

RIVISTA DI STUDI SULLA PERSONA E LA FAMIGLIA

ANTHROPOS

Rivista ufficiale del Pontificio Istituto Giovanni Paolo II
per Studi su Matrimonio e Famiglia
Pontificia Università Lateranense

Direttore responsabile: CARLO CAFFARRA

Anno I, n. 2 - Ottobre 1985

SOMMARIO

125 *Carl A. Anderson*, Toward a Global Law of the Family. The United Nations Draft Convention on the Rights of the Child □ **155** *Germain Grisez*, Moral Absolutes. A Critique of the View of Josef Fuchs, S.J.

203 NOTE CRITICHE □ *Angel Rodriguez Luño*: Sulla recezione del modello filosofico utilitaristico da parte di alcuni teologi moralisti

215 IN RILIEVO □ *Angelo Scola*: Antropologia, etica e scienza

227 VITA DELL'ISTITUTO □ A. Situazione dei titoli di studio □ B. Attività scientifiche

231 INDICE DELL'ANNO 1985

© Istituto Giovanni Paolo II, 1985

Direzione e Amministrazione: Istituto Giovanni Paolo II - Piazza S. Giovanni in Laterano, 4 - 00120 Roma - tel. (06) 6986401/6986113

Abbonamento annuo (2 numeri): Italia L. 19.000 - Estero US \$ 13

Forma di pagamento: assegno bancario (o vaglia postale) intestato a: Carlo Caffarra, Istituto Giovanni Paolo II - P.za S. Giovanni in Laterano, 4 - 00120 Roma

A norma dell'art. 74 lett. C del D.P.R. 633/1972, l'IVA pagata dall'editore sugli abbonamenti nonché sui fascicoli separati è conglobata nel prezzo di vendita: il cessionario non è tenuto ad alcuna registrazione ai fini IVA (art. 25 D.P.R. 633/1972) e non può parimenti operare, sempre ai fini di tale imposta, alcuna detrazione. In considerazione di ciò l'editore non rilascia fatture.

Un numero L. 11.000 (US \$ 6) - Per la diffusione della Rivista in libreria e l'acquisto di copie singole, rivolgersi a: Città Nuova Editrice - Via degli Scipioni 265 - 00192 Roma - tel. (06) 3595212/383062/310955 - c.c.p. 34452003

TOWARD A GLOBAL LAW OF THE FAMILY

The United Nations Draft Convention on the Rights of the Child

CARL A. ANDERSON *

During 1978, the United Nations Commission on Human Rights began drafting a Convention on the Rights of the Child¹. Nearly twenty years earlier the United Nations had adopted the Declaration of the Rights of the Child to reflect an emerging global consensus regarding the need of children for more adequate social and health services as well as legal protection². While the Declaration proposed worthy guidelines and objectives for national policies, it is without binding legal effect. In essence the Declaration provided a detailed set of principles elaborating the more general statement, contained in Article 25 of the Universal Declaration of Human Rights, that childhood is «entitled to special care and assistance»³.

Since adoption of the Declaration in 1959, several international legal instruments entered into force which contain treaty obligations in regard to the needs and rights of children. For example, Article 24 of the International Covenant on Civil and Political Rights provides that «every child shall have, without any discrimination... the right to such protection as is required by his status as a minor, on the part of his family, society and the State»⁴. This principle is also echoed in Article 17 of the American Convention on Human Rights⁵. Article 10 of the International Covenant on Economic, Social and Cultural Rights maintains that «special measures of protection and assistance should be taken on behalf of all children» and that they «should be protected

* Visiting Professor of Law John Paul II Institute for Studies on Marriage and Family.

¹ Draft Convention on the Rights of the Child, E.S.C. Res. 20, U.N. ESCOR, Supp. (No. 4) 123, U.N. Doc. E/CN. 4/1292 (1978).

² Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), adopted Nov. 20, 1959, 14 U.N. GAOR, Supp. (No. 16) 19, U.N. Doc. A/4354 (1959).

³ Universal Declaration of Human Rights, G.A. Res. 217A (III), adopted Dec. 10, 1948, 3 U.N. GAOR (Resolutions) 71, U.N. Doc. A/810 (1948).

⁴ International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), adopted Dec. 19, 1966, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc A/6316 (1966) (entered into force Mar. 23, 1976).

⁵ American convention on Human Rights, signed Nov. 22, 1969, OEA/Sec. K/SVI/1.1, Doc. 65, Rev. 1, Corr. 1 (1970).

from economic and social exploitation⁶. The European Social Charter⁷ as well as the Social Policy (Basic Aims and Standards) Convention⁸ of the International Labour Organization provide detailed rights and requirements regarding access of children to the labor force.

Building on these precedents, the Working Group of the Commission on Human Rights is preparing a comprehensive treaty establishing legal rights of children under international human rights law. As of 1984, the Working Group has adopted 13 articles of a Draft Convention⁹. A complete review of this work is beyond the scope of this analysis. Instead this paper will consider the decisions arrived at by the Working Group in its drafting of the preamble and articles 3, 6, 7, and 8 of the Convention as they affect three fundamental issues: (1) family rights regarding the religious education of children; (2) government review of parental decision-making on the basis of the «best interests of the child» and (3) the child's interest in recognition and protection before birth.

I. «TRAVAUX PRÉPARATOIRES» OF ARTICLE 7

In 1981, the Working Group adopted Article 7 of the Draft Convention mandating that signatories «shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity»¹⁰. The following year the United States proposed that Article 7 be substantially amended to recognize and protect the child's freedom of conscience and religion. The United States amendment provided that signatory nations would ensure that:

1. the child shall have the right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching;
2. no child shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice;

⁶ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), adopted Dec. 19, 1966, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976).

⁷ European Social Charter, signed Oct. 18, 1961, Treaty Series, No. 38 (1965) (entered into force Feb. 26, 1965).

⁸ Social Policy (Basic Aims and Standards) Convention, adopted June 22, 1962, 494 U.N.T.S. 249 (entered into force Apr. 23, 1964).

⁹ U.N. Econ. & Soc. Council, Comm'n on Human Rights, Report of the Working Group on a draft convention on the rights of the child, U.N. Doc. E/ CN.4/ 1984/ 71 (Feb. 23, 1985) [Working Group reports in this series hereinafter cited as WORKING GROUP].

¹⁰ U.N. Econ. & Soc. Council, Comm'n on Human Rights, 37 Sess. (Supp. No. 5), U.N. Doc. E/ CN.4/ 1475 (1981) [Comm'n reports in this series hereinafter cited as HUMAN RIGHTS COMM'N].

3. the child shall have the freedom to manifest his religion subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights of others; and

4. the child shall have the freedom to worship or assemble with others, acquire the necessary articles of his religion, observe and celebrate religious holidays and communicate with others regarding matters of religious belief ¹¹.

In 1983, the United States proposal was opened to extended discussion in the Working Group. Perhaps the most substantive criticism of the amendment was the concern of a number of delegations regarding the power of the State to ensure freedom of conscience, religion, and thought for children. They pointed out that in many countries these decisions were made primarily by parents who were recognized by law to have such authority ¹².

The United States proposal followed virtually verbatim the language of Article 18 of the International Covenant on Civil and Political Rights with one important exception: the United States text specifically deleted language regarding parental authority. Paragraph 4 of Article 18 requires governments «to have respect for the liberty of parents... to ensure the religious and moral education of their children in conformity with their own convictions» ¹³.

Following the discussion of the Working Group, the United States delegation submitted a revised version of its proposal. It added new language to the end of the second paragraph to «ensure that every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents... and shall not be compelled to receive teaching on religion or belief against the wishes to (sic) his parents». In addition, paragraphs 3 and 4 of the original version were deleted and replaced with the previously deleted language from the International Covenant on Civil and Political Rights: «the States parties to the present Convention undertake to have respect for the liberty of parents... to ensure the religious and moral education of their children in conformity with their own convictions». However, no further action was taken by the Working Group on the United States amended proposal in 1983 ¹⁴.

In 1984, Canada and Sweden each submitted substitute language for the revised United States amendment regarding Article 7 ¹⁵. While both texts recognized the authority of parents, they did so in a much more limited way than did the American version. Both subjected parental authority to a sliding scale related to the maturity of the child and placed the State in the role of arbiter between parent and child. Both texts also suggested that the rights enumerated in Article 7 could not be determined in regard to children as a

¹¹ U.N. Doc. E/ 1982/ 12/ Add. 1, part. C, para. 118, reprinted in WORKING GROUP, U.N. Doc. E/ CN.4/ 1983/ 62, para. 52.

¹² WORKING GROUP, U.N. Doc. E/ CN.4/ 1983/ 62, para. 55.

¹³ *Supra* note 4.

¹⁴ *Supra* note 12 at para. 57.

¹⁵ WORKING GROUP, U.N. Doc. E/ CN.4/ 1984/ 71 at para. 13.

class. Instead, whether a child was entitled to a particular right was a question to be resolved on an individual basis using a standard of «evolving capacities».

In part, the Swedish text stated, «The States Parties shall, subject to the evolving capacities of the child, respect the wishes, freedoms and rights of the parents or legal guardians in the exercise of these rights of the child and shall ensure the freedom to manifest religion or belief, in a manner not incompatible with public safety, order, health and morals». The appropriate Canadian language recognized only «the authority of the parents or legal guardian to provide direction to the child in the exercise of this freedom in a manner consistent with the evolving capacities of the child».

Following a lengthy debate, the Working Group could not agree on which version to adopt as a discussion text for drafting purposes. At the request of the chairman, the United Kingdom submitted a consolidated text which was accepted for purposes of discussion. It stated as follows:

1. The States Parties to the present Convention shall recognize the right of the child to freedom of thought, conscience and religion in accordance with... relevant international instruments.

2. These rights shall include in particular the right to have or to adopt a religion or whatsoever belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief, in conformity with public safety, order, health and morals.

3. This right is subject to the authority of the parents or legal guardians to provide direction to the child in the exercise of this right in a manner consistent with the evolving capacities of the child.

4. The States Parties to the present Convention undertake to have respect for the liberty of the child and his parents, or, when applicable, legal guardians, to ensure the religious and moral education of the child¹⁶.

During consideration of Article 7 the representative of the Holy See expressed reservations regarding the three earlier proposals. He questioned the adequacy of each version's recognition of the child's educational freedom and religious liberty and his relationship to parental authority. He now argued that there was a similar deficiency in regard to paragraph 1 of the United Kingdom's text since it merely established a duty to «recognize» the right to freedom of thought, conscience, and religion. The new Charter of the Rights of the Family published by the Vatican in 1983 called upon governments and international organizations «to promote respect» for these rights. The spokesman for the Holy See maintained that this was the proper standard for Article 7. The representative of Austria, with the support of the representatives of the United Kingdom and the United States, moved to substitute the word «respect» for the word «recognize» in the new draft. That suggestion was accepted by the Working Group.

¹⁶ *Ibid.*, at para. 17.

The delegate of the United States then offered two important amendments to the second paragraph of the United Kingdom's text which were accepted by the Working Group. The first amendment affected the relationship between the right of free exercise of religion and concern over public safety, order, health and morals. The United Kingdom's text stated that the right to «manifest» a religious belief must be done «in conformity with» public safety, order, health, and morals. That language suggested that the practice of religion must be consistent with majoritarian views of morality and public order. Instead of this standard of «conformity», the United States proposed language which imposed greater restrictions on the power of government to limit the free exercise of religion. Under the American proposal religious activity would be «subject *only* to such limitations as are prescribed by law and are *necessary to protect*»¹⁷ the public safety, order, health, and morals. The second United States amendment proposed that paragraph 2 be changed so as to recognize that both child and parent possess a right of «access» to religious education outside the home. Both proposals were accepted by the Working Group¹⁸.

The Working Group then amended paragraph 3 to replace the phrase «authority» of the parents with the phrase «rights and duties» of the parents to provide direction to the child. It also amended paragraph 4 to require that the States Parties to the Convention shall «equally» respect the liberty of the child and his parents.

As amended and approved by the Working Group in 1984, Article 7 reads as follows:

The States Parties to the present Convention shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity.

1. The States Parties to the present Convention shall respect the right of the child to freedom of thought, conscience and religion.

2. This right shall include in particular the freedom to have or to adopt a religion or whatsoever belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health and morals, and the right to have access to education in the matter of religion or belief.

3. The States Parties shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his right in a manner consistent with the evolving capacities of the child.

4. The States Parties shall equally respect the liberty of the child and his parents and, where applicable, legal guardians, to ensure the religious and moral education of the child in conformity with convictions of their choice¹⁹.

¹⁷ *Ibid.*, at para. 22.

¹⁸ *Ibid.*, at para. 24, 25.

¹⁹ *Ibid.*, at Annex I.

In the context of family and parental rights, Article 7 as adopted by the Working Group appears to have improved the language of the original 1982 United States proposal. Nonetheless it falls far short of the revised 1983 United States text. The 1983 version recognized an unconditional limitation on the power of government when it required signatories to «respect the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions». The language adopted by the Working Group, however, could actually be interpreted so as to increase the role of government since it requires only that signatories «respect» the rights and duties of parents to direct the child in the exercise of his rights «in a manner consistent with the evolving capacities of the child». Under this language the authority of parents regarding religious exercise and education is conditioned upon an outside evaluation of the maturity of the child by the State. When considered in light of the further requirement that government «equally respect» the liberty of the child and his parents in matters of religious education, it can hardly be said that Article 7 as now drafted has improved the original American omission regarding parental authority.

II. THE FAMILY'S RELIGIOUS LIBERTY AND THE UNITED STATES CONSTITUTION

The juridical effect of Article 7 within a constitutional system such as that of the United States should be significant, especially in regard to the relationship between parental authority and government regulation.

As early as 1923, the United States Supreme Court affirmed that the American constitution protected the right «to marry, establish a home and bring up children»²⁰. Two years later, the Court stated: «The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children... The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations»²¹. Since that time the Court has acted to increase parental authority over the religious upbringing of children.

In its landmark 1972 decision, *Wisconsin v. Yoder*, the Supreme Court affirmed «the fundamental interest of parents as contrasted with that of the State, to guide the religious future and education of their children»²². Mr. Yoder, a member of the Old Order Amish religion, had been convicted of violating a state compulsory school attendance law because he had removed his child from high school in the belief that continued public school attendance would

²⁰ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

²¹ *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1924).

²² *Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972).

«endanger» his own salvation and that of his child²³. The Court described the impact of the state regulation on the religious life of the Amish community as «severe»²⁴. The State argued that the compulsory school attendance law was in the best interest of the child since it preserved for him the opportunity at a later date to determine whether he would remain in the Amish community or move into the society at large. The Court, however, was not convinced. It observed, «it seems clear that if the State is empowered, as *parens patriae*, to «save» a child from himself or his Amish parents by requiring an additional 2 years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child»²⁵.

The Court considered such a transfer of power from parents to the State to be contrary to the tradition of familial autonomy and parental authority. It concluded: «The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition»²⁶.

Justice Douglas dissented arguing that only the rights of the children were entitled to constitutional protection²⁷. In his view, the recent decisions of the Supreme Court applying constitutional protection to children facing criminal or juvenile proceedings before State agencies should be applied to the children's relationship with their parents. In this regard, Douglas relied heavily upon the Court's decision in *Tinker v. Des Moines School District* when it upheld the right of three students to engage in a nondisruptive protest against American military involvement in Viet Nam by wearing black armbands in the classroom²⁸. In protecting the students' action the Court declared, «It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate»²⁹. The Court's opinion in *Tinker*, however, is best known for its statement that «students in school as well as out of school are «persons» under our Constitution. They are possessed of fundamental rights which the State must respect...»³⁰.

While *Tinker* is generally regarded as a landmark decision for the rights of children, the actions of the Tinker family which formed the basis of the litigation clearly make the *Tinker* decision complementary to and supportive of the result reached by the Court three years later in *Yoder*. Mr. Tinker was a Methodist minister employed by the American Friends Service Committee, a religious organization actively opposing American intervention in Viet Nam.

²³ *Ibid.*, at 209.

²⁴ *Ibid.*, at 218.

²⁵ *Ibid.*, at 232.

²⁶ *Ibid.*

²⁷ *Ibid.*, at 245-46.

²⁸ *Tinker v. Des Moines School District*, 393 U.S. 503 (1969).

²⁹ *Ibid.*, at 506.

³⁰ *Ibid.*, at 511.

The Tinker family decided they would fast over the religious holidays and that to demonstrate their opposition to American foreign policy the Tinker children, ages 8, 11, 13, and 15, would all wear black armbands to school. However, it makes little sense to speak of the free speech and religious liberty rights of 8 and 11 year old children to protest their government's foreign policy unless one is at the same time implicitly recognizing the familial circumstances and parental guidance from which it results³¹. But in *Yoder*, Justice Douglas was clearly unsympathetic to Amish family life. He wrote of the Amish child: «If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed»³². Douglas saw the child growing up in the Amish community to be «forever barred from entry into the new and amazing world of diversity that we have today»³³. His rationale for the independent decision-making children in *Yoder*, could have with little difficulty been applied to the children in *Tinker* by the State on the grounds that it was merely acting in the best interests of the children in protecting them from the overreaching influence of parents.

In *Yoder*, however, the Court refused to speculate on Justice Douglas's concern that parents might be preventing their children from attending school against their will and were therefore entitled to State intervention and judicial proceedings to determine whether the parents' decisions were indeed consistent with their children's desires. Describing such intervention as «an intrusion» into family decision-making, the Court cautioned that it «would give rise to grave questions of religious freedom»³⁴.

Seven years later the Court strongly reaffirmed parental authority in *Parham v. J.R.*³⁵. There, the Court turned down a challenge to the State of Georgia's procedures for the voluntary commitment of a child by its parents to one of the state's regional mental hospitals and refused to require a formal adversary hearing prior to a voluntary commitment. In doing so, the Court observed: «The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children... The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition»³⁶.

Writing for the Court in *Parham*, Chief Justice Burger made clear that the position of Justice Douglas in *Yoder*, now articulated by Justice Brennan,

³¹ See BURR, *Developing Constitutional Rights Of, In, and For Children*, «Law & Contemp. Problems» 39 (1975), pp. 118, 123.

³² 406 U.S. at 245-46.

³³ *Ibid.*, at 245.

³⁴ *Ibid.*, at 231; see also RIPPLE, *The Entanglement Test of the Religion Clauses - A Ten Year Assessment*, «UCLA Law Review», 27 (1980), p. 1195.

³⁵ *Parham v. J.R.*, 442 U.S. 584 (1979).

³⁶ *Ibid.*, at 602-03.

continued to be rejected by the Court's majority. Burger observed: «Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state... Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions... We cannot assume that the result in *Meyer v. Nebraska* and *Pierce v. Society of Sisters* would have been different if the children there had announced a preference to learn only English or a preference to go to a public, rather than a church school»³⁷.

Justice Brennan dissented, quoting from Justice Blackmun's earlier opinion in *Planned Parenthood v. Danforth*: «Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights»³⁸. Justice Brennan relied upon the holding in *Danforth* in which the Court struck down a Missouri statute requiring the consent of one parent before an unmarried girl under age 18 could obtain an abortion. He asserted the situation in *Parham* should have been controlled by the rationale of *Danforth* since the right to be free from «wrongful incarceration, physical intrusion, and stigmatization» must surely be as great as the right to an abortion³⁹. The majority, however, disagreed. One reason they gave was that, while the parent under the Missouri law was given an absolute veto power regarding the abortion question, the Georgia commitment procedure did not permit unilateral action by the parents. Medical personnel would have to determine, based upon their own evaluation of the patient, that commitment was in the patient's best interest. Moreover, that determination was itself reviewable by medical staff of the mental hospital.

Perhaps more important is the fact that the reasoning employed by Justice Blackmun in *Danforth* runs counter to the guiding principle of the entire series of cases beginning with *Meyer v. Nebraska*, namely that parents possess inherent and natural rights which the State neither creates nor can supplant. In *Danforth*, however, Blackmun wrote as though parental authority were merely a dim reflection of the authority of the State: «the State does not have the constitutional authority to give a third party (that is, parents) an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding consent»⁴⁰. Nothing could be further from the tone and substance of the Court's opinions in *Yoder* and *Parham*. Clearly, in *Parham*, the Court is signaling that the exception to parental authority created in regard to questions of abortion and perhaps other procreative decisions will not be extended beyond that area. That this is so may result too from the uniqueness of the Court's abortion

³⁷ *Ibid.*, at 603.

³⁸ *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74 (1976).

³⁹ *Supra* note 35 at 631.

⁴⁰ *Supra* note 38 at 74.

holdings. As John Hart Ely has written, «What is unusual about *Roe* is that the liberty involved is accorded a far more stringent protection, so stringent that a desire to preserve the fetus's existence is unable to overcome it — a protection more stringent, I think it is fair to say, than that the present Court accords the freedom of the press explicitly guaranteed by the First Amendment»⁴¹. If Ely is right, then there is good reason to think that the exception to parental authority and familial autonomy carved out in *Danforth* stands or falls with the continued viability of the *Roe v. Wade* decision. In this regard, a change in *Roe* would be likely to remove the major exception to the Court's otherwise uniform tradition of respect for parental rights and familial autonomy as recently articulated by the Chief Justice in *Yoder* and *Parham* thereby restoring the Court's consistency on the subject.

In light of the Supreme Court's concern to preserve the «enduring American tradition» of parental rights in the religious upbringing of their children it is disconcerting that the «equal respect» and «evolving capacities» standards presented by Article 7 of the Draft Convention appear to reflect the type of legal reasoning found in the *Danforth* opinion and apply it in an area where the Supreme Court has specifically refused to do so. In the abortion context, when the Court has held that the «liberty» in question is possessed equally by both parent and child, it has ruled, as *Danforth* makes clear, that government may not intervene on behalf of parental decision-making. Furthermore, the Court has gone on to require that government afford even an unemancipated minor child an independent judicial forum to demonstrate her maturity to make such a decision or that course of action she proposed to undertake is nonetheless in her best interest⁴². Article 7 would appear to impose similar procedures concerning the child's religious upbringing and his or her ability for independent judgment.

III. THE FAMILY'S RELIGIOUS LIBERTY AS AN INTERNATIONAL HUMAN RIGHT

The Council of Europe Convention on Human Rights⁴³, which entered into force in 1953, and its First Protocol, which became effective the following year, established a family-centered human rights approach to the issues raised by Article 7 of the Draft Convention of the Rights of the Child. Article 2 of

⁴¹ ELY, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, «Yale Law Journal» 82 (1973), p. 935; see also HAFEN, *The Constitutional States of Marriage, Kinship, and Sexual Privacy - Balancing The Individual and Social Interests*, «Michigan Law Review», 81 (1983), pp. 463, 512.

⁴² *Bellotti v. Baird*, 428 U.S. 132 (1977).

⁴³ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, signed Nov. 4, 1950, 213 U.N.T.S. 222.

the First Protocol states in part: «In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions». This provision complements other rights articulated in the European Convention, namely, that in Article 8 of the right to respect for family life, in Article 12 of the right to marry and found a family and in Article 9 to freedom of thought, conscience and religion. Together these provisions recognize a broad role for parental authority and familial autonomy in questions concerning the religious upbringing of children.

The juridical effect of the European Convention is straight-forward: Article 1 requires that «The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention». Thus, the European Convention creates absolute and immediate obligations on the part of parties to it to enforce and protect the rights recognized under it. This obligation is especially significant since the majority of national constitutions in Europe incorporate treaties as part of the domestic law of their respective countries without the additional requirement of implementing legislation⁴⁴. For example, Article 25 of the Basic Law of the Federal Republic of Germany states: «The general rules of public international law are an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory⁴⁵. Similarly, Article 55 of the French Constitution provides that «Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of law...»⁴⁶. The contrary position exists in the United Kingdom where provisions of international agreements do not have domestic effect unless implementing legislation has been enacted by Parliament⁴⁷. An English applicant before the European Commission of Human Rights would therefore seek, as in *Sunday Times v. United Kingdom*⁴⁸, a declaration that domestic law constituted a violation of the Convention and a request or directive from the Commission to the national government to introduce legislation conforming domestic law with that of the Convention. However, the majority of signatories to the European Convention view the rights secured by it «to be an integral part of domestic law»⁴⁹.

Recently, the European Court of Human Rights has acted to significantly «enhance parental influence and powers in relation to the schooling of their

⁴⁴ See P. SIEGHART, *The International Law of Human Rights* (1983), p. 41.

⁴⁵ 3 A. PEASLEE, *Constitutions of Nations* (1968), p. 366.

⁴⁶ *Ibid.*, at pp. 322-323.

⁴⁷ *Supra* note 44; see also, a H. LAUTERPACHT, *International Law* (1975), p. 537, Note, Implementing the European Convention on Human Rights in the United Kingdom, «Stanford Int'l Law Journal», 18 (1982), p. 147.

⁴⁸ (6538/74), 2 E.H.R.R. 245.

⁴⁹ CARREÑO, *Some Problems Presented by the Application and Interpretation of the American Convention on Human Rights*, «American Univ. Law Review», 30 (1980), pp. 127, 131.

children»⁵⁰. In its 1982 decision in the case of *Campbell and Cosans*⁵¹, the Court granted partial relief to mothers whose children attended schools which administered corporal punishment for disciplinary purposes. The mothers alleged that corporal punishment constituted a violation of Article 2 of the First Protocol regarding parental rights in education.

In reviewing the Convention's mandate that «the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions», the Court articulated broad definitions for both the terms «education» and «philosophical convictions». In regard to the scope of the term «education», the Court refused to limit the coverage of the Convention to classroom instruction but instead found it to be «the whole process whereby, in any society, adults endeavor to transmit beliefs, culture and other values to the young»⁵². The Court found the phrase «philosophical convictions» to be similarly broad and to include «such convictions as are worthy of respect in a "democratic society" and are not incompatible with human dignity»⁵³. It concluded that opposition to corporal punishment was entitled to respect under the terms of the Convention.

Article 18 (4) of the International Covenant on Civil and Political Rights incorporates the language of Article 2 of the First Protocol of the European Convention to require that parties to the Covenant «have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions»⁵⁴. Significantly, paragraph one of Article 18 provides that «Everyone shall have the right to freedom of thought, conscience and religion». Thus, it would appear that under the legal scheme provided for by the Covenant, the right of parents to ensure the religious upbringing of their children «in conformity with their own convictions» is part of the more general freedom of religion provided for by Article 18. Similarly, Article 12 (4) of the American Convention on Human Rights, which entered into force in 1978, states that «Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions»⁵⁵.

The International Covenant on Civil and Political Rights, the American Convention on Human Rights and the European Convention on Human Rights all seek to provide collective enforcement for the general human rights principle

⁵⁰ LONBAY, *Rights in Education Under the European Convention on Human Rights*, «Modern Law Review», 46 (1983), pp. 345, 350; see also POGANY, *Education: The Rights of Children and Parents Under the European Convention on Human Rights*, «New Law Journal» 132 (1982), p. 344; ROBILLIARD, *Religious Freedom as a Human Right within the United Kingdom*, «Human Rights Review» 6 (1981), p. 90.

⁵¹ Feb. 25, 1982, Sec. A, No. 48; 4 E.H.R.R. 293.

⁵² *Ibid.*, at para. 33.

⁵³ *Ibid.*

⁵⁴ *Supra* note 4.

⁵⁵ *Supra* note 5.

articulated in Article 26 (3) of the Universal Declaration of Human Rights that «Parents have a prior right to choose the kind of education that shall be given to their children»⁵⁶. The International Covenant on Economic, Social and Cultural Rights supplements these four agreements by requiring governments as part of their obligations under Article 13 «to have respect for the liberty of parents... to choose for their children schools, other than those established by the public authorities... to ensure the religious and moral education of their children in conformity with their own convictions»⁵⁷.

The juridical effects of these five international agreements are not identical. While some commentators argue that the Universal Declaration of Human Rights can now be said to create certain human rights obligations on the part of nations⁵⁸, the established view remains that the Declaration's considerable moral authority cannot by itself establish enforceable international legal obligations⁵⁹. The International Covenant on Economic, Social and Cultural Rights does move beyond moral authority to establish legally enforceable rights. However, it creates only a qualified and progressive obligation on the part of nations which are signatories to it. Under its terms, a signatory agrees «to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant». The European and American Conventions, as well as the International Covenant on Civil and Political Rights create absolute and immediate obligations on the part of the States Parties⁶⁰. The International Covenant on Civil and Political Rights requires States «to respect and to ensure to all individuals... the rights recognized in the present Covenant»⁶¹. Both the European and American Conventions contain similar language⁶². The American Convention further states that all persons are entitled to «the free and full exercise of those rights and freedoms»⁶³.

The five international human rights documents discussed herein establish a global legal environment which recognizes and respects a broad parental authority over children's education and religious upbringing as a basic human right. The fact that the Draft Convention on the Rights of the Child would

⁵⁶ *Supra* note 3.

⁵⁷ *Supra* note 6.

⁵⁸ Human rights declarations are «not merely aspirations of moral assertions but, increasingly, legal claims under some applicable law». L. HENKIN, *The Rights of Man Today* (1978), p. 2; see also H. LAUTERPACHT, *International Law and Human Rights* (1968), p. 394.

⁵⁹ *Supra* note 44 at 53.

⁶⁰ *Ibid.*, at 56-57, see also PLENDER, *The European Court as an International Tribunal*, «Cambridge Law Journal», 42 (1983), p. 279; BUERGENTHAL, *The American and European Conventions on Human Rights: Similarities and Differences*, «American Univ. Law Review», 30 (1980), p. 155; LIPPMAN, *Human Rights Revisited: The Protection of Human Rights Under the International Covenant on Civil and Political Rights*, «Cal. Western Int'l Law Journal», 10 (1980), p. 450.

⁶¹ *Supra* note 4 at Article 2(1).

⁶² Respectively, *supra* note 43 at Article 1 and note 5 at Article 1.

⁶³ *Supra* note 5 at Article 1.

create similar absolute rights which appear contradictory suggests serious difficulties for nations which may already be signatories to these agreements, especially the European Convention on Human Rights, the American Convention on Human Rights and the International Covenant on Civil and Political Rights. These later treaties specifically recognize a broad parental authority opposed to the much more narrow right admitted by the Draft Convention in which the State assumes the role of arbiter of conflicts between parent and child.

IV. THE FAMILY'S RELIGIOUS LIBERTY IN THE UNITED KINGDOM AND IRELAND

Article 7 of the Draft Convention raises significant difficulties for those nations whose constitutional systems provide that the rights enumerated by international agreements such as the European Convention on Human Rights establish corresponding legally enforceable domestic rights. Article 7 also appears problematic for countries such as the United Kingdom and Ireland with a constitutional or common law recognition of broad parental authority.

At English common law, «one of the first and most sacred duties of the parents is to imbue the mind of the children with some religious belief, and this is done, not merely by precept and instructions, but by the unconscious influence of everyday life and conduct»⁶⁴. The comprehensive nature of parental authority over the religious upbringing of children remains a keystone of common law tradition⁶⁵. While it has been argued by some that there has been a «steady erosion» of parental rights⁶⁶, even those cases cited to support the contention generally can nonetheless be read as consistently applying the common law principle⁶⁷.

Perhaps the most important among these recent cases is *J.v.C.*⁶⁸, which involved a custody dispute regarding a 10 year old boy. There the natural parents of the child were of Spanish nationality and had moved to England to seek employment. Within days of the birth of the child, his parents placed him with foster parents since the mother suffered from tuberculosis and required extended hospitalization. Sometime thereafter, the natural parents returned to Spain leaving their child in the foster home. As the natural parents were members of the Roman Catholic Church, their child, while in the custody of

⁶⁴ *F. v. F.*, (1902) 1 Ch. 688.

⁶⁵ See COMMENT, *Parental Right to Control Religious Education of Children*, «Harvard Law Review» 29 (1916), p. 485.

⁶⁶ HALL, *The Waning of Parental Rights*, «Cambridge Law Journal», 31 (1972), p. 248; see also EEKELAAR, *What are Parental Rights?*, «Law Quarterly Review», 89 (1973), p. 210; FREEMAN, *The Rights of the Child in England*, «Columbia Human Rights Law Review», 13 (1981-82), p. 601, and MAIDMENT, *The Fragmentation of Parental Rights*, «Cambridge Law Journal», 40 (1981), p. 135.

⁶⁷ HAFEN, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their Rights*, «Brigham Young Univ. Law Review» (1976), pp. 605, 618.

