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EXPERIENCE AND THE DEVELOPMENT OF MORAL DOCTRINE

In his influential *Consilience*, E. O. Wilson has a chapter entitled "Ethics and Religion" which begins with this declaration: "Either ethical precepts, such as justice and human rights, are independent of human experience or else they are human inventions."[1] I hold that this simple dichotomy is false. It is false because experience is not self-verifying. Raw experience is chaos. There are billions of events which could count as human experience. Which events count? Each event is good or bad and leads to further results, good or bad. Who decides the goodness or badness? Billions of persons have the billions of experiences. Whose experience is significant? None of these questions is answered by experience alone. The dynamisms of human nature, including the thirst for truth transcending material existence, provide the criteria by which everyone judges experience.

In any community existing over time there is an additional factor:

> The past experience revived in the meaning,
> Is not the experience of one life only
> But of many generations[2]

In the community that is the church all its generations are included, and in assessing the experience prayer has a part, and the guidance of the Holy Spirit is assured. In this community it is ultimately the church that judges what experience counts, whose experience is significant, what experience is good and what experience is bad. It is the point of this paper that, without experience for the church to select, preserve and judge, moral doctrine does not develop, and that with experience moral doctrine does.

I turn to the place of experience in the development of particular moral doctrines.

ADULTERY AND BIGAMY

That adultery is a serious sin is established by the Mosaic commandments and confirmed directly by the Lord.[3] Bigamy is a variant of adultery where the sin is treated as compounded by taking an institutional form. It is difficult to think of a moral law as to which the teaching of the church has been so constant,

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[1]Edward O. Wilson, *Consilience, The Unity of Knowledge* 260 (1998).
[2]T. S. Eliot, "The Dry Salvages," sec. II, *Four Quartets* (1942).
[3]Exod. 20.14; Matt. 5:27-28.

so universal, so uncompromising. Yet the teaching on adultery and bigamy has developed as the teaching on marriage has developed. Adultery or bigamy cannot occur unless there is an existing marriage that is violated; and what constitutes a marriage has changed over the centuries. As the commandment against the sin is formulated in Scripture, a marriage between two Jews is a marriage in which God has joined husband and wife; no exception to its exigencies is envisaged. Today, as the result of nearly twenty centuries of development, any nonsacramental union may be dissolved under given circumstances by one of the parties who converts and may be dissolved under other circumstances by papal authority in aid of the faith of a third party, a Catholic living in adultery with one of the partners to the original marriage. The apparently indissoluble union does not remain if one of these options is availed of; the sins of adultery and bigamy cease to occur.[4] What experience has produced these mutations of what constitutes a sin?

As this question was not explicitly posed in the course of the development, an answer cannot be demonstrative, but it is reasonable to suppose that Paul in writing the Corinthians had the experience of a hard case before his eyes. He is dealing with a marriage that could have been between Jews or Greeks where the nonconvert leaves the convert after conversion. He declares, "Neither a brother nor a sister is a slave in such matters," so a Jewish wife, converted to Christianity, is no longer bound if her husband leaves her.[5] The strong characterization of the abandoned convert's position – that of a slave – suggests the depth of Paul's empathy. At least vicariously he has shared the experience; and, as he carefully distinguishes what he says from what the Lord says, it may well be inferred that it is the experience he has encountered that has shaped his response.

Augustine was not so empathetic; he thought Paul sanctioned separation, not remarriage; but as separation had already occurred in the case addressed, on Augustine's interpretation Paul's advice was otiose.[6] Augustine was opposed by another fourth century writer, now believed to have been Isaac, a Roman lawyer and convert from Judaism. Isaac understood Paul to authorize remarriage by the convert; the nonconvert's "contempt of the Creator" had operated to dissolve the former union.[7] Isaac's authorship disappeared due to his difficulties with Pope Damasus on other matters, but his interpretation carried the day in the Middle Ages. It was an interpretation where again it may be suspected that the personal

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[4]For the development, see John T. Noonan, Jr., *Power To Dissolve: Lawyers and Marriages in the Courts of the Roman Curia*, 341-92 (1972).

[5]1 Cor. 7:12-16.

[6]Augustine, *De sermone Domini in monte*, ed. Almut Mutzenbechen, *Corpus Christianorum*, Latin series, vol. 35, 1.16.48 (1967).

