

APPLYING THE SEVENTEENTH-CENTURY CASUISTRY OF ACCOMMODATION TO HIV PREVENTION

JAMES F. KEENAN, S.J.

[After discussing contemporary commentary on the retrieval of 16th-century high casuistry, the author recalls the conservative, deductive 17th-century casuistry of accommodation that addressed and solved problematic cases while upholding existing principles. In the first generation of AIDS, while casuists utilized conservative casuistry to address HIV-prevention issues, many bishops were reluctant to heed their counsel. As we enter the second generation, consensus is developing toward recognizing both the helpfulness of the conservative casuistry and the need to promote HIV prevention.]

EVERYONE LOVES CASES. Television worldwide offers us not general debates about major moral issues but police, legal, and hospital dramas dealing with cases. Through programs such as *ER*, *Homicide*, and *NYPD Blue*, the networks tease viewers by combining a narrative and a moral quandary, thereby making the ethical entertaining.

Catholics too love cases, as is clear when they get together to talk about birth control, homosexual unions, sterilizations, or physician-assisted suicide. Because they have a set of moral teachings that claim to be absolutely exceptionless, Catholics enjoy coming up with the exceptions. Thirty years ago, for instance, several moral theologians did not believe that the encyclical *Humanae vitae* was right in its claim that every instance of artificial birth control was wrong. Not having to prove that every instance was right, many were only interested in challenging the claim that birth control was always wrong. They proposed therefore the case of a mother of eight, whose heart condition threatened her survival and who would not live through another pregnancy. Her failure to use birth control was itself life-threatening. Added to the case was the circumstance that abstinence was not an alternative; her careless husband scorned abstinence. In the event of her likely death, her eight children plus the newborn would be left

JAMES F. KEENAN, S.J., is professor of moral theology at the Weston Jesuit School of Theology in Cambridge, Mass. He received the S.T.D. degree from the Pontifical Gregorian University in Rome. Besides recent articles in *TS* and *Linacre Quarterly* he has several books in progress: *Practice What You Preach: Virtues, Ethics, and Power in the Lives of Pastoral Ministers and Their Congregations* (ed. with Joseph Kotva; Sheed and Ward); *Catholic Moral Theology in the Service of HIV/AIDS Prevention* (Orbis); and *Commandments of Compassion* (Sheed and Ward).

motherless; and given the carelessness of the father, the children would not be in good hands. The case was compelling, and the theologians made their point: not every instance of artificial birth control was necessarily wrong.

Of course, Jesus too loved cases. By using parables, Jesus presented new insights. He answered the famous question "Who is my neighbor?" (Luke 10: 29–37) with the case of the Good Samaritan. When faced with the charge that he ate with sinners, he gave the case of the Prodigal Son (Luke 15: 2, 11–32). Jesus used cases not only to teach but to persuade us. Cases are, after all, particular tools or instruments in the repertory of rhetorical arguments.¹

The many proclivities to casuistry have one thing in common: they all trust in the function of the case method, where cases are brief narratives or stories that we use to consider anew what we may have missed when making other claims. Cases bring to our attention a new claim that needs to be engaged.

INTRODUCING HIGH CASUISTRY

The study of cases is called casuistry. Casuistry comes from the Latin word *casus*, meaning "something that has happened."² Recently in moral theology, Christian ethics, and moral philosophy, scholars have begun looking back in history to understand better how casuistry functioned. In their ground-breaking work, *The Abuse of Casuistry: A History of Moral Reasoning*, Albert Jonsen and Stephen Toulmin located the beginning of high casuistry in the mid-16th-century European world bent on expansionism. That expansionism prompted a doubt about the utility and validity of existing principles.³

For instance, maritime insurance had been condemned since the 13th century as a form of usury; in the 13th century the logic of the condemnation was simple. Following the principle that all usury was wrong, Pope Gregory IX declared in 1237 that maritime insurance was a form of usury and therefore sinful. But a prohibition against maritime insurance three centuries later at the dawn of the "Age of Discovery" did not seem reasonable. Spanish merchants in Flanders asked John Mair and other professors at the University of Paris to reexamine the earlier prohibition. Mair

¹ I develop this in "The Case for Physician Assisted Suicide?" *America* 179 (November 14, 1998) 14–19, and in "Cases, Rhetoric, and the American Debate about Physician Assisted Suicide," in *Der medizinisch assistierte Tod: Zur Frage der aktiven Sterbehilfe*, ed. Adrian Holderegger (Freiburg: Herder, forthcoming).

² See my "Casuistry," in *Oxford Encyclopedia of the Reformation*, ed. Hans Hillerbrand (New York: Oxford University, 1996) 1.272–74.

³ Albert Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California, 1988).

and his associates returned a decision that the case of a maritime insurance agent was like the case of the captain of a ship: they both performed a similar task, they both worked to assure a merchant that his cargo (or its worth) would arrive safely on the other shore. The prohibition against insurance was abandoned and an analogous case was offered as a guideline: the work of a maritime insurance agent was sufficiently analogous to a ship's captain to warrant the former's moral legitimacy.⁴ Need, doubt, and imagination were the sources of 16th-century casuistry.⁵

It is important for us to realize that in the 16th century, moralists and ethicists did not simply raise questions by cases; they also established standards through cases. Casuistry was not simply the art of making exceptions; it was, in fact, a method for navigating safely through the different, challenging issues on the moral horizon. As ethicists turned to questions about maritime insurance, they also turned to the rights of local non-Christian princes, the claims on unsettled territory, the right to baptize children of non-Christian people, the possibility of a priest equivocating during times of persecution, etc.

The method of 16th-century casuistry was fairly simple. A case like maritime insurance was raised as a dilemma. Another case like the captain of a ship was sought that enjoyed a successful resolution or certitude. This second case served as a standard. The casuist—an ethicist who did casuistry—then considered through analogy how the new dilemma compared with the standard. By weighing a variety of circumstances, the casuist tried to determine what was morally significant in the new case and what was not.

As helpful as this method was and is, we should realize that the arguments we make depend on the people we are. A survey of casuistry would show that this method yielded different answers in the hands of a 16th-century British Puritan than in the hands of a 20th-century Spanish Roman Catholic.⁶ Edward Long showed, for instance, that the casuistry of the Pharisees functioned quite differently from the Jesuits' casuistry.⁷ This does not preclude the possibility that occasionally very different groups of

⁴ An analysis of this case appears in Louis Vereecke, "L'assurance maritime chez les théologiens des XVe et XVIe siècles," *Studia Moralia* 8 (1970) 347–85. For a discussion of Mair's casuistry, see James Keenan, "The Casuistry of John Major, Nominalist Professor of Paris," in *The Context of Casuistry*, ed. James Keenan and Thomas Shannon (Washington: Georgetown University, 1995) 85–102.

