Seminary) discusses both feelings and reasons on both sides of the debate.¹²³ He concludes that *in vitro* fertilization is not immoral even if it is morally risky. Smedes rejects the argument that it is "unnatural" for babies to be born apart from sex. "Even if the setting shifts, the drama is still the same," scil., God is mysteriously at work. As for Ramsey's argument about imposing risks on the child without consent, he believes the rights of the parents to try to have their own child override this. He then turns to societal risks (excessive power to technology, destruction of zygotes). Smedes contends that the balance of good to be achieved outweighs these risks. In the face of such risks, we must "have the wisdom to guard ourselves against the evils."

Two points. First, Smedes hardly gives a realistic listing of the risks. Therefore he equivalently underestimates them. Second, in what sense is discarding zygotes only a "risk" and how do we "guard ourselves" against this if it is, as Smedes admits, inevitably part of the procedure?

The *Hastings Report* published four brief studies on the problem.¹²⁴ Paul Ramsey faults the Steptoe-Edwards work on three grounds: irremovable risk ("a small risk of grave induced injury is still a morally unacceptable risk"); harm to Louise Brown through publicity ("socio-psychological ruin seems invited"); the direction of the technology toward a "Brave New World." He finds in the articles and statements of Robert Edwards ample reasons to fear these developments. For instance, Edwards and D. J. Sharpe wrote in a 1971 article that "the procedures leading to replacement and implantation *open the way* to further work on human embryos in the laboratory." Later Edwards referred to "sexing blastocysts."¹²⁵ As for surrogate mothers, Edwards believes this should be avoided *at the present time*.

Ramsey presented a longer version of his objections to the Ethics Advisory Board (DHEW). He saw a further trauma to an already divided

¹²³ Lewis B. Smedes, "Test-Tube Babies," *ibid.* 16-20.

¹²⁴ "In Vitro Fertilization: Four Commentaries," *Hastings Center Report* 8, no. 5 (Oct. 1978) 7-14. The commentaries are by Paul Ramsey, Stephen Toulmin, Marc Lappé, and John A. Robertson.

¹²⁵ The first reference is from R. G. Edwards and D. J. Sharpe, "Social Values and Research in Human Embryology," *Nature* 231 (1971) 87-91 (emphasis added). The second is from R. G. Edwards, "Fertilization of Human Eggs in Vitro, Morals, Ethics and the Law," *Quarterly Review of Biology* 49 (1974) 3-26.

nation, because persons conscientiously opposed (to abortion) would have to pay for the service, one that is not of overriding national interest. He sees even the small risk of induced injury as a *conclusive* argument against doing these things. Similarly, the development he fears beyond what is now done is an *immediate* attack on marriage and the family and is a conclusive argument. His conclusion: “*in vitro* fertilization and embryo transfer should not be allowed by medical policy or public policy in the United States—not now, not ever.”

John A. Robertson discusses the risk-to-the-prospective-child argument. He finds it unconvincing; for the act creating the risk of injury also brings about the very being that is said to be injured. From the child’s perspective, the only alternative to the action that allegedly violates his right not to be harmed is even less desirable; for it means no existence at all.

Robertson is primarily interested in whether government should *ban* such procreation. If this argument is taken for the justification of banning, he fears that the state may also demand sterilization and abortion to prevent deformed births in other situations. The point is well made, but Robertson does not really discuss the moral issue: whether it is morally responsible to run procreative risks for prospective children.

Stephen Toulmin argues that *in vitro* fertilization is a good case in which to refrain from legislative paternalism. Ethically, he finds nothing wrong with it. It is no more dangerous than normal gestation. To the objection that it might lead to further unacceptable manipulation, he responds that this is a “flesh-creeping” argument. There is no greater reason to fear these things than there already is with artificial insemination and sperm banks. As for the unborn child, he states flatly: “Until implantation has taken place, there is no ‘unborn child’ to protect.”

Regardless of where one comes out on the policy issue, it is surprising to find one of Toulmin’s stature so thoroughly oversimplifying the ethical issues. For instance, even though the zygote may not be an “unborn child,” it is living (not dead) and human (not canine) in its potential. This means that there is still the question of the respect and protection it deserves. Furthermore, I believe Toulmin misreads the “might lead to” point. It is not primarily concerned with empirical inevitability, but above all with the logic of moral justification. That is, the justification for *in vitro* fertilization can easily perform its task for other interventions. Finally, Toulmin seems to have no problem at all with AID and sperm banks. I do.

