

## CURRENT THEOLOGY

### NOTES ON MORAL THEOLOGY: 1983

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These "Notes" will focus on four areas of contemporary concern: (1) conversations in fundamental moral theology, (2) doctrinal development, (3) pastoral problems, (4) the episcopal pastoral *The Challenge of Peace*.

#### CONVERSATIONS IN FUNDAMENTAL MORAL THEOLOGY

I have entitled this section "conversations" rather than "disputes" in order to underline the open and communicative character that should pervade scholarly exchanges. Furthermore, the term allows reportage of literature that would not fit easily under a single rubric.

In an important article, Joseph Fuchs, S.J., discusses the tensions between bishops and theologians.<sup>1</sup> Fuchs first adverts to the mission of bishops. One aspect of that mission is the unity of the faithful. However, there is the danger that bishops can confuse unity in faith with uniformity about moral teaching. "If Vatican II noted that believing Christians of upright conscience could at times come to different solutions in important human questions (therefore ethical questions), then that indicates that the unifying function of the bishops in moral questions, even on the basis of the one faith, is not unlimited."<sup>2</sup> Unity in the faith is much more important than unity in moral questions. "Church history shows repeatedly that functional unity in moral questions does not mean the truth of the moral formulations implied in this unity." Therefore episcopal service should aim not above all at functional conformity, but at unity in the truth. Many regrettable events could have been avoided if this had been remembered through centuries of church history (Fuchs mentions religious freedom, sexual-ethical formulations, and the defense of the unjust use of force). Subjective certainty in moral questions has sometimes taken precedence over the truth.

In the years prior to Vatican II, Neo-Scholastic theological tendencies, both in theology and in hierarchical statements, were more in the service of certainty than of truth. This led to a regrettable "positivism" of the Christian moral message. One of the strongest critics of such positivism

<sup>1</sup> Joseph Fuchs, S.J., "Bischöfe und Moraltheologen: Eine innerkirchliche Spannung," *Stimmen der Zeit* 201 (1983) 601-19.

<sup>2</sup> *Ibid.* 603.

was Josef Ratzinger, who referred to the “transformation of the Christian ethos into an abstract natural-law system” and added that “even graver is the ever more pronounced positivism of magisterial thinking that embraces and regulates this ethical system.” Fuchs insists that in conceiving their unity-task bishops remember that it is unity *in truth* that we are after and that this is rarely well served by discussion-ending edicts.

Fuchs next turns to the mission of the theologian. The past century has witnessed the growth of a strong juridical understanding of the magisterium. This culminated in *Humani generis* (1950) but was attenuated by Vatican II’s insistence on the presence of the Spirit to the entire People of God. In the present situation Fuchs sees four dangers. First, there is the danger of magisterial positivism that functions as a real obstacle to the discovery of truth. Moreover, such positivism often involves a one-sided privileging of a single school of theology. Next there is the danger that we give support to the notion that concrete directives are a matter of God’s revealed will. The third danger is a certain narrowing of the field of moral-theological reflection. Finally, the situation is calculated to deepen a sense of ethical immaturity in the discovery of moral truth.

The work of moral theologians is often said to be the source of “dangerous confusion.” In most instances Fuchs reads this as fear of the loss of peaceful ecclesiastical functioning, which is basically fear of more responsible and arduous dialogue. Still, Fuchs insists that mere repetition of past formulations is an inadequate description of theology’s task. Human beings, including Christians, never cease to reflect on their lives. But they do so in the circumstances of different times and cultures. This means that in moral theology there will always be new insights, understanding, values, and judgments. It also means, Fuchs argues, that bishops who are not moral theologians will often be unfamiliar with the new problems of moral theology.

Fuchs then lists three acute problem areas that intensify the difficulties of bishops in carrying out their service of promoting “unity in truth.” The first concerns the possibility of distinguishing good and evil. It is asserted that moral theologians are making it more difficult for the Church to distinguish the two. Fuchs rightly notes that this accusation builds on an inadequate distinction between the pairs good-evil and right-wrong. The notions of good and evil concern the person. It is the person who is good or evil. Right-wrong refers to one’s conduct. The living-out of one’s Christian faith is primarily a matter of personal goodness, only secondarily of rightness-wrongness of conduct. And where personal goodness is concerned, there are no uncertainties and differences of view in contemporary moral theology.

It is universally acknowledged that a person must not act against a responsibly formed conscience; that a person must in his/her decisions always be morally good, never evil; that one must always regard and treat every human being as a person; that one must, as far as possible, avoid evil in the development of the world; that one must pursue the development of innerworldly reality with justice, mercy, magnanimity, chastity etc. . . ; that one must never use a means known as morally wrong to achieve a good end.<sup>3</sup>

Once one realizes that the determination of the rightfulness and wrongfulness of our actions, important as it is, is of secondary importance, one is better positioned to tolerate peacefully a certain pluralism of method and response where rightfulness and wrongfulness are concerned.

To one who is confused by contemporary theological work and maintains reservations about it, Fuchs suggests consideration of several basic points. For instance, in the past theological reflection did not always arrive at identical moral judgments in certain areas such as sexuality. Thus, for centuries sexual intimacy with any other motive than procreation was seen as sinful, while during the first five centuries masturbation received practically no moral consideration. Or again, failure to provide convincing reasons for certain norms can be reason for doubting their accuracy. Fuchs gives as examples the *propositiones* of the 1980 Synod of Bishops on contraception and reception of the Eucharist by the divorced-remarried person.

The second problem area is the relation of faith to morality. Some people erroneously believe that concrete norms of rightness and wrongness are exhaustively grounded in the Christian faith. Catholic tradition, by contrast, says they are grounded in *recta ratio*. While faith in Jesus Christ can illumine reason, it does not replace it.

Finally, there is the distinction between authority and competence. If one is to pass judgment on the rightfulness and wrongfulness of concrete human conduct, clearly one must have the competence to understand and judge the many factual dimensions involved in such problems. If this judgment is to be issued to the Christian community, one must have authority. As for competence, it is the same for bishops, moral theologians, and others. For instance, anyone wishing to determine the rights and wrongs of genetic interventions must be competent in the field. Where authority is concerned, Fuchs concedes that bishops have authority by reason of their mission. But it is not identical with competence. Furthermore, he cautions about an overexpansive interpretation of *de fide et moribus*. Neither Vatican I nor Vatican II meant this to include in an unqualified way all moral problems however concrete.

The study ends by reflecting on the pastorals of the American and

<sup>3</sup> Ibid. 611.

German hierarchies on war and peace. One of the great lessons to come from the American experience is that clarity on complex moral questions is not easy, requires time, and must draw on a variety of competences. Another lesson is that not everything the magisterium teaches has equal authority.

The most important emphasis in Fuchs's study is that episcopal concern for unity must be unity *in the truth*, not mere conformity. Furthermore, there is a hierarchy of truths.<sup>4</sup> Those pertaining to personal goodness or evilness (in contrast to rightness and wrongness) are primary and should be those that basically forge the unity bishops are missioned to achieve and protect. Where rightness and wrongness of conduct is concerned, insistence on a similar unity would be untrue to history, insensitive to the complexity of some moral problems, unresponsive to the historical and cultural changes we live with, and finally damaging to the credibility of the magisterium.

Yet it is unity on such right-wrong questions that seems to preoccupy too many authorities and some theologians. For instance, there are still bishops who exclude from their dioceses theologians who dissent on relatively marginal points of the moral life, especially in the area of sexuality. Unless and until bishops refrain from such jurisdictional overkills, uniformity will be confused with unity in the faith and unity in truth.

Furthermore, the tension noted by Fuchs is only heightened, and the achievement of truth impeded, by Roman interventions that are not dialogical but are straightforwardly an exercise of ecclesiastical muscle (cf. below under "Pastoral Problems"). Though the pope has no divisions, he does have his congregations. Their potential for good is great, but by the same token their potential for damage is incalculable. On Nov. 8, 1963, Cardinal Frings adverted to this when he confronted Cardinal Ottaviani in the most dramatic moment of Vatican II. He referred to the Holy Office, "whose methods and behavior do not conform to the modern era and are a source of scandal to the world."<sup>5</sup> Whenever concrete moral conclusions are imposed through intimidation—and that is being done in our time—those responsible for it must bear the heavy burden of Frings's indictment.

Those who treasure the magisterium should realize that the greatest threats to it may well be largely from within. Three stand out. First, there are some of the archconservative personnel of the Roman congre-

<sup>4</sup> Charles Curran has treated these matters well as they touch the pastoral minister. He emphasizes and develops two points that may be of aid to pastoral ministers: dissent and the difference between moral theology and pastoral counseling. Cf. "Discipleship: The Pastoral Minister and the Conscience of the Individual," *Clergy Review* 68 (1983) 271-81.

<sup>5</sup> *Catholic Review*, March 4, 1983, 1.

gations. They consistently confuse and identify the truth with conformism to Roman formulations, many of which are no more than the "school theology" of a minority group who happen to be consultors and advisors. Second, there are growing numbers of reactionary theologians who support this type of thing with insistence on a verbal conformity that is utterly incredible to the modern—and, I would add, open—mind. Third, there are the reactionary reporters and letter writers (to Rome) mentioned by Archbishop John Roach in his opening speech (Oct. 14, 1983) to the N.C.C.B.<sup>6</sup> and by the distinguished historian John Tracy Ellis.<sup>7</sup> It is clear that these three "threats" are quite capable of crippling the magisterium in the contemporary world. For reasons such as these Fuchs's article is extremely timely.

Fuchs notes that faith can illumine reason when it deals with concrete moral problems, but not replace it. That opens on another interesting question. In recent years there has been discussion about the relationship of morality to Christian faith. Specifically, what does Christian faith add at the level of concrete norms? The discussion, especially in Germany, developed into a lively debate. Jean-Marie Aubert summarizes the debate and proposes a synthesis.<sup>8</sup>

Vatican II emphasized the need of dialogue with the contemporary world. Many moral theologians saw this as a mandate to highlight the communicable dimensions of the Christian heritage. They built on two foundations: secularization (the independent value of earthly realities) and the Thomistic tradition of reason. A. Auer's *Autonome Moral und christlicher Glaube* was one of the opening shots in the debate. Auer argued for an autonomous morality at the level of concrete norms, but an autonomy enriched by the horizon of understanding (*horizon de compréhension*) provided by faith. In virtue of this horizon, the Christian, enlightened by faith, gives a different and deeper meaning to his inner-worldly activity. Furthermore, such a Christian will discern values underesteemed by the world and thus through faith exercise a critical role in the world.

Aubert notes that the autonomy thesis was adopted by "the majority of contemporary moralists" with nuances unique to each proponent. He mentioned Bruno Schüller, S.J., Dietmar Mieth, Joseph Fuchs, S.J.,

<sup>6</sup> *New York Times*, Nov. 15, 1983, A18.

<sup>7</sup> "I have the impression that certain curia officials are listening too much to one side—and that side is usually the far right" (*Catholic Review*, Nov. 18, 1983, A6). This "far right" was identified by both *Time* (Nov. 28, 1983, 96) and *Newsweek* (Nov. 28, 1983, 115) as the truculent tabloid out of St. Paul, the *Wanderer*. The "listening officials" are identified by *Newsweek* as Cardinal Angelo Rossi, Archbishop Augustin Mayer, and Cardinal Silvio Oddi.

<sup>8</sup> Jean-Marie Aubert, "Débats autour de la morale fondamentale," *Studia moralia* 20 (1982) 195–222.

Franz Böckle, B. Frailing, F. Furger, W. Korff, R. Hofmann—to mention but a few—as well as Edward Schillebeeckx and Hans Küng.

The reaction to this current of thought was quite polemical, “mingling unjust accusations with abusive simplifications.” Aubert sees in it a kind of “ecclesiastical politics” determined to repair the split between the hierarchy and others (theologians and the faithful in general); for if concrete morality is autonomous, “the authority of the hierarchy in ethical matters is correspondingly diminished.”<sup>9</sup> Thus, G. Ermecke argued that a morality founded on reason “risks losing its unconditional character and tumbling into subjective utilitarianism.” According to him, faith will manifest itself at the level of concrete norms.

But the chief champion of this “ethic of faith” is B. Stöckle. He denounces the idea of restricting the influence of faith to motivations and horizons. Reason is unable to perform the function (discovery of right and wrong) that autonomists assign it. Two traits characterize the thought of this minority school: ethical pessimism (loss of confidence in reason) and depreciation of the human. Besides Ermecke and Stöckle, Aubert lists as adherents K. Hilpert, A. Laun, J. Scheffczyk, A. Voegtle, H. Oberheim, and Hans Urs von Balthasar. This last has a notion of nature that is profoundly pessimistic and is closer to Barth than to St. Thomas. Thus the need to have recourse to Scripture to discover concrete norms.

Aubert believes a resolution of this problem is possible, but only if we recognize the deficiencies of both schools of thought. Both schools suffer from what he calls the “modern Kantian context” of the debate. In such a context morality is viewed above all as the proposal of duties and norms. For the autonomists, reason is too easily closed in on itself, whereas an “ethic of faith” too easily becomes fideism and sectarianism. To integrate the concerns of both schools, the casuistic character of the debate must be abandoned. Aubert suggests a return to the Thomistic perspective, which is more global but nicely integrates theological claims with the claims of reason. In the Thomistic synthesis it is the whole person who is transformed by grace and the theological virtues, not just the intentionality. But against the “ethic of faith,” Aubert insists with Thomas that reason is the rule of the entire moral life.<sup>10</sup>

Aubert comes close to pulling off a neat trick. He wants to reconcile opposing tendencies by creating a moral global synthesis, a kind of third alternative. He does so by actually siding with one side on the substantial issue. He denies biblical foundations for concrete norms and along with St. Thomas asserts the role of reason in their discovery. And that is what

<sup>9</sup> *Ibid.* 205.

<sup>10</sup> 1-2, q. 108, ad 2: “Ad opera virtutum dirigimur per rationem naturalem quae est regula quaedam operationis humanae.”

the debate was largely about in the first place. It was not about whether the entire person and his/her acts are penetrated and transformed by grace. Clearly they are. It was not about whether the theological virtues are central to the Christian moral life. Of course they are.

In an interesting article rather closely related to the discussion reported by Aubert, James Gaffney dialogues with Bruno Schüller, S.J., and this author on the distinction between parenesis and normative ethics.<sup>11</sup> He uses Stanley Hauerwas' approach to abortion as the vehicle for his reflections. Hauerwas, it will be recalled, thinks of a Christian as one who is trying to become a particular sort of person and presents abortion as profoundly at odds with that ideal. "It is this basis of opposition to abortion that, in Hauerwas' opinion, Christians should be telling people about and he thinks that telling about it is much more like telling a story than it is like building a case."<sup>12</sup>

My analysis of this, Gaffney correctly notes, was that it does not determine or state the rightness or wrongness of any particular abortion (as Hauerwas would admit) and therefore pertains to the category of parenesis. The story-approach does not have the "normative equivalency" or validity of a more analytic or argumentative approach. Gaffney accurately reports that I believe Hauerwas may have been confusing parenesis and justification, much as Schüller had rejected final ethical appeals to biblical revelation as embodying such a confusion. Gaffney has reservations about this contention because he has a "strong suspicion that parenesis is a less clear and distinct phenomenon than Schüller and McCormick seem to think." Furthermore, he has a strong sympathy with Hauerwas' approach.<sup>13</sup>

What suggestion does Gaffney make? As I understand his essay, he believes that the dichotomy between the parenetic and the normative is not as sharp as Schüller and I seem to think. Why? Because every ethical norm is parenetic (e.g., the statement "it is wrong directly to kill an innocent person" contains implicitly the exhortation "do not do so"). This leads Gaffney to suggest that the type of narrative Hauerwas employs may be more normative than we think and more useful than a too-sharply-drawn distinction between parenesis and normative discourse would suggest.

I am prepared to admit that every concrete norm is implicitly parenetic.

<sup>11</sup> James Gaffney, "On Parenesis and Fundamental Moral Theology," *Journal of Religious Ethics* 11 (1983) 23-34.

<sup>12</sup> *Ibid.* 27.

<sup>13</sup> For Hauerwas' most recent summary of his approach, cf. his "Casuistry as a Narrative Act," *Interpretation* 37 (1983) 377-88.

But I do not believe that this blurs the distinction between parenesis and normative discourse to the extent of allowing the former to do the work of the latter. In other words, normative discourse may contain implicit parenesis, but this does not convert into the statement that parenesis and normative discourse are insufficiently distinct. At least I do not believe it does.

This may seem a very technical point at the margins of the ethical enterprise. Quite the opposite is the case. It touches on the types of justification we give for some very concrete sorts of actions, for judging such actions morally right or wrong. If appeals that are broadly parenetic in character are considered to be justifications for some very concrete moral prescriptions or proscriptions, we are vulnerably exposed to some rather frightful isms: fundamentalism, positivism, and authoritarianism in morals.

Let a recent study by Bruno Schüller, S.J., exemplify this.<sup>14</sup> Schüller cites Hans Urs von Balthasar's defense of *Humanae vitae*. It reads in part as follows:

Is it indeed a sign that mankind has entered into the final phase of its history? Through fear of overpopulating the planet, it regulates procreation by tearing asunder the unity of human love. A mutual love that excludes from its expression the chance or danger of offspring is no longer unreserved love. . . . We simply ask: Can married love between Christians that builds into itself such decisive reservations be love modeled after the following of Christ? We appeal now not to the natural law, but rather we prefer to recall the well-known pericope from Ephesians (5/21–23) where Paul places the living-out of marriage under the prototypical love of Christ and the Church.<sup>15</sup>

Schüller sees the phrases “tearing asunder the unity of human love” and “builds into married love decisive reservations” as “persuasive descriptions” (“persuasive Kennzeichnung”) that contain their own evaluation. They purport to be mere descriptions but are so colored that the action is *ex definitione* morally wrong. This is the logical error of subreption—an inference obtained through fraudulent concealment. When Balthasar comes to the difference between natural family planning and contraception, he states that “the difference is great for those who think in a Christian way.” Equivalently, then, Schüller argues, Balthasar says: be a Christian, think as a Christian, decide for love without reservations, and the truth of *Humanae vitae* will no longer be doubtful. Schüller

<sup>14</sup> Bruno Schüller, S.J., “Zur Begründung sittlicher Normen,” in *Der Mensch und sein sittlicher Auftrag*, ed. Heinz Altaus (Freiburg: Herder, 1983) 73–95.