⁶⁸ *J. v. C.*, (1969) 1 All ER 788.

the foster parents, was raised in the Catholic faith even though the foster parents and their children were members of the Church of England. As the child's schooling progressed, he decided he would apply to a choir school but was unable to be admitted to the local Roman Catholic choir school. He was, however, accepted for admission to the nearby Church of England choir school on condition that he become a member of the Church of England. The child expressed that such was his desire, at which point the foster parents petitioned the court to adopt the boy and for permission for him to fulfill his wish of joining the Church of England. The boy's natural parents then petitioned the court to regain custody of their son.

The court ruled that, whatever the rights of the natural parents at common law, such rights in this case had been superceded by the Guardianship of Infants Act of 1925 which stipulated in section one that in any court proceeding regarding custody, «the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration...»⁶⁹. Applying this standard, the court concluded for a variety of reasons, including the fact that the boy had not seen his natural parents for a period of seven years, that it was in the welfare of the child to remain in the custody of the foster parents. The ruling of the court was subsequently upheld on appeal to the House of Lords. Regardless of the merits of the court's interpretation of the intent of Parliament concerning the rights of natural parents upon enactment of the Guardianship of Infants Act, it is significant here that the court specifically refused to grant both the foster parent's application for adoption and the petition to allow the child to act upon his desire to become a member of the Church of England. Although the natural parents failed to regain custody of their child, the court nonetheless gave effect to one of the major reasons for their petition, namely, to ensure that the child continued to be raised in the Roman Catholic Church. The result in *J.v.C.* clearly suggests that the common law principle of parental authority over the religious upbringing of their children survives even when they have lost custody of their child.

While Article 2 of the First Protocol of the European Convention was subject to a number of reservations and understandings by signatories to it, Ireland was the only nation to indicate that Article 2 did not go far enough to protect the rights of parents to guide the education of their children⁷⁰.

The Constitution of the Republic of Ireland⁷¹ provides an example of a constitutional system in which parental rights in education are specifically enumerated and protected⁷². It does so in a manner substantially different from that recognized under the present language of the Draft Convention. Article 41 of the Irish Constitution provides that «The State recognizes the

⁶⁹ *Ibid.*, at 808.

⁷⁰ Text of reservations and understandings reprinted in Sieghart, *supra* note 44 at 483.

⁷¹ 2 A. PEASLEE, *Constitutions of Nations* (2d ed. 1956), p. 459.

⁷² See A. SHATTER, *Family Law in the Republic of Ireland* (1981) pp. 2-5; STAINES, *The Concept of «The Family» under the Irish Constitution*, «Irish Jurist» 11 (1976), p. 223.

Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law». Article 42 concerning education builds upon the constitutional status of the family as a community possessing «inalienable» rights to firmly establish parental authority over the upbringing of their children. It provides, in part, as follows:

The state acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

Parents shall be free to provide this education in their homes or in private schools or in schools recognized or established by the State.

The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of schools designated by the State.

In *G.v. An Bord Uchtala*, the Irish Supreme Court observed that the obligations of parents, including obligations regarding education, «amount to natural rights of the child and they exist for the benefit of the child»⁷³. Contrary to the view that the exercise of parental authority in matters of education and religious upbringing is somehow in conflict with the rights of the child, the Irish constitutional model appears to resolve the question by viewing parental authority as the best way of protecting the rights and interests of the child.

V. «TRAVAUX PRÉPARATOIRES» OF ARTICLES 3, 6 AND 8

During its 1981 session, the Working Group considered Article 3 of a revised Polish draft⁷⁴. It stated in part as follows:

In all actions concerning children, whether undertaken by their parents, guardians, social or State institutions, and in particular by courts of law and administrative authorities, the best interest of the child shall be the paramount consideration»⁷⁵.

Discussion of the Polish text centered upon two basic issues. The first concerned the propriety of imposing legal obligations on parents and guardians by means of an international treaty. The second concerned the use of «the best interest of the child» as a standard to measure the legality of familial decision-making. Some delegations maintained that to adopt the best interest of the child standard as «the paramount consideration» in all decision-making simply

⁷³ *G. v. An Bord Uchtala*, (1978) 113 I.L.T.R. 25, 41 (S.C.).

⁷⁴ *Supra* note 10 at paras. 19-38.

⁷⁵ *Ibid.*, at para. 19.

was too broad. They felt that while the «best interest» rule should always be «a primary» consideration, there would naturally be circumstances when the rights or interests of other family members would be «paramount».

The representative of the United States introduced as a substitute for the Polish text a proposal which took into account both objections raised in the Working Group. It stated in part:

In all official actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration ⁷⁶.

After agreeing to a technical amendment of the United States proposal, the Working Group adopted by consensus the American language concerning paragraph 1 of Article 3.

Paragraphs 2 and 3 of Article 3 of the revised Polish draft presented the Working Group with a similar problem regarding the potential for State intrusion into family autonomy and parental decision-making. The Polish text continued as follows:

2. The States parties to the present Convention undertake to ensure the child such protection and care as his status requires, taking due account of the various stages of his development in family environment and in social relations, and, to this end, shall take necessary legislative measures.

3. The States parties to the present Convention shall create special organs called upon to supervise persons and institutions directly responsible for the care of children ⁷⁷.

Stating that it shared the objective of the Polish delegation to recognize the need to secure the rights of the child through support to the family in need, the Australian delegation introduced a substitute proposal for the Polish text. It contained one important difference, however, in that it clearly recognized the rights of parents. The Australian language proposed that when providing protection and care to the child governments must «tak(e) into account the rights and responsibilities of his parents». After further discussion of the two proposals the chairman requested that a compromise text be elaborated and the subsequent text submitted by the delegation of the United States was adopted by consensus by the Working Group. It stated as follows:

The States Parties to the present Convention undertake to ensure the child such protection and care as is necessary for his well-being, taking into account the rights and duties of his parents, legal guardians, or other individuals legally responsible for him, and, to this end, shall take all appropriate legislative and administrative measures ⁷⁸.

⁷⁶ *Ibid.*, at para. 20.

⁷⁷ *Ibid.*, at para. 19.

⁷⁸ *Ibid.*, at para. 34.

The United States then moved to amend paragraph 3 of the Polish draft so that it could not be interpreted as calling for the establishment of government agencies to supervise parents regarding the care of their children. The United States proposed that the word «persons» be replaced by the phrase «officials and personnel of institutions». The Working Group agreed to this amendment and following the acceptance of further language changes proposed by the delegation of Australia adopted the following substitute language for paragraph 3 of the Polish text:

The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children ⁷⁹.

In 1981, the Working Group also began consideration of Article 6 of the revised Polish draft concerning residence rights of the child ⁸⁰. It read as follows:

The parents shall have the right to specify the place of the child's residence unless, guided by his best interests, a competent State organ is authorized, in accordance with national law, to decide in this matter ⁸¹.

The Polish delegation, however, submitted a substitute draft for its original text which more clearly recognized the rights of parents. It also shifted the test to be applied from the best interests of the child to one of endangerment of the child's welfare. The revised draft stated:

The parents have the right to determine the place of the child's residence. If the place of residence determined by parents endangers the child's well-being and in case of disagreement between the parents as well as if the child does not remain under the care of parents, his residence will be decided by a competent, State organ, guided by the child's well-being ⁸².

The delegation of Australia objected to both Polish drafts on the grounds that a recognition of parental rights had no place in a draft convention concerning the rights of children. The representatives of the United States then introduced substitute language for the Polish texts which took into account the Australian objection. It stated in part:

States parties shall ensure that a child shall not be involuntarily separated from his parents, except when competent authorities determine, in accordance with procedures and criteria specified by domestic law, that such separation is necessary for the welfare of the child in a particular case, such as one involving maltreatment or abuse

⁷⁹ *Ibid.*, at para. 38.

⁸⁰ *Ibid.*, at paras. 62-72.

⁸¹ *Ibid.*, at para. 62.

⁸² *Ibid.*, at para. 63.

of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence ⁸³.

Following further discussion in the Working Group the delegation of Poland introduced a third text for consideration which stated:

The States parties shall recognize the right of the child to have his residence to be determined by his parents. If the place of residence specified by the parents is likely to be detrimental to the child's well-being or in the case of disagreement between the parents, a competent public organ, guided by the child's well-being, shall determine his place of residence ⁸⁴.

The Working Group was unable to complete its consideration of Article 6 during its 1981 session and rescheduled action on it for the following year.

In 1982, the Working Group completed drafting the first two paragraphs of Article 6 ⁸⁵. During the session the representative of the United States proposed several changes in the legal effect of the provision. First, he suggested that the phrase «welfare of the child» be stricken and replaced with the phrase «best interests of the child». He further suggested that the best interests of the child formulation be used throughout the Draft Convention rather than reference to the child's welfare. Second, he proposed that the concept of parental neglect be included along with parental abuse and he therefore asked that the term «maltreatment» be deleted and the phrase instead read «abuse or neglect». The representative of Norway then proposed that the American text be further amended to strike the word «involuntarily» and insert in its place the words «against their will» after the word «parents». All of these suggestions were agreed to by the Working Group which then adopted by consensus the following as paragraphs 1 and 2 of Article 6:

1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

2. States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case, such as one involving abuse or neglect of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views

⁸³ *Ibid.*, at para. 65.

⁸⁴ *Ibid.*, at para. 71.

⁸⁵ WORKING GROUP, U.N. Doc. E/CN.4/ 1982/ L. 41 (1982) at paras. 9-33.

known. Such views shall be taken into account by the competent authorities in making their determination ⁸⁶.

The best interests of the child standard was also applied in paragraph 1 of Article 8 of the revised Polish draft which read as follows:

The duty of bringing up the child shall lie equally with both the parents, who, in any case, should be guided by his best interests and, in keeping with their own beliefs and in compliance with the stipulations of article 7, shall prepare him for an individual life ⁸⁷.

Much of the discussion in the Working Group regarding this provision centered upon differing interpretations of Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women and its mandate of legal equality between men and women as parents. The delegate of the Soviet Union stated during the discussion his opposition to amendment of the Polish text which would alter recognition in the document that the duty of bringing up the child should lie equally with both parents. Other delegations observed that while equality of legal rights and responsibilities in regard to parenthood should be recognized, families allocate parental responsibilities and daily routines differently. Concerned that this issue might blur the more fundamental question of parental authority in relation to the power of the State, the United States sought to protect parents from excessive intervention on the part of government by proposing that the following sentence be added at the beginning of the paragraph: «Parents have the primary responsibility for the upbringing of their children».

The delegation of Brazil then suggested that the following sentence be inserted at the end of the American language: «The best interest of the child will be their basic concern» ⁸⁸. Finally, the representative of Australia proposed that the remaining language of the paragraph be stricken and a new and final third sentence be added to the language offered by the United States and Brazil. That proposal was agreed to by the Working Group which then adopted by consensus the following paragraph:

Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child ⁸⁹.

⁸⁶ *Ibid.*, at para. 33.

⁸⁷ *Supra* note 10 at para. 82.

⁸⁸ *Ibid.*, at para. 89.

⁸⁹ *Ibid.*, at para. 95.

VI. FAMILY AUTONOMY AND THE BEST INTERESTS OF THE CHILD

International recognition of the concept of the best interest of the child did not begin with the work of the Draft Convention. The concept was accepted in the 1959 Declaration of the Rights of the Child⁹⁰. Principle 2 of the Declaration maintains that in the enactment of laws regarding the development and the protection of the child, «the best interests of the child shall be the paramount considerations». Principle 7 declares that «the best interests of the child shall be the guiding principle of those responsible for his education». The Declaration, however, is essentially a call for greater social concern regarding the welfare of children. It does not by itself establish binding legal norms. The task of translating the concept of the best interest of the child from a general welfare principle into a legal standard creating enforceable obligations has been highly problematic for the Working Group. Underlying much of its consideration of the concept in reference to Articles 3, 6 and 8 has been the unspoken question of precisely who decides what is in the best interests of the child. The answer to that question is not necessarily that the best interest of the child is to be determined by the child himself. Indeed, advocates of greater legal autonomy for children oppose the concept of the best interest of the child because they view it as a limitation upon individual decision-making by children⁹¹. However, it has appeared in the deliberations of the Working Group as a mechanism for limiting parental authority while increasing State intervention.

In regard to this transfer of parenting authority to the State, the deliberations of the Working Group seem to have been significantly influenced by the Statement of Principles of the Legal Protection of the Rights of the Child adopted by the European Conference on the Rights of the Child held in Warsaw in 1979 under the sponsorship of the International Commission of Jurists, the Polish Association of Jurists, and the International Association of Democratic Lawyers. The Conference's Statement was circulated to the U.N. Working Group on the Draft Convention as a document of the Commission on Human Rights at the request of the representative of Poland⁹². Although it was not considered a discussion draft of the Working Group, it affected the language of the revised text of the Draft Convention submitted by Poland in 1979 which was taken up as the discussion and drafting instrument by the Working Group.

The Warsaw Statement articulates a legal environment for the family which

⁹⁰ *Supra* note 2.

⁹¹ See, e.g., R. FARSON, *Birthrights* (1974) pp. 196-197; GEISER, *The Rights of Children*, «Hastings Law Journal» 28 (1977), pp. 1027, 1046; and SCHWEITZER, *A Children's Rights Convention - What is the United Nations Accomplishing?*, in *The Family in International Law: Some Emerging Problems* (Lillich ed. 1981), at pp. 137-138.

⁹² U.N. Econ. & Soc. Council, Comm'n on Human Rights, 35 Sess. (Agenda item 13), U.N. Doc. E/ CN.4/ L. 1428.

leaves little room for autonomous decision-making by parents. For example, Principle 2 of the Statement provides that «the State should set out clearly what is required of parents to ensure the welfare of the child in society, and also how the State and organizations and individuals in society propose to assist parents in the upbringing of their children»⁹³. The Warsaw Statement carries forward the basic concept of socialist family law which «does not proceed merely from the postulate that State bodies are the supreme organs defending the interests of children and therefore will take appropriate measures in cases where the parents do not properly fulfill their obligations to their children. The law perceives the relationship to children in a much wider sense. It prescribes society's "participation" in the exercise of parental rights»⁹⁴.

A substantial opening to greater State participation in parental authority can be seen in the use of «the best interest of the child» concept as a standard for child custody decisions in the present text of Article 6. The formulation adopted by the Working Group — that «a child shall not be separated from his parents against their will, except when... such separation is necessary for the best interests of the child» — has never been adopted by Anglo-American legal traditions. The concept of the best interest of the child does not enter child custody disputes unless and until parental right in regard to the child has first been attenuated by some action of the parents themselves to abuse or neglect the child or institute divorce or separation proceedings. Only then does the question of custody of the child become one of the best interests of the child⁹⁵.

At common law the right of parents was perhaps even stronger. In the 1848 English case, *In Re Fynn*, Sir James Knight Bruce described the standard to be applied in depriving a parent of custody of his child as follows: «the father has so conducted himself, or has shewn himself to be a person of such a description, or is placed in such a position, as to tender it not merely better for the children, but essential to their safety or to their welfare, in some very serious and important respect, that his rights should be treated as lost or suspended — should be suspended or interfered with. If the word "essential" is too strong an expression, it is not much too strong»⁹⁶. Even where the common law rule has been altered by statute such as the Guardianship of Infants Act of 1925, the right of the parents to custody of their child must first in some way be weakened (as in voluntary relinquishment which occurred

⁹³ *Ibid.*, at 4.

⁹⁴ HAVELKA & RADUANOVA, *Czechoslovak Law and the Status of the Child*, «Columbia Human Rights Law Review», 13 (1981-82), pp. 263, 277.

⁹⁵ Crouch, «International Declaration/Convention Efforts and the Current Status of Children's Rights in the United States» in *The Family in International Law: Some emerging Problems* (Lillich ed. 1981) at 34-35; see also BELL, *Termination of Parental Rights: Recent Judicial and Legislative Trends*, «Emory Law Journal», 30 (1981), p. 1065.

⁹⁶ *In Re Fynn*, (1848), 2 DeG & Sm. 457.

in *J.v.C.* discussed above) before the court may apply «the welfare of the infant as the first and paramount consideration»⁹⁷.

To use the best interest of the child rule in the absence of such prior parental conduct has been specifically rejected by the United States Supreme Court. In 1978, it observed: «We have little doubt that the (Constitution) would be offended "if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest"»⁹⁸.

VII. LEGAL PROTECTION OF THE CHILD BEFORE BIRTH

The 1959 Declaration of the Rights of the Child recognizes a protectable interest on the part of the child before birth⁹⁹. Its Preamble affirms that the child «needs special safeguards and care, including appropriate legal protection, before, as well as after birth». In furthering this objective, Principle 4 of the Declaration states that «special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care». Both provisions were carried forward in the Draft Convention text submitted by Poland in 1978 as the initial discussion paper for the Working Group¹⁰⁰.

During the 1980 session of the Working Group, a number of delegations joined the representative of the Holy See to propose that the preambular language of the Declaration concerning protection of the child «before as well as after birth» be retained in the Preamble of the Draft Convention¹⁰¹. Delegates supporting the proposal urged its incorporation on the basis of its consistency with the language of the Declaration and with the domestic legislation of many nations. Other delegates objected on grounds that it might affect national policies on abortion. These delegates maintained that because national abortion laws varied, absolute neutrality on the subject was required if the Draft Convention was to be widely ratified. One delegate argued that any attempt to incorporate a particular point of view on abortion would make the Draft Convention unacceptable from the outset to nations which had adopted a different policy. He insisted that the language of the Draft Convention be worded so that neither side in the abortion debate could find legal support for its position in the text¹⁰².

⁹⁷ *Supra* note 68 at 808.

⁹⁸ *Smith v. Organization of Foster Families*, 431 U.S. 816, 862-63 (1977) quoted with approval in *Quilloin v. Walcott*, 434 U.S. 246 (1978).

⁹⁹ *Supra* note 2.

¹⁰⁰ U.N. Econ. & Soc. Council, Comm'n on Human Rights, 34 Sess. (Agenda item 22), U.N. Doc. E/ CN.4/ L. 1366 (1978).

¹⁰¹ HUMAN RIGHTS COMM'N, U.N. Doc. E/ CN.4/ 1408 (1980) at para. 6.

¹⁰² Statement of the delegate of the United States, *ibid.*, at para. 18.

After further discussion, the Working Group adopted a «compromise» text which deleted the proposed «before as well as after birth» language and instead substituted a general reference to the 1959 Declaration. The new text recognized that:

... as indicated in the Declaration of the Rights of the Child adopted in 1959, the child due to the needs of his physical and mental development requires particular care and assistance with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security¹⁰³.

To date the Working Group also continues to omit from the Draft Convention the provision of the Declaration that «special care and protection shall be provided to (the child), including adequate pre-natal and post-natal care».

Extreme sensitivity of the Working Group to the question of abortion in this context is unfortunate. First, it is not clear to what extent, if any, language such as that contained in the Declaration would require a signatory nation to the Draft Convention to alter its abortion policy as a legal obligation under international law. Second, it is equally unclear whether any nation for which such an obligation did arise would on that basis refuse to sign the Draft Convention rather than alter its policy on abortion.

Presumably the language contained in the Declaration would not affect the legal obligations of signatories to the American Convention on Human Rights, Article 4 of which states: «Every person has the right to have his life respected. This right shall be protected by law, and, in general, from the moment of conception¹⁰⁴. This language is considerably stronger than that contained in the 1959 Declaration of the Rights of the Child.

The European Commission of Human Rights has stated that even if the child before birth were held to be entitled to protection of its life under Article 2 (1) of the European Convention, the Commission would nonetheless find that the right was subject to an implied limitation to permit procedures to protect the life and health of the mother¹⁰⁵. That balancing of interests by the Commission is consistent with the 1974 decision of the high court of the Federal Republic of Germany. That decision permitted abortion to protect the life and health of the mother even though the Court found that the child before birth was an independent legal entity entitled to constitutional protection¹⁰⁶. What the German court did strike down as a violation of the rights to life of the unborn child was the decision by the Bundestag to permit abortion

¹⁰³ *Ibid.*, at para. 19.

¹⁰⁴ *Supra* note 5.

¹⁰⁵ *X. v. United Kingdom*, (8416/78) 19 DR 244.

¹⁰⁶ For English translation see: West German Abortion Decision, «John Marshall Journal of Practice and Procedure» 9 (1976), p. 551; also KOMMERS, *Abortion and Constitution: United States and West Germany*, «American Journal of Comparative Law», 25 (1977), p. 225.

for whatever reason within the first 12 weeks of pregnancy. Under the West German approach, the legalization of unrestricted abortion, that is, the legalization of abortion as simply another method of birth control, would appear to violate government's responsibility to protect human life before birth. This approach could be said to reflect at least a minimum global consensus as articulated during the 1984 International Conference on Population, which accepted by consensus the principle proposed by the representative of the Holy See that «abortion... in no case should be promoted as a method of family planning»¹⁰⁷.

Certainly, there can be different interpretations of the precise legal obligation which would be created by language recognizing a general right on the part of the child to «appropriate legal protection, before as well as after birth». In that regard, if incorporated, such language would not be unlike many other sections of the Draft Convention. It is also clear that the recognition of the child's protectable legal interest before birth has already emerged in varying degrees in both regional and global human rights forums. For example, both the International Covenant on Civil and Political Rights and the American Convention on Human Rights state that the death penalty shall not be carried out upon a pregnant woman¹⁰⁸.

Thus, the fear expressed by members of the Working Group that any recognition of the existence of the child before birth would prevent numerous countries from signing the Draft Convention appears highly exaggerated. The history of the Declaration of the Rights of the Child is itself instructive on this point. Although a number of member States had substantially decriminalized abortion just prior to the adoption of the Declaration in 1959, it was adopted unanimously by the United Nations. Perhaps more significantly, the 1978 Report of the Secretary-General, including detailed and specific comments from member States on the question of a Convention on the Rights of the Child contained no indication that any nation would consider itself prohibited from signing the Convention on the basis that the document contained language similar to that found in the Declaration¹⁰⁹.

The retreat by the Working Group in 1980 on the issue of the child's entitlement to care and protection before birth constitutes a serious digression from the general progress of the law in viewing the child's status as no longer that of a chattel but rather as that of a person. During the past 25 years this shift in legal viewpoint was remarkably accelerated by the adoption of the Declaration of the Rights of the Child. Since 1959, legal and social developments have altered the situation of children sufficiently so that an expansion of legal

¹⁰⁷ Report of the International Conference on Population, 1984, U.N. Doc. E/ Conf. 76/ 19; Recommendation 18 (e).

¹⁰⁸ Respectively, *supra* note 4 at Article 6 (5) and note 5 at Article 4 (5).

¹⁰⁹ U.N. Econ. & Soc. Council, Comm'n on Human Rights, 35 Sess. (Agenda item 13), Report of the Secretary-General: Question of a Convention on the Rights of the Child, U.N. Doc. E/ CN.4/ 1324 (1978).

recognition of children's protectable interests is now overdue. In no other area is this more the case than in the area of the child's development before birth. Yet it is precisely here that the 1980 Draft Convention offers significantly *less* protection than the principles recognized by the Declaration in 1959.

One would have expected that the Working Group, rather than omitting any consideration of the needs of the child before birth, would have built upon the extraordinary medical advances in the field of neonatology and the equally extraordinary legal advances regarding the protection of the child from prenatal injuries which has been described as «the most spectacular abrupt reversal of a well settled rule in the whole history of the law of torts»¹¹⁰. This more recent legal development supplements other established principles as, for example, the rule against perpetuities in the law of property where the child before birth is held to be a life in being in order that a property interest conveyed to the child before birth by will or by deed may be valid¹¹¹. As Epstein has suggested, such rules flow from «the general principle that the unborn child will be treated as a person whenever that will be to its benefit»¹¹².

Perhaps no better example can be found of this expectation than the concern expressed by the World Health Organization in its comments to the Secretary-General:

A convention on the rights of the child should constitute a realistic contribution to the «comprehensive care and the well-being of children all over the world». In this respect the present draft still appears to be incomplete. Although we welcome the initiative of elaborating a legally binding instrument in addition to the Declaration of the Rights of the Child, we note that the proposed convention does not contain new ideas and concepts. It appears, on the contrary, to be weaker and less explicit than the Declaration.

In order to be comprehensive we would like such a convention to place the child in his various contexts... We would also welcome more detailed provisions on the obligations of parents, both as individuals and as couples, of the family and the society, particularly in relation to the promotion of child growth and development...¹¹³.

One context in which to consider child growth and development is that suggested by the late professor Albert Liley: of the 45 generations of cell growth or multiplication divisions which are necessary to reach the 30 million-million cells of an adult body, all but four occur before birth¹¹⁴. How can it

¹¹⁰ W. PROSSER, *Handbook of the Law of Torts* (4th ed. 1974), p. 336.

¹¹¹ GREY, *The Rule Against Perpetuities* (4th ed. 1942), §§ 931-947.

¹¹² EPSTEIN, *Substantive Due Process By Any Other Name: The Abortion Cases*, «Supreme Court Review» (1973), pp. 159, 174; see also PARNES, *Crimes Against the Unborn: Protecting and Respecting the Potentiality of Human Life*, «Harvard Journal on Legislation», 22 (1985), p. 97, and RHODEN, *The New Neonatal Dilemma: Live Births from Late Abortions*, «Georgetown Law Journal», 72 (1984), p. 1451.

¹¹³ *Supra* note 109 at 21.

¹¹⁴ Statement to Hearings Before Subcomm. on Separation of Powers, Judiciary Comm.,

be considered in «the best interest of the child» for its development during this critical time to be completely ignored by the Draft Convention? The Working Group should consider anew the question of prenatal care and legal protection of the child. One place to begin would be with the question of the effects of chemical and environmental hazards to child growth and development as discussed in the report commissioned by the World Health Organization of the Joint Commission on International Aspects of Mental Retardation, Mental Retardation Prevention, Amelioration, and Service Delivery in 1980¹¹⁵.

The preambular language of the Declaration does not dictate a specific answer in regard to the question of the legal permissibility of abortion. It does, however, shift the focus of the inquiry. Like the West German high court, the Declaration recognizes that the child before birth, regardless of its stage of development, is a human life in being. Once that determination is made in the legal forum, as it has already been made in the medical forum¹¹⁶, the remaining question arises as to the extent of the community's obligation to protect and promote that legal interest. That such determinations have been made differently by different communities and that the decisions to be made are indeed difficult and complex are not reasons to abandon the effort. Which brings us back to Professor Epstein's observation that the direction of the law up until the early 1970's was to treat the child before birth as a legal person with protectable interests whenever doing so would be in the child's interest. The implementation of such a concept in the context of a Draft Convention on the Rights of the child can hardly be said to be outside the scope of, or to prove fatal to, a document dedicated to the «recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family»¹¹⁷.

U.S. Senate, 97th Cong., 1st Sess. on S. 158, the «Human Life Bill» (April-June, 1981) at vol. 2, p. 33.

¹¹⁵ See HERR, *Rights of Disabled Persons: International Principles and American Experiences*, «Columbia Human Rights Law Review» 12 (1980), p. 1.

¹¹⁶ See, e.g., Statement of HYMIE GORDON, Professor of Genetics: «I think we can now also say that the question of the beginning of life — when life begins — is no longer a question for theological or philosophical dispute. It is an established scientific fact. Theologians and philosophers may go on to debate the meaning of life or the purpose of life, but it is an established fact that all life, including human life, begins at the moment of conception» (*Supra* note 114 at 31-32). See also W. HAMILTON & H. MOSSMAN, *Human Embryology* (4th ed. 1972), p. 14; M. KRIEGER, *The Human Reproductive System* (1969), p. 88; K. MOORE, *The Developing Human* (2d ed. 1977), pp. 1, 12; B. PATTEN, *Human Embryology* (3rd ed. 1968), p. 43 and J. ROBERTS, *An Introduction to Medical Genetics* (3rd ed. 1963).

¹¹⁷ WORKING GROUP, U.N. Doc. E/ CN.4/ 1984/ 71/ Annex 1 at 1.

VIII. TOWARD A FAMILY-CENTERED ANALYSIS OF CHILDREN'S RIGHTS

The primary social dimension of the lives of children is expressed within the family. Legal recognition of the dignity and rights of the child can succeed in promoting the long-term interests of children only to the extent that legal norms reflect this fundamental condition of the child's life. A principal objective of the Draft Convention of the Rights of the Child as stated in its preamble is to help ensure that «the child should be fully prepared to live an individual life in society»¹¹⁸. It would be a mistake, however, to assume that the child's opportunities to develop mature capabilities can be enhanced at the expense of family stability. As Professor Bruce Hafen observes:

Children will outgrow their restricted state, but the more important question is whether they will outgrow it with maximized capacities. An assumption that rational and moral capacity exists, when in fact it does not exist, may lead to an abandonment of the protections, processes, and opportunities that can develop these very capacities. In this sense, the concept of restricting certain choice rights is in fact an important form of protection rights¹¹⁹.

This conclusion is supported by significant psychological evidence and child development studies which point to the fact that a child's development toward maturity and independence is itself dependent upon a continuous, well-grounded relationship with his or her parents. This has led some child development authorities to conclude that:

To safeguard the right of parents to raise their children as they see fit, free of government intrusion, except in cases of neglect and abandonment, is to safeguard each child's need for continuity. This preference for minimum state intervention and for leaving well enough alone is reinforced by our recognition that law is incapable of effectively managing, except in a very gross sense, so delicate and complex a relationship as that between parent and child¹²⁰.

The articulation of children's rights at the expense of parental authority and familial autonomy under such rubrics as «the best interests of the child» too often accomplishes little more than the intrusion of the State in the role of substitute parent. While that intrusion has been limited to some extent by the Working Group's revisions in drafting Articles 3, 6, and 8, it nonetheless remains significant. The question which continually needs to be asked when formulating children's rights and which is explicitly raised by Article 7 is: if

¹¹⁸ *Ibid.*

¹¹⁹ *Supra* note 67 at 650.

¹²⁰ J. GOLDSTEIN, A. FREUD, & A. SOLNIT, *Beyond the Best Interests of the Child* (1973), pp. 7-8.

a particular right is to be recognized on the part of the child, just how much State intervention will be permitted to enforce it.

In drafting Article 7, the Working Group focused almost exclusively on what it perceived to be a conflict between the rights of parents and those of their children. Neglected in this consideration was the religious nature of the family as a community. This dimension of the family has been an important theme throughout the Judeo-Christian tradition. For example, in *Familiaris consortio*, John Paul II described the family as «the Church of the home»¹²¹, an «evangelizing community»¹²², which possesses «a specific and original ecclesial role»¹²³. In this tradition, the family is a community of persons which, observed John Paul, «constitutes a specific revelation and realization of ecclesial communion, and for this reason too it can and should be called "the domestic Church"»¹²⁴. While this emphasis on the religious role of the family is especially important within the Roman Catholic Church, it continues as an important element of the family-centered Judeo-Christian tradition reflected in such communities as those involved in the *Tinker* and *Yoder* decisions.

In *National Labor Relations Board v. Catholic Bishop of Chicago*¹²⁵, the United States Supreme Court ruled that secondary schools operated by the Roman Catholic Church were not within the jurisdiction of the National Labor Relations Act and therefore church officials were not obligated by law to enter into collective bargaining with unions representing lay teachers. In reaching this decision, the Court found that such government supervision and regulation of church schools would inescapably entangle government in religious activity. The Supreme Court affirmed the court of appeals' earlier conclusion that:

We are unable to see how the Board can avoid becoming entangled in doctrinal matters if, for example, an unfair labor practice charge followed dismissal of a teacher either for teaching a doctrine that has current favor with the public at large but is totally at odds with the tenets of the Roman Catholic faith, or for adopting a lifestyle acceptable to some, but contrary to Catholic moral teachings. The Board in processing an unfair labor practice charge would necessarily have to concern itself with whether the real cause for discharge was that stated or whether this was merely a pretextual reason given to cover a discharge actually directed at union activity¹²⁶.

Certainly, the potential difficulties foreseen by the Court in relation to government supervision of the operation of church schools are readily transferable to the religious activities of families. In addition, the potential for excessive entanglement of government in «the Church of the home» is substantially

¹²¹ JOHN PAUL II, Apostolic Exhortation *Familiaris consortio* (1981), § 52.

¹²² *Ibid.*, at § 51.

¹²³ *Ibid.*, at § 50.

¹²⁴ *Ibid.*, at § 21.

¹²⁵ 440 U.S. 490 (1979); see also RIPLEY, *supra* note 34 at 1212-14.

