

# CURRENT THEOLOGY

## NOTES ON MORAL THEOLOGY: 1980

RICHARD A. McCORMICK, S.J.

*Kennedy Institute of Ethics and Woodstock Theological Center, D.C.*

This edition of the "Moral Notes" will deal with the literature touching on four subjects: (1) methodology in moral decision-making; (2) liturgy, character, and moral theology; (3) the preservation of life; (4) the Synod of 1980.

### METHOD IN MORAL DECISION-MAKING

For some years now, Catholic moral theologians have been attempting to explore the methodological implications of some quite concrete moral formulations traditional in the Catholic community. These explorations touch many areas and raise many questions; but above all, they have centered on the understanding of moral norms. Because the matter is difficult and highly sensitive, the literature has continued to abound. A brief sampling must suffice here.

Johannes Gründel, professor of moral theology at the University of Munich, clearly adopts a teleological understanding in his most recent book.<sup>1</sup> Behind this understanding is a conflict model of decision-making.<sup>2</sup> Within this model, things traditionally prohibited by deontologically understood norms (contraception, sterilization, artificial insemination by husband, etc.) become discussable, indeed at times justifiable. Gründel's work is reported and some questions put to it by Heinz J. Müller.<sup>3</sup> Müller's questions do not attack the theory as such but attempt to make it more precise.

The same is true of the overview article of Karl Hörmann.<sup>4</sup> It concentrates on and summarizes the perspectives of Joseph Fuchs, Bruno Schüller, Peter Knauer, Helmut Weber, Bernard Häring, and Rudolf Ginters. Hörmann does not challenge the substantial direction of these studies but insists on the importance of situating the conflict model within an adequate concept of the vocation of persons.

J. R. Flecha Andres presents an overview study on norms in which he argues that traditional presentations of intrinsically evil actions do not

<sup>1</sup> Johannes Gründel, *Die Zukunft der christlichen Ehe* (Munich: Don Bosco, 1978).

<sup>2</sup> Cf. *ibid.* 90, 94.

<sup>3</sup> Heinz J. Müller, "Theologische Durchblicke: *Die Zukunft der christlichen Ehe*," *Theologie der Gegenwart* 22 (1979) 233-38.

<sup>4</sup> Karl Hörmann, "Are There Absolutely Binding Moral Norms?" *Melita theologica* 30 (1978-79) 44-53. The article is terribly translated and is at times almost unintelligible; I do not recommend it.

consider the situation, the ends, the conflict of values.<sup>5</sup> The principle of double effect he regards as a "pseudo solution." He then briefly presents seven theses about moral norms. One such thesis is that moral norms must take into account "the 'objective' reality of the living person in his specific time and real situation," affected by external sociological factors as well as by congenital or educational influences. Another thesis: moral norms must distinguish evil (pre-moral) from perversity (moral evil). The overview concludes by noting that norms have the provisional character of our journey into the future. They are an orienting force in a history which is both fulfilment and promise.

It is clear that an increasing number of theologians insist on understanding moral norms within the conflict model of human reality.<sup>6</sup> Conflicted values mean that occasionally our choices (actions or omissions) are inextricably associated with evil. Thus, we cannot always successfully defend professional secrets without deliberately deceiving others; we cannot at times protect ourselves against aggressors without violent response; we cannot secure a stable professional and political atmosphere without hurtfully revealing the faults of others. Many theologians have come to believe that such evils (and others) may be done and intended if, all things considered, they are proportionately grounded.

This has led to the accusation by some that these theologians are violating the Pauline axiom (Rom 3:8) that a good end does not justify an evil means. Thus Richard Roach, in referring to a recent volume edited by Paul Ramsey and myself,<sup>7</sup> states: "I wonder if whoever chose the title for this volume pondered the text of Romans 3:8."<sup>8</sup> Roach's essay is a vigorous<sup>9</sup> defense of the absoluteness of the prohibition of the direct

<sup>5</sup> J. R. Flecha Andres, "Reflexión sobre las normas morales," *Salmanticensis* 27 (1980) 193-210.

<sup>6</sup> Cf. Franz Böckle, *Fundamentalmoral* (Munich: Kösel, 1977) 306.

<sup>7</sup> *Doing Evil to Achieve Good* (Chicago: Loyola University, 1978).

<sup>8</sup> Richard R. Roach, "Medicine and Killing: The Catholic View," *Journal of Medicine and Philosophy* 4 (1979) 383-97.

<sup>9</sup> Of those with whom he disagrees ("deviating theologians," "deviant moral theology") he writes: "They have coined a wealth of jargon. They speak of commensurate reason, proportionality, the method of proportionality; they speak of the preference principle or the principle of compromise; they distinguish between ontic and moral evil, or between pre-moral and moral evil etc." Their analyses are referred to as "argumentative ploys." Finally: "In short, these persons are all characterized by espousing a position on a substantial matter which contradicts the teaching of the Church to which they claim to belong" (389, emphasis added). Merely to cite such language is to deplore it. One must fault the editors for tolerating such a collapse of courtesy. For a gentle warning against this type of thing, cf. B. Schüller, "Die Bedeutung der Erfahrung für die Rechtfertigung sittlicher Verhaltensregeln," *Christlich glauben und handeln* (Düsseldorf: Patmos, 1977) 283. Hans Schilling notes that the more personal and accusatory theological language becomes, the less capable is the accuser of even understanding the position under discussion ("Theologische Wissenschaft und kirchliches Lehramt: Erwägungen zur Therapie einer kranken Beziehung,"

killing of the innocent. He contrasts this with a view that would approach the prohibition in an effort "to calculate the beneficial consequences of violation and find them to outweigh the 'evil.'"<sup>10</sup> Roach argues that this misses the point of the moral life, "which is whether our actions fit us for communion with God or not." Certain acts (e.g., fornication) break communion with God here and now "because of the purposes He has implanted by design into the sexual natures we are right now." There is no need of "appeal to consequences or future states." This is true of direct killing of the innocent. "It makes us unfit for communion with Him." Why? Because it usurps God's sovereignty "and any act which usurps that sovereignty is a bad act and one which is absolutely prohibited."

Several things about this essay call for comment. First, I agree with Roach that all practical moral reasoning is teleological in form (sc., it begins with the end in view). I also agree that the right end is communion with God. I further agree that actions which unsuit us for communion with God are morally wrong. But how does one get from these very

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*Stimmen der Zeit* 198 [1980] 291-302). In this respect one should read the wise analysis and suggestions of Archbishop John F. Whealon, "Unity and Pluralism as a Pastoral Concern of Bishops," *Catholic Mind* 78, no. 1344 (June 1980) 34-42.

<sup>10</sup> In any number of places Roach misrepresents the authors he attacks. For instance, to those who contemplate possible exceptions to rules he considers absolute he attributes the following: "We are obliged to follow them only when they promote what we calculate will make for human happiness." I know of no Catholic theologian who holds such a eudaimonistic position or who consistently must in terms of his/her principles. In another place Roach is cited as follows: "Consequentialism involves a person in subjective assessments of his actions. For instance, if a man is committing adultery he can excuse himself by rationalizing that he is not breaking up a family; that his mistress is lonely and needs him to comfort her; that the adultery puts him in a good mood, thereby facilitating a happy relationship with his wife" (*National Catholic Register*, Nov. 23, 1980, 10). If this is put forth as representing the position of many contemporary moral theologians, it is not only erroneous; it is unjust.—In their exchanges, theologians have a right to have their positions presented accurately. Those who oppose what they dub "proportionalism" frequently fail in this regard. For instance, the position has been described as follows: "The argument, basically, is that a hoped-for good-to-come-about can justify the deliberate, direct intention to do evil now" (*Hospital Progress* 61, no. 9 [Sept. 1980] 39). Here we have evil *now*—good *to come*. Thus it is sometimes said that adultery now justifies a future good. This misrepresents what Fuchs-Schüller-Böckle-Janssens-Scholz-Weber-Curran and many others are saying. What they are saying is that the good achieved *here and now* (though it may perish into the future) is sometimes inseparable from premeditated evil. Thus, an act of self-defense achieves *here and now* the good of preservation of life. A falsehood achieves *here and now* the protection of the professional secret. Taking property (food) of another saves the life of the taker *here and now*. The contraceptive act prevents *here and now* a further conception. In Knauer's terms, these theologians are speaking of the *finis operis* of the action. Indeed, one might counterargue that it is the principle of double effect which condones evil *now* for good *to come*; for the condition that the bad effect must be equally immediate is not understood temporally but causally.

general assertions to the conclusion that direct killing of the innocent always unsuits us for communion with God? Roach's answer: this is God's moral purpose "expounded in Scripture as taught by the Church." This purpose "is that God wills to retain direct sovereignty over each and every instance of innocent human life." To say anything else is to propose a contradictory purpose and one that makes our action "unfitting for communion with God." Roach applies this same reasoning to all sexual acts not "in conformity to the Church's teachings." They are bad in themselves without appeal to "consequences or future states."

Here I believe Roach misreads his own tradition and falls into a form of ecclesiastical positivism. He argues that God's purposes are clear independently of consequences and future states, even in situations of conflict. However, James Gustafson rightly notes that "the teleological framework of Catholic theology and ethics has always set the concern for consequences in a central place in moral theology."<sup>11</sup> Even the deontologically understood rules that did develop had a teleological basis. Thus, as Gustafson notes, adultery not only violates a covenant, but the rule against it has validity because adultery is harmful to the parties involved.

One can see this form of teleology at work in the process of restrictive interpretation given over the centuries to the commandment "Thou shalt not kill." If we adhere to the prohibition literally, we find that our hands are tied against unjust aggressors who disdain the rule. The result is that more lives are lost than if we had not adopted the rule. Therefore we qualify the rule, interpreting it as forbidding the taking of *innocent* human life. Then there are cases (birth-room conflicts) that are not covered by the exceptions comprised under "innocent." So we refine the rule further, distinguishing between direct and indirect killing, the latter being at times permissible. The rule is, in a sense, as acceptable as it is capable of being restricted to accommodate our sense of right and wrong, and our firm commitment to save more lives than we lose in situations of conflict.<sup>12</sup> To ignore this teleological substructure to the development of the rule against direct killing of the innocent and to read God's purposes

<sup>11</sup> James Gustafson, *Protestant and Roman Catholic Ethics* (Chicago: University of Chicago, 1978) 49.

<sup>12</sup> Cf. the interesting study of Joseph Fuchs on *epikeia*. Medieval theologians held that the *ratio iustitiae* could not change but that the *materia* could. Thus for these theologians there arose the question of what truly constituted unjust killing. Fuchs notes: "Here is pertinent what contemporary opinion states about the teleological nature of right moral judgments—precisely to render the natural law as efficacious as possible." Fuchs concludes his study with this statement: "Where concrete human reality is sacrificed to abstractly formulated human norms—or where certain norms which appear only general are taken to be universal—there the natural law strictly speaking is sacrificed to these norms. That is, the person is sacrificed" ("Epikeia' circa legem moralem naturalem?" *Periodica* 69 [1980] 251-70).

directly from official formulations is a form of ecclesiastical positivism (the teaching is right, and a manifestation of God's purposes, *because* the Church says so). When such positivism substitutes for moral reasoning, it becomes merely exhortatory or parenetic and begs most of the questions at issue.<sup>13</sup>

My second problem with Roach's essay is his dismissal of the notions of premoral, nonmoral, ontic evil as "jargon" coined by theologians and as "argumentative ploys." Once again, greater familiarity with his own tradition would have prevented this error. For centuries Catholic theologians have referred to certain effects of our conduct as *mala physica*, in contrast to *mala moralia*. For example, what are we to call the killing that occurs in legitimate self-defense? A moral good? Hardly. A moral evil? No, for the defense is *ex hypothesi* morally just and right. *Malum (mere) physicum* was the traditional way of describing such evils.

Contemporary theologians rightly think the word *physicum* is almost invariably misleading, as suggesting and being restricted to bodily harms and harms due to commission. The concept is far broader. It includes not only harm to reputation, etc., but even the imperfections and incompletenesses due to our limitations. Thus Janssens writes: "We call ontic evil any lack of a perfection at which we aim, any lack of fulfilment which frustrates our natural urges and makes us suffer."<sup>14</sup> The terminology "coined" by contemporary theologians, far from being a "jargon," is in substance utterly traditional.

Roach's use of disparaging terms such as "deviant moral theology" (deviant from official formulations) indicates that his primary preoccupation is conformity to official formulations. This makes it apropos to refer here to an interesting article by Karl Rahner on theologians and the magisterium.<sup>15</sup> He begins by noting that in spite of the huge outpouring

<sup>13</sup> Karl Rahner notes that in moral argument the conclusion is often *hineingesmuggelt* in the premises. That represents a begged question. In this case the conclusion so *hineingesmuggelt* is that the creative will of God is simply and in all circumstances identified with the moral will of God, or, in other words, that facticity is identified with God's moral will ("Über schlechte Argumentation in der Moralthologie," in *In libertatem vocati estis* [Rome: M. Pisani, 1977] 245-57, at 245). For further comments on bad arguments, cf. Richard A. McCormick, S. J., "Moral Argument in Christian Ethics," in Stanley Hauerwas, ed., *Remembering and Reforming: Toward a Constructive Christian Moral Theology* (Univ. of Notre Dame, forthcoming).

<sup>14</sup> Louis Janssens, "Ontic Evil and Moral Evil," *Louvain Studies* 4 (1972) 134. There is some indication that Roach's apologetic fervor has led him even to misunderstand the terminology many theologians are using. Thus he states (393) that were he attacked by a bear in the woods, he would directly kill it; for, other things being equal, "killing bears is a nonmoral good or bad." He continues: "But if I were attacked by a man in the woods, the matter becomes moral." That is not the understanding of the terminology used by contemporary theologians. If my legitimate self-defense resulted in the killing of a person, that killing would be classified as a nonmoral or ontic evil by the theologians in question.

<sup>15</sup> Karl Rahner, "Theologie und Lehramt," *Stimmen der Zeit* 198 (1980) 363-75.

of literature on the magisterium and theologians, the relationship remains very obscure ("immer noch sehr dunkel"). The magisterium presumes that its declarations are persuasive and that the task of theologians is to defend them. Clearly Rahner sees the picture as much more complex. He puts himself in the position first of a member of the Roman magisterium, then of a theologian, to say things that might be mutually helpful, even though he admits that there will always be tension and friction.

As for the magisterium, Rahner begins by insisting that the magisterium admit that it has erred, and even recently ("haben es schon oft bis in unsere Tage getan"). He points out that *Lumen gentium* left many questions unanswered. For instance, he suggests that the time of an "obsequious silence" in the face of authoritative teaching must be much briefer. After all, the present Pope is using language forbidden not long ago (Yawhist authorship). He faults the secrecy of the procedures of the Sacred Congregation for the Doctrine of the Faith. The final procedure with ten cardinals is outmoded. Beyond their seminary schooling, they knew nothing of theology ("salva omni reverentia . . . nichts von Theologie verstehen").<sup>16</sup> On the other hand, the magisterium has a right to insist on a presumption for its noninfallible but authoritative declarations. These are themes Rahner has often rehearsed.