⁵ Herbert Schlögel, "Tugend, Kasuistik, Biographie," *Catholica* 51 (1997) 187–200.

⁶ Keenan and Shannon, "Contexts of Casuistry: Historical and Contemporary," in *The Context of Casuistry* 221–31.

⁷ Edward Long, *Conscience and Compromise: An Approach to Protestant Casuistry* (Philadelphia: Westminster, 1954).

people could actually arrive at similar ethical judgments. Johann Sommerville, for example, convincingly argues that, on the topic of lying, British Puritans and Spanish Jesuits were considerably similar.⁸

Being so context-dependent, casuistry enjoys a certain translucence: it reveals to us how we can and do agree and disagree with one another. The dependence on context supports that translucence: casuistry carries out through a system of moral logic the application of the shared beliefs, intuitive or stated, of those practicing it. Thus casuistry does not really help us overcome our divergent differences, but it helps us to see where our beliefs converge.

Jonsen and Toulmin discovered this when they were members of the national commission studying the ethics of research on human subjects. They found casuistry effective precisely because it helped the commission members to see that they were more in agreement about practical issues than they originally believed. They knew that they were divided by different ethical systems, like deontology, utilitarianism, or consequentialism. What handicapped the commission members was not their actual beliefs about lying, abortion, or genetics, but the specific moral systems through which they expressed those beliefs. Without casuistry, they were left to their old moral methods and were bound to those methods' arguments. For instance, some insisted on holding that certain acts are valuable in themselves, while others held that consequences are actions' sole moral determinants. The ideologies of those diverse systems often inhibited the commission members from discussing their concrete beliefs about the morality of concrete actions. Casuistry, however, did not engage those ideologies. By the case method, members simply asked whether it was right to test a human subject. Casuistry freed them from the ideologies imbedded in their thoughts and let them share their specific judgments about particular types of conduct. Casuistry then became a formal conveyor, a translucent mediator bringing beliefs more directly into the concrete world. Casuistry is free of such ideological biases because, as Toulmin notes, it is "pretheoretical."⁹

Casuistry, as a translucent mediator, is an effective device when a plurality of ideas sit on the table. It helps us to talk with one another practically without getting caught up in ideological differences that divide us. For this reason, casuistry has one fundamental bias: it is suspicious of ideology precisely because it is suspicious of generalities. Its drive to the practical

⁸ Johann P. Sommerville, "The 'New Art of Lying': Equivocation, Mental Reservation, and Casuistry," in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites (New York: Cambridge University, 1988) 159–84.

⁹ Stephen Toulmin, "Casuistry and Clinical Ethics," in *A Matter of Principles?*, ed. Edwin DuBose et al. (Valley Forge: Trinity Press International, 1994) 310–20.

and concrete makes it reluctant to admit generalities. Here casuistry reveals its nominalistic roots, so apparent both in its famed 16th-century proponent, John Mair, as well as in its contemporary champion, Stephen Toulmin.¹⁰

If we want to find out what we believe on different issues, casuistry helps us to do so, because it allows us to express our ethical beliefs directly. To use an analogy (a proper casuistic move) casuistry is like an Ouija board: it simply points us in the direction we want to go when we have not yet articulated where we want to go.

This translucence then reveals to us a great deal, not only about the issues we resolve, but also about the beliefs that form us. Casuistry reveals not only the complex ethical matter, but also the casuists' ways of thinking.¹¹ Because it is so revelatory, casuistry helps uncover our presuppositions, biases, and presumptions. It helps us uncover what many systems overlook; it acknowledges the subject when other systems do not.¹² As Stanley Hauerwas remarks, "Casuistry is the mode of reflection that a community employs to test imaginatively the often unnoticed and unacknowledged implications of its narrative commitments."¹³ As Thomas Shannon and I argued in *The Context of Casuistry*, and as Hauerwas also claims, casuistry is "unintelligible as an activity separated from its communal context."¹⁴ Casuistry as translucent gives its practitioners a way of understanding themselves better as they understand the issues before them better. This dynamic helps them to see that their hermeneutics is not a circle, but a spiral: casuists facing the horizon of oncoming moral issues determine their solutions as they subsequently determine their communities.¹⁵

Thus when Catholics engage in casuistry, they are engaged in a commu-

¹⁰ Toulmin, "The Tyranny of Principles," *The Hastings Center Report* 13 (Dec. 1981) 31–39; "The Recovery of Practical Philosophy," *The American Scholar* 57 (1988) 337–52; Josef Römelt, *Vom Sinn moralischer Verantwortung: Zu den Grundlagen christlicher Ethik in komplexer Gesellschaft* (Regensburg: Friedrich Pustet, 1996) 110–14.

¹¹ Interestingly Toulmin highlights this transparency in "The Tyranny of Principles," where he argues that Catholic principles say more about Catholics than about the issue they are addressing.

¹² Stuart Hampshire, *Thought and Action* (London: Chatto and Windus, 1959).

¹³ Stanley Hauerwas, "Casuistry as a Narrative Art," *Interpretation* 37 (1993) 377–88, at 381.

¹⁴ *Ibid.* 387. David Blake also writes that "casuistry begins with the reality of at least a nascent moral community, and its task is to make that community a fully self-conscious moral world" ("The Hospital Ethics Committee: Health Care's Moral Conscience or White Elephant?" *Hastings Center Report* 22.1 [1992] 6–11, at 11).

¹⁵ Thomas Kopfensteiner, "Science, Metaphor, and Moral Casuistry," in *The Context of Casuistry* 207–20.

nity-building exercise. They are not simply looking for an exception to the law. Through the translucence of casuistry, Catholics uncover many of their concerns.¹⁶ Catholics, in particular, have one overriding concern that I wish to address in this essay: often they try at once both to admit the importance of the law and to uphold the spirit that animates the law. They want, for instance, to affirm their teachings about sex and marriage, but they also want to entertain cases that highlight the humanity underlying these laws. Here we see what I mentioned earlier, that cases are brief narratives or stories that we use to consider anew what we may have missed when making other claims.