¹²⁶ *Catholic Bishop of Chicago v. NLRB*, 559 F.2d 1112, 1125 (7th Cir. 1977), *aff'd*, 440 U.S. 490 (1979).

heightened by the fact that a judicial determination of a child's maturity in regard to religious doctrine and morality is «hopelessly subjective»¹²⁷ and may even, as in the case of Justice Douglas in the *Yoder* decision, be reflective of a hostility to the religion involved¹²⁸.

The family tradition which the Draft Convention appears to substantially weaken has been embraced by many different cultures. Before concluding its efforts on behalf of a Draft Convention, the Working Group should consider whether, in the absence of evidence indicating that children as a class have been injured by this family tradition, the interests of children are served by its undoing. Hafen observes:

The family life context has a history all its own — a history replete with psychological, economic, sociological, and political implications. The use of «children's rights» language in this day of rights movements offers a way to leap over that history and its implications into the realm of abstract ideology. Whether that leap is the result of strategy or ignorance, its consequences are the same. The most harmful of the potential consequences is that the long-range interests of children themselves may be irreparably damaged as the state and parents abandon children to their «rights»¹²⁹.

A new Convention on the Rights of the Child can make positive contributions to the well-being of children around the world but only if it considers and respects the basic reality of childhood: the family.

¹²⁷ HAFEN, *supra* note 41 at 516.

¹²⁸ SMITH, *The Special Place of Religion in the Constitution*, «Supreme Court Review» (1983), pp. 83, 105; see also W. DOUGLAS, *Go East, Young Man* (1974), pp. 14-16, 109-11, 203-04.

¹²⁹ *Supra* note 67 at 607.

MORAL ABSOLUTES

A Critique of the View of Josef Fuchs, S.J.

GERMAIN GRISEZ *

I. INTRODUCTION

Until recent years, all Catholic theologians held that there are moral absolutes, in the sense that there are true universal moral norms, such as «Contraception is always morally wrong» and «Adultery is always morally wrong». Such moral absolutes are included in received Catholic teaching and have been reaffirmed by the magisterium in documents such as *Humanae vitae*, *Persona humana*, and *Familiaris consortio*. Yet some Catholic theologians now reject these and other moral absolutes. The purpose of this paper is to defend such moral absolutes by criticizing an important example of the dissenting view.

That view usually includes a number of related theological opinions. 1) There are no specifically Christian moral norms, added to the norms of common human morality, among which one might find moral absolutes. Of course, everyone is absolutely bound to make a right fundamental option toward God, but this option is not a particular moral act, for it is not made by any particular free choice. 2) Received moral teaching of absolute norms includes historically and culturally conditioned elements. Thus, it is not necessarily valid in the changed conditions of today. 3) When one must choose and any available option will involve bringing about some harm, the right choice is of that action which promises to realize a favorable proportion of good to bad. 4) Thus, no norm which morally characterizes a definite kind of action (such as contraception or adultery) is always and everywhere true, and so no such norm can be infallibly proposed as part of Catholic teaching.

Josef Fuchs, S.J., has rejected moral absolutes and defended the preceding theological opinions, especially in one important article, «The Absoluteness of Behavioral Moral Norms». This article, first published (under a slightly different title) in 1971, has been republished in a 1983 collection of some of Fuchs' recent works: *Personal Responsibility and Christian Morality*¹. (All page references to Fuchs within the text are to this volume).

* The Flynn Professor of Christian Ethics Mount Saint Mary's College Emmitsburg, Maryland 21727.

¹ JOSEF FUCHS, S.J., *Personal Responsibility and Christian Morality*, Georgetown University Press, Washington, D.C. - Gill and Macmillan, Dublin 1983. References to pages 115-152

The article is unique in its brief articulation of all the elements of the view Fuchs' espoused when he published it. It also is unusually important because of its influence since its first publication and because of Fuchs' professional stature — well deserved by his many previous, valuable publications and years of service at the Pontifical Gregorian University. Hence, I have chosen this article as a focus for criticism, although I also refer occasionally to other items in the recently published collection.

In part II, I will expound Fuchs' view concerning moral absolutes, including what he thinks about the four interrelated theological opinions. In subsequent parts I will criticize Fuchs' view with respect to the relationship of morality to salvation (III), historical and cultural relativity (IV), proportionalism in moral judgment (V), and the use of theological sources (VI).

Many who have continued to defend and to try to live by received Catholic moral teaching are tempted to dismiss contrary theological opinion as mere rationalization of a surrender to contemporary, post-Christian culture. To give in to that temptation in criticizing Fuchs' view would be unjust. Fuchs was struggling with real theological problems which were not faced adequately by Catholic moral theologians before Vatican II. Fuchs' work has helped me in my own effort to face these problems, although I have come to conclusions very different from the dissenting positions of which Fuchs' view is a typical instance. In the present paper, I suggest my own view incidentally; it is developed at length in a recently published book ².

II. FUCHS' VIEW ON MORAL ABSOLUTES

Recent Catholic moral theology has reacted against a legalistic conception of morality, which thought of natural moral law as a set of precepts to be recognized and applied by each individual's conscience. The proper response was obedience to the law thus grasped by conscience. The immediate end of obedience, on this view, was moral uprightness itself or, negatively, avoidance of mortal sin. The ultimate end of obedience to moral law was that by it one would gain the reward of heaven, while those who died in grave sin would suffer everlasting punishment in hell.

Fuchs considers unsatisfactory «the conception of natural moral law as an all-embracing set of invariable norms» (p. 116). He firmly rejects «a "preceptive" understanding of the moral law» and the notion that the function of conscience is simply «the application of the moral law, or its norms, to the

inclusive are to *The Absoluteness of Behavioral Moral Norms*; other references to this volume are to other recent works of Fuchs, all of which appear to be fully in harmony with one another.

² GERMAIN GRISEZ, *The Way of the Lord Jesus*, vol. I, *Christian Moral Principles*, Franciscan Herald Press, Chicago 1983.

concrete case». Rather, Fuchs holds: «The function of conscience is to help man, as agent, make his action authentic (i.e., self-realizing). Hence conscience ought to assist action toward objectivity, toward truth, in conformity with the concrete human reality. It is necessary above all that action be conformable to the evaluating judgment (of conscience) with respect to the given concrete moment and its options» (p. 128). Morality is not an end in itself: «The moral task proper to man is not to fulfill norms so that in the final analysis life's reality would serve merely as material, so to speak, for actualizing moral values — that is, obeying norms. Inversely, the concrete reality of life itself — that is, its actualization — is the real task» (p. 146). Moral norms are not imposed by God on human persons but emerge as insights into the intrinsic conditions which must be met for human self-realization and self-development (p. 131)³.

Fuchs firmly rejects the inversion of the priority of grace to morality: «Christ's mission was not to establish a new moral order, new moral laws. Nor was it his primary intent to teach a moral doctrine corresponding to creation. The significance of his coming was rather to redeem sinful mankind, to transform man interiorly by grace, to make him one who believes and loves». Loving faith must bear fruit and be manifested in right conduct. But «faith, love, and salvation do not depend upon the rectitude of the norms of living that are basic to one's life practice» (p. 115).

It follows, Fuchs thinks, that one must take *cum grano salis* the usual explanation of the Church's teaching in the moral field: that she «has to teach the way to salvation and true morality is the way to salvation» (p. 121). For, Fuchs holds, the concrete content of moral life «is not directly concerned with salvation, or union with God; only faith and love, together with the effort to incarnate this materiality in the "true" way in the reality of life are thus concerned». From this, Fuchs tries to draw a further conclusion: «That the material mode of this incarnation can represent only a *secundarium*, already makes it reasonable that within certain limits moral pluralism might well be possible» (pp. 121-122).

Fuchs distinguishes among various sorts of moral norms. Some — such as the requirement to obey God and follow Christ — are central to the Bible, for they directly concern conversion and salvation. These are absolute. «But *these* moral-religious imperatives are transcendental — that is, they refer to the personal human being as a whole and not to specific moral conduct» (p. 118). Other absolute norms — for example, to be meek and compassionate — commend certain attitudes and values, but do not specify which actions embody these attitudes and values. Finally, there are «operative norms of conduct» which morally characterize kinds of action precisely described in a way that does not presuppose the moral evaluation to be given. Fuchs holds that while such norms can be absolute in the sense of being objectively true

³ See also FUCHS, *op. cit.*, pp. 59, 97, 178.

and binding in a given instance, they cannot be absolute in the sense of holding universally (p. 118) ⁴.

Examples of «operative norms of conduct», as Fuchs uses the expression, would include the received norms concerning contraception and adultery, assuming that «contraception» and «adultery» refer not only to *wrongful* birth prevention and *wrongful* extramarital intercourse, but to forms of conduct which can be described in morally neutral ways and then characterized as always morally wrong.

Fuchs denies that there are specifically Christian operative norms of conduct, added to the norms of common human morality, among which one might find moral absolutes: «Christian behavioral norms, in their material content, are not distinctively Christian norms that would hold only for Christians, but "human" norms, i.e., corresponding to the (authentic) humanness of man, which we have traditionally called norms of the natural moral law, or moral law of nature» (p. 129). In support of this position, Fuchs cites the teaching of St. Thomas Aquinas, who holds that in virtuous works Christians are guided by natural reason, the common standard of morality ⁵.

One might suppose that Fuchs' denial that there are specifically Christian operative norms of conduct entails an absolute separation of grace from human nature and its fulfillment through moral action. But that is not Fuchs' view. Rather, he relates the two domains by his theory of fundamental option. According to Fuchs, the fundamental option has two aspects.

On the one hand it is an act, inaccessible to conscious reflection, by which the person as such realizes himself or herself before the Absolute (p. 56). It is acceptance or rejection of an original intimate revelation, involving «either a fully accepted self-surrender to or a self-despairing rejection of the personal God» (p. 94). This option thus corresponds to the absolute transcendental norms of Christian life and is irreducible to the particular choices and actions which are governed by operative norms of conduct.

Yet, on the other hand, while grace does not specify operative norms of conduct within moral life, the right fundamental option does transform the whole of moral life, for the fundamental option is made *through* the many acts of free choice, which must be integrated with it to bring it to maturity ⁶. Hence, while Christian morality has no new moral precepts, it is «the content of the new man who does not remain in the life of the sinner (*sarkikos*) but rather is converted to the grace of being redeemed — in faith, in love, in the following of Christ — and who expresses his being redeemed by living true human morality and Christian religious life as a new man in Christian manner» (p. 76, cfr. p. 99).

⁴ See also *ibid.*, pp. 141, 143.

⁵ *Ibid.*, pp. 73-74 and 95; cfr. ST. THOMAS, *S. Th.*, I-II, q. 108. a. 2.

⁶ See JOSEF FUCHS, S.J., *Human Values and Christian Morality*, Gill and Macmillan, Dublin 1970, p. 96.

Insofar as Christian morality is nothing but true human morality, Fuchs holds that the operative norms of conduct in Christian life are necessarily conditioned by human historicity. For instance, Fuchs thinks that given the experience necessary to understand sexual behavior, it is immediately evident «that sexuality has to be viewed in relation to a particular culture» (p. 130). Fuchs favors the view that «“absoluteness”, understood as “immutability” and “universal validity” yields to the principle of change and historical conditioning» (p. 116). Against the position that there are «numerous precepts of natural law, which, because rooted in an unchangeable nature, are unvarying and universal» (pp. 125-126), Fuchs insists that «the human state may differ in different epochs and cultures» (p. 126).

While affirming the historicity of morality, Fuchs firmly rejects individualistic subjectivism: «There is a human orientation to moral questions only in terms of a group, a community, a society, conceived as a whole» (p. 145). He also rejects radical cultural relativism by positing a constant, transcultural standard. Because human self-realization is a historical process, the constant criterion of morality is «a steadily advancing “humanization”» (p. 129). For each person: «Self-realization entails that he himself must discover the available possibilities for his action and development, and determine on the basis of his present understanding of himself which of these possibilities are right, reasonable, human (in the full and positive sense of these words), and so contributive to human progress» (p. 127). In short: «Whatever leads to our unfolding, in the fullest and best sense of the word, is good» (pp. 126-127).

Hence, in Fuchs' view, moral norms which try to be universally valid by that very fact fail to reach the human reality they were meant to direct. The historically conditioned character of operative norms of conduct must be admitted precisely for the sake of their truth: «The critical question, then, is not one of relativism but of objectivity, or the “truth” of the action which must be in conformity with the whole concrete reality of man (of society)» (p. 133).

It follows that when a behavioral norm is being formulated, all the human values and disvalues must be considered in the total human situation. On Fuchs' view, these values and disvalues do not of themselves belong to the moral sphere; rather, they become morally significant only insofar as reason, taking them into account, reaches a judgement as to what way of acting *under the actual conditions* is likely to contribute to human progress:

To arrive at a behavioral norm regarding premarital intercourse or birth control, for example, a whole complex of factors obviously has to be considered. (It should not be necessary to add that this takes place in an explicit manner only in scientific reflection). What must be determined is the significance of the action as value or nonvalue for the individual, for interpersonal relations and for human society, in connection, of course, with the total reality of man and his society in view of his whole culture. Furthermore, the priority and urgency of the different values implied must be weighed. By this procedure, man as assessor (the evaluating human society)

arrives at a judgment, tentatively or with some measure of certitude, as to which mode of behavior might further man's self-realization and self-development (p. 131).

Fuchs believes that only a norm arrived at in this way is likely to fit concrete reality and so have the relevant absoluteness of objectivity and moral truth. There are constant human values (such as life and truth) and disvalues (such as death and error), but these values and disvalues do not immediately entail moral norms. Rather, the premoral human values and disvalues must be considered in the concrete situation relative to the overall human good of «self-realization and self-development».

But even norms formulated in this way, Fuchs believes, are nonabsolute. Societies are not homogeneous but include diversity; cultures themselves gradually change (p. 132). Any norm formulated before the choice to be made has a certain generality. Confronted with the actual situation, unexpected factors may be found which require an exception or restriction to a previously assumed norm (pp. 134-136). Thus, although in principle there are no exceptions to an adequately refined moral norm, Fuchs thinks that no norm can be assumed to be adequate until one has considered the values and disvalues in the situation one actually confronts.

For this reason, Fuchs does not define the moral goodness of the particular action by its conformity to a true moral principle. He formulates and answers the central question:

Here we take up the question: when is human action, or when is man in his action (morally) good? Must not the answer be: when he intends and effects a human good (value), in the premoral sense — for example, life, health, joy, culture, etc. (for only this is *recta ratio*); but not when he has in view and effects a human nongood, an evil (nonvalue) in the premoral sense — for example, death, wounding, wrong, etc. What if he intends and effects good, but this necessarily involves effecting evil also? We answer: if the realization of the evil through the intended realization of good is justified as a proportionally related cause, then in this case only good was intended (p. 136).

Thus, Fuchs introduces the notion of «proportionally related cause». He spells it out further as a requirement for rightness of action: «The evil (in a premoral sense) effected by a human agent must not be intended as such, and must be justified in terms of the totality of the action by appropriate reasons» (p. 137).

Fuchs grants that the end does not justify the means if the means in question is already admitted to be morally evil. But he holds that the intention and realization of a good can possibly justify the doing of any premoral evil (p. 138). In such cases, Fuchs insists, the bringing about of the evil cannot be morally evaluated by itself: «An action cannot be judged morally in its materiality (killing, wounding, going to the moon), without reference to the intention of the agent; without this, we are not dealing with a human action, and only of

a human action may one say in a true sense whether it is morally good or bad» (p. 137).

In Fuchs' view, it follows that there can be no absolute behavioral moral norms and so, theoretically, no intrinsically evil acts. «The reason is that an action cannot be judged morally at all, considered purely in itself, but only together with all the circumstances and the intention. Consequently, a behavioral norm, universally valid in the full sense, would presuppose that those who arrive at it could know or foresee adequately all the possible combinations of the action concerned with circumstances and intentions, with (pre)moral values and nonvalues (*bona* and *mala* "*physica*")» (p. 140). Such knowledge, Fuchs observes ironically, is not easy to come by.

Of course, Fuchs affirms that there are universal ethical statements — for example, that one ought to be just, chaste, merciful, and so on — but these are merely formal, since they stop short of specifying the actions which would fulfill them (p. 143). Thus, Fuchs counts life as a human good and recognizes the moral norm which protects it: «But "Thou shalt not kill" is obviously too broadly stated; it would be better to say, "Thou shalt not commit murder" — that is, "Thou shalt not kill unjustly"» (p. 140). The latter, truly universal formula, however, leaves open the question what killing counts as murder. Fuchs thinks that the method of formulating norms and making judgments he accepts might today lead to drawing the lines between lawful and unlawful killings differently than in the past — for example, with respect to capital punishment and some instances of suicide (p. 141).

Fuchs also holds that universal norms can be useful in practice. Formal norms call attention to values. Behavioral norms developed in view of the actual conditions can suffice for ordinary cases, but remain open to refinement when necessary. Also, Fuchs admits: «There can be norms stated as universals, with precise delineations of action to which we cannot conceive of any kind of exception — e.g., cruel treatment of a child which is of no benefit to the child. Despite misgivings on the level of theory, we get along very well with norms of this kind» (pp. 141-142).

In the light of the preceding, it is not surprising that in Fuchs' view no true moral absolutes, in the sense of universal behavioral norms, are to be found in Scripture or the Church's teaching. But it is worth noticing how Fuchs handles these theological sources when they seem to falsify his theory.

Fuchs says that Christianity has tended to take moral norms in Scripture as absolutes (universal, ever valid and unchangeable), inasmuch as Scripture is God's word. But since this word is spoken in a human mode, «the moral imperatives appearing in Holy Scripture should not be interpreted as direct divine "dictates"». Thus, there remains the problem of interpretation, and so «moral theology will have to go to school to contemporary exegesis, to avoid lapsing into unauthorized good-will reading» (p. 117).

Fuchs illustrates this view with a few examples from the New Testament. He thinks that the demands of the Sermon on the Mount probably should be interpreted as having absolute validity as models of behavior, but not as

universal behavioral norms (p. 118). He says recent discussion of the Lord's word on the indissolubility of marriage opens up questions as to whether what is involved is an imperative or something more, and if an imperative whether an operative norm or an ideal (p. 118).

Fuchs suggests that St. Paul presupposes and «accepts the moral wisdom of the "good" men of his time, both Jew and Gentile; one thinks, among other things, of the tables of domestic rules and the catalogue of vices». Thus, «Paul does not present himself as a teacher of moral living, still less as a teacher of specifically Christian norms of conduct». Paul represents a Stoic, Judaic, and Diaspora-Judaic ethos which can hardly be supposed timeless (p. 119). St. Paul's moral «directives concerning woman's position in marriage, society and the Church... are to be regarded as conditioned by his time» (p. 119). Since these directives given by Paul are considered dated, all the rest — including «the affirmation that certain explicitly mentioned modes of conduct ban one from the kingdom of God» — may be true only in the sense that «these modes of conduct are to be judged negatively, in accordance with the moral evaluation proper to that age and accepted by Paul. Paul therefore did not teach such evaluation as thesis, but admitted it as hypothesis in his doctrinal statement on the Christian mystery of salvation» (p. 120).

Fuchs admits that these considerations do not mean that norms of behavior found in the New Testament are no longer valid. But he thinks that the criterion of their possible universality cannot be found in Scripture itself, and concludes: «The moral behavioral norms in Scripture are directed to actual persons of a definite era and culture. Hence their character of absoluteness would not signify primarily universality, but objectivity; and the latter can denote either the objectively right evaluation in a particular culturally conditioned human situation or necessary conformity to the moral views of the morally elite in a given society» (p. 120).

In dealing with the moral teaching of the Church and with natural law, Fuchs deploys his theories, already summarized, about the relationship of moral life to salvation and about human historicity. With an evident allusion to polygamy, he argues that whether marriage is to be understood and lived in a Congolese or a Western European style is an important question, «but not in itself determinative of salvation» (p. 121)⁷. True, amidst pluralism, there must be unconditionality in stating precepts. «However, it could follow from what has been said that this quality of absoluteness does not represent primarily the universality of a norm, but an antithesis to arbitrary judgment; or, positively stated, orientation toward concrete human (total) reality, and, in this sense, objectivity, truth» (p. 122).

With respect to the assistance of the Holy Spirit promised to the Church, Fuchs denies that «the Holy Spirit slowly began to impart via the Church what he had not conveyed through Scripture — a vast collection of moral

⁷ Cfr FUCHS, *Personal Responsibility and Christian Morality*, p. 132 with note 29.

behavioral norms proclaimed for the whole world and for all time» (p. 123). The «Spirit is merely “incarnated” in the Church» which remains very human despite his assistance (p. 123). The Spirit only «guarantees that error, which in human comprehension-discovery-evaluation-listening-deciding can never be absolutely excluded, will not become in the end an essential component of the Church». From the preceding statement, Fuchs proceeds at once to draw the conclusion that there is room for dissent from behavioral norms received in the Church: «It stands to reason, then, that the same ecclesial community or a particular cultural group within it — pluralistic, therefore — will at times begin to experience and evaluate in a new and different way, regarding specific points. In this connection it is noteworthy that in the Church’s two thousand years, seemingly no definitive doctrinal decision on moral questions has been made, at least insofar as these would be related to natural law, without being at the same time revealed» (p. 124).

Fuchs affirms that nondefinitive moral guidelines of the Church come under the assistance of the Spirit and should enjoy a presumption of truth (p. 124). But for him that only means that received behavioral norms are nonarbitrary guidelines, which remain open to review by conscience confronted with a concrete situation including elements not envisaged by the general norm (pp. 144-145). Even if moral norms were proposed infallibly, Fuchs thinks, «it can be imagined and probably demonstrated, if need be, that a strict behavioral norm, stated as a universal, contains unexpressed conditions and qualifications which as such limit its universality» (p. 124).

III. CRITIQUE WITH RESPECT TO THE RELATIONSHIP OF MORALITY TO SALVATION

Without using the expression «fundamental option», Vatican II clearly teaches that the act of faith is the fundamental option of Christian life: «“The obedience of faith” (*Rm* 16, 26; cfr 1, 5; 2 *Cor* 10, 5-6) must be given to God who reveals, an obedience by which man entrusts his whole self freely to God, offering “the full submission of intellect and will to God who reveals”, and freely assenting to the truth revealed by him» (DV 5). While saving faith depends upon the mysterious working of grace, the teaching of Trent, Vatican I, and Vatican II clearly implies that the submission of faith is made by a free choice, a moral act of assent, in conformity with conscience⁸.

Fuchs says that faith (*fides qua*) is the fundamental option. However, he thinks this act is not a free choice, but pertains to basic freedom and is inaccessible to conscious reflection (pp. 92-94). This view depends upon an arguable theological theory of grace (p. 94)⁹. Whatever one thinks of that

⁸ DS 1554/814, 1559/819, 3010/1791; DH 2-3; cfr St. THOMAS, *S. Th.*, I-II, q. 113, a. 3.

⁹ See FUCHS, *Human Values and Christian Morality*, p. 109.

theory, in reality faith as a particular moral act of assent by free choice can be located by conscious reflection. Not only do many converted as adults remember the precise moment when they made that choice, but many baptized as infants can recall a moment at which they freely committed themselves to their faith in rejecting a temptation to abandon it or freely recommitted themselves after having sinned directly against it.

Moreover, Fuchs elsewhere treated fundamental option as if it were charity rather than faith¹⁰. Whether faith or charity is considered the fundamental option is important. A Christian can be in mortal sin and have true faith at the same time, since not every mortally sinful choice involves changing one's specific choice to believe¹¹. Charity, however, should inform the whole of Christian life and is incompatible with mortal sin.

As soon as one admits that the fundamental option of Christian life is faith and that one takes this option by a particular free choice, one begins to see difficulties in Fuchs' view of the relationship of the content of morality (conscious choices) to salvation (the transcendental). By Christian faith one enters the communion of the new covenant and so accepts the personal and communal responsibilities of friendship with God in Jesus' Church. A covenant has definite stipulations and life in any human community has many operative implications. Thus, faith requires one to keep the commandments¹².

Faith also leads to specifically Christian operative norms. In denying that there are such norms, Fuchs uses the authority of St. Thomas, but does so selectively. For Thomas holds that there are specific responsibilities, such as love of enemies, which flow from the properly Christian virtue of charity¹³.

Thomas also holds that Christian life requires specifically Christian moral virtues which differ in kind from the virtues which can be acquired through human acts formed by natural reason alone. According to Thomas, natural virtues equip one only for life in civic community in this world. Specifically Christian virtues are needed precisely because by faith human persons become fellow citizens of the saints and members of God's household. Natural virtues will end with this life, but specifically Christian virtues will continue to shape appropriate actions in the heavenly fellowship¹⁴.

Christian virtues bear on the same matters as the civic virtues they correspond to, but, according to Thomas, sometimes make specific demands different from those of human reason. For instance, the rule set by reason for eating is that one's diet be healthful and not block the use of reason. But the rule of divine law is that one chastise one's body and make it docile by

¹⁰ *Ibid.*, pp. 92-111.

¹¹ See DS 1577-1578/837-838.

¹² See DS 1336-1339/804.

¹³ See *S. Th.*, II-II, q. 25, a. 8; q. 83, a. 8; *De perfectione vitae spiritualis*, c. 14. Cfr S. PINCKAERS, O.P., *La morale de saint Thomas: est-elle chrétienne?*, «Nova et Vetera», 51 (1976), pp. 93-107.

¹⁴ *S. Th.*, I-II, q. 63, aa. 3-4.

abstinence from food, drink, and other satisfactions. Thomas expressly argues that something excessive according to the rational norm of civic virtue can be appropriate according to the norm of specifically Christian virtue — for example, to willingly lay down one's life in defense of the faith¹⁵.

Is Thomas' teaching on infused virtues inconsistent with his position, cited by Fuchs, that in virtuous works Christians are guided by natural reason, the common standard of morality? Hardly. For if one does not consign faith to the transcendental domain, as Fuchs does, it can generate Christian operative norms by specifying the content of a life conducted according to the principles and processes of natural reason. One can see how this specification works by considering an example: love of enemies.

Jesus says: «Love your enemies, do good to those who hate you, bless those who curse you, pray for those who treat you badly» (Lk 6, 27-28). In explaining the reason for this norm, Jesus appeals to a generally accepted moral principle: «Treat others as you would like them to treat you» (Lk 6, 31). Everyone takes care of friends and deals fairly with others when that is advantageous. But Christians should do more. As God's children, they are called to act as he does: «Be compassionate as your Father is compassionate. Do not judge, and you will not be judged yourselves; do not condemn, and you will not be condemned yourselves; grant pardon, and you will be pardoned» (Lk 6, 36-37)¹⁶.

The parable of the merciless official in Matthew's Gospel makes the same point. A king forgives a high official a huge debt, but the official refuses the same mercy to a subordinate who owes a small amount. The king thereupon insists on full payment, and Jesus draws the moral: «That is how my heavenly Father will deal with you unless you each forgive your brother from your heart» (Mt 18, 35).

The moral principle underlying these arguments is the Golden Rule, which is available to everyone. Christian faith makes a claim about the human situation: that although sinful men and women are God's enemies, they are offered fellowship with him by his mercy. One who believes this claim and accepts the offered fellowship therefore has specific moral responsibilities toward others, including enemies: to treat them with similar mercy.

Is this moral norm accessible to any upright nonbeliever who proceeds reasonably? Fuchs thinks so, but his argument assumes that loving enemies is the only alternative to hating them (p. 61). Of course, nonbelievers can know that revenge is immoral, that kindness to enemies is godlike, and even that such beneficence can at times be morally required¹⁷. But in many cases

¹⁵ See *In Sent.*, 4, d. 33, q. 1, a. 2, qu. la 4, ad 2; *De virtutibus cardinalibus*, a. 4.

¹⁶ For an exegesis of Lk 6,27-38 supportive of my reading: JOSEPH A. FITZMYER, S.J., *The Gospel According to Luke (I-IX)*, «Anchor Bible», 28 (Doubleday, Garden City, N.Y. 1981), pp. 630, 637-641.

¹⁷ See PHEME PERKINS, *Love Commands in the New Testament*, Paulist Press, New York 1982, pp. 27-40 and 89-95, for further background and exegesis of New Testament texts, which make it clear that the Christian norms regarding love of enemies are tightly based on faith.

nonbelievers will faultlessly follow the policy of keeping their distance from enemies in order to avoid both suffering and doing evil. Only faith in the divine initiative of reconciliation provides a reason for loving enemies — for example, by making repeated, risky, and often seemingly fruitless approaches to them.

In consigning the specifically Christian to the transcendental, Fuchs tends to reduce salvation to union with God (p. 122). Much old-fashioned spirituality favored that reduction, despite the New Testament's teaching that redemption includes all human goods and the cosmos itself¹⁸. The teaching of Vatican II firmly excludes such reductionist spirituality.

The work of redemption, according to Vatican II, is not limited to saving souls. The mission of the Church extends to the temporal order. The spiritual and temporal orders «although distinct, are so connected in the plan of God that he himself intends in Christ to appropriate the whole universe into a new creation, initially here on earth, fully on the last day» (AA 5). Christians will find perfected in heaven the very good fruits of human nature and work which they nurture here on earth (GS 39).

Thus, when Fuchs says that Christ's mission was neither to establish a new moral order nor primarily to teach a moral doctrine corresponding to creation, we can agree with him. Faith and love do not depend on the rectitude of norms of living. But the material mode in which Christians «incarnate» faith and love is not so much a «secundarium» as Fuchs suggests. Morally good actions not only manifest faith and love but prepare the material of the heavenly kingdom (GS 38). Thus, Christian moral teaching concerns not merely extrinsic effects and signs of saving grace but intrinsic and partially constitutive means to the integral fulfillment for which Christians hope.

Fuchs is right in rejecting legalism and what he calls a «preceptive» understanding of natural law. The genuine good of humankind is the ultimate principle of morality. But that good will never be fully realized within history and this world, for while our work prepares the material of the heavenly kingdom, earthly progress is not identical with the growth of the kingdom (GS 38-39). As Vatican II teaches, the selves and relationships built up by our actions are more important than the technical results we achieve: «A man is more precious for what he is than for what he has» (GS 35). Persons and their relationship, souls in loving communion, already mysteriously share in the kingdom which will last. «Hence, the norm of human activity is this: that in accord with the divine plan and will, it should harmonize with the good of the human race, and allow men as individuals and as members of society to pursue their total vocation and fulfill it» (GS 35).

In short, Christians are called to do what Jesus did and add to it, to bear real and abundant fruit, not by themselves but in him. Without Jesus we can do nothing; in him we can and ought to do great things. Thus, Christian ethics

¹⁸ See *Rm* 8,21; *1 Cor* 3,22-23; *Eph* 1,10.

should guide us in communal cooperation with Jesus. The work of Jesus bears upon human salvation, begun in this world but completed only in heavenly fulfillment. Hence, Christian ethics primarily should be an other-worldly humanism. It should direct Christian life here and now as a real sharing in the kingdom (which is not of this world) and preparation for everlasting life (still to come).

Furthermore, while a life according to Christian faith must conform to the moral truth the nonbeliever can know, for each believer faith excludes many options which would be available to an upright nonbeliever. For, according to faith, diverse personal talents and opportunities are so many different gifts which Christians must put to work in the cooperative effort of building up the Church or preparing the material of Jesus' expected kingdom (AA 3)¹⁹. Jesus' followers are to make their different personal contributions to the work he began. Hence, there is a specifically Christian norm which binds every Christian and no nonbeliever: One should discern one's personal vocation, accept it, and faithfully fulfill it.

This norm emerges very clearly from St. Paul's teaching concerning the Church, considered as one body of Christ, having many members with diverse and complementary functions (1. Cor 12, 12-26). In his encyclical, *Redemptor hominis*, John Paul II refers to the teaching of St. Paul in emphasizing the principle of personal vocation:

For the whole of the community of the People of God and for each member of it what is in question is not just a specific «social membership»; rather, for each and every one what is essential is a particular «vocation». Indeed, the Church as the People of God is also — according to the teaching of St. Paul mentioned above, of which Pius XII reminded us in wonderful terms — «Christ's Mystical Body». Membership in that body has for its source a particular call united with the saving action of grace. Therefore, if we wish to keep in mind this community of the People of God, which is so vast and so extremely differentiated, we must see first and foremost Christ saying in a way to each member of the community: «Follow Me»²⁰.

Thus, each Christian, following Christ according to his or her personal vocation, has specific responsibilities with respect to a small part of the whole work of redemption.

The fulfillment of one's vocation by no means guarantees success in realizing the human goods one attempts to serve. Indeed, in the fallen world, one can expect only limited results. The perfection of the redemptive work will come about by God's act of re-creation, which accepts and answers the sacrifice of faithful obedience, according to the model and in continuity with the death and resurrection of Jesus.