What is most interesting is the second half of the article, where Rahner assumes the role of theologian speaking to the magisterium. After acknowledging the appropriate deference due to the magisterium, he turns to the binding force of authoritative statements. He argues that no. 25 of *Lumen gentium* (with its demand of "religious submission of mind and will") is an inadequate portrayal of the appropriate theological response. He states: "If, for example, the statements of *Lumen gentium* (no. 25) on this matter were valid without qualification, then the world-wide dissent of Catholic moral theologians against *Humanae vitae* would be a massive and global assault on the authority of the magisterium. But the fact that the magisterium tolerates this assault shows that the norm of *Lumen gentium* (and many other similar assertions of the past one hundred years) does not express in sufficiently nuanced form a legitimate praxis

<sup>16</sup> Leo Scheffczyk cites this phrase of Rahner and admits that it suggests that the contributions of theologians are necessary even at the highest level. But he argues that the problem is not exhausted by such a suggestion. There is great pluralism in theology itself and eventually the magisterium must make a decision. Furthermore, Scheffczyk believes Rahner has misconceived the character of an authentic faith-judgment of the magisterium. It roots not in theological erudition but in the charism of the magisterium. I believe Scheffczyk has misunderstood the point of Rahner's objection. It is not that theology determines the magisterium. It seems to me to be the much more modest and practical point that, as things are, too often little or no account is taken of theological research in the official statements of the magisterium (cf. Leo Scheffczyk, "Das Verhältnis von apostolischen Lehramt und wissenschaftlicher Theologie," *Internationale katholische Zeitschrift* 9 [1980] 412-24, at 422-23).

of the relationship between the magisterium and theologians."<sup>17</sup> He continues: "What are contemporary moral theologians to make of Roman declarations on sexual morality that they regard as too unnuanced? Are they to remain silent, or is it their task to dissent, to give a more nuanced interpretation?" Rahner is unhesitating in his response: "I believe that the theologian, after mature reflection, has the right, and many times the duty, to speak out against ("widersprechen") a teaching of the magisterium and to support his dissent."<sup>18</sup> Only so does the Church make doctrinal progress. It is possible for the magisterium to proceed "unobjectively and unjustly" in its administrative constraints on theologians, to use evil means to its ends. Of other theologians Rahner allows: "I must say, however, that the number of cases of unjustified restraint that I have experienced in my life is rather large." He concludes by noting that explicit Roman admission of these perspectives would not lessen the authority of the magisterium but enhance it.

Here we have the Church's foremost theologian, a conservative in the authentic sense of that term, saying things that root deeply in the history and growth of the Catholic community. Is it not regrettable that the Church has not found, and seems incapable of finding, a way of dealing constructively with the type of dissent alluded to by Rahner? Instead of being used as an indispensable and positive contribution to the "development of the Church's understanding of her inheritance" (Bishop B. C. Butler's phrase), to the teaching-learning *process* of the Church, it is viewed with suspicion and fear. It is this fact—and the factors behind it—more than anything else that has prevented the Church from exercising the type of prophetic role expected of it in several domains of contemporary life. I would exhort my esteemed colleague Roach (and others who share his perspectives, perspectives I consider one-sidedly juridical, even preconiliar) to ponder Rahner's conciliatory but forthright essay.

If one desires to get a truly balanced and fair outline of some of the issues at stake in this discussion, I recommend Lisa Cahill's excellent essay in the same journal.<sup>19</sup> Cahill has befriended both Ramsey and this author with accurate analysis and tightly reasoned criticism.

The axiom that a good end does not justify an evil means has been treated frequently in the literature, most recently in a careful study by Bruno Schüller.<sup>20</sup> Schüller first notes that the term "evil" can mean two

<sup>17</sup> Rahner, "Theologie und Lehramt" 373.

<sup>18</sup> Ibid. 374.

<sup>19</sup> Lisa Sowle Cahill, "Within Shouting Distance: Paul Ramsey and Richard McCormick on Method," *Journal of Medicine and Philosophy* 4 (1979) 398–417.

<sup>20</sup> Bruno Schüller, S.J., "La moralité des moyens," *Recherches de science religieuse* 68 (1980) 205–24.

things: (1) moral evil (*malum morale, peccatum*); (2) nonmoral evil (*malum naturae sive physicum*), e.g., sickness, poverty, error. If it is taken in the first sense, then the axiom positively stated (“a good end justifies a morally evil means”) is a formal contradiction; for to say that an action is morally evil is to say that it cannot be justified morally. As Schüller notes, “How is it possible that a good end can morally justify something which by definition excludes all moral justification?” St. Paul had been falsely accused by some Jews of teaching that we ought to sin (moral evil) in order that God’s mercy might be more gloriously manifested. The falsity of such teaching is clear when we consider the indivisible nature of moral good. One cannot, e.g., simultaneously stand *for* justice and *against* fidelity.<sup>21</sup> “As a result, the person who takes moral good in any of its manifestations as his/her end, by this very fact eliminates moral evil from the domain of that which presents itself as the object of free will and choice.” If one decides to do a morally evil action, one can do so only by ceasing to seek moral good as one’s goal.

If, however, “evil means” refers to nonmoral evil, then clearly the end can justify causing such means. For instance, a physician may cause pain to a patient when this is inseparable from truly cognitive measures. This is evident whether one reasons teleologically or deontologically. Schüller, therefore, wonders why theologians with deontological tendencies have the impression that teleologists hold that a good end justifies a *morally* evil means. The only answer is that many means viewed by deontologists as morally evil are not viewed as morally evil by teleologists.<sup>22</sup>

Schüller uses contraception as his example. Catholic theologians of a teleological bent indeed hold that this (nonmoral evil) can be justified by the end. When others (e.g., Roach) conclude from this that they hold that a good end justifies a morally evil means, “they reveal only their incapacity to view the matter even hypothetically from the point of view of a teleologist.” For instance, all Catholic theologians defend the moral rightness of blood transfusions. Jehovah’s Witnesses see them as morally evil. “Does that mean that Catholic theology must allow itself to be accused by Jehovah’s Witnesses of holding that a good end . . . justifies a morally evil means? Of course not.”

Schüller rightly concludes that whatever one’s normative method may be, it should not be used to discredit others by sinister moral insinuations.

Joseph Fuchs, S.J., examines moral norms in the context of the “sin of the world” (Jn 1:29).<sup>23</sup> He indicates three ways in which this “sin of the

<sup>21</sup> Cf. the excellent study of John P. Langan, S.J., “Augustine on the Unity and Interconnection of the Virtues,” *Harvard Theological Review* 72 (1979) 81-95.

<sup>22</sup> I use these terms reluctantly and merely as space savers. They are patient of so many different renderings as to be misleading.

<sup>23</sup> Joseph Fuchs, S.J., “The ‘Sin of the World’ and Normative Morality,” *Gregorianum* 61 (1981) 51-76.



world" is relevant to the formulation of objective moral norms. First, he notes the different stages in salvation history, especially the present stage and the stage of eschatological glory. In the present stage we are burdened with concupiscence. Therefore there are norms and institutions possible and necessary only because of the actual situation of persons. An example would be private property. In the view of many medieval theologians, division of goods is rooted in our egoism and concupiscence. Catholic theologians are increasingly aware of the "sinful character" of some systems and institutions.

Second, there are what Fuchs calls "objectifications of concupiscence." These are sin-conditioned situations which may require an "adapted" form of human response. Some examples which have been given are: a class hugely dishonest in examinations may modify the demands of honesty on an individual; certain business situations where what is contracted for and what is done need not exactly correspond; certain homosexual relationships resembling marriage; falsehood in unjustly imposed situations.

Fuchs is very careful here. First, he does not specify that any of these situations must be seen as an objectification of sin, e.g., that true homosexuality is a sin-conditioned attraction. He merely asserts that other theologians have approached some of these situations as sin-conditioned and responded with a theology of compromise (e.g., Charles Curran). Second, he distinguishes carefully between a sin-conditioned situation and an objective conflict of values due to our finitude or historical circumstances. The two situations are parallel but different, and the compromise called for in each is different. The compromise that results from the objectified results of sin contains some of these objectified results. This is not the case with compromise that roots in a conflict of values.

Fuchs believes that it is really not possible in practice to make a neat distinction between the two types of compromise. Nor is it necessary; for the "evils or disvalues which are brought about as part of a 'difficult' situation—in spite of their being possibly conditioned by 'sin'—are not moral evils, but are relevant to moral judgment as *pre-moral* evils or disvalues."<sup>24</sup>

The third way the "sin of the world" can influence norms is through residual concupiscence in the individual. The weakness of an individual can be such that fulfilment of a moral demand is impossible. Fuchs is somewhat sceptical about the way certain theologians present this matter, above all because they see the resultant disorders in our conduct as moral evils. This implies the existence of two moral orders, one that is feasible

<sup>24</sup> Ibid. 60.

and one that is ideal. Fuchs rejects this. He prefers to call disorders in our conduct due to weakness “pre-moral” evils, because they can at times be justified.

With regard to what he calls “difficult” situations, Fuchs summarizes as follows:

Such values therefore do not *absolutely* have to be realized in individual situations. As values which are part of the well-being of the human world, they are not moral values (which always have to be implemented) but pre-moral values, which have to be implemented as far as possible according to the context. Only values which determine the *person* as such—and not merely the *well-being* of the person—are of themselves moral values. Therefore the compromise solution does not allow the simultaneous realization of the morally right and the morally wrong, but only of the morally right, which, however, contains both nonmoral right (good/value) and nonmoral wrong (evil/disvalue).<sup>25</sup>

Catholic theology has always admitted the existence of conflict situations and it has faced them with a set of exception-making categories (e.g., rule of double effect, material-formal cooperation, etc.). But only relatively recently has it begun to see the source of some conflicts in our sinful situation. In the past, at least some of these conflicts were approached exclusively through the distinction objective-subjective. Thus, in the face of human weakness, some conduct was seen as objectively wrong but subjectively guiltless. Fuchs’s essay, without denying the usefulness of this distinction, is an attempt to move beyond it, at least in some cases. He is aware of the dangers in this approach. He notes that “there is a constant danger of using genuinely ‘sin-conditioned’ situations as a facile excuse for indulging in compromise.”

One comment. Fuchs recognizes the difference in a compromise that is occasioned by our sinful situation and one with rootage in the objective incompatibility of pre-moral goods. He believes the two cannot be easily distinguished in practice. I think that is correct. But I believe it is important to continue to try to do so. Why? Because Fuchs’s use of the terms “pre-moral” (“nonmoral”) to analyze conflicts due to our sin-conditioned situation represents an advance, an extension. I believe it is a legitimate one. But the terms are already so badly misunderstood, so frequently distorted, so firmly resisted in some quarters that the analytic gains achieved by them could be easily threatened unless we continue to strive to distinguish as clearly as possible the two types of compromise and to tighten our analysis of each.

In an excellent piece of moral analysis, Lisa Cahill has done just that.<sup>26</sup>

<sup>25</sup> Ibid. 73–74.

<sup>26</sup> Lisa Sowle Cahill, “Moral Methodology: A Case Study,” *Chicago Studies* 19 (1980) 171–87.

She uses homosexuality as a case study for highlighting the multiple sources (Scripture on homosexuality, related texts, general biblical themes, descriptive accounts of human experience [e.g., empirical sciences], normative accounts) that must be integrated to achieve a truly Christian outlook. Cahill sees the need of maintaining a balance among the dialectical reference points. Their complexity is respected only by a very nuanced judgment. In her judgment, these sources “point unavoidably toward a heterosexual norm for human sexuality. This norm does not necessarily exclude exceptional applications, in cases where human and Christian values even more important than those protected by the norm are at stake, and when their realization cannot be accomplished without overriding the specific sexual norm.”<sup>27</sup>

For Cahill, a genuinely Christian perspective (which sees heterosexuality as normative) will perceive in the homosexual condition the suffering, tragedy, and irreconcilable conflict “which are part of historical existence after the fact of sin, as part of the ‘brokenness’ in which all creation shares.” As for material (genital) acts, they are to be judged by their relationship to moral values (honesty, love, service, self-denial, etc.). “If because of conflictual situations, the material acts [heterosexual] usually conducive to and expressive of moral values do *not* actualize them or in fact inhibit them, then these acts are not to be commended in the situation.” Of homosexual actions in such “broken” situations, Cahill says that they are “non-normative but objectively justifiable in the exceptional situation.”

She concludes by noting that another way of stating her conclusion is that homosexual acts are evil (as generally to be avoided because not conducive to moral value) but that “they are ‘pre-moral’ evils in that their sheer presence does not *necessarily* make the total act or relation of which they are a part ‘morally’ evil or sinful.”<sup>28</sup> There can be sufficient reason for causing such pre-moral evil. In this Cahill is at one with Fuchs.

Brendan Soane has raised difficulties with these conclusions in his commentary on a report of an Anglican Working Party (of the Board of Social Responsibility) published in 1979.<sup>29</sup> He uses Charles Curran as his example. Curran had argued that, although heterosexual acts are the ideal, still homosexual acts of the invert can be morally justified. Curran based his conclusion on two arguments. First, *agere sequitur esse*. But the invert has a different psychic structure (*esse*), a different sexual humanity. Second, we must distinguish between two states of natural law, before the Fall and after. This secondary (after the Fall) natural law is shaped by the presence of sin in the world. Thus the principles of natural law must be applied differently in different situations of human

<sup>27</sup> Ibid. 183.

<sup>28</sup> Ibid. 186.

<sup>29</sup> Brendan Soane, “Homosexual Relationships,” *Clergy Review* 65 (1980) 288–94.

history. Since the homosexual condition is a result of sin in the world, the homosexual acts of inverts in loving, permanent relationships are justified "by the principle of proportionate good in a situation affected by sin" (*sic* Soane reporting Curran).

Soane questions both arguments. As for the first, the argument would apply also to alcoholics, compulsive gamblers, kleptomaniacs, etc. Therefore the being we are called to follow (*agere sequitur esse*) "is the human being we are called to become, not the imperfect being we already are." Second, the examples Curran had given of compromise in our postlapsarian world (self-defense, capital punishment, material co-operation, toleration of evils in society, etc.) differ from homosexuality. They are activities necessary if life is to go on at all. Sexual activity is not necessary in the same way. Instead Soane proposes that the problem is better met "by the type of pastoral solution which maintains that homosexual relationships in which there is a physical expression of erotic love are disordered, but may on occasions be the best that is possible in the circumstances as a temporary expedient."

