

HUMAN SEXUALITY: THE BOOK AND THE EPIPHENOMENON

David Hume lamented that his *A Treatise of Human Nature* "fell dead-born from the press, without reaching such distinction as even to excite a murmur among the zealots." He grieved further when his *An Inquiry Concerning the Principles of Morals* "came unnoticed and unobserved into the world." The authors of *Human Sexuality*, though they have legitimate complaints, cannot join in Hume's lament. No American Catholic study in our time has won more scrutiny or elicited more response.

Though the book *Human Sexuality* is significant and interesting, the reaction to it is theologically and also psychologically more intriguing. It is also more than a little schizoid. Indeed, if some future worldwide apocalypse were to come upon us destroying every single copy of *Human Sexuality* but sparing all the reactions to it, future scholarship would definitely arrive at a two-source theory. It would simply be inconceivable that such contradictory reactions could have been stimulated by a single literary source.

On the one hand we read in the NCCB Committee on Doctrine statement that the study "contradicts theological tradition and the Church's clear magisterial teaching refined over the centuries. . . ." A number of bishops have written that the book is clearly contrary to the teaching of the Church. At times episcopal rhetoric flared into *ad hominem* attacks as when Bishop John King Mussio called Father Kosnik *et al.* "Prideful people," "free-wheeling people who . . . twist the Word of God," "destroyers," "self-excommunicates" who are lusting after "worldly renown."²

Some see the book as teleology run so amuck that it might even contain the implicit methodological wherewithal to justify such atrocities as coerced intercourse with a six-year old child.³ The same authors imply that the study would reduce Jesus to "the Bella Abzug of first-century Palestine,"⁴ and go on to say that the authors of *Human Sexuality* are either ignorant of the theological and historical evidence or chose "to pass this evidence over in silence."⁵

A Protestant theologian finds some of the claims of the book puzzling and comments: "Such issues are best left for the Catholics themselves to discuss, since having to deal with such intellectually confused claims is proper punishment for their past sins involving issues of sexual-

¹"Statement of the Committee on Doctrine Concerning *Human Sexuality*," Nov. 15, 1977.

²*Steubenville Register*, July 7, 1977.

³William E. May and John F. Harvey, "On Understanding Human Sexuality; A Critique of the C.T.S.A. Study," *Communio* 4 (1977), 208.

⁴*Ibid.*, 214.

⁵*Ibid.*

ity."⁶ Several writers have indicated the book as "unscholarly" and one theologian dismissed the book as "a fatuous report by people who have no real scholarly standing."⁷ (Interestingly, in a wry sort of way, that same theologian in a context in which his views were under attack recently said: "Ethicists are expected to restrain themselves from misrepresenting positions with which they disagree.")⁸

The study has been called act-utilitarian, consequentialist, and the baneful fruit of "proportionalism." A striking penchant for alimentary and organic imagery has also emerged in the literature as the study has been compared to "jello," "marshmallows," "garbage," and, the ultimate in organic insult, "dung."

In the grimmest reaction of all, one member of this society said that if the book were a movie, "it would be rated 'X.' It would be so rated not for pornography but for violence—the extreme violence done to the sources of Sacred Theology: Sacred Scripture, Sacred Tradition and the Magisterium of the Church." This same writer is embarrassed to think that any part of his dues "might have contributed in any small way to a project so small on collegiality and so big on stifling any views other than the Committee of Five" [sic]. He sees the book as a "conscious distortion of the teachings of the Church."⁹

Even when the language is less ebullient, the charges are stern. One theologian says that in this study, "a central Catholic tradition is misunderstood."¹⁰ One biblical expert said that although the authors "are eminently aware of the historical critical method in the exegesis of Scripture" and are thus "in line with the best of contemporary biblical scholarship," they are still to be faulted for being selective in their dependence on scriptural experts and for giving the appearance that "the conclusions were reached before all the research had been done."¹¹ Another scriptural expert indicts the study for "false methodology, silencing of prophetic ideals and pancultic explanation" in its Old Testament scholarship.¹²

These comments and others, then, would represent book number one in my imagined post-apocalyptic analysis of reaction to *Human Sexuality*. This reaction would point to a terrible book conceived by five wild-eyed and atypical Catholic adventurers. There is, however, another set of reactions.

One Catholic writer said that the book "marks the arrival at maturity of the U.S. theological community."¹³ This same writer worries that

⁶S. Hauerwas, "Sex and Politics: Bertrand Russell and *Human Sexuality*," *Christian Century* 94 (1978), 417.

⁷J. T. Burtchaell, *Newsweek*, July 11, 1977.

⁸Burtchaell, "A Call to Concern," *Christianity and Crisis* (1977), 270. Burtchaell also says of the "Call to Concern": "It is not fair. It is not generous. It is not true." Again, these words apply to his own broadly quoted "fatuous" comment.

⁹W. Smith, *The National Catholic Register*, June 19, 1977, July 3, 1977.

¹⁰F. X. Meehan, "Love and Sexuality in Catholic Tradition," *America* 137 (1977), 230.

¹¹E. Maly, "Human Sexuality: A Biblical Appraisal," *The Bible Today* 93 (1977), 1435-37.

¹²C. Stuhlmuehler, C.P., *ibid.*, 1441.

¹³F. X. Murphy, "Human Sexuality," *The Tablet* 231 (1977), 695.

the study offers criteria that demand "a higher conscientiousness and virtuous achievement than the ordinary person feels capable of." In this sense, he continues, the study "is well nigh rigoristic in its final moral prescriptions."¹⁴ In a *Christianity and Crisis* article, Joseph Cunneen, after introducing himself as a "middle-aged, sexually-unliberated Irish-American Jansenist, precisely the type that the authors of the present study are trying to render obsolete," goes on to this conclusion: "Any fair reading of the text will make clear that its authors are moderates in their approach to theological ethics, and that they are concerned to preserve continuity in Catholic teaching. . . ."¹⁵

A Protestant theologian sees the book as a "very significant accomplishment." He writes: "This milestone of a book is sane, courageous, charitable, hopeful, judicious, biblical, Christian and Catholic. It is a welcome event for Protestant as well as Catholic moral theology. . . . The miracle is that the committee reports no dissension within itself and no major criticism from the scholars they invited to comment on their drafts. This is surely the best book I have ever read that was written by a committee."¹⁶

Another professor calls the book "a watershed document. . . indispensable reading for anyone interested in the humanistic and values dimensions of sex."¹⁷ And Professor James Nelson calls the book "a major event" and says that "this theologically responsible, empirically informed, courageous book is a fresh and invigorating breeze." He refers to the "obviously competent scholarship and carefully balanced reasoning" of the book.¹⁸ Rabbi Roland B. Gittelsohn sees the book as "an exciting harbinger of hope."¹⁹

A sociologist writing in Australia writes that "the fusing together of theological and social science perspectives so successfully represents another major contribution to our understanding of man the spiritual and man the social being."²⁰ Though the authors of *Human Sexuality* have been accused of permissiveness on adultery and "swinging," Rosemary Radford Ruether says of the book, "swinging and adultery . . . are viewed as so impeding the values of fidelity and mutuality that it would be difficult to find an instance where such behavior belongs to a humanizing rather than a dehumanizing pattern."²¹

Fr. Samuel Natale, a psychologist and psychotherapist, calls the book "an overall very significant piece of work, in which the topics range widely and are treated with competence and respect." He sees it as "an important and valuable contribution" to the growth of our sexual

¹⁴ *Ibid.*

¹⁵ J. Cunneen, "Two Rousing Cheers," *Christianity and Crisis* 37 (1977), 247.