<sup>15</sup> *Ibid.* 90.



rightly sees this as parenesis that leaves the normative question untouched—or rather it supposes the answer to the normative question.<sup>16</sup>

This example shows, I believe, that it remains important to continue to distinguish parenesis from moral argument, a point I think Gaffney would concede. The only point of difference between us that I can detect is the extent to which a rather exclusively narrative approach to normative questions endangers the distinction.

Nothing said above should be understood as diminishing the importance of parenesis in the moral life. The New Testament is sufficient witness to such importance. Indeed, I would argue that to diminish the importance of parenesis is, by implication, to reduce the moral life to “quandary ethics.” In summary, I want to agree with Gaffney’s suggestion that parenesis and normative ethics are complementary. Neglect of either, or confusion of the two, is a threat to both.

A discussion similar in some respects to that about parenesis and normative ethics is that about the foundation of moral norms themselves. In a previous edition of these “Notes” I had dialogued with my friend and colleague John R. Connery, S.J., and made some criticisms of his critiques of so-called “proportionalism.”<sup>17</sup> One of his major criticisms was that Catholic tradition has taught that certain actions are morally evil *ex objecto*. He further contended that “proportionalists” cannot say this. I responded by saying that this misses the point of what this school of thought is saying. “When contemporary theologians say that certain disvalues in our actions can be justified by a proportionate reason, they are not saying that *morally wrong* actions (*ex objecto*) can be justified by the end. They are saying that an action cannot be qualified morally simply by looking at its *materia circa quam*, or at its object in a very narrow and restricted sense. This is precisely what tradition has done in the categories exempted from teleological assessment (e.g., contraception, sterilization). It does this in no other area.”<sup>18</sup> I further argued that the

<sup>16</sup> It is interesting to compare Balthasar’s statements with those of John Paul II (Sept. 17, 1983). Repeating his rejection of contraception, he stated: “To think or to say anything to the contrary is tantamount to saying that in human life there can be situations where it is legitimate not to recognize God as God.” He added: “The contraceptive act introduces a substantial limitation from within of this reciprocal donation and expresses an objective refusal to give to the other all the good of femininity or masculinity” (*St. Louis Review*, Sept. 23, 1983, 8).

<sup>17</sup> For discussions of this matter in some recent books, cf. David Hollenbach, S.J., *Nuclear Ethics* (Ramsey: Paulist, 1983); Neil Brown, *The Worth of Persons* (Sydney: Catholic Institute of Sydney, 1983). Cf. also Felix Podimattam, “Conflict Morality: An Interpretation,” *Jeevadhara* 12 (1982) 409–54; George Lobo, “Moral Absolutes: Toward a Solution,” *ibid.* 455–69. These latter two articles are in substantial agreement with the perspectives adopted in these “Notes” over the years.

<sup>18</sup> *TS* 43 (1982) 85.

term "object" was so inconsistently used (sometimes including circumstances, sometimes not) that it might be better to abandon the object-end-circumstances in favor of *materia circa quam* plus morally relevant circumstances.

Connery has graciously replied to these suggestions and made several points.<sup>19</sup> Since his rejoinder appeared in this journal, I will synthesize the points quite briefly, but I hope his major concerns will be clear. He does not believe that this new terminology clarifies anything. Indeed, he argues that "proportionalists" collapse into *materia circa quam* whatever they do not wish to consider a value term ("e.g., masturbation, contraception, contraceptive sterilization, killing an innocent person, and even adultery"). Rather, some of these are morally definable "merely by consideration of the object of the act, e.g., in solitary sexual acts." Or again, "one can make a moral judgment of sterilization when one knows that it is contraceptive," and therefore "apart from the kind of calculus the proportionalists would demand." He further argues that the chief reason for the vulnerability of "proportionalism" is "the reduction to *materia circa quam* or premoral evil of acts that had previously been considered immoral." Connery believes that one must not "weigh all the good and evil in the act, including all the consequences," for that would make our decisions "more difficult." Moreover, tradition used *ratio proportionata* only for affirmative obligations and positive legislation, not for negative obligations, "e.g., killing an innocent person."

I cannot respond in detail to many of the peripheral statements in Connery's article. For instance, whether "proportionalists" consider adultery or killing an innocent person value terms (actually I do so consider them) is of secondary importance. What is of greater importance is that those who oppose this *Denkform* do consider such terms value terms and then go about saying that "proportionalists" justify what has already been defined to be morally wrong. No "proportionalist" does that.

Again, Connery argues that *ratio proportionata* traditionally did not apply to negative obligations such as direct killing of the innocent. What he fails to observe is that this restrictive interpretation ("direct," "innocent") of killing could only have been made by a teleological procedure. In other words, we gradually arrived at a *moral* definition of certain actions ("*direct* killing of the *innocent*") by weighing all the good and evil in certain actions and then concluding that, all things considered, they could never be morally acceptable. Whenever a moral norm is inadequately formulated, this process of restrictive interpretation must occur. But that is not to make exceptions to accepted moral formulations.

<sup>19</sup> John R. Connery, S.J., "The Teleology of Proportionate Reason," *TS* 44 (1983) 489-96.

It is to critique the adequacy of the formulations themselves. If we get to a *moral* definition of an act (as morally wrong) by a teleological procedure, then clearly the act so defined is subject to teleological inspection if we are to be consistent.<sup>20</sup>

But there are several points in Connery's response that I want to lift out for further dialogue.

1) *The term "materia circa quam."* I am surprised that Connery sees my usage as "new." It is adapted from St. Thomas, and indeed in this very area. For instance, Thomas writes: "The objects as related to the exterior acts are the *materia circa quam*, but as related to the interior act of the will they are ends, and it is from their being ends that they give the species to the action, but as *materia circa quam* of the exterior action they are also termini by which the movements are specified."<sup>21</sup> I had suggested some such usage because the term "object" is used so inconsistently. Sometimes it includes morally relevant circumstances (theft = "taking another's property against his reasonable will"), sometimes it does not (masturbation). For this reason the term "ex objecto" becomes ambiguous, and not terribly useful, because it is not clear whether the moral wrongness roots in the object or the circumstances, as Karl Hörmann has recently noted.<sup>22</sup>

There are two ways to avoid this problem. The first is to cease speaking of the object and to speak of *materia circa quam* with all morally relevant circumstances. The second is to continue to use the term "object" but to include in it all morally relevant circumstances, as Thomas did.<sup>23</sup> For all practical purposes the two are the same.

2) *The proportionalist calculus.* Closely connected with the above point is Connery's insistence that there are actions that are morally definable "apart from the kind of calculus the proportionalist would demand." I am not sure what that means. It looks very much like a misconception. It makes me wonder what Connery is thinking of when he says "proportionalists" would demand a calculus beyond an already morally defined act. If an act is *morally* defined, obviously no further calculus is needed. And every "proportionalist" would say that. But a calculus is often called for before the act can be so defined.

At several points Connery refers to and rejects "weighing all the good

<sup>20</sup> Cf. John F. Dedek, "Intrinsically Evil Acts: The Emergence of a Doctrine," *Recherches de théologie ancienne et médiévale* 50 (1983) 191-226.

<sup>21</sup> 1-2, q. 72, ad 2; cf. also 1-2, q. 18, ad 2, 3.

<sup>22</sup> Karl Hörmann, "Die Unveränderlichkeit sittlicher Normen im Anschluss an Thomas von Aquin," in *Sittliche Normen*, ed. Walter Kerber (Düsseldorf: Patmos, 1982) 33-45, at 42.

<sup>23</sup> 1-2, q. 18, a. 10c: "principalis conditio objecti"; ad 2: "Circumstantia . . . in quantum mutatur in principalem conditionem objecti, secundum hoc dat speciem."

and evil in the act, including the consequences." Perhaps this is the "calculus" to which he refers. He says that this is unnecessary and only complicating because certain actions are morally definable without it. I would turn that around and say that certain actions are *morally* definable precisely because and only insofar as "all the morally relevant good and evil in the act" has been weighed. Sometimes that is very easy, as when Thomas says that *occisio innocentis* is always wrong. Sometimes it is not. But it can never be bypassed; otherwise we have given the act its moral character independently of morally relevant circumstances.<sup>24</sup>

That is exactly what tradition has done in some instances. Take Connery's example of the "solitary sex act." He says that a moral judgment can be made "merely by a consideration of the object of the act." That is, it is always wrong regardless of the circumstances. This is precisely the type of physicalism many theologians reject (I say "physicalism" because the entire moral meaning of the act is gathered in precision from morally relevant circumstances and based on its physical structure). Thus we find theologians like L. Janssens, M. Vidal, F. Scholz, B. Häring, E. Chiavacci, L. Rossi, A. Valsecchi, and many others rejecting such an analysis and approving masturbation in the procreative circumstances of artificial insemination by husband. They distinguish "moral" from "biological" masturbation, or masturbation from "ipsation." The terminology is irrelevant. Connery is defending a tradition many, perhaps even most, theologians reject. If one sticks with that tradition, then one must buy its methodological implications, which many theologians think indefensible.

At this point it would be helpful to introduce some remarks of Louis Janssens. In a recent study<sup>25</sup> he notes that Thomas gave four classifications for the objects of external action as they relate to reason. (1) External actions whose object is indifferent, e.g., to pick up a blade of straw from the soil. Such actions get their morality from the end. (2) Actions which because of their object are good *secundum se*, e.g., to give

<sup>24</sup> Sebastian MacDonald, C.P., sees this discussion in terms of a shift away from scholastic syllogistic reasoning to an argument from fittingness, "a resolution based on a harmonious relation of goods that evidences signs of fittingness and appropriateness." He concludes: "Catholic moral theology is on the verge of a new era in methods and procedures. It will gradually emerge from a transition period of wide diversity in methods, as it has done in the past, and move toward consensus, though of a different kind. It will depend on a newly gained ability to discover and weigh the goods and the values (and the evils and disvalues) associated with proposed courses of action, to the point where arguments, guidelines, principles and laws gain public warrant and legitimacy because of this fittingness and appropriateness in helping people to live out their Christian lives well in this complex world" ("Can Moral Theology Be Appropriate?" *Thomist* 47 [1983] 543-49, at 549).

<sup>25</sup> Louis Janssens, "St. Thomas and the Question of Proportionality," *Louvain Studies* 9 (1982) 26-46.

an alms. These can become evil by reason of an evil end. (3) Exterior actions that by reason of their object "involve an inseparable moral evil," e.g., adultery, fornication, perjury, killing of the innocent. Of these we may say *malx nominati sunt mali*; or, in Janssens' words, "Certain words are used to name an action not merely under its material aspect, but precisely insofar as it is a morally evil act." Such actions are given value descriptions, and insofar as they are, no further calculus is needed to pronounce them immoral, even though some calculus may be needed to decide what should count as fitting those categories. (4) Actions which, when abstractly considered, contain some important deformity or disorder but are made morally right by circumstances, e.g., in Thomas' words, "The killing and beating of a man involve some deformity in their object. But if it is added to this that an evildoer is killed for the sake of justice or that a delinquent is beaten for punishment, then the action is not a sin; rather it is virtuous."<sup>26</sup>

At this point Janssens makes several important points. First, the deformity or disorder Thomas refers to in category 4 is not *moral* deformity. "Were he speaking of moral disorder or deformity, then it could never be counterbalanced." In other words, no calculus need be made if the action is already given a moral definition. Therefore the deformity is ontic or premoral.<sup>27</sup> Second, while we have the duty to prevent such deformities to the best of our abilities, still, "as the examples given by Thomas show, there are situations in which ontic evil may even be caused—killing or beating a man—and is made morally good by outweighing circumstances."<sup>28</sup> The service of justice and the reasonableness of punishment "can be proportionate reasons to justify the causation of ontic evil." That is utterly clear in Thomas' example, an example that shows how traditional is the notion of "proportionalism."

Reflection on these last two classes of objects leads to the conclusion that a balancing or calculus is called for in the analytic process only when elements of an action are considered abstractly, before giving them a moral definition. For example, if no calculus were required, every killing would be a murder. None would ever be justified. Or, as Janssens notes, "To understand the meaning of the term 'murder,' we have to know the proportionate reasons why some killing is not murder."<sup>29</sup> We have to

<sup>26</sup> *Quaestiones quodlibetales* 9, q. 7, a. 15.

<sup>27</sup> I do not understand G. E. M. Anscombe's problem with such terminology; cf. her "Medalist's Address: Action, Intention and 'Double Effect,'" *Proceedings of the American Catholic Philosophical Association* 56 (1982) 12–25. The concept behind the terminology is quite traditional; cf. *Quaestiones quodlibetales* 9, q. 7, a. 15; also Franz Scholz, "Sittliche Normen in teleologischer Sicht," *Stimmen der Zeit* 201 (1983) 700–710, at 705.

<sup>28</sup> "St. Thomas and the Question of Proportionality" 40.

<sup>29</sup> *Ibid.* 40.

know what Janssens calls the "outweighing circumstances." And this is precisely what official and traditional teaching has not done in certain cases (contraception, sterilization, masturbation). As Thomas noted, some circumstances become "the principal condition of the object."<sup>30</sup> Now if this is true of the abstractly considered act of killing, why is it not true of an abstractly considered act like masturbation? The only reason I can think of is that the biological reality has been allowed to exhaust the notion of the *objectum actus*, as it does for Connery.

So it is not morally defined acts that are susceptible of a weighing and balancing—as Connery and others often assert or imply—but the goods and evils in the single action prior to giving a moral description. To say anything else is to exclude morally relevant circumstances from the assessment of the act. That would be very untraditional.

3) *Permissiveness and proportionalism*. Connery continues to assert that "proportionalism" is vulnerable to abuse and "must bear part of the blame" for the permissiveness experienced in recent years. Furthermore, he claims that there is evidence that this *Denkform* "has given rise to relaxation in attitudes toward moral norms." So many documented factors have been noted for this cultural phenomenon that to attribute it in any significant way to an academic discussion in moral theology is unreal.

But the occasion of Connery's remarks stimulates me to two glosses on this matter. First, if—*dato non concessio*—the discussion of "proportionalism" has indeed influenced an abusive laxness in conduct, then one might more accurately place the blame at the desks of those who misrepresent what many contemporary theologians are saying. I have read repeatedly over the past ten years assertions that many theologians are proposing that a good end justifies a morally evil means. That is, of course, totally false.<sup>31</sup> I have read repeatedly other misrepresentations.<sup>32</sup>

<sup>30</sup> 1-2, q. 18, a. 10.

<sup>31</sup> Bruno Schüller, S.J., calls attention to this and suggests that the eighth commandment still does make demands. Those who neglect or forget this seem not to realize that by inaccurately attributing to others the axiom "the end justifies (any) means," they themselves act objectively according to that axiom. Cf. "Die Reductio ad absurdum in philosophischer und theologischer Ethik: Zur Moral wissenschaftlicher Kontroversen über Moral," in *Die Wahrheit tun*, ed. B. Fraling and R. Hasenstab (Würzburg, 1983) 217–40, at 237.

<sup>32</sup> The most recent is that of Ronald D. Lawler ("Critical Reflections on Current Bioethical Thinking," in *Perspectives in Bioethics* [New Britain, Conn.: Mariel, 1983] 9–27, at 21). He caricatures teleological tendencies in the understanding of moral norms as "one does a deed that is in itself simply a doing of evil . . . in the hope that something good may come of it." Or again: "It is a view that producing good effects, having fine things happen in the world, is better and more important than *doing* actions which are free deeds honoring God by their goodness." I know of no contemporary theologian who would tolerate such totally misleading statements as a fair presentation of contemporary discussions. Similarly, Paul Quay, S.J., a physicist, has stated with vigor, and certainty in inverse

When priests hear such misrepresentations associated with the names of our outstanding theologians (Häring, Fuchs, Böckle, Schüller, Auer, Janssens, Vidal, Furger, Scholz, Weber, Curran, and a host of others), perhaps it is understandable that they are bewildered. But it must be remembered that we are dealing with a misrepresentation. Let blame fall where it is due, on the misrepresentation.

Second and more importantly, there is solidly based evidence that Catholics have adopted certain permissive attitudes because (among many other cultural factors) of the Church's apparent intransigence and unwillingness to dialogue in any meaningful way on sexual matters. The *Humanae vitae* phenomenon revealed this. The phenomenon was repeated in *Persona humana*, as the literature reported in these "Notes" testifies.<sup>33</sup> Many people with whom I have spoken over the years are convinced that Roman theology, and to that extent the official Church, is incapable of dealing with sexuality honestly and openly. *For this reason* people begin to develop their own approach to things. This is also documentable.<sup>34</sup> But once again, let blame fall where it is due.

proportion (if I may) to his grasp of the issues, that "proportionalists" propose that "the alternatives proposed in moral deliberation are, with only a few rare exceptions, nonmoral." He regards this as a "serious error," sufficient "of itself to vitiate the revisionists' entire approach to morality" ("The Unity and Structure of the Human Act," *Listening* 18 [1983] 245-59). He attributes this position to Knauer, Schüller, Fuchs, Janssens, Curran, and this author. "Proportionalists," of course, say nothing of the kind. Obviously, every choice is of an action with a moral character. What "proportionalists" do say is that, before assigning or determining that moral character, one must evaluate relevant circumstances. St. Thomas obviously held this; otherwise he would never have been able to approve (as he did) an action that involved the killing of a human being. Janssens makes this very clear in the article cited above. Quay's wild assertions are a reminder that we have a duty to understand the terms of a discussion or exercise self-restraint in entering it. Quay, I am sorry to say, has done neither.—For an accurate representation of the views in question, cf. Walter Kerber, S.J., ed., *Sittliche Normen* (Düsseldorf: Patmos, 1982). Of this book Bernard Häring writes: "Very seldom have I read a collection with such full agreement as I have this rich book, to which proven and well-known moral theologians and the esteemed exegete Heinz Schürmann have contributed." Häring concludes his review as follows: "If all those with magisterial authority, if theologians and pastors of souls would study this little book carefully and discuss it with each other, many misunderstandings would be dissipated and the pastoral peace of the Church would be well served. . . . It would be a pity were this world-wide consensus of established authors not sufficiently noted" (*Theologie der Gegenwart* 26 [1983] 66-67). Cf. also Franz Scholz as in n. 27 above.