It is hard to tell exactly where Marc Lappé stands. He believes that absolute vulnerability demands absolute protection, but it is unclear how he relates this to the *in vitro* procedure.

Leon Kass, in a careful paper presented to the Ethics Advisory Board,

discusses three aspects of the problem: the status and treatment of extracorporeal embryos; questions of procreation, lineage, and parenthood; limits of manipulation of human reproduction.¹²⁶ On the first point, he defends a middle position: the embryo is not nothing. It is, on the other hand, not clearly a person. But it is a human being demanding our respect, not because of rights but because of what it is now prospectively.¹²⁷ Such respect excludes "most potentially interesting and useful" research but does not necessarily exclude embryo loss in attempts at implantation.

Kass is deeply, and I think rightly, concerned with what he calls the "soft issues." Many contemporaries are likely to view donors, host wombs, etc., as only "little embryos that stray from the nest." Kass sees these "almost certain" practices as eroding the indispensable foundation of a sound family life ("itself the foundation of civilized community") by eroding clarity about who one's parents are, clarity about generational lines, etc.

Finally, after arguing that the so-called wedge argument is one of the logic of moral justification, he urges the Board, regardless of what it does, to state very precisely why it is doing so; for "this Board . . . may very well be helping to decide whether human beings will eventually be produced in laboratories."

This has been only a sampling of some recent literature touching the problem of the so-called "test-tube baby."¹²⁸ Perhaps it would be helpful here to summarize and comment on those areas that seem at the center of the discussion of the ethics and public-policy problems.

Ethics

1) *Technologizing marriage.* There are two forms this argument takes. The first is associated with Pius XII and his statements on artificial insemination by husband. The Holy Father excluded this, and especially

¹²⁶ Leon Kass, "'Making Babies' Revisited," to be published in *The Public Interest*, Winter 1979.

¹²⁷ Clearly Kass, with nearly all scientists, accepts the *fact* that human life begins at conception. He cites Dr. Robert Edwards' interesting, if inadvertent, remark about Louise Brown: "The last time I saw *her*, *she* was just eight cells in a test-tube. *She* was beautiful *then*, and *she's* still beautiful *now*" (*Science Digest*, Oct. 1978, 9 [emphasis added]).

¹²⁸ One of the most important areas in weighing the moral character of *in vitro* fertilization with embryo transfer is the status of the zygote. Some interesting literature (often in disagreement) was published on this question in the past year: cf. Robert E. Joyce, "Personhood and the Conception Event," *New Scholasticism* 52 (1978) 97-109; Georges Cottier, O.P., "Problèmes éthiques de l'avortement," *Nova et vetera* 53 (1978) 13-36; Joseph T. Culliton, "Rahner on the Origin of the Soul: Some Implications regarding Abortion," *Thought* 53 (1978) 201-14; Larry L. Thomas, "Human Potentiality: Its Moral Relevance," *Personalist* 59 (1978) 266-72; Robert Barry, O.P., "Personhood: The Conditions of Identification and Description," *Linacre Quarterly* 45 (1978) 64-81.

on the grounds that it separated the “biological activity from the personal relation of the married couple” (World Congress on Fertility and Sterility, 1956). Rather, “in its natural structure, the conjugal act is a personal act. . . .” (Italian Catholic Union of Midwives, 1951). In summary, Pius XII viewed the conjugal act as having a natural and God-given design that joins the love-giving dimension with the life-giving dimension. On this basis he excluded both contraception and artificial insemination, and a fortiori *in vitro* fertilization with embryo transfer. It is safe to say that this structured the negative responses of some theologians and bishops when they spoke of the “unnatural.”

I believe that this is substantially the approach of Donald McCarthy.¹²⁹ He refers to the “integrity of the procreative process” and argues that artificial fertilization is among those “actions that violate human dignity or the dignity of human procreation.” Such actions are inhuman in themselves.