Perhaps Fuchs-Cahill-Curran might respond by saying that the activities and conditions cited by Soane (alcoholism, compulsive gambling, kleptomania) are harmful to the persons involved and to others. In this they differ from expressed homosexuality.

But here we must put a question to Soane. He has said "disordered . . . but the best that is possible in the circumstances." How does that differ from Fuchs-Cahill-Curran? Not at all, as far as I can see, providing Soane understands "disorder" as something other than *moral* disorder.<sup>30</sup> If he does, this pastoral position seems to be exactly that of Fuchs-Cahill-Curran, who insist that the heterosexual, permanent married state is normative for full sexual expression and that therefore deviations from it involve premoral evil. If Soane's "best that is possible in the circumstances" means "not morally wrong," his position is exactly that of the three authors mentioned, as I understand them.

Much of the discussion on norms in the Catholic community was occasioned by Peter Knauer's earlier study.<sup>31</sup> Now, fifteen years later, he returns to the discussion in a very long study.<sup>32</sup> Knauer states at the outset that his perspective is really a middle ground between two positions (deontological, teleological), a synthesis that resolves the polarity.

<sup>30</sup> Fuchs discusses this (n. 23 above) on pp. 63-67 and notes that the term "désordre" in the French bishops' pastoral on *Humanae vitae* "should have been understood in a nonmoral sense." In a similar vein, cf. Edward Vacek, "A Christian Homosexuality?" *Commonweal* 107 (1980) 681-84.

<sup>31</sup> Peter Knauer, S.J., "La détermination du bien et du mal moral par le principe du double effet," *Nouvelle revue théologique* 87 (1965) 356-76.

<sup>32</sup> Peter Knauer, S.J., "Fundamentelethik: Teleologische als deontologische Normenbe-gründung," *Theologie und Philosophie* 55 (1980) 321-60.

We are concerned with determining the moral right and wrong. Traditionally, the principle of the double effect claimed to be able to do this for instances of conflict. Knauer rejects the traditional four-conditioned formulation as a *petitio principii* (it supposes the answer to the question it proposes to answer); for one of its conditions is that the action in itself must not be morally evil.

Knauer next turns to the Thomistic formulation of this principle (2-2, q. 64, a. 7, c) in the analysis of defense against an unjust aggressor. He interprets Thomas as holding that the evil effect (death of the aggressor) is unintended (*praeter intentionem*) when it is necessary to the self-defense. Where it is unnecessary, then such an evil effect is not *praeter intentionem*. In summary: the killing of an aggressor is morally evil when it is intended. It is intended when it is unnecessary to the self-defense. Or, as Thomas says, "Potest tamen aliquis actus ex bona intentione proveniens illicitus reddi, si non sit proportionatus fini."

From this Knauer concludes that the moral rightness or wrongness of any action is gathered from a single criterion: whether the act is proportioned to its end. In the example of self-defense, the end of the act is self-defense. It is the *ratio boni* of the action. "As long as the action is proportioned to this *ratio boni*, then the *ratio boni* occupies the entire field of the 'intended' and effects the moral rightness of the conduct."

What does it mean to say that the action must be "proportionate" to the end? Knauer rejects an understanding of the term which would suppose a weighing of goods, the ethical duty being to choose the "higher." This not only leads to rigorism; it also supposes a criterion for measuring the unmeasurable. The choice, he urges, is not between different goods or values, but *in what way* to seek the good one chooses. If the action involving harm will "generally and in the long run" ("auf die Dauer und im ganzen," a phrase repeated by Knauer over and over again) undermine the very good being sought here and now, it is morally wrong. If not, it is morally right.

Knauer says that this distinguishes his understanding of proportion from those demanding a weighing of different goods against each other.<sup>33</sup> "In respect to the *one and same* value, we ask whether one does justice to it in the long run and generally. . . ." Thus, in the instance of self-defense, the death of the aggressor, to be morally right, must be grounded in the overall good of life "in the long run and generally." The good sought in the action must not be eventually undermined. One who seeks

<sup>33</sup> Knauer admits that other values can indeed be considered, not precisely because they are "higher" values than the value sought, but "because they are the condition of its realization" (336). In a similar vein, I have spoken of the "association of goods." There are any number of ways of interpreting a "weighing of different goods" without measuring the incommensurable.

wealth through a bank robbery undermines wealth itself. In other words, the action must not be counterproductive. It is this counterproductivity "in general and in the long run" that makes an action morally wrong.

So far I see nothing different in Knauer's study from his 1965 analysis. That analysis had led him to assert that, of the four conditions traditionally stated for the double effect, only the fourth (*ratio proportionata*) remains.<sup>34</sup> The rest of his study is a systematic application of this notion to several traditional concepts.

The first area is that of the notion of affirmative and negative precepts. Affirmative precepts ("Thou shalt protect life") bind *semper sed non pro semper*, as the scholastic saying goes. Negative precepts ("Thou shalt not murder") bind *semper et pro semper*. One can be excused from the former, not the latter. Traditionally, affirmative precepts have been seen as weaker and less fundamental. Knauer denies this. Negative precepts are merely the application of affirmative ones; that is, they state the cases where the conditions of release from affirmative precepts are not fulfilled.

The next area of application is the distinction between direct and indirect. Knauer insists that the evils caused and permitted in our actions (killing, falsehood, taking another's property) must be viewed as premoral evils. Sometimes they can be justified, sc., where there is a *ratio proportionata*. When this is lacking, the evils caused or permitted are "eo ipso 'directly' willed" in the ethical sense. Therefore we must distinguish clearly between direct in the psychological sense and the ethical sense. Knauer applies this to capital punishment. Such punishment can be justified only if necessary for the protection of life itself. Where it is so necessary, it is indirect in the ethical sense.<sup>35</sup>

Knauer next turns to the traditional notions of object, end, and circumstances as fonts of morality. Traditionally, the object of an act (*finis operis*) was said to be that end to which the act by its very nature is ordained. The end (*finis operantis*) was a freely chosen purpose of the agent beyond its object. Knauer rejects this undue separation and sees the purpose of the act as really constitutive of its object (*finis operis*). We cannot give an ethical qualification or meaning to an ontic or pre-ethical notion such as "taking another's property." More is required. Thus the taking of another's property without commensurate reason has as object "the harming of a fellow man through his property" and is theft. If, however, taking another's property is the only way of preserving one's

<sup>34</sup> Cf. also Jean-Marie Aubert, "Morale et casuistique," *Recherches de science religieuse* 68 (1980) 167-204. Aubert rightly sees this in other studies also: "C'est d'ailleurs dans cette direction que s'orientent bien des recherches actuelles, y voyant l'unique condition essentielle de la règle du double effet" (201).

<sup>35</sup> Cf. the excellent "Statement on Capital Punishment" of the American bishops in *Origins* 10 (1980) 373-77.

life, "then the *finis operis* is totally different, namely, saving one's life."<sup>36</sup>

Another application Knauer makes is to the axiom that "a good end does not justify an evil means." The axiom supposes, as Schüller had noted, that the means is *morally* evil. "However, when the means to achieve an end consists in the causing or permitting of a harm . . . then the means can be morally evil only in the case where the *ratio boni* of the entire action constitutes no commensurate good and therefore the *finis operis* of the whole action is morally evil."<sup>37</sup> One cannot look just at the physical structure of an act and pronounce it *morally* evil. One of Knauer's examples: masturbation for sperm-testing in a sterile marriage.

Similarly, Knauer insists that an action is *contra naturam* only when the harm caused is counterproductive in the sense explained.

Knauer concludes by noting several characteristics of his proposed grounding of moral norms. First, it is pragmatic and looks to the future. For instance, as for the future, we may use medicines with noxious side effects if these are the only means for cure available. When another cure without such effects is available, use of the first becomes morally wrong. Every ontic value makes a claim on us that we promote it and not endanger it without commensurate reason. Hence there is a future-looking thrust away from the harms inseparably a part of our actions.

As for pragmatism, Knauer believes his approach makes an essential place for the empirical sciences. Moral norms can be developed only through trial and error. For instance, it is possible that placing abortion on the penal code would not really reduce abortions at all. Other measures might be more effective. Only experience can tell us that. We learn what is "in general and in the long run" counterproductive through experience.

Second, Knauer grants that his theory has in common with utilitarianism the notion that in every morally right action a utility or goal is sought. It differs, however, because it insists that this goal must not be sought in overall counterproductive (contradictory) ways. This is very close to the way Louis Janssens has formulated the matter.

Third, his theory is a middle path between opposing theories known as deontological and teleological. While it takes consequences into account, still the qualifier "in the long run and in general" distinguishes his approach from standard consequentialism. Thus certain actions are wrong in themselves (counterproductive ones).

I have given here only the main outlines of Knauer's study. Some years ago Germain Grisez stated of Knauer that he "is carrying through a revolution in principle while pretending only a clarification of traditional

<sup>36</sup> Here Knauer relies on Thomas' distinction between *species naturae* and *species moris* (1-2, q. 1, a. 3, ad 3).

<sup>37</sup> Knauer 348.

ideas."<sup>38</sup> I believe that is true—and Knauer explicitly admits it in this study. The only question, then, is the following: Is the revolution justified? Is it solidly grounded? Grisez says no. His key objection is that Knauer "cannot exclude a fanatical dedication to any particular genuine value." Thus a mad scientist would, Grisez argues, find support in Knauer's theory. "He could defend any sort of human experimentation, no matter how horrible its effects on the subjects, provided the experimental plan promoted the attainment of truth—on the whole and in the long run."

Is Knauer vulnerable to this objection? I think not. He could answer (as Grisez acknowledges) that the fanatical investigator would really damage the cause of truth "in general and in the long run" in the very means used. And if that were the case, Knauer would say the action is morally evil, and indeed "in itself." If this is the case, the basic question between these two scholars seems to me to be epistemological: How do we know that this is the case? Do we simply intuit it? Or is that conclusion (about counterproductivity) learned from experience by a kind of trial and error? Some statements of Knauer's lead me to believe he would answer in the latter way.

My own tentative view is that the judgment of counterproductivity is probably made in different ways depending on the issues at stake. In some cases we know from experience that certain actions are counterproductive. For instance, we know that private property is essential to the overall well-being of persons, hence that robbery is counterproductive. We know that those who live by the sword die by the sword, hence that violence is most often counterproductive. We know that permanent marriage offers unsurpassable opportunities for human fulfilment, hence that actions that undermine its stability and permanence (adultery) are counterproductive.<sup>39</sup> I think we are getting very close to this in our judgment of war. We are all losers, as experience has so frequently taught us. Experience itself provides a sound basis for such judgments.

There is a second category of actions where we sense very strongly (sense of profanation, outrage, intuition) that the actions are counterproductive. Indeed, so strong is our sense of revulsion that we are grateful that we have not as yet had the experience. In this category I would put the example adduced by Grisez.

Third, there are actions or procedures where we know very little and must proceed to normative statements gradually by trial and error. This would be true of our moral statements about DNA recombinant research, and on many technological matters where dangers and/or abuses are

<sup>38</sup> Germain Grisez, *Abortion: The Myths, the Realities, the Arguments* (New York: Corpus, 1966) 331.

<sup>39</sup> Some of these judgments are confirmed from other sources, e.g., Sacred Scripture.



possible but where no experiential history is available to instruct us.

Grisez's objection to Knauer leads me to ask: Could it be that some of the disagreements being experienced in the area of moral norms are traceable to unexamined suppositions and disagreements about how clear and certain we can or ought to be on all moral matters? Perhaps the mechanizing and quantifying of moral judgments that occurred during several centuries of high casuistry has led us to expect a type of certainty in some moral judgments that is beyond realistic expectation. I leave that to my colleagues and to further discussion.

#### LITURGY, CHARACTER, AND MORALITY

Moral theology concerns itself with both character formation and decision-making. Perhaps attention has fallen somewhat one-sidedly on the latter to the neglect of the former.<sup>40</sup> Here a brief roundup will have to suffice to point up recent efforts to redress this imbalance.

Jeremy Miller, O.P., uses the book of Bruce Birch and Larry Rasmussen<sup>41</sup> to underline the importance of the Church (as community) for Christian ethics.<sup>42</sup> The Church influences character in three ways: as shaper of moral identity, bearer of moral tradition, community of moral deliberation. For instance, where moral identity is concerned, it is clear that the Church's actions (liturgy, preaching) function as socializing factors. More attention to character formation would tie liturgy more closely with moral theology.

Miller suggests—rightly, I believe—that Vatican II's notion of the Church as People of God would provide a Christian anthropology that would put appropriate emphasis on "the inner discerning power the Christian can claim in living out the demands of discipleship." This would mean also that a more prominent place is required for principles of dissent. Furthermore, an emphasis on the theology of grace would mean a tighter union of morality and spirituality.

The directional emphasis suggested by Miller seems certainly justified. We might say that we have been putting a heavy emphasis on the pair right-wrong, to the neglect of those considerations (virtue, formation, character) involved in the pair good-bad. When appropriate adjustment is made, we will be much more concerned with factors influencing character, especially liturgy and the sources of Christian spirituality. A concrete but not insignificant gesture-of-resolve in this direction might

<sup>40</sup> For an interesting article calling attention to the one-sidedness of either of these contrasts, cf. Thomas R. Ulschafer, S.S., "Jacques Maritain as a "Mixed Deontological Ethicist of Agency," *Modern Schoolman* 57 (1980) 199-211.

<sup>41</sup> *Bible and Ethics in Christian Life* (Minneapolis: Augsburg, 1976).

<sup>42</sup> Jeremy Miller, O.P., "Ethics within an Ecclesial Context," *Angelicum* 57 (1980) 32-44.

be adoption of the usage "moral-spiritual life."

Enda McDonagh notes the emerging sense of the need to integrate the liturgical life of the Church, personal prayer, and "Christian living in the world (formally treated in moral theology)."<sup>43</sup> His study explores, therefore, the relationship between liturgy and morality.

He notes and develops several links. The first is that of "mystical" experience (the experience of God). In liturgy—which is community remembering—we recall in celebration the life, death, and resurrection of Jesus Christ in such a way that we appropriate more deeply our own present identity. In doing so, we enjoy the present experience of God. "In Christian liturgy history is the way to mystery, the human activity of celebration the way to mystical experience." Thus in liturgy we have celebration, remembering, identity, and mystical experience.<sup>44</sup>

These same four elements occur in the moral life. In moral activity we celebrate others, achieve fuller self-identification and self-transcendence. Finally, "moral response to a human other has the potential of encounter with the divine other." Both liturgy and moral action involve us, through temporalities, in opening to the experience of God as Father of Jesus Christ (McDonagh's so-called "mystical" element).