<sup>33</sup> It was no less than Joseph Ratzinger who wrote in 1971: "I should like to emphasize once more that I fully agree with Küng's distinction between Roman [school] theology and [Catholic] faith. I am convinced that Catholicism's survival depends on our ability to break out of the prison of the Roman-school type" ("Widersprüche im Buch von Hans Küng," in K. Rahner, ed., *Zum Problem Unfehlbarkeit* [Freiburg, 1971] 97-116, at 105).

<sup>34</sup> For instance cf. the interesting replies to a questionnaire on "Secular Ethics and Nonbelief" circulated by the Secretariat for Nonbelievers (*Atheism and Dialogue* 18 [1983] 4-34). Bjørn Halvorsen, O.P. (Norway), compares the different reception accorded social

Another interesting conversation concerns theological "notes" or the status of teaching in the Church. It will be recalled that John C. Ford, S.J., and Germain Grisez argued in these pages that the traditional Catholic teaching on birth regulation is infallibly taught.<sup>35</sup> Ford and Grisez had stated their premise as follows:

We do not assert that the norm is divinely revealed. This question is one from which we have prescinded. Our position rather is this: if the norm is not contained in revelation, it is at least connected with it as a truth required to guard the deposit as inviolable and to expound it with fidelity. . . . Admittedly, it does not seem there is any way to establish *conclusively* that this teaching either pertains to revelation or is connected with it apart from the fact that the ordinary magisterium has proposed the teaching in the manner in which it has, and the faithful as a whole until recently have accepted the norm as binding. But a similar state of affairs has been used as a basis for solemnly defining at least one dogma: that of the Assumption of the Blessed Virgin Mary.<sup>36</sup>

In the process of a very thorough study of the ordinary magisterium, Francis A. Sullivan, S.J. (Gregorian University), deals with this premise.<sup>37</sup> I say "premise" because the paragraph deals with the proper object of infallible teaching, a condition of infallible teaching. Sullivan interprets the paragraph as follows: "If I understand this correctly, what it means is that we can know for certain that this is a proper object for infallible teaching from the fact that the magisterium has taught it infallibly."

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and sexual teachings. "On the other hand, however, the Church's teaching in the field of sexual ethics generally meets with negative reactions, even with ridicule." He believes that the values the Church is upholding would be better achieved "by a more positive presentation of them than what is generally the case." Patrick Masterson notes the same thing in Ireland: "Since *Humanae vitae* there has been somewhat of a qualitative change in the way in which Catholic moral theology is *received*." Reporting from India, Aelred Pereira, S.J., notes: "Catholics reject the Church's teaching on sexual ethics without having a substitute position—they find it inconvenient and impracticable." The Episcopal Conference of Belgium notes: "Even though there is not question here of a capital point in Christian ethics, still we must not misunderstand the fact that it is especially the presentation of the Christian principles concerning sexual life that provoked the greatest resistance since the appearance of *Humanae vitae*."

<sup>35</sup> John C. Ford, S.J., and Germain Grisez, "Contraception and Infallibility," *TS* 39 (1978) 258–312. This article was published as a brochure in Germany (*Das unfehlbare ordentliche Lehramt der Kirche zur Empfängnisregelung*, Siegburg, 1980). It occasioned several exchanges: cf. *Theologisches* 139 (1981) 4341–42; 144 (1982) 4583–85; *Theologie und Glaube* 72 (1982) 14–39; *Theologisches* 149 (1982) 4819–27. These references were provided to me through the kindness of Joachim Piegsa, professor of moral theology, Augsburg.

<sup>36</sup> "Contraception" 286–87.

<sup>37</sup> Francis A. Sullivan, S.J., *Magisterium: Teaching Authority in the Catholic Church* (Dublin: Gill and Macmillan, 1983). I cite from the proofs and therefore no accurate pagination is available at this writing.



Sullivan rejects this on several grounds. First, the analogy with the Assumption breaks down. The Assumption was accepted for centuries as a matter of Christian *faith*. The same is not the case with the prohibition of contraception. Sullivan thinks it more likely that it was accepted "as a binding law of the Church."

Next, Sullivan rejects the supposition of the Ford-Grisez argument: that is, if the magisterium speaks in a definitive way about something, it must necessarily be the case that what they speak about is a proper object of infallibility. This would eliminate independent criteria for determining whether something is a proper object of infallibility. Against this view, Sullivan urges that there would be no point in the insistence of Vatican I and Vatican II that the magisterium can speak infallibly only on faith and morals. "It would have been necessary to say only this: whenever the magisterium speaks in a definitive way, it must be speaking infallibly, because the very fact that it speaks in a definitive way would guarantee that what it speaks about would be a proper matter for infallible teaching." Sullivan sees this as an open door to absolutism. He finds no evidence to show that the teaching is so necessarily connected with revelation that the magisterium could not safeguard and expound revelation if it could not teach it infallibly. In other words, it is not a proper object of infallible teaching.

Finally, Ford-Grisez base their case for infallibility on the contention that for many centuries the doctrine was taught by the universal episcopate as a norm *to be held definitively*. Sullivan, along with Rahner and others, insists that "to be held definitively" means to give an irrevocable assent. There is no evidence that this is what the centuries-old teaching meant to do. As Sullivan words it, "In other words, it is one thing to teach that something involves a serious moral obligation; it is quite another to claim that this teaching is now absolutely definitive, and demands irrevocable assent." If the Ford-Grisez thesis were correct, "it would mean that the Church could not declare any mode of conduct gravely wrong unless it were prepared to make an irreversible judgment on the matter. This would practically rule out any ordinary, noninfallible exercise of the Church's teaching authority on moral questions." I find Sullivan's arguments and his concluding synthetic overview of the Church's teaching authority in these matters persuasive.

#### DOCTRINAL DEVELOPMENT

When doctrinal development occurs in the Church, it is usually not without a kind of last-gasp neurological twitch that reveals the pain of the transition. In moving to a new level of understanding, something is left behind, and that abandonment is not in all respects different from a kind of dying. We saw this in the struggle that culminated in *Dignitatis humanae* (on religious liberty). To accept the doctrine on religious liberty

of Vatican II, the Church had to admit, at least implicitly, that Gregory XVI and Pius IX were wrong.<sup>38</sup> In doing so, she had to concede that subsequent popes were and are no less vulnerable. Still, for a Church with an enormous recent investment in the notion of papal authority, that admission was slow and traumatic, even though it should shock no one with a knowledge of history. The authority problem explained much of the vigorous and at times almost bitter resistance to change on religious liberty. John Courtney Murray, S.J., recognized and acknowledged this privately on numerous occasions.

In a pilgrim Church that exists in diverse cultures and rapidly changing times—to say nothing of existing “between the times”—such doctrinal development should be expected. Archbishop John Quinn adverted to this in his intervention during the 1980 Synod of Bishops. However, if such developmental shifts are to occur pacifically in the Church, it might be useful to attempt to highlight their broad structural outlines. The contemporary literature on artificial insemination and *in vitro* fertilization may serve as a vehicle here. As I write, some 300 babies have been born by this latter procedure.<sup>39</sup>

The Government Committee of Inquiry into Human Fertilisation and Embryology (the “Warnock Committee,” so called because it is chaired by Oxford philosopher Mary Warnock) was established in England to review the problems associated with *in vitro* fertilization. Three Catholic groups made submissions to the Warnock Committee: the Bishops’ Joint Committee on Bioethical Issues, the Bishops’ Social Welfare Commission, the Catholic Union and Guild of Catholic Doctors.<sup>40</sup> All are opposed to the involvement of third parties (donor sperm or ova, womb-leasing) and to experimentation on fertilized embryos.

However, they differ markedly on *in vitro* fertilization to aid infertile couples. The Catholic Union and Guild of Catholic Doctors favors the procedure. The Social Welfare Commission repeats the statement of welcome which it issued in 1978 when Louise Brown was born: “Some married couples have a deep desire for children as the supreme joy of their marriage, but are physically unable to conceive children in the normal way. In these cases science can support the loving and natural ambition of the couple to produce new life.”<sup>41</sup>

<sup>38</sup> The reconciliation of *Dignitatis humanae* with *Mirari vos* and the *Syllabus of Errors* is not an easy undertaking, to say the least. What is more interesting than the obviously strained attempts at reconciliation (*Faith and Reason* 9 [1983] 182–248) is the felt need—the implication being that the earlier popes could not have been inaccurate in their rejection of religious liberty. An expansive and unwarranted understanding of the ordinary magistratum has created an unnecessary problem.

<sup>39</sup> Personal communication from Dr. Gary Hodgen, National Institutes of Health.

<sup>40</sup> *Tablet*, June 4, 1983, 523.

<sup>41</sup> *Ibid.*

The Bishops' Joint Committee, however, argues that *in vitro* fertilization, as well as artificial insemination by husband, severs procreation from sexual intercourse in such a way that the child comes into existence "in the manner of a product." This involves for the child a status "of radical inequality" in contrast to the equality enjoyed by the child of natural sexual union. The committee believes that "the great evils of destructive experimentation, observation and selection" are symptoms of this flaw. They refer to the long-run evils inseparable from procreation severed from the marital act:

Undesirable and scarcely reversible changes in the way parents regard their children; in the way partners in marriage regard each other; and in the way men and women regard their bodily life and the most intimately involving personal interaction within that life. Each of these changes, bad in themselves, would also make more difficult, in principle and in practice, resistance to the general trivialising of sexual intercourse; commercialisation and/or state control of reproductive activity; selection of children on eugenic grounds; the moulding of children's most basic characteristics by parents, technicians and other interested persons, groups and governments; and even more extensive resort to that awesome instrument of compassion become ruthless and inhumane, the embryo bank.<sup>42</sup>

What is one to make of this? I would agree with the committee's rejection of experimentation that endangers the embryo, of selective destruction of embryos, embryo storage without the prospect of transfer to the proper mother, of third-party involvement. But what about the "undesirable changes" in attitude (toward the child, each other, and their bodily life) associated with severing procreation from sexual intercourse? It is such changes that led most of the committee to reject on moral grounds *in vitro* fertilization as well as artificial insemination by husband. The weakness of the argument is its lack of evidence. Even the committee's wording unwittingly acknowledges this. It refers to long-run evils that "*may be involved* in arranging procreation severed from the central marital act." Without evidence that such evils will very likely occur, the committee's analysis remains more a caution than an argument. The same thing can be said of the committee's assertion that the IVF child may be likened to a "product."

Lorenzo Leuzzi, a physician and moral theologian, presents a useful summary of theological thought in Italy on artificial insemination.<sup>43</sup> G. Pesce, Carlo Caffarro, D. Tettamanzi, and G. Perico are opposed to

<sup>42</sup> The citation is from the original manuscript kindly provided to me by LeRoy Walters, Kennedy Institute of Ethics.

<sup>43</sup> Lorenzo Leuzzi, "Il dibattito sull'inseminazione artificiale nella riflessione medico-morale in Italia nell'ultimo decennio," *Medicina e morale* 22 (1982) 343-71.

artificial insemination by husband and a fortiori to *in vitro* fertilization. For instance, Pesce adverts explicitly to the inseparability of the unitive and procreative dimensions of sexual intimacy underlined in *Humanae vitae*. This excludes both contraception and artificial insemination. Tet-tamanzi insists that the unity of these dimensions cannot be restricted to the intention.

Leuzzi summarizes: "The most frequent and urgent critique made by theologians who express a more favorable judgment of A.I.H. is that this [condemnatory] judgment stems from a biological and physiological notion of human nature."<sup>44</sup> Thus Enrico Chiavacci wonders whether the separation of biologically generative activity from personal intimacy is a *malum in se* independently of the accompanying intention. When the procreative intention is so strong that it is required by the overall good of the couple, then the two dimensions (unitive and procreative) are "united by intention" since "the separation is only at the biological level." Chiavacci concludes: "My judgment is positive providing we limit the procedure to husband insemination in cases where procreation is otherwise impossible."

A. Delepiere studies the texts of Pius XII and rejects Pius' condemnation of husband insemination because it is the result of an identification of biology with the natural law. Leuzzi also cites Häring's approval: "When the sperm comes from the husband and the whole marriage is lived in a climate of love, then not only is he biologically the father but there is not that total severance between the unitive and the procreative meaning of marriage."<sup>45</sup>

Marciano Vidal, the outstanding moral theologian in Spain, associates himself with the position of Chiavacci and M. Di Ianni, as does L. Rossi. As for obtaining semen by masturbation, Di Ianni, Vidal, Häring, Valsecchi, Delepiere, and Rossi find little problem, since we must distinguish this biological phenomenon from egoistic self-petting.

<sup>44</sup> Ibid. 357.

<sup>45</sup> Bernard Häring, *Medical Ethics* (Notre Dame: Fides, 1973) 92. Häring's most recent judgment is that "fertilization *in vitro* . . . can be evaluated on the same principle as artificial insemination with the husband's sperm" (*Free and Faithful in Christ* 3 [New York: Crossroad, 1981] 25). On artificial insemination he cites George Lobo ("In the present state of the discussion . . . a couple . . . would not be doing wrong by having recourse to A.I.H.") and remarks that "Lobo can be sure of finding vast assent." Janet Dickey McDowell comes to a conclusion similar to Häring's. She believes that "love (as expressed in sexual activity) is preconditional to reproduction, and in that sense the two purposes [unitive, procreative] remain linked. . . . The fact that conception does not take place as the *direct* result of love made concrete through intercourse is less significant; provided that both love and the desire to procreate are elements of the couple's total relationship, IVF would not be problematic" ("Ethical Implications of In vitro Fertilisation," *Christian Century* 100 [1983] 936-38).

Leuzzi concludes his report with a synthetic overview. Two key points stand out: (1) There should be no procreation without conjugal love. (2) Procreation should not be reduced to a technological thing ("fatto tecnico"), because that would open the door to a consumer mentality toward procreation. A very useful overview.

Two articles represent totally opposing points of view on *in vitro* fertilization. The first is that of Francesco Giunchedi, S.J.<sup>46</sup> He adverts to the studies of P. Verspieren and W. Molinski, both of whom approve the procedure.<sup>47</sup> The former sees *in vitro* fertilization as a prolongation of the sexual life of the sterile couple. Giunchedi sees it rather as a substitution, one that completely separates the exercise of sexuality and the transmission of life in a way that does not allow procreation to achieve its full dignity. By contrast, Henri Wattiaux agrees with Verspieren that *in vitro* fertilization may be viewed as a prolongation of sexual intimacy.<sup>48</sup> Since this is the case, there is not the radical severing of the unitive and procreative.

Hermann Hepp, after attending to the possible misuses that could be associated with *in vitro* procedures, concludes that *abusus non tollit usum*.<sup>49</sup> "I believe that, in an overall view of human persons, here of the loving couple whose love can reach completion only through artificial impregnation, husband *in vitro* fertilization must be approved as a last resort." Hepp is aware that this runs counter to the thesis of the inseparability of the unitive and procreative dimensions proposed by Paul VI and John Paul II. But he sees it as in the service of life, and agrees with J. Gründel that not everything that is artificial is unnatural in the moral sense.

Josef G. Ziegler approaches the problem through two basic principles: (1) the inviolable worth of the human being; (2) the threefold relation of our conduct to God, the neighbor (society), the self.<sup>50</sup> "Conduct in marriage qualifies as 'good' when it corresponds to the principle of the integration of the three stated basic elements." The first principle is violated when embryos are treated like things, experimental objects. The second may be violated in a number of ways. For instance, he argues that

<sup>46</sup> Francesco Giunchedi, S.J., "La fecondazione 'in vitro,'" *Rassegna di teologia* 24 (1983) 289-307.

<sup>47</sup> P. Verspieren, S.J., "L'Aventure de la fécondation in vitro," *Etudes*, Nov. 1982, 479-92; W. Molinski, "Sittliche Aspekte der extracorporalen Befruchtung," *Arzt und Christ* 28 (1982) 141-47.

<sup>48</sup> Henri Wattiaux, "Insémination artificielle, fécondation 'in vitro' et transplantation embryonnaire," *Esprit et vie* 92 (1983) 353-64.

<sup>49</sup> Hermann Hepp, "Die In-vitro-Befruchtung: Perspektiven und Gefahren," *Stimmen der Zeit* 201 (1983) 291-304.

<sup>50</sup> Josef G. Ziegler, "Zeugung ausserhalb des Mutterleibes," *Theologisch-praktische Quartalschrift* 131 (1983) 231-41.

donor insemination offends against all the components in principle 2: "against the relationship to God, who established the unbreakable oneness of marriage; against the relationship to oneself, the self who achieves fulfilment within the marital partnership; against the relationship to society, which has a right to know where children come from."<sup>51</sup>

Ziegler is particularly concerned about the severing of the life-giving from the love-making element in *in vitro* procedures. "Is not the function of the wife as life-bearer featured in an isolated way and thereby her personal worth undermined?" In response to this he emphasizes that sexual intimacy, to be worthy of persons, depends on "the intentional or moral unity of partnering and parenting." It is precisely in uniting toward a common goal or responsibility that a married couple achieve true unity. In this case the goal is the fulfilment of their deep desire to have a child.