[7]*Commentarium in Primam Epistolam B. Pauli ad Corinthios*, 7.13, printed in *Patrologia latina* 17, 219, as an appendix to the works of St. Ambrose. On the true author, see *Power to Dissolve*, 454n.3.

observation of conversion from Judaism led to a different conclusion from Augustine's rigor.

Paul's text as interpreted by Isaac (an interpretation usually attributed to Ambrose or Gregory the Great) became standard in the canon law with Gratian's collection in the 1140s.[8] No obvious personal experience played a part in its appropriation by the canonists. Exactly how dissolution of the first marriage worked was a subject of analysis and debate by twelfth- and thirteenth-century canonists and theologians. It may be guessed that greater interaction with Jews and the new interaction with Moslems in the Holy Land led to greater appreciation of what became identified as the Pauline privilege. But it was only as a result of the experience of missionaries in the New World after 1500 that the privilege underwent substantial development.

Missionaries encountered two relevant situations: Indian chiefs who were polygamists but ready to convert if not compelled to keep their first wife, and African slaves, brought to the Americas without their spouses and ready to be good converts if they could remarry. The Augustinian theologian, Alfonso de la Veracruz, in 1556 found marriage cases "very frequent" in Mexico, so frequent as to be depressing; but he hoped to help "the new men, newly discovered, of the New World."[9] The missionaries often let a chief stay with the spouse he was baptized with, but the missionaries were then tormented by scruples that the chief had a first wife he should have returned to. In slow but clear response to these doubts, Pius V in 1567 issued *Romani pontificis* declaring valid and lawful the union of the Indian with the wife he was baptized with; any need to show abandonment or contempt of the Creator by the first spouse was eliminated.[10] In 1585, in response to Jesuit missionaries, Gregory XIII issued *Populis et nationibus* asserting the papal power of dissolving the marriage of unbelievers "if necessity urges." The power was delegated to Jesuit confessors, parish priests, and ordinaries in Angola, Ethiopia, Brazil, "and other parts of the Indies," to be exercised on behalf of slaves who were unable to communicate with their first spouses but who wanted to convert and remarry.[11] The dissolutions effected by papal decree turned adultery and bigamy into Christian marriages. The dissolutions, as explained by the seventeenth century Jesuit canonist Tomás Sanchez, were "by virtue of the privilege of Christ, who granted it [the privilege] in favor of the faith."[12] Nonetheless, *Romani pontificis* and *Populis et nationibus*

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[8]Gratian, *Concordia discordantium canonum*, dictum post c.2, C.28, q.1, *Corpus juris canonica*, ed. Emil Friedberg (1878).

[9]Alfonso de la Veracruz, *Speculum coniugiorum*, preface (1556).

[10]Pius V, *Romani pontificis*, 2 August 1571, now published as Document VII of the appendix to the *Codex juris canonica* (1918).

[11]Gregory XIII, *Populis et nationibus*, January 25, 1585, now published as Document VIII of the appendix to *the Codex juris canonica*.

[12]Tomás Sanchez, *De sancto matrimonio sacramento* 7.74.10.

were not made part of the public law of the church. Their full significance was to be appreciated only in this century.

The revival and expansion of these texts and Sanchez's interpretation was owed largely to a canonist, Pietro Gasparri, who drew attention to them in 1891 in his book on marriage and in 1917 succeeded in inserting a cryptic citation of them in the new Code of Canon Law.[13] Thereafter the development was rapid. In 1924, in a case from Helena, Montana, Pius XI dissolved the marriage of an Episcopalian to an unbaptized man in order to permit a valid Catholic marriage between the man, now divorced, and a Catholic.[14] In 1934, "Norms for the Dissolution of Marriage in Favor of the Faith by the Supreme Authority of the Sovereign Pontiff" were drawn up by the Holy Office, approved by Pius XI, and sent in secret to the bishops: a regular process was now in place for dissolving nonsacramental marriages, usually after a civil divorce and where no scandal or wonder would be caused.[15] In 1946 Pius XII, in a case from Monterey–Fresno, California, dissolved a marriage of a Catholic who had been dispensed to marry an unbaptized person and had been married before a priest; this couple had divorced; the unbaptized party now desired to marry another Catholic; the dissolution of the first marriage was in favor of the faith of the second Catholic spouse. Indissolubility of marriage had come to depend on the baptismal status of the spouses.[16]