This Catholic tendency to uphold and respect the law while considering new cases prompted Catholics in the 17th century to develop another type of casuistry, what I call a casuistry of accommodation. From this casuistry, casuists developed ways of accommodating new cases while upholding principles, a point that the German moral theologian Bruno Schüller has already noted.¹⁷

INTRODUCING ANOTHER CASUISTRY

In the 17th century, Catholics developed a casuistry of accommodation in the aftermath of 16th-century casuistry. In the 16th century, cases replaced principles. Principles and their rules were stretched beyond credibility on issues like usury, equivocation, political sovereignty, and even abortion and divorce. People turned then to cases, like that of the captain of the ship, as worthy standards. After a century of successfully resolving cases, however, casuists articulated new material principles. These new principles were normative statements summarizing the related standard cases. For instance, in the 17th century, many casuists posed cases about attacking military installations within civilian populations. From these

¹⁶ Richard Miller provides an example of this by investigating the Roman Catholic encyclical *Humanae vitae*, in order to explore its underlying but unstated pre-suppositions and the way it determines the course of its casuistic deliberations; see his *Casuistry and Modern Ethics: A Poetics of Practical Reasoning* (Chicago: University of Chicago, 1996) 129–53.

¹⁷ See Bruno Schüller, “Direct Killing/Indirect Killing,” in *Readings in Moral Theology 1: Moral Norms and the Catholic Tradition*, ed. Charles Curran and Richard McCormick (New York: Paulist, 1979) 138–57; “The Double Effect in Catholic Thought: A Reevaluation,” in *Doing Evil to Achieve Good*, ed. Richard McCormick and Paul Ramsey (Chicago: Loyola University, 1978) 165–91. In support of Schüller, see James Keenan, “Taking Aim at the Principle of Double Effect,” *International Philosophical Quarterly* 28 (1988) 201–6; Richard McCormick, *Notes on Moral Theology: 1965 through 1980* (Washington: University Press of America, 1981) 751–56; Joseph Selling, “The Problem of Reinterpreting the Principle of Double Effect,” *Louvain Studies* 8 (1980) 47–62.

cases they more precisely articulated the principle of noncombatant immunity and the prohibition against directly killing the innocent.¹⁸ Similarly, they developed principles that differentiated equivocation from lying or legitimate money lending from usury. Many of the material principles that we refer to today were actually born in the 17th century.

Another type of principles was articulated at the end of the 17th century. These were the famous methodological principles such as double effect, lesser evil, cooperation in wrong-doing, totality, and toleration. These methodological principles arose from a casuistry that attempted to accommodate compassionate cases that the newly articulated material principles did not necessarily include. Like the material principles, these methodological ones were no more than an expression of the least common denominator among earlier solved cases. From the congruence of similar cases, for instance, the principle of double effect was born. Josef Ghooos has demonstrated that through the 16th century, casuists debated isolated concrete cases. Toward the end of the 16th century Bartolomeo Medina (1528–1580) and Gabriel Vasquez (1551–1604) began to name the common factors among these cases. Finally, John of St. Thomas (1589–1644) articulated the factors into the conditions of the principle as such.¹⁹ Double effect, like cooperation, toleration, lesser evil, and totality were able to accommodate new cases that did not affect the core of a particular material teaching or principle. Casuistry continued to build the Catholic community as it upheld its laws and entertained through cases new claims that it had not anticipated.

Casuistry in the 16th century was evidently very different from casuistry in the 17th century. The former was about cases breaking open the claims of a principle and eventually replacing the principle. It was a casuistry of its age, the age of discovery. In this casuistry, cases and not principles served as analogous guides for a very inductive form of logic. In the 17th century, however, with the articulation of new material principles, casuistry was rather deductive; there was no interest in prolonging the upheaval of the 16th century. Still, moral theology was not going to avoid moral chaos. Even though the newly articulated principles of the 17th century marked an end of the imaginative and ambitious chaos of the 16th century, the 17th century developed those methodological principles that allowed moralists to consider chaotic issues that were not covered by the material principles. Could one actually attack military installations in civilian populations?

¹⁸ Joseph Mangan, "An Historical Analysis of the Principle of Double Effect," *Theological Studies* 10 (1949) 41–61, at 54.

¹⁹ Josef Ghooos, "L'Acte à double effet, étude de théologie positive," *Ephemerides theologicae lovanienses* 27 (1951) 30–52. See my "The Function of the Principle of Double Effect" *TS* 54 (1993) 294–315. The finest study on double effect remains Lucius Ugorji, *The Principle of Double Effect* (Frankfurt: Peter Lang, 1985).

Could one help another do wrong? Could one allow another to persist in an intrinsically evil activity? The methodological principles which emerged allowed Catholics to recognize and address the chaos, whereas the material principles had not.

This casuistry of accommodation came to be played out in the 19th century. Catholic theologians insisted that the material principle of no direct killing of the innocent had to be applied to abortion, but they were still willing to address the cases of women with ectopic pregnancies or those suffering from a cancerous uterus without compromising the integrity of the material principle itself. By using the methodological principle of double effect they argued that in these cases the action of removing an inevitably doomed fetus was not a direct killing. They accommodated the new cases without compromising the principle.²⁰

Likewise, in the 20th century, casuists considered the chaotic case of a person inevitably dying in terrible pain. Without undermining the material principle against euthanasia, they invoked the methodological principle of double effect to address the application of dangerous dosages of morphine. This case became quite popular. In fact, Pope Pius XII sanctioned its solution,²¹ and later he issued several other medical decisions invoking the double-effect principle for the same reason: to consider a new problem and to solve it specifically without undermining the principle that was at stake.²²

Later, in the moral considerations of transplants, moralists turned to the principle of totality in order to consider the complicated question of retrieving organs from the integrity of one body in order to save the life of another.²³ Even more recently, in *Donum vitae*, the Congregation for the Doctrine of the Faith upheld the material principle of the insepa-

²⁰ T. Lincoln Bouscaren, *Ethics of Ectopic Operations* (Milwaukee: Bruce, 1944); John Connery, *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola University, 1977); John T. Noonan, Jr., "An Almost Absolute Value in History," in *The Morality of Abortion*, ed. John T. Noonan, Jr., (Cambridge: Harvard University, 1970) 1–59. See Charles Curran on one active participant in these discussions, "The Manual and Casuistry of Aloysius Sabetti," in *The Context of Casuistry* 161–87; Charles Curran, *The Origins of Moral Theology in the United States* (Washington: Georgetown University, 1997) 128–66.

²¹ Pius XII, "Address to Delegates to the Ninth National Congress of the Italian Society of the Science of Anesthetics," *Catholic Mind* 55 (1957) 260–78.

²² Pius XII, "Allocution to Participants of the VII International Congress of Hematologists," *Acta apostolicae sedis* 91 (1958) 732–33; "The Prolongation of Life," *The Pope Speaks* 4 (1958) 397. See also Leandro Rossi, "Duplice effetto," in *Dizionario enciclopedico di teologia morale*, ed. Leandro Rossi and Ambrogio Valsecchi (Milan: Paoline, 1987) 293–308.

