

recent pastoral letters by the American bishops on the nuclear situation and the economy.<sup>111</sup> The bishops insist that strategies such as the preferential option for the poor are in principle intelligible to those who do not share a biblical faith. One wonders, however, whether the stories of the Exodus and the ministry of Jesus to the poor and outcasts do not enter constitutively into this moral mandate, whether in effect the ethics of discipleship is more distinctive than our natural-law preferences would lead us to acknowledge.<sup>112</sup>

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#### SEXUAL ETHICS, MARRIAGE, AND DIVORCE

Recent probings of the ethics of sexuality and the theology of marriage come from two directions. The more specific impetus is the 1983 Code of Canon Law; the more general is a re-examination in Catholic thought of the foundations of moral evaluation, including the need to rearticulate moral norms in ways sensitive to likely circumstances of application. In the latter category are several essays prompted by teaching documents or statements: e.g., *Educational Guidance in Human Love: Outlines for Sex Education* (Sacred Congregation for Catholic Education, 1983) or the present Pope's commitments to the ban on artificial contraception. Authors coming from both directions are concerned to formulate adequately and convincingly the intrinsic meanings of marriage and sexuality. The traditional ranking of primary and secondary ends of marriage was replaced in the 1960s by parity of procreation and love; many current efforts try to express better the unity of these ends and to develop concretely what that unity means in practice, especially for sex education and for marital sexuality. Other important themes emerging from the literature here considered are the relation between marriage as sacrament and marriage as lived partnership; the relation between experience, including empirical descriptions of it, and sources of normative interpretation of experience, such as Scripture, tradition, theology, canon law; the function of "personalism" as a foundation for sexual ethics; the meaning and connection of objective and subjective morality; and the connection between objective morality and cultural change.

<sup>111</sup> See National Conference of Catholic Bishops, *The Challenge of Peace* (Washington, D.C.: USCC, 1983) pars. 39–55, 274–78; *Pastoral Letter on Catholic Social Teaching and the U.S. Economy: Second Draft* (Washington, D.C.: USCC, 1985) pars. 49–62.

<sup>112</sup> "Such [NT] perspectives provide a basis for what today is called the 'preferential option for the poor.' Though in the Gospels and in the New Testament as a whole the offer of salvation is extended to all peoples, Jesus takes the side of those most in need, physically and spiritually. The example of Jesus poses a number of challenges to the contemporary Church. . . . Our contemporary prosperity exists alongside the poverty of many at home and abroad, and the image of disciples who 'left all' to follow Jesus is difficult to reconcile with a contemporary ethos which encourages amassing as much as possible" (ibid., par. 60).

*Fundamental Approaches*

Two historical interpretations of the Catholic understanding of marriage are, respectively, keynotes of the more traditional and the more developmental perspectives on these questions. John R. Connery argues that, contrary to the explicit hierarchy given in the 19th century to the goods of marriage, the tradition actually "saw love as key to the whole marriage relationship."<sup>113</sup> He pursues this thesis through the OT and NT, especially Genesis and the Pauline letters; the Fathers, especially Augustine; Aquinas and Hugh of St. Victor; Trent's Roman Catechism; 20th-century papal encyclicals; and Vatican II. Commendable as it is to situate Catholic ethics more firmly on scriptural foundations, care should be exercised not to read natural-law considerations and church tradition or law back into Scripture, thereby reducing the latter to a set of "proof texts." This tendency is not evaded entirely in statements such as "The description in Genesis is of marriage as it came from the hands of God,"<sup>114</sup> since marriage as such is not mentioned in Genesis; or that St. Paul in 1 Corinthians 7 "made it clear" that encouraging celibacy "was in no sense a reflection on the marriage vocation,"<sup>115</sup> since Paul in fact explicitly prefers celibacy as better enabling Christian service; or that the tradition of the sacramentality of marriage "began with Paul,"<sup>116</sup> since in Ephesians 5 Paul tells husbands to *imitate* the love of Christ for the Church, not that marital love is a sign of Christ's love.

Connery argues more basically and more persuasively that in Christian tradition the love-aspect of marriage usually was associated with its sacramentality, but that prior to this century there was a tendency to identify "love" with "mutual help" and thus to subordinate it to procreation. Drawing on Karol Wojtyła, *Gaudium et spes*, and *Humanae vitae*, Connery concludes that conjugal love is not a distinct end but "permeates the whole of marital life," "is ordered by nature to the procreation and education of children," is the "source" of marriage's other ends, and is "the basis for the sacramental (sign) value of marriage."<sup>117</sup> He affirms the conclusion of *Humanae vitae* that "conjugal love would demand responsibility for the procreative process," but without demonstrating more convincingly than did the encyclical a necessary connection between this fundamental responsibility and openness to procreation in every sexual act. Connery does not belabor the point, however, and, characteristically, operates constructively within the parameters of traditional materials.

The author of the second historical review, Denise Lardner Carmody,

<sup>113</sup> John R. Connery, "The Role of Love in Marriage: A Historical Overview," *International Catholic Review: Communio* 11 (1984) 257.

<sup>114</sup> *Ibid.* 246.

<sup>116</sup> *Ibid.* 250.