Identified as the Petrine privilege in distinction from the old Pauline privilege, the papal power was used by John XXIII in a case from Djarkarta in 1959: Lo Ma, an unbaptized Chinese woman, was married in China to Phan, also unbaptized. Phan left her and came to Indonesia. When the Japanese invasion occurred, Dorothy, a baptized Catholic, like other Indonesian girls saw marriage as an urgent necessity. She married Phan. Two years later she discovered the existence of his first wife, Lo Ma. Now Dorothy was mired in adultery and bigamy. She could not receive the sacraments. Phan had no desire to convert, so the Pauline privilege was of no use. Dorothy's case being presented to the Pope, John XXIII dissolved the marriage of Phan and Lo Ma in favor of the faith of Dorothy. The natural indissolubility of marriage was, in the most ample way possible, subordinated to the reception of the sacraments and the elimination of sin on the part of a Catholic.[17]

This development of 68 years from Gasparri's book in 1891 to *Djarkarta 1959*, can be understood at one level as reflecting the experience of canonists in the Roman curia, like the missionaries in the New World, becoming acquainted

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[13]See *Power to Dissolve*, 366-68.

[14]The decision is translated in T. Lincoln Bouscaren, *The Canon Law Digest* 553-54 (1958).

[15]*Power To Dissolve*, 375-77.

[16]*The Canon Law Digest* IV, 349-50.

[17]René Leguerrier, "Recent Practice of the Holy See in Regard to the Dissolution of Marriages between Non-Baptized Persons without Conversion," *The Jurist* 25 (1965) 456.

with the multitude of marriage cases created by unbending application of the old rules. The men in the curia, benevolently responding to urgent necessities, had come up with a solution in which the term "divorce" was never used although the predicate of the curial practice was civil divorce. The result was that a lawful, valid, consummated marriage, celebrated with proper dispensation before a Catholic priest, could be set aside to eliminate a sin on the part of a Catholic not a party to the dissolved marriage. The changes can be seen, more broadly, as reflecting the experience of Catholics increasingly marrying the unbaptized and civil divorce becoming widespread.

The present state of the law reflects tension with possible doctrinal implications. A canon publicly regulating the process was proposed for the new Code of Canon Law but was withdrawn at the last moment.[18] The procedure is still governed by rules that are not officially public, issued under Paul VI in 1973.[19] A bishop asking for a dissolution by virtue of the privilege of the faith must report "if any danger of scandal, wonderment, or calumnious interpretation is to be feared among Catholics and non-Catholics as though in practice the church favored the use of divorce."[20] Plainly the church does not favor the use of divorce, but without a custom of civil divorce the process of papal dissolution of unbelievers' marriages would not work.[21]

USURY

The development of the prohibition of usury and its subsequent substantial modification reflect different experiences. A scriptural basis did exist in strong injunctions against Jews taking usury of Jews.[22] In the patristic period there were plenty of instances of interest at high rates whose exaction appeared offensive to Christian moralists. But a settled, systematic, legal opposition to usury came only in the Middle Ages. The Second Lateran Council in 1139 prohibited usury and declared it a sin reprobated by both the Old and New Testaments.[23] The Third Lateran Council in 1179 repeated the scriptural condemnation, noting that usury was strong in many places, so that "many, leaving other businesses, exercise usury as if it were lawful."[24] Urban III in 1186 cited the words of Christ reported in Luke 6:35, "Lend freely, hoping nothing thereby," and interpreted them as a

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[18]Commentary on Canon 1150, *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden, Thomas J. Green, and Donald E. Heinstschel, 819 (1985).

[19]*The Canon Law Digest*, VII, 1177-85 (1978).

[20]Idem, 1183.

[21]For cases reported where civil divorce precedes the dissolution, see, e.g., *The Canon Law Digest* IX (1982) (from Salina, Kansas); and ibid., XI, 272-76 1991).

[22]Psalm 14:5; Ex:22, 25; Lev. 25:35-37; Ez. 18:5-9; cf. Luke 6:35.

[23]Second Council of the Lateran, *Porro detestabilem, Historie des conciles*, ed. Karl Joseph von Hefele, V, part 1, 729.