Second, McDonagh states that by remembering and retelling the story and events of Jesus Christ, the liturgy enters into the essential moral education of Christians. The biblical narratives and their liturgical commentary are intended to reveal the basic meaning and direction of Christian living as discipleship. In his development of this point, McDonagh scores a widespread rationalism in moral theology, as if the "mystical" encounter promoted by liturgy and discernible in moral activity has "no bearing on the analysis and resolution of concrete problems." Rather, the recall of God's relationship with humankind and its realization in Jesus "*illuminates in endless ways* the moral dilemmas one faces from fidelity to a marriage partner to sharing the goods of the earth."<sup>45</sup> Here I wish McDonagh would have been more specific. Concretely, what form does such illumination take? Does it simply reconfirm what is in principle knowable by human insight? Or does it provide a broader, more satisfying context for analyzing concrete problems? Or does it result in substantially different judgments? These are not insignificant questions; they are constantly put to me by my colleagues in moral philosophy. An

<sup>43</sup> Enda McDonagh, "Liturgy: Expression or Source for Christian Ethics?" in Stanley Hauerwas, ed., *Remembering and Reforming: Toward a Constructive Christian Moral Theology* (Univ. of Notre Dame, forthcoming).

<sup>44</sup> For a study on how this happens in terms of models of consciousness, cf. Donald E. Miller, "Worship and Moral Reflection: A Phenomenological Analysis," *Anglican Theological Review* 62 (1980) 307-20.

<sup>45</sup> Emphasis added.

answer is not satisfactory until it deals analytically with a concrete moral problem, and in terms other than the merely parenetic. I shall return to this below.

McDonagh ends his stimulating essay by attending to a third linkage between liturgy and morality, that of liturgy as source of structure and direction for the communities in which we lead our moral lives. Here he very helpfully outlines how liturgy acts as a corrective for dualistic attitudes toward the body and pleasure, toward the earth and our care of it, toward individualistic or collectivistic tendencies, toward triumphalistic assessments of our moral achievements. McDonagh began his study by expressing the hope that he could "carry a little further" the task of relating liturgy and morality. He has done far more than that.

An entire issue of the *Journal of Religious Ethics* is devoted to liturgy and ethics. Just a few items will be lifted out here. Paul Ramsey and D. E. Saliers addressed the relationship of liturgy and ethics at the January 1979 meeting of the Society of Christian Ethics.<sup>46</sup> Ramsey insists that the engendering event gives shape to the engendered liturgical response ("a formed reference to divine events"). But this is true as well for Christian morality and Christian faith. Thus Ramsey refers to the *lex orandi, lex credendi, lex bene operandi* as having the same ordering principle. Between these three responses (*orare, credere, operari*) there is both parity (no one deserves a priority over the other) and reciprocity. In Christian ethics, e.g., the notion of agape must be continually nourished by liturgy and the entire biblical narrative; otherwise it loses its meaning and collapses into a pale philosophical concept.

Ramsey then applies in illuminating fashion the relation of liturgy and morality to two practical instances: second marriages and abortion. In the Eastern Orthodox tradition, theology and ethics are contained, subsumed, and conveyed by the liturgy. The liturgy for a second marriage (after a failed first) is straightforwardly penitential in character and is a way of making a theological statement about marriage.

Next Ramsey turns to abortion. He shows, amply and correctly, the shape of biblical thought on abortion. "And it is the shape of Christian liturgies so far as the Bible has not been excluded from them." Anyone who believes that the Bible says nothing definitive to the abortion question Ramsey believes has not listened to biblical evidence or has responded: "Speak, Lord, and thy servant will think it over." Ramsey urges: "Far more than any argument, it was surely the power of the Nativity Stories and their place in ritual and celebration and song that tempered the conscience of the West to its audacious effort to wipe out

<sup>46</sup> Paul Ramsey, "Liturgy and Ethics," *Journal of Religious Ethics* 7 (1979) 139-71; D. E. Saliers, "Liturgy and Ethics: Some New Beginnings," *ibid.* 173-89.

the practice of abortion and infanticide.”<sup>47</sup> So Ramsey is arguing that liturgy affects morality not merely by transforming the moral agent and his/her perspectives and character in a general way (which it does), but also by presenting substantial concrete moral content. This is vintage Ramsey—which means that it is an entertaining, enlightening, and provocative piece.

In rather marked contrast to Ramsey, Donald E. Saliers argues that the relations between liturgy and ethics are most adequately formulated by specifying how certain affections and virtues are formed and expressed in liturgy. By this he does not mean an instrumentalist understanding of worship, where liturgy is viewed as a means to moral exhortation or motivation. Rather, good liturgy, as a rehearsal of narratives, is the imaginal framework of encounter with God in Christ and a continual re-embedding of persons into the perspectives of God’s actions toward us and the world. As such, it molds our vision and moral character.

Yale’s Margaret Farley, in a thoughtful response to these studies, grants that Ramsey and Saliers have made important points.<sup>48</sup> But they do not “raise the most critical issues confronting us today in the worshipping life of the Church.” Many Christians experience liturgy as deadening, impoverishing, and burdensome. Farley identifies three causes of this. First, liturgical structures too often incorporate the divisions of class, race, and sex that violate our deepest Christian convictions about the Church as *koinonia*. Second, there is a disparity between word and reality in worship. *Diakonia* (service) after the example of Jesus is shaped by the model of servant; yet the reality too often is a pattern of power and domination. Furthermore, there are drastically different views of what *diakonia* must mean in our contemporary world. Until these differences and tensions are resolved, they will continue to impact deleteriously on the worshipping community.

Finally, there is the contemporary experience of the death of symbols. Since these are utterly essential to liturgy, it is no wonder that liturgy fails to be for so many a meaningful rehearsal of divine realities.

William Everett notes that Ramsey and Saliers have focused on different aspects of the Word central to faithful life (Saliers on a greater personal openness to God’s Word and character formation, Ramsey on the right orders set forth in Scripture).<sup>49</sup> But neither copes successfully with the realities of social pluralism. Social pluralism refers to the fact that any worshipping person is a member of associations, institutions,

<sup>47</sup> Ramsey, “Liturgy and Ethics” 162.

<sup>48</sup> Margaret A. Farley, “Beyond the Formal Principle: A Reply to Ramsey and Saliers,” *Journal of Religious Ethics* 7 (1979) 191–202.

<sup>49</sup> William Everett, “Liturgy and Ethics: A Response to Saliers and Ramsey,” *ibid.* 203–14.

communities whose interests may compete with, complement, or ignore one another.

In Saliers' approach, Everett sees an accommodation to social pluralism that is, if I understand him correctly, excessively individualistic, even a kind of escapism. Ramsey is much readier, through his emphasis on right structures, to challenge easy social pluralism, but Everett finds the approach a form of emerging sectarianism (the distinction between holy community and profane society). He feels that the impetus toward right social order and right character has to be reworked in our time to lead to critical engagement of social and cultural pluralism.

Everett proposes the notion of "public" as the vehicle of this reworking. "The public is a pattern of ways for acting about important matters." Liturgy disposes us to become "public beings." "Not only do we rehearse the stories of past action, we project new scenarios to test the judgments of the public realm." The article is stimulating, but even after several readings, the notion of publicity remains obscure to me.

The volume of the *Journal of Religious Ethics* ends with a brief but thoughtful essay by Philip Rossi, S.J.<sup>50</sup> Rossi's thesis is that the character of our moral agency as Christians has its most fundamental formative ground in Christian public worship. This is so because it is in liturgy that we are exposed to the narratives that shape our lives. Rossi contrasts the contours of this shaping (God as the Lord of life) with those dominant in our culture (the agent as solitary, morally autonomous individual).

It seems that Rossi's presentation is what we might call the "ideal." That is, the character of our moral agency ought to be fundamentally formed by exposure to biblical narratives in liturgy. But whether that is actually achieved by contemporary liturgy is another question, as Farley has pointed out so clearly.

Since it is liturgy, especially through remembering and rehearsal of narrative accounts, that shapes our moral consciousness and character, it is important that the relation of the biblical narratives to moral life be accurately understood. Two recent studies have focused on this question.

Stanley Hauerwas examines the moral authority of Scripture.<sup>51</sup> He sees it ultimately as one about the kind of community the Church must be in order to make the narratives of Scripture central to its life. The Church's life depends on faithful remembering of God's care for creation through the vocation of Israel and Jesus. Scripture is the vehicle of that remembering. Its dominant mode is narrative. Thus the Bible is not a logical unit or finished whole; indeed, some of its prescriptions strike us as

<sup>50</sup> Philip J. Rossi, S.J., "Narrative, Worship and Ethics: Empowering Images for the Shape of Christian Moral Life," *ibid.* 239-248.

<sup>51</sup> Stanley Hauerwas, "The Moral Authority of Scripture: The Politics and Ethics of Remembering," forthcoming as in n. 43 above.

irrelevant, even perverse. Only within the narrative context can we place the explicitly moral sections of Scripture (exhortations, commandments).

Hauerwas argues that those who see Scripture as by and large irrelevant to ethics have mistakenly seen ethics as primarily a matter of decisions. It is not. It also concerns the character of individuals and of a community, "what kind of community we must be to be faithful to Yahweh and his purposes for us." Once we see this, we see that the narratives of Scripture are as important as the commandments.

James Childress believes that interpretations such as that of Hauerwas overemphasize some features of the moral life (vision and perspectives, images and metaphors, stories, loyalty and character) to the detriment of the role of Scripture in moral justification.<sup>52</sup> These interpretations highlight influence rather than reflection. Actually, Childress argues that aesthetic interpretations (images, metaphors, stories) aid us to recognize obligations, but justification of them comes through appeal to principles and rules. Childress concludes his brief essay by insisting that there is a variety of uses of Scripture as revealed morality. "To reduce Scripture's moral requirements to any single category is to distort both morality and Scripture." Clearly, Childress feels that the restriction of Scripture to formative narrative is such a reduction.<sup>53</sup>

The literature on liturgy and ethics is relatively young and sparse, but it is extremely interesting. Here I want to raise one problem that was hinted at by Childress. It is clear that moral theology has a great deal to do with character and community formation, and that the biblical stories through liturgy play an essential role here. It is also clear that moral theology has a great deal to do with moral deliberation and justification. But what is the relationship of these two? How do the biblical narratives as formative relate to justification in moral discourse? It is clear, of course, that good people will generally make right decisions, as Aristotle noted. But that is not sufficient as an answer, for moral theology seeks a more systematic and reflexive understanding.

There are any number of possible answers to this question, no one of which is adequate or exclusive of others. The problem I am raising here is indicated in two distinctive emerging tendencies in recent literature. On the one hand, those who emphasize vision and character (and the biblical narratives that impact on them) do not often engage in moral justification with regard to concrete moral problems. When they do, the moral "justification" (so it seems to some observers) is either not a true justification or not an original one (sc., it is knowable by other than

<sup>52</sup> James Childress, "Scripture and Christian Ethics," *Interpretation* 34 (1980) 371-80.

<sup>53</sup> The rest of the issue of *JRE* contains interesting articles on concrete aspects of biblical ethics by Gene Outka, John Howard Yoder, David Little, and Charles M. Swezey.

biblical sources). Thus Childress has referred to this form of writing as an overemphasis.

On the other hand, those who are concerned with concrete moral problems and a disciplined analysis of their solution say little about vision and character and the biblical-liturgical materials that nourish and shape them. In other words, they act like moral philosophers. There is ample witness to this in the literature on bioethics, as James Gustafson has repeatedly pointed out.<sup>54</sup> Unless these two trends are brought together, what goes for moral theology will increasingly become either sectarian exhortation or unbiblical rationalism.

An interesting article by Stanley Hauerwas on abortion will illustrate the concern I am outlining.<sup>55</sup> Hauerwas argues that Christian opposition to abortion has failed because we have accepted a "liberal" culture's presupposition that our convictions must be expressed in terms acceptable to a pluralist society. In doing so, we have not exhibited our deepest convictions, convictions which alone make the rejection of abortion intelligible. Specifically, Hauerwas argues that we have tried to present abortion independently of the kind of people we would like to become. Thus the arguments pro and con abortion are fragments torn from the context that gave them intelligibility.

Hauerwas sees the roots of this dilemma in the presupposition on which our liberal society is founded: how to prevent people from interfering with one another. The government is restricted to this and is expected to be neutral on the very subjects that matter most. Thus liberalism seeks an account of morality divorced from the kind of persons we are or want to be. That falsifies the way moral injunctions function. Taken together, moral injunctions describe a way of life.

As Christians, we have failed because we have tried to argue abstractly. We should rather have presented abortion as an affront to our basic convictions about what makes life meaningful, to our way of life. To do this, we must tell stories that show the correlation between the prohibition of abortion and the story of God and His people. "It is only when we have done this that we will have the basis for suggesting why the fetus should be regarded as but another of God's children."

More positively, Hauerwas urges that the Christian prohibition of abortion rests on our conviction that life is not ours to take. Life is God's creature, under the lordship of Jesus. Furthermore, for Christians, as people determined to live within history, children are seen as duty and

<sup>54</sup> Most recently in "A Theocentric Interpretation of Life," *Christian Century* 97 (1980) 754-60.

<sup>55</sup> Stanley Hauerwas, "Abortion: Why the Arguments Fail," *Hospital Progress* 61, no. 1 (1980) 38-49.

gift. It is in displaying themes such as these that we will best serve our society on the abortion question.

Two things in this extremely interesting study could easily be overlooked and need explicit reference. First, Hauerwas notes that "the broad theological claims I am developing cannot determine concrete cases." This means that such themes cannot function as criteria for rightfulness or wrongfulness in individual instances. Second, of the desire for new life that is part of the Christian form of life, Hauerwas says: "Such a desire is obviously not peculiar to Christians." Of the love of those we did not choose, he says that "the existence of such a love is not unique or limited to Christians." Moreover, he concludes that "Christians should certainly wish to encourage those 'natural' sentiments that would provide a basis for having and protecting children."

What have we here? We have (1) an attitude not specific or peculiar to Christians (2) which does not decide rightfulness or wrongfulness in individual cases.

I want to raise several points. First, here is an attitude which does not determine in individual cases the morally right or wrong. What, then, does it do? Must we not say that it nourishes sentiments or dispositions preparatory to individual decisions? That is broadly known as *parenesis*, at least in so far as it relates to individual decisions. Or, in Childress' language, it is a perspective which helps to *recognize* an obligation, but not to *justify* it or its violation.

Second, if it is not specific to Christians, then are not the Christian warrants for it confirmatory rather than originating? I have suggested elsewhere (on abortion) that "these evaluations can be and have been shared by others than Christians of course. But Christians have particular warrants for resisting any cultural callousing of them."<sup>56</sup> The point I am raising here is epistemological. It is not whether *de facto* and historically Christians have rejected abortion because of their story and the community they wanted to be. One can make a strong case for that, as Ramsey has. The question is rather whether this rejection of abortion is in principle unavailable to human insight and reasoning (sc., without the story or revelation).<sup>57</sup> If it is, then the only way to know that abortion (and many other things) is to be rejected is to be part of the story. That is inherently isolationist. Whatever it is, it is certainly not Catholic tradition or the story of the Catholic community. Its story is precisely that many of these moral demands are epistemologically separable from its story, though confirmed by it. "Particular warrants" of the Christian

<sup>56</sup> Richard A. McCormick, S.J., "Abortion: A Changing Morality and Policy?" *Catholic Mind* 77, no. 1336 (Oct. 1979) 42-59, at 51.