Hence, for each Christian, a morally good action is one marked by

¹⁹ Cfr. Paul VI, *Populorum progressio*, 59 (AAS [1967] 263-265).

²⁰ John Paul II, *Redemptor hominis*, 71 (AAS [1979] 317).

faithfulness, whether or not it actually effects innerworldly good. Jesus did not say: If anyone wants to be a follower of mine, let him intend and bring about more premoral human good than bad. Rather, he said: «If anyone wants to be a follower of mine, let him renounce himself and take up his cross every day and follow me» (*Lk* 9, 23)²¹.

Fidelity to personal vocation is specified by true moral norms. Since the human fulfillment to which they direct is the heavenly kingdom planned by God and expected through his re-creative act, these true norms cannot be reduced to the principle of the human self-realization and self-development possible within this world. Hence, Fuchs is mistaken in thinking that the right option is the one which contributes to human innerworldly progress or makes for steadily advancing humanization in the course of history.

The Christian needs something more modest in order to be able to choose responsibly in view of his or her unique but very small role in the divine plan of salvation. For example, the morally decisive question about extramarital sexual intercourse is not whether it contributes to self-development and steadily advancing humanization, but whether it can faithfully fulfill anyone's personal vocation by bringing souls into that loving communion which is the kingdom — a loving communion not only of human but of divine persons.

In sum, Fuchs is right in rejecting legalism and seeking the basis of morality in integral human fulfillment. However, he overlooks the place this fulfillment has in the work of redemption, which will be completed only by God's re-creative act. Hence, Fuchs accepts as part of an oversimplified criterion of morality how well acts effect goods in this world and history. He thus neglects the importance of faithful service to the goods pertaining to each Christian's personal vocation, a service which remains significant even when failure seems to render faithfulness pointless. At the same time, Fuchs too rigidly divides the «transcendental» from the «operative» dimension of Christian life. Thus he makes the relationship between Christian moral life and salvation too loose.

Whether Fuchs' view of that relationship does full justice to Catholic doctrine concerning the merit of good works is a question which need not be considered here. However, it is worth noting that Fuchs' conception of the relationship between moral life and salvation is not the only alternative to the legalistic view of it. One also can understand merit in relationship to God's faithfulness to his covenantal promises — as the appropriateness of God's ultimate work of re-creation and glorification in response to the obedience of men and women united in Christ, fulfilling their personal vocations within Jesus' redemptive mission. On this view, faithful service to human goods in this life merits what it cannot effect — their integral realization in the kingdom, where «we will find them again, but freed of stain, burnished and transfigured» (GS 39).

²¹ Cfr. FITZMYER, *op. cit.*, pp. 241-43 and 783-90.

IV. CRITIQUE WITH RESPECT TO HISTORICAL AND CULTURAL RELATIVITY

A radical historical or cultural relativism treats as ultimate the set of norms commonly accepted as morally obligatory at a given time and place. This reduction of morality to social convention leaves no room for moral criticism which transcends cultures and epochs. Radical relativism also presupposes a unity and harmony in culture one does not find in any actual society or epoch. Thus, radical relativism is not so prevalent among professional anthropologists as it once was. David Bidney aptly summarizes the antirelativist view: «In the last analysis, *culture is not* the measure of all things, *but nature is*, and there are more things in nature than are ever grasped through our human, cultural symbols. Culture is but our human means of adjusting to nature and utilizing its powers in the service of mankind. This postulate of a *metacultural reality* renders scientific progress possible and saves us from the *culturcentric predicament* of historic idealism, historic materialism, and evolutionary positivism»²².

In general, Fuchs' view does not involve a radical historical and cultural relativism. For instance, when he dismisses as culturally conditioned «the Pauline directives concerning woman's position in marriage, society and the Church», one might think he is committed to radical relativism, especially when he proposes as a conclusion: «Such directives cannot be normative for a period in which the social position of women is essentially different». But Fuchs' basic nonrelativism appears when he adds that a judgment is possible «at least in principle — as to which suits the nature of women in society better, and hence is the moral ideal, the social position of women in Paul's cultural milieu or that of women in our cultural milieu — along with corresponding moral demands» (p. 119).

Nevertheless, there are passages in which Fuchs suggests that there might be a profound relativity of morality to social reality. For instance, he refers to polygamy in an African tribe, and sketches two ways of viewing it. One is that the social reality is defective, which raises an issue at the pastoral level but not one concerning moral truth. The other raises a more basic question: «But might it not be assumed also that on the basis of dissimilar experiences, a heterogeneous self-concept and varying options and evaluations on the part of man (humanity) projecting himself into his future in human fashion — *secundum rectam rationem* — are entirely possible, and that these options and evaluations within the chosen system postulate varied forms of behavior?» (p. 132).

Without admitting radical relativism, there are several ways in which one can make room for historicity and for the relativity of morality to contingent social reality.

²² DAVID BIDNEY, *Cultural Relativism*, in *International Encyclopedia of the Social Sciences*, III, col. 544.

First, factual judgments often lead to an altogether fresh insight into moral responsibilities. That is how Christian faith's teaching concerning the fallen and redeemed human condition generates specifically Christian norms, such as the requirement treated above of mercy toward enemies. At a much lower but still significant level, modern knowledge of communicable diseases leads to morally binding norms of hygiene inaccessible to less well informed societies.

Second, social and cultural entities are not discovered by us in the natural world. Rather, they are constituted by human practical reflection. Thus, relationships of tenants to landlords and charging interest on loans had different moral significances in the Middle Ages than they do today, because the socioeconomic system was so different that outwardly similar actions actually involved very different relationships between the wills of those doing them and the relevant human goods.

Third, societies like individuals have options which both generate and limit moral responsibilities. There is no relativism in the fact that a husband and wife should express their affection for each other in ways which would be inappropriate for a couple who are not married. Different moral responsibilities follow from different morally acceptable antecedent options. Similarly, societies can have options — for example, whether to press harder for the development of useful techniques or to live a simpler style of life. Options such as this one can make a profound difference in certain moral responsibilities, such as those bearing upon communal property.

Fourth, conceptual clarification can transform the options with which one is faced by distinguishing what had appeared a single choice into two or more. Fuchs points out an example: «The Church's opposition in the past to religious freedom is understandable if religious freedom and indifferentism are equated conceptually» (p. 125). One might be tempted to say in such cases that an error in moral judgment is detected and corrected. But it would be more accurate to say that a correct judgment on one inadequately understood alternative has been replaced by two correct judgments on more adequately understood alternatives.

Fifth, moral insight often is blocked by bias and released by changed social conditions. Thus, when all the members of a society with the leisure to engage in critical reflection benefit from an institution such as slavery, it is difficult for anyone seriously to entertain the moral truth. However, when slavery is no longer so expedient, the truth about its unfairness easily appears. In this way, changing social reality alters available knowledge of moral truth and thus changes people's subjective moral responsibility, although the moral truth remains what it was. Slavery has not become wrong in the past century or two, but its wrongness has become known.

Contingent social reality makes a difference to the morality of behavior in these five ways and perhaps in other ways as well. Clearly, growing knowledge of moral truth (the fifth way) is compatible with there being moral absolutes. That leaves the first four ways. But all of these also are compatible with moral absolutes — that is, with certain universal norms, such as those concerning

adultery and contraception, being true. For such moral absolutes refer not merely to patterns of behavior but to human acts specified by definite intentions: Contraception is a choice to do something to prevent conception, and adultery is a choice to engage in extramarital intercourse involving a married person²³. These specifications will not be changed by further factual information, differing interpretations of similar outward behavior, changing options with respect to social priorities, or conceptual clarification. Acts specified by intentions remain the same despite such variable factors, because their basic interpretation is identical with their constitution as human acts, and so they are not open, as behavior is, to reinterpretation.

Thus, if one wishes to hold that contraception and adultery are not necessarily wrong for Christians today but were necessarily wrong for Christians in earlier times, one must hold either that only our *knowledge* of the moral truth rather than the truth itself has changed or that contingent social reality makes a difference to what is morally right and wrong in some more radical way. When Fuchs emphasizes historical and cultural relativity, he obviously wants to say something other than that Christian morality always has been erroneously strict. Thus, he is supposing some way more radical than any of those listed above in which the concrete historical and cultural situation determines moral truth.

When Fuchs suggests as criteria of morality standards such as «steadily advancing "humanization"» (p. 129) and «man's self-realization and self-development» (p. 131), he evidently wants them to be more than formal and empty concepts. When he insists upon the social («the evaluating human society») to exclude individual arbitrariness, he points to the de facto «total reality of man and his society» as the principle which provides determinate content (p. 131). Clearly, he wishes to avoid relativism: «The critical question, then, is not one of relativism but of objectivity, or the "truth" of the action which must be in conformity with the whole concrete reality of man (of society)» (p. 133). But how can Fuchs avoid relativism if he accepts as determinative of the formal concept of human self-realization the *whole* concrete reality of society, with its actual historical and cultural conditions?

One could say that the whole concrete reality of persons and their societies must be taken into account in developing moral norms, but that not everything should be accepted uncritically as determinative of what is morally right and wrong. That position is available to anyone who holds that critical reflection can invoke operative norms with transhistorical and transcultural validity. But Fuchs, to avoid moral absolutes, proposes a concept of *recta ratio* which empties it of such content:

²³ See GRISEZ, *op. cit.*, ch. 9, for an analysis of human acts which makes this point clear. Fuchs takes a contrary view, of course; his view on this point will be criticized toward the end of part V.

We shall continue to employ the traditional term *recta ratio*. The human is in it, that which is humanly right. Whatever is not *recta ratio* is necessarily nonhuman, not worthy of man, antithetic to a steadily advancing «humanization». *Recta ratio* does not mean innate discernment or moral truth, «inscribed» somehow, somewhere. Hence it does not denote a norm of conduct «inscribed in our nature», at least not in the sense that one could read off a moral regulation from a natural reality. The «nature» upon which the moral law is inscribed is preeminently and formally nature as *ratio*, but only, of course, as *recta ratio*. From this viewpoint, the preferred expression would probably be that of Paul in Romans: the moral law is «engraved on the heart» (Rm 2, 15). Apart from this, realities of the natural order, *ratio* excepted, can neither provide a basis for, nor affirm, any moral laws. Considered positively, then, the task of *homo-ratio* in discovering or projecting behavioral norms consists in understanding man himself, his own total reality, together with his world, in order to assess the significance of the alternatives for action available to him and so arrive at a moral affirmation (pp. 129-130).

While this account of *recta ratio* is not without its ambiguities, it clearly excludes the sort of content which would be needed to determine what should and what should not count as morally determinative when one fills the formal concept of human self-realization with the *whole* concrete reality of persons in society and their world.

Thus, in rejecting moral absolutes Fuchs is driven to do two things: to appeal to the whole historical-cultural reality to find content for the formal notion of human self-realization, and to exclude from natural law anything beyond the formal requirements of reason which might serve as a principle of criticism. He probably did not intend indiscriminately to accept as morally determinative actual, socially functioning views of human self-realization. He certainly did not consider the implications of doing so. But only the relativity of morality to actual, socially functioning views of human self-realization seems to involve sufficiently radical relativity to exclude moral absolutes. Therefore, it is worth considering in the concrete what such relativity amounts to, even though Fuchs surely would wish to introduce limiting principles.

One actual, socially functioning view of human self-realization is the Marxism which is accepted by the leadership of the Soviet Union. Those who espouse this ideology are not constrained by the ethical absolutes of other eras and cultures, such as the Stoic, Judaic, and Diaspora-Judaic ethos which Fuchs thinks St. Paul assumed as hypothesis from his cultural milieu. Nor does any Marxist wonder about what is required for steadily advancing humanization. For a convinced Marxist, human self-realization and self-development are no mere empty concepts. What contributes to the revolution and emergence of the new society is good; what resists the course of historical inevitability is bad. Thus, while Marxists deny moral absolutes which would bind always and everywhere, regardless of the concrete historical and cultural conditions, they insist on moral absolutes of the sort Fuchs accepts — norms which guide behavior in the actual situation to true self-realization and self-fulfillment.

Fuchs might reply that although Marxism is the established world view

in the Soviet Union, it can be criticized on factual and logical grounds, and thus does not represent the whole concrete reality of anyone's historical-cultural situation. Whether such a critique could be carried through without assuming some moral standards will not seem so clear if one considers the ideological differences between the findings of social scientists in the Soviet Union and the West. Moreover, will the situation be improved if one sets aside Marxism as one's example of a socially functioning view of human self-realization and takes instead the liberal world view common to the democratic nations of the West?

Here social norms also are predicated on a definite view of steadily advancing «humanization». Human self-realization ideally means material well-being for all and maximum liberty for each. Among the normative implications of this conception are approval of contraception, abortion, and easy divorce and remarriage. By limiting population growth and the cost of social welfare programs, contraception and abortion contribute to the attainment of a high and rising standard of living. By freeing individuals from burdensome family responsibilities, these practices together with easy divorce contribute greatly to individual liberty.

Theologians of the West who appealed to public opinion polls (the «sensus fidelium») and the academic climate of opinion («consensus theologorum») against recent reaffirmations by the magisterium of received Catholic moral teaching are hardly in a position to disown the specification «self-realization» receives from the actual social reality of the contemporary West. Indeed, Fuchs seems to appeal to this reality.

Undoubtedly it is full of inconsistencies, and so can be criticized on logical grounds. But logical criticism can only show that *some* position is false; it is impotent to determine which, if any, of an inconsistent set of positions is true. Moreover, because of the libertarianism and pluralism characteristic of the West, frequently anyone who sought moral specification from social reality would be sent back to individualistic subjectivism: On that question, what is right for you depends upon what you want out of life. But Fuchs appealed to society precisely to avoid that sort of arbitrariness and relativism.

Of course, when the very survival of a society is at stake, those who admit no moral absolutes do tend toward unanimity in their judgments concerning what ought to be done. Shortly after World War II, a British economist, Lionel Robbins, reflected upon the simplifications introduced into the making of socioeconomic policy during wartime. A single objective counts; all else is instrumental. If there is no victory, there is no future. All decisions are technical. Unity of purpose «gives a certain unity to the framework of planning which at least makes possible some sort of direct decision which is not wholly arbitrary»²⁴.

²⁴ LIONEL ROBBINS, *The Economic Problem in Peace and War: Some Reflections on Objectives and Mechanisms*, Macmillan, London 1957, pp. 49-50.

Robbins surely is right about the wartime psychology of the leaders and people of Britain and the United States. Absolute victory, the unconditional surrender of the Axis nations, became an obsession. That it precisely why virtually everyone accepted the strategy of obliteration bombing as harmonious with the whole concrete historical-cultural reality of those societies. Against that strategy, two decades later Vatican II articulated a moral absolute of the sort Fuchs considers theoretically impossible: «Any act of war aimed indiscriminately at the destruction of entire cities or of extensive areas along with their populations is a crime against God and man himself. It merits unequivocal and unhesitating condemnation» (GS 80).

During World War II Germans also had a clear sense of the requirements of concrete social reality. Although subsequently hardly anyone could be found who had supported Nazi ideology, at one time some Germans were certain that racial purification required that all Jews be eliminated. Of course, Nazi ideology can be criticized. The most obvious criticism is that it is *always* wrong to try to kill all the Jews in the world. No doubt Fuchs would agree with that moral absolute. But for him absoluteness is not universality. It is «the objectively right evaluation in a particular culturally conditioned human situation or necessary conformity to the moral views of the morally elite in a given society» (p. 120). In other words, the relevant absolute is merely what *we* must think about Nazi genocide. Or, at best, it is one of those «norms stated as universals, with precise delineations of action to which we cannot conceive of any kind of exception» (p. 141).

Martyrs in general, not only Christian ones, often lay down their lives for what they think are moral absolutes at odds with social demands which themselves claim absoluteness in Fuchs' sense. The fictional Antigone and Plato's Socrates appealed to moral absolutes. John the Baptist lived too soon to know how to provide «internal forum solutions» for difficult marriage cases. Thomas More, thinking it always wrong to swear falsely, died «the King's good servant, but God's first».

Had Jesus, in discerning his own responsibilities, used the criterion of the whole concrete historical-cultural situation of his society, he might have sided with the leaders, like Caiphas, who judged that «it is better for one man to die for the people, than for the whole nation to be destroyed» (Jn 11, 50). Of course, Caiphas was assuming that the end justifies the means. But unless one supposes that killing the innocent is *always* wrong, how can one disagree with Caiphas' evaluation of the premoral goods of one innocent life and the whole nation's survival? Indeed, what happened a few decades later might be taken to verify the realism of Caiphas' policy of collaboration with the Roman authorities.

For the Christian there is a way of escaping from the limitations of the concrete totality of particular historical-cultural situations. The ultimate horizon of good action need not be settled by what contributes to human progress in one's actual, earthly society. For while natural virtues promote the good life of earthly society, Christian virtues equip one for life in the kingdom. The

kingdom is no mere abstraction but a reality which relativizes the particularities of historical epochs and cultures.

That is why Vatican II, having stressed the tremendous changes which mark the modern world, affirms: «The Church also maintains that beneath all changes there are many realities which do not change and which have their ultimate foundation in Christ, who is the same yesterday and today, yes and forever. Hence in the light of Christ, the image of the unseen God, the firstborn of every creature, the Council wishes to speak to all men in order to illuminate the mystery of man and to cooperate in finding the solution to the outstanding problems of our time» (GS 10).

When it approaches urgent questions about war, the Council specifies this teaching to affirm moral absolutes: «Contemplating this melancholy state of humanity, the Council wishes to recall first of all the permanent binding force of universal natural law and its all-embracing principles» (GS 79). These principles are not merely transcendental norms; rather, they are operative norms drawn from the gospel's vision of human self-realization and progress. Hence, «The good news of Christ constantly renews the life and culture of fallen man. It combats and removes the errors and evils resulting from sinful allurements which are a perpetual threat. It never ceases to purify and elevate the morality of peoples. By riches coming from above, it makes fruitful, as it were from within, the spiritual qualities and gifts of every people and of every age. It strengthens, perfects, and restores them in Christ» (GS 58).

Obviously, the content the gospel provides for the notion of human self-realization does not give Christians a goal which would enable them to calculate what sorts of actions are likely to effect the most good or contribute most to human progress. Moreover, as explained above, success in effecting goals, even those involving the most genuine goods of persons, is far less important than faithful obedience in serving goods, whose realization ultimately depends upon God's re-creative act. How, then, can the gospel's vision of integral human fulfillment generate any operative moral norms?

According to the Preface of the Feast of Christ the King, which Vatican II quotes, the goods of the kingdom are truth and life, holiness and grace, justice, love, and peace (GS 39). Each of these is an irreducible aspect of human fulfillment. Each contributes to the image of God whose fullness will be found only in the whole Christ. Yet each of these goods can be served by our work in this world. Such service gives content to love of neighbor, and loving service to one's neighbor is service to Jesus. In carrying on such service, partiality is excluded, except that partiality to others characteristic of the mercy of Jesus, who came not to be served but to serve.

However, not all Christians have the same gifts and opportunities for service. Hence, apart from their common religious duties, the affirmative operative norms of Christian life flow from finding one's personal vocation, committing oneself to it, and faithfully fulfilling it. In doing so, one promotes the good fruits of human nature and effort. The neighbors one serves will attain truth only imperfectly, will die, will fall short of perfect holiness, will

suffer from injustice and share in it. Still, the redemptive work of Jesus will continue in the world and the coming of the kingdom will continue to be merited.

In cases in which it would seem to a nonbeliever necessary to destroy, damage, or impede some instance of one of the human goods, the Christian will remember that these are irreducible aspects of persons made in God's image. Love of neighbor excludes any choice to harm; that is why it fulfills the commandments (*Rm* 13, 8.10). Reverence for the person rules out, always and everywhere, a whole series of abuses. For example, one may never choose abortion, willful self-destruction, slavery, or prostitution (GS 27). Within the limited perspective of human knowledge, no one can ever know that choosing to destroy, damage, or impede a human good truly would contribute to human self-realization. The Christian has the certitude of hope that God will crown faithfulness with the perfection of all the human goods in the heavenly kingdom. Hence, it never is necessary to make the best of a broken world by sacrificing some persons (or aspects of persons) to other persons (or aspects of persons).

The preceding explanation of the place of absolutes in Christian morality may be clarified by considering the example of marital love.

Marital love is a good intrinsic to the persons of husband and wife in their communion. This good is not merely a means to some further end. Unlike an automobile or a dose of medicine, marital love is an ultimate principle — though not the only one — which specifies the acts of married life. Beyond marital love lies only the ultimate and full human good — the heavenly communion, of which Christian marriage itself is the sacrament, in which Jesus is united with his Church.

The meaning of the good of marital love is not exhausted by anyone's present understanding of it. Every couple who truly love grow constantly in their understanding of their love. As they do so, they look back with the realization of how little they understood at earlier stages (Some of this growth in understanding certainly can be articulated and handed on from age to age. It would be a mistake to think that husbands and wives today have no more responsibility to and for one another than did married people in Old Testament times).

Precisely for the sake of marital love's growth, we must not attempt to define it in positive terms. To say, once for all, what marital love is and must be, would be to mummify it. Yet if married people have no way of identifying authentic love, they cannot pursue and foster it. Thus, marital love is «defined» negatively, in terms of *exclusive* and *permanent* rights, mutually given and received, to marital acts. Thus, negative moral norms which absolutely exclude divorce (with remarriage) and adultery hold open the way for the constant growth and creative newness of marital love.

Remove the moral absolutes which make marital love possible without delimiting its possibility. Marital love then will be redefined positively, in terms of certain skillful performances (such as simultaneous orgasms), psychological satisfactions (such as secure affection), or social advantages (such as economically

beneficial family ties). Even if people succeed in the pursuit of such goods, they will only complete projects, not receive a continuous and inexhaustible gift.

Maintain these absolutes and others like them. Human self-realization and progress have content which can generate operative norms. These do not ideologically define a this-worldly social goal, historically and culturally conditioned and constantly changing. But they do direct one to the service of the various goods of the person, to reverence for persons, and to preparing the material of the kingdom. Conforming to moral absolutes, one sometimes will pay the price of not effecting certain good results or of suffering certain evils. But one may confidently hope that God's re-creative act will respond to one's faithfulness.

V. CRITIQUE WITH RESPECT TO PROPORTIONALISM IN MORAL JUDGMENT

Of course, Fuchs has reserved a way out of the inadequacy of socially articulated moral norms with their dependence on the actual historical-cultural situation to provide content for the otherwise merely formal concept of human self-realization or steadily advancing «humanization». That way out is through conscience. For, according to Fuchs, behavioral norms formulated in advance, which are necessarily abstract and somewhat generalized, never can be wholly adequate to the concrete human reality to which authentic, self-realizing action should conform. Hence: «As only the *ratio* (*recta ratio*) of conscience judges the reality ultimately and comprehensively in terms of the concrete element in it that is to be actualized, the *ratio* (*recta ratio*) of behavioral norms exercises merely an auxiliary function» (p. 129).

Still, it was important to see the inadequacy of Fuchs' view of the historical and cultural relativity of behavioral norms. Otherwise, when the unworkability of moral judgment as he understands it becomes clear, one might have supposed that the individual conscience could look to society for support. However, what has been shown above with respect to historical-cultural relativity makes it clear that society is in no better position to support conscience than a bankrupt nation is to support its impoverished citizens. Fuchs' view of the relationship between conscience and norms means that the individual must in principle be able to review the work of the evaluating society in formulating general norms.

Thus, in theory, at least, concrete moral judgment, if it is to arrive at moral truth, somehow must be able to reconsider everything involved in societal evaluation: «the significance of the action as value or nonvalue for the individual, for interpersonal relations and for human society, in connection, of course, with the total reality of man and his society and in view of the whole culture. Furthermore, the priority and urgency of the different values implied must be weighed» (p. 131). Beyond this, conscience must consider what human good and nongood — in the premoral sense — will be effected by each action possible in the actual situation. Whenever the action will effect both good and

bad, conscience must determine whether «the realization of the evil through the intended realization of good is justified as a proportionally related cause» (p. 136).

It is important to notice that the case in which an action intends and effects a good but also effects an evil is by no means an exception. Whenever anyone undertakes to bring about a certain good something is lost; at least, valuable resources such as time and energy are used and they will never be recovered. Moreover, no one sets out to effect evil (in the premoral sense) precisely as such. Even malicious people seeking revenge intend some premoral good — for example, what seems to them just satisfaction for the wrong another has done. If we think of a possible action and notice nothing bad about it, no choice is necessary; we proceed spontaneously. And if a possible action is suggested to us and we see nothing good about it, we do not entertain it as a real option.

Therefore, when Fuchs introduces the notion of «proportionally related cause», he embraces a general theory of moral judgment: proportionalism. According to this theory, the moral judgment of conscience can and should be reached by making a comparative evaluation of benefits and harms promised by available possibilities. The right choice is the one which offers the best proportion of premoral good to nongood.

Since Fuchs is not alone in holding proportionalism, I shall first offer a general — and, I believe, decisive — criticism of the theory, and then deal with some of the peculiar features of Fuchs' presentation of it.

The first point to notice is that we can and often do make practical judgments in the way proportionalism suggests. In cases where one has a definite, firmly accepted goal in view, deliberation seeks to determine the easiest or least costly route to this objective. After considering the possibilities, one often finds only one remaining and proceeds to take it. Here «more good» and «less bad» have definite meanings, for one is not thinking morally but technically: Only instrumental good is at stake. The morality of what one is doing and of the various ways of doing it is either taken for granted or ignored for the time being. One reaches a conclusion about the best course from a comparative evaluation of premoral goods, but the conclusion is not a moral judgment. For example, if someone is only concerned to reach a destination as quickly as possible, «I ought to take the night plane to Rome» is not a judgment about moral rightness but about efficiency.

If individuals could simply accept their moral framework from society, their judgments of conscience could be limited to technical questions, and they could proceed as proportionalism suggests. However, since no merely earthly society is in a position to give moral support to its members' consciences, proportionalism requires conscience to evaluate the promise of different options not in view of particular goals but in view of human fulfillment as a whole.

In many cases, one makes a moral judgment, eliminating possibilities by using previously recognized moral norms. For instance, a mother who believes she ought to divide her estate evenly among several children may consider and

reject several possible ways, until she finally finds the way which seems least inequitable. She then makes the division in this way, saying it is less bad than the alternatives — that is, less uneven than the discarded possibilities. Here the moral good of fairness is at stake, and reflection concludes in a moral judgment. But the judgment is different from those proposed by proportionalists. The proportion here is determined by a moral principle (fairness). By contrast, the proportionalist thinks moral judgments are reached by a comparative evaluation of human goods, without assuming a moral principle to settle the proportions.

When they break promises and do other things which they consider justifiable exceptions to accepted norms, people often explain themselves in a way which sounds like proportionalism: «I broke my promise to my friend and wouldn't let him have his gun because, regardless of any harm to our friendship, it would have been much worse to let him go out and kill somebody». However, the nonabsoluteness (openness to exceptions) characteristic of most moral norms can be explained without adopting proportionalism, by pointing out the absolute norms in which others are grounded.

For instance, the Golden Rule — treat others as you would have them treat you — both grounds the norm that one should keep promises and justifies exceptions. An upright person who breaks a promise when the Golden Rule requires this judges that fairness is a greater good than dependability. This judgment is by no means proportionalist; it does not involve the proportionalist's weighing and balancing of goods and bads prior to a moral norm in order to justify a judgment that some goods can be attacked for the sake of promoting others or preventing «greater evils». Fairness is a greater good than the dependability of keeping promises because the latter has moral value from the former: One ought (usually) to be dependable because it is (usually) unfair not to be. The Golden Rule itself does not admit of exceptions. What could justify one who treated others in a way he or she would not want to be treated in a similar situation?

Many proportionalists accept some absolute moral limits, such as the Golden Rule, on the use of proportionalism. They do this precisely to prevent their theories from justifying judgments like that of Caiphas. Fuchs does not explicitly make any reservations of this sort. But even if he admitted some absolute moral limits, he would have to face the issue of the workability of proportionalism within those limits.

That issue is: How can one commensurate the premoral benefits and harms promised by available possibilities to determine which of them offers the best proportion of good to nongood? In trying to explain how the goods and bads can be weighed against one another, proportionalists who are clearheaded have tried to find some way consistent with their theory to commensurate premoral benefits and harms. But they never have succeeded in doing so ²⁵.

²⁵ See GRISEZ, *op. cit.*, ch. 6; *Against Consequentialism*, «American Journal of Jurisprudence», 23 (1978), pp. 21-72; ALAN DONAGAN, *The Theory of Morality*, (University of Chicago Press,

Analysis of moral action shows that proportionalism is in principle unworkable because the problem of commensuration is logically insoluble. This is so because proportionalism requires that two conditions be met, and the two conditions are incompatible. The two conditions are: 1) that a moral judgment is to be made, which means both that a choice must be made and a morally wrong option could be chosen; 2) that the option which promises the definitely superior proportion of good to bad be knowable. The following consideration makes it clear that these two conditions cannot be met at the same time.

If the first condition is met and the morally wrong option could be chosen, then its morally acceptable alternative must be known. Otherwise, one could not choose wrongly, for one chooses wrongly only when one knows which option one ought to choose and chooses a different option.

But when the first condition is met, the second cannot be. The option which promises the definitely superior proportion of good to bad cannot be known by a person who chooses an alternative which promises less. If the superior option were known as superior, its inferior alternative simply could not be chosen. Any reason for choosing it would be a better reason for choosing the superior option. Whenever one really knows that one possibility is definitely superior in terms of the proportion of good to bad it promises, any alternative simply falls away, and there is no choice to make.

Thus, although proportionalism is proposed for cases in which one must choose between morally significant alternatives, all that proportionalists really say is that it would be wrong to choose precisely that which practical judgment (as they understand it) would exclude as a possibility for free choice, namely, an alternative measurably inferior in terms of the relevant good and bad. The truth of the matter is that when such an alternative is recognized in deliberation, no choice about it is possible; it drops out of consideration. Hence, whenever proportionalist judgments are possible, they exclude choices contrary to them by preventing them, not by forbidding them. But a judgment which prevents one from choosing otherwise is not a moral judgment. Therefore, proportionalism is inherently unable to serve as a method of moral judgment.

If the preceding analysis is correct, why has it seemed to Fuchs and other intelligent and reflective people that it is possible to carry out the commensuration of goods and bads proportionalism requires? There are several causes of this mistake.

Chicago 1977), pp. 149-209; JOHN FINNIS, *Fundamentals of Ethics*, (Georgetown University Press, Washington, D.C. 1983), pp. 80-120; JOHN R. CONNERY, S.J., *Morality of Consequences: A Critical Appraisal*, «Theological Studies» 34 (1973), pp. 396-414; *Catholic Ethics: Has the Norm for Rule-Making Changed?*, «Theological Studies», 42 (1981), pp. 232-250; FERDINANDO CITTERIO, *La revisione critica dei tradizionali principi morali alla luce della teoria del «compromesso etico»*, «Scuola cattolica», 110 (1982), pp. 29-64; DARIO COMPOSTA, *Il consequenzialismo: Una nuova corrente della «Nuova Morale»*, «Divinitas», 25 (1981), pp. 127-56; MARCELINO ZALBA, S.J., *Principia ethica in crisim vocata intra (propter?) crisim morum*, «Periodica de Re Morali, Canonica, Liturgica», 71 (1982), pp. 25-63 and 319-57.

Proportionalists who are not clearheaded often try to use scales which their theory makes unavailable to them. One such scale is a definite objective, which reduces the moral question to one of technical calculation. This mistake is involved in the common practice of leaving to experts the evaluation of means to an end, once the end has been accepted as morally valid. For instance, given that a war is just, there is a tendency to approve whatever means military leaders consider most effective. Even those who are amoral often learn that this is disastrous, because no expert takes account of all the interests involved. Military leaders, for instance, often forget that politics will go on by other means after a war is over. Morally sensitive people take for granted that the morality of means cannot be settled merely by considering their technical effectiveness. That is precisely why Fuchs holds that the «truth» of an action «must be in conformity with the whole concrete reality of man (of society)» (p. 133).

Another scale often assumed by proportionalists is a moral principle. For instance, when Fuchs tries to offer an example of a behavioral norm involving action so precisely delineated that we cannot conceive any kind of exception, he suggests «cruel treatment of a child which is of no benefit to the child» (p. 141). Here the word «cruel» has an unmistakable moral connotation. Undoubtedly, Fuchs had a certain pattern of behavior in mind, but his good moral sense overwhelmed his bad ethical theory when he tried to describe what he had in mind.