¹⁶ T. F. Driver, "A Stride Toward Sanity," *Christianity and Crisis* 37 (1977), 243.

¹⁷ R. Francoeur, in a review prepared for *The Journal of Sex Research*.

¹⁸ J. B. Nelson, "Sexuality and American Catholic Thought: Two Non-Catholic Views," *SIECUS Report* 6 (1978), 14-15.

¹⁹ *Ibid.*, 14.

²⁰ A. W. Walsh, in a letter to *Paulist Press*, Jan. 16, 1978.

²¹ R. Ruether, "Time Makes Ancient Good Uncouth: The Catholic Report on Sexuality," *Christian Century* 94 (1977), 684.

ethics.²² Religious educator, James J. Di Giacomo calls the book "a welcome and valuable contribution to the continuing dialogue that goes on in the church community and among concerned parents and educators of all persuasions."²³

Regarding the biblical side of the study, James Gaffney writes that the "25-page summary of relevant biblical data is, despite its brevity, plausible."²⁴

And finally, an editorial in the *U.S. Catholic* sees the study as "providing a splendid opportunity for the church . . . to build anew a sexual ethic that makes sense to educated Catholics in the 20th century." The editorial notes that the study was sensationalized more in the Catholic press than in the secular press, and laments that the comments of some Catholic theologians and scholars were "disappointing and even unfair."²⁵

So where, in all of this, is the elusive center of theological balance? I take as a step toward that the statement of Paul McKeever, a one-time president of this Society, in *The Priest*. McKeever notes that the "serious authors" who consulted over 25 theologians in preparing this study, have written "what must be regarded as the most serious study of sexuality in the whole history of the American Church."²⁶ I note also, with approval, the statement of David K. O'Rourke, also in *The Priest*, who calls this study "a monumental effort." He asks: "Are there flaws in the presentation? Of course there are, and it could not be otherwise."²⁷ As O'Rourke sees it, it will take a generation to begin to accomplish the goal of reappraising Catholic sexual ethics undertaken by this study. I also appropriate the statement of Cardinal Dearden and the Detroit bishops who said: "We must listen to each other carefully and with openness to grow in our own understanding. But we must also be secure enough to challenge what seems inconsistent with the truth."²⁸

In other words, we must agree to disagree humanely. This will not be easy to achieve. Michael Polanyi says: "In a clash of intellectual passions each side must inevitably attack the opponent's person."²⁹ The issues here are not peripheral. Ecclesiological assumptions of a foundational sort are involved. Conflicting worldviews and personologies are contending. The "heuristic passions" (Polanyi's phrase) that are operating in this debate reach to the depths of religious and moral conviction. The issues involved here touch on our religious identity. And the issues of sexual ethics are never lightsome. It is a strength of the Catholic tradition that it has always recognized that the sexual encounter cannot

²²S. M. Natale, "The Quest For a Humanized Sexuality," *Momentum* 8 (1977), 22, 25.

²³J. DiGiacomo, *The Living Light* 14 (1977), 617.

²⁴J. Gaffney, Book Review, *America* 137 (1977), 14.

²⁵*U.S. Catholic* 42 (1977).

²⁶Editorial, *The Priest* 33 (1977), 8.

²⁷D. O'Rourke, "Human Sexuality: A Clinical Critique," *The Priest* 33 (1977), 20.

²⁸Statement of John Cardinal Dearden and the Assistant Bishops of the Archdiocese of Detroit.

²⁹M. Polanyi, *Personal Knowledge: Towards a Post-Critical Philosophy* (Chicago: University of Chicago Press, 1962), p. 152.

easily be confined to frivolous and superficial levels. It has deeper resonances. The sexual encounter is a symbolic matrix that cradles influential social and political attitudes; sex, like sexual ethics, is ultimately serious. It is not hard to see how disagreement in this debate waxed hot. It is difficult to disagree at the levels to which this debate invites us without appearing betimes to discredit even the very person of the opponent. With all of this, we must remember that axiom of Catholic tradition: the *ad hominem* argument represents debate at its lowest ebb. The authors of this report have been publicly insulted as to their intelligence, integrity and credentials. At least one of them has been threatened as to employment. They have been accused of not doing what they never intended to do and of not doing what they actually did and did well. Let us not aggrieve the able and gentle authors of this study further.

As to my own reaction, I begin by saying that I not only receive the report; I accept it. I believe the Catholic Theological Society of America should also formally accept this report. Otherwise they are, as Mary Perkins Ryan has pointed out, trying to eat their cake and have it too. The Society commissioned the study, supplied twenty-eight reviewers for it (an astounding number!), accepted the copyright, and one-third of the profits of the book! We have already accepted the report in fact; let us end the fiction. Having accepted it we can then proceed to praise and criticize it, offer alternative visions, and prepare to live with some disagreements that could be dissipated by nothing less than the beatific vision. In the words of St. Paul: "you can all prophesy in turn, so that everybody will learn something and everybody will be encouraged. Prophets can always control their prophetic spirits, since God is not a God of disorder but of peace."³⁰

IMPORTANT EFFECTS

This report has changed the *status quaestionis* for sexual ethics in this and in many countries. You cannot address sexual ethics in a Catholic context and ignore this report: a fatuous or inept study could not have achieved this. Part of the strength of the report is its honesty. It has called to an end a period of evasion and pretense by professing openly "that there is a growing gap between what the Catholic Church officially teaches in matters sexual and what the faithful have come to believe and practice."³¹ Partly the authors have suffered because they are the messengers who bring "bad" news. John Giles Milhaven writes in his review of the book: "As Father Avery Dulles and Father Charles Curran rightly observe nothing is in the report that some moral theologians have not already said. Most of the report's propositions now hotly criticized have been defended for some time by a good number of respected theologians and applied in pastoral guidance by a good number of respected pastors."³² Father Gregory Kenny states that

³⁰ 1 Cor 14:32-33.

³¹ A. Kosnik, W. Carroll, A. Cunningham, R. Modras, J. Schulte, *Human Sexuality: New Directions in American Catholic Thought* (New York: Paulist Press, 1977), p. 78.

³² J. G. Milhaven, Review of *Human Sexuality*, *National Catholic Reporter*, June 17, 1977.

"what the book is saying publicly has been used in private by priests and counselors for years. What the book presents in its 'Pastoral Guidelines' section simply reflects widespread pastoral practice."³³ And Father James J. Di Giacomo observes that "A great many Catholic priests, educators and counsellors will find nothing disturbing in *Human Sexuality*, but rather a printed version of what they have been thinking and saying and even teaching for years. And many of the not-so-simple faithful, who reached the same conclusions as private persons long ago, will wonder what all the shouting is about."³⁴ The report does have some original aspects which have stimulated discussion, but there is no point in pretending that the genie was not already out of the bottle.

In saying that this book presents us with a new *status quaestionis* I am not saying that it ushers in a new orthodoxy. The book is painstakingly tentative in tone and probing in character. The response it merits is respectful dialogical criticism. It is the beginning of a new process which has already borne some wholesome theological fruit, and it does not pretend to be any more than a beginning.