<sup>115</sup> *Ibid.* 245.

<sup>117</sup> *Ibid.* 252-54.

argues like Connery for the centrality of love in marriage but takes a more cautious view of the biblical evidence. She states merely that Ephesians 5 "places the marital relation of husband and wife in the outline of Christ's relation with the church," and indicates that the text became "very influential."<sup>118</sup> She also believes that the Pauline and later Catholic preference for virginity "tended to have negative effects on the average Catholic's view of marriage."<sup>119</sup> Her view of the role of love in marriage, the basis of the sacramental tradition, coheres with that of Connery. She suggests that marriage is "a vocation through which two people might love God and neighbor wholeheartedly," and that the two traditional "goals" of marriage are intrinsically linked with this vocation, one which Catholicism recognizes theologically and liturgically as a means of grace.<sup>120</sup> Carmody stresses "love of God" as the saving reality mediated by the marital relation and advises that the life of faith will be healthier if Catholics "keep secondary matters secondary."<sup>121</sup> She resists the conclusion that genuine married love excludes artificial contraception. Despite John Paul II's "personalist" language, his inferential descriptions of the experiences of women and of spouses about the "meaning" of sex would, in her view, better be replaced by firsthand accounts. At the same time, Carmody affirms as a distinctive contribution of the Catholic tradition its prophetic positions in support of procreation and indissolubility (when it "does not become a hurtful club"), and against contraception and abortion, as drawing us into "fruitful reflections on what marriage is finally about."<sup>122</sup> Connery and Carmody agree that marriage is about establishing a committed and loving partnership rooted in and expressive of divine love before it is about the fulfilment of subsidiary outcomes, however integrally they may be related.

### *Sociocultural Factors and Christian Morality*

Entering now more fully into Catholic discussions of marriage and sexuality are studies of the social conditions of sexual development and of marital commitment. They often are introduced as part of Christian feminist re-examinations of the relations between biological and social roles of men and women, and the theological interpretations of sexuality, childbearing, marriage, and family which have traditionally supported

<sup>118</sup> Denise Lardner Carmody, "Marriage in Roman Catholicism," *Journal of Ecumenical Studies* 22 (1985) 28. This is a special issue on "Marriage in the World Religions." It includes essays on Judaism, Orthodoxy, Protestantism, Islam, Hinduism, Buddhism, and four responses to all, including one by Sidney Callahan.

<sup>119</sup> *Ibid.* 30.

<sup>121</sup> *Ibid.* 39.

<sup>120</sup> *Ibid.* 32.

<sup>122</sup> *Ibid.* 40.

certain male and female roles.<sup>123</sup> In recent articles by German theologians the social dimensions of sexual ethics and marriage are placed in broad historical and social-scientific perspective. Especially wide-ranging and perceptive is the discussion by Lorenz Wachinger of just what distinctive contribution Christianity may make to the Western institution of marriage in the late 20th century.<sup>124</sup> Changes in the roles of women, in family structures, and in the social function of marriage are considered. He stresses that to realize the opportunities which changes in sociocultural situations can represent, the Church must be willing to redraw its romanticized, hierarchical picture of the family, captured in the portrait of the Holy Family which pious Catholics of a generation ago (at least in Germany) were accustomed to hang over the marriage bed. The order revealed by the serious, upright carpenter and seated wife holding a golden-haired child places the woman at home in family, the man in his occupation. The father provides domestic welfare through his solicitous authority, to which wife and children respond obediently. Wachinger states with restraint: "this simple ideal of the family no longer appears convincing to us today."<sup>125</sup>

Elisabeth van der Lieth stresses, like Wachinger, that while it is essential that the Church raise its voice against the "sexual depravity" which certainly exists, the Church (in its teaching documents) should take a more thoughtful approach to the wide spectrum of knowledge available through the humanistic sciences. Above all, Rome should appreciate the fact that there is "a large group of believing, searching people who want to live in agreement with the Church."<sup>126</sup> Sometimes a background analysis is sensitive to modern conditions, for instance the Pope's analysis in *Familiaris consortio* of social relationships in the Third World, but then is followed by unconvincing conclusions. The rigidity and unwillingness to compromise with which traditional norms are asserted are likely to create the very uncertainty and confusion in the faithful that they are supposed to avoid.

Wachinger insists that any individual or group, including the Church,

<sup>123</sup> See, e.g., Rosemary Radford Ruether, "Feminism, Church and Family in the 1980s," *New Blackfriars* 65 (1984) 202-12. Among scholarly resources for Christian feminist ethics are a special issue of the *Journal of Ecumenical Studies* on "Women and Religion: Scripture-Tradition-Institution," in Vol. 20, no. 4 (1983), and the new *Journal of Feminist Studies in Religion*, edited by Judith Plaskow and Elisabeth Schüssler Fiorenza.

<sup>124</sup> Lorenz Wachinger, "Die christliche Ehe und Familie: Ihre Chancen und Probleme heute," *Stimmen der Zeit* 203 (1985) 170-80.

<sup>125</sup> *Ibid.* 170.