Another possible cause of the mistaken belief in the workability of proportionalism is suggested by a significant clause Fuchs adds at the end of one of his formulations of the theory: «Causing an "evil for man" is not morally wrong in every case. All that seems necessary is that it be justified by a comparative evaluation of all the elements of the total actual situation, without such evaluation having necessarily to take place on the plane of conscious reflection» (pp. 164-165). Here the appeal is to intuition.

No doubt, everyone has intuitions about what is appropriate to do. The moral intuitions of a truly upright and well-integrated person — the person who has the virtue of «prudence» as St. Thomas understands it — will be sound, for they will embody the moral principles by which such a person was formed. The equally compelling intuitions of someone who is not vicious but simply morally immature will reflect the immediate resonance of human values and disvalues in a more or less healthy sentient nature. That will be so because the character of the morally immature person is not yet determined through intelligence and free choice to life in accord with reality as a whole. Thus, the value response of the immature person results from what is determined by nature. The proportionalist who appeals to the intuition of the prudent begs the moral question; the one who appeals to the intuition of the immature abandons it.

Decent people sometimes have intuitions at odds with moral principles to which they are committed. For example, a compassionate priest who believes in the absolute indissolubility of marriage can feel that it would be best in a

particular case if a divorced and «remarried» couple continued to live in their adulterous relationship. The question is whether that intuition reflects some sort of subconscious «comparative evaluation of all the elements of the total actual situation», as Fuchs might think, or whether it reflects decent feeling about some of the elements of the situation but fails to reflect the whole truth of human fulfillment, which goes not only beyond sentiment but even beyond intelligent wishes unintegrated by faith. The priest's intuition is not self-validating; it requires criticism. And so the critical question which is the task of ethical theory cannot be settled by appealing to such intuition.

Another possible cause of the mistaken belief in the workability of proportionalism is confusion between moral judgment and free choice. Unlikely as it might seem that Fuchs would confuse the two, there is some evidence of this confusion in his favorable reference to what Karl Rahner, S.J., wrote about «a moral faith-instinct» (p. 122). Rahner advanced this notion in an article concerned with genetic manipulation²⁶. He asserted that there are aspects of the essential morality of human acts which are nonconceptual, but belong to experienced reality and to practice which is in a «darkness» beyond theory. He also pointed out that people (including moral theologians) have a hard time articulating good arguments for their moral convictions. On this basis, Rahner posited his «moral faith-instinct».

What Rahner had in mind is somewhat unclear; perhaps he only intended an appeal to intuition similar to that already criticized. But it seems he meant to propose a version of individual voluntarism, for in the summary of the article he wrote that «this "instinct" justifiably has the courage to say *Stat pro ratione voluntas* because such a confession need not necessarily be overcautious about making a decision» and that the whole theoretical argument is based on «we do not *want* to manipulate»²⁷.

No doubt, choice does commensurate objectively noncommensurable values and disvalues. However, to make choice the principle of moral determination is to surrender to subjectivism. The point of ethical reflection is to determine what is right and wrong before one chooses, so that one's choice will be right. Subjectivism reverses the roles of judgment and choice: First one chooses and then one finds a reason for one's choice. That process overcomes the unworkability of proportionalism, but, unfortunately, it does so by replacing conscience with rationalization.

Having criticized proportionalism as such, I now turn to some peculiar features of Fuchs' presentation of the theory. Examination of these features will confirm the preceding criticism by further pointing up the incoherence of Fuchs' view. Fuchs uses the word «intention» in two senses without distinguish-

²⁶ KARL RAHNER, S.J., *The Problem of Genetic Manipulation, Theological Investigations*, vol. 9, *Writings of 1965-67*, I, trans. GRAHAM FARRISON, Herder and Herder, New York 1972, p. 243.

²⁷ *Ibid.*, p. 251.

ing them, and thus rests part of his argument on equivocation. He uses «intention» in one sense to refer to that willing without which there is no human act at all (p. 136). He uses «intention» in another sense to refer to the willing of the precise good for the sake of which one acts (pp. 136-138). These two are not logically identical and often are distinct in fact. For example, a couple who deliberately and freely contracept can have only one «intention» in the first sense, namely, to impede the coming to be of a possible new person (That contraception is a definite human act is clear, since a wide range of somewhat different performances can count as the same human act). But the human act of contraception can be carried out with many different «intentions» in the second sense. For instance, some couples contracept for the sake of freedom from parental responsibilities while others do so because they fear having another child would make it difficult for them to fulfill their parental responsibilities.

Proportionalists do not wish to admit that intention in the first sense can be morally determinative by itself — that is, apart from intention in the second sense, and perhaps other factors as well. They are entitled to try to defend that view. But they ought to be clear that they are approving choices to destroy, damage, or impede (pre-moral) goods, and that any such choice is an intention in the first sense.

Fuchs does not wish to admit that his view approves intending (pre-moral) evil. For this reason, he suggests that the moral justification of an action can affect what one intends (pp. 136-137). By using «intention» in this odd way, Fuchs makes his view appear much closer than it actually is to received Catholic teaching's concern about the morality of the means one uses to gain one's ends. However, he pays a price to gain this advantage: He loses the subject matter of ethical reflection. For, if there is no act without intention and no intention without moral characterization, there is no act without moral characterization, and hence there is nothing whose moral character can be in question.

The preceding confusion affects Fuchs' remarks about the morality of killing. He asserts that a morally significant action «can be performed only with the intention of the agent. One may not say, therefore, that killing as a realization of a human evil may be morally good or morally bad; for killing as such, since it implies nothing about the purpose of the action, cannot, purely as such, constitute a human act. On the other hand, "killing because of avarice" and "killing in self-defense" do imply something regarding the purpose of the action; the former cannot be morally good, the latter may be» (p. 136).

Here Fuchs oversimplifies the complexity of the situation. There are cases in which one brings about death without choosing to kill and there are cases in which one chooses to kill. The former class includes those killings which received Catholic teaching called «indirect» (Killing in self-defense, had to be indirect to be justified, according to some, though not all, Catholic moralists). Direct killing — that is, killing which carries out a choice to destroy a life — can be done with many different intentions: out of avarice, for revenge, to end a burdensome life, and so forth. By rendering it impossible even to consider

direct killing prior to its moral characterization as an important kind of moral action, this oversimplification lends plausibility to Fuchs' claim that the commandment forbidding killing must be understood as forbidding unjust killing (pp. 140-141).

I think that as a matter of historical fact, Christian tradition did treat direct killing as an important kind of moral action²⁸. True, it did not characterize all such killing as morally evil. However, the factor believed to make killing immoral was not the injustice involved in most killing — suicide violates the commandment but need not be unjust — although the injustice of killing usually aggravates its malice. Rather, direct killing was considered immoral in the absence of divine authorization, both because unauthorized killing violates God's lordship over life and because it violates the reverence due to the person made in God's image. As St. Thomas says: «Considering man according to himself, it is not licit to kill anyone, since we ought to love in everyone, even the wrongdoer, the nature which God made and which is destroyed by killing»²⁹.

One can challenge the traditional view of killing on various philosophical and theological grounds. But whatever its strengths and weaknesses, its approval of some choices to kill provides no precedent for Fuchs' interpretation of the commandment, which amounts to saying: Thou shalt not kill unless the choice to do so seems «justified by a comparative evaluation of all the elements of the total actual situation, without such evaluation having necessarily to take place on the plane of conscious reflection» (pp. 164-165).

Fuchs' oversimplified analysis of the moral act, which follows from his equivocation on «intention», also facilitates his exploitation of cases which moral theology formerly dealt with as instances of indirect killing, indirect mutilation, and so forth (pp. 136-138). These were cases in which the destruction, damaging, or impeding of a good (life, bodily integrity, and so forth) is not chosen but is freely accepted as a side effect incidental to carrying out a choice to bring about a good. Fuchs points out, I believe correctly, that there were certain confusions in the traditional statement of the principle of an act with a double effect (p. 138). While no extended treatment of that principle is required to complete the present critique, a few clarifications are in order.

Proponents of the principle of double effect presupposed moral absolutes. There would have been no point in their trying to distinguish cases in which a side effect may be accepted had they not been convinced that some kinds of acts are always wrong and that such a kind is specified by a choice to bring a certain premoral evil. The articulation of the principle was an effort to discriminate instances in which it is permissible to bring about what it would always be wrong to choose.

²⁸ See ST. AUGUSTINE, *City of God*, I, 20-21; XIX, 7.

²⁹ *S. Th.*, II-II, q. 64, a. 6.

Fuchs does his best to submerge choosing in the overall movement of the will toward good. One might ask: Why was choosing formerly thought to be so important? The answer, briefly stated, is that in the Christian tradition, morality is in the heart. God cannot choose evil but he can and does permit certain evils. Similarly, the human will sometimes can permit what it could never choose without losing its goodness. One determines oneself in respect to what one chooses in a way one does not with respect to what one freely accepts. Unless one changes one's mind — in case of a sin repents — one's choices, being self-determining, endure to constitute one's lasting self.

Hence, an upright person such as Jesus might freely accept death incidental to the carrying out of a choice to do something good without that acceptance qualifying a constant love of the good of human life. But no one can choose to kill without qualifying that love. Traditional justifications of killing qualified it by subordinating it to reverence towards God. Proportionalist justifications of killing qualify it by subordinating it to considerations of quantity of lives (Hiroshima), or quality of life (Baby Doe), or to various other finite goods.

Besides requiring that one not choose evil, the principle of double effect in its usual formulations set other requirements for the uprightness of an act having a bad side effect. One of these was that there be due proportion between the good sought and the evil accepted. Proportionalists frequently argue that this requirement is evidence both that traditional moralists were at least half-hearted proportionalists and that they assumed the commensurability of goods which proportionalism requires.

The answer to this challenge is that when traditional moralists talked about «proportionality» they referred to *moral* criteria, over and above the moral absolutes which forbid certain direct acts, which govern the acceptance of side effects. For example, a pediatric physician prepared to accept the harsh side effects of some form of therapy for her patients when she would not approve the same sort of treatment for her own children shows immoral partiality. In such a case, although other conditions of a standard understanding of double effect would be fulfilled, there would be lack of proportionate reason for accepting the harmful side effects, and so the choice of that type of therapy would be immoral. Of course, since what is in question here is a genuine moral judgment according to a rational principle, prudent persons often know intuitively when the requirement of proportionality is met and when it is not.

Fuchs accepts the dictum that the end does not justify the means, but only with the qualification that the excluded means is the *morally* bad one (p. 138). The qualification would seem to render the dictum nugatory: A good purpose does not morally justify what cannot be morally justified. However, Fuchs' view does not leave room for even this vacuous interpretation of the dictum. For, as explained above, Fuchs thinks that there is no act at all until the purpose for acting is specified. If so, what he calls a «morally bad means» would not be a complete human act so long as there were a further possibility of its serving as a means to some ulterior good end. Hence, on Fuchs' view, the dictum loses all sense.

St. Paul articulated this dictum when he confronted precisely the question whether what would otherwise be evil — a lie or refusal of truth — might not be justified if it promotes God's glory (*Rm* 3, 7-8). I neither wish nor need to use Paul as a proof text against proportionalism. Fuchs probably would argue that Paul's rejection of violating truth to promote God's glory was simply another instance of his acceptance as hypothesis of a moral evaluation proper to his time.

However, the following *reductio ad absurdum* makes it clear why Paul took the position he did. If one holds 1) that one may do evil that good might come of it together with 2) Paul's doctrine of divine providence (God permits what is bad only to draw good from it), then one also must accept as a moral principle: If in doubt about what is right, try anything. For if one accomplishes what one attempts, one can be certain that on the whole and in the long run it was for the best, since it must have fit into the plan of providence. And if one does not accomplish what one attempts, one learns that would have been wrong, but no harm is done.

This suggests proportionalism's central theological inadequacy: It confuses human responsibility with God's responsibility. We however are not responsible for the overall greater good or lesser evil, for only God knows what they are. Our responsibility requires not success in effecting goods and preventing evils but faithful fulfillment of our personal vocation, according to which we serve human persons as we can, refrain from choices to violate them, and hope for God's re-creative act to complete the work of redemption.

Given that there are moral absolutes, is the role of conscience reduced, as Fuchs suggests it would be, to obedient application of rules? Not at all. The Catholic must learn the moral truth. Revelation contains it and the Church's teaching makes it available, but it is not a simple set of rules to be followed unintelligently. Even if the true meaning of moral absolutes is grasped and they are accurately applied, one only knows what one must *not* do. The real work of conscience begins at this point. One must find one's vocation and learn how to fulfill it in the way of Jesus. One must understand one's options and invent better ones. In doing this work, the Christian conscience will develop new specific affirmative norms to shape action in a way which faithfully follows Jesus across ever new terrain.

VI. CRITIQUE WITH RESPECT TO THE USE OF THEOLOGICAL SOURCES

Like parts of a house of cards, the opinions which make up Fuchs' view lean upon one another for support. Hence, if even one part of the preceding criticism has succeeded, Fuchs' effort to exclude moral absolutes from Scripture and the Church's faith loses virtually all of its initial credibility. Still, given the dependence of theological dissent on a method of using theological sources exemplified in Fuchs' recent work, a direct consideration of this matter is necessary to round out this critique.

With respect to interpreting Scripture, Fuchs tells us «to go to school to contemporary exegesis, to avoid lapsing into unauthorized good-will reading» (p. 117). That is good advice, but Fuchs' advice is better than his example.

Nothing the difficulty of understanding the Sermon on the Mount, Fuchs expresses the opinion that the absolute validity of its demands probably is not as universal norms but as «models for the behavior of the believing and loving citizens of God's kingdom who will be ready for such modes of conduct, perhaps, under certain conditions not individually specified by the Lord» (p. 118). Fuchs offers no exegetical evidence for this opinion. No doubt he could find it. However, there is equally good exegetical support for the view he wishes to exclude and for a number of others, because there are at least a dozen different and respectable ways of reading the Sermon on the Mount³⁰.

In his book, *The Moral Teaching of the New Testament*, Rudolf Schnackenburg rejected the opinion Fuchs considers probable³¹. Other competent exegetes argue cogently that the moral teaching in Matthew's Gospel is not merely incidental — a «secundarium», to use Fuchs' expression³². Moreover, through the monumental work of Jacques Dupont on the Beatitudes, one verse of the Sermon on the Mount recurs like a refrain: «It is not those who say to me, "Lord, Lord", who will enter the kingdom of heaven, but the person who does the will of my Father in heaven» (Mt 7, 21). Nor does Dupont understand this verse in a way compatible with the interpretation Fuchs favors.

About Jesus' teaching on the indissolubility of marriage, Fuchs asks: «Is the moral imperative to be understood as a norm to be followed as universal practice or as an ideal?» (p. 118). Schnackenburg discusses this question and does not even consider the opinion that Jesus' prohibition of divorce is only an ideal; he concludes that it is a universal norm³³. E. Schillebeeckx, in his work on marriage published in 1963, considered the relevant passages of Scripture and drew the same conclusion³⁴. Moreover, against the opinion that the prohibition of divorce is only an ideal stands the weight of the whole Christian tradition, including the tradition of those who admitted an exception in the case of adultery, for that claimed exception would have been pointless had Jesus merely announced an ideal.

In dealing with St. Paul, Fuchs focuses on «the Pauline directives concerning woman's position in marriage, society and the Church» and takes it as

³⁰ See HARVEY K. MC ARTHUR, *Understanding the Sermon on the Mount*, London 1960, pp. 106-127.

³¹ RUDOLF SCHNACKENBURG, *The Moral Teaching of the New Testament*, Herder and Herder, New York 1965, pp. 82-89.

³² See JOHN P. MEIER, *The Vision of Matthew: Christ, Church, and Morality in the First Gospel*, Paulist Press, New York 1979, pp. 42-51; W.D. DAVIES, *The Setting of the Sermon on the Mount*, Cambridge University Press, Cambridge 1964, pp. 94-108.

³³ SCHNACKENBURG, *op. cit.*, pp. 132-143.

³⁴ E. Schillebeeckx, O.P., *Marriage: Human Reality and Saving Mystery*, trans. N.D. SMITH, Sheed and Ward, New York 1963, pp. 141-155.

self-evident today that these «are to be regarded as conditioned by his times» (p. 119). No doubt, distinctions must be made among Paul's «directives», for some are rules of Church order while others are teachings, and canon law must not be confused with moral truth. But given these distinctions, substantial recent work calls into question what Fuchs considers self-evident³⁵.

Fuchs uses the example of Paul's teaching on man and woman to support a more general thesis: «It could hardly be supposed that the Stoic, Judaic, and Diaspora-Judaic ethos which Paul represents was in all respects a timeless ethos» (p. 119). If that reference is to anything having more than intentional unity, it hardly could be timeless, for cultural houses so thoroughly divided are as fragile as houses of cards. More important, if Paul «represented» either Judaism or Stoicism, more typical participants in either tradition might have wished for better representation.

Of course, Paul did draw on Judaism; he did not believe that divine revelation began with himself. But like Jesus himself, Paul was careful to discriminate what Christians had to accept from the earlier tradition of Israel. The diligence he shows in liberating his converts from unnecessary requirements of the law argues strongly that any demands Paul assumes from the Judaic tradition are believed by him to be essential for the salvation of Christians. Paul believes that the greatest possible transformation of human nature has occurred in Jesus; anything which survives this transformation can hardly be in his eyes a mere expression of the Jewish ethos.

The thesis that Paul borrowed heavily from Stoic and other popular morality of the time needs to be proved, and Fuchs offers no proof for it. Against it stand very substantial exegetical studies, which minimize the borrowings of the authors of the New Testament Epistles, including Paul, from Greek sources, and find in the Epistles a pattern of moral teaching which suggests that underlying them is a primitive Christian catechism, probably developed for the instruction of the catechumens and the recently baptized³⁶. Forcefully opposing pagan corruption and carefully prescinding from elements of the Judaic law not essential to Christian life, the apostolic Church appropriated the revelation in Jesus of what persons should be; the result was moral formation in the way of Christ which is valid always.

³⁵ STEPHEN B. CLARK, *Man and Woman in Christ: An Examination of the Roles of Men and Women in Light of Scripture and the Social Sciences*, Servant Books, Ann Arbor, Mich. 1980, pp. 209-220 (summary).

³⁶ See PHILIP CARRINGTON, *The Primitive Christian Catechism: A Study in the Epistles*, Cambridge University Press, Cambridge 1940, pp. 88-89 (summary); EDWARD GORDON SELWYN, *The First Epistle of Peter: The Greek Text, with Introduction, Notes, and Essays*, Macmillan, London 1958, pp. 437-439 (summary); DAVID DAUBE, *The New Testament and Rabbinic Judaism*, Athlone Press, London 1956, pp. 90-105, esp. 102-103: «Everything points to the existence of early Christian codes of duties in Hebrew, from which the particples of correct practice crept into the Greek of the epistles. Freedom in the spirit did not relieve the Church of the necessity of insisting on a definite moral order».

In handling the question of moral norms in Scripture, Fuchs proceeds as if his audience consisted of persons who had been brought up as fundamentalists and who have no living community of faith to rely upon when they encounter difficulties in interpreting Scripture. He admits that the behavioral norms of the New Testament might remain valid today, but adds: «Only, we must reflect whether the criterion of their possible absolute (i.e., universal) validity is Holy Scripture itself, whether it can be and was intended to be» (p. 120). Similarly, in dealing with the Church's moral teaching, Fuchs proceeds as if the Church were a merely human community which had no access to God's word when it encounters difficult moral questions: «Is the claim of absoluteness for the norms transmitted by the Church a claim of universal norms? Does the Church give us thereby a system of universal morally valid norms which God has not given us in Holy Scripture?» (p. 121).

That way of dividing theological sources does not comport well with Catholic teaching and practice. Vatican II, in its magnificent Constitution on Divine Revelation, makes it clear both that Scripture must be read within the Church under the guidance of the magisterium and that the Church entirely depends upon divine revelation whose handing on the magisterium serves. As if directly rejecting the view implicit in Fuchs' methodology, the Council concludes: «It is clear, therefore, that sacred tradition, sacred Scripture, and the teaching authority of the Church, in accord with God's most wise design, are so linked and joined together that one cannot stand without the others, and that all together and each in its own way under the action of the one Holy Spirit contribute effectively to the salvation of souls» (DV 10). If one adopts a methodology more in harmony than Fuchs' with this Catholic principle, one will have no trouble discovering some moral absolutes in Scripture and the Church's teaching.

The Ten Commandments have a unique place within the Mosaic law; they are represented as being the very words of the covenant, dictated by God (see *Ex* 34, 27-28)³⁷. Their religious and liturgical significance makes them no less functional as a moral foundation for legal enactments³⁸. Within the New Testament, Christian morality is presented as the perfection and superabundant fulfillment of the Decalogue³⁹. In the Sermon on the Mount, Jesus broadens and deepens several of the commandments and demands their interiorization (see *Mt* 5, 21-37). All the synoptics, moreover, present Jesus as affirming the commandments as a necessary condition for entering eternal life (see *Mt* 19,

³⁷ See EDOUARD HAMEL, S.J., *Les dix paroles: Perspectives bibliques*, Desclée de Brouwer, Brussels 1969, pp. 18-20.

³⁸ DELBERT R. HILLERS, *Covenant: The History of a Biblical Idea*, Johns Hopkins Press, Baltimore 1969, pp. 88-89.

³⁹ See MATTHEW VELLANICKAL, *Norm of Morality according to the Scripture*, «Bible Bhashyam: An Indian Biblical Quarterly», 7 (1981), pp. 121-146, for a remarkably clear and balanced synthetic statement of the biblical teaching of moral truth, centrally in Christ, but also including specific and unchanging norms.

16-20; *Mk* 10, 17-19; *Lk* 18, 18-21). St. Paul, in asserting that Christian love fulfills the law, assumes the truth of the Decalogue and its permanent ethical relevance, extols the superiority of love, and rejects any suggestion which would empty love of its operative normative implications (see *Rm* 13, 8-10).

The prohibitions of the commandments were no doubt understood more narrowly in their original context than in their unfolding in later Jewish and Christian tradition. Still, no reasonable reading of the Decalogue can deny it the status of fundamental revealed moral truth — a status always recognized by common Christian practice in moral instruction ⁴⁰. To say that the Decalogue has the status of fundamental, revealed moral truth is not to deny that it needs interpretation and development. This process begins in the Old Testament itself and, as indicated, is continued in the New. The same process is carried on today by the living magisterium, whose competence extends as far as revelation's protection and exposition requires (LG 25). However, the continuous process of interpretation and development does not justify the claim that the Decalogue is mere moral exhortation to follow an existing code, which always must be read with proportionalist riders — for example, Thou shalt not commit adultery, unless it seems to be the greater good.

In considering the moral teaching contained in Scripture, one must bear in mind that most moral norms are nonabsolute. Moreover, as already explained in respect to the commandment prohibiting killing, some important norms taught in Scripture are limited in ways taken to be divinely revealed. For these reasons, instances in the Bible of norms which admit of exceptions do not argue against the truth of absolute norms which are proposed there as absolute and certainly true (Moreover, nonabsolute norms proposed in Scripture as certainly true are not falsified by their exceptions).

Moral absolutes are found in divine revelation. It is fitting that they are. For, as was shown in part III, moral absolutes guide human acts and protect the intrinsic goods of human persons, and these acts and goods are constitutive elements of the kingdom, in which alone integral human fulfillment will be found. Moreover, as was shown in part V, proportionalism is unworkable in principle as a method of guiding human actions to integral human fulfillment, because human providence is inherently limited. And, as was shown in part IV, by faith the Christian is in principle both liberated from the moral bondage of the historical-cultural relativity of this world's ideologies of human self-realization, and enabled to live with Jesus in a communion which remains the same always and everywhere. Living in that communion, one benefits from both the definiteness and the openness of having one's faithful obedience

⁴⁰ See ST. THOMAS, *S. Th.* I-II, q. 100, aa. 1, 8; q. 107, a. 2, ad 1. For a very detailed study of this point in the Fathers of the Church, see GUY BOURGEAULT, S.J., *Décatalogue et Morale Chrétienne: Enquête patristique sur l'utilisation et l'interprétation chrétiennes du décatalogue de c. 60 à c. 220*, Desclée, Paris 1971, pp. 405-418 (summary of conclusions). An important textual study: PATRICK LEE, *Permanence of the Ten Commandments: St. Thomas and His Modern Interpreters*, «Theological Studies», 42 (1981), pp. 422-43.

defined by negative norms. Thus, the word of God includes moral absolutes to provide the guidance we need to play our own small but irreplaceable role in the drama of salvation and to play it with originality and creativity.

Moral absolutes also contribute to the economy of revelation itself. This can be seen by considering adultery.

Fuchs and others who reject moral absolutes seldom take adultery as an example. The commandment against it has not been proposed with divinely authorized limits, as has the commandment against killing. Also, it seems ridiculous to claim that the true meaning of the commandment has always been: Thou shalt not engage in *wrongful* extramarital sexual intercourse involving a married person. The commandment absolutely forbidding adultery, moreover, is proposed consistently throughout Scripture and tradition, and surely still reaffirmed by a morally unanimous magisterium. Transparently, the commandment was not conditioned upon the ethos of New Testament times. Both St. Paul and Trent include adultery among the immoralities — a list obviously based on the Decalogue — which will exclude unrepentant Christians, even if they die in faith, from the kingdom ⁴¹.

To understand the importance of adultery to revelation and the life of faith, one must notice that the revelation we have actually received would have been impossible had God not created sex: «God created man in the image of himself, in the image of God he created him, male and female he created them» (Gn 1, 27). For if we had no experience of familial relationships based on sexual generation, we could not understand the meaning of «Father» and «Son», and without these concepts we could not begin to understand what we believe about the Trinity, the Incarnation, and our adoption as children of God.

Marriage is the created reality before all others by which God reveals to us the communion of divine and human persons for which he has created us and to which he calls us in Christ. Marriage is a union of utmost intimacy (the two become one flesh) which yet preserves the individual identities and different roles of those who share in it. As husband and wife, so divine and created persons are united in communion while retaining their personal dignity, because the covenant relationship is formed by mutual, free commitments. One can see how unique the Christian vision of divine-human communion is if one compares it with other religions which either exclude such intimacy or submerge the individual personalities of creatures.

God's faithfulness to the covenant relationship is one of the most central revealed truths, for this truth is the ground of our trust in God's mercy and our hope of glory. Take away our assurance that God is faithful and the gospel ceases to be good news. Faithfulness in marriage is the created reality before all others by which God reveals his faithfulness to us. The moral absolute

⁴¹ See DS 1544/808; 1 Cor 6, 9-10.

forbidding adultery makes marital faithfulness possible. Therefore, this moral absolute belongs to the economy of revelation itself. The revelation we have actually received is necessarily linked with marital faithfulness.

Someone will object that even if there were no moral absolute forbidding adultery, some husbands and wives might still be absolutely faithful to one another, and so there would still be available the experience required for the revelation of God's faithfulness. But the objection fails, for two reasons.

First, faithfulness is not a contingent fact: that this man and woman happen to have intercourse only with one another. The faithfulness is in making and keeping a commitment to a self-giving which is both mutual and exclusive. From one point of view, that commitment is a free choice. But from another point of view, it has in it a necessity which excludes contingency. This necessity is the only sort of necessity compatible with free choice: moral necessity. This moral necessity is the bindingness of the commitment, the obligation one accepts in making it. Just as an ordinary promise is more than a prediction because it is a moral undertaking, so covenantal promises are more than both predictions and ordinary promises because of their more profound moral undertaking. That undertaking is a pledging of oneself; its violation is moral self-destruction. Here is moral necessity.

In fact, of course, we can be unfaithful; we can destroy ourselves morally. But we know what that means only by recognizing the moral absolute which forbids it. Knowing our faithfulness and unfaithfulness, and believing that God cannot destroy himself morally, we begin to conceive what God's faithfulness is. Thus, the moral absolute forbidding adultery, not merely some examples of exclusive sexual communion, is necessarily linked with the revelation of God's own faithfulness.

Second, created realities by which God reveals pertain to the image of God in creation. The means God uses are not mere means; they always have their own intrinsic value. That is so because whatever goods God makes belong within his plan; they are part of the fullness he intends to complete in Christ. Therefore, marital fidelity contributes to the building up of the reality it signifies — the faithful communion of husbands and wives is within the faithful communion of divine and created persons. After they serve the Lord here on earth, faithful spouses will find the good of their fidelity again in the kingdom, freed of stain, burnished and transfigured. In sum, marital fidelity is no mere conventional sign of the fidelity of Christ and the Church, but a true sacrament. For this reason too, the moral absolute excluding adultery, not merely contingent examples of exclusive sexual communion, is necessary.

The final topic for criticism is Fuchs' opinion about the moral teaching of the Church. To criticize it, one must first consider a certain assumption about infallibility. The assumption, widely shared in recent years, is that what is not solemnly defined is not infallibly taught.

If this assumption were correct, infallibility would attach quite contingently to some propositions pertaining to faith, namely, to those which for one reason or another happen to be solemnly defined. But this is a mistaken conception

of the relationship between infallibility and the revealed truth which faith accepts.

To see why, one must consider what infallibility adds to the absolute truth of God's revealed word and the absolute certitude of the divinely given faith by which Christ's faithful accept, hold, and hand on God's word. Although God can neither deceive nor be deceived, individual believers, even those whose faith is true and generous, can err in matters of faith. For example, St. Thomas Aquinas mistakenly thought that Mary was conceived in original sin — an opinion we now know to be an error contrary to the truth of faith. How is such error possible?

The answer is that such error is possible because the individual believer can confuse what is not revealed with what is, can mistake either a nonrevealed and possibly false opinion for a revealed truth, or a revealed truth for a nonrevealed and possibly false opinion. This confusion and mistaking is what infallibility — the certain gift of truth — excludes. The Catholic Church *as such* has this gift, although no individual Christian *as such*, not even the pope *as an individual Christian*, has it.

To see why the Church *as such* has the certain gift of discerning revealed truth, it helps to begin with the apostles. The Church is founded on them, because they were the authorized recipients of God's revelation in Jesus, who is the reality and truth by whom the Church lives.

Revelation is communication, and there is no communication without a recipient. An attempt at communication which goes unreceived is just that — a failed attempt, not a communication. But God, revealing in Jesus, communicates perfectly and in no way fails. Therefore, God's revelation in Jesus was perfectly received by the apostles. Perfect reception of a communication excludes confusing anything which belongs to the communication with anything extraneous to it. Therefore, the apostles could not make such mistakes. However, of themselves they were fallible men. Therefore, they needed and received a certain gift of discerning God's revelation in Jesus: infallibility.

Revelation in Jesus, however, was not for the apostles alone, but for all humankind, including us men and women. Even to us, God continues to communicate. His revelation in Jesus — infallibly received, witnessed, and handed on by the apostles — continues to reach people as the apostolic communion continues to spread to all nations and eras. Thus, men and women today share in revelation by living within the apostolic communion, the Church.

The Church, however, would not hand on revelation to us if she were not infallible. Rather, at best, she would hand on fragments of a mutilated revelation mixed with much merely human and possibly erroneous extraneous matter. Since revelation cannot be verified or falsified by any outside standard, such as experienced facts, the residue of God's authentic communication could never be reclaimed and purified. If that were the situation, God's undertaking to reveal to us would be a botched attempt.

But God cannot fail in his undertakings. Therefore, the Church *as such* — the apostolic communion still continuing in the world and in history —

continues to share in the apostolic gift of sure discernment. She infallibly accepts, holds, and hands on as revealed all and only what truly is revealed. Thus, as Vatican II teaches:

The body of the faithful as a whole, anointed as they are by the Holy One (cfr *Jn* 2, 20.27), cannot err in matters of belief. Thanks to a supernatural sense of the faith which characterizes the people as a whole, it manifests this unerring quality when, «from the bishops down to the last member of the laity» (note to St. Augustine omitted), it shows universal agreement in matters of faith and morals.

For, by this sense of faith which is aroused and sustained by the Spirit of truth, God's people accepts not the word of men but the very word of God (cfr *1 Ths* 2.13). It clings without fail to the faith once delivered to the saints (cfr *Jd* 3), penetrates it more deeply by accurate insights, and applies it more thoroughly to life. All this it does under the lead of a sacred teaching authority to which it faithfully defers (LG 12).

Thus, whatever the Church as such received, holds, and hands on is infallibly believed and taught.