The second form of this argument is a softer form. It is a general concern that too much technology introduced into a highly personal context (parenting, family) can mechanize and depersonalize the context. The argument issues in a prudential caution, not necessarily a moral judgment that each instance is morally wrong on this account alone. This argument is also justifiably concerned with objectifying the child into a consumer item (“what sex?” “what color eyes?” etc.).

What might be said of these arguments? I shall comment on only the first, since the second is a dictate of common sense and leaves the question fairly well open. It is clear that at least very many theologians have not been able to accept “the natural . . . design of the conjugal act” as this was interpreted by Pius XII. That is, they have not viewed it as an inviolable value. Thus they can allow for contraception at times.

Similarly, and with consistency,¹³⁰ they have not been able to see that artificial insemination by husband is necessarily a violation of nature. Gründel states it well when he says that the child must be the expression and embodiment of love, but that sexual intercourse is not the only or necessary source for this expression and embodiment. Many would re-

¹²⁹ Donald McCarthy, letter to the editor, *Hospital Progress* 59, no. 9 (Sept. 1978) 6.

¹³⁰ Note the following from the *National Catholic Register*, Aug. 13, 1978: “It comes as anything but a surprise that moral theologians who reject *Humanae vitae* have difficulty explaining why laboratory conception is morally wrong, or that they are not even sure it is wrong, or they may even think it justified. Father Richard McCormick admits to a certain uncertainty, says that since Pope Pius XII there has been ‘a long second look, a rethinking that it can be justified,’ and counsels caution. Fr. Bernard Häring observes that Pope Pius condemned test-tube fertilization ‘a long way back,’ but thinks the Church ‘takes a long time to come to positions on these matters.’” The *Register* has it just right, but *praeteritio* is called for in the face of statements such as that those who condemn “laboratory concoction” of babies are “faithful Catholics.”

spond in a similar fashion to Donald McCarthy's assertion that artificial fertilization always attacks the integrity of the procreative process. How can one establish that plausibly? We can intuit it, but intuitions notoriously differ. And in this case such dehumanization has not been perceived by at least very many commentators (most recently Bernard Häring, George Lobo, Roger Troisfontaines, Karl Rahner, *et al.*).

That is not to say that the separation of procreation from sexual love-making is a neutral thing. To say that would be to minimize the physical aspects of our being in a dualistic way. Rather, the artificial route to pregnancy is a disvalue and one that needs justification. John R. Connery, S.J., has caught this well (though by saying this I do not imply that he should necessarily be associated with the analysis as one approving it).¹³¹ Whether it can find such justification is the burden of some of the other arguments, especially that of the "slippery slope" involving possible undesirable future developments.

In summary, it seems very difficult to reject *in vitro* fertilization with embryo transfer on the sole ground of artificiality or (what is the same thing) the physical separation of the unitive and the procreative—unless one accepts this physical inseparability as an inviolable value.

2) *Abortion and discarded zygotes.* It is admitted that in the process of *in vitro* fertilization with embryo transfer more than one ovum is fertilized.¹³² Those not used will perish.¹³³ There are those who view zygotes as persons with rights and therefore condemn the procedure outright as abortion. Others see them as simply "human tissue" and find no problem in their creation and loss, the more so because so many fertilized ova are lost in *in vivo* attempts at pregnancy. Still a third group would assess the zygote as somewhere in between these alternatives: not yet a person but a living human being deserving of respect and indeed protection. How much protection is the key question.

With no claim to saying the last word, I would suggest the following for consideration. First, the discussion ought not to center around the personhood of the fertilized ovum. It is difficult to establish this, and there are reputable theologians and philosophers in large numbers who deny such an evaluation at this stage. Moreover, it is unnecessary; for many of those who deny personhood insist that the zygote is not just a thing but deserves our respect and awe.

¹³¹ John R. Connery, S.J., letter to the editor, *America* 139 (1978) 145.

¹³² It is not absolutely essential to the procedure as such. *In vitro* fertilization could be done during successive cycles either by freezing ova in advance or by doing (most unlikely) successive laparoscopies.

¹³³ Furthermore, it is generally accepted that the parties ought to be willing to abort during the pregnancy if something goes wrong. I put this in a footnote because it is not necessary to the procedure as such.