<sup>126</sup> Elisabeth van der Lieth, "Pädagogische Aspekte kirchlicher Lehrschreiben zur Sexualität," *Stimmen der Zeit* 202 (1984) 745.

will come at the problem of marriage and family with certain cultural and socioeconomic presuppositions, so it is appropriate to exercise discretion and a self-critical attitude. He argues that if marriage is a sacrament of earthly reality, then its meaning must first be understood through the human sciences. Van der Lieth commends the German bishops for noting the changing roles of women in church and society, and connected changes in the role of sexual love. Without expressly contradicting Roman promulgations, they have offered differentiated views of homosexuality and of nonmarital intimate relationships. But, she continues, one searches in vain for such courageous words in Roman documents, which quote Scripture texts without exegetical reflection and mention the humanistic sciences with suspicion. Furthermore, religious education, especially in regard to the Sixth Commandment, has not been education of conscience but schooling in a casuistic which revels in detail.<sup>127</sup>

Wachinger notes that a normative Christian perspective on sexuality will include attention to biblical materials, the magisterium, the varied work of theologians, and especially the experience and actual situation of married couples. He sees seven areas of social change as crucial: longer average duration of marriage, calling for more numerous adjustments; rising rates of divorce, especially as initiated by women; sexual liberalization; equal rights and educational and career opportunities for women; personalization of marriage, involving greater emotional dependency between spouses; marriage and family as a private realm; added emphasis on communication and conflict resolution. Although marriage and family only can serve human welfare by continuing to react sensibly to changing realities, not every changed form is a good one. "As Christians, we are free to test everything and hold fast what is good (1 Thess 5:21)."<sup>128</sup> The "testing" process, in Wachinger's view, will entail dialogue between the Church and its contemporaries in the modern world. What *distinctive* message does Christianity bring to the consideration of these phenomena? This is the theological question. What is theologically valuable today is less the sign value of the vows of consent than the living of marriage itself as a sign of the cross and resurrection of Jesus. Faith gives meaning to both failure and success, makes a statement against

<sup>127</sup> Wolfgang Bartholomäus, "Katholische Sexualpädagogik: Geschichte-Theorie-Praxis: I," *Theologische Quartalschrift* 165 (1985) 28-40, takes as his point of departure debate in Germany over sexual education in the schools. He distinguishes between sexual "information" and true "education," which from a Christian perspective aims at an understanding of sexual expression as a language of love. Unfortunately, a post-Enlightenment bourgeois individualism has infiltrated with few exceptions and in a negative way the Church's attitude toward sexuality. Sexuality is seen as an animal instinct which must be suppressed for true self-liberation to occur.

<sup>128</sup> "Die christliche Ehe" 172.

both banalization and overvaluation of sex. However, "what can be mediated and experienced in faith is not necessarily adaptable to legal or parenetic generalizations." It would be well to develop normative proposals about Christian marriage and family cautiously and frugally, recalling that "It is experience that counts today in these questions. . . ."<sup>129</sup>

Wachinger's recommended approach is exemplified by André Guindon's essay on the sexual "testimony" of older persons.<sup>130</sup> Evidence offered by empirical studies indicates that many elderly are actively and enjoyably engaged in sexual activity, which should tend at least to challenge our preconception that sex is appropriate only in the reproductive years. More importantly, certain characteristics of sexual relationships have an enhanced opportunity to emerge once these years are past: attentiveness to sexuality's emotional aspects, such as vulnerability and tenderness; the importance of development and change in sexual intimacy; and the connection between mutual dependence and personal identity.

The work by Wachinger, van der Lieth, and Guindon represents two important methodological moves: first, the use of the human sciences to describe the actual situations of sexually active persons, married couples, and families, which should operate as fundamental premises of normative understandings; and second, a return to biblical themes for normative insights into the human experiences under evaluation, insights which can engender critical as well as affirmative attitudes. Biblical resources still are used more at the general than at the specific, exegetical level, but their use demonstrates that Christian symbols stimulate varied ways of interpreting the "data" experience provides.

Quite another view of the role of Church teaching vis-à-vis contemporary society is displayed in articles by William E. May, W. B. Skrzydlewski, and Wanda Poltawska.<sup>131</sup> All armor the Church as defender of Christian values and humane morality against the assaults of 20th-century hedonism, relativism, and promiscuity. The strengths and weaknesses of the proposed defense are revealed in May's claim to "capsulize" his method in "a few key propositions" (six). These begin with "God's divine law" and end with "the immutable and unchanging goods" of

<sup>129</sup> Ibid. 179-80.

<sup>130</sup> André Guindon, "Le témoignage sexuel des personnes âgées," *Eglise et théologie* 16 (1985) 107-33.

<sup>131</sup> William E. May, "The Vatican Declaration on Sexual Ethics and the Moral Methodology of Vatican Council II," *Linacre Quarterly* 52 (1985) 116-29; W. B. Skrzydlewski, "Conflict and Schism in Moral Theology and Sexual Ethics," *Homiletic and Pastoral Review* 85, no. 8 (May 1985) 23-32; Wanda Poltawska, "The Church and Human Sexuality," *Catholic Medical Quarterly* 36, no. 2 (1985) 89-101, reprinted in *Linacre Quarterly* 52 (1985) 349-60.