The study concludes by refusing to give an unconditioned yes or no to *in vitro* fertilization. Each case must be considered on its own. But it is clear that Ziegler would approve some instances as last resorts. And if I read him correctly, he must refuse to give an absolute, determinative value to the physical inseparability of the unitive-procreative as this is proposed in official Church analyses.

William May (Catholic University) believes that the official formulations (Pius XII) against artificial insemination and *in vitro* fertilization "can be shown to be true."<sup>52</sup> He offers the following syllogism:

Any act of generating human life that is nonmarital is irresponsible and violates the reverence due to human life in its generation. But *in vitro* fertilisation and other forms of laboratory generation of human life, including artificial insemination whether by vendor or husband, are nonmarital. Therefore these modes of generating human life are irresponsible and violate the reverence due to human life in its generation.

May argues that the minor does not require "extensive discussion." When the sperm or ova are from outside the marriage (donors, vendors), the insemination is "evidently nonmarital." It comes from outside the marriage. So far, clear. But he then says that even when sperm and ovum come from husband and wife, the procedure is "nonmarital in nature." Why? "Because they are *in principle* procedures that may be effected by persons who are not spouses." May then adds: "In addition and more significantly, the spousal character of the man and woman participating in the procedures is not intrinsic to the procedures even though they may happen to be husband and wife. What makes husband and wife

<sup>51</sup> Ibid. 241.

<sup>52</sup> William E. May, "‘Begotten, Not Made’: Reflections on the Laboratory Generation of Human Life," in *Perspectives in Bioethics* (New Britain, Conn.: Muriel, 1983) 31–60.

capable of participating in such activities is not their spousal union but the simple fact that they are beings who produce gametic cells."<sup>53</sup>

With all due respect, May's minor does require far more "extensive discussion" than he has given it. It is the term "nonmarital" that is the problem. It is the nub (middle term) of his argument. But I fail to see what the term means. In fact, I find his use of it impenetrable. In his own definition, it refers to an action of which a couple is "capable" only by being spouses. But what is such an action? Surely not sexual union. For we could reword May as follows: "What makes husband and wife capable of participating in such activities is not their spousal union but the simple fact that they are beings who have sexual organs." Perhaps "nonmarital" means an action in which spouses *ought not* participate. But then May's syllogism involves a straightforward *petitio principii*. Until he explains far more clearly than he has the meaning of the term "nonmarital," the argument remains as strong as its weakest link.

Donald McCarthy, in comparing the new procedure of low tubal ovum transfer (LTOT), where the ovum is transferred to the uterus to be fertilized by natural intercourse, with *in vitro* fertilization, contends that it "differs radically and essentially" from the latter.<sup>54</sup> In IVF there is "no personal involvement of the parents with each other." They simply supply their gametes. Secondly, in IVF there is no expression of the marriage covenant and the child is produced by technology. Thus he approves LTOT but rejects IVF.

I think we must grant these differences. But what is their ethical significance? To accept one technology (LTOT) and reject the other (IVF), the meaning of McCarthy's descriptive differences must be: (1) The parents must be personally involved through sexual union in the procreation of new life. (2) In the conception of new life the marriage covenant must be expressed through sexual union. But these assertions are, of course, the very things to be established if IVF is to be totally rejected. *Why* must the parents be personally involved in all, even exceptional and last-resort, cases of generation of new life? Merely to describe differences and then give them ethical mileage is what Schüller referred to as "persuasive description." It nearly always contains a *petitio principii*.

This, then, is some of the recent literature on artificial reproductive technologies. It is clear that many theologians (cf. Häring's "vast assent") have moved beyond the formulations of Pius XII. It is also clear that in doing so they must, in some way or another, modify the understanding of the inseparability of the unitive-procreative dimensions of sexual

<sup>53</sup> Ibid. 49.

<sup>54</sup> *Medical-Moral Newsletter* 20 (Oct. 1983) 30-31.

expression asserted in *Humanae vitae* and *Familiaris consortio*. That raises the interesting question of the development of doctrine in moral theology. That such development has occurred in the past is unquestionable. For instance, Walter J. Burghardt, S.J., states the conviction of many when he asserts that "I am convinced that Vatican II's affirmation of religious freedom . . . is discontinuous with certain explicit elements within the Catholic tradition."<sup>55</sup> That such development can occur in the present ought to be unquestionable. But the matter is extremely sensitive, as John Courtney Murray, S.J., recognized when he stated of *Dignitatis humanae* that it was the most controversial document of Vatican II "because it raised with sharp emphasis the issue that lay continually below the surface of all the conciliar debates—the issue of the development of doctrine."<sup>56</sup>

I do not wish for the moment to argue that growing theological acceptance of artificial procreative techniques is an example of doctrinal development or *ought to be accepted as such*. The wish is too easily father of the thought. That may or may not be the case. If it is the case, then like *Dignitatis humanae* it will involve certain discontinuities with the past. What is important to highlight is that *if* such a development occurred, it would probably have a recognizable structure, something we could look for in other developing areas. Using the emergence of *Dignitatis humanae* as a vehicle, I would tentatively suggest attending to a three-step process: (1) the earlier formulation and the reasons and circumstances that explain it, (2) a change in the circumstances and reasons that supported the earlier formulations, (3) experience and reflection leading to an altered formulation.

Concretely, there were cultural and historical circumstances that led to Gregory XVI's *Mirari vos* and made it quite intelligible in those circumstances. But the circumstances had gradually changed by 1965 and "the American experience" had been reflected upon sufficiently to generate efforts at a new formulation of the Church's concerns.<sup>57</sup>

<sup>55</sup> Cf. *Religious Freedom, 1965 and 1975* (Ransey: Paulist, 1977) 72.

<sup>56</sup> *The Documents of Vatican II*, ed. Walter M. Abbott, S.J. (New York: America, 1966) 673.

<sup>57</sup> In his doctoral dissertation Robert E. Lampert argues that "reading the signs of the times" was the methodology operative in the development of *Dignitatis humanae* (*An Investigation of Reading the Signs of the Times* [Ann Arbor: University Microfilms, 1980] 302–42). Indeed, John Courtney Murray stated this explicitly: "The link between religious freedom and limited constitutional government, and the link between the freedom of the Church and the freedom of the people—these were not nineteenth-century theological-political insights. They became available only within twentieth-century perspectives created by 'the signs of the times.' The two links were not forged by abstract deductive logic, but by history, by the historical advance of totalitarian government, and by the corresponding new application of man's dignity in society" (*The Problem of Religious Freedom* [Westminster, Md.: Newman, 1965] 100).



This is only to admit that the Church's formulations of her moral convictions are historically conditioned. This should surprise no one, for even dogmas are historically conditioned. The Congregation for the Doctrine of the Faith (*Mysterium ecclesiae*, 1973) acknowledged a four-fold historical conditioning. Statements of the faith are affected by the presuppositions, the concerns ("the intention of solving certain questions"), the thought categories ("the changeable conceptions of a given epoch"), and the available vocabulary of the times.<sup>58</sup>

Could an evaluation similar to the one that led to *Dignitatis humanae* be occurring with regard to procreative technologies? One who defends that thesis could point to rather clearly identifiable circumstances that led Pius XII to reject all A.I.H. Specifically, there was the influence of F. Hurth, S.J. Hurth was largely responsible for the major writings of Pius XII on sexual and medical questions. Hurth regarded procreativity as the exclusive primary finality of human sexuality. For him, this was "the intention of nature inscribed in the organs and their functions." Thus artificial insemination by husband was to be excluded as against nature. At one point in his analysis of the marriage act Hurth states:

Our whole argument proves not only that nature has determined the means for man by which he is capable of serving the species, but also that he may only serve it by this means, i.e., the natural marriage act. It would be absurd that nature determined the means for men in every respect (anatomical, physiological, psychological) to place himself at the service of the species and that it indicated the manner of acting to the smallest detail with an almost unbelievable efficiency in order to thus allow man the right to choose his manner of acting as he pleases or to substitute another means for it which he had found himself. Nature contains no such inner contradiction. Let me conclude: This analysis of the psychosomatic sexual apparatus demands that we say that man's right to use the sexual organism, and especially the germ cells, is limited to the execution of the natural marriage act with all that prepares for, accompanies and follows from it in a natural way.<sup>59</sup>

It is clear, then, that for Hurth the moral law and the biological law coincide. Indeed, Hurth states exactly that: "Man only has disposal of the use of his organs and his faculties with respect to the end which the Creator, in his formation of them, has intended. This end for man then is both the biological law and the moral law, such that the latter obliges him to live according to the biological law."<sup>60</sup>

In the nearly forty years since those lines were written, there has been

<sup>58</sup> Cf. *Catholic Mind* 71 (Oct. 1973) 58-60.

<sup>59</sup> F. Hurth, S.J., "La fécondation artificielle: Sa valeur morale et juridique," *Nouvelle revue théologique* 68 (1946) 402-26. I take the translation of this and the following citation from L. Janssens, "Artificial Insemination: Ethical Considerations," *Lowain Studies* 8 (1980) 3-29.

<sup>60</sup> Cf. n. 59 above.

a change in the circumstances surrounding the discussion. The principal change is the criterion to be used in judging the rightfulness or wrongfulness of human conduct. Vatican II proposed as the criterion not "the intention of nature inscribed in the organs and their functions" but "the person integrally and adequately considered." To discover what is promotive or destructive of the person is not a deductive procedure. As Louis Janssens has noted, "History itself testifies to so many mistakes which man later had to admit or ignore because he had too quickly condemned what was new without allowing for the experience, the time or the opportunity to work out whether or not something was worthy of man."<sup>61</sup>

This is not to blame Pius XII in any way. His achievement was magnificent. He was, after all and as it should be, dependent on his theologians. Similarly today, the pope must depend on theological advisors who, like all of us, are pilgrims and see only darkly. There are two points to emphasize in saying this. First, when teaching on doctrinal questions, the pope must be careful to prevent his circle of advisors narrowing so as to exclude legitimate currents of theological thought, as Rahner has repeatedly noted. Second, even with the broadest and best consultation, authoritative teaching will unavoidably be time- and culture-conditioned. A certain form of ecclesiastical fundamentalism tends to forget this.

Is an evolution occurring with regard to the understanding of the unitive and procreative dimensions of sexuality? Much of the literature brought under review would have to answer in the affirmative. If a development of doctrine is occurring, the thread that yields both continuity and change is the notion of the inseparability of the unitive-procreative dimensions of sexuality. The continuity: the general validity of the insight. The change: a broadened understanding away from an act analysis of this inseparability. Whatever the case, the aforementioned inseparability-principle must promote the person "integrally and adequately considered." When it becomes an obstacle to that promotion, it loses its (generally operative) normative force; for it is subject to and judged by the broader criterion.

Should there be doctrinal development in the Church's teaching on abortion? Daniel Maguire thinks so.<sup>62</sup> He contrasts the attitudes of the United States Catholic bishops on peace and abortion. With regard to peace, they caution in their recent pastoral against "a simple answer to complex questions," whereas on abortion there is "only a simple answer to complex questions." Maguire indicts the silence or indifference of

<sup>61</sup> Janssens, as in note 59 above, at 11.

<sup>62</sup> Daniel C. Maguire, "Abortion: A Question of Catholic Honesty," *Christian Century* 100 (1983) 803-7.

“many Catholic theologians who recognize the morality of certain abortions but will not address the subject publicly.” It is his view that a sizable number of theologians disagree with some aspects of official teaching; and for this reason he believes probabilism is applicable, making it possible to act on “the liberal dissenting view.” As he words it:

There are far more than five or six Catholic theologians today who approve abortions under a range of circumstances, and there are many spiritual and good people who find “cogent,” nonfrivolous reasons to disagree with the hierarchy’s absolutism on this issue. This makes their disagreement a “solidly probable” and thoroughly respectable Catholic viewpoint.<sup>63</sup>

Maguire then proceeds to list the factors that generated the present official stand on abortion and argues that they were deficient or have changed in our time. (I would note that this is the very structure I suggested above.) Among the factors: heavily juridical arguments; an external-judge approach; excessively physical arguments; abstract and rationalistic arguments; lack of an ecumenically sensitive theology; inaccurate biological knowledge; lack of dialogue with the laity; pervasive sexist attitudes. In combination, these produced a one-sided absolutism.

Maguire concludes by arguing that abortion deserves respectable debate because there are “good reasons and reliable authorities” standing behind the opposition to the absolutism of official Catholic teaching. This is all the more reason why there should be freedom and not coercion at the public-policy level.

What is one to make of this? Reactions, I would guess, will be quite predictable, as they so often are in discussions about abortion. Maguire will be accused of verbal sophistry, of one-sided feminism, of antihierarchyism, and a host of almost printable things. He will also be praised for honesty and courage. Such rhetorical flourishes are not very enlightening.

This reviewer has two reactions. First, I believe Maguire has overstated the case in several ways. He refers to “far more than five or six Catholic theologians today who approve abortions under a range of circumstances.” Who are these theologians? And above all, what does “a range of circumstances” include? Specificity is required here. I know of theologians who have problems with certain marginal cases. But I know of precious few who would extend this over an unspecified “range of circumstances.” But Maguire expands this into the “solid probability” of a dissent against “the hierarchy’s absolutism on this issue.” That is just too vague. What is actual theological opinion on this matter? Franz Böckle (in his *Handbuch der christlichen Ethik*) presents what Bernard Häring calls “the common opinion among Catholic moral theologians.”

<sup>63</sup> Ibid. 805.

Böckle allows interruption of pregnancy only where otherwise the mother cannot be saved. "Beyond this case I do not see any plausible reasons that could morally justify an interruption of pregnancy."<sup>64</sup>

Then there is the matter of "solid probability." Maguire asserts that "there are many spiritual and good people who find 'cogent,' nonfrivolous reasons to disagree with the hierarchy's absolutism on this issue. This makes their disagreement a 'solidly probable' and thoroughly respectable Catholic viewpoint." Once again we encounter vagueness. "Disagreement with absolutism" is one thing. A single exception in a marginal instance (e.g., anencephaly) would warrant such a statement. But Maguire carries the matter far beyond that to a vaguely asserted "liberal dissenting view" and asserts its probability. Nothing that I know in Catholic tradition would justify such a loose expansion of "solid probability." It is opinions about *specific cases* that may be said to be probable or not. And when Maguire addresses specific cases, a further ambiguity enters the picture. Citing a 1982 Yankelovich poll, he adduces the following instances: rape, risk to health, genetically damaged fetus, physically handicapped woman, teen-age pregnancy, welfare mother who cannot work, a married woman who already has a large family.

Maguire cites these as instances where a majority of Catholic women would judge abortion morally justified. But what are we to make of that? Does he propose these as justifiable cases? I know of no reputable Catholic theologian who would justify abortion in such a litany of cases. The fact that many Catholic women do raises more questions than answers. It is, of course, notoriously true that under permissive abortion laws many more women see abortion as a solution to their problem than would otherwise be the case. Daniel Callahan has noted that a change to permissive abortion laws "appears—from *all data* and in *every country*—to bring forward a whole class of women who would otherwise not have wanted an abortion or felt the need for one."<sup>65</sup> This means, of course, that the very culture or atmosphere has conditioned their judgment. Or, to use Maguire's probabilistic language, many more will judge their reasons for abortion "cogent" in such circumstances. That leaves relatively unexamined the moral question of whether they *are* cogent—unless one reduces the moral question to a question of the individual women's judgment.

That brings me to my second and major problem with Maguire's essay. Put quite simply, he has attempted to move the problem from a life issue to an exclusively women's (choice) issue. He opposes "absolutism." Fair enough; I suppose many of us do. But in doing so he is—as I read him—

<sup>64</sup> Bernard Häring, *Free and Faithful in Christ* 3 (New York: Crossroad, 1981) 33.

<sup>65</sup> Daniel Callahan, "Abortion: Thinking and Experiencing," *Christianity and Crisis* 32 (1973) 296.

proposing just two *moral* options: the absolutism of the tradition or the prochoice option. (I emphasize the word “moral” because the legal level is a different matter.) I say the prochoice option because the broad range of instances he cites is equivalent to that. That seems to me to trivialize the morality of abortion. Whatever one’s moral position may be, I believe it is off course if it is not seen as centrally—even if not exclusively—a life problem. Certain abortions may be morally justifiable (I do not argue the matter here). But if they are, it is because it is at times justifiable to take nascent human life. *That* is the matter that must be discussed and that is the conclusion that must be justified; for on any realistic account of things that is what is happening in abortion. Major Protestant theologians like James Gustafson, James Childress, Arthur Dyck, Paul Ramsey, William May—whatever their moral conclusions might be—conceive the issue in this way. A “prochoice” moral position abandons this structure and the arduous wrestling involved in determining if and when it is tragically justifiable to end fetal life. In doing so, it trivializes the moral problem.

In summary, whatever development Catholic moral teaching may undergo in this area, it would be a mistake were it to abandon its concern with the problem as a life problem.<sup>66</sup>

In this section I have been interested above all in doctrinal development in moral theology, what to look for and what to avoid, so to speak. What kind of development one will look for, hope for, recoil from, tolerate, etc., will be influenced very much by one’s methodological frameworks. Some frameworks will accommodate development, some will resist it. David F.