Second, it is one thing to fertilize *in vitro* in order to experiment and study the product of conception; it is quite another to do so in order to achieve a pregnancy. It seems to me that the respect due nascent life, even if not yet personal life, rubs out the first alternative. Kass has stated that the "presumption of ignorance ought to err in the direction of not underestimating the basis for respect." That seems correct, and it is the same as the traditional principle that in factual doubts life deserves the preference.

Third, the term "abortion" must be carefully used when there is question of discarded zygotes. We know that a very high percentage of naturally fertilized ova never implant, are lost. This means that there is a tacit acceptance on the part of the couple that their normal sexual relations will lead to this as the price of having a child.

The response often given to this explanation is that we may not reproduce by artifice everything that happens in nature. Thus, though people inevitably die, we do not kill them. Though there are life-taking earthquakes in nature, we ought not manufacture life-taking earthquakes. Perhaps a distinction is called for here between replicating nature's disasters and replicating nature's achievements. Is there anything particularly wrong about achieving artificially, *faute de mieux*, what occurs otherwise naturally? We are not exactly replicating disasters, but rather achievements even with unavoidable disvalues. If it is by no means clear that couples engaging in normal sexual relations are "causing abortions" because foreseeably many fertilized ova do not implant, it is not clear that the discards from artificial procedures must be called "abortions," especially if the ratio of occurrence is roughly similar.¹³⁴

Put this in the language of rights to life on the supposition that the zygote is a person. It is not a violation of the right to life of the zygote if it is spontaneously lost in normal sexual relations. Why is it any more so when this loss occurs as the result of an attempt to achieve pregnancy artificially? The matter of discards is serious, indeed crucial, for those of us who believe that human life must be protected and respected from its very beginning. These reflections are meant only as probes into a difficult area.

3) *Harm to the possible child.* The argument here is that the very procedure which gives life is inseparable from risks, physical and psychological. These may be small risks, but even so it is morally wrong to induce for a nonconsenting child even a small risk of great harm. This seems to be Ramsey's key argument.

¹³⁴ It might be well to recall here that we do not object to tubal reconstructive surgery. Yet, it is well known and foreseen that such surgery leads to a marked increase in ectopic pregnancies that will have to be reluctantly terminated—and at a later stage than the zygote stage.

On the other hand, the counterstatement (by Kass and others) is that the risk of harm need not be positively excluded. It is sufficient if it is equivalent to or less than the risks to the child from normal procreation.

The response to this assertion is that we could never get to know *that* without exposing a certain number of children to unknown risk to get the statistic. This seems to some to be an insuperable argument against ever starting the *in vitro* procedures. However, once this statistic is had, is the objection any longer telling? In other words, even though Steptoe and Edwards may have acted wrongfully (in ignorance of the risks), after it is clear that the risks are equivalent to normal conception, are those who follow necessarily acting wrongfully?¹³⁵

4) *The extension beyond marriage.* This reasoning takes two forms. First, once *in vitro* fertilization is used successfully in marriage, it will go beyond marriage to third-party donors (semen, ovum), host wombs, etc.¹³⁶ This extension is seen as a radical attack on marriage, the family, human sexuality, personal identity and lineage of the child. The argument is one of inevitability, given the cultural acceptance by many of AID (donor insemination) already. As Kass says, "There will almost certainly be other uses involving third parties."

The second form of the argument, an extension of the first, is that the wedge argument is primarily a matter of the logic of justification. That is, the principles now used to justify husband-wife *in vitro* fertilization already justify in advance other procedures. The strict validity of this second argument, it seems to me, depends on the "principles now used to justify." If the principle is that an infertile couple, using their own gametes, may licitly use artificial means, that is one thing. If, on the other hand, it is less precise (e.g., couples may licitly overcome their sterility with *in vitro* procedures), then all the problems involved in the second form of the argument strike home.

In summary, then, at the level of the individual couple's decision, there seems to be no argument that shows with clarity and certainty that *in vitro* procedures using their own sperm and ovum are necessarily and inherently wrong, if abortion of a possibly deformed child is excluded and

¹³⁵ In this respect it should be noted that some of the experts testifying before the Ethics Advisory Board thought factually that (1) not enough animal work had preceded and (2) the risks for humans have not been sufficiently assessed.