But the Church hands on more than solemnly defined doctrines. As Vatican II teaches:

Therefore the apostles, handing on what they themselves had received, warn the faithful to hold fast to the traditions which they have learned either by word of mouth or by letter (cfr *2 Ths* 2, 15), and to fight in defense of the faith handed on once and for all (cfr *Jd* 3). Now what was handed on by the apostles includes everything which contributes to the holiness of life, and the increase in faith of the People of God; and so the Church, in her teaching, life, and worship, perpetuates and hands on to all generations all that she herself is, all that she believes (DV 8).

Therefore, infallibility does not attach in a merely contingent way to certain truths of faith.

The conclusion which was to be proved follows: The widely shared assumption that what is not defined is not infallibly taught is false. The truth, rather, is that whatever the Church as such believes and hands on as part of revelation is infallibly taught.

Of course, many will deny this. But the ultimate cost of denying it will be to deny that God still does reveal to us in Jesus, for if the Church is not infallible, nothing in the world to which we have access will be able to bring God's communication to us intact.

But if infallibility characterizes all that the Church as such believes and teaches, what distinguishes the infallible Church from her fallible members? When does the Church as such act, in distinction for the particular acts of believing and teaching which belong to her members?

The Church is a human community. Like any human community, she has a leadership. A human community acts as such when its leaders act in certain official ways. These ways of acting which constitute the acts of a community as such are called «authoritative». Therefore, the Church as such acts when

her leaders act according to their proper authority. Specifically, the Church as such teaches when her leaders teach according to their proper authority.

The revelation which is handed on is the whole reality of the Church — all that she herself is, all that she believes. This whole reality is the communion of divine and human persons in mind, in will, and in performance. Therefore, the Church's belief and teaching, her sacramental communion with God in Jesus, and her revelatory living out of the gospel before the world are not three separate sets of acts, but only one integrated set of acts.

Jesus founded the Church upon the apostles; they were her initial leaders. They led her in respect to the one set of acts which constitute her life by preaching the gospel, presiding over the eucharistic assembly, and building up and guiding the Christian community in its responsibility of bringing the light of Christ to the world.

In every aspect of the life of the Church, all of her members were called to participate according to their gifts. Thus, the apostles were not the only teachers, priests, or apostolic workers. But since the single life of a community requires unified leadership, the apostolic office included leadership in the Church in teaching, worship, and government. Thus, when the apostles taught according to their proper authority as leaders of the Church, they taught infallibly.

With respect to their role of leadership, the apostles had successors: those still recognized as leaders of the Church, namely, the bishops. There are many bishops, and they can act individually and inconsistently, even when they are trying to fulfill their official duties as leaders of the Church. When that happens, one cannot say that their official acts constitute acts of the universal (Catholic) Church as such.

However, when the bishops act officially, together, and in harmony, the Church as such acts. When the Church as such teaches, she teaches infallibly. Therefore, when the bishops teach officially, together, and in harmony, they teach infallibly. Therefore, as Vatican II teaches:

Although the bishops individually do not enjoy the prerogative of infallibility, they nevertheless proclaim the teaching of Christ infallibly, even when they are dispersed throughout the world, provided that they remain in communion with each other and with the successor of Peter and that in authoritatively teaching on a matter of faith and morals they agree in one judgment as that to be held definitively (LG 25).

Study of the development of this conciliar text clarifies it ⁴². The first condition — that the bishops be *in communion* with one another and with the pope — does not mean that they must act as a single body, in a strictly

⁴² The present interpretation of the conciliar text is based on the study of it presented by JOHN C. FORD, S.J., and GERMAIN GRISEZ, *Contraception and the Infallibility of the Ordinary Magisterium*, «Theological Studies», 39 (1978), pp. 263-277.

collegial manner. It is necessary and sufficient that they remain bishops within the Catholic Church. The voice of the Church is identified, and distinguished from various voices within the Church, partly by the sacramental ordination and bond of communion which unite the bishops who share in uttering the Church's teaching.

The second condition — authoritative episcopal teaching *on a matter of faith and morals* — requires that the bishops be acting in their official capacity as teachers, not merely expressing their opinions as individuals or as theologians. As for the subject matter of their teaching — «faith or morals» — the formula has a long history⁴³. It is sufficient here to say that nothing in the pertinent documents limits «morals», in the sense intended by Vatican II, in such a way as to exclude moral absolutes, such as that forbidding adultery.

The third condition — that the bishops agree *in one judgment* — identifies universality as a requirement for an infallible exercise of the ordinary magisterium. What is necessary, however, is the moral unity of the body of bishops in union with the pope, not an absolute mathematical unanimity such as would be destroyed by even one dissenting voice⁴⁴.

Furthermore, if this condition has been met in the past, it would not be nullified by a future lack of consensus among the bishops. The consensus of future bishops is not necessary for the ordinary magisterium to have taught something infallibly or to do so now. Otherwise, one would be in the absurd position of saying that it is impossible for there to be an infallible exercise of the magisterium until literally the end of time; since at any given moment, one cannot tell what some bishops in the future might say.

The fourth condition — that the bishops propose a judgment to be held *definitively* — obviously does not refer to the formulation and promulgation of a solemn definition, since what is in question is the bishops' day-to-day teaching. The condition does mean at least this: that the teaching is not proposed as something optional, for either the bishops or the faithful, but as

⁴³ See M. BÉVENOT, *Faith and Morals in Vatican I and the Council of Trent*, «Heythrop Journal», 3 (1962), 15-30; PIET FRANSEN, S.J., *A Short History of the Meaning of the Formula «Fides et Mores»*, «Louvain Studies», 7 (1979), pp. 270-301. The formula in Vatican I and II certainly includes reference to specific moral norms under «mores», and in Trent and before, when «fides» was understood more existentially and less rationalistically, under «fides». See TEODORO LÓPEZ RODRIGUEZ, «Fides et mores» en Trento, «Scripta Theologica», 5 (1973), pp. 175-221; MARCELINO ZALBA, S.J., «Omnis et salutaris veritas et morum disciplina»: Sentido de la expresión «mores» en el Concilio de Trento, «Gregorianum», 54 (1973), pp. 679-715.

⁴⁴ At Vatican I, Bishop Martin of Paderborn, speaking for the Deputation of Faith, explained the unanimity required for the infallibility of the ordinary magisterium (which Vatican I teaches: DS 3011/1792) by using the following example: All Catholic bishops believed in the divinity of Christ before the Council of Nicea, but this doctrine was not defined until then; therefore, up to that time it was taught by the ordinary magisterium: J.D. MANSI ET AL., ed., *Sacrorum conciliorum nova et amplissima collectio*, 51, pp. 224-225. As everyone knows, there hardly was anything like unanimity about this doctrine either before or even after Nicea, except to the extent that those who denied it may have ceased to be Catholic bishops, having lost communion by their heresy.

something which the bishops have an obligation to hand on and which Catholics have an obligation to accept. In the case of moral teaching, however, it is unlikely that those proposing the teaching will explicitly present it as something to be intellectually accepted as true; it is more likely that they will leave this demand implicit and will propose it as a norm which followers of Jesus must try to observe in their lives.

The Church as such also teaches when a truth of faith is solemnly defined, either by a general council or by a pope teaching *ex cathedra*. Solemn definitions presuppose, pick out, and officially formulate particular propositions from the infallibly received and handed on reality of the Church. Thus, an act of solemn definition does not add infallibility to a truth previously taught noninfallibly, but adds only the canonical expression of the truth — the «irreformable definition»⁴⁵. Moreover, such definitions are «irreformable» only in this: The language used in the sense in which it is used in that act of defining accurately expresses an infallibly believed element of the content of faith.

In one passage, there is a suggestion that Fuchs shares the erroneous assumption that what is not solemnly defined is not infallibly taught. Fuchs says

... it is noteworthy that in the Church's two thousand years, seemingly no definitive doctrinal decision on moral questions has been made, at least insofar as these would be related to natural law, without being at the same time revealed. On the other hand, this is not to say that the nondefinitive authoritative guidelines of the Church are meaningless, as if one might ignore them, oblivious to the fact that they also come under the assistance of the Spirit of Christ abiding with the Church. Hence a certain presumption of truth must be granted them. Yet one may not see in such instances any conclusive legislation or doctrinal definition of an ethical norm whose validity would be guaranteed by the Holy Spirit (p. 124)

This argument seems to overlook the category of nondefined but infallibly taught moral truths. In doing so, it reduces the status of common, constant, and very firm moral teachings to that of noninfallible judgments on moral questions offered by leaders of the Church acting without the consensus of the body of bishops in communion with one another and the pope.

Fuchs qualifies his denial that there have been solemn definitions of moral truths, probably to leave room for Trent's definitions polygamy and divorce⁴⁶. But his denial raises the question of the significance of the fact that there is not a body of solemnly defined moral norms comparable to the body of solemnly defined dogmatic truths.

I think this fact can be explained easily in a way compatible with confidence in the infallibly taught common, constant, and very firm moral teaching of the Church. As has been explained, solemn definition does not add infallibility to what was noninfallible, but only adds a canonical expression of the truth. Why

⁴⁵ See DS 3074/1839.

⁴⁶ See DS 1802/972, 1805/975, and 1807/977.

is such canonical expression important? Because the Church has the task of handing on revelation, a process which involves both words and deeds — the words which proclaim the gospel and the deeds which carry it out. Sometimes doctrinal confusion makes a canonical expression of a dogma necessary so that Christians will all speak in the same way, and thus be able to convey the same gospel message. But canonical expression of moral norms generally will be of little help in cultivating the communal, living witness to Christ which will convey God's love and make the truth of the gospel credible.

Therefore, to counter moral disarray among Christians, the Church has not resorted to solemn definitions of moral norms but has taken other, more relevant measures: declaring certain very grave sins to be canonical crimes, exhorting the faithful to do penance for certain sins, approving certain rules of life for the more devout living of the gospel, providing catechisms which help the faithful learn how to live the Christian life, canonizing saints who exemplify certain virtues, requiring that confessors be trained in moral theology according to the content of approved textbooks, using certain passages of Scripture in the liturgy, and so on.

If one approaches the Church's teaching without an *a priori* conviction that no moral absolutes could possibly be found there, one will not have any difficulty in finding such norms. Many of them, like the norm forbidding adultery, have been universally, constantly, and very firmly handed on in moral teaching proposed as revealed in the Decalogue, its deepening, and development. Such norms clearly are infallibly taught, for the Church as such has accepted, held, and handed them on through the centuries. The conditions articulated by Vatican II to identify infallible teaching by the bishops were met as they exercised their moral leadership. Hence, although such norms were never solemnly defined, their status is unmistakable from the many other relevant acts, analogous in morals to definition in dogma, proposing these norms as absolutely essential conditions for Christian living.

If one sets aside the peculiar developments of the twentieth century and considers the entire previous Jewish and Christian tradition, its massiveness and unity in witness to the moral teaching centering on the Decalogue are overwhelmingly impressive. For example, not only no Catholic but no other Christian and no Jew ever would have dared to say of adultery and killing the innocent anything but: These are wicked things, and they who do them can have no part in God's kingdom. Thus the whole People of God stands against contemporary theological speculation to the contrary. That speculation has accepted the burden of showing that even until yesterday the whole People of God profoundly and thoroughly misunderstood how to do his will. Can such a claim find any possible ground in faith? Is it not, rather, patently a claim whose whole plausibility derives from contemporary cultural factors wholly alien to Jewish and Christian faith?

But Fuchs contrasts what pertains to natural law morality with what pertains to revelation. Some norms commonly, constantly, and very firmly taught by the Church — for example, that concerning contraception — do not so

obviously pertain to divine revelation as does the norm, say, concerning adultery. Might such norms be taught by the Church without being infallibly taught?

The answer, clearly, would be yes, if the norm in question is not taught by the Church as such. For example, various bishops and groups of bishops have expressed different opinions concerning the morality of a nuclear deterrent which involves the threat to kill noncombatants. Some of these differing judgments, even if they were proposed to be held definitively, might be in error.

But norms such as that concerning contraception pose a different problem. That norm surely has been held and handed on by the Church as such⁴⁷. That is precisely the point made by the popes who have said that the norm has been «handed down uninterruptedly from the very beginning» (Pius XI), «is as valid today as it was yesterday; and it will be the same tomorrow and always» (Pius XII), has been proposed with «constant firmness by the magisterium» (Paul VI), and is reaffirmed «in continuity with the living tradition of the ecclesial community throughout history» (John Paul II).

Very often those who proposed the Catholic teaching concerning contraception appealed to Scripture. Sometimes, the norm concerning contraception was reduced to the commandment concerning homicide or to that concerning adultery. In other cases, appeal was made to another text, such as that concerning Onan. Whatever more recent exegesis makes of such uses of Scripture, those who taught in this way made it clear by doing so that they were convinced that the teaching belongs to revelation and must be accepted by Christians with faith.

Those who invoked or alluded to particular texts in Scripture did not interpret them in isolation from the whole body of Christian moral convictions. These latter in turn were grounded more in the meditation of Christians upon the whole of divine revelation, contained both in Scripture and in the concrete experience of Christian life, than in an exact reading of isolated texts. Holding a body of moral convictions, which they were confident expressed God's wisdom and will for their lives, Christians invoked particular Scripture texts as witnesses to the truth and obligatory character of the moral norms they believed to belong to the law of God.

If one looks at matters in this way, it is easy to believe that the principles explicitly contained in revelation implicitly include whatever Christians need to shape their lives in Christ. Still, some theologians have thought that while the Church must be able to teach definitively on the whole natural law, not all of it can be found in revelation. In an early draft of Vatican II's text on the infallible teaching of bishops, there was an important limiting clause: «in handing on the revealed faith». This clause was deleted to accommodate the view that infallibility is not thus limited, and instead the qualification was made that the truth must be proposed as one to be held definitively — that is, as certain or absolutely binding⁴⁸.

⁴⁷ FORD and GRISEZ, *op. cit.*, pp. 277-282.

⁴⁸ *Ibid.*, p. 267.

At the same time, both Vatican I and Vatican II make it clear that in defining doctrine, there is no question of adding to divine revelation⁴⁹. The infallibility of the Church, Vatican II teaches, extends just as far as divine revelation extends — that is, it extends to all those things and only those things «which either directly belong to the revealed deposit itself, or are required to guard as inviolable and expound with fidelity this same deposit» (LG 25). The clarification in the phrase, «or which are required to guard as inviolable and expound with fidelity this same deposit», was provided by the commission responsible for Vatican II's text; it excludes a restrictive theory of the object of infallibility, which would limit it to truths explicitly contained in already articulated revelation, and so prevent the Church from developing its doctrine and rejecting new errors incompatible with revealed truth⁵⁰.

I think this clarification solves the problem of how moral truths, such as that concerning contraception, taught by the Church as such do belong to divine revelation. They need not be expressed or even implied in Scripture. For revelation includes more than is in Scripture and more than truths. It includes the whole reality of the new covenant communion. This communion is what the Church herself is, what she hands on. Sometimes it is necessary to articulate a moral norm in order to guard as inviolable and expound with fidelity that aspect of covenant communion which is following Christ and bearing witness to him by doing the truth. So if the Church as such teaches some moral norms, they pertain at least in this way to divine revelation.

Those Jews and Christians who first began to set aside the tradition on contraception had no intention of setting aside the entire received morality concerning sex and innocent life. The majority of Paul VI's Commission on Population, Family, and Birthrate, and other Catholics who denied the moral absolute concerning contraception before *Humanae vitae* almost unanimously insisted that the approval of contraception would have no effect upon received teaching concerning fornication, adultery, homosexual relations, abortion, or the indissolubility of marriage. But today there are few indeed who approve contraception on any sort of theoretical ground who have not also rejected at least some of the moral absolutes more obviously included in revelation. Hence, the moral absolute concerning contraception pertains to the deposit of revelation at least in this sense: The body of received teaching concerning sex and innocent life is so tightly integrated that all of it must be firmly held to guard as inviolable and expound with fidelity those parts of it which are most clearly revealed. Hence, the norm concerning contraception could be solemnly defined as pertaining to divine revelation.

So much, then, for Fuchs' view of moral absolutes and for the opinion that Catholics may dissent from the Church's common, constant, and very firm moral teaching.

⁴⁹ See LG 25; DS 3070/1836.

⁵⁰ FORD and GRISEZ, *op. cit.*, pp. 264-269.

In 1965 I argued that one cannot approve contraception without more generally abandoning traditional teaching on moral absolutes. After *Humanae vitae* I argued that a Catholic cannot accept the legitimacy of dissent from such teaching without more generally abandoning the Catholic conception of the Church, so freshly articulated by Vatican II. Now I am arguing that no believer can accept dissenting theology's conception of Jewish and Christian life without altogether abandoning faith in divine revelation. More quickly than I ever expected, events have shown that the logic of the first two arguments was sound.

NOTE CRITICHE

SULLA RECEZIONE DEL MODELLO FILOSOFICO UTILITARISTICO DA PARTE DI ALCUNI TEOLOGI MORALISTI *

1. Il metodo teleologico per la fondazione della morale normativa

Nella quasi totalità dei manuali di teologia morale pubblicati negli ultimi 10 o 15 anni il *metodo deontologico* e il *metodo teleologico* per la fondazione delle norme morali sono oggetto di un'attenta discussione, che si conclude di solito con l'approvazione del secondo e la condanna, più o meno sfumata a seconda dei casi, del primo. In questi testi compaiono anche le distinzioni fra i valori extra-etici (anche premorali, non morali, ecc.) e i valori etici, e tra il moralmente buono/cattivo e il moralmente giusto/errato.

Ci sembra un dato di fatto che l'attuale riflessione teologico-morale abbia accolto il secolare dibattito della tradizione etico-filosofica dominante nell'area culturale anglosassone. Si tratta della contrapposizione, mai definitivamente risolta, tra l'*intuizionismo* e l'*utilitarismo*. Per *intuizionismo* s'intende comunemente la teoria etica secondo la quale la persona può conoscere direttamente il bene che deve fare: la rettitudine delle azioni viene verificata col semplice rivolgere lo sguardo alle azioni stesse, senza considerare le loro ulteriori conseguenze¹. L'*utilitarismo* ritiene invece che il comportamento dell'uomo debba venir valutato dalle sue conseguenze: la correttezza di un'azione dev'essere giudicata in base alla sua utilità per produrre la felicità². Attualmente viene

* di ANGEL RODRÍGUEZ LUÑO, professore di etica filosofica all'Istituto Giovanni Paolo II per Studi su Matrimonio e Famiglia - Pontificia Università Lateranense.

¹ Cfr H. SIDGWICK, *The Methods of Ethics*, Londra 1874 1907², p. 159. Si veda anche: B. BARRY, *Political Argument*, Routledge and Kegan, Londra 1965; R.B. BRANDT, *Ethical Theory*, Prentice-Hall Inc., Englewood Cliffs, N.J. 1959. Per i classici: G.E. MOORE, *Principia Ethica*, The University Press, Cambridge 1903; H.A. PRICHARD, *Moral Obligation*, The Clarendon Press, Oxford 1949; W.D. ROSS, *The Right and Good*, The Clarendon Press, Oxford 1940. Un dibattito recente: H.J. MC CLOSKEY, *Meta-Ethics and Normative Ethics*, Martinus Nijhoff, L'Aia 1969.

² Cfr A.C. GARNETT, *Ethics* New York 1960, p. 159. Per quanto si dirà sull'utilitarismo: H. SIDGWICK, *The Methods...*, cit.; J. RAWLS, *A Theory of Justice*, Harvard 1971; R.F. HARROD, *Utilitarianism Revised*, in «Mind», 45 (1936); J. HARRISON, *Utilitarianism, Universalisation, and Our Duty to Be Just*, in «Proceedings of the Aristotelian Society», 53 (1952-53); J.O. URMSON, *The Interpretation of the Philosophy of J.S. Mill*, in «Philosophical Quarterly», 3 (1953); oltre i luoghi classici di HUME, BENTHAM e J.S. MILL. Di grande interesse anche come valutazione critica è l'opera di J. FINNIS, *Fundamentals of Ethics*, Clarendon Press. Oxford 1983.

preferita di solito la terminologia di Broad, che parla di «deontological theories» (per intuizionismo) e di «teleological theories» (per utilitarismo)³.

Se esaminiamo le dichiarazioni esplicite dei partecipanti al dibattito teologico, dobbiamo onestamente costatare che non tutti sono concordi nel considerare il metodo teleologico e l'utilitarismo come la stessa ed unica cosa⁴. Sarebbe superfluo spendere altre parole nel riportare qui affermazioni e contraffermazioni. L'importante non sono le parole, ma la sostanza. Procederemo quindi a tracciare una breve sintesi delle strutture essenziali del sistema utilitaristico, augurandoci di apportare qualche chiarimento alla discussione.

2. Il modello filosofico utilitaristico

Nella sua autorevole esposizione dell'utilitarismo, John Stuart Mill⁵ prende lo spunto da quelle che a suo avviso sono le esigenze irrinunciabili della logica del discorso morale. La prima di esse è la necessità di arrivare subito alla determinazione del criterio supremo del bene e del male, quindi al sommo bene. Questo sarà il primo principio di ogni ragionamento etico, e come tale dev'essere autoevidente e sufficiente a risolvere tutti i problemi di conflitto di doveri.

La logica più elementare richiede altresì che il criterio della giustizia o correttezza morale (*a test of right and wrong*) sia veramente il mezzo per determinare concretamente ciò che è giusto e ciò che è errato, e non una conseguenza scaturita a determinazione già avvenuta. Il buon senso, aggiunge

³ Cfr C.D. BROAD, *Five Types of Ethical Theories*, Londra 1967⁹, pp. 206 ss.

⁴ BOECKLE ritiene che «non è legittimo parlare di utilitarismo o eudemonismo etico soltanto perché attribuiamo una funzione centrale alla ponderazione dei beni come metodo di fondazione della norma» (*Morale fondamentale*, Queriniana, Brescia 1979, p. 262). FURGER sostiene che «già il termine *teologico* dovrebbe valere a indicare che questa impostazione etica non consegue necessariamente solo da un calcolo utilitaristico di ottimizzazione; si tratta invece di una *ponderazione delle conseguenze* in vista di una determinata finalità prestabilita (e pertanto appunto non teleologicamente determinata) propria di ogni azione e omissione, e dunque in riferimento a un *télos*» (*Dalla morale del dovere all'etica della responsabilità*, in AA.VV., «Etica teleologica o etica deontologica? Un dibattito al centro della teologia morale odierna», Documenti CRIS, 49/50, Roma 1983, p. 39). SPAEMANN risponde a FURGER: l'equiparazione fra etica teleologica e utilitarismo «non è una mia invenzione, ma un uso terminologico universalmente accettato; e corrisponde anche alla corretta riproduzione della posizione di BRUNO SCHÜLLER, che ha introdotto l'opzione teleologica nella teologia morale tedesca. SCHÜLLER stesso, in un saggio della miscellanea di R.A. MC CORMICK, *Doing evil to achieve good*, parla di *Consequentialism or a teleological theory of normative ethics* e, seguendo gli *anglo-american moral philosophers* suddivide le teorie normative in due classi: 1) *Teleological (utilitarian, consequentialist)* e 2) *Deontological (formalist theories)*» (R. SPAEMANN, *Chiarimenti & Punti fermi*, in «Etica teleologica...», cit., p. 59).

⁵ Cfr *Utilitarianism*, 1863, cap. I; l'edizione inglese più facile da trovare è forse quella curata da M. WARNOCK, New York 1962.

Mill, chiede che prima sia fissato il fine, poi i mezzi per raggiungerlo; altrimenti, tutto il discorso etico sarà circolare.

Mill ritiene che il supremo criterio della morale sia il principio dell'utilità o della più grande felicità, dove per felicità s'intende il piacere e l'assenza di dolore; per infelicità tutto il contrario. Sono necessarie alcune precisazioni per non fraintendere Mill. Il termine piacere ha un significato molto ampio (non va inteso quindi come sinonimo di godimento grossolano o brutale) e forse sarebbe meglio parlare di soddisfazione razionale dei desideri o di soddisfazione dei desideri razionali. Inoltre bisogna tener presente che non si parla della felicità individuale, ma della più grande somma totale e generale di felicità («*the greatest happiness of the greatest number*», era la formula classica). Anzi, sarebbe obbligatorio che nei confronti della propria felicità e di quella altrui l'individuo si comporti come uno spettatore benevolo e disinteressato.

Una volta determinato il criterio di giustizia morale, si può affermare che le azioni sono rette se tendono a promuovere la felicità e sono errate se tendono a promuovere l'opposto della felicità. È corretto quel comportamento che, fra le alternative disponibili, produrrà il maggior bene (felicità, piacere, soddisfazione), o almeno un bene pari a quello prodotto da uno qualsiasi dei comportamenti presenti come realmente possibili. È corretto il comportamento che qui e adesso può determinare la maggiore somma di soddisfazione. La morale normativa sarà allora l'insieme delle regole per il governo della vita la cui osservanza assicurerà a tutti la più felice delle esistenze *realmente* possibili.

Questi brevi cenni possono bastare. Per i filosofi che lavorano sulla scia di tale tradizione la struttura essenziale di un sistema etico viene determinata dal modo di definire e di connettere il *bene* e il *giusto* o *corretto*. La posizione utilitaristica classica può essere efficacemente riassunta in due tesi: 1) il bene va definito prima e indipendentemente dal giusto; 2) il giusto sarà definito allora come la massimizzazione del bene o, se si vuole, come ciò che contribuisce alla ottimizzazione del mondo. Riflettiamo sul significato di queste due tesi⁶.

La prima tesi ha due presupposti. Primo: il giudizio di valore concreto non appartiene alla classe dei giudizi intuitivamente e spontaneamente distinguibili. Per rimediare al vuoto creatosi si propone appunto l'ipotesi della massimizzazione. Quest'ipotesi ha un notevole fascino, poiché sembra assumere il principio della *razionalità*. Razionalizzare è massimizzare qualcosa; in morale, è ovvio che si tratterà di massimizzare il bene, e a questo scopo si deve procedere attraverso un'adeguata ponderazione delle conseguenze. Ma tale attrattiva e quest'avvincente semplicità hanno il loro prezzo: il degrado sia della ragione pratica che dell'ideale etico. La prima diventa ragione calcolatrice; il secondo rischia di essere limitato alle dimensioni più materiali della vita, perché soltanto dove c'è materia è possibile calcolare e massimizzare.

Secondo presupposto: è permesso dissertare sul bene senza tener conto del giusto o del corretto. Allora, il giusto non appartiene alla categoria del

⁶ Cfr. J. RAWLS, *A Theory...*, cit., paragrafo 5.

bene? Il retto comportamento nei confronti degli altri, il fatto ad esempio che Tizio eviti di spacciare droga o di tradire sua moglie, non è un bene? Se si risponde affermativamente, siamo al di fuori dell'utilitarismo, perché il bene non potrebbe essere definito indipendentemente dal giusto; se si risponde negativamente, rischiamo di cadere nell'assurdo, ma abbiamo in compenso una teoria etica, bella e semplice. I teologi moralisti danno, di regola, una risposta negativa, poiché mantengono una salda distinzione tra il moralmente buono/cattivo e il moralmente giusto/errato, anche se, ovviamente, aggiungono delle sfumature tendenti ad evitare il ridicolo⁷. Si noti che non abbiamo la pretesa di affermare che gli utilitaristi (non parliamo ora dei teologi) non possano dimostrare come il non spacciare droga sia un comportamento giusto. Ci riescono, certo, ma attraverso la procedura della massimizzazione. Cioè, in senso rigoroso e tecnico tale comportamento non è un bene, perché per loro è bene soltanto la felicità; sarà sì un comportamento moralmente giusto, almeno nella stragrande maggioranza dei casi, e comunque sempre secondo un giudizio *a posteriori*, ottenuto dopo il calcolo o la ponderazione dei beni. Altrimenti dovrebbero ammettere l'*intrinsece malum*, categoria etica che a loro non piace affatto.

3) *Principali problemi dell'utilitarismo etico*

Dopo questa breve descrizione delle strutture portanti dell'etica utilitaristica, vorremmo indicare i principali problemi che essa comporta. Così saremo in condizione di valutare *fino a che punto e come* l'utilitarismo etico si sia fatto strada fra alcuni teologi moralisti. Sarà possibile comprendere certi meccanismi concettuali che altro non sono, a nostro avviso, che estremi tentativi di rimediare ad alcuni difetti del sistema assunto come modello filosofico di base. Procederemo in maniera molto sintetica, risparmiando al lettore le innumerevoli ricuciture subite dal modello classico specialmente negli ultimi anni.

Anzitutto va notato che l'etica utilitaristica ha certamente dei pregi. Abbiamo accennato alla semplicità e alla praticità che la caratterizzano (non è un'etica per intellettuali «puri» come quella di Kant), e all'attrattiva della sua razionalità, anche se intesa in modo del tutto particolare. Possiamo adesso evidenziare qual è la verità che essa racchiude. Bisogna per forza riconoscere che un'etica incompatibile con la felicità generale dell'umanità non può essere giusta; non a caso già Aristotele disse che l'uomo è per natura un essere politico, pertanto il suo fine ultimo o felicità non può venir svincolato completamente dalla socialità. In questo senso, riflettere sulle possibili conseguenze del nostro comportamento è quasi un istinto naturale: sarebbe del tutto irragionevole non pensarvi.

⁷ Cfr. B. SCHUELLER, *La fondazione dei giudizi morali*, Cittadella, Assisi 1975, pp. 62 ss.

Tuttavia l'idea utilitaristica di felicità è molto indeterminata, sicché non sembra possibile derivarne un'etica precisa. Se non tutti hanno la stessa idea della felicità dell'uomo, ancora più difficilmente si troverà un accordo sul metodo concreto che qui e ora può massimizzare nella nostra società tale felicità indefinita. Di norme etiche concrete che siano universalmente valide non se ne parla nemmeno. Poi, la vita sociale è ogni giorno più complessa e impenetrabile; non sarebbe meglio abbandonarsi completamente nelle mani degli strateghi del benessere o dei *leaders* politici? E così dalla responsabilità per la felicità generale, si passa inconsapevolmente alla generale irresponsabilità personale. La responsabilità etica muore per ipertrofia (Spaemann).

L'utilitarismo non può proporre ideali etici più adeguati. Qualunque sia il concetto di felicità, le strutture portanti del sistema costringono ad affermare che la felicità sarà comunque la conseguenza o il risultato naturale delle azioni umane prese nella loro esteriorità e nella loro totalità. Occorre qui ricordare che Max Scheler ha messo in rilievo⁸ come i beni possono essere prodotti dal fare umano (contrapposto all'agire) quanto più sono periferici ed esterni (più legati al piacere sensibile). Sicuramente è facile calmare la sete o un mal di testa, ma come farà Tizio per eliminare la profonda disperazione che lo angoscia? Per sentirsi profondamente felici — diceva Aristotele — bisogna aspettare persino dopo la morte, perché non sappiamo se l'infelicità dei nostri cari ancora in terra potrà rattristare anche noi. Solo resta da augurarci — aggiungeva lo Stagirita — che la nostra virtù sia sufficiente per fare della sfortuna un avvenimento incapace di turbare la nostra serenità interiore⁹. Ma qui si passa all'interiorità, al sentimento del proprio valore etico, che non può — secondo gli utilitaristi — essere annoverato tra le conseguenze, perché allora ogni definizione etica sarebbe circolare. Vale a dire, se si afferma che un dato comportamento è buono perché nell'individuo ne deriva la soddisfazione o la coscienza tranquilla, gli utilitaristi rispondono: non sarà piuttosto che hai la coscienza tranquilla perché previamente ritenevi che tale comportamento era buono? La fondazione del tuo giudizio su quel comportamento rimane problematica — argomentano gli utilitaristi — finché non rompi il circolo basandoti su di un criterio di natura *extra-etica* (i valori non morali): la definizione della moralità attraverso la moralità sarà sempre circolare. Così l'utilitarismo è tendenzialmente propenso ad offrire un ideale etico legato alle dimensioni più esterne e superficiali della vita umana. Tale tendenza è difficile da superare, se non si concede più spazio all'interiorità e a ciò che per l'etica cristiana rappresenta la *teologia del merito*.

Per l'utilitarismo è problematica anche la fondazione del dovere. Mill cerca di dimostrare il principio utilitaristico riconoscendo come dato di fatto

⁸ Cfr *Der Formalismus in der Ethik und die materiale Wertethik*, volume II delle «Gesammelte Werke» a cura di MARIA SCHELER, Francke Verlag, Berna 1954; sezione V.