“mutual self-giving and the procreation of human life in the context of true love.” The latter serves as a basis for rejecting certain types of genital acts as always “intrinsically disordered” (repeating the phrase of *Humanae vitae*). Advantages are clarity of expression, unambiguity of conclusions, and stability. Disadvantages are unconvincing progression from premises stated to conclusions deduced, and lack of serious consideration of the positive implications of the challenges to traditional formulations offered by contemporary experience and the human sciences. A specific purpose of May is to demonstrate consistency of the “personalism” of *Gaudium et spes* and *Dignitatis humanae* with the Sacred Congregation of the Faith’s 1975 *Declaration on Certain Questions concerning Sexual Ethics* (which cites *Gaudium et spes*). The *Declaration* claims to represent the moral requirements of the nature of the human person, authentically and objectively understood. May uses occurrence of similar terms as evidence of convergence of viewpoint. However, an assumption shared by May and by the author of the *Declaration*, but harder perhaps to infer convincingly from *Gaudium et spes*, is that human characteristics and values can be known in a clear, definitive, and “transhistorical” manner, and formulated as “objective and metahistorical moral norms.”<sup>132</sup> The Council documents certainly share common ground with May and the *Declaration on Sexual Ethics*, inasmuch as all represent the characteristic Catholic commitment to an objective morality, shared human values, the perspicuity of both to the enquiring and reasonable human mind, and the responsibility of the Church to guide in the discernment process. Nonetheless, it is difficult to agree that May’s repeated emphasis on the Church’s authority to render “divine revelation” and the “eternal law” does justice to the quality of the Council’s vision. The now familiar phrases of *Gaudium et spes*, “signs of the times” and “light of the gospel,” have at least a different ring. They seem to commend an avenue into adequate appreciation of moral obligation which would lead the searcher (magisterial or not) through a genuine dialogue with nonreligious sciences, the experiences of human persons both Christian and non-Christian, and into the struggle to realize gospel values successfully in historical communities. Those moral arguments about human sexuality which are most convincing in their renderings of the experience of those to whom they are addressed will have the optimum potential to elicit assent.<sup>133</sup>

<sup>132</sup> The phrases are May’s, 119.

<sup>133</sup> See Alberic Stacpoole, “Documents and Human Hearts: Formal and Experiential Sexual Morality,” *New Blackfriars* 66 (1985) 230–38. The author focuses on episcopal responses to *Humanae vitae*, and contrasts approaches which focus on teaching emanating from the “centre” (Rome) with that which takes greater account of moral experience within the faith community.

Poltawska and Skrzydlewski likewise draw on personalist themes, but link them primarily to the writings of John Paul II. The Pope has articulated his own teaching on sexual intimacy, and more recently “responsible procreation,” in the context of “a complete view of the human person.”<sup>134</sup> Subjective correspondence to the objective moral order is affirmed by stating that it is “man,” in “the whole truth of his personal subjectivity,” who is “the subject of the natural law.”<sup>135</sup> The objective and the subjective aspects of sexuality coalesce in “the conjugal act” as the “language of the body,” which “signifies” both “love” and “potential fruitfulness.”<sup>136</sup> The Pope thus reminds his audience that a “natural” morality can be no more dualistic than a Christian one. Sexual acts, as the speech of a bodily language, have a bodily meaning. This meaning includes the extension of the love commitment to a commitment to new life. The long-disputed point, not resolved by setting the traditional solution against a philosophically updated background, is what it means in practice to realize these values within the concreteness and complexity of real marriages and real families. The Pope proceeds without intervening explanation from his description of sexuality as “language” to his conclusion that “In the conjugal act, it is not licit to separate artificially the unitive aspect from the procreation aspect, because both the one and the other pertain to the intimate truth of the conjugal act.”<sup>137</sup> Even if the truth of the second half of this proposition is granted, it is difficult to see how it serves as a warrant for the first.

Similar comments fit uses of terms such as “person” and “nature of the person” by Poltawska and Skrzydlewski. These authors share with the Pope and May a quite legitimate concern to resist capitulation to social mores which seem to contradict not only tradition but also the gospel and human well-being. But what purports to be a richer, more integrated view of human experience seems in the end to avoid any new questions experience might raise. Poltawska focuses on sex education, while Skrzydlewski contemplates with evident alarm a “schism” he thinks has been instigated by theologians who, supporting relativism and sexual permissiveness, undercut the absoluteness of moral norms. Perhaps of more interest than the arguments of the two is the style in which they are advanced and the institutional affiliations of the authors. Both style and background reveal a good deal about sociocultural barriers to effective discourse about ethics in the Catholic Church. Wanda Poltawska, M.D., a psychiatrist, is head of the Institute for the Theology of the Family,

<sup>134</sup> John Paul II, “Responsible Procreation,” *The Pope Speaks* 29 (1984) 245.

<sup>135</sup> John Paul II, “The Transmission of Life,” *ibid.* 350.

<sup>136</sup> *Ibid.* 351.

<sup>137</sup> *Ibid.* 351. “The Sacramentality of Marriage,” *The Pope Speaks* 30 (1985) 17-20, likewise attempts to defend *Humanae vitae* on a “biblical” and “personalistic” basis.