²³ See Gerald Kelly, "Notes in Moral Theology," *TS* 9 (1948) 89–98; "Pope Pius XII and the Principle of Totality," *TS* 16 (1955) 373–96.

rability of the unitive and the procreative and therefore rejected the claims to legitimacy of *in vitro* fertilization and artificial insemination by donor. But the congregation applied the casuistry of accommodation in the case of artificial insemination by a husband, arguing that if the reproductive technology assisted and did not replace the conjugal act, it was licit.²⁴

Similarly when the American bishops discussed nuclear weapons, they rejected the validity of nuclear deterrence. They believed, however, that inasmuch as there was no present alternative to such a policy and as unilateral disarmament could result in significant global political instability, they should not oppose deterrence but simply tolerate it.²⁵

The history of casuistry reveals that for the past four centuries Catholic moral logic has been faithful to its clear principles and at the same time has been consistently willing to consider new cases, which it resolved without compromising the existing material principles. It did this by a fairly broad selection of methodological principles that allowed casuists to recognize new claims that were not covered by the material principles. Clearly the method helped build up the Catholic community as over time it negotiated new problems on the horizon.²⁶

The original function of the case method remains intact, then, even in the fairly deductive type of logic based on principles articulated three centuries ago. Today we still entertain cases or narratives in order to consider what we may have missed when making earlier claims. Through these methodological principles, casuists accommodate new claims while protecting the integrity of the principle. This balance between preserving moral order and entertaining the chaos of complicated pregnancies, complicated military strategies, complicated surgeries, complicated protocols for the dying, and complicated reproductive technologies has served the Catholic community well over these four centuries.

Moreover, this balancing act was accomplished by a fairly sophisticated logic recognized and understood by the entire Catholic community. Church leaders did not claim we should avoid facing the claims of these complicated matters lest we cause scandal. Theologians did not claim that we should not address the indirect abortions of an ectopic pregnancy because they could confuse the faithful on abortion. Popes did not compromise the pain of the dying by claiming that they could not address it lest the faithful

²⁴ Congregation for the Doctrine of the Faith, *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation* (Vatican City: Libreria Editrice Vaticana, 1987).

²⁵ "The Challenge of Peace," *Origins* 13 (May 19, 1983) 1–32.

²⁶ Besides Kopfensteiner's essay cited above, see John T. Noonan, Jr., "The Development in Moral Doctrine," in *The Context of Casuistry* 188–203.

be confused over the Church's stance on euthanasia. And bishops did not reject tolerance of nuclear deterrence so as to avoid consternation about the community's apprehension of the principle of not directly killing the innocent. On the contrary, popes, bishops, and theologians recognized that church members were well aware of the long sustained logic that both appreciated ordered principles and took into account the complicating claims of new cases that often needed to be arbitrated by these methodological principles.

AIDS

In contrast with this history, when we turn to investigating the relationship between casuistry and the topic of AIDS, we find something astonishing—a resistance by Catholic leadership to theologians' casuistry about AIDS. To support this claim, I present three cases: first, the case of a health-care worker in a Catholic health-care facility facing a patient who has just tested HIV positive and who has no intention of becoming sexually abstinent; second, the case of proposing needle exchange programs; and third, the case of testing the HIV status of candidates applying to religious orders. In each of these cases, moral theologians have engaged in a casuistry that Catholic leadership actively resists. The resistance itself reveals some underlying anxiety.

At the outset, we need to recognize that for the most part, the casuistry being invoked in the face of AIDS is *not* generally speaking the more revolutionary 16th-century casuistry that sought to replace principles, but rather the casuistry that accommodates new cases while protecting existing principles. (One exception is the approach of Kevin T. Kelly who asks the overarching question, "Why does Christian sexual ethics so often hamper rather than assist humanity as it faces the AIDS pandemic?" His recent book on moral theology and the challenge of AIDS attempts to offer new directions that sexual ethics needs to pursue in order to be at the service of all human beings.²⁷) Kelly aside, however, almost every other theologian's casuistic proposal involves a more modest look at the present crisis. This is a very important point. It means that church leadership is not currently resisting foundational challenges; rather, it is resisting the casuistry of accommodation that so significantly helped build up the Catholic community over the past 400 years.

²⁷ Kevin T. Kelly, *New Directions in Sexual Ethics: Moral Theology and the Challenge of AIDS* (London: Geoffrey Chapman, 1998); see also Richard Smith, *AIDS, Gays, and the American Catholic Church* (Cleveland: Pilgrim, 1994).

Case 1

The first case appeared in the document from the United States Catholic Conference Administrative Board, "The Many Faces of AIDS."²⁸ Here a health-care worker has urged a person who has tested positive for HIV "to live a chaste life." But, the document adds, "if it is obvious that a person will not act without bringing harm to others," then a health-care professional could advise a form of conduct which minimizes harm. Presumably, the health-care professional could recommend the use of prophylactics. This position reflected in many ways the same type of casuistry that was found in an important pastoral letter by Bishop Anthony M. Pilla of Cleveland.²⁹

The USCC solution invoked the principle of toleration—the same principle that the bishops invoked when dealing with nuclear deterrence. Thus in a good casuistic move, the USCC appropriated the logic of another case and made an important distinction. They were opposed to the promotion or advocacy of condoms, but when faced with a person who could further spread the disease and whose conduct would not be altered, they tolerated the advice that the patient should use a condom to prevent the spread of the disease. This position allowed the bishops both to resolve the new case and to protect the material principle that sex is illicit outside of marriage. It was a typical casuistry of accommodation, the same one used on nuclear deterrence.

This time, however, some bishops rebuffed the casuistry. Several bishops registered a double concern: first, that the solution could be construed as approving or promoting illicit sexual activity and therefore could compromise Catholic teaching and confuse the faithful; and second, that condoms do not work effectively enough.³⁰

Alongside the USCC statement many theologians attempted a casuistry of accommodation that was designed precisely to anticipate the bishops' first concern, not to compromise Catholic teaching. These theologians invoked traditional methodological principles to address bishops' anxieties that existing material moral principles would be undermined or made confusing. For instance, in addressing the case of the health-care worker,

²⁸ USCC Administrative Board, "The Many Faces of AIDS: A Gospel Response," *Origins* 17 (December 24, 1987) 481–89.

²⁹ Anthony M. Pilla, "Statement on Developing an Approach by the Church to AIDS Education," *Origins* 16 (March 12, 1987) 692–96.