[24]Third Council of the Lateran, *Quia in omnibus* in ibid., V, part 2, 1105.

commandment.[25] By this time usury was understood as "profit on a loan" or "anything added to principal."[26] Usury was located in loan contracts, although, by extension, sales on credit and mortgages fell under the prohibition.[27] Ordinary sales and partnerships in which one party invested capital, the other labor were not governed by the ban.[28] Usury was understood as a sin against justice, the taking of a person's property against his will even though the debtor, coerced by necessity, consented to the payment.[29] As property acquired unjustly, usury was subject to the obligation of restitution if the sin were to be forgiven.[30]

The experience that entered into the energetic insistence on the usury prohibition was that of both theologians and canonists interested in systematizing the patristic inheritance; the precise form of the prohibition reflected the work of lawyers.[31] The emphasis on intention, so that the very intention to profit from a loan was seen as mortally sinful, incorporated the sensitivity of theologians to mental states.[32] From the zeal with which the prohibition was pressed, one may infer that it found popular resonance. In agricultural communities, dependent on weather for good crops, the lender who makes money rain or shine is not a popular figure.[33] In the commercial centers of Italy it may be doubted that the prohibition was universally applauded. Certainly by 1425 when Bernardino of Siena indicted most of his city for cooperation in usury or for failing to make restitution of gifts and inheritances received from usurers, he encountered people who told him that the commandment on usury was impossible and that without usury the city could not exist.[34]

No break in the wall of theological condemnation appeared, however, before the sixteenth century. Then theologians at the new university of Tübingen came to defend the addition of contracts of insurance to the contract of partnership, a way of creating an extension of credit functionally like a loan at interest.[35] Other approaches were devised by ingenious theologians – to permit the sale of annuities based on labor, to permit the sale of foreign exchange at a profit, to permit interest understood as compensation to the lender for profit the lender

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[25]Urban III, *Consuluit, Decretales Gregorii IX*, V, 19, 10, *Corpus juris canonici*.

[26]Gratian, *Concordia,* C.14, Q.4, dictum post c.x.; John T. Noonan, Jr., *The Scholastic Analysis of Usury* 31-32 (1957).

[27]Alexander III, *In civitate*, *Decretales*, V, 1, 6.

[28]Noonan, *The Scholastic Analysis*, 133-53.

[29]E.g, William of Auxerre, *Summa aurea in quatuor libros sententiarum* III, 21, Q.1 (1500).

[30]Peter Lombard, *Sententiarum libri quatuor*, III, 37, 3.12

[31]Noonan, *The Scholastic Analysis*, 199-201.

[32]Raimundo of Peñafort, *Summa casuum conscientiae*, 2, 7, 13.

[33]*The Scholastic Analysis*, 1,13.

[34]Bernardino. *De contractibus*, Sermon 43, 3, 1, *De evangelio aeterno*, *Opera omnia*, vol. 2 (1745).

[35]*The Scholastic Analysis* 206-11.

could have realized in lawful investments. A series of papal bulls rejected the innovations. The views of the ingenious theologians prevailed.[36] By the end of the seventeenth century the theologians were even arguing that the risk inherent in lending was in itself a ground for taking interest; the concept of a gratuitous loan contract was challenged.[37] By 1745 when Benedict XIV issued the encyclical *Vix pervenit* repeating the old rule, so many exceptions were theologically defended that little of the rule remained to enforce.[38]

In the nineteenth century when confessors inquired of Rome what to do about penitents confessing to making money in lending the confessors were instructed that the penitents were not to be disturbed.[39] The prohibition, as it had been framed in the twelfth century, was dead. The experience that contributed to its burial was the experience of commerce in Europe, the experience of businessmen, the experience of bankers, the experience of governments communicated to the theologians and listened to by them, and, as to the risk inherent in lending, the specific pleas of missionaries to China. The old prohibition, presented as rooted in natural law, was found to be out of touch with economic reality. The merchants, the lenders and their lawyers, the missionaries, put to sympathetic theologians exceptions which were designed with casuistic ingenuity. The customs of the market and of public finance prevailed.

THE DEATH PENALTY

Capital punishment was an institution of Roman law that the early Christians accepted as an ordinary mechanism of civil society. Occasionally, Christians (e.g., Lactantius) taught that all killing was wrong.[40] More often, bishops such as Ambrose rebuked the official authors of particular public executions or recommended mercy in particular cases.[41] No established, coherent, fundamental opposition to the institution developed. At the beginning of the fifth century, Innocent I could say, "On this point nothing has been handed down to us."[42] The Christian emperors (Theodosius, Justinian), codifying the law, freely incorporated the death penalty.[43] The Gospel texts on forgiveness and love of neighbor had not been made a barrier against such punishment, nor had the example of enormous official error in the execution of Jesus provided a deterrent. The Old Testament,

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[36]Ibid., 220-30, 237-44, 317-33.