Pontifical Faculty of Theology of Krakow, Poland, as she was under Cardinal Wojtyla. She is also a member of the Pontifical Council for the Family in the Vatican. W. B. Skrzydlewski, O.P., whose essay was first published in Poland, is a member of the Commission for the Family of the Polish Bishops' Conference. It is thus not unlikely that the theological and social milieu within which they work is similar to that which has been formative for the present Pope. While it would be reductionist to suggest that the theological or ethical merit of an argument is determined by (or limited to) the social context of its genesis, it is still true that an argument's thrust is more comprehensible once the situations of its author and audience are clarified.

All three Polish authors not only reaffirm traditional church teaching on the basis of a quite loosely connected "personalism," but also construe modern Western culture as a chief source of danger to the Church and to human moral integrity. John Paul II, rather moderately and not without truth, accuses "all modern civilization," but especially "Western civilization," of a tendency toward materialism.<sup>138</sup> Poltawska goes further, defining "our century" as "a time of anti-culture." A siege mentality is in evidence in regard to sex education: "A struggle takes place, a struggle for the holiest values, and we cannot afford to give in."<sup>139</sup> One must keep in mind that state-sponsored sex education in Poland would hardly endorse religious insights. One also appreciates the merit of W. Bartholomaeus' argument<sup>140</sup> that the heretofore prevailing view of sex in Catholic sex education has been negative when one reads that "desire" is "against love,"<sup>141</sup> and that "Subordinating the body to the spirit—the spiritualization of the body—is true sexual education."<sup>142</sup> That the family is normally the best realm of schooling in sexual values cannot be debated. But Poltawska's delineation of parental roles, reminiscent of Wachinger's portrait of the Holy Family, surely demonstrates that the view of gender and sexual roles it represented did not die out with the popularity of the gold-framed icon: "The correct model of a father, responsible for the destiny of his family, causes admiration and high regard; the model of the mother, tenderly loving and caring for all the needs of the child, gives a sense of security."<sup>143</sup>

Skrzydlewski, on the other hand, deplors the erosion of church authority at the theological, as distinct from merely cultural, level. In an essay devoid of footnotes or references to specific texts, he accuses several theologians by name, and refers to "Western couples" for whom the

<sup>138</sup> "Sacramentality of Marriage" 19.

<sup>139</sup> "The Church and Human Sexuality" 90.

<sup>140</sup> See n. 127 above.

<sup>141</sup> "The Church and Human Sexuality" 99.

<sup>142</sup> *Ibid.* 95.

<sup>143</sup> *Ibid.* 98.

contraception ban "has proved inconvenient,"<sup>144</sup> "Western Catholics" who supposedly are in "confusion,"<sup>145</sup> and "Western theologians" who repeat "unjust rumours,"<sup>146</sup> who are "permissive" and who are "generally euphoric" about activities such as premarital sex.<sup>147</sup> This defensive rhetoric, with which "opponents" are painted in very broad strokes, obscures the legitimate criticisms which might be made of some attempts to revise Catholic moral theology. It does little to advance dialogue about genuine, shared concerns, such as insufficiently critical acceptance of empirical studies of human sexual behavior; inadequate emphasis on clear and specific moral guidelines; the responsibility of conscience to be informed with respect to the magisterium; or the integral connection which Christianity sees among love, its sexual expression, and the welcoming of children.

One area of sexual ethics in which innovative analysis is being carried forward in traditional categories is sterilization. As Edward J. Bayer states it, "Over the past three years theologians who take their lead from the Church's official teaching have begun again to raise some healthy discussion about a subject they had not treated for some time: the sterilization of the severely retarded woman as a last and desperate resort to protect her from criminal impregnation."<sup>148</sup> Bayer's thesis is that "defensive sterilization," when used as a last resort against aggression, "is not an intrinsically evil thing (as contraceptive sterilization is)." Bayer also justifies defensive sterilization in the case of rape in marriage and in the reputed decision of missionary doctors in the 1960s to give anovulant drugs to women, including religious, in danger of rape in the Belgian Congo. A key element in the "defensive sterilization" argument is the "principle of totality." The total well-being of the woman can justify the suppression or even elimination of her reproductive capacity.<sup>149</sup>

Bayer relies on the work of Marcelino Zalba, one of whose articles Bayer has translated for recent publication,<sup>150</sup> an article he considers to

<sup>144</sup> "Conflict and Schism" 24.

<sup>145</sup> *Ibid.* 25.

<sup>146</sup> *Ibid.* 24.

<sup>147</sup> *Ibid.* 28. Skrzydlewski regards prospects for improvement as dismal: "theological reviews are dominated by the proponents of permissive moral theology" (50).

<sup>148</sup> Edward J. Bayer, "Sterilizing the Severely Retarded Woman: Is It Morally Different from Contraceptive Sterilization?" *Ethics and Medics* 10, no. 3 (1985) 3-4. See also a supportive discussion of Bayer's general position by Thomas J. O'Donnell, "Defensive Sterilization for the Severely Retarded: Follow-up," *Medical-Moral Newsletter* 22 (1985) 5-8.