<sup>66</sup> Those with a yen for nourishing suspicions, discovering causal influences, tinkering with etiologies, and other forms of putting two and two together could have a field day comparing Maguire’s study with that of Marjorie R. Maguire (“Personhood, Covenant and Abortion,” *Annual of the Society of Christian Ethics*, 1983, 117–45). The latter Maguire argues that fetal personhood comes into being if and when the mother consents to the pregnancy. This total relativizing of personhood and of the morality of abortion is a recrudescence of the proposals made some years ago in *Etudes* by Bruno Ribes. Ribes’ analysis proved unpersuasive to virtually all commentators. I see no reason for a different verdict about Marjorie Maguire’s thesis. Indeed, in a sense, it is itself a strong refutation of her operating hypothesis that the notion of person is essential to discussions of abortion. That is a hypothesis still searching for support. Any notion of personhood (and therefore of “being treasured by God”) that allows for the idea that two women at the identical gestational age and with perfectly healthy babies could differ in that one was carrying a person, the other a nonperson, is a not so subtle form of dualism that is effectively discriminatory. This point is brought out very well by Mary Seegers in her review of Beverly Harrison’s *Our Right to Choose* (Boston: Beacon, 1983). She notes: “Some feminists worry that if you deny equal value (or personhood) to one member of the human species, you compromise every other contemporary egalitarian movement, whether for sexual or for racial equality” (*Christianity and Crisis* 43 [1983] 412). Precisely.

Kelly (Duquesne University) brings this out very well in his discussion of the development of medical ethics within Catholicism.<sup>67</sup>

The Catholic medical ethics of the first half of the twentieth century had two methodological frameworks "within which other principles were applied and to which they were subordinated: physicalism and ecclesiastical positivism." By "physicalism" Kelly means "a normative ethical approach which emphasizes the physical and biological properties, motions and goals of the action." Physicalist criteria are used to determine the *finis operis*, with other aspects (social, relational, psychological, and spiritual) neglected. Above, Hurth was cited as an example. "Ecclesiastical positivism" is that approach which overemphasizes a single source for the discovery of God's will, "the authoritative pronouncements and interpretations of the Roman Catholic magisterium." Joseph Ratzinger, as we saw, scored such positivism years ago.<sup>68</sup>

In combination, these frameworks led to a kind of "normative absolutism" which allowed moral theologians to arrive at "precisely specified conclusions" backed by or drawn from authoritative pronouncements. One of the many shortcomings of this approach, according to Kelly, is that it failed to allow genuinely theological themes to nourish our reflection and to exercise their influence on our ever-deepening and fresh understanding of our creaturehood but also our coagency with God, our need to suffer but also to fight suffering. While such themes will not solve ethical dilemmas, they will help us wrestle with them in a way that prevents what Kelly calls "ethical short-cuts." He obviously regards physicalism and ecclesiastical positivism as short-cuts.

I would add but a single reflection to Kelly's detailed and perceptive

<sup>67</sup> David F. Kelly, "Roman Catholic Medical Ethics and the Ethos of Modern Medicine," *Ephemerides theologicae Lovanienses* 49 (1983) 46-67.

<sup>68</sup> John Noonan notes that "many legislators—Justinian, the Emperors of China, the Council of Trent—have thought to terminate all controversies by forbidding interpretation of their decrees. Legal texts and moral rules are by their very nature open to being interpreted. *Humanae vitae*, to use a modern instance, cries out for it. Such interpretation is within the province of the moral philosopher. Those who block interpretation by repeating the letter of the text engage in a fundamentalism no more likely to be successful than Justinian's" ("The Role and Responsibility of the Moral Philosopher," *Proceedings of the American Catholic Philosophical Association* 56 [1982] 1-10, at 5.)—I would hesitate to call a recent study by Patrick R. Hughes an interpretation. Hughes proposes the good of the species as the overall criterion of marital sexual conduct. It can be violated by overpopulation as well as underpopulation. In this light he proposes a distinction between birth control and birth prevention (total closedness to life). On this basis he sees no moral difference between so-called "natural" means and artificial ones ("Artificial Birth Control Revisited," *Euntes docete* 35 [1982] 319-26). For a contrary view, cf. M. Zalba, S.J., "Innovatum tentamen aequiparandi usum continentiae periodicae et recursum ad media artificialia pro regulanda natalitate," *Periodica* 72 (1983) 141-80.

remarks. It is precisely an ongoing and deepening appropriation of these theological themes in changing circumstances that will provide both the possibility of and guidance for doctrinal development.

#### PASTORAL PROBLEMS

1) *The Sisters of Mercy of the Union and Sterilization*. Margaret Farley, R.S.M., reveals an extremely interesting and in many senses troubling episode in recent American Church history.<sup>69</sup> Some of the more significant events could be detailed with the following chronology.

In 1978 the Sisters of Mercy of the Union, sponsors of the largest group of nonprofit hospitals in the country, began a study of the theological and ethical aspects of tubal ligation. The study resulted in a recommendation to the General Administration of the Sisters of Mercy that tubal ligations be allowed when they are determined by patient and physician to be essential to the overall good of the patient. The General Administrative Team accepted this recommendation in principle. In a Nov. 12, 1980, letter to their hospital administrators the General Administrative Team reported the results of the study and indicated a desire to draw concerned persons into dialogue on the issue. They did not, as was inaccurately reported to the bishops of this country, mandate a policy.

Copies of the original study, the position statement of the General Administrative Team, and the letter to the hospitals somehow fell into the hands of officials in Rome and of the Committee on Doctrine of the N.C.C.B. One thing led to another until finally a dialogue was initiated between a committee of five bishops (headed by James Malone of Youngstown) and six Sisters of Mercy, both groups with their theological consultants. Two meetings were held (Sept. and Dec. 1981). These were largely exploratory, get-acquainted-with-the-problem meetings. At the December meeting it was decided that the next meeting (March 1982) would enter the substance of the problem. The sisters were to present a single-page position paper stating why they thought that not all tubal ligations were morally wrong. The episcopal committee was to do the same, showing why they were.

Early in 1982 the sisters were informed that the dialogue was off and that a Committee of Verification had been appointed by Rome. The purpose of this committee (composed of three bishops, again headed by Bishop Malone) was to verify the Administrative Team's answer to two questions: (1) Does it accept the teaching of the magisterium on tubal ligation? (2) Will it withdraw its circular letter (Nov. 12) to its hospitals?

On May 11, 1982, the Administrative Team addressed their response

<sup>69</sup> Margaret Farley, R.S.M., "Power and Powerlessness: A Case in Point," *Proceedings of the Catholic Theological Society of America* 37 (1982) 116-19. Cf. also *National Catholic Reporter*, Nov. 11, 1983, 1.

to Pope John Paul II. The pertinent answers read as follows:

1. We receive the teaching of the Church on tubal ligation with respectful fidelity in accord with *Lumen gentium* 25 (*obsequium religiosum*). We have personal disagreements as do others in the Church, including pastors and respectable theologians, with the formulation of the magisterium's teaching on sterilization. However, in light of present circumstances, we will not take an official public position contrary to this formulation.

2. We withdraw our letter of Nov. 12, 1980 and will notify the recipients of the letter of such withdrawal.<sup>70</sup>

The letter concluded by urging "continued study and consultation within the Church on this issue."

The Committee of Verification seemed quite pleased with the response. The Apostolic Delegate informed the Administrative Team that their response had been accepted. The matter seemed quietly put to rest. However, the sisters received a letter dated Aug. 30, 1982, from E. Cardinal Pironio (Prefect of the Congregation for Religious and Secular Institutes). In part it stated: "In light of all the sentiments expressed in your letter of May 11, as well as your letter of withdrawal, dated May 17, 1982, your reply is not considered fully satisfactory and, indeed, your interpretation of the *obsequium religiosum* is judged incomplete." The sisters were told by Cardinal Pironio that a "subsequent response" would be coming from the congregation.

This subsequent response was a letter from Cardinal Pironio to Sister M. Theresa Kane dated Nov. 21. The letter insisted that the religious submission of mind and will (*obsequium religiosum*) "calls for the Catholic not only not to take a public position contrary to the teaching of the Church but also to direct his or her efforts, by an act of the will, to a more profound personal study of the question which would ideally lead to a deeper understanding and eventually an intellectual acceptance of the teaching in question." The letter also requested the sisters to write another letter to their hospitals "clearly prohibiting the performing of tubal ligations in all the hospitals owned and/or operated by the Sisters of Mercy of the Union."

A letter dated July 6, 1983, was drafted by Sister Theresa Kane to the chief executive officers of the Mercy Sisters' hospitals and forwarded to Cardinal Pironio. It read as follows:

On November 21, 1982, the Sacred Congregation for Religious and Secular Institutes (SCRIS) requested that we write you stating our reevaluation of tubal ligation and clearly prohibiting the performance of tubal ligations in Mercy hospitals owned and/or operated by the Sisters of Mercy of the Union.

<sup>70</sup> These and subsequent citations are taken from documents kindly provided by the Sister of Mercy of the Union.



As requested by SCRIS to reevaluate, we, the Mercy Administrative Team, have spent additional time in study and consultation on tubal ligation. In obedience to the magisterium we will take no public position on this matter contrary to Church teaching. As you face pastoral problems regarding tubal ligation, we ask that you continue to work in close collaboration with your local ordinary in implementing Church teaching.

The Congregation for Religious responded to this draft in a letter to Bishop James Malone dated Aug. 22. The congregation insisted that the second and third sentences of paragraph 2 be changed to read as follows: "In obedience to the magisterium we will continue to study and reflect on Church teaching with a view to accepting it. We, therefore, direct that the performance of tubal ligations be prohibited in all hospitals owned and/or operated by the Sisters of Mercy of the Union." If any sister does not accept this, she is to specify the dissent in writing and with signature. Furthermore, Bishop Malone stated that "upon enquiry I have learned that the letter from the congregation is indeed a 'formal precept' to you." That was specified to mean that "no further compromises or word changes . . . will be entertained by the congregation."

This happening is heavy with theological implications that invite explication. Margaret Farley's brief paper highlighted the powerlessness of women in the Church. Here three other points will be noted.

First, in the exchanges over a two-year period, the substantive issue was never discussed. Indeed, at the very point (March 1982) in the dialogue where the substantive issue (Is direct sterilization intrinsically evil?) was to be discussed, Rome (SCRIS) intervened to terminate the dialogue and appoint the Committee of Verification on the grounds that "there is nothing to be gained by further dialogue on this issue."

Is there really nothing to be gained by further dialogue? That would be the case only if it were antecedently clear and certain that the magisterial formulation was absolutely and unquestionably accurate. Yet, how can one sustain this in light of the very widespread theological questioning of that clarity and certainty? I have discussed this matter with very many established theologians throughout Europe and the United States and can report as a fact that most would endorse the approach and analysis of Johannes Gründel reviewed several years ago in these "Notes."<sup>71</sup> Surely this fact needs discussion, unless we are to exclude in principle the relevance of theological analysis.

<sup>71</sup> J. Gründel, "Zur Problematik der operativen Sterilisation in katholischen Krankenhäusern," *Stimmen der Zeit* 199 (1981) 671-77. Recently Bernard Häring has endorsed a similar concept. He rejects the reduction of the problem to "a simple distinction between direct and indirect sterilization" and argues for the moral acceptability of "therapeutic" sterilization. "For some, sterilization is 'therapeutic' only if it is therapy concerning solely a sick sexual organ. In spite of the reality of psychotherapy as an important asset in today's medical world, these people would confine healing to organs alone. This not only leads to

The second theologically pertinent issue is the notion of *obsequium religiosum*. The Mercy Administrative Team had responded that “we receive the teaching of the Church on tubal ligation with respectful fidelity in accord with *Lumen gentium* 25 (*obsequium religiosum*).” The Congregation of Religious responded to this by saying that it was incomplete because a Catholic must also “direct his or her efforts . . . to a more profound personal study of the question which would ideally lead to a deeper understanding and eventually an intellectual acceptance of the teaching in question.”

This raises a host of interesting issues. First, the assumption seems to be that the members of the Administrative Team have not so “directed their efforts.” But what is the evidence for that? Surely it is not the simple fact of dissent. That would rule out dissent in principle and elevate the teaching to irreformable status—both theologically untenable. More positively, surely a group that has conducted a three-to-four-year study, consulting opposing theological viewpoints and a variety of competences, has satisfied the demands of *obsequium religiosum*. If not, what more is required? Is this “direct his or her efforts” a duty with no time limit? Does it go on forever with no discernible *terminus*?

Next, the congregation uses the word “ideally” of the outcome of such directed efforts. What if it does not turn out that way? Furthermore, what if a group such as the Administrative Team discovers that many competent and demonstrably loyal theologians throughout the world have had similar problems? Are these simply regrettable but ultimately irrelevant failures? If magisterial inaccuracy or error is possible and if dissent is the vehicle that reveals this, is there not a point at which obligations begin to return to and weigh upon the proponents of the disputed formulation? Specifically, must they not re-examine *their* position if it is truth and not juridical position that is our dominant concern? To say anything else is to discount the significance of personal reflection in the teaching-learning process of the Church. In other words, it is utterly to juridicize the search for truth.

Finally, the “Mercy Affair” seems to have all the characteristics of an “enforcement of morals.” Bishop Christopher Butler, O.S.B., distinguishing between the irrevocable and provisional in Church teaching, states of the latter: “To require the same adhesion for doctrines that are indeed taught by officials with authority but to which the Church has not irrevocably committed itself is to abuse authority, and if this requirement is accompanied by threatened sanctions it is also to abuse the power of

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wrong and narrow-minded solutions in the case of sterilization, but is more dangerous because it betrays a wrong image of man and God. God does not care only for the health of discrete organs; he cares for the healthy person and for healthy relationships” (*Free and Faithful in Christ* 3 [New York: Crossroad, 1981] 20).

constraint."<sup>72</sup> Whether these words fit this case in all respects, one need not judge. But if they do, their true theological importance should not be overlooked. One effect is to relieve bishops of their collegial task. An immediate implication of that relief is the undermining of authority in the Church. Those who treasure the magisterium as a privilege must view such a prospect, because of its generalizable implications, with profound sadness.

At the heart of this matter is the question of the proper response to authoritative noninfallible teaching. Vatican II described the response in the phrase *religiosum voluntatis et intellectus obsequium*. The best and most balanced treatment I have seen of this notion is that of Francis Sullivan, S.J.<sup>73</sup> Sullivan, after noting that free will can influence judgment, states that *obsequium* involves renunciation of attitudes of obstinacy and adoption of attitudes of docility. In sum, "an honest and sustained effort to overcome any contrary opinion I might have, and to achieve a sincere assent of my mind."

Sullivan then spells out two implications of this. First, since assent is an act of judgment, the magisterium must offer clear and convincing reasons for its teaching. "When the norm itself is said to be discoverable by human reasoning, it would be a mistake to rely too heavily on merely formal authority in proposing it for acceptance by thinking people." Why a mistake? Because the magisterium "will not be offering to the faithful the help that many of them will need to rid themselves of their doubts."

Second, if Catholics have made a sincere and sustained attempt to achieve assent but have failed to overcome their strong doubts, "I do not see how one could judge such non-assent, or internal dissent, to involve any lack of obedience to the magisterium. Having done all that they were capable of doing toward achieving assent, they actually fulfilled their obligation of obedience, whether they achieved internal assent or not." Therefore Sullivan regards it as "unjust to treat all dissent from the teaching of the ordinary magisterium as disobedience, or to turn agreement with this noninfallible teaching into a test of loyalty to the Holy See."

Certain aspects of the "Mercy Affair" lead me to believe that these points can easily be overlooked. It must be remembered that *Dignitatis humanae* stated: "In the formation of their consciences, the Christian faithful ought carefully to attend to the sacred and certain doctrine of the Church."<sup>74</sup> An emendation was proposed for "ought carefully to attend to." It read: "ought to form their consciences according to." The Theo-

<sup>72</sup> Cf. Charles Curran and Richard McCormick, eds., *Readings in Moral Theology* 3 (Ramsey: Paulist, 1982) 185.

<sup>73</sup> Cf. n. 37 above.

<sup>74</sup> *Documents of Vatican II* 694.

logical Commission rejected the emendation and stated: "The proposed formula seems excessively restrictive. The obligation binding on the faithful is sufficiently expressed in the text as it stands."<sup>75</sup>

2) *The Preservation of Life*. In a recent case (Kaiser Permanente Hospital, Harbor City, Calif., 1981) Clarence Herbert underwent surgery for closure of an ileostomy. Shortly after successful completion of the surgery, Herbert suffered cardio-respiratory arrest. He was revived and immediately placed on life-support equipment. Within the following three days it was determined that Herbert was in a deeply comatose state from which he was very unlikely to recover. Tests performed by several physicians indicated that he had suffered severe brain damage, leaving him in a vegetative state which was likely to be permanent.

At that time Herbert's physicians, Robert Nejdil and Neil Barber, informed Herbert's family of his condition and the extremely poor prognosis. The family then drafted a written request to the hospital personnel stating that they wanted "all machines taken off that are sustaining life." Nejdil and Barber complied and removed Herbert from the respirator. Herbert continued to breathe. After two more days, Nejdil and Barber, after consulting with the family, ordered removal of the intravenous line and nasogastric tube that provided hydration and nourishment. Shortly thereafter Herbert died.

Nejdil and Barber were accused of murder by the Los Angeles District Attorney. Los Angeles Municipal Judge Brian Crahan dismissed the case. It was reopened (May 5, 1983) by Superior Court Judge Robert A. Wenke on the grounds that the dismissal was erroneous. The Herbert case received widespread publicity. The implications of Wenke's decision were stated simply by Barber: "No doctor will take a patient off a respirator now."<sup>76</sup>

Clare Conroy was an 84-year-old terminally-ill woman, mentally incompetent. She was fed by a nasogastric tube. On Feb. 2, Judge Reginald Stanton (State Superior Court, Essex County, N.J.) yielded to the wishes of her only relative (a nephew) and ordered the tube removed. The order was never carried out, since the decision was immediately appealed. Conroy died of natural causes thirteen days later.

These two cases raise interesting questions. Is it permissible to remove intravenous drips and nasogastric feeding tubes from dying, incompetent patients? In the Conroy case, John J. Delaney, Jr., a court-appointed lawyer, and Joseph A. Rodriguez, the New Jersey Public Advocate, argued that removing feeding tubes was quite different from removing a respirator. The latter may or may not cause death; the former certainly will.

John Paris, S.J., testified on behalf of Nejdil and Barber. Of this

<sup>75</sup> *Acta synodalia Conc. Vat. II* 4/6, 769.