³⁰ "Reaction to AIDS Statement," *Origins* 17 (December 24, 1987) 489–93; "Continued Reaction to AIDS Statement," *Origins* 17 (January 7, 1988) 516–22; "Cardinal Ratzinger's Letter on AIDS Document," *Origins* 18 (July 7, 1988) 117–18.

Charles Bouchard and James Pollock³¹ presented a history of the principle of toleration to highlight how traditional the USCC statement was. Later, David Hollenbach made a similar argument from common-sense logic.³² Then Michael Place, one of the principal writers of "The Many Faces of AIDS," invoked the principle of toleration to demonstrate that the USCC statement did not jeopardize, but as a matter of fact protected, church teaching on the exclusivity of marital relations.³³

I published a long essay on the principle of cooperation similarly supporting the USCC statement.³⁴ The Irish theologian Enda McDonagh also proposed a casuistry in a time of AIDS, again arguing that no one endorses or approves either illicit sexual activity or the "quick-fix approach," as it had been dubbed.³⁵ The Austrian moral theologian Hans Rotter has written along similar lines.³⁶ Later, the Italian ethicist Guido Davanzo proposed the law of graduality as another casuistic device which would allow for the provision of condom information without compromising existing church teaching.³⁷

David Kelly looked not only at Catholic health-care workers offering advice to those who are HIV positive, but also at married couples where one spouse is HIV positive and discussed how the use of a condom in their context was preventive, not contraceptive.³⁸ James Drane looked at Thomas Aquinas's writings on the object of an action and again developed a casuistry of accommodation for the cases of both the patient and the spouse who are positive.³⁹ For married couples, Béla Somfai invoked the principle of double effect, and Dennis Ryan subsequently endorsed this position.⁴⁰ I, too, argued for life-giving ways to interpret the law so as to

³¹ Charles Bouchard and James Pollock, "Condoms and the Common Good," *Second Opinion* 12 (1989) 98-106.

³² David Hollenbach, "AIDS Education: The Moral Substance," *America* 157 (1987) 493-94.

³³ Michael Place, "The Many Faces of AIDS," *America* 158 (February 13, 1988) 135-41, 171, at 141.

³⁴ James Keenan, "Prophylactics, Toleration and Cooperation: Contemporary Problems and Traditional Principles" *International Philosophical Quarterly* 28 (1988) 201-5.

³⁵ Enda McDonagh, "Theology in a Time of AIDS," *Irish Theological Quarterly* 60 (1994) 81-99.

³⁶ Hans Rotter, "AIDS: Some Theological and Pastoral Considerations," *Theology Digest* 39 (1992) 235-39.

³⁷ Guido Davanzo, "Aspetti Morali," 114-30.

³⁸ David Kelly, *Critical Care Ethics* (Kansas City: Sheed and Ward, 1991) 204-9.

³⁹ James Drane, "Condoms, AIDS and Catholic Ethics," *Commonweal* 189 (March 22, 1991) 188-92.

⁴⁰ Béla Somfai, "AIDS, Condoms and the Church," *Compass* (November 1987) 44; Dennis Regan, "Perspectives from Moral Theology," *Dossiers and Documents*;

protect both the law and people's lives.⁴¹ John Tuohey, invoking *Humanae vitae*, offered his assessment of protecting that teaching while still acknowledging the moral liceity of using prophylactics in a marriage where one spouse is HIV positive.⁴² Finally, Josef Fuchs reminded us of the importance of the principle of *epikeia* which helps us to do the casuistry of accommodation that moral theologians are called to develop.⁴³

I have found very few theologians who differ significantly from the positions in this list. The philosopher Janet Smith argued that the use of the principle of toleration in the "Many Faces of AIDS" was unclear.⁴⁴ Mark Johnson argued that David Kelly's use of double effect was incorrect.⁴⁵ Neither author subsequently argued that advising on the use of prophylactics was itself wrong; they simply questioned a particular application of a particular principle. Only one writer objected to such advising, and he argued simply that the advising was scandalous.⁴⁶ One wonders whether he thinks that the Church's positions on ectopic pregnancies, pain administration to dying patients, and artificial insemination by husbands are also scandalous.

Despite this consensus of moral theologians offering traditional research for a casuistry that protects long-standing teaching while accommodating the value of protecting those at risk for the virus, some bishops still feared that they could cause confusion and so wrote another letter on AIDS, entitled "Called to Compassion." While not negating "The Many Faces of AIDS," the bishops resisted addressing any persons living positively who do not abstain from sexual activity.⁴⁷ Evidently they resisted entertaining the case because they feared undermining the long-standing material principle regarding illicit sexual activity.

In the new pastoral letter, the bishops raised their second concern, about the effectiveness of condoms. This objection appeared several times in two

The Pandemic of AIDS: A Response by the Confederation of Caritas International (February 1988) 58–67.

⁴¹ James Keenan, "Living with HIV/AIDS," *The Tablet* 249 (June 3, 1995) 701.

⁴² John Touhey, "Methodology or Ideology: The Condom and a Consistent Sexual Ethic," *Louvain Studies* 15 (1990) 53–69.

⁴³ Josef Fuchs, "Epikeia—Der praktizierte Vorbehalt," *Stimmen der Zeit* 214 (1996) 749–50.

⁴⁴ Janet Smith, "The Many Faces of AIDS and the Toleration of the Lesser Evil," *International Review of Natural Family Planning* 12 (1988) 1–15.

⁴⁵ Mark Johnson, "The Principle of Double Effect and Safe Sex in Marriage: Reflections on a Suggestion," *Linacre Quarterly* 60 (1993) 82–89.

⁴⁶ Joseph Howard, "The Use of the Condom for Disease Prevention," *Linacre Quarterly* 63 (1996) 26–30.

⁴⁷ National Conference of Catholic Bishops, "Called to Compassion and Responsibility: A Response to the HIV/AIDS Crisis," *Origins* 19 (November 30, 1989) 421, 423–34.

national Catholic newspapers, *Our Sunday Visitor* and the *National Catholic Register*, which published a series of essays claiming simply that condoms were not safe, employing such titles as "Sex, Lies and Latex: Study Busts Condom Myth."⁴⁸ There and elsewhere, Catholics cited a variety of studies about the effectiveness of condoms.⁴⁹ But, what would happen if these claims were challenged?

In the past four years, striking studies have shown that condoms are effective. The Jesuit physician Jon Fuller presents at length three studies that demonstrate the dramatic effect that condom use has had in stemming the spread of HIV.⁵⁰ One study appeared in the *New England Journal of Medicine*; it included 124 couples in which only one partner was HIV positive. Consistent use of condoms showed not one infection after a period of two years and an estimated 15,000 acts of intercourse. Studies in Uganda and Thailand showed that preventive programs that urged abstinence and, if not that, then condoms, showed dramatic drops in infection rates.