¹³⁶ That this is not an idle fear is clear from the testimony given before the Ethics Advisory Board by Drs. Randolph W. Seed and Richard G. Seed. They propose to inseminate a third party, then wash out the fertilized ovum to be reimplanted in the wife. Moreover, Dr. Landrum Shettles, waiting to testify in the Del Zio case, stated: "I have cloned three human eggs from testicular tissue. They lived for three or four days." Cf. *Medical Moral Newsletter* 15, no. 7 (Sept. 1978) 28. In the words of Nobel Laureate James Watson, there is potential for "all sorts of unsettling scenarios" (*Reader's Digest* 113, no. 679 [Nov. 1978] 103).

the risks are acceptably low.¹³⁷ This is not to say that such procedures are without problems and dangers; they are not. And that brings us to public policy.

Public Policy

Public policy refers above all to laws or decisions that either ban, do not ban, or financially support *in vitro* fertilization. In my own, at this time very tentative, judgment, public policy should not support *in vitro* fertilization where research alone (not embryo transfer) is the purpose. Respect for germinating life calls for at least this. Granted, there is potentially a good deal to be learned from study of fertilized ova (genetic disease, contraception, fertility). But I do not see how this can be done without stripping nascent life of the minimal respect we owe it. Some research is necessary, of course, prior to implementation of transfer technology. I do not see this, given our doubts about zygote status, as incompatible with respect.

As for *in vitro* fertilization with embryo transfer, this should not be supported with government funds *in the present circumstances* (cf. below), though it should not be prohibited by law or policy. Why “not supported”? Because of the cumulative impact of many arguments: the dangers of going beyond marriage are almost certainly unavoidable; the distorted priorities of medicine this introduces (e.g., prenatal care for children already *in utero* is unavailable to very many); the almost unavoidable dangers of proceeding to independent zygote research and the manipulation of the implanted fetus (cf. our abortion culture) with the assault on nascent life this involves; the readiness to abort that this procedure presently entails; the trauma this would visit on an already deeply divided nation (on abortion) by asking that tax money be used for purposes against the consciences of many and not necessary to the public good; the disproportion of benefits (to a relatively few) with costs; the growing neglect of more radically therapeutic (oviduct reconstruction) and preventive (of gonorrhoea) interventions; government reinforcement of the dubious, perhaps noxious, notion that women’s lives are unfulfilled if they cannot have their “own children.”

It should be remembered that funding implies fostering. Whether it is appropriate to foster depends on what is being fostered. And that depends to some extent on the circumstances. Thus, if we cannot fund *in vitro* fertilization between husband and wife without *in our circumstances* funding (and fostering) practices beyond that, we should not do so. I believe this to be the case. *In other circumstances* we could draw a

¹³⁷ In saying this, I am in substantial agreement both in method and content with the ethical committee of the Guild of Catholic Doctors (London). Cf. “In Vitro Fertilization,” *Catholic Medical Quarterly* 24 (1972) 237–43. But note the words “seems” and “certainty.”

different conclusion.

This section began with the deliverances of James Gustafson. Let it end with a return to this wise and insightful moral theologian. People are going to differ on this question, and probably vociferously, much as they do on abortion.¹³⁸ Those differences may well root in matters of loyalty and beliefs that are profoundly theological in character. Concretely, one view may see in the givenness of natural processes the creation and unalterable mandate of God. This involves a notion of God Himself and what He is doing in the world, and it must be explored.

Another perspective would see in man's being God's image the fact that God has shared His dominion and providence with us in such a way that we are to be the prudent overseers of nature. Such prudence means employing our creative capacities in a way that supports and furthers the outlines indicated in nature. This suggests that the criterion of use is what humanizes the person. That determination is the enormous responsibility of man.

Thus, statements like "violates the human integrity and dignity with which a loving and wise Creator has endowed humanity" are radically theological appeals. If there are differences on what does and does not violate integrity, and if these are to be made more intelligible, this theological warrant must be brought into the open and explored more deeply. In the process of doing this, we could well recall John Mahoney's reflection: "We are more prone to behave as those who nostalgically and selectively canonize the past than those who are called to consecrate the future."¹³⁹

¹³⁸ Richard A. McCormick, S.J., "Abortion: Rules for Debate," *America* 139 (1978) 26-30.

¹³⁹ Mahoney, "Ethical Horizons" 329.