Aside from inducing a substantial change in the *status quaestionis* and bringing theologians and pastoral ministers into new dialogue, the report also has created fresh interest in Catholic views on sexual ethics among Protestants. In the enduring wake of *Humanae vitae* and the Vatican *Declaration on Certain Questions Concerning Sexual Ethics*, Protestant disenchantment was understandable. Now the report opens the way for a fruitful blending of the various Christian traditions on this subject. Also, in response to the report, some bishops have finally called for greater collaboration with theologians. A few bishops now seem to see that moral theology is pastoral by its nature. History, however, prompts me to wonder if the bishops merely wish to banish liberal positions—or at least their publication. After all, their positions and those of the Vatican were not ignored in the report. Is the call for collaboration a wish for control over liberal voices? Subsequent events may prove me too cynical regarding the bishops' desire for genuine collaboration.

To tell moralists, as some are doing, to theologize but keep out of the pastoral domain is to tell them to think but reach no conclusions . . . at least no published conclusions. This is absurd. Moral theology is no longer a clerical preserve. Moral theologians are no longer writing Penitential Books to be mediated through a semiliterate clergy to an illiterate laity. An articulate laity know what moral theology is up to and join or follow in the work. Perhaps this debate will drive that home to pastors at every level in the Church. The report, therefore, has already had important effects.

THEOLOGICAL CRITIQUE

Having said all of this, I turn to my own professional critique of the report on human sexuality.

³³Kevin H. Axe interviews Father Gregory Kenny, C.M.F., "A New Approach to Sexual Morality," *U.S. Catholic* 43 (1978), 20.

³⁴J. Di Giacomo, *The Living Light* 14 (Winter 1977), 619.

First of all it should be noted that any significant work in ethics is a contribution to theory or it may justly be considered a piece of reportage which might, perhaps, be fascinating and useful in its own way, but is not ethics. The indispensable work of ethics is theory and method. Ethics, even in addressing particular subjects, illumines how it is that we sensitively know and evaluate in the moral realm, or it fails as ethics. *Human Sexuality* does not fail in this fashion for it did not evade the methodological challenges.

In fact, it should be noted that one of the major services of this report is that it brought to the surface some of the methodological agenda that have long gone abegging in Catholic moral theology. The authors of the report addressed these neglected areas sensing accurately that sexual ethics could not be fruitfully reappraised in any other way. The authors are not to be indicted for not finishing the work in these areas. They are to be praised for making new beginnings and showing where follow-up work has to be done. My methodological conclusions follow:

1. *Unitive and Procreative*

The report, while not rejecting the unitive and procreative purposes of sexuality, offers creative and integrative as more broadly regulative of sexual behavior. This suggestion must be seen as unfinished business. It also must be seen in its historical context. It comes out of a history where procreative was seen as primary and unitive as secondary. This was altered when the rhythm birth control method was seen as legitimate even to render a marriage permanently childless, and later when Vatican II with very deliberate care taught that the other ends of marriage were not to be considered as of lesser account than the procreative end.³⁵

Vatican II's formulation and *Human Sexuality's* treatment, however, are incomplete and call for further distinctions. The mistake in the older teaching and in Vatican II was in proceeding in an ordinal fashion as though the ends of sexuality were competitively related and in need of ranking as higher, lower, or equal. Unless we are to turn to cloning on a planetary scale, sex is obviously the physical medium of reproduction. From the viewpoint of species-needs, it might even be argued ordinarily that reproduction is the prime purpose of sex. I would not so argue since I feel that even here the ordinal ranking of sexual purposes would be specious and unhelpful. It might, for example, also be argued that the

³⁵ See *AAS* 43 (1951), 835-54, 845-46, 859 on the "very wide" set of reasons that could justify the permanent prevention of children in a marriage. This was more revolutionary than was generally perceived at the time. If procreative openness was to be the kingpin of sexual finality and if a marriage could be deliberately rendered non-procreative even by rhythm birth control, it was not easy to say how such marriages fulfilled the procreative rubric at all. Contorted efforts to turn to the subjunctive to salvage the linkage between procreative and unitive are not helpful. Thus, to say that procreative purpose is maintained by the couple's saying that if they were to reproduce it would be through and with the other does not speak to a situation where the couple for good reasons are determined not to reproduce or who cannot reproduce. On the procreative end in marriage in Vatican II, see W. Abbott, S.J., *The Documents of Vatican II* (New York: Herder and Herder, 1966), "The Church Today," #50, 254, and n. 168, 254. The key phrase in Latin is *non posthabitis ceteris matrimonii finibus*.

unitive and socializing purpose of sexual encounters is equally primary for society, etc.

At any rate, because sex is the physical means of reproduction does not mean that sexual exchange should *semper et pro semper* be reproductively oriented. Indeed, social justice and other virtues might require that it not be reproductive. Unitive, however, is another matter. Sex, I will argue, is unitive by orientation for all who participate in it. Sex is not ecstasy without a mission. It is a sacrament of intimacy leading to self-revelation, trust and friendship. It is unitive. But, unitive and procreative are not conjoined in every sexual union. *The confusion here has been between individual realizations of sexuality and the needs of the species—and these are separable.*

The report need not have suggested such a dichotomy between unitive and procreative on the one hand and creative and integrative on the other. All four purposes should be maintained. There is no need to downplay the sex-specific purposes of unitive and procreative. What is needed is to distinguish between species and individual needs. In so saying, I am not introducing a novelty. Celibacy would be immoral if chosen by the whole human race, but we have not taught that the species-need for reproduction was a moral argument against voluntary celibacy.

In point of fact, it should be noted that the report did not abandon the unitive rubric but actually includes it in a number of ways. The report need only distinguish between species-need and individual obligation to treat reproductive purpose properly. The unitive dimension of sex is very present throughout the report. It is in the report's description of sexuality, in its theological use of the symbol of the union between Christ and the Church, and in its stress on the integrative aspect of sex, in the need for fidelity, and elsewhere.

It is now a Catholic commonplace to say that the unitive and procreative purposes of sex are inseparably conjoined. That statement, however, is an enigma. That sex is unitive and procreative may be readily affirmed. That these two aspects of sex are inseparably conjoined is quite another matter. Let us concede again that sex is the physical means of reproduction since few truths are as evident as that. However, it should not be surprising that this physical function does not exhaust the full personal meaning of sex. Sex for persons is not just instinctual and reproductive; it is also liturgical and symbolic. To explain sex as a complex natural liturgy and thus provide a better understanding of the unitive and procreative aspects of sex, let me turn illustratively to another natural liturgy, the meal. The comparison of the two liturgies is important.

THE MEAL AS LITURGY

The table is not a trough and a meal for persons is not just feed time. People who dine together are not just consuming proteins and carbohydrates. We do not normally invite people to dinner because they are notoriously hungry. A guest list is not predicated on malnutrition. There

are two things that show a meal to be a natural liturgy: it is intrinsically social and socializing, and, it is heavy with symbol. It is by its nature a friendship event, which, like a sacrament, both symbolizes and effects friendship. (It is not surprising that the Christian religion and other religions favored the meal as a symbolic matrix.) Hence the exquisite attention to elegant detail that goes into a meal. We are not just feeding our friends when we invite them; we are expressing our love. The way the food is presented, the setting, the silver, the crystal all suggest the seriousness of a symbolic event.

Not all meals are fully symbolic, but the social urgency is always there. The busy housewife or househusband who has gotten the children off to school, and sits for a bit of breakfast, reaches for the phone or the television or a magazine to ward off the aloneness that offends a meal. And if all this stress on sociality, love, and respect as essential ingredients of a meal seems too lyrical, think of what happens when you are forced to eat with someone whom you seriously dislike. The consequent indigestion will bear witness to the fact that mere foodstuffs and a table do not a meal make. If you ate beside a stranger every day at a diner counter, it would be very difficult to ward off the intimations of communication and conviviality that go with personal eating. You would have to become friends or a sort.