<sup>76</sup> *Los Angeles Times*, May 6, 1983, 20.

testimony John Popiden (Loyola Marymount University) stated: "My own appraisal of Father Paris' position is that it is not in line with the Church's teaching." He further asserted that the positions of persons like Paris and this author are "much more in line with American liberal thought than with Church teaching on the subject."<sup>77</sup> It is unfortunate that Popiden does not seem to understand his own tradition on these matters. Quite traditional authors such as Edwin Healy, S.J., Gerald Kelly, S.J., and Charles J. McFadden, O.S.A., allow for the cessation of intravenous feeding in circumstances similar to those of Herbert.<sup>78</sup>

Several recent studies take up this problem. Hospice nurse Joyce V. Zerwekh asks whether it is always more merciful to administer I.V. fluids to a dying patient than to let the patient experience dehydration.<sup>79</sup> Her answer is no. There are both beneficial and detrimental effects associated with dehydration and the judgment must be individualized.

Kenneth Micetich, M.D., Patricia Steinecker, M.D., and David Thomasma (all of Stritch School of Medicine, Loyola University, Chicago) agree that I.V. fluids may not be morally required under a threefold condition.<sup>80</sup> (1) The patient must be dying. "Death will be imminent (within two weeks) no matter what intervention we may take." (2) The patient should be comatose. Comatose patients would experience no pain, thirst, etc. (3) The family must request that no further medical procedures be done in the face of impending death.<sup>81</sup>

James Childress and Joanne Lynn, M.D., after acknowledging that provision of adequate nutrition and fluids is a high priority for most patients, ask whether this is true of all patients.<sup>82</sup> Limiting their considerations to the incompetent patient, they first propose a general rule: one should decide as the incompetent person would have if he or she were competent, or decide according to the person's best interest when

<sup>77</sup> *National Catholic Register*, Aug. 28, 1983, 1 and 8.

<sup>78</sup> Cf. Gerald Kelly, S.J., *TS* 11 (1950) 219-20; *Medico-Moral Problems* (St. Louis: Catholic Hospital Association, 1958) 130; Charles J. McFadden, O.S.A., *Medical Ethics* (Philadelphia: F. A. Davis, 1967) 246-47; Edwin Healy, S.J., *Medical Ethics* (Chicago: Loyola, 1956) 80.

<sup>79</sup> Joyce V. Zerwekh, "The Dehydration Question," *Nursing* 83, Jan. 13, 1983, 47-51.

<sup>80</sup> K. Micetich, P. Steinecker, D. Thomasma, "Are Intravenous Fluids Morally Required for a Dying Patient?" *Archives of Internal Medicine* 143 (1983) 975-78.

<sup>81</sup> Bonnie Steinbeck seems to be in substantial agreement with Micetich, Steinecker, and Thomasma ("The Removal of Mr. Herbert's Feeding Tube," *Hastings Center Report* 13 [Oct. 1983] 13-16). She distinguishes the Herbert case from that of Clare Conroy and states: "Whether or not we wish to extend the argument to patients in Miss Conroy's condition, it seems clear that removal of life-support apparatus, including feeding tubes, from irreversibly comatose patients is not morally, and should not be construed legally as, murder."

<sup>82</sup> James Childress and Joanne Lynn, "Must Patients Always Be Given Food and Water?" *ibid.* 17-21.

individual preferences cannot be determined. Is it, then, ever in a patient's best interest to be malnourished and dehydrated? Childress and Lynn believe there are such cases, even if they are relatively few. They give three kinds of situations. First, the procedures that would be required could be so unlikely even to restore nutritional and fluid parameters toward normal that they could be considered futile. Second, the improvement in nutritional and fluid balance, though achievable, could be of no benefit to the patient (e.g., persistent vegetative state, some preterminal comas). "Thus, if the parents of an anencephalic infant or a patient like Karen Quinlan in a persistent vegetative state felt strongly that no medical procedures should be applied to provide nutrition and hydration, and the care givers agree, there should be no barrier in law or public policy to thwart that plan." Finally, there are cases where the burdens to be borne in receiving the treatment may outweigh the benefit. Terminal pulmonary edema, nausea, and mental confusion may be more likely in some patients as a result of artificial hydration and nutrition. The article concludes with some useful reflections on terminology (Childress and Lynn regard the ordinary-extraordinary distinction as misleading) and the difference between withholding and withdrawing (they see no *moral* difference). A well-informed and carefully-reasoned study.

Daniel Callahan agrees that it is morally licit to discontinue feeding in the circumstances noted by Lynn and Childress.<sup>83</sup> Yet he is profoundly uneasy with that conclusion. The feeding of the hungry, whether they be poor or physically unable to feed themselves, is "the most fundamental of all human relationships." It is extremely dangerous to tamper with so central a moral emotion. Even under legitimate circumstances there remains a deep-seated revulsion at the stopping of feeding. Thus Callahan experiences a struggle between head and heart.

Is there a resolution? As I read him, Callahan would respect this revulsion and continue feeding. He sees this as "a tolerable price to pay to preserve—with ample margin to spare—one of the few moral emotions that could just as easily be called a necessary social instinct."

Joanne Lynn was an Assistant Director of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. It is not surprising, then, that the Childress-Lynn study reflects the suggestions earlier made in that commission's excellent *Decisions to Forego Life-Sustaining Treatment*.<sup>84</sup> At a key point the commission notes:

Most patients with permanent unconsciousness cannot be sustained for long without an array of increasingly artificial feeding interventions—nasogastric

<sup>83</sup> Daniel Callahan, "On Feeding the Dying," *ibid.* 22.

<sup>84</sup> Washington: Government Printing Office, 1983.

tubes, gastrostomy tubes, or intravenous nutrition. Since permanently unconscious patients will never be aware of nutrition, the only benefit to the patient of providing such increasingly burdensome interventions is sustaining the body to allow for a remote possibility of recovery. The sensitivities of the family and of care giving professions ought to determine whether such interventions are made.<sup>85</sup>

A footnote to that last sentence notes that it can be anticipated that courts will grant requests to withhold or withdraw further treatment, including I.V. drips, from such patients. And that is, indeed, how the Nejdil-Barber case has turned out. On Oct. 12, 1983, Judge Lynn Compton of the Court of Appeal exonerated Nejdil and Barber of any unlawful conduct.<sup>86</sup> In the course of this opinion the court made several interesting and important points. First, Compton notes that even though life-support devices are self-propelled, still each drop of I.V. fluid is "comparable to a manually administered injection or item of medication." Hence disconnecting such devices is "comparable to withholding the manually administered injection." Second, the court views intravenous nourishment and fluid "as being the same as the use of the respirator." Third, *medical* nutrition and hydration resemble medical procedures rather than typical ways of providing nutrition and hydration. Hence they are to be evaluated in terms of their burdens and benefits. Finally, since the court viewed the physicians' actions as omissions rather than affirmative actions, the resolution of the case depends on whether there was a duty to continue to provide life-sustaining treatment. The court asserts that there is no such duty once the treatment is useless. And it was useless in Herbert's case because it merely sustained biological life with no realistic hope of a return to a cognitive, sapient state. Thus continued use of life-sustainers was "disproportionate."

This carefully-reasoned decision should go a long way toward clearing the atmosphere surrounding the use of *any* life-sustainers for the dying incompetent patient. That atmosphere has been clouded by the use of freighted language, particularly by use of the word "starve." Equivalently Judge Compton is saying—correctly, I believe—that "starving" a patient is not to be identified with any act whereby impending death is hastened by omission of nutrition and/or hydration, but only with omission *where the physician had a duty not to omit medical nutrition or hydration*. He has a duty not to omit when the benefit of such procedures predominates over the burdens. In cases of some dying incompetents (e.g., vegetative state), there is simply no appreciable benefit.

<sup>85</sup> *Decisions* 190.

<sup>86</sup> I work from a xeroxed copy of the original decision kindly forwarded by John Paris, S.J.

The Nejd-Barber decision makes it clear that "starving" language<sup>87</sup> is out of place in cases like that of Clarence Herbert. Judge Compton followed closely the guidelines established by the President's commission. He could hardly have chosen a better guide.

3) *The Case of Agnes Mary Mansour*. The basic facts of this tragic incident are quite familiar, though there is disagreement on some particulars.<sup>88</sup> Madonna Kolbenschlag, H.M., discusses the theological implications at length.<sup>89</sup> She distinguishes general moral teachings from specific policy decisions, a point not always clear in the minds of many Catholics. The Mansour incident also reveals a confusion about the distinction between clerics and women religious, these latter being treated as "quasi-clerics" in some respects. In matters of power, sacramental and ecclesiastical, women religious are treated as laity. In questions of discipline they are treated as clerics.

But, according to Kolbenschlag, one aspect of the case is not complex. "I refer to the flagrant violation of due process." She refers to the fact that Mansour never had the opportunity to present her views on Medicaid funding of abortion to Roman authorities. Authorities within the Sisters of Mercy were bypassed. Mansour was approached by the Roman delegate without being informed of the nature of the options to be given. She sees Mansour as the "victim of arbitrary and unfounded Church discipline" which threatens "the survival and identity of religious communities of women."

Theologian Thomas E. Clarke, S.J., commenting on an editorial in *America*, insists that the central issue in the Mansour case is not abortion funding but the fidelity to the gospel of certain Church laws and procedures.<sup>90</sup> The laws of the Church do not sufficiently respect the charismatic character of religious life, hence its greater autonomy when compared to the clerical state. But the most central issue is: "How can we develop ecclesiastical processes for dealing with baptized Christians which do not degrade those who participate in them?" Clearly, Clarke, who is profoundly respectful of authority and therefore profoundly sensitive to its abuse, views the Mansour proceedings as degrading.

There is a sharp difference in view about the justice and fairness of

<sup>87</sup> Cf. also Bernard Towers, "Irreversible Coma and Withdrawal of Life Support: Is It Murder If the I.V. Line Is Disconnected?" *Journal of Medical Ethics* 8 (1982) 203-5.

<sup>88</sup> Cf. *Origins* 13 (1983) 197-206 for a chronology of events as presented by Bishop Anthony Bevilacqua, Agnes Mary Mansour, and the Provincial Team of the Sisters of Mercy of the Union.

<sup>89</sup> Madonna Kolbenschlag, H.M., "Sister Mansour Is Not Alone," *Commonweal* 110 (1983) 359-64.

<sup>90</sup> *America* 149 (1983) 20.



the proceedings leading to Mansour's dispensation from her vows. The *ad hoc* delegate of the Holy See (Anthony Bevilacqua) summarized the matter as follows: "Justice, the requirements of fair and canonical process, and the protection of rights were scrupulously attended to."<sup>91</sup> He further stated: "The Holy See would not countenance any miscarriage of justice, infringement of rights or violations of required canonical process."

However, the Sisters of Mercy of the Union did not see it this way at all. At their eleventh general chapter (Sept. 1-6, 1983) they issued a statement that reads in part as follows:

We speak because serious harm has been experienced by the Church, by our congregation and by one of our members; we are deeply concerned for all involved. It is our belief that the fullness of justice is not achieved by the law alone. We are particularly distressed:

1. that adequate dialogue between congregational and hierarchical authorities was lacking.
2. that responses to questions and sufficient information regarding the canonical processes to be used were not made available to congregational leadership or to Sister Agnes Mary Mansour.
3. that, at crucial points, legitimate authorities of the congregation were ignored.
4. that prior to final action by Roman authorities the congregation was not officially requested to represent its position, nor Sister Agnes Mary Mansour hers.<sup>92</sup>

Kolbenschlager ended her study by noting that the overall outcome of the Mansour case will depend very much on the response of the American bishops. It was for this reason that a group, most of whom are stationed in Washington and represent a variety of backgrounds, addressed the following letter (reproduced only in part here) to all of the American bishops.<sup>93</sup>

This series of events raises very grave issues in and for the Church.

First, there is the matter of due process. As Catholics we are justly proud of the steps the Church has taken to protect human rights in civil society. We are correspondingly distressed by the absence of respect for such rights within the Church itself. Bishop Anthony Bevilacqua, the *Ad Hoc* Delegate of the Holy See in this matter, has stated in his report that canonical norms of due process were "scrupulously attended to." This surely raises the question of whether these legal

<sup>91</sup> *Origins* 13 (1983) 199.

<sup>92</sup> Document kindly provided by the Sisters of Mercy of the Union.

<sup>93</sup> Signatories were: Mary Burke, James Hug, S.J., Keith Brennan, S.D.S., Mary Collins, O.S.B., James Coriden, Barbara Cullom, Charles Curran, Vincent Cushing, Alfred Hennelly, S.J., David Hollenbach, S.J., Mary Hunt, Madonna Kolbenschlager, H.M., Lora Ann Quinonez, C.D.P., Mary Daniel Turner, S.N.D., Philip Land, S.J., Maria Riley, O.P., and this author.

norms are an adequate guarantee of genuine justice. The basic fact remains that Sister Mansour's only contact with Roman authorities occurred after it had already been decided that a process of dismissal would be initiated against her if she continued to hold her government position. She was never permitted to explain or defend her position with authorities in Rome, even though this was requested. In a matter of such gravity this is a clear violation of the kind of justice we have a right to expect in the Church.

Second, the reason given for these developments is that Sister Mansour's position is "contrary to the magisterium" (Archbishop of Detroit). This is simply inaccurate. While the magisterium does teach that abortion is morally wrong, it does not specify what kind of cooperation with it is tolerable in what circumstances. Such specifications involve further factual assessments, and people of good will can and do disagree about them. Your excellent pastoral letter *The Challenge of Peace* makes it very clear that Christians committed to the protection of human life can legitimately disagree about how to pursue this commitment in public policy.

Third, the way this matter was handled raises all kinds of cognate issues relevant to the good of the Church: the nature of religious vows, the propriety of public office for priests and religious, the place of women and their ministry in the Church, the collegiality of the American episcopate, the manner of the exercise of authority in the Church etc.

The letter ends with a request that the bishops reflect on the incident and make an appropriate pastoral response. If the Mansour decision cannot be changed, "at the very least there would be the consolation that there are still official voices in the Church ready to insist on justice. That would go a long way toward repairing the public damage done by the swift and ill-considered treatment accorded to Sister Mansour"—treatment that the letter describes as an "abuse of authority."

At least one bishop, Thomas Gumbleton, has spoken out. He referred to the Church's treatment of Mansour as a "clear injustice."<sup>94</sup> While I disagree with Mansour's judgment on Medicaid payments for abortion, I agree with the editors of *America* when they write: "To find her position on this issue unacceptable is vastly different from declaring her unfit for office or for religious life or unorthodox in Catholic doctrine."<sup>95</sup> It is this "vast difference" that seems to many to constitute the chasm between justice and injustice, regardless of what procedures were used and what protocols followed.

This incident is mentioned in these "Notes" because its importance

<sup>94</sup> *Catholic Chronicle*, July 1, 1983, 1.

<sup>95</sup> *America* 148 (1983) 409. The matter is only further confused by inaccurate statements such as that of James Hitchcock. He asks: "How, then, can a nun stay in a job which requires her going directly contrary to Catholic moral teaching on an extremely serious issue?" (*Catholic Chronicle*, Oct. 7, 1983, 9). The answer: there is no such teaching on Medicaid funding of abortions.

stretches far beyond an individual person or congregation. It looks very much like the working out of an ecclesial vision, one that is in noticeable contrast to some of the perspectives of Vatican II and hierarchical insistence on the foundational character of human rights in society. As such, it will constitute the atmosphere in which theology must perform its modest service.

#### THE CHALLENGE OF PEACE

On May 3, 1983, the American hierarchy overwhelmingly (238 to 9) approved *The Challenge of Peace: God's Promise and Our Response*.<sup>96</sup> Without delay I want to identify myself with the statement of the remarkable Theodore Hesburgh, C.S.C.: "I believe it is the finest document that the American Catholic hierarchy has ever produced."<sup>97</sup> That is not to say it is without problems. It is not. It is to say that in process, style, and substance it did and will continue to make people think. Surely that is a fine first step. Hesburgh gives four reasons for his judgment. First, the bishops had the courage to address "the greatest moral problem that has ever faced humanity," knowing that they would face serious criticism no matter what they said. Second, there were precious few theological precedents to structure their response. For instance, the key just-war concepts of discrimination and proportionality "are practically meaningless as applied to nuclear warfare." Yet the episcopal conclusions are blunt, clear, and courageous. Third, there is the process itself.<sup>98</sup> Hesburgh applauds the total openness of the procedures culminating in the final draft. "That process was almost as important, for bishops and laity, as the document produced." Finally, there is the modesty of the document, "a quality not true of all Church documents." What it asserts as binding is relatively minimal given the broad sweep of the letter. Furthermore, it is "clearly and expressly a first word," not a final word. Hesburgh has, I believe, put his finger on exactly those dimensions of *The Challenge of Peace* that made its appearance such a fresh and exhilarating experience in the American Church.

<sup>96</sup> *Origins* 13 (1983) 1-32. The official summary is found in *Origins* 13 (1983) 97-101.

<sup>97</sup> Theodore Hesburgh, C.S.C., "Foreword," in *Catholics and Nuclear War*, ed. Philip J. Murnion (New York: Crossroad, 1983) vii. The volume contains commentaries by David Hollenbach, S.J., David J. O'Brien, Peter Steinfels, Charles Curran, William E. Murnion, J. Bryan Hehir, Sandra Schneiders, Joseph A. Komonchak, Gordon Zahn, James Finn, Bruce Russett, George F. Kennan, Lester C. Thurow, John C. Haughey, S.J., Harry A. Fagan, and this author. The book also contains the full text of *The Challenge of Peace*.

<sup>98</sup> For an interesting history of the development of the pastoral, cf. Jim Castelli, *The Bishops and the Bomb* (New York: Image Books, 1983). A good overview of the pastoral is that of Judith A. Dwyer, "The Morality of Using Nuclear Weapons," *New Catholic World* 226 (1983) 244-48.