⁹ Cfr ARISTOTELE, *Etica nicomachea*, libro I, capp. 7-10 e libro X.

che tutti vogliono essere felici ¹⁰. Volentieri concediamo che il desiderio della felicità è un fatto naturale, un dato fondamentale della psicologia e dell'antropologia; esso è presente anche nelle persone che hanno una condotta immorale, appunto perché nella sua immediata e naturale fatticità quel desiderio non è sufficientemente determinato. Ma il problema qui è un altro: se il desiderio di felicità è un fatto, come può essere nel contempo un dovere? Ammesso che possa essere un dovere, come viene fondato? Perché diventare felice è un dovere etico assoluto? Come si spiega la sua obbligatorietà etica? Il problema ha una precisa risposta nell'etica cristiana, dove la felicità dell'uomo è un bene che rientra persino nell'ambito dell'Assoluto. Ma gli utilitaristi né vogliono né possono muoversi su questo piano, perciò è vera — se riferita a loro — l'accusa kantiana secondo cui gli imperativi della felicità sono ipotetici: valutazioni *tecniche* dettate dall'astuzia o dalla scaltrezza, ma non dalla morale. Brutta confusione, soprattutto per chi dichiara di prendere lo spunto da un'esigenza di rigore nel discorso etico.

Ma l'etica utilitaristica ha il suo momento più paradossale nell'ambito della giustizia. Mill lo riconosce agli inizi del capitolo V dell'opera citata. Come il singolo può volentieri accettare di perdere ora per guadagnare di più dopo, così la società sarebbe autorizzata a compensare le perdite di alcuni coi guadagni degli altri, purché ciò promuova una maggiore somma totale di benessere per tale società. A condizione di procurare la massimizzazione del benessere generale, può essere giudicata come utile una decisione sociale o politica che danneggi alcuni individui in valori da essi ritenuti essenziali. Quindi non si prende sul serio la distinzione tra le persone, perché tutti i cittadini vengono considerati come un'unica e grande persona. Viene trascurata la dignità inviolabile di ogni uomo, e la persona rimane nelle mani degli strateghi del benessere sociale. Se si concede che la dignità personale impone dei limiti precisi ad ogni strategia sociale e politica, allora siamo di nuovo al di fuori dell'utilitarismo, perché si ammette che i comportamenti lesivi di tale dignità sono sempre riprovevoli (*intrinsece malum*) e quindi non sono disponibili per una prudente ponderazione dei beni ¹¹.

Se si riconosce che qualsiasi soddisfazione ha valore in sé, si dovrà pure accettare che va presa sul serio la soddisfazione di chi pretende che gli altri abbiano uno status di minore libertà, oppure la soddisfazione di chi esige da un altro di rinunciare alla propria vita (è la logica dell'aborto, almeno se considerato dalla parte del bambino, le cui speranze di vita finiscono nel bidone dei rifiuti), purché tutto ciò contribuisca ad una maggiore somma di benessere. Così le maggiori e più aberranti ingiustizie possono venir giustificate in nome dell'utilità generale. Oggi ne abbiamo esempi molteplici ¹².

¹⁰ Cfr *Utilitarianism*, cit., cap. IV.

¹¹ Cfr su questi aspetti legati alla giustizia J. RAWLS, *A Theory of Justice*, cit., paragrafo 5.

¹² Interessante quanto scrive SPAEMANN a proposito di R. GINTERS discepolo di B. SCHUELLER: «fra le azioni che vanno assoggettate a una simile ponderazione dei beni e che "in certe circostanze, tenuto conto delle conseguenze dannose che ne deriverebbero, possono essere

Gli utilitaristi potrebbero replicare di avere un'idea ben definita dell'uomo. Noi rispondiamo: allora il principio dell'utilità diventa inutile per la determinazione dei principi capitali della giustizia. Se un'idea di uomo è accettata in una data società, non abbiamo più bisogno della mediazione dell'utilità per sapere se un dato comportamento è giusto o ingiusto. Ogni atto che danneggi dei valori essenziali dell'uomo è moralmente errato. Questo è un criterio di applicazione più facile ed immediata rispetto all'utilità generale, sempre difficile da determinare.

Ma il problema più importante è, a mio avviso, quello della fondazione ultima delle norme e del legislatore morale. Se le norme politiche vanno giustificate in base alla loro utilità per il benessere complessivo di una data società, le norme etiche universali lo saranno a seconda della loro utilità alla felicità dell'umanità. Allora si offrono due possibilità: a) o si ammette l'esistenza di un legislatore morale di infinita intelligenza, oppure b) la moralità sarà un ideale irraggiungibile, a cui l'umanità può tendere lungo la storia, ma senza mai raggiungere una formulazione perfetta. È necessaria, infatti, un'intelligenza infinita per conoscere in che modo le conseguenze degli atti di tutti gli uomini, nei loro effetti presenti e futuri, nel loro intrecciarsi, ecc., possono contribuire alla felicità degli uomini oppure danneggiarla. Questa prospettiva di totalità è propria solo di Dio come governatore dell'intero universo. L'uomo non può assumerla e — malgrado i progressi scientifici e tecnologici — non potrà mai assumerla in modo completo. Certamente la responsabilità umana ha dei gradi (responsabilità individuale, del padre di famiglia, del governante dello Stato, dei responsabili di un organismo internazionale o addirittura mondiale), ma è anche vero che quanto più si estende, è meno intensa, perché non riesce ad abbracciare un maggior numero di aspetti. San Tommaso d'Aquino afferma giustamente che l'uomo non ha il dovere di volere esattamente ciò che Dio vuole, ma ciò che Dio vuole che lui voglia, perché l'uomo è tenuto ad assumere la responsabilità derivante dai rapporti etici in cui egli è immerso, e tra questi non è annoverato quello di essere governatore dell'intero cosmo¹³. L'inadeguatezza dell'utilitarismo è tanto maggiore quanto più impropria dell'uomo è la prospettiva che la persona è costretta ad assumere. Perciò potremmo affermare che l'utilitarismo può fornire dei criteri validi per orientare le scelte di piccole comunità, laddove i diritti fondamentali della persona siano garantiti da un ordinamento superiore; presenta, invece, dei problemi gravissimi, se dovesse essere assunto come base di un ordinamento statale; è impossibile farne un criterio supremo di moralità.

eticamente giuste", Ginters annovera espressamente anche il rinnegamento della propria convinzione religiosa (una tesi per la quale i martiri dei primi tre secoli dovrebbero tutti essere considerati vittime di un errore teologico-morale)» (R. SPAEMANN, *Chiarimenti...*, cit., p. 59).

¹³ Cfr SAN TOMMASO D'AQUINO, *Summa theologiae*, I-II, q. 19, a. 10.

4. La versione teologica dell'utilitarismo

Dall'esame dei manuali e delle monografie attinenti alla fondazione della morale normativa risulta che la problematica utilitaristica è stata recepita come alternativa valida all'etica deontologica. Ma quest'ultima, così come viene presentata dai consequenzialisti¹⁴, non è mai esistita, almeno nella teologia morale cattolica. Abbiamo già detto che sarebbe irragionevole non pensare alle conseguenze, o valutare gli atti umani indipendentemente dal contesto. Fra l'altro, perché il rapporto con la propria dignità personale, intrinseco ad ogni atto di libertà, costituisce di per sé un contesto, molte volte sufficiente per fondare un giudizio di valore. Perciò ci sorprende molto non trovare uno studio critico tendente a valutare fino a che punto la contrapposizione fra etica deontologica ed etica teleologica sia adeguata alla comprensione dei problemi di morale normativa. Non basta affermare che talvolta si argomenta in base alle conseguenze e talaltra secondo un principio recepito come assoluto, perché sarebbe irragionevole non agire in una maniera o nell'altra, a seconda dei casi. Ma tutto ciò non spiega come una dottrina che ammette l'esistenza di alcune azioni intrinsecamente cattive, non tenga conto del bene della comunità umana, così come non sembra plausibile che la preoccupazione per il bene di tutti implichi necessariamente che ogni comportamento possibile possa favorire la promozione di tale bene.

Comunque è un fatto che John Stuart Mill aveva previsto in qualche maniera la possibilità di un «utilitarismo teologico». Nel capitolo II di *Utilitarianism* cerca di ribattere l'accusa di ateismo che gli era stata rivolta. Questa è la sua risposta: se si ritiene che Dio vuole la felicità degli uomini, allora l'utilitarismo è la dottrina più religiosa e chi agisce secondo il principio della massimizzazione del benessere generale può essere sicuro di adempiere perfettamente la volontà di Dio. In altre parole: Mill non è disposto a concedere che il momento teologico sia intrinseco alla morale; la determinazione di ciò che è moralmente giusto o moralmente errato è e dev'essere *autonoma*. Poi ciascuno è liberissimo di avere le proprie convinzioni religiose, che potrebbero rafforzare la motivazione etica, ma sono assolutamente estrinseche alla morale normativa. Infatti, dal punto di vista di Mill hanno lo stesso significato sia la fondazione cristiana sia quella musulmana o buddista, nella misura in cui si ritiene che tanto Cristo quanto Allà o Budda vogliano la felicità degli uomini. Ma per l'etica cristiana questo non basta; si pensi ai problemi sopra elencati, specialmente a quanto abbiamo detto riguardo alla giustizia. Vediamo comunque come viene percorsa dai teologi moralisti la strada tracciata da Mill.

La distinzione tra valori etici e valori non etici (non morali, premorali, ontici, ecc.) viene recepita, per evitare i problemi di circolarità nelle definizioni e per poter fare oggetto della ponderazione dei beni (calcolo utilitaristico) certi comportamenti. Così si afferma che la sterilità causata volontariamente dai

¹⁴ Sull'etica consequenzialistica si veda J. FINNIS, *Fundamentals of ethics*, cit., pp. 80-108.

farmaci contraccettivi, l'interruzione della gravidanza, ecc. sono in sé «mali non morali», che possono essere giustificati in certe condizioni dal valore etico positivo intentato, perché — affermano — è un'evidente regola di priorità il fatto che i valori etici prevalgano sui valori non etici¹⁵.

Ma questi teologi moralisti da una parte vogliono evitare i problemi relativi alla fondazione del dovere da noi sopra elencati e, dall'altra, non vorrebbero accettare una dissoluzione grossolana del valore etico nel valore di natura extra-etica. Perciò, ferma restando la fondazione utilitaristica degli aspetti «materiali» o contenutistici della morale, viene introdotto un aspetto formale di stampo kantiano. Il risultato viene presentato come distinzione tra il moralmente buono e il moralmente giusto. Il bene o male morale dipendono dal *principio* per cui si agisce, agire bene è agire per un buon principio¹⁶. Il cattivo principio è l'egoismo o particolarismo. Il buon principio è la carità, la regola d'oro, che consiste, in fin dei conti, nell'assumere come *intenzione o principio movente* il criterio utilitaristico: «la bontà morale dell'uomo si attua nella *volontà* di realizzare la maggior quantità possibile di bene non-morale, non nel realizzare effettivamente questa volontà»¹⁷. Perciò sono perfettamente compatibili il moralmente buono e il moralmente errato. «Si può cogliere nella sua profondità più riposta il bene morale (...) e tuttavia compiere atti eticamente non giusti a causa di una valutazione errata dei contenuti non-morali»¹⁸. La ragione è molto semplice: la conoscenza del moralmente giusto (la conoscenza morale concreta) sarebbe un'attività moralmente neutra¹⁹. «La moralità di un uomo non può dipendere dalla sua conoscenza più o meno approfondita dei contenuti non-morali, essa si fonda completamente sulla libera autodeterminazione dell'uomo»²⁰. Vale a dire, il moralmente buono/cattivo si fonda esclusivamente sull'intenzione, sulla qualità etica del principio movente: in questo ambito rientrerebbe il dovere assoluto della carità intesa come imparzialità, regola d'oro, ecc. Il giudizio sul moralmente giusto o errato, invece, è di carattere tecnico. Sapere cioè se l'adulterio, l'aborto, lo spaccio di droga ai giovani, ecc., sono comportamenti moralmente giusti o errati, sarebbe il risultato di una ponderazione dei beni che nulla dice sulla categoria etica della persona agente. Risulta paradossale che alcuni, mentre riconoscono il valore della persona come il primo principio del discorso etico, ammettono che le sfere in cui essa si manifesta immediatamente (vita, sessualità, ecc.) possano venir strumentalizzate²¹.

¹⁵ Cfr B. SCHUELLER, *La fondazione...*, cit., p. 35.

¹⁶ Cfr B. SCHUELLER, *La fondazione...*, cit., pp. 66 ss.

¹⁷ B. SCHUELLER, *La fondazione...*, cit., p. 88.

¹⁸ Cfr B. SCHUELLER, *La fondazione...*, cit., p. 71. È significativo che a pagina 69 si fa il caso di «uno che, ritenendo moralmente giusto a certe condizioni l'aborto, proponga per questa tesi una giustificazione oggettiva».

¹⁹ Cfr B. SCHUELLER, *La fondazione...*, cit., p. 62.

²⁰ B. SCHUELLER, *La fondazione...*, cit., p. 72.

²¹ Cfr le critiche fatte ai consequenzialisti da R. SPAEMANN, *La responsabilità personale & Il suo fondamento*, in «Etica teologica...», cit., pp. 19-21.

Il metodo seguito da questi teologi consiste in una spartizione dell'atto morale *more kantiano* tra *forma* e *materia*. La forma viene giudicata secondo i principi della filosofia trascendentale, la materia secondo quelli dell'utilitarismo²². Il risultato è alquanto ambiguo sia per gli utilitaristi puri che per i kantiani ortodossi, ma è quello che viene offerto. D'altra parte, i due modelli filosofici hanno qualche aspetto in comune, dei quali due sono molto importanti: l'impostazione autonomistica della morale normativa e il rifiuto della possibilità dell'uso metafisico (non trascendentale, non calcolatore) della ragione. Qui sta il problema e il *perché* ultimo.

Oggi sono molti gli autori che accettano il concetto di natura risultante dallo studio del mondo e dell'uomo in base ai metodi delle scienze positive. Ne emerge un concetto di natura empirico, spesso anche meccanicistico, in cui non risulta possibile cogliere un finalismo oggettivo di tipo metafisico, legato all'atto creatore, e capace di fornire una spiegazione del modo in cui il valore affonda le sue radici nell'essere. In questa prospettiva, quando la tradizione parla di legge naturale, alcuni teologi intendono «fiscicismo» o «biologismo», e perciò affermano che si può interrompere la gravidanza allo stesso modo in cui si può interrompere con il ricorso ai farmaci il processo biologico di una malattia²³; non comprendono, quindi, che, oltre al fatto biologico, esiste una *finalità oggettiva di tipo metafisico*, per la quale è ovvio che mentre il corpo *non è per* la malattia, la sessualità invece *è per* il risveglio di nuove vite. In altri termini: si ritiene illegittimo il passaggio dall'essere al dovere, dalle leggi che spiegano la natura delle cose a quelle che definiscono ciò che devono essere, e — sul piano teologico — si scava un abisso fra la volontà onnipotente di Dio Creatore e la volontà di Dio come Autore dell'imperativo morale²⁴.

Alcuni autori che in qualche modo intendono conservare un'idea plausibile di moralità, cercano di reinterpretare il concetto classico di ragione pratica (*recta ratio*). L'ordine etico naturale sarebbe il frutto della ragione umana, ma intesa come l'autocomprensione raggiunta dall'uomo in ogni momento della storia. Senza le basi metafisiche necessarie a fondare la scoperta razionale delle norme etiche, si cerca una via d'uscita nel concetto esistenzialistico di ragione (elaborazione di un progetto di possibilità) o si ripercorrono i sentieri dello storicismo (l'obiettività della conoscenza sarebbe l'adeguamento del pensiero alla realtà umana e sociale in continuo movimento); ma sia la prospettiva esistenzialistica sia quella storicistica non permettono di fondare norme etiche non condizionate storicamente e culturalmente. Perciò si ritiene che parlare di norme divino-naturali sarebbe un modo illegittimo di «cristallizzare» le acquisizioni storiche e mai definitive della ragione umana, e così il problema della

²² «Un modello di comportamento viene giudicato dalle sue conseguenze. Un'azione o una omissione è moralmente giusta quando le sue conseguenze buone prevalgono su quelle cattive» (B. SCHUELLER, *La fondazione...*, cit., p. 109).

²³ Cfr. B. SCHUELLER, *La fondazione...*, cit., pp. 151 ss.

²⁴ Cfr. B. SCHUELLER, *La fondazione...*, cit., pp. 152-153; 163.

fondazione ultima delle norme e del legislatore morale rimane irrisolto. Sotto tale profilo ci sono le condizioni perché il ruolo della ragione venga inteso come ottimizzazione o massimizzazione di certe condizioni vitali e sociali, e perché sia attribuita una portata ontologica al compito logico di fondare la morale normativa secondo il criterio di ottimizzazione testé menzionato. Così affiorano impetuosamente tutti i gravi problemi implicati nel metodo teleologico.

Su queste basi, forse è vero che non c'è altra via d'uscita che accogliere il modello filosofico utilitaristico come metodo per spiegare perché vediamo certe cose *sub ratione boni* o *sub ratione mali*. Ma il prezzo è troppo alto. Non c'è una categoria metafisica di bene che sia comune tanto al bene etico quanto al bene di natura extra-etica (allora, bene è un termine equivoco, o uno dei due non è realmente un bene?), e non c'è neppure la possibilità di una comprensione unitaria delle due componenti dell'agire (il riferimento alla persona agente e il riferimento alla configurazione del mondo = moralmente bene/male e moralmente giusto/errato), perché ognuna di esse è trattata con categorie appartenenti a due sistemi diversi. L'unità fra l'uomo interiore (messo in risalto da Kant) e l'uomo esteriore (su cui pongono l'accento gli utilitaristi) si è rotta. Non è più possibile un'antropologia unitaria così come non è possibile una teoria unitaria sul bene. I teologi seguaci dell'etica teleologica, attraverso un'abile sintesi di filosofia trascendentale e di utilitarismo, tentano di ricomporre l'antropologia a valle, senza cercare a monte l'unità originaria. L'ibrido risultante è pieno di contraddizioni. Non sarebbe più «utile» fare della ragione l'uso metafisico che le è proprio?

IN RILIEVO

ANTROPOLOGIA, ETICA E SCIENZA *

1. La scienza implica sempre un'etica e un'antropologia

Capita spesso nella storia dell'uomo che il genio poetico, il più capace di profezia tra tutte le forme di genio, preannunci con largo anticipo, in un linguaggio mitico e simbolico, ma non per questo meno carico di efficace realismo, il futuro dell'uomo con le sue talora drammatiche implicazioni. È il caso del *Faust* di Goethe che con più di 150 anni di anticipo ci offre uno spaccato impressionante dell'attuale situazione dell'umanità di fronte alla terribile possibilità che le scienze mediche e biologiche possiedono non solo di manipolare, ma quasi di «produrre» l'uomo come *manufatto*. Nella descrizione di Goethe è pure, inevitabilmente, anticipato *in actu exercitu* l'intreccio tra scienza, antropologia ed etica che accompagna anche oggi le problematiche relative alla manipolazione della vita umana nella sua origine, lungo la sua durata e nella sua fine. Problematica che va sotto il nome di *bioetica*, anche se il termine non rende linguisticamente giustizia alla primaria componente antropologica che pure implica. Nel *Faust* il Goethe immagina il ritorno di Faust, accompagnato da Mefistofele, nella sua casa, abbandonata da molto tempo. Egli vi trova il dottor Wagner, che era stato suo alunno, intento a fabbricare un uomo in una provetta (non è impressionante che il poeta abbia concepito l'idea molto prima che se ne cominciasse a parlare e in modo così veridico?). *Homunculus*, appena venuto alla luce — per così dire — saluta affettuosamente il padre, ma poi si rivolge subito allo zio Mefistofele (il diavolo). Insomma l'esito dell'operazione di Wagner è diabolico, perché *homunculus* non è uomo ma diavolo¹. L'episodio rinvia a un altro quadro dominato dalla figura di un pericolo alla cui base sta il diabolico. Mi riferisco al racconto della tentazione nell'Eden, in nome di che il Serpente spinge Eva a mangiare il frutto proibito attraverso l'esplicita motivazione: «sarete come Dio» (*Gn* 3, 5). Il nesso allora risulta facile: fabbricare l'uomo con le mani dell'uomo

* Relazione introduttiva del Prof. ANGELO SCOLA al Corso di Bioetica, svoltosi in Istituto nel Febbraio 1985 (cfr p. 228).

¹ *Faust II*, Atto secondo, 6885. «Ma tu, signor cugino, l'Ironico, sei qui?». GOETHE parlerà in una lettera della natura diabolica di *homunculus* (*Faust II*, Ed. FAUSTO FORTINI, Mondadori, Milano 1984³, p. 1092).

coincide con la pretesa orgogliosa di ergersi al posto di Dio o con quella, ancor peggiore perché più meschina, di fare l'uomo a immagine dell'uomo².

Per stare all'interno del luogo poetico citato, quello di Goethe, l'esito di una tale pretesa è ancora una volta ben descritto dal *Faust II*. Wagner infatti, non si limita a costruire l'*homunculus* in provetta ma progetta e realizza tutto un mondo, un impero tecnico-sociologico, dove permangono come residue anomalie due soli elementi: una campana che suona (simbolo del divino) e una capanna (simbolo dell'umano). Ma anch'essi dovranno essere eliminati perché impediscono la perfezione del sistema. Wagner lo ordina a Mefistofele. Allora quando l'amore divino e l'amore umano sono stati rispettivamente ridotti al silenzio e bruciati, si fa strada nel cuore di Wagner — simbolo dell'umanità d'oggi — l'ansia, la preoccupazione che come un tarlo lo rodé e questa sarà anche la fine di Faust. Un illustre scienziato del nostro tempo, Jerome Lejeune, consapevole del terribile significato simbolico del *Faust* goethiano ha affermato circa un anno fa in una conferenza tenuta qui a Roma: «Il compito nostro... è di far sì che non siamo degli emuli del Faust, ma di colui che una volta ci ha detto: "primo: non nuocere; poi dobbiamo curare". Questa è la vera medicina»³.

Mi sono dilungato volutamente sul dramma di Faust perché ritengo che in esso siano posti, in una sintesi straordinaria, tutti i termini necessari allo svolgimento del tema. Lo scopo è quello di illuminare i nessi che intercorrono tra antropologia, etica e scienza avendo come interlocutori privilegiati medici e biologi. Se questo è lo scopo del mio intervento allora il riferimento al testo di Goethe rende più comprensibile la prima fondamentale affermazione. Ogni scienza sperimentale modernamente intesa, galileanamente intesa, formula delle ipotesi applicando rigorosamente un determinato metodo e tende a suscitare una prassi di trasformazione dell'uomo e del mondo. Nel fare ciò, vale a dire per sussistere e svilupparsi, essa implica di fatto un'antropologia e un'etica. Non pretendo fornire in questa sede la dimostrazione della validità di questa affermazione in merito alle scienze più astratte e assiomatiche come le matematiche pure, anche se tale dimostrazione è possibile ed è stata fatta, ma solo invitarvi a constatare come essa si riveli fin troppo evidente nel multiforme campo della scienza medica e nella biologia⁴.

² È sorprendente il fatto che mentre la scienza canta i suoi peana i filosofi oggi più di moda parlano, a proposito dell'uomo, di «finitudine del finito» come FOUCAULT. Pagine critiche interessanti sulla parabola nichilista della filosofia dopo NIETZSCHE e sul suo influsso sulla teologia contemporanea si possono trovare in: J. MARTELET, *Deux mille ans d'Eglise en question*, Paris 1984, pp. 23-35; 123-140.

³ J. LEJEUNE, *Manipolazione genetica*, in «Synesis», I (1984) 2-3, p. 194.

⁴ Per tutta la problematica della natura della scienza, della riflessione epistemologica su di essa e dei suoi rapporti con la teologia, rinvio a E. BROVEDANI, *Mentalità scientifica e riflessione teologica*, in «Aggiornamenti sociali», XXXII (1981), 5, pp. 333-350. L'articolo contiene anche i riferimenti bibliografici necessari a chi voglia occuparsi dei metodi scientifici essendo un «laico» e non un «sacerdote» della scienza.

Anzitutto, l'affermazione fatta risulta comprensibile in quanto queste scienze hanno per oggetto l'uomo, perché si occupano dell'uomo. Ma anche prese in se stesse, in quanto formulano una ipotesi sulla realtà e operano in essa, implicano un soggetto che le coltiva e che, poco o tanto, veicola attraverso di esse una visione dell'uomo e delle cose. Essendo inoltre tale soggetto un essere dotato di libertà e di responsabilità non può compiere che atti carichi di una intenzionalità. Allora lo stesso atto conoscitivo o manipolativo del reale che lo scienziato pone porta sempre con sé, in quanto eseguito dall'uomo e in vista dell'uomo e/o del cosmo, una *Weltanschauung* (visione globale dell'uomo e del cosmo) e una responsabilità etica. Nessuna scienza può quindi trincerarsi dietro la sua oggettività, la sua limitazione di campo e di metodo, per pretendersi neutra e quindi obiettivamente indifferente rispetto al destino dell'uomo e perciò in se stessa amorale, cioè priva di ogni riferimento a ciò che è bene e a ciò che è male.

Così nel caso del *Faust*, costruire l'uomo con le proprie mani è l'esito e insieme una nuova possibilità di costruire tutto un universo privo del nesso vitale con Dio e orfano della dimensione misteriosa e irriducibile di ogni uomo, che è il fondamento della sua dignità. La scienza del *Faust* «crea» un mondo artificiale perché segnata da una antropologia immanentistica e da un'etica della potenza. Un mondo la cui perfezione tecnico-formale non potrà salvare l'uomo dalla corruzione e dall'annientamento. Visibilmente nell'operato ipotizzato come scientificamente perfetto di Wagner non è all'opera solo la scienza ma un'antropologia e un'etica. Un'antropologia immanentista, priva del senso della trascendenza e della coscienza della natura misteriosa dell'uomo. Un'etica del dominio dell'uomo sull'uomo.

Da questa tesi fondamentale derivano altri tre interrogativi decisivi per lo svolgimento del nostro tema. Dato l'intreccio inevitabile della scienza con l'antropologia e l'etica, qual è la gerarchia in cui le tre discipline (evito di dire le tre scienze perché lo sono secondo accezioni diverse dell'idea di scienza) stanno tra loro? Vale a dire quale viene prima e quale viene dopo, o ancora se si vuole, quale delle discipline è determinante, criteriante in un qualche modo le altre?

La nostra risposta sarà l'antropologia. Nascerà allora un'altra questione: quale antropologia è adeguata all'uomo e quindi alla sua scienza? Da qui partirà l'esame della natura dei rapporti tra antropologia e scienza, che farà emergere il compito dell'etica come la modalità adeguata del nesso tra antropologia e scienza. Ma procediamo con ordine.

2. Il primato ontologico dell'antropologia mostra il significato ultimo del progresso scientifico

Il modo più elementare per affermare il primato dell'antropologia nell'intreccio di antropologia, scienza ed etica è ricavabile dalla stessa esperienza scientifica. Si dovrà per inciso precisare che l'uso della parola primato non

implica alcuna pretesa di sottomissione della scienza alla teologia o alla filosofia. Piuttosto si vuol dire che nell'uomo la questione antropologica è primaria! L'uomo di scienza, in modo particolare da quando Bacone con la sua terribile identificazione tra *scientia* e *potentia* ha radicalmente mutato il rapporto tra teoria e prassi a favore di quest'ultima, opera e agisce assai spesso con un'abnegazione totale di sé che sfiora l'eroismo in nome del progresso che la scienza procura all'umanità. L'idea di progresso è un'idea illuministica. Furono gli Enciclopedisti e in particolare il Condorcet a formulare l'idea di una forza propulsiva insita nella storia che determina una crescita costante in senso ascendente e positivo della medesima⁵. La storia è in lento ma continuo e progressivo miglioramento. Tutta la dialettica hegeliana e pure quella del materialismo storico e scientifico di Marx non hanno potuto togliere dal cuore dell'uomo di scienza questo convincimento. Non è più l'idea ottimistica e ingenua di un progresso assolutamente lineare alla Condorcet. Esistono le contraddizioni, talvolta si torna indietro, soprattutto vi è la possibilità drammatica ed angosciante che il risultato della scienza sia impiegato contro l'uomo, ma inesorabilmente la curva della storia è ascendente e, ciò che più conta, è ascendente proprio grazie al progresso della scienza. Si potrebbe negarlo? Forse sì forse no, in ogni caso qui ci interessa sviluppare un'altra questione: cos'è il progresso? o ancora *perché, per chi* il progresso? La risposta inevitabile dell'uomo comune come dello scienziato è sempre la seguente: per l'umanità. Più raramente «per l'uomo» perché il prezzo di tale progresso concepito come inesorabile è talora pesante per il singolo uomo ma, si pensa, i conti tornano se si considera l'umanità nel suo insieme, soprattutto l'umanità in prospettiva futura.

Questa incrollabile convinzione che la scienza sia la molla del progresso, che sta tra l'altro determinando una sistematica trasformazione del pensiero contemporaneo in *pensiero calcolante*, per usare la celebre espressione coniata da Heidegger, non potrebbe sostenersi e diventare sempre più dominante — come invece avviene — se venisse meno l'incondizionata fiducia che la *scienza è per l'uomo*. Alla fine, lo si riconosca o meno esplicitamente, è l'uomo e il suo bene il motore della scienza, cioè l'antropologia. Le domande che da sempre sono distintive dell'uomo e del suo senso religioso: chi sono io? perché sono? da dove vengo e dove vado? che senso ha il cosmo in cui sono immerso?, sono il cuore di ogni antropologia e potranno rischiare di trovare nella scienza risposte che tendono a vanificare lo spessore trascendente oppure saranno da essa eliminate come «non scientifiche». È celebre in proposito il procedimento utilizzato da Marx per eliminare il senso religioso e i suoi contenuti come falso problema⁶.

Ma tanto la scienza può affermare di essere la molla del progresso

⁵ Penso al celebre *Esquisse d'un tableau historique des progrès de l'esprit humain*, Paris 1794.

⁶ K. MARX, *Manoscritti economico-filosofici*, a cura di U. BOSCI, Torino 1968, pp. 123 ss.

dell'umanità in quanto si paragona con tali domande e si lascia da esse giudicare. Non importa, in questo momento, rilevare il circolo vizioso per cui la scienza può e tende storicamente parlando a paragonarsi con queste radici antropologiche pretendendo di dare una risposta scientifica a tutti questi quesiti e quindi in fondo cercando di ridurre scientificamente ogni antropologia così che alla fine la scienza non debba paragonarsi che con se stessa! È sufficiente, per smascherare questa attitudine, riflettere sulla propria personalissima esperienza di uomo per scorgere in tali essenziali questioni antropologiche qualcosa di strutturalmente irriducibile al *pensiero calcolante* se si intende per pensiero calcolante l'eliminazione della questione del significato, cioè del mistero del cuore dell'uomo. In effetti è proprio l'irriducibilità del senso religioso — che è la domanda sul significato ultimo della vita e delle cose cui si connette il problema dell'origine dell'io, della sua capacità di giudicare, di moralità e di affezione — la prova più convincente sul piano esistenziale e metafisico del primato dell'antropologia sulla scienza. Questo non è sfuggito agli scienziati più autentici, il cui apporto al progresso scientifico è indiscutibile. Disse Einstein: «La più bella e profonda emozione che possiamo provare è il senso del mistero. Sta qui il seme di ogni arte, di ogni vera scienza... La preoccupazione dell'uomo e del suo destino deve sempre costituire l'interesse principale di tutti gli sforzi tecnici. Non dimenticatelo mai in mezzo ai vostri diagrammi e alle vostre equazioni». Il primato dell'antropologia in quest'affermazione del grande scienziato non appare solo come una pura precedenza dal momento stesso che è concepito — e da quale scienziato — come la molla della stessa ricerca scientifica. Ne rappresenta in un certo senso la genesi (seme) e il fine. Non si tratta né di limitare aprioristicamente le possibilità della scienza né di pretendere di definirne dall'esterno i criteri metodologici, quanto piuttosto di saper portare sull'uomo uno sguardo integrale che gli riconosca la sua natura misteriosa, ultimamente inafferrabile dalla sola scienza. In un certo senso l'aveva ben intuito K. Jaspers quando scrisse che «tutte le causalità empiriche e i processi biologici di sviluppo sembrano applicarsi al substrato materiale dell'uomo, ma non all'uomo stesso». Ora la dimensione dell'uomo non riducibile alla scienza empirica è appunto la sua dimensione antropologica⁷. Il primato dell'antropologia sulla scienza è riconoscibile dunque da parte dello stesso scienziato, sia dall'interno della sua stessa esperienza scientifica che è incapace di spiegare tutto l'uomo, sia quando imposti in modo serio il problema del suo essere uomo che ha per vertice supremo il senso religioso. Infatti solo la risposta al perché dell'uomo può costituire ciò per cui la scienza stessa «vale la pena» e quindi il motivo di un impegno con la scienza stessa. L'esistenza del senso religioso concepito come l'insopprimibile esigenza, magari implicita, di una risposta al perché ultimo delle cose giustifica metafisicamente tale

⁷ Un'efficace lettura per accostare le principali tappe dell'evoluzione dei metodi scientifici con una sensibilità rispettosa di un'antropologia integrale, è C.F. MANARA, *Metodi della scienza dal Rinascimento ad oggi*, Milano 1975.

primato e spiega perché l'uomo semplice quando si apre consapevolmente alla vita nell'età critica non possa fare a meno di porsi le questioni antropologiche fondamentali. Lo ha detto bene Giovanni Paolo II: «In effetti la religiosità rappresenta l'espressione più elevata della persona umana perché è il culmine della sua natura razionale. Essa sorge dall'aspirazione profonda alla verità ed è alla base della ricerca libera e personale che egli compie del divino»⁸. È così posta la seconda tesi del nostro discorso. Il primato dell'antropologia risulta pertanto determinante nell'intreccio tra antropologia, scienza ed etica perché solo nella risposta al problema del significato dell'uomo emergono quegli orientamenti fondamentali e i valori finali dell'uomo e della comunità umana che individuano il senso autentico del progresso scientifico.