What happens in a natural liturgy like a meal is that there is a material substratum and a large symbolic superstructure. Food and nutrition go with a meal but these could be received intravenously and you would not call it a meal. The symbolism, therefore, is as intrinsic as the nutrition.

The same is true for sexual exchange. Sex does meet physical needs such as distraction, relaxation and nervous release. Sometimes when the personal dimensions are minimal as when sex is commercialized, there may be little more to it than this. But there is symbolic power in sex which, given due chance, will assert itself. Sex has a power to engender and express endearing emotions and intense personal expectations. It is an intense form of sharing that invites more sharing. In the sexual encounter, the parties are not just physically enveloping and interpenetrating one another; there is psychological envelopment and penetration as well. One is personally as well as physically naked in shared orgasmic experience. The event is truly a *revelatio*. The usual cosmetic defenses with which we gird ourselves about do not easily survive such liturgy. The force of the encounter is unitive. The lover may remain only an experience, but she tends to become a way of life. The lovers have shared a secret together. They have shared a powerful symbolic event that both signifies and effects friendship. "Getting involved" is a corollary of "having sex" if it is not the prelude.

This is not to say that the symbolic aspects of sex cannot be repressed or almost extinguished in certain cauterized personalities or at lower stages of personality development. But without some manifestation of cherishing and affection, the sexual meeting is not even going to be a sensual success. And if depersonalized sex is repeated, the personal

and unitive dimensions are likely to emerge. It is ironic to note that the romantic sexual encounter which is certainly a high form of fun has such a lugubrious legacy in terms of songs of broken hearts, the blues, and literary tragedies. Its unitive potential explains this to some degree. The unitive potential is felt by one of the parties and not the other or circumstances prevent the union that is so commandingly required by the relationship. "A pity beyond all telling is hid in the heart of love," wrote the poet Yeats and many persons who move into a sexual encounter learn the poignant adaptations that the poet's words can have.

Morton Hunt, in his 1974 study *Sexual Behavior in the 1970's*, offers this conclusion:

... sexual liberation has not dismantled the romantic-passionate concept of sex and replaced it with the recreational one... while most Americans—especially the young—now feel far freer than formerly to be sensation-oriented at times, for the great majority of them sex remains intimately allied to their deepest emotions and inextricably interwoven with their conceptions of loyalty, love and marriage. The web of meaning and social structure surrounding sex has been stretched and reshaped, but not torn asunder.³⁶

In no culture does sex remain purely frivolous and merely physical, although rather depersonalized modalities of sexual exchange can be found. There is abundant witness to the unitive thrust of sex. To my mind this points to enduring grounds for asserting the marital orientation of sexual exchange.

Marriage I would define as *the ultimate form of friendship achievable by sexually attracted persons*. Friendship is the dominant reality and sex is the specifying mode. This means sex in the genital sense and in the myriad other forms that sexual attraction may take.

If it is clear, then, how sex is unitive, what is the moral import of its reproductive purpose and how does this conjoin with the unitive? It does not conjoin in the sense that the species-need for reproduction can be translated into an absolute moral obligation binding every act of sexual exchange or every marriage. This would be neither physically possible nor morally responsible. It would depersonalize sex, reducing women to brood mares and men to studs. And no one actually defends the proposition that sex is only permitted when fertilization is possible and likely.

The unitive and the reproductive do conjoin in one way: reproduction can be the most unifying and maritalizing experience of a relationship. The ecstatic sharing in the miracle of birth and childhood may be the most bonding of experiences. It explains, I think it reasonable to opine, why the family is such a remarkably stable phenomenon in human societies. As anthropologist Ralph Linton writes:

The ancient trinity of father, mother, and child has survived more vicissitudes than any other human relationship. It is the bedrock underlying all other family structures. Although more elaborate family patterns can be broken from without or may even collapse of their own weight, the rock remains. In the Götterdämmerung which overwise science and overfoolish

³⁶M. Hunt, *Sexual Behavior in the 1970's* (Chicago: Playboy Press, 1974), p. 253.

statesmanship are preparing for us, the last man will spend his last hours searching for his wife and child.³⁷

Reproduction, however, is not necessary or feasible for every union and thus it is not essential to every marriage. It is also not the grounds for ruling that every homosexual union is dehumanizing and immoral. The definition that I gave of marriage above, does not require heterosexual orientation. Homosexual marriages and childless marriages should also exemplify the unitive fidelity of love and thus be personally and socially fruitful in their own way.

Though the sexual ethic I propose here gives marriage a paramount position, I do not accept the simplism that you can draw a perpendicular line, call it the ceremony of marriage and say that every consciously sexual thought, word, or deed to the left of that line is immoral and dehumanizing. Such simplicity would be unique in the whole of ethics. And sexuality is so mysterious and in many ways so varied in its manifestations, as anthropology testifies, that it would seem a most unlikely candidate for such tidy and convenient divisions. What I do say is that the sexual encounter, allowing for cultural and developmental psychological factors, is unitive and hence serious. It is a kind of binding pleasure and intimacy-making concelebration. It engenders potent emotions. Herein lies its moral seriousness. The report, I believe, takes great pains to point out this seriousness.

The report also repeatedly stresses the social significance of sex. As Abraham and May Edel write, "sex is nearly everywhere highly charged morally, for in addition to its high emotional potential, it is part of the most central nexus of human social interrelationships."³⁸ The sexual encounter mirrors one's social attitudes. Sexism and racism reveal themselves in patterns of sexual behavior. The ancients said that in play morals reveal themselves (*Inter lundendum, mores se detegunt*). This is certainly so for sexual play. Add to all of this the unitive symbolic and liturgical power of sexual expression, and the report is even more obviously correct in standing for the ultimate seriousness of sexual behavior.

Strangely enough, a lot of the criticism of the report regarding reproduction relates to homosexuality. As is apparent in the written criticism of the report, one of the ethical chores of the reproductive rubric is to foreclose on homosexual relations. The methodological abstractionism here is neat. You define moral sex in such a way as to include some and exclude others. You establish moral sex as heterosexual-marital thus leaving all homosexuals with no moral mode of sexual expression. For them it is either celibacy or sin. For the heterosexual it is better to marry than to burn; for the homosexual, there is only burning. The report, quite properly, rejects this sweeping and cruel abstractionism. The report accepts the view "that meaningful and

³⁷R. Linton, "The Natural History of the Family," in *The Family: Its Function and Destiny* (New York: Harper & Brothers, 1959), p. 52.

³⁸M. and A. Edel, *Anthropology and Ethics* (Springfield, Ill.: Charles C. Thomas, 1959), p. 81.

wholesome sexuality need not always be evaluated in terms of its relationship to procreation."³⁹ The report is, in my view, correct in this since, as I have argued, the species-need for reproduction is not inseparably conjoined as a moral condition to sexual exchange.

The report even goes on to say that a particular homosexual relationship may be counselled "not simply as a lesser of two evils but as a positive good."⁴⁰ And it concludes "that where there is sincere affection, responsibility, and the germ of authentic human relationship—in other words, where there is love—God is surely present."⁴¹ I find this better ethical theory than is represented by those who say, even while justifying homosexual sex, that it is always ontically evil, not human expression at full term, falling short of the full meaning of human sexuality, the result of the infecting power of sin, etc.⁴² This puts the homosexual couple into the position of having to say of their relationship—which may be an ideal and heroic realization of Christian love, reconciling power and hope—that it is ontically evil but morally sound. The problem arises from saying that heterosexual marital relations remains the ideal. What does it mean to a permanently homosexual person to say that heterosexuality is the ideal for him? Clearly it would not be ideal for the human race if everyone were homosexual. Clearly it is ideal that historically most have been heterosexual, else in harsh times the species may not have survived. But it is a large leap from this blunt fact to say to a particular homosexual couple that their union is not ideal for them because of the species' already well met needs for ample heterosexuality.