Other reactions to the document are interesting. Here just a sampling can be cited. The *National Catholic Reporter* editorialized: "It could well be the most important religious statement of our time."<sup>99</sup> McGeorge Bundy refers to the letter as a "landmark in the changing pattern of American concern with nuclear danger." It is an "excellent starting point for what can now be said about deterrence."<sup>100</sup> At the other end of the spectrum was the judgment of philosopher William Mara (Fordham). When asked about the pastoral, Mara responded: "It was overrated. And I think it will have harmful effects." Mara referred to the bishops as "posturing as moral prophets" and wondered "who can take them seriously?"<sup>101</sup>

Charles Krauthammer calls the letter's central position (on deterrence) an "unhappy compromise," a "sorry compromise." Why? The bishops, he says, reject countervalue strategy as indiscriminate and counterforce strategy as violating proportionality. As he puts it, "One runs out of ways of targeting nuclear weapons." Thus, on the one hand, "the logic, and quite transparent objective, of such a position is to reject deterrence *in toto*." On the other hand, this is at odds with Vatican policy (John Paul II). The compromise: "You may keep the weapons but you may not use them."<sup>102</sup> Krauthammer sees this as incoherent and unconvincing. It is incoherent because it requires the bishops to support a policy their entire argument is designed to undermine. It is unconvincing because the deterrent they allow is no deterrent at all. Deterrence requires the will to use.

Krauthammer's analysis, besides assuming that deterrence strategies are efficacious (that is debated), misses the fact that *The Challenge of Peace* did not condemn *any* use of nuclear weapons. It came close, but it

<sup>99</sup> *National Catholic Reporter*, May 13, 1983, 1.

<sup>100</sup> *New York Review*, June 16, 1983, 3.

<sup>101</sup> *National Catholic Register*, Nov. 6, 1983, 6. This is also the opinion of Michael Novak, as might be expected ("The Bishops and Soviet Reality," *New Catholic World* 266 [1983] 258-61). According to Novak, the bishops resisted pacifism and did not destroy deterrence. That was to their credit. But they perpetrated a "grave religious as well as political failure" because they underestimated Soviet reality and tied deterrence to progressive disarmament. The *New Yorker* saw the bishops' position as "radical" because it rules out the mainstay of deterrence (the targeting of cities). But the bishops "contradicted themselves" in holding that deterrence can be provisionally tolerated. In trying to steer a course between city-destroying and unilateral disarmament, there had to be a point of ambiguity and that point is the rationale for deterrence. Still, the *New Yorker* judges that the letter has performed "a historic service" (May 23, 1983, 31-32).

<sup>102</sup> Charles Krauthammer, "On Nuclear Morality," *Commentary*, Oct. 1983, 48-52. This was also the criticism of Albert Wohlstetter in "Bishops, Statesmen and Other Strategists on the Bombing of Innocents," *Commentary*, June 1983, 15-35.

did not do so. And it was precisely this tiny opening that allowed its provisional and strictly conditioned tolerance of nuclear deterrence.

Very similar to Krauthammer's is the analysis of François Gorand.<sup>103</sup> The bishops have done both too much and too little. Too much because in opposing the Reagan administration's ideas about a controlled and winnable nuclear war, they have left a kind of *tabula rasa* for nuclear strategy. Too little because their arguments should have led them to question the very notion of deterrence.

Francis Winters responds to Gorand.<sup>104</sup> Gorand's critique had argued that Catholics are confronted with an impossible dilemma: either accept just-war criteria and denounce deterrence, or reject them and preserve the peace by threatening Soviet society. Winters argues that *datur tertium*: strengthening conventional forces while retaining nuclear capacity with no intention to use it. The deterrent effect is in the eye of the beholder, who can never be sure of our intentions as long as weapons exist. This is all that is required for the American bishops to accept deterrence.

Rather than cataloguing reactions, it might be more useful to highlight the issues raised before and after the pastoral. John C. Haughey, S.J., usefully identifies four interrelated concerns, really complaints.<sup>105</sup> First, there is evangelization. The contention is that the bishops' relationship to public life should always express this primary mission of the Church. Specifically, if bishops take a stand on a particular policy issue, they should do so precisely to show that Christ is the norm of their judgment. Merely political argumentation is an inappropriate use of episcopal authority.

Second, there is the question of episcopal competence. If this competence lies in the episcopacy's intimate relationship to the revelation of God in and through Christ, then their policy statements should reveal this linkage. Third, the specificity of recommendations puts the Church in a partisan political posture. Some would argue that this is inappropriate and that the Church should limit itself to general principles. "Otherwise, the contention runs, the Church becomes just another interest group or lobby for this or that position," which can compromise its primary function.

Finally, there is the role of the laity. Some lay people resent what they regard as excessively progressive or liberal positions taken officially. Furthermore, the application of traditional wisdom in the temporal order is the laity's responsibility.

<sup>103</sup> François Gorand, "La dissuasion nucléaire," *Etudes*, Oct. 1983, 377-88.

<sup>104</sup> Francis Winters, "Un regard pascalien," *Etudes*, Oct. 1983, 388-92. Cf. also Francis Winters, "Did the Bishops Ban the Bomb? Yes and No." *America* 149 (1983) 104-8.

<sup>105</sup> *Woodstock Report* no. 2 (April 1983) 1.

Haughey does not attempt to respond to these concerns. But he thinks it important that they are raised because they go to the heart of the significance of faith for public life. Actually, it seems to me that the pastoral has anticipated some of these concerns and responded to them. For instance, with regard to evangelization and competence, *The Challenge of Peace* makes it quite clear why the bishops, precisely as bishops, have a legitimate concern in these matters.<sup>106</sup> As I read the document, it builds this legitimacy in two steps. (1) "The Church is called to be, in a unique way, the instrument of the kingdom of God in history. Since peace is one of the signs of that kingdom present in the world, the Church fulfills part of her essential mission by making the peace of the kingdom more visible in our time" (no. 22). The document speaks of peacemaking as "central in the ministry of the Church." (2) "At the center of the Church's teaching on peace and at the center of all Catholic social teaching are the transcendence of God and the dignity of the human person. The human person is the clearest reflection of God's presence in the world; all of the Church's work in pursuit of both justice and peace is designed to protect and promote the dignity of every person" (no. 15).

Thus it is the centrality of peacemaking in the Church's ministry and the centrality of the person within this ministry that are the bishops' entitlements to address the question. Put negatively, to remain silent on such an issue would be a tacit concession that the *magnalia Dei* have nothing to do with these twin concerns. That is theologically unthinkable.<sup>107</sup>

As for specificity, the pastoral letter is careful to distinguish three types of assertions: universally-binding moral principles, previous magisterial teaching, concrete applications to specific cases. Of this third category the bishops note that "prudential judgments are involved based on specific circumstances" and that "the Church expects a certain diversity of views even though all hold the same moral principles."<sup>108</sup>

As a way of organizing the literature that is only now beginning to appear, we may ask four questions: (1) What is the methodology of the pastoral? (2) What is new about the pastoral's content? (3) How does it

<sup>106</sup> Cf. also the Bishops of Haiti, "Les fondements de l'intervention de l'église dans le domaine social et politique," *Documentation catholique* 80 (1983) 641-43. The always perceptive George Higgins takes this up in *America* (forthcoming as I write) in a response to Russell Shaw's "The Synod in Search of a Subject," *America* 149 (1983) 325-28.

<sup>107</sup> Joseph Cardinal Bernardin made this point in a speech at Notre Dame (May 1983): "Today the stakes involved in the nuclear issue make it a moral issue of compelling urgency. The Church must be involved in the process of protecting the world and its people from the specter of nuclear destruction. *Silence in this instance would be a betrayal of its mission . . .*" (cited by Hesburgh in *Catholics and Nuclear War* viii).

<sup>108</sup> For an excellent article on authority in the pastoral, cf. Edward Vacek, S.J., "Authority and the Peace Pastoral," *America* 149 (1983) 225-28.

compare with the pastoral letters of other episcopates? (4) What is its major problem?

1) *What is the methodology of the pastoral letter?* Here Charles Curran is very helpful.<sup>109</sup> Curran points out that the *The Challenge of Peace* follows the methodology of *Gaudium et spes* in emphasizing a threefold source of moral deliberation: the signs of the times, Sacred Scripture, human reason. Three signs of the times are mentioned: the need for peace, the curse of the arms race, the unique dangers of the arms race. As for the Scriptures, Curran rightly notes that they do not supply us with detailed answers but “only give a clear, urgent direction when we look at today’s concrete problems,” a kind of vision.

Curran next turns to and praises the notion of moral theology that structures the pastoral letter. That notion includes: a general vision of reality, an understanding of human history (eschatology) and of human beings in general (anthropology), the virtues and values that must be present in human society, the need for structures to safeguard these values, the importance of the person as agent and as a subject called to continual conversion, the principles and norms that govern conduct, the application of these to specific problems. The admission by the bishops that there can be legitimate disagreement on complex specific applications of principles leads Curran to conclude: “Logically this understanding must also be present in other areas of Christian morality . . . [It] is bound to have some repercussions in other areas of moral teaching and Church life.”

In another study Curran notes the tensions that constituted the atmosphere of the drafting process.<sup>110</sup> The relationship to Rome and other hierarchies played a notable role. It was well known that some French and German bishops were opposed to condemnation of the first use of nuclear weapons since NATO and the French defense posture rely on the threat of limited nuclear weapons to deter attack even by conventional forces of the enemy. Then there was the Roman meeting chaired by Josef Cardinal Ratzinger during which Ratzinger proposed the rather curious idea that bishops’ conferences as such do not have a *mandatum docendi*.<sup>111</sup>

<sup>109</sup> Charles Curran, “Metodologia morale della lettera pastorale dei vescovi americani su guerra e pace,” *Rivista di teologia morale* 15 (Oct.–Dec. 1983) 487–98. Curran was very badly served by his translator. Curran had spoken of the pre-moral evil of war. The translator rendered this by saying that sometimes *immoral* acts could be justified by a proportionate reason.

<sup>110</sup> Charles Curran, “Analyse américaine de la lettre pastorale sur la guerre et la paix,” *Supplément* no. 147, Nov. 1983, 569–92.

<sup>111</sup> *Origins* 12 (1983) 691–95. For a fine analysis of the teaching authority of episcopal conferences, cf. Avery Dulles, S.J., “The Teaching Authority of Bishops’ Conferences,” *America* 148 (1983) 453–55.

There was also opposition and conflict within the American Catholic community. A symbol of this was Michael Novak's alternate pastoral letter.<sup>112</sup> One difficulty the bishops faced was consistency with some of their earlier statements. For instance, in their 1976 pastoral letter *To Live in Christ Jesus*, the bishops had stated that it is wrong both to attack civilian populations and to threaten to do so. John Cardinal Krol, in his 1979 testimony, attempted to finesse the implications of this by insisting that deterrence (involving such a threat) cannot be approved but only tolerated.<sup>113</sup> Curran correctly points out that this is a theologically novel use of the notion of toleration, since it involves tolerating one's own immoral (conditional) intent to perform moral evil. However, this worked its way into the second draft of the pastoral. That version was accused of "consequentialism" by certain traditionalists—the moral evil of an immoral intention justified by the good effects of the deterrence. This "consequentialism" was then identified with certain revisionist Catholic thinkers. However, Curran rightly notes that these revisionists would not agree with the Krol testimony and the second draft. One may never intend to do what is morally wrong. Therefore "it is wrong," he writes, "to identify such reasoning with the revisionist theory of proportionalism."

In summary, the final version does accept a strictly conditioned deterrence. It escapes the methodological traps of the Krol testimony and the second draft, but in doing so it offers no satisfactory justification for its position. For this reason Curran's conclusion is right on target: "The thorny question of deterrence and the ethical theory supporting it will continue to be the most important subject for further ethical investigation."

2) *What is new about the pastoral's content?* The American bishops state explicitly in their letter that they "wish to continue and develop" previous teaching on peace and war, and to do this out of the "insights and experience of the Catholic community of the United States." What concretely has this development meant?

In an excellent overview David Hollenbach, S.J., examines three areas: (1) basic perspectives on the morality of war, (2) the moral norms proposed for the use of nuclear weapons, (3) the morality of deterrence.<sup>114</sup> With regard to the first, the pastoral breaks new ground in regarding the just-war ethic and the ethic of nonviolence as interrelated approaches, not as contradictory alternatives. This complementarity had not been

<sup>112</sup> Michael Novak, "Moral Clarity in a Nuclear Age: A Letter from Catholic Clergy and Laity," *Catholicism in Crisis* 1 (1983) 3–23.

<sup>113</sup> *Origins* 9 (1979) 195–99.

<sup>114</sup> David Hollenbach, S.J., "The Challenge of Peace in the Context of Recent Church Teachings," in *Catholics and Nuclear War* 3–15.



affirmed previously in conciliar or papal teaching. Hollenbach believes the bishops were led to this conclusion by the particular form of the debate in the United States, where an articulate pacifist position has emerged. The strong presumption against war is the link that binds both perspectives together.

As for moral norms on the use of nuclear weapons, *The Challenge of Peace* is more nuanced than any other official statement since World War II. Earlier popes never condemned *any* use of such weapons. The pastoral letter *resoundingly* rejects the use of nuclear weapons against population centers. It *strongly* rejects any first use of nuclear weapons. Finally, on the most debated question of the day (Can any use be discriminate and proportionate?), it expresses *extreme skepticism* that any use can be kept limited.

Finally, there is deterrence. Neither Vatican II nor John Paul II condemned the possession of nuclear weapons for deterrence. Nor did the American bishops. But Hollenbach believes that the American pastoral goes beyond John Paul II "by entering into an analysis of different types of deterrence policies." The conditions set by the Americans for accepting deterrence are considerably more detailed and stringent than are the pope's. They exclude "war-fighting" strategies, the quest for superiority, and all weapons systems that make disarmament more difficult to achieve. Hollenbach concludes that the pastoral involves "a clear development" in tradition and for this reason may be seen as "genuinely prophetic."

In centering attention on the moral legitimacy of deterrence, it is quite possible to overlook this developmental thrust. In a very interesting article, Francis X. Meehan sees the bishops' pastoral as a step in the development of doctrine.<sup>115</sup> How? It is in the relationship of just-war teaching and nonviolence. *The Challenge of Peace* notes that there is a "complementary relationship in the sense that both seek to serve the common good." Furthermore, the pastoral states that the two are "distinct but interdependent methods of evaluating warfare." Finally, the "two perspectives support and complement one another, each preserving the other from distortion."

Meehan sees in these statements a growing resolution of the either-or dilemma (either just war or nonviolence). A new "duality" is emerging that disallows our resting with Christian comfort in either option. Thus "the witness of non-violence makes the use of just-war teaching more moderate and just." Similarly, just-war teaching lends moderation to the nonviolent witness. This complementarity must be seen in the broader

<sup>115</sup> Francis Meehan, "Non-Violence and the Bishops' Pastoral: A Case for the Development of Doctrine," forthcoming (1984) in a collection from Paulist Press.

context of the theology of sin and grace. Against such a background, force is "part of the concupiscent world that stems from sin." It ought not to exist. It is a reality to be overcome. Failure to see it in this way leads to an abstract acquiescence in the use of force and an unwitting nourishment of militarism. This means that "we absolve ourselves too easily of a pull which the final kingdom should be exercising on us." Meehan argues that this eschatological pull means "a progressive movement in the Church toward non-violence," Far from being unrealistic, this progression constitutes true Christian realism; for it is a "view of non-violence which is active not passive, historical and public rather than private and interior, assertive rather than surrendering, practical and pragmatic rather than pure other-worldliness."

Meehan is too realistic to think that we will ever overcome the tensions between justice and peace, force and nonviolence. But unless these realities are seen with their deeper rootage in sin and grace, they will remain dichotomous, not complementary. And when they are viewed as complementary, there is a new dynamic at work: toward nonviolence. To brush aside the excellent points in Meehan's analysis would amount to complacency with the *status quo*. At some point that is profoundly unchristian.

John Haughey, S. J., carries this theme forward by noting that in addition to a "norm ethics" we need a "call ethics."<sup>116</sup> The just-war theory has its clear advantages, but it also has shortcomings. For instance, Haughey believes it cannot furnish the power necessary for a "moral-about-face" which the bishops see as necessary. Furthermore, the norm ethics of just-war defense may leave those using it unaware of the violence in their own hearts. True peacemaking must begin by breaking down the walls of hostility in our own hearts. The pastoral is less successful in developing these themes, but Haughey believes it is the direction of the future already foreshadowed in *The Challenge of Peace*.

3) *How does the American pastoral compare with the pastorals of other episcopates?* Before treating the French, German, Irish, and Belgian pastoral letters, let me take note of the Sixth Assembly of the World Council of Churches (Vancouver, July 24–August 10, 1983). The Assembly stated: "We believe that the time has come when the Churches must unequivocally declare that the production and deployment as well as the use of nuclear weapons are a crime against humanity and that such activities must be condemned on ethical and theological grounds."<sup>117</sup>

The Assembly then approached nuclear deterrence. It must be "cate-

<sup>116</sup> John Haughey, S.J., "Disarmament of the Heart," in *Catholics and Nuclear War* 217–28.

<sup>117</sup> I work from a manuscript document kindly provided by Alan Geyer.

gorically rejected" as contrary to faith in Jesus Christ. Why? Because "it relies on the credibility of the *intention to use nuclear weapons*." The Assembly insisted that "any intention to use weapons of mass destruction is an utterly inhuman violation of the mind and spirit of Christ."

The Vancouver Assembly then went on to detail further objections to nuclear deterrence. It (1) is the antithesis of an ultimate faith that casts out fear; (2) escalates the arms race; (3) ignores the economic, social, and psychological dimensions of security, thus paralyzing the *status quo*; (4) destroys the reality of self-determination for most nations in matters of their safety and survival; (5) diverts resources from basic human needs; (6) rationalizes the development of new weapons etc.