<sup>149</sup> On this point see Bayer's earlier article, "Defensive Sterilization for Severely Retarded Women: A Moral Option?" *Medical-Moral Newsletter* 21 (1984) 5-8.

<sup>150</sup> Marcelino Zalba, "The Meaning of the Principle of Totality in the Doctrine of Pius X and Pius XII and Its Application to Cases of Sexual Violence," *Linacre Quarterly* 52 (1985) 218-37. The original appeared in *Rassegna di teologia*, the Gregorian's theological journal, in 9 (1968) 225-37.

be impeccably faithful to the magisterium. Zalba recognizes in the individual "a power of stewardship over the genital organs which can extend even to the deliberate inhibition of the normal ovulation of a woman." This occurs, he continues, only as a last resort and in cases of sexual violence. Then sterilization is the "purely material" meaning of the act, while its "moral meaning" is one of "wise stewardship of one's own body." It is only in concluding that Zalba mentions that the "sexual faculty" is not for the individual's good alone but is for "service to human society."<sup>151</sup> This was an argument against sterilization to which the so-called "minority report" of the Papal Commission on Birth Control gave significant play: "Through the course of the centuries the malice of contraception has lain in the violation of the essential ordination of the generative faculty to the good of the species."<sup>152</sup> Bayer and Zalba advance the argument that the natural ("intrinsic") relation of sexual activity to procreation and to the welfare of the species can be *deliberately severed* when certain circumstances are present in combination: violence and injury (including danger of pregnancy) to the total personal welfare of a woman. In such cases the good achieved by sterilization is "more important" than (proportionate to) the material or physical separation of a sexual act from its procreative outcome. This conclusion may represent an opportunity for rapprochement between those moral theologians who, as Bayer puts it, take their "lead" from the magisterium and those who, turning more rapidly to concrete sexual experience, claim that physical acts such as sterilization cannot be evaluated as "intrinsically evil" apart from circumstances. The point of agreement between them is the importance of considering carefully the conditions under which acts are proposed to be done, and of following through with norms which include the circumstances relevant to the evaluation of a specific sort of act (its permission or prohibition). Bayer, following Zalba, has argued in effect that sterilization is not "intrinsically evil" (sinful) in the abstract, but rather when certain carefully specified excusing conditions are not present.

### *Marriage in Canon Law*

A more "personalist" anthropology, taking its lead from *Gaudium et spes*, is reflected in the canons on marriage of the 1983 Code.<sup>153</sup> The shift

<sup>151</sup> Quotations are from 219, 220, and 235 respectively.

<sup>152</sup> From the text of the Commission document, "The State of the Question," which was submitted by the more traditional minority of Commission members and which influenced the position of Paul VI in *Humanae vitae*; cited in Robert G. Hoyt, ed., *The Birth Control Debate* (Kansas City: National Catholic Reporter, 1968) 32.

<sup>153</sup> See Michael D. Place, "A Guide to the Revised Code," and Dennis J. Burns, "The Sacrament of Marriage," both in *Chicago Studies* 23 (1984) respectively 5-36 and 63-76; and P. Branchereau, "Le sacrement de mariage dans le Code de droit canonique," *Nouvelle revue théologique* 105 (1985) 376-93.

from contract to covenant language signifies heightened attention to the fact that the multidimensional and intimate commitment of spouses, as indeed a “partnership of the whole of life” (can. 1055), is not sustainable by external legal constraint but only by that internal fidelity which makes Christian marriage an effective sign of God’s presence to the Church. It is partnership of lives to which consent is given, and which is “ordered to” both the “good of spouses” and the birth and nurturance of children. Dennis Burns observes rightly (and in agreement with Connery and Carmody) that it is most appropriate to speak of “but one final cause, one end of marriage, the establishing and fostering of conjugal love.”<sup>154</sup> This is reflected in the Code’s statement that in the covenant of marriage the spouses “mutually hand over and accept *each other*” (can. 1057), that is, in the totality of their personal being. This goes far beyond the *ius in corpus*, or right to one another’s bodies, which the language of the 1917 Code had permitted interpreters to stress in their search for a legally definable criterion of whether consent to what was necessary for matrimony really had been intended.<sup>155</sup> Sexual expression is, of course, implied by the inclusive end of conjugal love as a partnership, in light of the goods to which that partnership is ordered. The same goods require the unity, fidelity, and indissolubility which become for Christians a sacramental sign.

To speak of a “partnership of the whole of life” is to indicate a high ideal for which spouses ought to strive; to stipulate that to consent to marry is to consent to this ideal is to require that matrimony be entered upon as a serious project toward its achievement. When that to which consent is given in valid marriage is described in maximalist rather than minimalist terms, however, it becomes proportionately difficult to state clearly just what must be present for a marriage, especially a sacramental one, to take place; on what grounds a legal declaration could be made that a valid marriage had never taken place; or in what sense the marriage of divorced Christian partners continues to be a sacramental sign.