<sup>57</sup> This point has been made recently by P. Gaudette, "Jésus et la décision des chrétiens," *Science et esprit* 32 (1980) 153-59, at 158.



for rejecting abortion do not raise the issue of how one originally knows God's will within a storied community.

Third, if Christian convictions on abortion (and similar concrete moral questions) are indeed in principle available to human insight (sharable by others than Christians), is it not more productive in a pluralistic society to urge one's convictions in the public forum in terms of what is sharable in that forum?<sup>58</sup> That is what many popes and Catholic bishops throughout the world have done. Or negatively, are Christians not argued right out of the current controversy by presenting their convictions in terms of particular and often unsharable warrants? If we argue our conviction in terms of a unique community story, others need only assert that their story is not ours. The conversation stops at that point. Hauerwas is aware of this difficulty (indeed, he raises it), but, in my judgment, he does not adequately answer it.

Hauerwas has pursued these general themes in another stimulating study.<sup>59</sup> In speaking of the Christian commitment to peace, he states that it is not based on "the inherent value of life but on the conviction that the refusal to resort to war cannot be consistent with the Kingdom we have only begun to experience through the work of Christ and his continuing power in the church." He says much the same thing about slavery, sc., that we reject it not because it violates inherent human dignity but because "we have found that we cannot worship together at the table of the Lord if one claims an ownership over others that only God has the right to claim."

Two reflections. The first concerns the nature of moral argument. Appeals to "the type of people or community we want to be" (who acknowledge Jesus as Lord and Lord of life) are certainly true. They are also certainly not moral arguments in the sense of justifications for the moral rightness or wrongness of any individual action. To think that they are is to confuse Christian parenesis with justification.

Concretely, Hauerwas asserts that Christians reject slavery not because it violates human dignity but because "we have found that we cannot worship together at the table of the Lord if one claims an ownership over others. . . ." One might respond: if that is the *only* reason why Christians

<sup>58</sup> In contrast to Hauerwas, Walter Kern, S.J., states that Catholic social teaching can make an important contribution to the discussion of fundamental values. However, this is only possible if "it argues on a broadly human basis, that is, not a specifically Christian one" ("Zur Grundwertediskussion," *Stimmen der Zeit* 198 [1980] 579-84, at 580). This does not mean abandoning specifically Christian convictions (e.g., on the indissolubility of marriage). It is simply a recommendation about how one discusses these in the public arena. Christian convictions ought to be presented in the public forum; but this does not mean that they have to be, or should be, presented as Christian.

<sup>59</sup> Stanley Hauerwas, "The Church in a Divided World: The Interpretative Power of the Christian Story," *Journal of Religious Ethics* 8 (1980) 55-82.

reject slavery, perhaps it clarifies why they did not do so for nineteen centuries. Discomfort at the Eucharistic meal helps to *recognize* wrongdoing, to use Childress' language. It is not the only or primary validation (justification) of it as wrong.

In another context Hauerwas notes: "When asked why we do or do not engage in a particular form of activity, we often find that it makes perfectly good sense to say 'Christians just do or do not do that kind of thing.' And we think that we have given a moral reason. But it is moral because it appeals to 'what we are,' to what kind of people we think we should be."<sup>60</sup> I am suggesting here that "moral reason," as Hauerwas uses the term, does not pertain to the genre of moral argument understood as justification.<sup>61</sup>

My second reflection follows immediately from the first. Hauerwas states that, e.g., Christians reject slavery not because it violates inherent human dignity but because we cannot worship together with those who engage in it. Here he contrasts and separates what ought not be separated. Christian warrants are continuous with and interpenetrate human warrants, at least in the Catholic tradition. In this sense Christian warrants are confirmatory. The Christian story does not replace the notion of "inherent human dignity"; it supports and deepens it.

What it seems (and I emphasize "seems") Hauerwas is actually doing is denying the relevance, perhaps even the existence, for the Christian, of what has been badly called for centuries the natural moral law. I suspect he does this because he conceives of it as a set of principles (and their warrants) developed through discursive reasoning. (He would be aided

<sup>60</sup> Hauerwas, "Abortion" 42.

<sup>61</sup> Hauerwas writes: "Our theological convictions and corresponding community *are* a social ethic, for they provide the necessary context for us to understand the world in which we live. The church serves the world first by providing categories of interpretation that offer the means for us to understand ourselves truthfully . . ." ("The Church in a Divided World" 75). We all would agree to that. "Contexts" and "categories of interpretation" are not in themselves, however, adequate justifications of rightfulness and wrongfulness of individual actions, necessary as they truly are. In this sense they are not a social ethic if by that term we mean to exhaust all that is requisite to moral justification. To think that such "moral reasons" are moral justifications is to ask them to bear a burden they cannot bear. It is not a moral justification to say "Christians do not do these things." It is simply an assertion that reminds one to go back to his/her tradition and find out why. When pressed, I believe Hauerwas would admit this; for he refers to "theological convictions that *shape* our reasoning." They do not replace it. This point is made well by Martin Honecker, "Vernunft, Gewissen, Glaube," *Zeitschrift für Theologie und Kirche* 77 (1980) 325-44. Honecker refers to theological contributions as those which "broaden our horizons and open our insights" (344). In a statement (Oct. 22) explaining his now famous "lust" statement, John Paul II referred to Christ's words as "the basis for a new Christian ethos which is marked by a transformation of people's attitudes." An "ethos" and "transformation of attitudes" are necessary but not sufficient conditions for moral discourse.

and abetted in this distortion by certain Catholic formulations such as that of the then [1940] Holy Office that "direct sterilization is against the law of nature.")

But this is not what the natural moral law in its earliest and most genuine sense means. It refers to *naturaliter nota*, those things known immediately and connaturally.<sup>62</sup> The existence of such knowledge is admitted, so many exegetes argue, in Romans, where the fault of nonbelievers is said to be precisely suppressing such knowledge. Elsewhere Schüller has argued that unless we know (moral consciousness) what faithfulness means, we will have no idea of what faithfulness to Christ could possibly mean and thereby commit the entire moral life to blind obedience, indeed to incoherence.<sup>63</sup> If Hauerwas exalts Christian warrants so much that he denies the existence of such knowledge (cf. his not because of "the inherent dignity of our humanity," "inherent value of life"), I believe it must be said that he has diminished the very Christian story to which he appeals; for part of that story is that basic moral knowledge and correlative justifications are not exclusive to this community. To overlook this is to annex the Christian story to a single reading of it.

There is a great deal in Hauerwas' recent writing that is powerful and compelling. For instance, he is right on target in attacking the assumptions of the modern liberal state which lead it to neutrality where our deepest values are concerned. However, overemphasis (in Childress' words) on those Christian perspectives that attack these assumptions can force on them a burden in moral discourse that they cannot always bear, and in doing so can lead to a sectarianism that could easily be counter-productive.<sup>64</sup>

#### LIFE AND ITS PRESERVATION

Any number of widely publicized events (living-will legislation, brain-death statutes, the Public Television broadcast of "Choosing Suicide," the Quinlan-Saikewicz-Spring-Fox-Becker cases, the Broadway play *Whose Life Is It Anyway?*, the activities in Britain of EXIT [a voluntary euthanasia society]) have forced public attention on euthanasia. It was probably in light of the problems and doubts created by the aforemen-

<sup>62</sup> Cf. the recently republished essay of Jacques Maritain, "De la connaissance par connaturalité," *Nova et vetera* 55 (1980) 181-87, esp. 185-86. Also interesting in this regard is V. Ferrari, O.P., "Il primo principio morale," *Angelicum* 57 (1980) 45-53.

<sup>63</sup> Bruno Schüller, S.J., "Wieweit kann die Moraltheologie das Naturrecht entbehren?" *Lebendiges Zeugnis*, March 1965, 41-65.

<sup>64</sup> Some of the points raised here have been urged from a different perspective by J. Wesley Robbins, "Narrative, Morality and Religion," *Journal of Religious Ethics* 8 (1980) 161-76.

tioned events that the Sacred Congregation for the Doctrine of the Faith issued in late June its *Declaration on Euthanasia*.<sup>65</sup>

The introduction itself to the document is interesting. After noting that medical advances have created new anxieties and doubts, the SCDF proposes to offer "elements for reflections" that people can then "present to the civil authorities with regard to this very serious matter." Three groups are envisaged as recipients: (1) those who place their faith and hope in Christ; (2) those who profess other religions, but with a basic faith in God; (3) people of good will who, in spite of their philosophical differences, are sensitive to the rights of the human person. Thus the religious appeals are supportive of the human appeals, the SCDF using phrases such as "human and Christian prudence suggest. . . ."

After dealing with the value of life ("necessary source and condition of every human activity") and euthanasia (to be rejected), the SCDF turns to the means that must be used to preserve life. It makes two points. First, who makes the decision? "It pertains to the conscience either of the sick person, or of those qualified to speak in the sick person's name, or of the doctors to decide. . . ." Second, the SCDF turns to the principles in light of which the decision ought to be made. It adverts to the standard terminology ("ordinary," "extraordinary" means) and suggests that, while the principle behind these terms still holds, the terms themselves are "perhaps less clear today." It notes that some advocate the use of "proportionate" and "disproportionate" means. Whatever the term used, the SCDF notes that the judgment is a balancing of two considerations: (1) the type of means used (degree of risk, difficulty, cost, etc.); (2) the result to be expected for the patient. Thus certain treatments can be "disproportionate to the result." The document concludes by applying these principles somewhat more concretely. For instance, it makes it clear that it is morally permissible, with the patient's consent, "to interrupt these means where the results fall short of expectation."

This document received widespread praise, and it deserved it. It said nothing new, but it spoke in new circumstances and what it said it said very well. Thus *Commonweal* states that it "recognizes complexity and respects individual circumstances."<sup>66</sup> The *New York Daily News* editorialized: "We think he [the Pope] has laid down guidelines that will be enormously helpful to both Catholics and non-Catholics in right-to-die controversies."<sup>67</sup> The (London) *Tablet* stated of the declaration that it is "timely, compassionate and rooted in common sense."<sup>68</sup> Such statements

<sup>65</sup> *Declaration on Euthanasia* (Vatican City: Vatican Polyglot Press, 1980); also in *Catholic Mind* 78 (Oct. 1980) 58-64 and *Origins* 10 (1980) 154-57.

<sup>66</sup> *Commonweal* 107 (1980) 420.

<sup>67</sup> *New York Daily News*, July 9, 1980.

<sup>68</sup> *Tablet* 234 (1980) 624.

could be multiplied.<sup>69</sup>

I believe that several things should be highlighted in this declaration. First, the statement makes quite clear in a general way who are the decision-makers as to how the ill shall live while dying. It refers to "the conscience either of the sick person, or of those qualified to speak in the sick person's name, or of the doctors." This is extremely important at a time when the courts are increasingly assuming the prerogative of decision-making in this matter. I said above "in a general way." The SCDF does not address the problem of disagreement among the doctors and "those qualified to speak in the sick person's name," or among doctors themselves. There is surely a place for court appeal here.

Second, the SCDF is sensitive to the "imprecision of the term" (ordinary, extraordinary). I shall return to this below. But in stating the principle that undergirds any language used, the document remains flexible and nuanced. This is important. Many persons, not excluding physicians, expect a principle which will "solve cases" and "give them answers." There is no such thing. Human formulations can direct prudence; they cannot replace it. What some people seem to be looking for is a guideline that will make the decision for them. This is understandable; for these are extremely delicate decisions and weigh heavily on us. We squirm under the terrible burden of risk they involve and would feel more comfortable if a formulated rule could remove from us the burden and anguish of that risk. But it cannot be so. A formulated rule about the proportionate or disproportionate character of a particular treatment, and the elements that go into its making, can only prepare us intellectually and psychologically for a decision; it cannot make the decision for us. To think otherwise is to move in the direction of mechanizing and stereotyping these decisions in a way potentially harmful to the patient and to our best instincts about what is humanly and Christianly appropriate.<sup>70</sup>

The great relativity of the terms "ordinary" and "extraordinary" is underscored in a brief study by James J. McCartney, O.S.A.<sup>71</sup> He reviews the history of this usage from Soto (1582) and Bañez (1595) to Pius XII's Allocution to Physicians and Anesthesiologists (1957), then summarizes the theological reaction to the papal allocution. Pius XII clearly gave families an important, indeed decisive role where the patient is unconscious—a point of no little importance in our time. McCartney concludes

<sup>69</sup> "The Right to Life Question," *Overview*, Oct. 1980, 1–8.

<sup>70</sup> This same point is made by Ph. Delhaye, "Aspects de cette déclaration," *Esprit et vie* 90 (1980) 541–43.

<sup>71</sup> James J. McCartney, O.S.A., "The Development of the Doctrine of Ordinary and Extraordinary Means of Preserving Life in Catholic Moral Theology before the Karen Quinlan Case," *Linacre Quarterly* 47 (1980) 215–24.

his essay by wondering whether it is ever permissible to cease feeding (he refers to normal feeding) a patient who is terminal on the grounds that there is "no reasonable hope of success" or, to use the SCDF's terms, on the grounds that the means are disproportionate.

This is an interesting and extremely difficult question that occurs more frequently than it is comfortable to think. It is particularly thorny when the feeding is artificial. Some elderly and very senile patients, with associated complications, resist feeding, constantly remove their tubes, etc. It is situations like this that cannot be absolutely preprogrammed and where prudence must combine with wisdom and courage.

John R. Connery, S.J., presents a study whose purpose is "to present and explain the traditional position on the obligation to prolong life and its limits."<sup>72</sup> Connery feels that there is a good deal of misunderstanding in present debates. He also regards the traditional position and language as still viable.

Connery first points out that the key element in distinguishing ordinary from extraordinary was the burden. "So if a particular means imposed a great burden on the patient either before, during or after its use, it would not be obligatory." The option belongs to the patient, for only the patient can gauge the burden he/she experiences.

Here Connery makes a key move. Many theologians today (following the late Gerald Kelly, S.J., and recently the Sacred Congregation for the Doctrine of the Faith) consider not only the burden; they consider the benefit. Thus, if a means causes no burden but offers no benefit, they would regard this as extraordinary or disproportionate. Connery rejects this because the notions of burden and benefit "deal with different issues—and usually apply to different types of cases." The question of benefit, he argues, is limited largely to terminal cases. Burden can be an issue even in nonterminal cases.