Several things are notable about this document. First, it goes beyond the moral stance of the American bishops in condemning deterrence. Second, it does this on both ethical and theological grounds. Third, these grounds coalesce in the intention to use nuclear weapons. As I read the declaration, then, it has taken a position on a previously debated point: Does the possession of nuclear weapons as a deterrent necessarily involve the intention (conditioned) to use them? The Assembly's answer is affirmative; otherwise the deterrent is not credible. Thus the World Council links very closely, indeed inseparably, possession and use. This is in sharp contrast with, for example, the pastoral letter of the German episcopate. *The Challenge of Peace* left this dimension of the question untouched.

The German episcopate has issued its pastoral *Righteousness Creates Justice* (April 27, 1983).<sup>118</sup> It is a very long document and in this it resembles *The Challenge of Peace*. The major emphasis in the document is peace—its urgent need, its theological understanding, its human threats, its protection and achievement. Thus, in discussing Church teachings over the past thirty years, it highlights the shift in emphasis from just defense to the mandate of peace. "Although the doctrine of a just defense has not been abandoned, it can no longer serve as a basis for an overall concept of the ecclesiastical ethics of peace."<sup>119</sup> Greater prominence must be given to the "positive precepts of peace and the combating of the causes of war." However, the pastoral refuses to see these emphases as "contrasting." Rather, "these two perspectives supplement each other and we cannot forgo either of them." Still, the doctrine of just defense maintains but a "limited function" within a comprehensive peace ethic.

It is within such a flow of *sic et non* balancing assertions that the German episcopate approaches security policies. There is no longer

<sup>118</sup> "La justice construit la paix," *Documentation catholique* 80 (1983) 568-94.

<sup>119</sup> *Ibid.* 580.

dispute about the goal of preventing war (everyone admits the urgency of the goal). The disputed question concerns the means of prevention, and above all deterrence. After admitting that the efficacy of deterrence is disputed (some say it has prevented war, others say this cannot be substantiated), the Germans cite John Paul II's statement to the Second Special Session of the U.N. General Assembly: "Under present conditions, deterrence . . . can still be judged to be morally acceptable." They then undertake their own analysis.

The Germans accept the papal judgment. They then offer several orienting perspectives for judging a nuclear deterrent. First, there is the *goal* of the deterrent (prevention of war). Politicians and military leaders must "be able to substantiate the fact that war can really be prevented by this strategy and why."<sup>120</sup> Second, there is the question of *means*. The goal must become credible in the choice of means. By this the German document means that weapons must not be judged in isolation but in terms of the overall political objectives.

Such orienting perspectives lead to criteria that judge the moral legitimacy of a deterrent. Three are given. (1) Existing or planned military means must never render war more feasible or more probable. The document notes that this criterion creates almost insuperable obstacles. "After all, weapons only provide an effective deterrent if their use can be threatened in a credible manner."<sup>121</sup> (2) Only those weapons (qualitatively and quantitatively) may be deployed that are required by the deterrent. This excludes any quest for superiority. (3) All military means must be compatible with effective mutual arms limitation, reduction, and disarmament. This reflects the papal assertion that the deterrent must be a "stage on the way to progressive disarmament."

These are the criteria we must apply to live with the dilemma of the horror of mass destruction on the one hand, and totalitarian injustice, oppression, and extortion on the other. In the "interim period," then, the deterrent can be tolerated. "By virtue of this decision we are choosing from among various evils the one which, as far as is humanly possible to tell, appears as the lesser."<sup>122</sup> The document tries to blend rationality (which leads to interim compromise) with an eschatological pull ("which leaves far behind all the currently still necessary compromises").

What are we to make of the German pastoral? The key principle appealed to is that of the choice of the lesser evil when all of the available options include evils. What I find missing in the German document is an awareness that the evils involved may be qualitatively different. Rejecting a nuclear deterrent certainly risks vulnerability to totalitarian blackmail,

<sup>120</sup> Ibid. 586.

<sup>121</sup> Ibid. 587.

<sup>122</sup> Ibid. 588.

expansionism, and takeover. These are clearly enormous evils, but in terms of those experiencing them and trying to prevent them they are nonmoral or ontic in character. By that I mean that if they happened, they would not involve *our* doing moral evil. Tolerating a nuclear deterrent risks its use and this means, to cite the German episcopate, "a horror such as could not be more terrible." Thus the document seems to be balancing two sources of danger, two nonmoral outcomes.

What is obscured in this analysis is that one danger includes (according to some analysts) our own conditioned intention to use nuclear weapons, and that would involve, even on the account of the German bishops, a moral evil. In other words, in adopting as their pivotal principle the choice of the lesser evil (as if the evils were both nonmoral), the German pastoral seems to me to have evaded the very question that led the Vancouver Assembly to condemn nuclear deterrence: the conditioned intention to use nuclear weapons.

One way out of this ethical dilemma is to maintain a limited and morally legitimate use of nuclear weapons. Then the intention to use would not be immoral. What do the Germans say about this? They are deliberately (I believe) ambiguous—much as the American bishops are. They refer to the concerns of "many people" about escalation and ask: "Is not the danger of escalation from their use—however limited—so great that one cannot imagine any situation in which one could accept responsibility after consideration of all factors to use nuclear weapons?"<sup>123</sup> The question is left unanswered, and there is the ambiguity. One senses that the German bishops want to answer this question with a clear "yes." But if they did, the implications for the ethics of deterrence would be clear—especially for those who hold that deterrence is effective only if it involves a credible threat. A similar problem arises in the French, Irish, and Belgian pastorals.

And now to *The Storm That Threatens*, the relatively short July 1983 statement of the bishops of Ireland.<sup>124</sup> The Irish bishops cite both the American and the German pastoral letters. They state: "According to Catholic moral teaching, the possession of nuclear weapons is tolerable only to deter their use by others, as the lesser of two evils and only under certain conditions." The Irish bishops list three conditions. (1) There must be no intention to use the weapons against cities and population centers. (2) The underlying philosophy must be one of deterrence, not superiority or even equality. (3) Possession must be in the context of substantive efforts to bring about disarmament.

<sup>123</sup> *Ibid.* 587.

<sup>124</sup> Catholic Press and Information Office, Dublin.

Several things are interesting about this statement. First, in referring to the tolerability of a nuclear deterrent as the lesser of two evils, the Irish bishops say this is "Catholic teaching." By this I presume they mean two things: (1) The magisterium (Vatican II) has not condemned such a deterrent. (2) John Paul II, in his 1982 U.N. statement, said that deterrence "may still be judged morally acceptable." It seems a bit much to refer to such evidence as "Catholic moral teaching," a phrase that implies more than it can deliver in this instance.

Second, the Irish statement insists that if an *act* is immoral, then the *intention* (even conditioned) to perform that act is also immoral. Thus it insists that there must be no intention to use nuclear weapons against population centers. Yet the letter does two things: (1) It admits that deterrence is based on threat. (2) It tolerates such a threat as the lesser of two evils. The implications are interesting. There are several possibilities. The first is that threats do not necessarily involve the intention to use. The second is that threats do involve such an intention and therefore they must be restricted to morally legitimate use.

The Irish letter does not clearly resolve this problem. I incline to think they had the second alternative in mind, because their only clear and unhesitating condemnation of the use of nuclear weapons is of their indiscriminate use against population centers. They acknowledge the possibility of limited use of nuclear weapons and remain content to cite the German bishops and John Paul II on the unlikely possibility of containing escalation. Thus, though they tie use and intention to use very closely, they do not unambiguously condemn all use, and therefore not every intention to use, and therefore not any possession for deterrent purposes. This leaves a small opening for the tolerance of a nuclear deterrent without that tolerance referring to one's own readiness (intention) to perform immoral actions.

Perhaps this is how the German pastoral should also be read, as noted above. But the opening is very, very small. Indeed, many think it nonexistent. In other words, there is a developing consensus that any use of nuclear weapons is morally unacceptable because of the almost unavoidable danger of escalation. If this is indeed the case, then any appeal to the principle of tolerating the lesser evil is out of place as implying tolerance of *one's own* intention to do immoral things. The principle never meant that.

This impasse has led to two outcomes. First, it has led the World Council of Churches Vancouver Assembly to condemn nuclear deterrence. Second, it has led others (e.g., Francis Winters) to continue to insist that it is possession itself (not any intention to use) that suffices to deter.

And now to the French. In November 1983 they released their *Win the Peace*.<sup>125</sup> The document defends deterrence and denounces unilateral disarmament. Nuclear deterrence is justified because of the "aggressive character of Marxist-Leninist ideology." The central question is the following, according to *Win the Peace*: "In the present geopolitical context, does a country whose life, freedom, and identity is menaced have the right to parry this radical threat with an effective, even nuclear, counterthreat?" The answer: "Until now . . . the Catholic Church has not condemned it."

The absolute condemnation of all war would place peaceful people at the mercy of those inspired by the desire to dominate. The document continues:

To escape war, these peoples risk succumbing to other forms of violence and injustice: colonization, alienation, removal of their freedom and their identity. In an extreme sense, peace at any price leads a nation to every variety of surrender. Unilateral disarmament can even provoke aggressiveness in neighbors nourishing the temptation to seize a too easy prey.

The French bishops sharply distinguish threats from actual use. They ask themselves: "Is it not wrong to threaten what it is wrong to do?" Their answer: "It is not evident." Threat and use are "moral unequals." What this means is questionable. On the face of it, it would have to mean two things: (1) One may threaten to do what one may never do. (2) Such a threat does not necessarily involve the intention to do, since all admit that one may not even conditionally intend to do what is morally wrong. On this reading the French defense of deterrence is a version of the "bluff theory" or the "mere-possession theory." Many believe that the weakness of that theory is that the deterrent is no longer credible.

The Belgian bishops issued their statement in mid-July 1983.<sup>126</sup> After citing both Paul VI's demand for abolition of atomic weapons and Vatican II's condemnation of indiscriminate destruction, the Belgians turn to deterrence. They recite the positions of those who defend it and those who condemn it. It is no way to a true and stable peace. "At the best it is a 'lesser evil,' a solution of distress strictly provisional in character." They then cite John Paul II's conditioned acceptance of it in his U.N. speech. The brief statement concludes with several suggestions about promoting peace.

How, then, do the pastorals differ? Obviously, there are many points on which they overlap. For instance, the notion of just defense must be seen within the dominant imperative of peace. All accept the legitimacy

<sup>125</sup> I work from the manuscript copy kindly provided by Bryan Hehir; cf. also *New York Times*, Nov. 12, 1983.

<sup>126</sup> "Désarmer pour construire la paix," *La libre Belgique*, July 20-21, 1983.

of just national self-defense. All are inspired by Vatican II's condemnation of indiscriminate destruction and John Paul II's conditioned acceptance of deterrence.

In an insightful article Stanley Hoffmann has adverted to a major difference between the American and French pastorals.<sup>127</sup> The French present the moral problem as being placed "between war and blackmail." Not so for the American pastoral. The equilibrium of the forces of the nuclear superpowers prevents the exercise of blackmail against the United States.

But the most profound difference between the two pastorals is that *The Challenge of Peace* is fully aware of the recent evolution of strategy and nuclear technology. Deterrence is not what it used to be. The multiplication and sophistication of weapons has made it possible for the superpowers to move from a deterrence involving a threat to cities (apparently still the French concept) to a counterforce threat. This nourishes the idea of a limited, winnable nuclear war. There are two grave consequences to this evolution. First, counterforce deterrence demands only a limited number of weapons; counterforce deterrence demands "an astronomic number." Second, the presence of vulnerable nuclear forces may lead one side to a pre-emptive and protective strike. This means a move from a relatively stable deterrent to a destabilizing and disquieting one. The American pastoral realizes this and is composed from this perspective. Not so the French, argues Hoffmann. Thus, the American bishops are much more detailed about arms control, the sale of arms. Further, the Americans condemn first use (thus opposing official N.A.T.O. policy); the French do not.

Second, with Hoffmann I would note that the American bishops are much more reticent about deterrence than the other pastorals. The German, Irish, French, and Belgian letters appeal to the lesser-evil principle; not so the Americans. One can speculate about this, but it is not hard to believe that the Americans had come to see some imposing moral difficulties in such an appeal. However, I can only commend the American bishops for leaving the tensions in their document (e.g., a strictly conditioned acceptance of nuclear deterrence vs. an analysis of nuclear arms that seems to leave no room for it). In tensions there is room for growth.

Finally, the value of nonviolent witness has a prominence in the American document that is not found in the other pastorals.

4) *What is the remaining problem?* Briefly, it is the morality of nuclear deterrence. The American bishops did not condemn *any* use of nuclear weapons. At their May meeting Archbishop John Quinn (San Francisco)

<sup>127</sup> Stanley Hoffman, "Le cri d'alarme de l'église américaine," *Le monde*, Nov. 19, 1983.



had proposed that "profound skepticism" about the morality of any use be replaced by "opposition on moral grounds to any use of nuclear weapons." Originally passed, this amendment was later rescinded because it would appear incompatible with the bishops' acceptance of nuclear deterrence. It was this "centimeter of ambiguity" (Bryan Hehir) upon which the bishops hung their strictly conditioned acceptance of deterrence. But is that analysis persuasive? Several articles highlight this key issue.

Kenneth Himes, O.F.M., reviews the three arguments justifying deterrence and rejects them all.<sup>128</sup> First, there is the position presented by John Cardinal Krol before the Senate Foreign Relations Committee (1979). Krol distinguished between use, threat to use, and mere possession. Mere possession requires no declared intent and hence is tolerable. This is the position still espoused by Francis Winters. Himes rejects this on the grounds that there is an inbuilt intent in the system.

Second, there is the analysis of John Langan and William O'Brien that builds on the idea of a morally legitimate use of nuclear weapons. If some such use is imaginable, then that legitimates the threat of that use. This seems to be the position of *The Challenge of Peace* with its "centimeter of ambiguity." Himes rejects this as being unreal. "The real problem with drawing distinctions advocated by some proponents of this position is that those distinctions would almost surely be among the first casualties in the event of nuclear war." Briefly, this analysis fails to deal realistically with the danger of escalation.

Finally, there is the argument advanced by Michael Novak and David Hollenbach. They distinguish between the intention to use and the intention to deter. Deterrence is built on this latter. Himes rejects this as an immoral bluff. Just as it would be immoral to try to prevent murder by threatening the innocent family members of the convicted murderer (Michael Walzer's example), so too here. The threat itself is morally repugnant.

Himes concludes that there is no convincing rationale for the moral acceptability of nuclear deterrence. He sees this as the "significant flaw" of the American pastoral: it tries to justify deterrence. But that does not mean that Himes calls for unilateral disarmament. Distinguishing moral theological judgments from pastoral judgments, he suggests that it is one thing to judge a policy morally wrong; it is another to ask how we act to reverse it. The answer to this latter question is complicated, is not unilaterally determined, takes time, etc.

Next, there is the study of René Coste.<sup>129</sup> After reviewing the state-

<sup>128</sup> Kenneth Himes, O.F.M., "Close but No Cigar," forthcoming in *Cross Currents*.

<sup>129</sup> René Coste, "Le problème éthique de la dissuasion nucléaire," *Esprit et vie* 93 (1983) 513-28.

ments of Vatican II, John Paul II, and two episcopal conferences (American, German), he cites the theological discussion as it has occurred in England and the United States. He mentions the analyses of P. Ruston, Canon Dunstan, Sir Arthur Hockaday, John Langan, David Hollenbach, and this author.

Finally, he concludes by proposing certain guidelines. Some of them are as follows. (1) The fundamental ethical criterion is the promotion of a just peace. (2) The problem of deterrence must be seen concretely, historically, not abstractly. (3) The actual international situation must be said to be gravely evil ethically and sinful from a theological point of view. But it is in such a situation that we must view deterrence. What might not be justifiable in another situation can be "tolerated" in the one we are in. (4) Clarity and a sense of responsibility demand that we take into account the nature of the Soviet regime—as the American and German pastorals do. (5) We must consider it probable that deterrence has prevented a direct military confrontation between the superpowers and that it has protected the freedom of Western Europe. (6) Deterrence can be considered tolerable as a lesser evil as long as it is indispensable for the maintenance of peace. Coste faces the problem of intention by asserting that threat is one thing, one's real intention is another. This latter remains one's secret. This is very close to the Winters position.

Coste's study is careful and his toleration of nuclear deterrence is almost anguished. It is a reflection of what Bruce Russett calls the "ambiguities and contradictions" of nuclear deterrence.<sup>130</sup> Russett lays out very clearly the problems, strategic and moral, with nuclear deterrence. As for the problem of threatening what one may never licitly do or intend, "the bishops avoid it in their letter." He sees their ultimate position as "not so ambiguous as it is frankly conflicted." Russett states: "To avoid totally rejecting nuclear deterrence the bishops had to find some strategy that at least had a chance, in some hypothetical circumstances, of being morally neutral (discriminating, proportionate) rather than intrinsically evil." Did they do so? Russett remains unconvinced. "For myself, I repeat that I see no *good* solution overall."

In a nutshell, that is the moral problem of nuclear deterrence. On the one hand, there is an intuitive sense that it would be irresponsible unilaterally to abandon the deterrent. On the other, there seems to be no satisfactory ethical or theological analysis to support it.

It has been the privilege of this author to compose these "Notes" for nineteen years. In the course of that time I have occupied far more pages than anyone in the history of THEOLOGICAL STUDIES. It is time to turn

<sup>130</sup> Bruce M. Russett, "The Doctrine of Deterrence," in *Catholics and Nuclear War* 149-67.

over this task to younger people and different perspectives. But before doing so I should like to express profound thanks to those who have made this task so pleasant: the authors of the articles reviewed and the critics of my writing from whom I have learned so much. To my successors a simple counsel: *in certis firmitas, in dubiis libertas, in omnibus caritas*. And if one is permitted to expand the Augustinian axiom, *in obscuris claritas*.