P. Branchereau suggests that valid consent requires a discernment of the reality of marriage proportionate to the “opening to the other” necessary to establish a total partnership which can even serve as, in the words of *Familiaris consortio*, “a domestic church.”<sup>156</sup> Grave obstacles which interfere with this partnership from the beginning make the marriage invalid. Within the category of valid Christian marriage, other authors distinguish between marriages which are simply valid and those which are sacramental. It also has been suggested that even valid sacramental marriage may not be indissoluble. These suggestions arise both

<sup>154</sup> “The Sacrament of Marriage” 66.

<sup>155</sup> A good historical resource is Geoffrey Robinson, “Unresolved Questions in the Theology of Marriage,” *Jurist* 43 (1983) 69–102.

<sup>156</sup> “Le sacrement de mariage” 379, 392.

from uncertainties and ambiguities within canon law, and from broadened contact of theologians and canonists with the experience of Christian persons, betrothed, married, divorced, or remarried after divorce.

Jan R. Larson and James A. Schmeiser pose the actual dilemma of ministers when confronted with a baptized couple whose faith appears inadequate to a sacramental celebration.<sup>157</sup> They describe a "pastoral solution" attempted in France, where civil marriage was for a time given a "ritual welcome" without a sacramental celebration. This rite emerged out of a concrete pastoral need. While it does not conform to the canonical stipulation that the only valid marriage of the baptized is a sacramental one involving a representative of the Church, it does signify the genuine human commitment made public in a civil ceremony. Larson and Schmeiser support church recognition of valid nonsacramental civil marriages between the baptized. They mention as parallel the not uncommon American solution of the "internal forum," whereby conscientious Catholics living in technically invalid second marriages are permitted to join the sacramental life of the Church. Like the French rite of welcome, Larson's and Schmeiser's recommendation is experientially attuned but needs further theological development. Whether their pastoral recommendations can be tied into the present structure of canon law is questionable.

The difficulty of accomplishing consistency between such pastoral practices and current Catholic marriage theology and law is illustrated further by Matthäus Kaiser's re-examination of the status in the Church of divorced, remarried persons.<sup>158</sup> The exclusion of the divorced and remarried from the Eucharist is based on the assumption that they are living in adultery, a state of serious sin—an assumption unsupported by the conscientious attempts of many such persons to establish sound unions in fidelity to the Church and to educate their children in the faith. Kaiser focuses on the fact that Jesus' prohibitions (Mk 10:6-9; Mt 19:4-6) are directed primarily against the destruction or abandonment of the original "one flesh" unity. Objectively speaking, all divorced persons have violated this commandment, whether or not they remarry. Indeed, Kaiser places whatever guilt and remorse are appropriate (he observes that fault usually is shared) where experience would indicate they belong: in the failure of the first marriage, not the rebuilding of one's life in a new relationship. He offers that the merely divorced and the remarried are in analogous situations: objective wrong but subjective

<sup>157</sup> Jan R. Larson and James A. Schmeiser, "Marriage and Non-Believing Catholics: An American Perspective," *Eglise et théologie* 16 (1985) 207-13.

<sup>158</sup> Matthäus Kaiser, "Geschiedene, die wiederverheiratet sind: Ihre Stellung in der Kirche," *Stimmen der Zeit* 203 (1985) 241-54.

penitence and therefore guiltlessness in their new state, which should include participation in the sacramental community.

At the same time that he desires a more satisfactory pastoral practice, Kaiser also considers important the Christian witness to indissolubility. He distinguishes between the "personal life unity" of the couple, which has broken down definitively, and the sacramental marriage covenant, which continues to exist despite divorce and remarriage. God participates in the sacramental covenant and His action is irrevocable. Thus there can be only one marriage involving a church representative, who is a sign of God's action. However, civil second marriages could be entered upon guiltlessly and with validity. Kaiser's recommendation manifests sensitivity to the situation of divorced Catholics, while touching all the important base points in the Church's teaching on marriage, especially the indissolubility of sacramental, consummated marriage. Its major shortcoming is one which attends most "pastoral" ways around theological insolubles or ecclesiastical dicta: inconsistency of the premises it implies with those it is claimed to uphold. In this case the concept "sacramental marriage" has become so detached from the "partnership of life" by which it is to be embodied that one wonders what substantive meaning remains. Where is God's "irrevocable" action, if not in the lived commitment of the spouses? What is the sign of divine fidelity, if not the fidelity of the spouses to one another? Either the original spouses are no longer married, by virtue of the dissolution of their life together; or they are married in the sight of God and the Church, divorce notwithstanding, and remarriage is adultery or polygamy. Kaiser, in effect, opts for the latter description by attaching sacramental indissolubility to the first marriage and validity to the second. The result is pastorally better but theologically worse than either current canon law or the view that sacramental marriage may not be indissoluble after all.