Heterosexuals discussing homosexuality suffer from abstractness. Let me be concrete. I know two homosexual women who consider themselves married. Both are degreed in special education and plan, as legally single women, to adopt several retarded and emotionally handicapped children who would otherwise be raised in public institutions. The homosexuality of these two women is and, by their intention, will remain private. They know the infinite demands of children healthy and normal or otherwise, and they want to meet those demands for these children in a way that no institutional care could provide. If ethical theory puts the procreative element of sex in its distinguished place, there is no need to tell these women that their union is ontically evil in a way that heterosexual unions are not. Thomas Aquinas tells us that human actions are good or bad according to their circumstances.⁴³ Given all the circumstances of these two women, I would describe their union as ideal *for them*. The unitive power of sexuality hopefully will help sustain them in the generous direction that their marital friendship has taken them.

Catholic moral theology has some outstanding debts to homosexual persons since we are to some degree responsible for the afflictions they

³⁹ *Ibid.*, p. 204.

⁴⁰ *Ibid.*, p. 215.

⁴¹ *Ibid.*, p. 218.

⁴² See *ibid.*, pp. 202-03 for list of some authors in this vein.

⁴³ *Summa Theologica*, I II q. 18, a. 3.

experience by imposing a normative ethical ideal which for them is neither normative, nor ideal, nor feasible. Such an approach sacrifices the concrete reality of irreversibly homosexual persons to an imperfect and incomplete conceptualization of the human sexual situation. Homosexuality is and remains a mystery for us and even for the experts who have tried to fathom it and discern its etiology. Many societies simply have seen it as a variant, not as an abnormality. Our society views it with morbid horror and puts a heavy sociocultural stigma on it. This stigma certainly impinges upon the relationships of homosexual persons and then when the effects of this stigmatizing become known to us in terms of negative data on homosexual relationships, we facilely conclude that we were right all along. It is not yet clear that we have done any more than prove that, in significant ways, you get back what you project.

2. Teleology vs. Deontology

Reflected in the report are the effects of the debate, which I submit is misconceived, between teleology and deontology in ethics. In fact the report involves both teleology and deontology and this is as inevitable as it is proper. Marital fidelity until death and the heroic love required by parenting will never be evaluated in purely teleological terms. An exclusively teleological ethics misses the affective, mystical import of normal moral experience. A narrowly teleological understanding of marriage or of childrearing will be, of necessity, jejune and pale.

Rationalistic ethics does not blend teleology and deontology; it concentrates on one or the other and achieves a practical divorce of the two. If you accept, however, that ethics involves not just principles and reasoning and the calculation and weighing of effects but that it also involves mystical and affective appreciations, then the clumsy category of deontology might truly describe some of the evaluational experience. In adjudicating something like group sex or "swinging," we do not have to limit ourselves to projecting the effects of such activity or await word from the social scientists on how such sexual behavior tests out in their studies. Such activity might stimulate our sense of profanation,⁴⁴ it might jar our evaluative *Gemüt* even before all the measurable data is in on what happens when folks do this sort of thing. Such affective appreciations are not infallible neither are they negligible in doing ethics. If this involves you in a degree of deontology, so be it. Such deontological appreciations should be supplemented by teleological analysis, not as though one were going from a lower to a higher court, but simply in the name of exercising all of our evaluative capacities. Evaluation in which either deontological or teleological aspects are omitted is truncated.

Thus in the report itself, the somewhat diffident judgment against "swinging" ("While remaining open to the results of further research . . . generally dehumanizing."), could be more firmly negative without lapsing into the intuitionism of an older moral theology. I would

⁴⁴On my use of the term "sense of profanation," see D. Maguire, *The Moral Choice* (Garden City, New York: Doubleday, Inc., 1978), pp. 81-83, 290-93.

be inclined to put such things in the category of the unimaginable exception.⁴⁵

The teleology-deontology debate is mistaken and a lot of mischief can be avoided by correcting the mistake. Teleology teaches that actions are right or wrong according to the *telos*, end, or goal to which they lead. Consequentialism and utilitarianism are teleological theories. Deontology affirms that certain things are wrong regardless of the consequences. For example, promise-keeping might be defended teleologically in view of the disruptive effects on society if confidence in promises perished. An exclusively teleological approach, therefore, would say that promise-keeping is good *because* it promotes a milieu of confidence. The question is, however, is that judgment complete?

W. D. Ross helps us here with his case of the promise made to a dying man. After the death of the promisee, if no one knows about the promise, why must it be kept? How would the general welfare or other social consequences be impinged if this promise were ignored? As Ross puts it: "We need not doubt that a system by which promises are made and kept is one that has great advantages for the general well-being. *But that is not the whole truth. . . .*"⁴⁶ There is the nub. As William Frankena says, the deontologists "assert that there are, at least, other considerations which may make an action or rule right or obligatory beside the goodness or badness of its consequences. . . ."⁴⁷ This position does not deny moral significance to the consequences. The consequences are morally significant, but, in W. D. Ross's phrase, "that is not the whole truth." Hence, given the nature of the sexual encounter, as described in number one above, I would feel confident in denying the moral status of good to "swinging" and to "open marriage." That judgment proceeds from my pluriform moral consciousness—from my practical reason, from historical experience, from creative imagination, from affective appreciation, from judicious reliance on religious and other cultural authorities, etc. In other words, I have a lot going for me in making that judgment even if some empirical studies are still pending. Those pending studies will really have to be quite something to overwhelm what I already know about the precious yet fragile tenderness of human sexual relationships and marriage. Might I be surprised by pending research? As David Ben Gurion says, there are no experts on the future. There are such surprises in history. But with as much firmness as we can bring to many moral judgments, I can pronounce my negative moral judgment with vigorous firmness.

In so doing, I have, of course, not joined those Catholic intuitionists who with Prichardian simplicity can intuit the intrinsic finality of human sexuality so clearly and metaphysically that they know unwaveringly that sexual thoughts, words, or deed are either marital or immoral,

⁴⁵ See *ibid.*, p. 162.

⁴⁶ W. D. Ross, *The Right and the Good* (Oxford: Clarendon Press, 1930), p. 39. Emphasis added.

⁴⁷ William K. Frankena, *Ethics* (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1963), p. 14. On the misplaced debate between teleology and deontology, see my *The Moral Choice*, pp. 157-63.

yesterday, today or tomorrow, anywhere in the world. I have also not joined the alleged conspiracy of those who purvey an insidious novelty known as "the principle of ethical proportionalism." The term proportionality in ethics may not be the best of terms because of the mathematical and physical biases it may introduce, but some term like it is inevitable in ethics. Proportionality symbolizes the necessary comparative weighing that the "balancing art" of ethics must perform. Only intuitionists whose motto must be *fiat intuitio, pereat mundus* could dream of dispensing themselves from the weighing and balancing and comparing work of moral evaluation.⁴⁸

What I have done here is assert that the current rush to teleology in Roman Catholic ethics is an overreaction to the deontological excesses of our past. Having sinned by excluding teleological considerations in the past, there is now an ensuing disposition to sin by excluding deontological aspects from ethical method. This reaction is abetted by the love of tidiness to which our ethical tradition has long been unduly prone. And, of course, it must be conceded that when one admits affective considerations into their rightful place within ethical method, tidiness departs. Paradox, enigma and the discrete defensibility of logically contradictory options become our portion.