[37]Ibid., 286-93.

[38]Ibid., 356-62.

[39]Ibid., 378-88.

[40]See James J. Megivern, *The Death Penalty: An Historical and Theological Survey*, 25-26 (1997).

[41]Ibid., 31.

[42]Ibid., 33.

[43]Ibid., 27-28.

with thirty-six capital crimes including blasphemy, stood as a ready repository of authority affording divine approbation of the practice.[44]

The medieval church got more deeply into its support as death became the punishment for heretics. *Ad abolendam*, issued by Lucius III in 1184, provided that the unrepentant or lapsed heretic was to be "left to the judgment of the secular power to be punished by punishment of death."[45] The fiction that priests—bound by canon law not to shed blood—did not shed blood in turning heretics over to the secular power was accepted without cavil by the canonists. Writing against this legal background, Thomas Aquinas's defense of capital punishment in general and of turning the lapsed over to the state to be killed sealed the official position with the prestige of a great theologian.[46]

The course was set for centuries. Spectacular examples of error – Jan Hus, Joan of Arc, Girolamo Savonarola – did not shake confidence in this way of fortifying the faith. The outbreak of revolt against the papacy in the sixteenth century only enlarged the number of executions. In the bull *Exsurge Domine*, Leo X condemned proposition 35 of Martin Luther, "It is against the will of the Spirit to burn heretics."[47] The Roman Catechism and the great Counter-Reformation theologians endorsed the practice. Suarez in *De fide theologica*, Disputation 23, asked, "Can the church justly punish the heretics with the punishment of death?" and confidently answered affirmatively.[48] There was now not even a fiction: it was the church that punished capitally. In the papal states, the death penalty was an ordinary part of criminal law enforcement, used against brigands and heretics alike.[49]

In our century the most eloquent abolitionists have been Albert Camus and Arthur Koestler.[50] In reaction to the slaughter of World War II most of the European countries got rid of the institution (only Portugal had the honor of anticipating them by abolition in 1857).[51] The church began to catch up with the governments. In 1995 John Paul II issued the encyclical *Evangelium vitae* and taught that instances where the defense of society could only be accomplished by the death penalty were "very rare, if in fact they occur at all". Speaking in St. Louis in January 1999, the Pope characterized the death penalty as "both cruel and unnecessary." If not necessary, if without justification, state executions are, by implication, a species of homicide, an attack on the sacredness of human life.

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[44]Ibid., 10.

[45]Lucius III, *Ad abolendam*, *Decretales* 5, 7, 9.

[46]Thomas Aquinas, *Summa theologiae* 2-2, q. 64, art. 2 (capital punishment); 2-2, q. 11, art. 3 (relapsed heretics).

[47]Megivern, *The Death Penalty*, 141.

[48]Francisco Suarez, *De fide theologica*, Disp.23, *Opera omnia*, vol. 12 (1858).

[49]Megivern, *The Death Penalty*, 152-60.

[50]Albert Camus, "Reflections on the Guillotine," trans. Justin O'Brien, 175-234 (1961); Arthur Koestler, *Reflections on Hanging* (1957).

[51]Megivern, *The Death Penalty*, 353-54 (Portugal); 371 (France in 1981).

The Pope did not draw this explicit conclusion; he asked governors for mercy, he did not categorize them as murderers. The moral rule was still in flux.[52]

STATE PUNISHMENT OF HERETICS

The suppression of a heresy by state force became a topic for Christians only when Constantine became emperor. Lactantius had expressed the strong opinion held by persecuted Christians that religious persecution was "against the law of humankind, against all established rightness."[53] But Lactantius's pupil, Constantine, believed in enforcing Christian orthodoxy, although not in compelling the conversion of Jews or pagans.[54] By the end of the fourth century a variety of religious groups regarded as heretical, such as the Montanists, were proscribed by law; and a religion that was not a variant of Christianity but a rival, Manicheanism, was subject to state-imposed disabilities.[55] On the basis of the New Testament and on the basis of his own observations Augustine defended the use of corporal punishment to return the Donatists of Africa to Catholic orthodoxy.[56]