In sum, moral theologians provided a very modest traditional casuistry of accommodation to allay the bishops's first concern: confusing the faithful and compromising traditional principles.⁵¹ They also provided substantial empirical data to address the second objection. Despite these moves, workers in Catholic health-care facilities know that adoption of this casuistry can still result in considerable sanctions from some local chanceries.⁵²

⁴⁸ Julie Hoffman, "Bennett and Carey Rap Condom Plan," *National Catholic Register* 68 (May 31, 1992) 1; Russell Shaw, "Condom 'Cure' Questioned by Top AIDS Researcher," *Our Sunday Visitor* 82 (Jan. 23, 1994) 3; Russell Shaw, "The Great Condom Con," *Columbia* 74 (June 1994) 5; Jean-Marie Guenois, "Sex, Lies and Latex: Study Busts Condom Myth," *Our Sunday Visitor* 86 (Nov 2, 1997) 21.

⁴⁹ Beverly Sottile-Malona, "Condoms and AIDS," *America* 165 (Nov 21, 1991) 317-19; New York Bishops, "Statement on Public Schools' Condom Distribution," *Origins* 22 (January 21, 1993) 553-56.

⁵⁰ Jon Fuller, "AIDS Prevention: A Challenge to the Catholic Moral Tradition," *America* 175 (Dec 28, 1996) 13-20.

⁵¹ On concern about condom distribution in the schools without parental consent, which a variety of Christian spokespeople attacked, see Reed Jolley, "The Condom War on Children," *Christianity Today* 38 (1994) 19; "Statement on Public Schools's Condom Distribution," *Origins* 22 (January 21, 1993) 553-56; "Condom Sense," *Commonweal* 118 (September 13, 1991) 499-500. Whether the program is morally right is one question, but recent studies suggest that condom distribution in schools does not promote sexual promiscuity; see Lynda Richardson, "Condoms in School Said Not to Affect Teen-age Sex Rate," *New York Times*, 30 September 1997, A1, 33.

⁵² See Mireya Navarro, "Ethics of Giving AIDS Advice Troubles Catholic Hospitals," *New York Times*, 3 January 1993, 1, 24; and "Vatican Intervenes to Stop HIV Pack," *Tablet* 249 (Nov. 18, 1995) 1489.

Case 2

In order to get a sense of why some bishops resist, I turn to the second case. In the document "Called to Compassion," the bishops argued against needle exchange, using the same two arguments: first, that people might perceive the bishops as condoning illicit moral activity; and, second, that the program is not effective.⁵³

Regarding the concern about confusion, Jon Fuller has applied the principle of cooperation to the issue of needle exchange.⁵⁴ Through a casuistry of accommodation, he argues in favor of protecting the teaching that drug use is morally wrong, while at the same time providing an accommodation for the present crisis. Fuller's recent proposal prompted a strong editorial endorsement by *America* magazine as well as support from Richard McCormick. McCormick proposed some common-sense casuistry that again highlights the traditional accommodation of a case in the face of chaos. Invoking the case of drunk driving and the possibility that someone drunk could compound their irresponsibility by driving, McCormick made a comparison to the needle-exchange program: "We say, don't drive while drunk; let someone else drive. But supporting the designated driver doesn't mean we support overdrinking; it simply means that we don't want the irresponsibility doubled."⁵⁵ Moral argument again distinguished through casuistry the principle being protected from the particular case being solved.

Regarding the empirical success of needle-exchange programs, two complimentary sets of data are important: one on HIV prevention, the other on the nonincrease of drug use in light of needle exchange. In 1995, an advisory panel of the National Research Council and the Institute of Medicine declared that "well-implemented needle-exchange programs can be effective in preventing the spread of HIV and do not increase the use of illegal drugs."⁵⁶ Studies by the National Academy of Sciences, the General Accounting Office, the Centers for Disease Control, and the University of California at Berkeley all found that needle-exchange programs substan-

⁵³ See also Joseph Doolin, "The Trouble with Needle-Exchange Programs," *The Boston Pilot* (May 8, 1998) 8; New Jersey Catholic Conference, "Statement on the Establishment of a Demonstration Needle and Syringe Exchange Program in the New Jersey Department of Health," November 1993.

⁵⁴ Jon Fuller, "Needle Exchange: Saving Lives," *America* 179 (July 18-25, 1998) 8-11; on the other hand, see Peter Cataldo, "The Ethics of Needle-Exchange Programs for Intravenous Drug Users," in the newsletter of the Pope John XXIII Center, 1997.

⁵⁵ "Needle Exchange Saves Lives," *America* 179 (July 18-25, 1998) 3.

⁵⁶ Cited in Fuller, "Needle Exchange" 10. See Jacques Normand, *Preventing HIV Transmission: The Role of Sterile Needles and Bleach*, (Washington: National Academy, 1995).

tially lowered the spread of HIV and led to no increase in new drug use.⁵⁷ The programs are backed by the AMA and the U.S. Conference of Mayors⁵⁸ as well as the National Institutes of Health.⁵⁹ Outside of the U.S., similar reports of success come from many diverse studies from Glasgow⁶⁰ to New Zealand.⁶¹

These programs could have significant impact on preventable disease, illness, and deaths. Instead the federal government continues to refuse to fund these programs, and the American bishops' opposition to needle-exchange programs remains unchanged. This failure to endorse needle-exchange programs has caused scandal. In the British Medical Journal *The Lancet*, Peter Lurie claims that up to 9,666 HIV infections would have been prevented by needle-exchange programs and adds that "if current U.S. policies are not changed, . . . an additional 5,150–11,329 preventable HIV infections could occur by the year 2,000."⁶² This year *The Lancet* wrote an editorial urging the Clinton administration to lift the ban against federal funding for these programs. They noted that the U.S. remains one of the few industrial countries that refuses to provide access to clean needles, and that injection-drug misuse is now the leading primary cause of pediatric AIDS.⁶³

In comparing these two AIDS cases of condom use and needle exchange, I have made a traditional case to endorse these programs without undermining traditional teachings. I think my argument is compelling. But these two cases do not help us to understand why some bishops have hesitated to find it compelling, even when they have both the traditional ethical structures and the hard empirical data that should allay their concerns and allow them to confront the cases before them in a constructive way.

⁵⁷ "Federal Funds for Clean Needles," *New York Times* (Feb 22, 1997) 20.