Ladislav Orsy addresses this second view head on while attempting to give equal time to the contrary hypothesis. Like Kaiser, he begins from the facts: "marriages do break down, and the persons involved in such tragedies turn to the Church for help."<sup>158a</sup> He observes that the Church in fact dissolves both natural and sacramental marriages, both of which ostensibly are indissoluble. A sacramental marriage can be dissolved if it is nonconsummated. Why is the line drawn here? Is it for prudential reasons, to keep divorce within bounds? Could the line have been drawn elsewhere (as in the Greek Church)? Although Orsy leans in favor of dissolubility, his purpose is not to offer a definitive conclusion but to demonstrate that there are sufficient ambiguities in the Church's tradi-

<sup>158a</sup> Ladislav Orsy, "The Issue of Indissolubility: An Inquiry," *Thought* 59 (1984) 360-61.

tion on indissolubility to warrant further consideration. Important observations with regard to the “sign” value of marriage are that after a divorce all ends such as mutual help and procreation are unfulfilled; all that remains of the marriage is “an abstract legal tie” and “the relationship between separated spouses represents anything but the bond of Christ to his Church.”<sup>158b</sup>

If the relationship is indeed merely legal, Orsy observes, then there seems to be no persuasive reason for denying that the Church has juridical power over it. More importantly, the practice of upholding sacramental indissolubility when dissolution has in fact occurred at the level of personal and sexual relations is in need of better theological justification. That justification will be particularly difficult to come by if a criterion of theological adequacy is the experience of Christian people. The articles reviewed reflect the fact that an intention to form a lifelong partnership and a commitment to sustaining it in times of difficulty are a central part of the Catholic Christian marriage tradition; but they also reflect the reality of repentance, forgiveness, and renewal in a new union after the failure of a first marriage between Christians.

A final perspective on divorce—indeed, on the function of moral injunctions in Christian ethics generally—can be gained from the NT divorce texts (Mt 5:31–32; 19:9; Mk 10:11–12; Lk 16:18; 1 Cor 7:10–11). Wolfgang Trilling discusses questions raised by these texts, a subject of much critical discussion in the last decade.<sup>158c</sup> Unfortunately, this discussion has impinged hardly at all on the Church’s theological, moral, and legal approaches to divorce. Trilling draws specific connections between research on the biblical materials and the practice of the Catholic Church. First, he notes the eschatological context of all NT views of the Christian life, especially the tension between the demands of the kingdom and success in fulfilling them in the present age. Jesus communicates the advent of a radically new ethos, presented, for instance, in the Sermon on the Mount, which includes one divorce saying (Mt 5:31–32). This saying must be taken in the same manner as those about adultery, manslaughter, anger, and avoidance of sin, that is, as establishing the possibility of radical discipleship. None are intended as determinations of law. In the oldest NT divorce text, in 1 Corinthians 7, Paul cites Jesus’ radical vision (vv. 10–11) but proceeds to adjust it to pastoral needs and develop from it a more practical instruction (vv. 12–15). A similar adaptation may occur in Matthew, though the exact nature of the

<sup>158b</sup> Ibid. 362–63.

<sup>158c</sup> Wolfgang Trilling, “Zum Thema: Ehe und Ehescheidung im Neuen Testament,” *Theologie und Glaube* 74 (1984) 390–406.

“exception” is unclear.<sup>158d</sup> What is striking is that there is in the NT no homogeneous praxis which co-ordinates the words of Jesus with divorce. Without this diversity the very eschatological nature of Jesus’s words would be undermined.<sup>158e</sup> A basis for distinguishing the eschatological ideal of unity and indissolubility in marriage from the praxis or divorce law of the Church is thus to be found in Scripture.

To summarize briefly, recent literature shows a turn to experience in the consideration of sexual morality and of the Christian meanings of marriage and family. This does not represent abandonment of an “objective” morality, but instead the perception that common values are discerned best through the prisms of the concrete realms of life in which they are embodied. In marriage and sexuality, experience in our time shows more clearly that commitment is grounded in the affective dimensions of relationship, though it also requires for its stability social and ecclesial institutionalization. Thus love is the foundation and the inclusive “end” of the partnership which is marriage, while the nurturing of children is an important outgrowth of that partnership. Disagreement remains over the precise interrelations of these values, that is, over whether marital love requires childbearing if possible, whether conception can be separated deliberately from the sexual acts which properly are marital love’s expression, and over the relation of the biblical ideal of permanent commitment to the reality of marital breakdown. NT perspectives on ethics suggest that life within the faith community will be the proving ground for articulation of specific sexual and marital norms, and that adaptive rearticulation of norms best suits the historical, incarnate qualities of human nature and of the “good news” which judges, redeems, and liberates it.

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#### WHITHER NUCLEAR DETERRENCE? THE MORAL DEBATE CONTINUES

The massive threat posed to human life by nuclear weapons makes the task of assessing and directing strategic defense policy the single most important moral question of our time. In recent years these “Notes” have dealt with the nuclear question often. Both the intrinsic seriousness of the topic and the quantity of literature dealing with it over the past year more than justify returning to this area once again. Indeed, during 1985 there have been a number of signs that the debate about nuclear-weapons policy is moving to a new level. These signs have appeared in several

<sup>158d</sup> See, e.g., Reinhard Neudecker, “Wie steht es heute mit den Worten Jesu zur Ehescheidung?” *Gregorianum* 65 (1984) 719–24. Neudecker reviews critically the work of Corrado Marucci on the divorce texts, especially the origin and nature of the Matthean exceptive clause.

<sup>158e</sup> “Ehe und Ehescheidung” 404–5.