3. *The Social Sciences and Ethics*

This third conclusion relates closely to the preceding one, since it pertains to teleological analysis. The point here is the proper relationship of moral theology to the social sciences. Vatican II urged us to "blend modern science and its theories and understanding of the most recent discoveries with Christian morality and doctrine."⁴⁹ We needed the advice since many moralists of yesteryear went about intuiting the essence and intrinsic finality of behavioral forms in ways that were supposedly transculturally valid. This was a rationalistic, docetic kind of ethics and by its bitter fruit we should know it. We should react against this but I would recommend some anticipatory revisionism lest we ride the pendulum to another extreme. We must not now start treating the social sciences as though they were a kind of Marco Polo with singular access to realities that we poor peasants could never reach, even with all of our vaulting cognitive powers. Without a judicious reliance on the social sciences, we will be prone to what Sartre called the greatest evil possible—treating as abstract that which is concrete. But the social sciences are limited in what they can do for ethics. Moral insight may just not wait for the surveys and samplings to be tabulated and replicated.

The report does note the limitations of social science data but I think it also reflects at times the common malady that many theologians and philosophers now have—and are encouraged by the social scientists to have—undue awe for the potential contribution of empirical science. At

⁴⁸ For a critique of the damners of proportionalism, see R. McCormick, "Notes on Moral Theology," *Theological Studies* 39 (March, 1978), 90-97.

⁴⁹ See W. Abbott, *op. cit.*, "The Church Today," #62, 269.

times it seems that the report, keenly mindful of our past indifference to empirical studies, is overly timid in its conclusions for fear that contrary data from the empirical evidence will come home like Marco Polo to embarrass us in our provincialism. In this, again, the report is reflecting a common problem that affects us all. We have not yet worked out the details of our new partnership with the social sciences.

At this point in the partnership, three cautions should be sounded. First, social scientists, like the rest of us, do not perceive truth with limpid, unimpeded, contemplative vision. Knowledge is always interpretation and *interpretes* in Latin is a bargainer or negotiator. In knowing we make a bargain with reality. We do not take reality straight. We filter it through our selective memories, our symbols, our cognitive moods, our polemical preoccupations, our myths and ideologies. I feel eerily certain that if the social sciences existed two hundred years ago with all of the analytical tools available to them today, they would have produced impressive studies on how happy our slaves were and how unsuited for freedom. It is fair to say that the social sciences, though an invaluable tool for criticism, are not always critical. They may at times merely reflect the dominant myths of a society and give those myths prestige by dressing them in the snobbish and chic apparel of elitist *Wissenschaft*.

There is a second caution we should have regarding the social sciences. We are in an age which is still enamoured with scientific and measurable approaches to truth. The positivistic poisons still course in our veins. Yet the *humanum* we explore is a *mysterium tremendum et fascinans* and some of our deepest appreciations of it are at the mystical, precordial depths of contemplation. It is for this reason that I stress the role of *Gemüt*, or affectivity, and creative imagination in ethics. A rationalistic ethic downplays the need for these faculties and constricts ethics to the realms of speculative reason, principles and language. Ethicists of such a stripe are easy prey to a quantitative bias. We do not come embarrassed to our partnership with the social scientists. They have a lot to learn from us. Neither do we come, however, to enlist them as the latest recruits in our stable of *ancillae*. Each of us knows "in part," to cite St. Paul's masterful epistemological insight. We come together, therefore, with modesty.

Third, it is to be remembered that we are all "valuing animals," in Nietzsche's phrase. This includes the social scientist. The term "value-free" science came into philosophical vocabulary in the second half of the nineteenth century. It was created, as Eric Voegelin says "through the positivistic conceit that only propositions concerning facts of the phenomenal world were 'objective,' while judgments concerning the right order of soul and society were 'subjective.'" ⁵⁰ This poisonous fog has still not entirely blown out to sea. There is still the illusion of freedom from value commitments that attaches to science. This means that social scientists who in their own way explore the *humanum* will wax norma-

⁵⁰E. Voegelin, *The New Science of Politics* (Chicago: University of Chicago Press, 1966), p. 11.

tive without the benefit of explicated normative ethical theory. The danger here is that particular value choices may be ushered in under the guise of untainted objectivity.

4. *The Mysticalization of Sex*

The next point relates to a tendency toward mysticalization of sex that is rather broadly present today and is also visible in the report. In the past we seemed to be locked into the contradictory position of saying: "Sex is dirty; save it for someone you love!" In rediscovering the goodness of sex, we must again beware the pendular reaction. I am uneasy when I read in the report: "Sexual intercourse is an expression of a person's whole being, the deepest core of one's personality."⁵¹ Even in a good marriage, sexual intercourse will not always be all of that. I am also uneasy when I read: "Sex is seen as a force that permeates, influences, and affects every act of a person's being at every moment of existence. It is not operative in one restricted area of life but is rather at the core and center of our total life-response."⁵² I would prefer to say not that sex permeates personality, but that personality permeates sex in persons, and that that is precisely why it is difficult to limit sex to its recreational dimensions. It is for this reason that merely sexual interest is disruptive since sex between persons means more than sex. Sex in humans is permeated by personality, with all of personality's manifold and insistent needs.

5. *Contextualized Moral Principles*

The report raises the issue of how contextualized moral principles should be. The report has been criticized widely for using creative and integrative and its septad of middle axioms to regulate sexual behavior. The charge is that these criteria are not sex-specific; they could apply to any form of human activity from the practice of medicine to the playing of cribbage.

My reaction here is mixed. On the one hand, the report on this point relates well to older theological teaching on the connection of the virtues. A person cannot be sexually responsible if he is bad in every other way. The rapacious, aggressive person will not be likely to blossom edifyingly in the sexual encounter. There are, therefore, good reasons to bring in the kinds of more generic, non-sex-specific principles as the report does.⁵³

On the other hand I find interesting the resolute insistence on specifically sexual principles to treat sexual behavior. It is interesting because the same insistence is not found elsewhere. For example, in treating violence as a means for social change, we have regularly used principles such as proportionality and discrimination (or the limitation of

⁵¹ Kosnik *et al.*, p. 167. But for a contrary emphasis, see *ibid.*, p. 157.

⁵² Kosnik *et al.*, p. 81.

⁵³ My teaching assistant Robert Breese defends the report in this regard by introducing the category of "story" and shows how sexual morality will relate to one's overall story and moral posture.

harm) which could also be used in business ethics and in marriage and anywhere where power operates violently or not. These principles are not violence-specific and that has not bothered us. I think it should.

The methodological point I would urge here is this: we should look for principles that derive from *what* we are treating. Other more generic principles should also be employed for the reasons just mentioned, but our analysis is less likely to go astray if we seek to derive our basic generalizations from the particular and specific behavioral zone we are studying. This would help us to avoid the pitfalls between an abstract essentialism and a nominalistic particularism. In other words, we are not looking for an entelechy that can be intuitively perceived and which encapsulates the quintessential moral meaning of one form of behavior for all times and cultures. Neither would we indulge in a Sartrean actualism which would give to a situation only the meaning the participants bring to it. The quest for contextualized principles is a hedge against both extremes.