⁵⁸ Katharine Seelye, "A.M.A. Backs Drug-User Needle Exchanges," *New York Times*, 27 June 1997, 15. See also Lawrence Gostin, "Prevention of HIV/AIDS and Other Blood-Borne Diseases Among Injection Drug Users," *Journal of the American Medical Association* 277 (January 1, 1997) 53–62.

⁵⁹ "NIH Panel: Politics Hurting Fight Against AIDS," *The Nation's Health* (March 1997) 5; Warren Leary, "Panel Endorses Disputed Study of Hypodermic Needle Program," *New York Times* 15 December 1996, A 41.

⁶⁰ Martin Frischer, "Direct Evaluation of Needle and Syringe Exchange Programmes," *The Lancet* 347 (Mar 16, 1996) 768.

⁶¹ Bronwen Lichtenstein, "Needle Exchange Programs: New Zealand's Experience," *American Journal of Public Health* 86 (Sept 1996) 1319.

⁶² Peter Lurie, "An Opportunity Lost: HIV Infections Associated with Lack of a National Needle-Exchange Programme in the USA," *The Lancet* 349 (Mar 1, 1997) 604–8.

⁶³ "Needle-Exchange Programmes in the USA: Time to Act Now," *The Lancet* 351 (January 10, 1998) 75.

Case 3

In order to suggest a reason for bishops' hesitation, I turn to Jonsen and Toulmin's casuistic insight that stringing several cases together may allow us to see emerging congruencies. For this reason, I offer a third case. This case concerns the fact that twelve years ago many male religious orders in the U.S., among them the ten Jesuit provinces, began requiring that candidates to these orders submit to the HIV test as a condition for application.⁶⁴

This policy, perhaps not familiar to many, is an extraordinary one, inasmuch as among all institutions in our country only religious communities, the military, and the prison system are permitted by U.S. law to require testing for HIV. While the U.S. government can require such testing of those in prison and in the military because their civil rights are already curtailed, separation of church and state allows religious orders to pursue an admissions policy at variance with the practices of every other institution in the U.S. Not only does this policy reject many ethical and canonical considerations, it also contradicts the USCC position in the "The Many Faces of AIDS." That document stated, "We oppose the use of HIV antibody testing for strictly discriminatory purposes."⁶⁵

The requirement for testing sets the stage, I think, for asking what type of ethical reflection religious superiors engage in when they initiate new protocols, especially ones that seem to go against the standard ethical norms that govern society at large. Concretely, what type of inquiry did the American Jesuit provincials make when they inaugurated this policy? And now twelve years later, after dramatic advances have been made and

⁶⁴ Jack Anderson, "How Healthy is Healthy Enough? Canon Law Considerations in Matters of Health and HIV-AIDS Testing Policies," *Horizon* (Winter 1993) 8-18; R. R. Calvo, "Admission to the Seminary and HIV Testing," *Roman Replies and CLS Advisory Opinions 1991* (Washington: Canon Law Society of America, 1991) 72-75; Jon Fuller, "HIV/AIDS: An Overview," in *Clergy and Religious and the AIDS Epidemic* (Chicago: National Federation of Priests' Councils, 1994) 3-50, esp. 27-29; Fuller, "HIV-Considerations for Religious Orders and Dioceses," *ibid.* 57-76, esp. 66-74; R. Gibbons, "Admission to the Seminary and HIV Testing," *Roman Replies* 76-77; James Keenan, "HIV Testing of Seminary and Religious-Order Candidates," *Review for Religious* 55 (1996) 297-314; James Keenan, "The Return of Casuistry," *TS* 57 (1996) 123-29; Bill Kenkelen, "Dilemma for Religious Orders: To Test or Not to Test for AIDS," *National Catholic Reporter* (September 2, 1988); Jay O'Connor, "HIV Testing of Applicants," *Clergy and Religious and the AIDS Epidemic* 77-82; James Schexnayder, "HIV/AIDS Policy Department," *ibid.* 83-86; Diocese of Oakland HIV Policy Committee, "Policy Statement," *ibid.* 87-93.

⁶⁵ USCC Administrative Board, "The Many Faces of AIDS," *Origins* 17 (December 24, 1987) 481-89.

people are successfully “living with HIV” and “living with AIDS,” what structure do they have in place to revisit and possibly revise these policies?

For several years I have been writing about these questions. It is not the issue itself that I find perplexing, however, but rather the way Jesuits, for instance, respond to the issue. Aside from the comments of scholastics who underwent the testing prior to their entrance, I have never heard any expression of interest in evaluating the policy. When the issue is raised, Jesuits simply attempt to justify the policy by their intuitions. They say things like, “We require physical exams,” or “We are not an employer, we are a religious community,” or “We are a religious institute; applicants are not required to enter.” Granted these claims have some merit, there are other relevant issues. First, an HIV test is hardly like a physical exam. Besides the obvious fact that physicals do not routinely include HIV testing, HIV testing represents a whole new approach to medicine. It does not describe a present pathology but forecasts the possibility of a future one. That is, HIV testing is like DNA testing that tries to predict one’s future health. The fact that we use HIV testing means that we will probably require DNA testing for other health prognostications. Is this the type of screening that we want? Second, the prognosis for one who tests positive is strikingly different today from what it was ten years ago. Third, American society has made a powerful argument that one who is HIV positive *lives* with it. Does our policy deny that claim? Fourth, if one were excluded from entrance for testing positive, what is it about being positive that is incongruent with our mission? Here the question of a purpose must be determined. Is the protocol designed to satisfy insurance providers? to protect the superior from possibly more burdensome health issues? to insure that a candidate has a reasonably long life expectancy? to avoid the possibility of public scandal associated with a religious developing AIDS?

CONCLUSION

This resistance to ethical assessment of our policy highlights one basic concern: we want to keep the infection out of our ranks. I make this claim noting first that Catholic bishops, other church leaders, and religious themselves have done and are doing a great deal in the service of people with HIV. Numerous cities have Catholic hospitals dedicated to treating people with HIV. Numerous Catholic agencies administer to their needs, and numerous religious work in supporting people with HIV. Since the beginning of the epidemic, in a variety of settings, Catholics have been among the first to minister to those suffering from the disease.

But twelve years ago, when we first became familiar with AIDS, religious orders were concerned about how the infection would affect their own members and their mission. Similarly, ten years ago when bishops

reacted to "The Many Faces of AIDS," they were concerned with whether preventive measures against the infection could in turn infect traditional principles on marriage, sex, and drug use. When the three cases I have proposed are put together, we see that both bishops and religious superiors betray an initial anxiety about the infection itself. Would AIDS infect the bishops' teachings and the religious' missions?