Connery very correctly argues that the option of refusing extraordinary measures is the patient's. If the patient is incompetent, the proxy must make the decision the patient would make. If there is no way of knowing this (e.g., the patient was never competent), "his [the proxy's] best option is to make the decision he would make if he were in the patient's place, or the decision that reasonable people would make for themselves in that situation."

Connery then turns to what is certainly one of the most difficult moral dilemmas in our time: the treatment of terribly defective newborns. Most people would feel very guilty, Connery believes, about allowing a defective person to drown were they able to save him/her. Conversely, there is no

<sup>72</sup> John R. Connery, S.J., "Prolonging Life: The Duty and its Limits," *Linacre Quarterly* 47 (1980) 151–65.

evidence to show that defective people consider death preferable to continued existence with their handicap. Connery continues: "If this is true, it is hard to understand how refusing help on the basis of a quality-of-life estimate is generally consistent with the duty of charity."

Robert Veatch and Paul Ramsey have both argued that we should abandon the ordinary-extraordinary terminology. For instance, Ramsey has suggested a "medical indications norm." According to this norm, if a treatment is medically indicated, it is obligatory; if it is not, it would not be obligatory. Thus useless treatment of a terminal patient would not be "medically indicated." Connery is dissatisfied here because he believes Ramsey's criterion would force burdens on incompetent people that the competent need not bear. Connery agrees with Ramsey that quality-of-life judgments are dangerous with regard to incompetents, but, he says, "I do not agree that in order to avoid them we should or have to make medical decisions final."

Connery's article is very carefully done and makes valuable distinctions about the obligation to *use* certain means and the obligation to *provide* them. But I want to put an important question to him in an effort to achieve greater clarity. He argues that burden and benefit are different issues and that traditionally it was the burden that was decisive in constituting a means extraordinary. He urges this as the basis for excluding quality-of-life ingredients in making decisions for those never competent.

But can we separate burden and benefit that sharply? Is not the benefit at times and in a sense identical with the burden? Connery gives the example of a quadruple amputation and says that because "it could certainly make life burdensome for its victim *afterwards*," it would be extraordinary. The very benefit we intend to provide (preservation of life) is also its burden and both are defined in terms of a kind of life. The life we save is the benefit; the kind of life is the burden.

Take the statement of the late Bishop Lawrence Casey in his *amicus* brief in the Quinlan case: "Karen Ann Quinlan has no reasonable hope of recovery from her comatose state by the use of any available medical procedures. The continuance of mechanical supportive measures to sustain continuation of her body functions and her life constitutes extraordinary means of treatment." Here treatment is burdensome (extraordinary) because of the quality of the benefit. In other words, it is impossible in some cases to determine what will benefit a patient without presupposing a standard of life. If the standard is bad enough (as in Connery's example of quadruple amputation), the benefit and burden coalesce.<sup>73</sup> Or

<sup>73</sup> Thus, Ph. Delhaye in his commentary on the document (cf. n. 70 above) of the SCDF notes that our task is to know if there is a proportion between the means used "and other aspects of the situation: the quality of the life one can prolong, the condition of the ill

again, what is a burden to the patient presupposes judgments about the patient's condition, and among the objective conditions to be considered one of the most decisive is the *kind of life* that will be preserved as a result of our interventions.<sup>74</sup> In cases like this, therefore, burden and benefit do not, as Connery thinks, "deal with different issues . . . and usually apply to different types of cases."

In summary, I see no way out of *some* quality-of-life judgments<sup>75</sup> short of imposing survival on all defective newborns regardless of their condition and prognosis.<sup>76</sup> Is not our task rather to develop more detailed criteria to control and restrict the quality-of-life criteria which are unavoidably operative in our judgments—if, as Connery admits, the notion of burden can apply before, during, or *after* the use of lifesaving means?

Management of the critically ill and dying has become so confused that increasingly the cases are brought to court. Thus we have the well-known court cases involving Quinlan, Saikewicz, Spring, Fox, Dinnerstein, Becker. Connery reviews the first four of these cases.<sup>77</sup> When dealing with the incompetent patient, he fully endorses the notion of proxy

person," etc. It is interesting to note that Delhaye regards the notion of proportion as an "ouverture." It is not just the burden that is to be considered.

<sup>74</sup> Thus Tristram Englehardt, "Philosophy of Medicine," in *Social History of the Biomedical Sciences*, ed. Franco Maria Ricci (forthcoming), notes: "Physicians often justify withholding further care because such an intervention would be extraordinary or would involve heroic measures. However, the sense of ordinary and extraordinary does not appear to turn simply upon whether the treatment is costly or exotic, but upon whether it is likely to restore the patient to a quality of life acceptable to him, or should he be incompetent, to his family. In fact, such phrases are usually employed to indicate the result of various chains of reasoning that lead to the conclusion that treatment is obligatory or non-obligatory. Often the conclusion that a treatment is not obligatory or extraordinary will be made even when the treatment would not be costly or exotic, but because it would not achieve for the patient a quality of life that he would find tolerable." The questions I have put to Connery I would put to Joseph M. Boyle also; cf. "Quality of Life Standards and Withholding Life Saving Treatments," in *The Human Person*, ed. George F. McLean, 150-57 (this is Vol. 53 of the *Proceedings of the American Catholic Philosophical Association*).

<sup>75</sup> Of the use of such criteria, Connery states that I have shifted the emphasis from the nature of the means to the quality of life itself. "To this extent he departs from the tradition" (165, n. 15). Two points. The quality-of-life ingredient was always present in the very definition of burdensome means. Second, it is one thing to depart from a tradition, and in substance, not merely in formulation; it is another to extend this tradition into new problem areas. If such extension is true to the substantial value judgments of the tradition, it is a departure only in formulation. The distinction between substance and formulation is clearly proposed by John XXIII and Vatican II.

<sup>76</sup> I believe that this is what is logically entailed in James Burtchaell's response to Paul R. Johnson. Cf. Burtchaell, "How Much Should a Child Cost?" *Linacre Quarterly* 47 (1980) 54-63, and Johnson, "Selective Nontreatment of Defective Newborns: An Ethical Analysis," *ibid.* 39-53.

<sup>77</sup> John R. Connery, S.J., "Court's Guidelines on Incompetent Patients Compromise Their Rights," *Hospital Progress* 61, no. 9 (Sept. 1980) 46-49.



decision as "a hallowed Catholic principle."<sup>78</sup> He finds increasing resort to the courts, especially the guidelines set down by the court of appeals in the Fox case, a threat to the well-being of patients. This is true above all because they provide no way in which an incompetent person's rights can be exercised in a nonterminal case. Thus they compromise the incompetent person's rights to refuse disproportionate treatment.

Very much the same point is made in a fine article by Holy Cross's John J. Paris, S.J.<sup>79</sup> He faults the Mollen court in the Fox case for the cumbersome procedures it imposes, agrees with the Quinlan court that a proxy decision is appropriate, and insists that the decision be located within the family-physician group. I agree completely with Paris.<sup>80</sup>

Corrine Bayley, C.S.J., in an excellent summary article, agrees with Connery in the general lines of reasoning he has proposed.<sup>81</sup> But she regards the ordinary-extraordinary distinction as "an unfortunate use of words" since they are so easily misunderstood. "Emphasis is not on the means, but on how they will affect the patient." She rightly insists that the question of whether, e.g., to use or withdraw a respirator is an ethical question because "it deals with values, rights and obligation."

Bayley then notes that our first concern in decision-making for the incompetent is the patient's best interest, which means doing "what he or she would do if competent." Like Connery, Bayley argues that relatives and/or friends are best positioned to make this judgment. Furthermore, appeals to the courts, being cumbersome and drawn-out, are contrary to the patient's best interest. What is notable here is that Bayley is not a mere academician. She was for years a hospital administrator and was in a position to observe frequently and at first hand whether decisions left

<sup>78</sup> David E. Lee has challenged the use of substituted judgment in the Saikewicz case. He argues that (1) the notion of the right to refuse presupposes a decision-making capacity; (2) autonomy is such that it cannot be assumed by someone else without express authorization; (3) attempting to ascribe preferences to others apart from any expression of them is too tricky and dangerous ("The Saikewicz Decision and Patient Autonomy," *Linacre Quarterly* 47 [1980] 64-69). These objections can be met if we remember that (1) the autonomy appealed to is used in an analogous way when applied to the always incompetent; (2) determining what another would do is not simply determining his/her preferences (as Lee supposes) but roots in the "best interests" criterion. Best interests are, within a range and with some degree of risk, objectively identifiable. The vehicle for it is the "reasonable person criterion."

<sup>79</sup> John J. Paris, S.J., "Court Intervention and the Diminution of Patients' Rights: The Case of Brother Joseph Fox," *New England Journal of Medicine* 303 (1980) 876-78. See also his excellent article "Brother Fox, the Courts and Death with Dignity," *America* 143 (1980) 282-85.

<sup>80</sup> Richard A. McCormick, S.J., "The Fox Case," *Journal of the American Medical Association* 244 (1980) 2165-66.

<sup>81</sup> Corrine Bayley, C.S.J., "Terminating Treatment: Asking the Right Questions," *Hospital Progress* 61, no. 9 (Sept. 1980) 50-53, 72.

to families and physicians would or would not be to the patient's benefit. It is significant, I believe, that many people in Bayley's position are comfortable with proxy decisions (family-physicians) based on a best-interests criterion, controlled by the "reasonable person standard."

I agree with the Connery-Bayley perspectives in the matter of proxy decision. Indeed, Robert Veatch and I attempted to propose in these pages a principle of "family self-determination" for such situations.<sup>82</sup> We were uncomfortable with the original Fox decision, because it had proposed self-determination as the only way to get the dying, 83-year-old, noncognitive, nonsapient Brother Fox off the respirator. Judge Meade had argued that Fox could be relieved of the respirator because, though incompetent, he had stated his opinion on the Quinlan case and similar cases ("that extraordinary business"). Because he had done so, the decision of Rev. Philip Eichner to remove him was really Brother Fox's decision—an exercise of self-determination by anticipation.

Veatch-McCormick argued that these grounds were too narrow, that they would leave most dying incompetents on respirators. Therefore, beyond self-determination, we proposed the need of proxy judgments by family/relatives, what we called a "principle of family self-determination." We argued that the state should intervene only when family decisions "so exceed the limits of reason that the compromise with what is objectively in the incompetent one's interest cannot be tolerated." This is in full agreement with the principles laid out by Connery and Bayley in their review of Catholic tradition.

In this issue of *TS*, Paul Ramsey challenges this view (*tolle et lege*). He agrees with us that these decisions about/for incompetent dying patients should not (at least generally) be adjudicated in the courts. There is no need for this. However, neither should they be made by the families with the physicians, as Connery-Bayley-Veatch-McCormick propose. Why? Because these are subjective criteria, often subtly interpenetrated with quality-of-life criteria that Ramsey rejects as allowable. So, as between the courts and family self-determination, Ramsey argues that the appropriate and only *objective* criteria are "strictly medical criteria," "medical indications," "clinical or physiological ones." By this he refers to the "medical decision to cease to combat the dying of the dying . . . to cease treatment when, and only when, to continue would only prolong the dying of the dying." Unless we adopt criteria "in which physicians agree to place their confidence," we will not keep these cases out of court. The courts will preempt other "subjective standards" and the McCormick-Veatch proposal will be counterproductive.

<sup>82</sup> "The Preservation of Life and Self-Determination," *THEOLOGICAL STUDIES* 41 (1980) 390-96.

The above is, I believe, an accurate summary of Ramsey's contribution. I say this because in the course of displaying a single flower Ramsey is wont to roam through a garden and pluck out and examine a whole scattering of weeds that too easily obscure his single display.<sup>83</sup> What is to be said of his argument and analysis? I speak for myself here, not for Veatch. Veatch will undoubtedly answer in his own way and time. I want to suggest three points.

1) Family self-determination (proxy decision) as subjective. Ramsey insists that allowing such determination of treatment for the incompetent exposes them to merely subjective criteria. I want to deny that. The standard for treating incompetents (if we have no living will or something similar) is to discover whether the treatment would be *objectively valuable for a patient in that condition*. In order to determine this, we have to resort to some empirical means. For me, that would be asking what is reasonably seen as *objectively valuable by a reasonable person*. It is the "best interests" standard as controlled by the "reasonable person" standard that Veatch and I proposed when we urged that the state should intervene "only when familial judgment so exceeds the limits of reason that the compromise with what is objectively in the incompetent one's interest cannot be tolerated." "Best interests" as controlled by the "reasonable person" standard may permit a range. But a range is not necessarily subjective.

2) Medical indications policy as objective. Ramsey argues that only a "medical indications policy" is objective and will keep these cases out of court by assuring best interests. By "objective" he clearly means "not influenced by personal value judgments." Thus "medically indicated" supposes that the judgment is not only objective but determined by *scientific evidence alone*. This must be denied. The "medical indications policy" of not prolonging a dying patient's dying contains a nonscientific value judgment. As Ramsey admits, some patients may want heroic measures to the moment of their death; others may not. These choices root in different subjective and value reasons. To say that "not to prolong a dying patient's dying" is a merely medical (scientific) indication is wrong. It is the acceptance of one value preference over another. It looks merely scientific (hence objective), but it is not. Clearly, therefore value judgments or preferences function in a "medical indications policy." And if they do, why refer to this as a "*medical* indications policy"? It is rather a policy that most reasonable people agree to, that conforms to their

<sup>83</sup> I agree that many of the weeds are indeed weeds (judicial obscurities and incoherences). In other cases, no. For instance, Ramsey says: "*Quinlan* was the right decision for the wrong reasons." I believe *Quinlan* was the right decision for the right reasons. Similarly, he believes *Saikewicz* was "a wrong decision for the wrong reason." I believe it was the right decision for the right reason—but with wrong procedures attached.

value preference, and therefore can be comfortably accepted as what most doctors think right and do.<sup>84</sup>

In summary: if a value judgment clearly underlies Ramsey's "medical indications policy," it is clearly not objective in the sense he proposes, *sc.*, one distinct from personal value preferences and distinct from a policy based on best interests controlled by the "reasonable person" standard. Indeed, his policy is but a concretization of the "reasonable person" standard.

3) Incompetents who are not dying. Ramsey's policy simply does not touch these. Or rather, it mandates medical treatment on them all regardless of how heroic or extraordinary it is. For if a "medical indications policy" is merely scientific (clinical or physiological), it can contain no value judgments that might exempt us from using any and all treatments on the incompetent but not dying patient. Connery has caught this well. He asks: "Is it reasonable to make incompetent people bear burdens that competent people do not have to bear? Certainly the decision is more difficult . . . but the difficulty does not warrant retreat to a position which seems to compromise the rights of the incompetent."<sup>85</sup>

I agree with Connery. A "medical indications policy" leads straight to the violation of the rights of the incompetent nondying patients. It makes life-preserving treatment the only option regardless of the patient's condition. If this can be an assault on the best interests of the competent, it is no less so for the incompetent. The only way out of this cul-de-sac is to accept the validity of proxy judgments based on best interests—the very thing Ramsey denies because of the danger of subjective, quality-of-life judgments.