Strange as it may seem, then, I believe our ethics of violence can profit from this debate on *Human Sexuality*—and I am not imposing a sick joke. If the kind of insistence on sex-specific principles found in this sexual debate were applied to violence, we would come up with principles that would make violence more difficult to justify. If we noted that by its nature violence makes post-violence community-building more difficult, that it is addictive, that it minimizes the conditions for rationality and creative imagination, that it is inherently escalatory, and tends to bypass the needs for social and cultural restructuring, that it unleashes primitive vindictive instincts, etc. some principles will occur to us that would make the usual just war principles seem bland and permissive.⁵⁴

6. *Neo-Probabilism*

Finally, I would appeal on the occasion of this book for a return to probabilism, or rather neo-probabilism since I believe the reaction to the book has evoked a wide wave of what could be called neo-mitigated-tutorism. It has also provoked explicit attacks on the achievements of the debate on the moral systems and of probabilism in particular. For example, one writer in this debate has disparagingly referred to probabilism as "that extrinsic legalistic probabilism of the 17th and 18th centuries when authors were counted to affirm that some activity was safe in practice."⁵⁵

Probabilism, like all good things, was abused, but the theological achievement that it represents was significant and, until we see how it relates to the charismatic theology of Paul and John and the concept of the moral inspiration of the Holy Spirit in Augustine and St. Thomas Aquinas, it has not been given its theological due. Another reason for bringing probabilism down from the Catholic attic is that after Vatican

⁵⁴I develop these ideas in *Death By Choice* (New York: Doubleday, 1974; Schocken Books, 1975), pp. 209-16.

⁵⁵F. X. Meehan, "Love and Sexuality in Catholic Tradition," *America* 137 (1977), 234.

II's recognition of the truly ecclesial quality of Protestant Christian churches, neo-probabilism could be the test of ecumenism. Is our ecumenism merely ceremonial or can we really begin to take Protestant moral views into account in discussing liceity in doubtful matters? The older probabilism did not even face such a question.

With all the calls for a return to the Catholic tradition that were levelled by critics of the report, it is ironic that no one congratulated the authors for bringing probabilism back into Catholic ethical discourse. The triumph of probabilism in the Church was an achievement of many of our long-suffering theological forebears and we do well to harken back to their work. Let me briefly repeat what probabilism is all about. Probabilism arose, and finally gained prominence over competing systems, as a way of solving practical doubt about the liceity of some kind of behavior. In practice, it confronted a situation in which a rigorous consensus claiming the immorality of certain behavior was challenged. The question was: at what point does the liberty-favoring opinion attain such respectability in the forum of conscience that a person could follow it in good faith? Those who said that even frivolous reasons would justify departure from rigorous orthodoxy were condemned as laxists by Popes Innocent XI and Alexander VII. At the other extreme were the absolute tutorists who taught that you could never follow the liberal opinion unless it was strictly certain. Even being most probable (*probilissima*) was not enough. In graph form the situation was this:

A

/ B

A represents the dominant rigorous opinion claiming that certain activity could never be moral. B represents the liberal dissent. Laxism claimed that the most tenuous B would override A. Absolute tutorism claimed that until B replaced A and was beyond challenge, it could not be followed. The Jansenists found absolute tutorism attractive, but Alexander VIII did not, and he condemned it on December 7, 1690. Thus between the two banned extremes of laxism and absolute tutorism, the Catholic debate raged with probabilism gradually becoming dominant.

Probabilism proceeded from the twin insights that a doubtful obligation does not bind as though it were certain, and that where there is doubt there is freedom. It held that a solidly probable opinion could be followed even though more probable opinions existed. To be solidly probable, a liberal opinion had to rest upon cogent though not conclusive reasons (intrinsic probability) or upon reliable authority (extrinsic probability). As Tanquerey puts it in his manual of moral theology, to be probable, an opinion could not be opposed to a "definition of the Church" or to certain reason and should retain its probability when compared with opposing arguments.⁵⁶ Since there is no "definition of the Church" regarding the issues disputed in *Human Sexuality*, and

⁵⁶ "... ei nec definitio Ecclesiae nec certa ratio adversetur. . . ." See A. Tanquerey, *Theologia Moralis Fundamentalis: De Virtutibus et Praeceptis*, Tomus secundus (Parisii: Declée et Socii, 1955), p. 293.

since furthermore it is clear that the Church does not have the competence to define such issues infallibly,⁵⁷ that condition cannot stand in the way of using probabilism.

Intrinsic probability, where one followed one's own lights to a solidly probable opinion, was not stressed in the history of probabilism, but it was presented as a possibility. Stress fell upon extrinsic probability where one found "five or six" moralists known for their "authority, learning, and prudence." Even one extraordinarily preeminent teacher alone could constitute probability. What this meant is that minority B on our graph became solidly probable through private insight or though the insight of five or six learned experts even though the enormous majority of theologians disagreed. Note well that the basis of probabilism is insight—one's own or that of reliable experts. Insight is an achievement of moral intelligence. It cannot be forbidden neither does it await permission to appear.

Note also that probabilism does not require a consensus or certitude. As Father Henry Davis writes, "when I act on the strength of a probable opinion, I am always conscious that though I am morally right in so acting, since I act prudently, nevertheless, the opinion of others who do not agree with me may be the true view of the case."⁵⁸ Obviously, the perennial debate will be between those who argue that the defenders of probability in a particular case are actually crypto-laxists and those who argue that the deniers of probability are disguised absolute tutorists.

Probabilism was a remarkable development, and represents a high point in Catholic moral thought. It recognized that the apparent safety of absolute tutorism was only apparent. The acceptance of such a rigorous position, as Father Tanquerey explained, would impose an impossible burden on the faithful contrary to the mind of the Gospel which promises that the yoke will be sweet and the burden light; it would thus increase sins, generate despair, and drive many from the practice of religion.⁵⁹ Those reasons and probabilism itself are still relevant today.

To dismiss probabilism as the legalistic bickerings of the sixteenth and seventeenth centuries, is theologically short-sighted. In the heyday of the debate, extravagant claims were made. Caramuel, who became known as the "prince of the laxists," taught that Adam and Eve used probabilism successfully to excuse themselves from many sins, until their wits and their probabilism failed them and they did fall. Vigorous efforts were made to trace the formal doctrine of probabilism to Augustine, Jerome, Ambrose, Gregory of Nazianzen, Basil and Thomas Aquinas. One need not become party to such adventures to insist on and argue how compatible probabilism is with deep Christian traditions. The

⁵⁷ See my "Moral Absolutes and the Magisterium," in which I argued that it is not meaningful to say that the Church is infallible in specific issues of morality in *Absolutes in Moral Theology?* ed. C. Curran (Washington, D.C.: Corpus Books, 1968).

⁵⁸ H. Davis, *Moral and Pastoral Theology* (London and New York: Sheed and Ward, 1949), Vol. 1, p. 107.