In the twelfth century the secular penalty for lapsed heretics was, as already noted, racheted up to death. To the argument that the Gospel required forgiveness and taught that God was always ready to forgive, Thomas Aquinas replied, "God knows who are truly returning. But the church cannot imitate this. She presumes that they are not truly returning who, after they have been received back, have again relapsed."[57] Armed with this presumption, clerical judges turned heretics over to the secular power to be killed. Although the death penalty for the lapsed was not the rule after the eighteenth century, the church did not give up its position that a good Christian ruler would, if he could, suppress heresy by force. As recently as 1940 John A. Ryan, known as a liberal in American politics ("Right Reverend New Dealer") in his *Catholic Principles of Politics* defended the ideal state's duty to persecute.[58] The doctrine was so entrenched that when in 1948 John Courtney Murray addressed the nascent Catholic Theological Society of America on the topic "Governmental Repression of Heresy" and concluded that in principle repression was not required, he was attacked by

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[52]John Paul II, *Evangelium vitae*, 25 March 1995, n.56, *Acta apostolicae sedis* (1995); United States Catholic Conference Administrative Board, "A Good Friday Appeal to End the Death Penalty," *Origins* 28 (8 April 1999): 727 (quoting John Paul II in St. Louis).

[53]Lactantius, *Divinarum institutionum libri*, 5.20, *Patrologia latina* 6, 614.

[54]John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom*, 46 (1998).

[55]Ibid., 45-46.

[56]Augustine to Boniface, Letter 185, c. 20, *Patrologia latina* 33:802.

[57]Thomas Aquinas, *Summa theologiae*, 2-2, q. 11, art. 3.

[58]John A. Ryan and Francis J. Boland, *Catholic Principles of Politics*, 319 (1948).

traditionalist theologians and ultimately forbidden by his Jesuit superiors to write at all on the subject.[59]

Murray's rehabilitation came with the Second Vatican Council when religious liberty became a topic on the council's agenda. In fierce combat that lasted all four years of the council, a majority of the bishops, led by the American hierarchy, advanced the proposition that the right to religious freedom was the right of every human person.[60] The opposition, centered in crucial conservatives, saw this proposition as a repudiation of sixteen hundred years of teaching. As Archbishop Marcel Lefebvre starkly phrased the position of the opponents, "If what is being taught is true, then what the Church has taught is false."[61] To the contrary, Cardinal Karol Wojtyla, the future John Paul II, asserted: "In the very fact of Revelation is included the true and deep doctrine of religious liberty."[62] Ultimately, by a vote of 2,308 to 70, the council adopted *Dignitatis humanae personae* declaring a right to religious belief free of coercion by any human power to be a right "founded in the very dignity of the human person as it is known by the revealed word of God and by reason itself."[63]

The experience that made possible such near unanimity in the adoption of the new position was the Europeans' experience of unfreedom under the totalitarian regimes of the Soviet Union and Germany, plus the Mediterranean bishops' wariness of Islamic intolerance. For those who had suffered religious persecution or had seen it in action, the assertion of freedom for everyone was a felt necessity. Then there was the positive experience of the Americans, observed and reported on by a stream of European observers from Tocqueville to Maritain. In the United States, religion, and in particular the Catholic church, had flourished. Who could refute the proof from the prosperity?[64]

SLAVERY

The right to religious freedom, wiping out the old teaching on the duty to suppress heresy, was ultimately the proclamation of the bishops of the church joined with the pope. In contrast, a change in the age-old teaching on slavery came to expression differently. Slavery was an institution uncriticized in the Hebrew Bible and a fixed institution of the Roman world in which Christianity appeared. Without questioning the legal structure, Paul instructed the slaves of Corinth to obey their masters.[65] The Christian emperors did not abolish the

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[59]*The Lustre of Our Country*, 26, 331-33.

[60]Ibid., 342-48.

[61]Ibid., 346.

[62]Ibid., 346.

[63]Second Council of the Vatican, *Dignitatis personae*, sec. 1, *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani Secundi* 4, 7.

[64]*The Lustre Of Our Country*, 333-36.