Connery believes, and I agree, that Ramsey has "canonized medical indications." This he has done in a laudable cause: to keep these cases out of court on the one hand, and to steer clear of possibly very subjective and discriminatory assessments of another's best interest. In doing this, he has, I believe, mechanized treatment decisions, paralyzed them for the nondying incompetent, and opposed himself to a very long tradition which insists that treatment of the ill, whether dying or nondying, is radically an ethical (value) decision, as both Connery and Bayley so

<sup>84</sup> That "medical indications" contain but hide a value judgment is clear from some of the facts revealed in the Fox case. Dr. Edward Kelly, the surgeon in the case, argued that once a respirator was employed, "it should not be withdrawn." Larry Kennedy, a spokesman for the Nassau Hospital, reinforced this by saying: "Our mission is to do all that we can to maintain life." I disagree with that, as does Ramsey. But our disagreement with Kennedy roots in a *value* judgment. Thus, when Ramsey uses phrases such as "useless prolonging of the dying process," he is not making a purely scientific or medical judgment. He is making a *value* judgment which *most physicians have made their own*; and for that reason it is easily conveyed by the phrase "medical indications."

<sup>85</sup> Connery, "Prolonging Life" 161.

correctly assert. To hide these value components under a "medical indications policy" will only delay the day when physicians must face up to the awesome task of sharing with families in difficult value judgments. In other words, I believe Ramsey is pedaling backwards.

It is important to stand back from these discussions to see their broader dimensions. On the one hand, there is widespread dissatisfaction with ordinary-extraordinary terminology for many reasons, not the least because it disguises the quality-of-life ingredient so often present in treatment decisions made by the competent dying patient, and frequently judged appropriate for the incompetent dying and nondying patient. On the other, there is legitimate and grave fear that quality-of-life considerations can be subjective discrimination against the incompetent which would violate their rights and undermine our own grasp on the sanctity of every human life. I sympathize deeply with both of these concerns. But in the face of such a dilemma, our task is not to deny the quality-of-life ingredient as a legitimate criterion but sharply to control it within the bounds of what we consider to be truly human and Christian.

#### THE FIFTH SYNOD OF BISHOPS

The fifth Synod of Bishops began September 26 and formally ended October 26. Treating of the family, the Synod raised, perhaps unrealistically, great expectations in an area swimming in problems. Any realistic treatment of the family is bound to touch upon several delicate and controversial areas, especially birth regulation and the pastoral problem associated with irregular second marriages.<sup>86</sup>

What did the Synod do? The available sources for a response to that question are four. First, there are the various interventions.<sup>87</sup> Second, there are the proposals (*De muneribus familiae christianae in mundo hodierno*) submitted to the Holy Father, though the actual vote on these proposals is unknown at this writing. Third, there is the "Message to Christian Families in the Modern World."<sup>88</sup> Finally, there is the closing speech of John Paul II.<sup>89</sup>

With regard to the two subjects mentioned above, it is clear what the Synod did. In their "Message to Christian Families in the Modern World,"

<sup>86</sup> Ph. Delhaye reports that when Paul VI acceded to the wishes of bishops to discuss the family in the Synod of 1980, he stated: "Yes, but it is necessary to avoid the burning questions." John Paul II did not take this attitude. It is amusing that Delhaye gives abortion as an example of the "burning questions" ("Le sens du synode 1980," *Esprit et vie* 90 [1980] 545-47).

<sup>87</sup> The interesting intervention of Archbishop Denis Hurley (Durban) was mysteriously omitted from the published synopses. It can be found in the *Tablet* 234 (1980) 1105-7. Hurley rightly wonders how "the act of artificially limiting the exercise of one faculty of life is intrinsically evil while the act of exterminating life itself is not."

<sup>88</sup> *Origins* 10 (1980) 321-25.

<sup>89</sup> *Ibid.* 325-29.

the synodal bishops stated that the "conjugal act itself, as the encyclical *Humanae vitae* tells us, must be fully human, total, and open to new life." Furthermore, in proposals 23, 24, and 25 the traditional doctrine of *Humanae vitae* is repeated, a pastoral approach of gradualism is suggested, and theologians are invited "to join forces with the hierarchical magisterium so that the biblical foundations and the personalistic reasons for this doctrine may be better brought out."

Speaking at the closing session of the Synod (Oct. 25), John Paul II stated that the irregularly remarried may not receive Communion unless they "live in a manner which is not opposed to the indissolubility of marriage, live in complete continence, that is, by abstinence from acts in which only married couples can engage."<sup>90</sup> In proposal 18 we read: "Nevertheless the Synod confirms the practice of the Church supported by Sacred Scripture (*Sacrae Scripturae innitentem*)<sup>91</sup> of not admitting the divorced and irregularly remarried to Eucharistic Communion. For they cannot be admitted to Eucharistic Communion since their state of life and condition objectively contradict the indissolubility of that covenant of love between Christ and the Church which is signified and realized in the Eucharist."

Thus, on the two most burning (not the only) issues to confront it, the Synod repeated traditional teaching.

This is theologically and pastorally disturbing, to say the very least. For two reasons. First, in both matters the synodal conclusions will not win sufficient theological support. Indeed, a heavy majority of theologians have drawn a different conclusion in both matters.<sup>92</sup> Second, it is disturbing because the papal and synodal statements were made at the very time

<sup>90</sup> Cf. *ibid.*

<sup>91</sup> It is often Scripture scholars themselves who, from the very perspectives of Scripture, point to a different possibility. The most recent study I have seen in this category is that of John R. Donahue, S.J., "Divorce: New Testament Perspectives," a paper delivered to the Midwestern Canon Law Society, April 21, 1980. Cf. also Raymund Schwager, "Inkonsequente Normfindung für Gewalt und Ehescheidung," *Orientierung* 44 (1980) 144-47.

<sup>92</sup> Cf. Normand Provencher, O.M.I., "L'accès des divorcés aux sacrements," *Studia canonica* 14 (1980) 89-106. Provencher argues that adherence to the doctrine of indissolubility need not imply negation of all reality to a second union. Rather, there is a reality and under certain conditions (he lists them, 105) divorced-remarrieds should be able to receive the sacraments. The conclusion of Provencher has been shared by a heavy majority of theologians during the past ten years. For a review cf. James H. Provost, "Intolerable Marriage Situations Revisited," *Jurist* 40 (1980) 141-96. Cf. also Pierre Benoit, O.P., "Christian Marriage according to St. Paul," *Clergy Review* 65 (1980) 309-21. As for contraception cf. F. J. Elizari, "A los diez años de 'Humanae vitae': Boletín bibliográfico," *Moralia: Revista de ciencias morales* 1 (1979) 235-53. Also *Theology Digest* 28 (1980) 33-37 and E. Chiavacci, "Valori di fondo e sistematica normativa," *Rivista di teologia morale* 10 (1978) 519-27. Chiavacci notes simply that the deontological argument (nature of the act) is no longer defended.

that several national episcopates in attendance were calling for a study of these problems at the highest levels.

Just a few episcopal interventions can be reviewed here to make the point just made. One of the most interesting interventions was that of Archbishop John R. Quinn.<sup>93</sup> He noted that many men and women of good will do not accept the "intrinsic evil of each and every use of contraception." This conviction is shared by a majority of priests and theologians, a conviction found among "theologians and pastors whose learning, faith, discretion, and dedication to the Church are beyond doubt." Quinn argued that this cannot be dismissed. He notes that the Church "has always recognized the principle and fact of doctrinal development." Therefore he proposed three things: (1) a new context for the teaching; (2) a widespread and world-wide dialogue between the Holy See and theologians on the meaning of this dissent; (3) careful attention to the process by which magisterial documents are written and communicated. He then elaborated these three points.

The press reports of this careful, realistic, and courageous statement were somewhat misleading. Careful—because the problem was stated accurately. For instance, Quinn noted that the problem of many theologians is not that they view contraception as "simply something good, desirable, or indifferent." The problem is the usage "intrinsically evil" of *quilibet usus*.<sup>94</sup> Realistic—because Quinn is absolutely correct in saying that "this problem is not going to be solved or reduced merely by a simple reiteration of past formulations or by ignoring the fact of dissent." Furthermore, the way to face it is precisely through Quinn's suggested dialogue at the highest level. Courageous—because the suggestions were made *coram pontifice*, whose views on this matter are well known and who therefore could not be thought to have called the Synod to have them questioned. I say "questioned" because Quinn did refer to "doctrinal development" in areas such as biblical studies and religious liberty. In

<sup>93</sup> John R. Quinn, "'New Context' for Contraception Teaching," *Origins* 10 (1980) 263-67.

<sup>94</sup> Cf. the outstanding little essay by J. Dominion ("Open Letter to the Synod," *Tablet* 234 [1980] 840-42). Dominion makes any number of very telling points. One is that serious opposition to *Humanae vitae* "is not based on the assertion that infertile period methods do not work." Of course they do, for many people. The opposition is theological. Another is that those who oppose the encyclical's "intrinsically evil" formulation are accused of wanting abortion as well. Dominion asserts that "there is no evidence whatsoever that this is the case." Another fear is that the advent of contraception will become an attack on children. "There is not the slightest danger of this." Dominion's essay is strong testimony to the need of married experience in the formulation of the Church's convictions. See also Arthur McCormack, M.H.M., "The Population Problem and the Synod on the Family," *Clergy Review* 65 (1980) 328-38.

these contexts development meant change. I regard Quinn's intervention as outstanding.

The second intervention is that of Cardinal G. Emmett Carter of Toronto.<sup>96</sup> After noting that many theologians and Catholic couples have "moved beyond" *Humanae vitae*, he asked: Could this be a way the Holy Spirit is speaking to the whole Church? Could this be an expression of the *sensus fidelium*? Whatever the case, Carter concluded that "the magisterium must take account of this phenomenon or run the risk of speaking in a vacuum."

Next, Cardinal George Basil Hume.<sup>96</sup> He insisted that those who experience the sacrament of marriage constitute "an authentic *fons theologiae*." For some, the problem of *Humanae vitae* remains a real problem not because of their frailty and weakness. "They just cannot accept that the use of artificial means of contraception in some circumstances is *intrinsece inhonestum*." Hume concluded that "if we [the Synod fathers] listen to all the different points of view," a right way will be found.

Archbishop Derek Worlock (Liverpool), in his discussion of the divorced and remarried, asked: "Is this spirit of repentance and desire for sacramental strength to be forever frustrated?"<sup>97</sup> He noted that his own presynodal consultation would not accept the assertion that concession of the Eucharist to the irregularly remarried would scandalize Catholics and undermine the bond of marriage.

Archbishop Henri Legare (Grouard-McLennan, Alberta) stated that the problem of the divorced-remarried cannot be approached merely at the pastoral level.<sup>98</sup> The doctrine of marriage must be re-examined. To the present, the theology of marriage has been developed out of an "essentialist philosophy." Legare proposes that it must be rethought "in a more existentialist and personalist framework." He asked that we re-examine the relationship of the sacrament to the human institution of marriage.<sup>99</sup>

<sup>96</sup> D. Emmett Carter, "Spirit's Voice or Moral Decadence?" *Origins* 10 (1980) 276-77.

<sup>96</sup> George Basil Hume, "Development of Marriage Teaching," *ibid.* 275-76.

<sup>97</sup> Derek Worlock, "Marital Indissolubility and Pastoral Compassion," *ibid.* 273-75.

<sup>98</sup> Henri Legare, "Current Situations: Value, Risk, Suffering," *ibid.* 280-82.

<sup>99</sup> At least fifteen of the 162 Synod fathers spoke to this question, and most urged the Synod to find a way to readmit Catholics in irregular second marriages to the sacraments (*Catholic Chronicle*, Oct. 24, 1980, 10). Those who think this unthinkable and "in conflict with the basic nature of the Church" must reflect more deeply on current discipline. By policy (Decree on Ecumenism, Decree on Oriental Catholic Churches, and the *motu proprio* "Crescens matrimonium") Orthodox Catholics in good standing can receive the sacraments in the Western Catholic rite. Thus a divorced and remarried Orthodox person can receive the Eucharist in Catholic churches of the West. No one has argued that this is in "conflict with the basic nature of the Church."



Finally, the Canadian bishops, in a pastoral letter to Canadians at the end of the Synod, called attention to two things: (1) "The Synod fathers recommended that a new and far-reaching study be launched" on the pastoral care of the divorced and remarried. (2) In re *Humanae vitae*, "Many bishops recommended continuing research toward a new and fuller presentation of what is involved in this question." In a communication to Cardinal Joseph Ratzinger, the Canadian bishops had suggested that both matters be re-examined.<sup>100</sup>

Here we have synodal fathers acknowledging a problem, calling for further study and dialogue, admitting the need to consult the experience of the married as a *fons theologiae*, stressing the need to "listen to all the different points of view," yet repeating traditional formulations on the very issues regarded as problematic, as needing further study and dialogue.<sup>101</sup>

Furthermore, the disturbing character of these events is only deepened when we read the following concerning procedures from a reporter at the Synod:

The lay auditors were not representative of the Church, but were in fact firm promoters of natural family planning. The majority of Catholic families, which practice birth control, were not represented. Nor were dissenting theologians welcome at the Synod. As a result no true dialogue was really possible. Any criticism of *Humanae vitae* was considered scandalous. The final message ignored the population crisis. Some bishops were afraid to say what they really thought because they feared they would be misrepresented by the press or seen as challenging positions held by Pope Paul VI and John Paul II.<sup>102</sup>

Finally, on several occasions during the Synod, bishops intervened to say that the teaching of *Humanae vitae* was "certainly correct" but that "better reasons" had to be found to validate its conclusions. To maintain the certain truth of a formulation but admit that we must find "better reasons" is perilously close to saying that the formulation is correct regardless of the reasons. Catholic theological tradition will not support this, even though official Catholic practice has at times and still does. Such considerations raise the gravest doubts about the very freedom of the synodal process. And that brings us to the pastoral problems associated with the Synod.

<sup>100</sup> For the Canadian bishops' message, cf. *Origins* 10 (1980) 329-30. For their communication to Ratzinger, cf. *Catholic Chronicle*, Oct. 10, 1980, 5.

<sup>101</sup> It must be remembered that the Synod is not per se a teaching authority; it is advisory to the Holy Father (cf. the *motu proprio* "Apostolica sollicitudo" of Feb. 15, 1965, as in *Documents of Vatican II* [New York: Association Press, 1966] 720-24). Yet practically it will surely be viewed and used as a vehicle to communicate Catholic conviction.

<sup>102</sup> Thomas J. Reese, S.J., "The Close of the Synod," *America* 143 (1980) 281. Similarly, the *Tablet* refers to "foregone conclusions virtually imposed on a so-called consultative body" (234 [1980] 1059).