⁵⁹ See A. Tanquerey, *op. cit.*, p. 287.

early Church was remarkably sanguine about the presence of the illumining Spirit in the hearts of the faithful. As Vatican II says:

The Spirit dwells in the Church and in the hearts of the faithful as in a temple (cf. 1 Cor. 3:16; 6:19). In them He prays and bears witness to the fact that they are adopted sons (cf. Gal. 4:6; Rom. 8:15-16 and 26). The Spirit guides the Church into the fullness of truth (cf. Jn. 16:13) and gives her a unity of fellowship and service. He furnishes and directs her with various gifts, both hierarchical and charismatic, and adorns her with the fruits of His grace (cf. Eph. 4:11-12; 1 Cor. 12:4; Gal. 5:22).⁶⁰

The Church has shared the confidence of St. Paul when he said that the spiritual man "is able to judge the value of everything."⁶¹ Augustine and Thomas manifest in strong theological language this exuberant confidence in the presence in all Christians of the illumining Spirit of God. Augustine asked: "What are the laws of God written by God in our hearts but the very presence of the Holy Spirit?"⁶² And Thomas Aquinas, arguing that the new law is not anything written (including the New Testament), cites Jeremiah's promise that in the future testament God will put his law into the minds of his people and inscribe it on their hearts. In its primary meaning, then, the new law for Thomas is not the writings of biblical authors, church officers, or theologians, all of which are secondary, but the instructive grace of the Holy Spirit.⁶³

This, admittedly, is a heady doctrine which called for and did historically elicit a theology of the discernment of the Spirit. One must test one's claimed inspiration against all the witnesses to truth within the community. And yet this heady doctrine, with all of its perils, is not a private preserve of the current charismatic movement in the Church, but is rather *bona fide* mainstream Catholic thought. It is also, I believe, eminently congenial with the spirit of the debate that led to the championing of probabilism. The debate on probabilism in many ways seems a curious and stilted period piece, but it would be ungrateful and unconservative of us to reject this achievement of the Catholic tradition. And reject it, in effect, we did. Of course, it maintained its presence in the manuals but in practice it was rendered nugatory. This was done by simply ignoring the genuine possibility of intrinsic probability and by controlling the theological enterprise in such ways that any theologians favoring a liberal opinion that did not square with the contemporary Vatican view was quickly deemed neither learned nor prudent. Thus did extrinsic probability pass. And thus were the doors thrown open to a juridical positivism based on the hierarchical magisterium.

The neo-probabilism for which I call would have to be extended to include Protestant witnesses to moral truth. Vatican II said of Protestant Christians that "in some real way they are joined with us in the Holy Spirit, for to them also He gives His gifts and graces, and is thereby operative among them with His sanctifying power."⁶⁴ It becomes un-

⁶⁰W. Abbott, *op. cit.*, p. 17.

⁶¹1 Cor 2:15.

⁶²*De spiritu et littera*, C 21, *M.L.* 44,222.

⁶³"Et ideo dicendum est quod principaliter nova lex est lex indita, secundario autem est lex scripta," *Summa Theologica* I II q. 106, a. 1, *in corp.*

⁶⁴W. Abbott, *op. cit.*, p. 34.

thinkable, therefore, if these words mean anything, that we accept that solid probability could not also be achieved through the witness of Protestant Christians who are also subjects of the "gifts and graces" of our God. I submit that if that thought is unpalatable, our ecumenism is superficial and insincere.

A final word on this matter. Two things have emerged in the debate on *Human Sexuality*: one is a kind of newstyle mitigated tutorism and the other is age-old magisteriological fundamentalism that is a lingering Catholic nemesis. The new tutorism emerges subtly enough in that criticism of the report which stresses defensively that this report and its conclusions do not represent a consensus or a majority opinion of The Catholic Theological Society of America or of Catholic theologians in general. In old language this seems to say that the opinions are not *probabilissimae* and are therefore irrelevant. It may even imply that the opinions are not *stricte certae* and are therefore of no import—but this would be the absolute tutorism condemned so roundly by Alexander VIII. What this indicates to me is that the categories of the moral systems debate of the sixteenth and seventeenth centuries are reductively perennial and are not outdated tools of a localized and passé conflict.

Regarding the magisteriological fundamentalism which would bypass moral inquiry by appeal to the hierarchical magisterium and the notion of official truth, much has been said, and the problems here will not be met by what I can say in this brief format. I would only point out that by definition and not by permission, non-infallible teaching admits of dissent. As the Belgian bishops said in their statement on *Humanae vitae*: "Someone . . . who is competent in the matter under consideration and capable of forming a personal and well-founded judgment—which necessarily presupposes sufficient information—may, after a serious examination before God, come to other conclusions on certain points. In such a case he has the right to follow his conviction, provided that he remains sincerely disposed to continue his inquiry."⁶⁵ This merely reflects the common teaching of the manuals that a Catholic could have good reasons to withhold assent to the teachings of the ordinary magisterium.⁶⁶ It also reflects the tradition of probabilism.

As to the notion of official truth which is implied in the idea of "official teaching," there are some staggering problems here. The idea of official truth involves a contradiction of symbols. It is like speaking of a valid kiss or an orderly ecstasy or a circular trapezoid. Truth cannot be official; neither can teaching. This confuses the juridical and the epistemological orders. There can be a core of central beliefs that give meaning to a particular religious communion and I have argued

⁶⁵ Statement of the Belgian Hierarchy on *Humanae vitae*, quoted in the *National Catholic Reporter*, September 11, 1968. The bishops, of course, did point out the need to avoid "questioning the very principle of authority." Probabilism does not question that principle. Neither would an ecumenically enlarged neo-probabilism.

⁶⁶ See J. Komonchak, "Ordinary Papal Magisterium and Religious Assent," in C. Curran, ed., *Contraception: Authority and Dissent* (New York: Herder and Herder, 1969), pp. 101-26, and D. Maguire, "Moral Inquiry and Religious Assent," *ibid.*, pp. 127-48.

elsewhere that there is such a thing as a Christian moral credo and even a specifically Catholic ethic.⁶⁷ But the particular issues of *Human Sexuality* are not the specifying themes of Christian or Catholic existence. God has not given us an inflexible code by which to neatly measure our sexual orthodoxy. The discernment of orthodoxy and of moral truth is considerably more complex than that. The quest for an official ethics in sensitively disputed areas where serious and committed Christians differ is illusory and factionalizing. Revelation cannot be conceived as a substitute for moral discernment. Yet many of the laments about the abandonment of the traditional and official teaching of the Church imply nothing less.

Also I would say that appeals to the official teaching of the Church issued to end debate on these disputed issues of sexual ethics are at odds with contemporary ecumenical theology. What they are saying is that Protestant Christians (along with dissenting Catholics) do not represent the voice of the illumining Spirit if they dissent with the non-infallible teaching of the hierarchical magisterium. I would have to ask those who say this how they know that, or, what is the deeper question, how they could know that.

As a final word on this I would say magisteriological fundamentalism undermines probabilism and common sense. In support I quote again Father Davis:

In its ultimate analysis, probabilism is common sense; it is a system used in practical doubt by the majority of mankind. People rightly say: I am not going to debate all day before acting in doubtful matters; there must be some very obvious way of making up my mind. At all events, if I cannot make up my mind for myself, I will act as some good people act, though many other good people might disapprove. That practical solution of doubt is common sense, and it is probabilism.⁶⁸

In conclusion I would say that *Human Sexuality* is a serious and courageous work. The authors chose not just to offer theoretical vignettes and platitudes, but to touch upon the specific issues. Had they chosen to stay general and edifying their work would have created no stir but merely been filed away as another theologically harmless and unhelpful statement. But they dared to face issues which most Catholic moralists have not faced with candor. In so doing, they have smoked us all out and have guaranteed a more substantive and helpful discussion of human sexuality than we have had in years. Because of their work the debate they have stimulated also promises to be an event in theory. What committee of The Catholic Theological Society of America has ever done more?

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⁶⁷ See D. Maguire, "Credal Conscience: A Question of Moral Orthodoxy," *Anglican Theological Review*, Supplementary Series 6 (1976), 37-54, and, "Catholic Ethics with an American Accent," in *America in Theological Perspective*, ed. by Thomas M. McFadden (New York: Seabury Press, 1976), pp. 13-36.

⁶⁸ H. Davis, *op. cit.*, p. 93.