[65]1 Cor. 7.21; cf. Phlm. 11-19.

institution or agonize over leaving it in place. The church preached kindness and encouraged manumissions. But as Augustine put the prevailing view, Christ freed men from sin but "did not make men free from being slaves."[66] According to Bede, it was Gregory the Great's browsing in the slave market of Rome that led the pope to decide to send missionaries to England.[67] "That day's dear chance," as Hopkins later phrased it,[68] enlightened the pope on the possibility of evangelizing the English; it did not move him to denounce the trade that sent them as slaves to Rome.

No change in doctrine occurred in the Middle Ages even though chattel slavery markedly declined. Thomas Aquinas noted that no true justice held between master and slave because a slave "is something of the master."[69] With the apparent need for labor in the New World, all the Christian countries of Europe that had the opportunity embarked on supplying slaves from Africa. Theological reservations were confined to reformers like Las Casas, who objected to the Europeans' reducing the Indians to slavery. Bossuet, the great defender of constancy in Catholic teaching, taught that to condemn slavery would be "to condemn the Holy Spirit, who, by the mouth of St. Paul, orders slaves to remain in their state."[70] Alfonso de'Ligouri in his definitive *Theologia moralis* devoted only a single question to the subject. Under the heading "You shall not steal" he asked, "Can slaves captured in a just war lawfully escape to their homes?" Some authors said "No," their master held them as his property by a just title. The more common and more probable opinion was "Yes," the right of escape was implicit in the title; Justinian's *Institutes* supported this position. So, on the basis of Roman law, without mention of personal dignity, social responsibility, or the gospel, Alphonsus approved the institution of slavery with a single small qualification that escape from slavery was not theft from the owner.[71]

It was only in 1839 that Gregory XVI condemned the slave trade, yet not so comprehensively that the American bishops understood the condemnation to apply in the United States.[72] As late as 1866 the Holy Office ruled that the buying and selling of slaves was not contrary to natural law.[73] It was only as part

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[66]Augustine, *On Psalm 125*, 7, *Patrologia latina* 37, 1653.

[67]Bede, *Historia ecclestiastica gentis anglorum*, ed. G. H. Moberley, 2, 1.

[68]Gerard Manley Hopkins, "To what serves Mortal Beauty?" *Poems of Gerard Manley Hopkins* (1948) 109.

[69]Thomas Aquinas, *Summa theologiae* 2-2, q. 57, art. 4.

[70]Jacques Bossuet, *Advertissement sur les lettres du Ministre Jurieu, Oeuvres complètes* 3, 542.

[71]Alfonso de' Ligouri, *Theologia moralis*, ed. L. Gaudé, 3, 350 (1954).

[72]Gregory XVI, *In supremo Apostolatus, Acta*, 2, 388; John England, bishop of Charleston, wrote to Secretary of State John Forsyth on the condemnation's nonapplication to the domestic slave trade in the United States, England, *Works*, ed. I. A. Reynolds, 3, 115-19.

[73]Holy Office to the Vicar Apostolic of the Galle Tribe in Ethiopia, 20 June 1866,

of a general European revulsion against slave trading in Africa, that Leo XIII issued an unequivocal moral condemnation of human bondage.[74] The church's position is now reflected in John Paul II's inclusion in *Veritatis Splendor* of slavery as an instance of the intrinsically evil, as a violation of a universally valid negative precept, as a departure from an obligation binding "each and every individual, always, and in every circumstance."[75] In this vigorous assertion of the present understanding no effort was expended on explaining how this universal precept had been allowed to sleep for centuries.

THE IMPACT OF EXPERIENCE

Isolating and emphasizing the role of experience in making rules of morality, I do not mean to deny or to discount other factors, but I do mean to argue that specific events at specific times prompted the developments. The concreteness of the marriage cases demonstrates the point. They took place at definite dates over nineteen hundred years. They took place in Corinth, Rome, Mexico, Brazil, Montana, California, Indonesia. If these events had not taken place, every marriage would be treated as unbreakable as the Gospel texts appear to assume they are. Analogously, the usury rule was formed in response to the intellectual conditions and the economic conditions of Europe in the Middle Ages and was altered as both sets of conditions changed. Similarly, the death penalty came to seem odious as prisons rendered it unnecessary and as Europeans reacted to the killing in two world wars. Religious liberty as a right reflected the post-Reformation European experience of religious war, the recent European experience of totalitarian repression, and the positive American experience of religious freedom. Slavery was ended, government by government, in a period of about a hundred years; the moralists then responded.