L'esigenza che sorge a questo punto diviene quella di individuare quale sia l'antropologia adeguata a esprimere il mistero dell'uomo e quindi a fondare l'etica e a criteriare la scienza. È il terzo passo di questo nostro cammino ideale.

3. Due contenuti essenziali per un'antropologia adeguata

Si può costruire un'antropologia in chiave puramente filosofica, in un certo senso dal basso, riflettendo sull'uomo e sulla sua natura così come appaiono alla ragione naturale, ma dal momento che la fede è l'interesse che almeno implicitamente muove questo nostro incontro, sembra giusto guardare senza indugio all'antropologico, pensato alla luce della fede e della rivelazione, cioè all'antropologia teologica.

Una riflessione antropologica di carattere teologico che intenda essere sufficientemente compiuta deve affrontare non poche questioni. Certamente non può rinunciare a trattarne quattro decisive: creazione, peccato originale, giustificazione, uomo nuovo. Essendo impossibile svolgere in questa sede, anche sinteticamente, questi quattro grandi temi, mi limiterò a fare qualche cenno sui due che sono *necessari* e *sufficienti* per far procedere la nostra trattazione. Mi riferisco al problema della creazione e a quello della redenzione (giustificazione) dell'uomo in Cristo, che è poi la risposta compiuta al grande interrogativo: *chi è l'uomo*.

a) Non è sufficiente pensare (come spesso fanno gli uomini di scienza) la creazione come il gesto con cui Dio fabbrica e mette in moto il mondo, quasi questo fosse il celebre meccanismo di Cartesio, ma bisogna considerarla teologicamente. Se Dio è Dio, all'infuori di Lui c'è solo il nulla a meno che Egli gratuitamente e liberamente non voglia comunicare se stesso fuori di sé. Siccome il Dio cristiano è Trinità, da queste due premesse risulta che la creazione in senso pieno (teologico) è *la comunicazione ad extra della vita*

⁸ Udienza generale del 19 ottobre 1983.

*intima della Trinità*⁹. Su questa affermazione conviene ora riflettere un poco. L'ipotesi filosofica di creazione, quella cui siamo abituati anche dal punto di vista del senso comune, appare legata a una nozione non trinitaria di Dio. Questa ipotesi di creazione evidenzia soprattutto il dato cosmologico: in essa appare un Dio che crea il cosmo e solo in un secondo tempo l'uomo; al contrario il dato biblico integrale e teologico della nostra fede circa la creazione mette in luce l'elemento antropologico come suo contenuto primario. Dio è la comunione intima e profonda delle tre persone da cui scaturisce misteriosamente e gratuitamente l'uomo e per esso il cosmo.

È molto importante non contrapporre le due posizioni espresse come se l'una escludesse l'altra. La seconda non annulla ma integra e completa la prima mentre non sarebbe possibile il contrario. Ma come si attua in concreto questa creazione da parte di Dio? Se all'origine della creazione vi è la Trinità allora la creazione avviene nel Verbo, anzi è obiettivamente riferita al Verbo incarnato, cioè a Cristo. La creazione è in vista di Cristo. Infatti come è avvenuta questa comunicazione ad extra della Trinità? Attraverso la missione del Verbo e, derivatamente, dello Spirito Santo. Ma la missione del Verbo implica la sua incarnazione, cioè l'assunzione della natura umana. La natura umana allora è stata da sempre pensata in vista del fatto che il Verbo doveva assumerla, quindi la creazione è in Cristo.

Pertanto da un punto di vista teologico si deve parlare di creazione-elevazione per esprimere con chiarezza che fin dall'origine l'uomo, oggi storicamente esistente, è stato predestinato e creato in conformità a Cristo, cioè con un fine soprannaturale. Non esiste nell'ordine storico effettuale altro fine per l'uomo che quello soprannaturale. Quindi se si concepisce la creazione nella prospettiva della comunicazione ad extra della Trinità, si riconosce che la natura umana è stata costituita per questo fine soprannaturale e il mondo è stato creato esso stesso per l'attuarsi di questa possibilità. Si capisce allora come la Trinità sia la sorgente intima dell'essere creato e come l'uomo da sempre, fin dallo stato originario, sia dotato di un fine soprannaturale. Questo significa che l'io e il mondo dipendono strutturalmente da Dio in ogni istante. Dio ci crea istante per istante in modo libero e gratuito. Non solo, ma ci crea come esseri fatti secondo una determinata natura universalmente valida, ma liberi¹⁰. Già da questa prima troppo sintetica esposizione si potrebbe ricavare l'impossibilità che l'uomo compia qualunque operazione su se stesso e sul cosmo (anche l'operazione scientifica) al di fuori di questa dipendenza attuale (valida ogni istante) da Dio. Un autentico senso religioso, cioè un'adeguata percezione dell'io, scopre la necessità di questa dipendenza da un altro, cioè della contingenza. Ma chiediamoci ancora, qual è questa natura dell'uomo?

⁹ La problematica con interessanti riferimenti ad autori classici e contemporanei è svolta in H.U. VON BALTHASAR, *Theodrammatik*, IV. *Das Endspiel*, Einsiedeln 1983, pp. 53-102.

¹⁰ Sull'origine trinitaria e cristica della creazione si veda anche G. COLOMBO, *Problematica dell'antropologia teologica*, in «Vita e Pensiero», 54 (1971), pp. 586-595.

b) Sono tre le tesi nelle quali la teologia cattolica ha condensato lunghi secoli di riflessione sull'uomo del quale si è potuto dire, parafrasando una celebre frase del profeta Isaia riferita a Dio, «vere tu es homo absconditus». La prima afferma che l'uomo è composto di anima e di corpo (DS 902, 1440, 3002; GS 14-15). La seconda definisce l'anima come forma del corpo umano (DS 902). Essa esprime la convinzione che l'uomo non è un epifenomeno della realtà materiale, ma che la realtà materiale, aspetto ineliminabile della natura umana, assume «forma» antropologica proprio perché sorretta, informata da un principio spirituale che trascende la materialità stessa del corpo. La terza tesi è relativa alla spiritualità (DS 800, 2812) e all'immortalità dell'anima (DS 1140, 2766).

Nell'ottica della teologia della creazione-elevazione, in cui la creazione dell'uomo è strutturalmente orientata a Cristo, alla possibilità che il Verbo ha di uscire dalla Trinità per incarnarsi, la domanda sulla natura dell'uomo trova una risposta nella Rivelazione. Mi riferisco al grande tema biblico vetero e neotestamentario, ripreso ampiamente dalla Patristica e dalla Scolastica e mai dimenticato dalla grande tradizione teologica, che definisce l'uomo ad immagine di Dio. Cos'è l'uomo: è un'immagine imperfetta di Dio. Tommaso d'Aquino opera una celebre distinzione ispirandosi ad Agostino. Egli precisa che solo Gesù Cristo è *imago* in senso pieno. Egli infatti è Figlio di Dio e realizza la *ratio imaginis* (cioè il valore dell'immagine) in senso integrale perché possiede la stessa natura del Padre: Egli è Dio. L'uomo propriamente parlando non è *imago dei* ma solo *ad imaginem dei*, dove l'*ad* + accusativo indica il tender dell'uomo alla realizzazione piena del suo essere a immagine di Dio e apre lo spazio al fondamento della morale. Certo l'uomo non toccherà il vertice dell'immagine in senso proprio, ciò spetta solo al Figlio, ma giungerà alla figliolanza adottiva, all'essere *filius in filio*, cioè alla partecipazione alla natura divina, a quella che i Padri chiamavano la divinizzazione. Appare così descritto l'ideale dell'uomo secondo la Rivelazione. Esso si realizza nell'*incorporazione* a Cristo, siamo assimilati e trasformati da Cristo nel suo corpo risorto. Lo Spirito è l'artefice poiché eleva l'uomo alla partecipazione della vita divina sciogliendolo dai peccati. Tale incorporazione dipende da una parte da Cristo che dona il suo Spirito ma dall'altra essa dipende dalla libera determinazione dell'uomo. Allora la nostra esistenza (creazione) e la nostra natura hanno origine in Cristo. È Lui la prima fondamentale comunicazione ad extra della vita della Trinità. Egli presiede alla creazione proprio perché ha come scopo di farla partecipare alla vita trinitaria stessa. L'azione creativa inaugura questa partecipazione ma non la esaurisce, essa infatti costituisce il soggetto spirituale, creaturale *ad imaginem dei*. Si compirà solo attraverso l'adesione piena d'amore dell'essere creato al disegno di Dio in Cristo. La libertà è quindi esigita come condizione necessaria per la partecipazione dell'essere creato alla vita intima della Trinità. Per cogliere meglio il significato di questa tesi centrale dell'antropologia teologica, secondo la quale l'uomo è chiamato a conformarsi al Cristo glorioso realizzando a pieno la sua natura di essere a immagine di Dio, occorre riflettere sinteticamente su Cristo esemplare o, come dice la Bibbia, *primizia* dell'uomo

nuovo. Si vede allora che la domanda centrale della cristologia, che da duemila anni non cessa di inquietare l'uomo (croce per i teologi), «Chi è Costui» risulta infatti — e ne avremo subito conferma — anche la domanda centrale dell'antropologia. Solo nel suo essere Colui che viene dal Padre (missione del Verbo), inviato *propter nos homines et propter nostram salutem*, trova comprensione la risposta all'interrogativo «Chi è Gesù Cristo». La persona di Cristo coincide con la sua missione. Analogicamente, affermare che l'uomo ad immagine di Dio è l'ideale di uomo secondo la Rivelazione significa affermare che in Cristo l'uomo è reso compiutamente persona perché in Cristo soltanto si rivela la missione dell'uomo. Nell'incorporazione a Cristo si apre lo spazio della missione e quindi della definizione veramente personale di ogni uomo. Solo così l'uomo trova risposta alla domanda: *Chi sono io?* Essere a immagine di Dio implica essere persone teologiche, uomini definiti dalla missione di Cristo per il mondo. È qui abbozzata una certa urgenza che ancora una volta la teologia fa alla filosofia per radicare nel suo terreno più proprio il concetto di persona e le categorie che a essa si connettono come quella di dignità e di diritti della persona. La definizione boeziana di persona (*rationalis naturae individua substantia*) così come quelle più contemporanee legate al rapporto io-tu, cioè al tema della relazione interpersonale, *pur essendo valide per fondare* la nozione universale del soggetto spirituale personale non attingono il livello costitutivo del *proprium* di ciascun uomo. A ciò giunge la teologia, dove la categoria di persona si lega alla missione e dove il *chi sono io?* trova pertanto risposta esaudiente¹¹. Si pensi a certe grandi figure di apostoli, vere e proprie colonne della Chiesa e si vedrà il significato di questa missione personalizzante o di persona teologica. Ognuno di noi che si percepisce come essere spirituale solo assumendo in Cristo la vita come vocazione, si realizza pienamente come persona. Infatti, come insegna la grande tradizione cattolica, nell'incorporazione a Cristo l'uomo, la sua libertà e il suo agire subiscono una trasformazione reale che rende l'uomo stesso sempre più conforme a Cristo. Creazione come comunicazione gratuita della Trinità che costituisce l'uomo-Cristo come fattore in cui ogni uomo può scoprire il *proprium* che lo fa compiutamente persona è il criterio supremo di ogni impresa umana e quindi anche della scienza.

Il progetto scientifico o trova in questa concezione dell'uomo come creatura e come persona a immagine di Dio in Cristo il significato del suo sviluppo o inesorabilmente, anche senza che i suoi cultori se ne accorgano, opererà per un'antropologia che non rispetta l'uomo nella sua integrità, che non è adeguata. È questa la terza tesi della nostra riflessione.

¹¹ H. URS VON BALTHASAR, *Teodrammatica*, vol. III, Milano 1983, pp. 141-262.

4. *L'etica è il fattore che consente il rapporto dialettico tra antropologia e scienza*

Affermare il primato dell'antropologia sulla scienza coincide quindi con l'affermare una funzione regolativa della prima sulla seconda che non ne implica la distruzione ma il suo sicuro ancoraggio all'interno di un orizzonte più ampio di quello costituito dal puro pensiero calcolante. Un orizzonte che consente alla ricerca scientifica di non tradire le speranze offerte all'umanità. Ma come avviene, in concreto, questa funzione regolativa dell'antropologia nei confronti della scienza, o in che cosa essa consiste propriamente parlando? Si apre qui lo spazio per il compito dell'etica (nel nostro discorso ci riferiamo all'etica teologica che dal nostro punto di vista risulta comprensiva anche di quella naturale o filosofica).

Per cogliere meglio il compito dell'etica nell'intreccio delle tre discipline, riprendiamo il filo del discorso partendo ancora una volta dalla scienza e tentiamo di schizzare i connotati principali della scienza empirica odierna. Ciò può risultare più semplice se si instaura un significativo, chiarificante paragone con quelli della scienza classica.

La scienza sperimentale attuale si concepisce non come una conoscenza vera — era invece il caso della scienza classica prima di Galileo — ma come una conoscenza ipotetica, invece che il concetto di causalità vi sostituisce quello di possibilità verificata, infine la distinzione-rapporto teoria-pratica vivissima nel mondo classico è conservata ma la scienza attuale si concepisce in vista della tecnica (*scire est posse*). Una simile concezione della scienza, lo si voglia o meno, tende a offrire un modello indicativo dell'agire dell'uomo e veicola una concezione del mondo. Il mondo appare in ultima istanza come un fascio di possibilità illimitate che il dinamismo evolutivo mette a disposizione dell'uomo: la scienza verifica queste possibilità e le propone come realizzabili all'attività umana. In concreto, la scienza moderna è unità inscindibile di progetto di umanizzazione dell'uomo e del cosmo (teoria scientifica), di tecnica che offre gli strumenti per perseguire questo scopo e di produzione dei beni di questa umanizzazione. Ecco come l'universo scientifico attuale tende a coincidere con l'universo intero dell'uomo¹². La scienza attuale non è neutra ma veicola dei significati ideologici. La ragione di questo dipende dal fatto che si è formata come scienza sperimentale sull'esclusione del soggetto, mettendo tra parentesi il soggetto in nome di una presunta oggettività. Di che natura era il soggetto escluso? Era l'espressione di una concezione positivista dell'uomo e quindi immanentistica e relativista. La scienza è nata, o se non è nata si è subito consolidata, su questo terreno e per questo tende a e pretende di risolvere da sé tutto il problema del significato. La valutazione della tendenza ideologica della scienza attuale mostra ancor meglio l'urgenza del suo nesso vivificatore

¹² Siamo debitori, per questa sintesi, a C. CAFFARRA, *Teologia morale e scienze positive*, in *Studia moralia* 1975, Romae 1975, pp. 121-133.

e purificatore con l'etica e l'antropologia. Liberarsi dalla pretesa totalizzante della scienza, mantenendo alla scienza tutte le sue potenzialità, è possibile: molti grandi scienziati l'hanno fatto e anche molti di voi lo fanno. La strada per questo è riconoscere, nella concezione cristiana o almeno nella concezione religiosa dell'uomo, i criteri valutativi del progresso scientifico in ordine al suo vero o presunto scopo di progresso dell'uomo. Il compito di operare tale valutazione ultima dei progetti, del metodo e dei risultati della scienza ormai definita nella sua complessità è quello dell'etica. L'etica non deve e non potrebbe neppure sostituirsi al progetto scientifico nei contenuti e nel metodo, ma essa può e deve valutare la natura del progetto antropologico che *sempre*, lo abbiamo visto fin dall'inizio, muove un progetto scientifico. L'etica diviene allora il tramite essenziale dell'imprescindibile nesso tra antropologia e scienza. Tale nesso poi è per sua natura dialettico nel senso che va, attraverso l'etica, dall'antropologia alla scienza e dalla scienza all'antropologia. Nonostante il riferimento iniziale al *Faust*, la scienza non è anzitutto di segno negativo. Può essere, al contrario, una grande possibilità di umanizzazione e come tale offre all'antropologia importanti contributi per una realizzazione, il più possibile adeguata, del progetto di Dio sull'uomo, rivelatosi nel Cristo morto e risorto. Essa risponde all'imperativo culturale della Genesi di trasformare il mondo di cui Dio ha reso l'uomo, creato a sua immagine, *dominus*. Consente anche di assumere l'invito paolino a edificare una civiltà degna dell'uomo contenuto nel bellissimo programma «per quanto è possibile vivete in pace» (*Rm* 12, 18). Quand'è così, l'etica, sentinella posta a salvaguardia della verità dell'uomo, valuterà positivamente gli apporti scientifici. Così nel caso delle più recenti scoperte biologiche potrà dire con Lejeune «che questa biologia "snaturata" (si riferisce alla manipolazione genetica come possibilità di correggere gli errori della natura) non è assolutamente da temere se utilizzata per riparare degli errori... ma se fossimo tentati non di riparare malattie ma di modificare l'uomo»¹³ la questione sarebbe diversa. Cose analoghe e ancor più elogiative si possono dire per altre recentissime scoperte come la possibilità di addomesticare i batteri per renderli adatti a produrre salute. Ma è dovere imprescindibile dell'etica valutare con chiarezza come contrarie alla verità dell'uomo quelle teorie e pratiche scientifiche che ne snaturano l'immagine divina posta dalla creazione ed esaltata nella morte e resurrezione di Cristo. Ciò dovrà sempre avvenire quando la scienza sconfina nell'ideologia, soprattutto in quella più drammaticamente distruttiva che è sottesa a ciò che è stato chiamato l'imperativo tecnologico: *la scienza può perciò deve*. Ciò che la scienza deve o non deve *in ordine al destino dell'uomo e del cosmo* non può mai essere pronunciato dalla scienza ma solo dall'etica fondata in un'antropologia adeguata. Si dà evidentemente anche il caso in cui la scienza può contestare l'antropologia, quando questa rifiuti di lasciarsi indicare precisi elementi caratterizzanti il

¹³ J. LEJEUNE, op. cit., p. 193.

vissuto umano per consentire giudizi etici più rigorosi. La scienza in questo caso è indubbiamente una delle strade con cui l'antropologia evita di alienare l'uomo dalla sua concretezza storica. L'etica è quindi il tramite del rapporto dialettico tra antropologia e scienza. È la quarta e ultima tesi.

5. Conclusione

Riprendendo in filigrana gli argomenti della presente riflessione a mo' di conclusione si può dire che:

1. Ogni atto scientifico è atto umano, perciò non è neutro. Esso implica pertanto un riferimento necessario a un'etica e a un'antropologia.

2. Nell'intreccio inscindibile tra scienza, etica e antropologia è innegabilmente dimostrabile il primato dell'antropologia. Tale primato significa che l'antropologia svolge una funzione regolativa nei confronti della scienza perché, svelando gli orientamenti fondamentali e i valori finali dell'uomo e della comunità umana, determina il significato ultimo del progresso scientifico.

3. L'antropologia per essere adeguata all'uomo, fondare l'etica e orientare la scienza, non può rinunciare alla verità della creazione dell'uomo come atto libero e gratuito di Dio e a quella della morte e resurrezione di Cristo come risposta adeguata e personale al *Chi sono io?* di ogni uomo.

4. La funzione regolativa dell'antropologia sulla scienza si attua mediante l'etica. Essa diviene così il tramite dei rapporti tra scienza e antropologia e viceversa tra antropologia e scienza. Sono rapporti dialettici: l'etica valuterà positivamente la scienza quando essa offrirà possibilità di realizzare elementi di un umanesimo rispettosi di un'antropologia adeguata. L'etica dovrà dire il suo no e motivarlo quando la scienza tenderà a fornire possibilità che veicolano un'antropologia contraria a quella adeguata.

Il problema dell'uomo di scienza cristiano, come emerge indirettamente dalle considerazioni svolte, è quello di un coinvolgimento personale carico di vigilanza nei confronti del mistero dell'essere pienamente svelato in Cristo. Solo così egli non sarà tentato di sopraffarlo nello svolgimento della teoria e pratica scientifica. L'uomo che incarna nella sua persona i valori antropologici ed etici richiamati ha le carte in regola per essere, se ne ha le doti, un vero uomo di scienza. Il medico o il biologo, così alimentato, di fronte alla tremenda possibilità che la scienza sta approntando intorno alla manipolazione della concezione e della nascita dell'uomo non avrà esitazioni. Farà di tutto perché la scienza si avvicini alla Rivelazione, almeno a quella inscritta in ciò che la sapienza medioevale chiamava il *Liber naturae*.

VITA DELL'ISTITUTO

A. SITUAZIONE DEI TITOLI DI STUDIO

LICENZA IN SACRA TEOLOGIA

Anno accademico 1984-1985

NAPOLEON RAMON BRITO LIRIANO, <i>Missione educativa dei genitori nella «Familiaris consortio» e nel Magistero di Giovanni Paolo II.</i>	49/50	Magna cum laude
CLAUDIO GIULIODORI, <i>Fondamenti per una teologia sponsale attraverso gli studi patristici di H.U. von Balthasar.</i>	50/50	Summa cum laude
ANTONIO MARIA LEM TAVERNE, <i>La preparacion al matrimonio: como fué y come es en el Ecuador y come debria ser segun «Familiaris consortio».</i>	39/50	Bene probatus
FELIX IGBINEWEKA, <i>The Sacrement of Marriage and Childlessness in Edo: Pastoral problems and possible solutions.</i>	48/50	Magna cum laude
BENJAMIN ROO MOLEDO, <i>La familia, escuela de valores y virtudes en el contexto de la «Familiaris consortio».</i>	49/50	Magna cum laude
DANTE MORETTI, <i>«Memoria», «Storia» e «Speranza» nelle Catechesi del Mercoledì di Giovanni Paolo II.</i>	50/50	Summa cum laude

DIPLOMA IN SCIENZE DEL MATRIMONIO E DELLA FAMIGLIA

Anno accademico 1984-1985

KATARZYNA KUKOLOWICZ, <i>La pastorale familiare, dopo il Concilio Vaticano II, nei documenti della Conferenza dell'Episcopato polacco.</i>	50/50	Summa cum laude
--	-------	-----------------

B. ATTIVITÀ SCIENTIFICHE

SEMINARI DI STUDIO PROMOSSE DALL'ISTITUTO GIOVANNI PAOLO II

1) *Corso di Bioetica*

Corso offerto ai laureati in Medicina e Chirurgia, in Biologia, in Farmacia e agli studenti degli ultimi due anni delle corrispondenti Facoltà. Si è svolto nei giorni 1-2-3 e 15-16-17 Febbraio 1985. Ad esso hanno partecipato 80 corsisti fra medici, biologi e farmacisti provenienti da diverse regioni italiane. Il programma prevedeva 24 ore di insegnamento e 8 di lavoro seminariale.

Relazioni:

- «Antropologia, etica e scienza» - Prof. Don ANGELO SCOLA.
- «Il valore della persona umana, fondamento dell'etica» - Prof. Mons. CARLO CAFFARRA.
- «La norma morale» - Prof. Mons. CARLO CAFFARRA.
- «Etica medica: principi generali» - Prof. Dott. GONZALO HERRANZ.
- «Etica medica e medicina legale. Il rapporto fra etica e legge» - Prof. Don JUAN IGNACIO CARRASCO.
- «Il Magistero della Chiesa sull'etica medica» - Prof. Mons. ELIO SGRECCIA.
- «La bioetica nei suoi contenuti essenziali» - Prof. Mons. ELIO SGRECCIA.
- «La procreazione responsabile» - Prof. Don DIONIGI TETTAMANZI.
- «I metodi naturali: stato della ricerca scientifica» - Prof. SALVATORE MANCUSO.
- «L'inseminazione artificiale» - Prof. Don LINO CICCONE.
- «La fecondazione in vitro» - Prof. Don LINO CICCONE.
- «L'attuale legislazione degli Stati sulla AI e sulla FIV» - Prof. GIOVANNI SERLUPI CRESCENZI.

Seminari:

- «Antropologia e scienza» - Prof. Don ANGELO SCOLA.
- «Crisi attuale dell'etica e professione medica» - Prof. Dott. GONZALO HERRANZ.
- «La "separazione" fra etica e scienza» - Prof. STANISLAW GRYGIEL.
- «La sofferenza umana alla luce della Esortazione apostolica "Salvifici doloris"» - Prof. STANISLAW GRYGIEL.
- «La formazione etica del medico e del biologo: prospettive e problemi» - Prof. Dott. GONZALO HERRANZ.
- «Norme etiche, società civile, obiezione di coscienza» - Prof. Don JUAN IGNACIO CARRASCO.

- «La procreazione responsabile: la "casistica" difficile» - Prof. Don DIONIGI TETTAMANZI.
- «La procreazione responsabile: la situazione della ricerca scientifica» - Prof. SALVATORE MANCUSO.
- «Antropologia e bioetica» - Prof. Mons. ELIO SGRECCIA.
- «Analisi di alcuni testi legislativi e non sulla bioetica (Rapposto Warnock...)»
- Prof. GIOVANNI SERLUPI CRESCENZI.
- «Approfondimento delle ragioni filosofiche e teologiche» - Prof. Don LINO CICCONE.
- «Significato della procreazione» - Prof. Mons. CARLO CAFFARRA.

2) *«L'attuale situazione della regolazione naturale della fertilità nel mondo»*

Seminario di studio, tenutosi il 27 Marzo 1985, al quale hanno partecipato 350 persone, fra medici, professori di varie Università, sacerdoti, e studenti dell'Istituto.

Relazioni:

- «L'attuale situazione della regolazione naturale della fertilità nel mondo» - Prof. Dott. JOHN J. BILLINGS.
- «Il futuro della regolazione naturale della fertilità» - Dott.ssa EVELYN L. BILLINGS.

INDICE DELL'ANNO 1985

IOANNES PAULUS PP. II	Constitutio Apostolica «Magnum Matrimonii Sacramentum»	pag. 1
-----------------------	--	--------

EDITORIALE	» 5
------------	-----

ARTICOLI

CARL ANDERSON	<i>Toward a Global Law of the Family</i>	» 125
JOHN M. FINNIS	<i>Personal integrity, sexual morality and responsible parenthood</i>	» 43
GERMAIN GRISEZ	<i>Moral Absolutes. A Critique of the View of J. Fuchs, S.J.</i>	» 155
STANISLAW GRYGIEL	<i>Errantes revoca! Essai sur l'auto-conscience, sur le péché et la réconciliation</i>	» 13
NORBERT MARTIN	<i>Familiensoziologische Überlegungen im Anschluss an das apostolische Schreiben «Familiaris consortio»</i>	» 31
JOSEF SEIFERT	<i>Absolute moral obligations towards finite goods as foundation of intrinsically right and wrong actions</i>	» 57

NOTE CRITICHE

RAMON GARCÍA DE HARO	<i>F. Böckle, I concetti fondamentali della morale</i>	» 95
ANGEL RODRIGUEZ LUÑO	<i>Sulla recezione del modello filosofico utilitaristico da parte di alcuni teologi moralisti</i>	» 203

IN RILIEVO

CARLO CAFFARRA

*La fecondazione in vitro: considerazioni
antropologiche ed etiche*

pag. 109

ANGELO SCOLA

Antropologia, etica e scienza

» 215

Lia Carini Alimandi

PRESENZE DI DONNA

femminilità e maternità
nella letteratura di ieri e di oggi

Questo libro-strenna vuole essere innanzi tutto un omaggio alla donna come tale, un tributo alla sua femminilità così come è stata colta e sublimata in pagine letterarie e poetiche in tempi e luoghi diversi, dall'Egitto a Babilonia, dalla Bibbia ai lirici greci, alla romanità classica, al pensiero cristiano, poi su su risalendo i secoli, alla Rinascenza e fino a noi, passando per le trame poetiche del Barocco, dell'Arcadia, fino all'Illuminismo, al Romanticismo e ai nostri giorni.

In questo itinerario non poteva mancare l'altro aspetto peculiare della donna e sua prerogativa esclusiva: la maternità. I due filoni, in effetti, si intrecciano e si completano in quadretti stupendi, di volta in volta aderenti allo spirito e alla cultura del popolo dal quale essi provengono. E proprio per raggiungere la maggiore varietà di sfaccettature nel discorso donna, si è allargata la ricerca a letterature che taluni potrebbero definire insolite.

Il volume, rilegato, contiene 32 foto a colori che conferiscono al testo una notevole efficacia «visiva», tracciando a loro volta un profilo di donna nell'arte figurativa, ad opera di maestri greci, romani, mesopotamici, fino alla pittura dei nostri giorni.

collana «Le Strenne» - pp. 176 - 32 foto f.t. - L. 25.000

Città Nuova Editrice

Odile Levassort

FELICITÀ D'AMARE

educazione psicologica e sessuale al matrimonio

L'Autrice, medico e psicologo, ci offre in questo volume una trattazione completa, serena e obiettiva, scientifica e semplice allo stesso tempo, dei rapporti coniugali, sia sotto l'aspetto sessuale fisiologico, sia sotto quello psicologico. In modo particolare questo secondo aspetto, più raramente trattato e qui svolto in modo ampio e pratico, rende il volume veramente prezioso per coloro che si avviano al matrimonio o ne fanno la prima e talora difficile esperienza.

collana «Guide» - 12ª ed. - pp. 308 - 19 ill. nel testo e 16 f.t. - L. 13.000

Paul Thyma

IL DOPPIO METODO

di controllo per la pianificazione delle nascite

Un libro di igiene familiare, una guida pratica alla maternità e paternità responsabile, uno «stile di vita» che promuove valori umani all'interno delle relazioni matrimoniali. Il doppio metodo si basa sul controllo della temperatura (per accertare i periodi di infertilità prima e dopo l'ovulazione) e del muco cervicale (per stabilire il momento dell'ovulazione). Il tutto sorretto da grafici e tavole illustrative di grande utilità pratica.

collana «Guide» - 4ª ed. - pp. 86 - 21 ill. nel testo e 10 tav. f.t. - L. 5.000

Città Nuova Editrice

DOSSIER SULLA FAMIGLIA

a cura di Giorgio Campanini

contributi di:

F. Masellis - A. Riva - G. Agostinucci Campanini - G.
Dalla Torre - G. Giavini - G. Gatti - D. Tettamanzi - P.
Scabini - M. e P. Quartana

La «crisi di valori» che investe la società mette in discussione anche strutture, come matrimonio e famiglia, che sembravano saldamente radicate nella tradizione civile e religiosa dell'Italia.

Questo libro si interroga appunto sugli aspetti antropologici e teologici del matrimonio e della famiglia: sessualità della coppia, dialogo nella coppia, matrimonio come struttura educativa, aspetti giuridici dell'istituto matrimoniale; e inoltre, il matrimonio alla luce della Parola di Dio, il ministero culturale della coppia cristiana e la vita cristiana nel matrimonio, nonché il rapporto tra la realtà familiare e la comunità ecclesiale.

Chiude il volume un contributo-testimoniaza dei coniugi Quartana, che offrono il momento di verifica della vita familiare nella esperienza concreta del quotidiano.

Collana «Opere varie» - pp. 296 - L. 10.000

Città Nuova Editrice

Finito di stampare nel mese
di novembre 1985
dalla tipografia Città Nuova della P.A.M.O.M.
Largo Cristina di Svezia, 17
00165 Roma tel. 5813475/82