Writers have noted the initial reluctance of many persons to deal with HIV because it was a virus that struck, from our earlier perspective, the marginalized. In the initial stages of familiarity with the disease, many thought of it as an avoidable infection that affected the avoidable: people with HIV were in Uganda or Haiti, in the Castro district of San Francisco, or on the Lower East Side of New York City. Moreover, though the virus can be transmitted through several means, some of those infected were stigmatized as having engaged in immoral activity.⁶⁶ Shame was attached to this disease in a way that it has been attached to few others. Not surprisingly, shame was also attached to the preventive measures.⁶⁷

Since we perceived the disease as mostly affecting those shamed by it who lived on the margins, our society gave less thought to prevention for those endangered than to protection for everyone else. Church leaders wanted to protect those living lives not infected by the conduct typically considered as the shameful conduit of the infection. Indeed, in AIDS's earliest stages, physicians and nurses wondered similarly how they could protect themselves and their institutions from the infection.

As we now face the second generation of AIDS, we have begun to overcome anxiety. Time, reasoning, reflection, and experience have taught us to subdue our reactionary stances. Eventually we are realizing that we can live in a time of AIDS and live with persons who are HIV positive. Anxiety over the infection and its shame is abating. AIDS is becoming a disease like others, and effective methods of prevention for HIV are becoming as normative as effective methods of prevention for other diseases. We now realize we can live in a time of infection. Four reasons bear these claims out.

First, the original instinct of self-protection often precedes the instinct to work for prevention when an infection is at hand. Thus, bishops understanding themselves as responsible for Catholic teaching sought to protect it in this time of threat. But, like the medical establishment that first sought to understand how to protect itself and its nonmarginalized patients, bish-

⁶⁶ See the Susan Sontag's classic, *AIDS and Its Metaphors* (New York: Farrar, Straus and Giroux, 1989); William Rushing, *The AIDS Epidemic: Social Dimensions of an Infectious Disease* (Boulder: Westview, 1995); *The Gospel Imperative in the Midst of AIDS*, Robert Iles, ed. (Wilton, Conn: Morehouse, 1989).

⁶⁷ E.g., J. Michael McDermott, "Is AIDS God's Punishment?" *Homiletic and Pastoral Review* 91 (April 1991) 32, 50-58.

ops too are now growing through this time of infection to begin considering the more chaotic questions of prevention.

Now, as we enter a second generation within a time of AIDS, Catholic leadership realizes that it can be protective and also advance the interest of prevention. For these reasons, we should expect to see Catholic leadership loosening its resistance and returning to its traditional ways of addressing cases while upholding existing principles. We have every reason to believe that in time, fewer bishops will directly censure health-care workers in Catholic facilities who in conscience recommend to their clients that they protect the common good by abstinence and, failing that, by prophylactic measures. Likewise, we should not expect the censure of moral theologians who assert the liceity of spouses' protecting one another from their infection. And we can reasonably expect to see Catholic hospitals becoming progressively involved in needle exchange. Finally, some day (if not already) one of the American Jesuit provincials will accept a candidate who is HIV positive, knowing that his illness is more a chronic condition than a terminal illness.

Second, several bishops around the world are turning to a casuistry of accommodation to address HIV preventive measures. In 1996, Bishop Rouet of the French Bishops' Social Commission issued a statement on AIDS which, through an appeal to the principle of the lesser evil, recognized the preventive function of the condom. This statement received a cautious but considered acceptance from many bishops, archbishops, and cardinals around the world.⁶⁸ Similarly, the Rochester Catholic Family Center in New York has promoted the first U.S. Catholic supported needle-exchange program. Moreover, as Jon Fuller reports, three Catholic agencies support extensive needle-exchange programs throughout Australia. The state of South Australia alone has 55 exchange programs for a population of only 1.2 million people. In that state, no new HIV infection has occurred from needle sharing in the last three years.

Third, bishops are able to take such steps because the tradition provides them with a way, as I have attempted to show, both to protect existing

⁶⁸ Craig Whitney, "French Bishop Supports Some Use of Condoms to Prevent AIDS," *New York Times*, 13 February 1996, 1; Pamela Schaeffer, "Condoms Tolerated to Avoid AIDS, French Bishops Say," *National Catholic Reporter* (February 23, 1996) 9; "Caution Greets AIDS Statement by French Bishops," *Tablet* 250 (February 24, 1996) 272; Hubert Cornudet, "AIDS and Humanity," *ibid.* 256-57; "Church Leaders Mix Condoms and Caveats," *National Catholic Reporter* (March 15, 1996). See also, "Dutch Cardinal Says Condoms OK When Spouse Has AIDS," *Catholic News Service*, February 16, 1996; "Vienna Archbishop Says Condoms Morally Acceptable to Fight AIDS," *Catholic News Service*, April 3, 1996; see also, Robert Vitillo, "HIV/AIDS Prevention Education: A Special Concern for the Church," Presentation for Discussion at Caritas Internationalis; CAFOD Theological Consultation on HIV/AIDS, Pretoria, South Africa, April 14, 1998.

principles and simultaneously to engage new problems creatively. We do not need to construct an entire new moral system, even at such a critical time as this one. The Catholic tradition is a supple and balanced legacy that we need to recognize, appreciate, and utilize.

Finally, the tradition not only permits the bishops to engage these profoundly human issues, it urges them to do so. The tradition gave us the casuistry of accommodation, precisely because the tradition is animated at its best moments by the virtue of mercy. This virtue, which Aquinas considers the one which likens us to God by imitating God's work,⁶⁹ is the willingness to enter into another's chaos. It is the virtue that appears in the case of the Good Samaritan, who was called neighbor because he practiced mercy. The Samaritan entered into the chaos of the wounded man lying on the margins of his society. The Venerable Bede among others recognized in the case of the Samaritan the story of Jesus Christ. Jesus is the Samaritan who, in becoming human for us, discovered Adam outside the Garden of Eden, wounded by sin and shame. Jesus tended to his wounds and carried him to the inn, which Bede realized was the Church where Jesus gave his life, our ransom, for our health or salvation. And he promised that he would return and pay whatever debt remained outstanding.

In the Incarnation Jesus gave to the Church the possibility of practicing mercy. This virtue, associated with being neighborly to those suffering from illness and shame, ought to and does urge us to enter further into the chaos of AIDS.⁷⁰

⁶⁹ *Summa theologiae* 2-2, q. 30, a. 4, ad 3.

⁷⁰ Roger Burggraeve, "Une éthique de miséricorde," *Lumen Vitae* 49 (1994) 281-96. I wish to thank Jon Fuller, Tom Massaro, and Robert McCleary for their help in preparing this article.