THE EXPERIENCES THAT COUNTED

Whose experience counted in forming moral judgments within the church? Two broad levels of experience may be distinguished: that of the persons subject to or affected by the rules and that of the persons enunciating them. Categorized as adulterers and bigamists, the persons condemned by the rules on these topics do not appear to constitute a potent lobby. Viewed as persons desiring to be faithful Catholics although caught in matrimonial tangles, their cause proved irresistible. Lenders and borrowers both were affected by the usury rule; in the end the lenders' experience turned out to be decisive. In these instances of adultery and usury it was the experience of persons subjected to rules of the

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Collectanea S.C. de Propaganda Fide 1, 1293.

[74]Leo XIII, *Catholicae ecclesiae*, 20 November 1890, *Acta sanctae sedis*, 23, 257 (1890).

[75]John Paul II, *Veritatis splendor* (6 August 1993), *Acta apostolicae sedis* 85, 1198.

church that mediately led to development. In the instances of the death penalty, religious persecution and slavery, different dynamisms were at work. Those executed by the state had no voice, nor did slaves. Crusaders for reform grasped their plight by empathy and spoke for them. The first effective critic of the death penalty was an anticlerical eighteenth-century Italian, Cesare Beccaria.[76] In the nineteenth century its strongest critics were Alphonse Lamartine and Victor Hugo, as in the twentieth century they were Albert Camus and Arthur Koestler.[77] As to slavery, its first critics were Quakers and its effective nineteenth-century opponents were Congregationalists and Unitarians. In addition to these Protestant reformers, slavery was attacked by enlightened French opinion and abolished in the French colonies by the Revolution.[78] The first defenders of religious freedom were small pockets of the persecuted and individuals who had suffered persecution such as Roger Williams, Baruch Spinoza, and John Locke.[79] Religious freedom was not tried governmentally before the formation of the United States.[80] In short, the experience of those affected by the death penalty, the suppression of heresy, and slavery was articulated primarily by persons not part of the institutional church.

In all five instances of development, the experience of the affected had to be translated into the second level of experience, the experience of the decision makers, if a firm moral rule was to be enunciated by the church. At least since the twelfth century the decisionmakers have, subject to the supervision of the pope and bishops, been an identifiable body of theologians and canonists. Normally they have worked within a definite set of tropes and topics, with the result that blind spots have occurred and often been perpetuated. Digesting the facts slowly, these moralists did respond to the difficulties created by unbending rules on marriage and on lending. A distinctly slower response by them was perceptible as to slavery, the suppression of heresy by state force, and the death penalty. Ligouri's casual treatment of slavery at a time when it was a worldwide phenomenon is all too typical of this inbreeding.

CRITERIA

What have been the criteria for the decisionmakers in finding certain experiences significant? The decisive criterion in the development on adultery and bigamy was the faith life of a Catholic spouse. The decisive criterion in the development on usury was justice to the lender. The criterion effecting development as to slavery, the suppression of heresy, and the death penalty has been the

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[76]Megivern, *The Death Penalty* 215-19.

[77]Ibid., 236-38.

[78]See David Brion Davis, *The Problem of Slavery in Western Culture*, 291, 333, 401 (1966).

[79]*The Lustre of Our Country*, 55-56.

[80]Ibid., 90-91.

dignity of the human person bearing the image of God and destined to an end with God. It is apparent that experience has been necessary to arrive at the criteria; otherwise, for example, the dignity of the human person would have made slavery unthinkable as an acceptable institution. But there cannot be an endless regress into further experience; some insights are primordial, and these are provided or confirmed by the words and the conduct of Christ. The revelation is not added to but what it requires is made evident in experience. As *Dei Verbum* tersely put it: "insight grows into the realities as into the words that have been handed on."[81]

As insight has grown, the precept protecting monogamous marriage has undergone substantial alteration. The Gospel text once construed to control lending has become a counsel of generosity. Two practices accepted by Christians as social institutions have been repudiated, and a third is on the brink of moral condemnation. These developments would not have occurred without challenges to convention, without argument, without conflict, without prayer, without the assistance of the Holy Spirit, and without connection with the core constituents of Christianity. Experience, raw experience, has not carried the day. Without experience, however, these developments could not have come to be considered or brought to fruition.

JOHN T. NOONAN, JR.
United States Court of Appeals
San Francisco

[81]Second Vatican Council, *Dei Verbum*, n.8 (18 November 1965), *Acta apostolicae sedis*, 58, 821.