There is a single pastoral problem of great significance that is inseparable from the Synod and its outcome. It concerns the functioning of the teaching office of the Church, an ecclesiological problem with clear personal ramifications for both the theologian and the theologically informed pastoral minister. A word about each.

### *Theologian*

How is the theologian to respond to the continuing "reaffirmation of *Humanae vitae*" when he is convinced of the inadequacy of some of its formulations ("intrinsic dishonesty . . . always illicit") and when he knows that a majority of his/her colleagues share this view? Should he lapse into silence? Does loyalty demand this type of submission? Rahner's answer to this was noted above. How one answers these questions will depend very much on one's concept of the magisterium and how it relates or should relate to theological enquiry.

At this point I want to call attention to three very important articles that touch on this subject. The first is by André Naud and was presented at the 1979 meeting of the *Société canadienne de théologie*.<sup>103</sup> Naud begins by noting that the responses to *Humanae vitae* and *Persona humana* show that there is a crisis. Adverting to the fact that theology and collective reflection are no longer in proper focus ("ne sont pas au point"), Naud organizes his thoughts around two themes: right of the Church to intervene and mode of intervention.

1) *Right of the Church*. Naud clearly accepts the right of the Church to intervene, even in a very practical way. So as between saying nothing (or remaining tautologously general) and settling definitively, there is settling *pro hic et nunc*, surely a prerogative of the sovereign pontiff. That brings up the heart of the problem, the mode of intervention.

2) *Mode of intervention*. Here Naud scores the fact that authoritative interventions leave the impression that they are changeless when this is not the case. He regards the text of *Lumen gentium* (no. 25 "adherence of mind and will") as "extrêmement ambiguës" when taken together with the type of freedom asserted by the German hierarchy (1968) in the face of noninfallible teaching. Finally, he wonders why bishops do not openly and honestly express their own doubts. For some this is custom ("one does not contradict the pope"). For others it represents the need for unanimity on the pastoral front. Naud sees this as artificial and ultimately deceitful ("mensongère"). "The mechanism of magisterial teaching finds itself, so to speak, distorted because no place has been allowed in the Church, as it should be, for doubt, hesitation, search."<sup>104</sup> The magisterium

<sup>103</sup> André Naud, "Les voix de l'église dans les questions morales," *Science et esprit* 32 (1980) 161-76.

<sup>104</sup> *Ibid.* 167.

is disabled when bishops become a mere echo of the pope.

Naud then turns more positively to the qualities magisterial teaching ought to have. First, it must present "motives and reasons." It is the guardian of the Christian message, not its autonomous creator. Second, as Rahner has suggested, it should state the degree of certitude with which a position is taken. Its very integrity ("honnêteté") is at stake here. Finally, we must advance beyond *Lumen gentium* 25. Citing the rather common theological rejection of Pius XII's approach in *Humani generis* (matters authoritatively settled by the pope are no longer a matter of free discussion among theologians), Naud continues: "The thought of the Church has, therefore, advanced in this matter. It must still advance. In my view, we should not repeat the text of *Lumen gentium* (25), even less brandish it to condemn, without clarifying its sense."<sup>105</sup>

Naud repeatedly emphasizes the need for bishops to speak freely on controversial questions, both *before* and *after* Roman interventions. To leave these matters (moral questions where revelation gives no definitive answer) entirely to the pope is abandonment of episcopal responsibility. There must be exchange. "Then, and then alone, will the ecclesial word correspond to the state of thought and certitude of the Church."<sup>106</sup>

Naud then turns to the role of pastors (those in pastoral ministry). Rahner had stated in 1968 that "in preaching and catechesis, one ought not in any case present teachings contrary to these provisional doctrines of the Church." Naud rejects this, as it is clear that Rahner himself would now. Naud calls it the "politics of silence" that "maintains a false evaluation of the true thought of the Church." Rather, the pastor's role must be redefined. The pastor of souls is no mere courier. "In the measure in which he has a share in magisterial activity, the pastor has not only the right to reflect, but the duty to do so. He has equally the right and duty to make his responsible contribution to the teaching of the Church."<sup>107</sup> Naud firmly rejects the old idea of an obedient or obsequious silence, and the apparent unanimity it presents. "It does not recognize sufficiently the right and the duty of each of those with a responsibility within the Christian community to participate in the communal search on moral questions that ought to be debated." Therefore he resolutely defends the right and duty of dissent, always, of course, with due reverence. Denials of this root in the urge toward a unity established on a false basis. As a result of this urge, he feels, we have tended unduly to expand

<sup>105</sup> Ibid. 168-69.

<sup>106</sup> Forthcoming in the *Way* (April 1981) is a fine article by Thomas E. Clarke, S.J., "Shepherding the Heritage: Bishops as Teachers." Clarke stresses the fact that Church teaching takes place through an interplay of the experience of the entire People of God, its creative testing and understanding by theologians, its validation by the episcopal college.

<sup>107</sup> Naud, "Les voix" 170.

the authority of the magisterium, especially of the pope, in matters not definitively decided by Scripture and tradition. He concludes his study as follows:

For all the questions which revelation cannot sufficiently clarify, my reflections point in the direction of a much greater reserve in the definition of the role of the Roman pontiff; of a more responsible sharing on the part of pastors (priests and bishops) in the magisterial function; of a diminished isolation of the critical role of the theologian; of a presentation of the thought of the Church which, in each instance, reveals adequately the qualities that give it credence; of an approach to the ecclesial community which considers each adult member of it as truly adult.<sup>108</sup>

This outstanding study has been presented at length because it outspokenly represents the convictions of a large segment of the theological community. These convictions, basically ecclesiological in character, constitute the framework out of which many theologians feel obliged—and, I would add, in conscience—to think about and respond to the authoritative noninfallible declarations of the Church on moral matters not definitively settled by the sources of faith. Thus it should be expected and pacifically accepted, even welcomed, that dissent will continue from some of the reaffirmations of the Synod.

Concretely, where theologians feel that they have convincing reasons for a position, they feel obliged in loyalty to the Church to say it, and say it publicly (since theology is a public enterprise). Naud argues that this must also be the case with bishops. This is one of the most important aspects of his study. I used to believe that closer co-operation between bishops and theologians might solve many of our pastoral problems and foster the credibility of the Church's teaching office. Such co-operation is nugatory, however, if the bishops do not speak their true mind after co-operation has occurred. If they do not, then we shall continue to experience in official documents the dominance of a theology emanating from those Walbert Buhlmann refers to as the "old guard."<sup>109</sup>

Next there is a fine essay by Bernard Cooke.<sup>110</sup> Cooke says some of the things stated by Naud. For instance: "What is needed—and has been needed for many years—is open and careful discussion that includes all the responsible voices in the Church." We need structures, Cooke argues, that allow bishops' collegial witness to apostolic tradition to openly interact with the reflection and research of scholars and both to be challenged by the life experience of devoted Catholics. Why so? Because,

<sup>108</sup> Ibid. 175–76.

<sup>109</sup> Walbert Buhlmann, "Chance zum Neubeginn in der Glaubenskongregation?" *Orientierung* 44 (1980) 196–97. This is a severe critique of "Roman centralism" in contemporary theology.

<sup>110</sup> Bernard Cooke, "The Responsibility of Theologians," *Commonweal* 107 (1980) 39–42.

although the bishops, together with the bishop of Rome, possess and pass on the truth upon which Christianity is grounded (Jesus' death and resurrection), still "when we move beyond this core reality to which the papacy and episcopacy witness, when we move to questions about the meaning and applicability of Christ's death and resurrection, other kinds of knowledge and experience enter the picture." A fortiori this would be true of concrete moral questions, a point both Naud and Cooke concede.

Third, in dealing with the pastoral problem of the theologian, it would be useful to study an excellent essay by Avery Dulles, S.J.<sup>111</sup> He first treats of the requisites for membership in either of the two (hierarchical, scholarly) magisteria. Where the theological magisterium is concerned, what is required is a group of factors such as advanced degree, distinguished career of teaching, noteworthy publications, esteem by one's colleagues. *Missio canonica* is not required. This notion, as applied to theologians, originated in Germany after the disturbances of 1848, when special measures were required to protect Catholic teachers from state interference. "This historically conditioned maneuver ought not to be the ground for redefining the concept of the Catholic theologian."

Dulles next reviews the functional specialties of each magisterium. The hierarchical magisterium is proclamatory, explanatory, promotional, judicial. Under this last category, Dulles believes that the position of Pius XII (*Humani generis*, DS 3885) about terminating a theological debate "still seems to stand." By this he means that it has not been officially abrogated; he does not mean that he agrees with the position. In summary, the functional specialty of the hierarchical magisterium is judgment about what is vital for the life and witness of Christian community. That of the theologian is understanding.

As for the relationship of the two magisteria, Dulles rejects reductionist (total identification) and separatist approaches. Instead, he proposes a "dialectical relationship of relative autonomy with mutual acceptance." Thus, while the hierarchy does not learn the Christian message from theologians, still the appropriate restatement of this faith does depend on scholarly work.

There is a certain tension that is normal and healthy in the relationship of the two magisteria; but in our time it has become explosive and has generated a "third magisterium." This refers to simple and devout believers (and their theological supporters) who have not been trained to distinguish the deposit of faith from traditional formulations and thus believe that liberal theologians are betraying the faith. Bishops are under great pressure from this "third magisterium" and this has sharpened the normal tensions between bishops and theologians. These two groups are

<sup>111</sup> Avery Dulles, S.J., "The Two Magisteria: An Interim Reflection," forthcoming in the *Proceedings of the Catholic Theological Society of America* 35 (1980).

being driven apart by forces that would put them in opposite camps.

Dulles believes—and I think accurately—that the hierarchical magisterium is tempted to identify traditional formulations too simplistically with the deposit of faith “and to appeal to authority of office as an excuse for not looking into new and complex questions.” This attitude on the part of churchmen of the nineteenth century made it difficult for scholars to open up the biblical question, and Dulles asserts that “the same may be said in our time regarding recent developments in the morality of sex and family life.” If the hierarchy is to regain influence with alienated Catholics, bishops cannot simply go by the book in condemning new ideas and their authors. Dulles then concludes as follows:

They must sincerely and evidently examine the issues on their merits. Before rejecting any new doctrinal proposal, they must assure themselves that they have really heard and appreciated the reasons and motivations of those who favor the proposal. Where there is widespread and persistent dissent on the part of committed Catholics, the hierarchy must carefully inquire whether something has gone wrong with the decision-making process. If the decision was not substantively wrong—a possibility we can rarely exclude—at least the way in which it was reached, expressed and imposed may have been deficient.

What is important here is that all three authors (Naud, Cooke, Dulles), and with them Rahner and many others, view dissent as (1) a normal, indeed indispensable, aspect of doctrinal progress, (2) and therefore as the right and duty of a theologian. In reactionary times in the Church it is all too easy to overlook this and define a theologian's loyalty in terms of adherence to a traditional formulation. We must remember that certain notions of loyalty and obedience are really encouragements to risk-avoidance and theological conformity. At this point “loyalty” betrays fidelity to one's vocation as a theologian and to those who have a right to expect more from the theologian. Similarly, it is all too easy to define the teaching role of the bishop too exclusively in terms of formal authority. It remains axiomatic that one of the great advantages of being a teacher is that it creates the possibility of learning.

### *Theologically Informed Pastoral Minister*

Archbishop Quinn adverted to this problem in his synodal intervention (“grave personal problems for priests”). The priest has a dual role: representative of the Church's teaching authority, pastor of souls. Normally these two roles complement each other. But where contraception is concerned they are in severe tension and this causes grave personal problems. It can endanger the very identity of the priest in his ministry. In one role the priest is expected to set forth the teaching of the hierarchical magisterium as the remote objective norm for moral decision-

making. On the other hand, the more theologically aware he is, the more he knows of the widespread disagreement with the substantive moral argument (*intrinsece inhonestum*) and the reasons for it.

The pastoral strategy constantly urged is compassion toward one regarded as a "habitual sinner" in need of time for conversion, or as one in a situation of *conscientia recta sed non vera*, but in either case as one who should receive the Eucharist. The problem of this pastoral strategy is two-dimensional. For the penitent or counselee it can appear to be a recommendation for hypocrisy. Purpose of amendment is clearly very problematical here and the penitent knows it better than anyone. For the priest it goes to the very marrow of his self-understanding. He is a man of the Church and as such is loyal to authority within the Church. But he also is aware that the intellectual foundations of the position he is asked to impose as counselor-advisor have been profoundly eroded. Thus he is split. And so split, he is asked to solve at a practical level the problem of dissent and nonconformity, a disproportionate burden for the average priest. In summary, the priest finds himself with no coherent theological grounding for pastoral strategy. All of these things Archbishop Quinn has realistically noted in his intervention.

Can anything be said to this problem at the present time? An interesting study by Philip S. Kaufman attempts an answer.<sup>112</sup> After reviewing the history of probabilism in the Church, Kaufman asks whether there is a probable opinion in this matter against *Humanae vitae*. He notes the "massive response of competent theologians" opposed to certain formulations of the encyclical. The standard answer is, of course, negative. According to this view, as Kaufman notes, "once the pope or a Roman congregation has taken an official position, there is no longer room for the legitimate doubt upon which probabilism is based."

Kaufman rejects this view and argues that it can be maintained only if the Roman magisterium has never been in error in its authentic moral teaching. He amply documents that this is not the case, citing especially but not exclusively slavery as an example. Kaufman concludes by insisting that widespread theological dissent is a theological source and "it should also be a valid and available source for the faithful in the formation of their consciences." He cites the remarks of Bernard Häring in a talk at Holy Cross Abbey: "Those who are doubtful whether they can accept it have to study it thoroughly, have to read it with good will, but they also have to accept other information in the Church. They cannot dissociate the pope from the whole of the Church." Kaufman argues that the faithful have a right to that "other information" and that it is "objectively immoral" to deny that right. In summary, he thinks probabilism is applicable.

<sup>112</sup> Philip S. Kaufman, "An Immoral Morality?" *Commonweal* 107 (1980) 493-97.

When we combine Rahner–Naud–Cooke–Dulles with Kaufman’s essay, an important point emerges. When dissent occurs against an official formulation and becomes “massive” throughout the Church, it cannot be viewed as “isolated speculation” with no relationship to practical everyday living. That is exactly what Häring and Kaufman are underlining. To say anything different is to put truth in the service of authority and official formulations. It should be exactly vice versa.

And that is where this matter is, in my judgment, even after the Synod. There was neither the time nor the ability (cf. Reese’s description of the synodal atmosphere and personnel) to engage in the serious dialogue and study suggested by Archbishop Quinn and the Canadian bishops. Such dialogue and study is required to maintain the presumption of truth certainly enjoyed by those possessing the *charisma veritatis*.<sup>113</sup>