IV summarium

SUMMARIUM PARTIS QUARTAE

Pars Quarta continet quinque breviora commentaria in Schema Documenti de Responsabili Paternitate, nn. I ad V, a Dr. Grisez praeparata; et quinque longiora commentaria de Relatione Finali, nn. VI ad X, a P. Ford praeparata.

I. Actio Pontificia nunc possibilis

Comment on Schema Documenti, p. 12, § 1.

Here is presented an idea with which every member of the Commission agreed: that a Pontifical Institute or Secretariat be established for the study of problems connected with matrimony. However, the functions suggested for this new office certainly were not what the minority had in mind.

It may not be possible for the Holy Father to speak concerning contraception for some time. There is no reason whatsoever why he could not act immediately, using this paragraph as his warrant, in a sense opposite to that intended by those who wish to approve contraception.

The effect would be accomplished if the Holy Father were to establish the new office, appointing as its director and organizer someone who is well known to be absolutely opposed to contraception. The new office could well be assigned two immediate tasks: 1) Serious study to see how the virtue of chastity can be more generally and more perfectly achieved. Children should not be permitted to form habits of impurity; premarital unchastity should be fought against strongly. If these things were done, contraception would not be a problem; if these things are not done, contraception would not be a solution. 2) Study toward the perfection of the use of the infertile periods, including (if necessary) actual scientific research to this end. Every Catholic couple would know that the Church wants them to fulfill the precept of conjugal chastity and cares enough to help them fulfill it if only such an act were done now. A firm restatement or a legitimate development of the traditional precept could then be accepted more willingly.

Action speaks louder than words. One must first capture the ground, then argue about title to it. That is how the proponents of contraception have proceeded. Why cannot the Magisterium proceed in the same way? First show what is to be done and what the Church will demand, then teach it in words in due time. Our Lord H imself sometimes first performed a miracle or told a parable, then explained the meaning of it. First He rose from the dead, then He sent the apostles to preach the Gospel. May we not follow His example?

II. Interventus gubernativi leviter tantum reprobati

Comment on the Schema Documenti, p. 13, C. III

This chapter is extremely weak. It presents little opposition§ even to the most objectionable kinds of government intervention. While part of what is said in Gaudium et Spes, §87, is quoted, the more afirmative teaching of the § is omitted. The schema warns against solutions promoted and sometimes imposed "praesertim propagando abortum vel sterilizationem," but it significantly does not forbid governments to offer abortion and sterilization. Nothing is said of the right of the parents to determine the size of their family without government interference. Instead a vague allusion is made to "jura parentum circa procreationem et educationem."

There is no demand that governments which promote birth regulation as such should offer morally acceptable means, including the teaching of the use of the infertile period, which is the only means that is clearly morally acceptable. Of course, on the supposition of the Schema Documenti, many other means are being approved, but there may be upright couples who will for a long time be unable to accept this teaching. Must the Church abandon her most loyal children, as if their consciences were worth no thought at all? Why should the Church expect anyone to accept the strange new teaching that contraception is morally acceptable, when this new teaching is a simple surrender to those who refused to accept the traditional precept condemning it?

This discussion of government intervention also is dangerous in that it makes no reference to methods that are probably abortifacient--i.e., for example, the I.U.D. This is the method that international family planning organizations already are beinginning to promote and that certain governments are beginning to adopt. Undoubtedly, the reference to this technique was omitted at this point because certain members of the majority group are hopeful that these methods will prove not to be abortifacient, or else that they will be accepted as morally approvable even if it is demonstrated that they do interfere with the normal development of the already fertilized ovum.

III. Matrimonia instabilia juniorum.

Comment on the Schema Documenti, p. 14, § 2.

"Aedificatio communitatis coniugalis ac familialis non ex improviso fit. Proinde oportet ubique instaurare et meliori modo evolvere multiplices modos quibus iuvenes ad matrimonimm remote et proxime praeparantur."

On first reading, one wonders if this suggestion is to be taken seriously, appearing as it does in a document whose whole purpose is to approve contraception--which has been proposed for so long and so urgently as the necessary solution to the problems of married couples.

However, a little reflection shows that if, indeed, contraception were permitted, great preparation for marriage would be required. Of course, it is hardly likely that anything much would be done to provide it.

The reason this preparation for matrimony would be required is that the whole of Catholic sexual and conjugal morality is not structured to accomadate the mentality of contraception. If this were blessed, then, the whole structure would undergo a severe strain.

On the one hand, young unmarried lovers would feel more entitled than ever to express and cultivate their love by engaging in contraceptively protected sexual intercourse. The advocates of contraception say that they would not approve of this. Let us assume that they mean what they say--then a great battle would have to be fought against premarital unchastity. The experience of Protestants who have accepted contraception suggests that it would to a large extent be a losing battle.

On the other hand, to the extent the battle against premarital unchastity was successful, very young couples would be strongly motivated to enter into imprudent marriages before they were sufficiently mature. They would reason that they could live contraceptively for some years until they were old enough to have a family. However, even without the strain of parental responsibilities, very early marriages are extremely unstable. Therefore, the demand for divorce would become much stronger. The advocates of contraception say that they would not want to permit divorce. It seems proper for them, then, to call for the establishment and strengthening of programs of preparation for marriage. Obviously, programs for the aid of marriages that are breaking up also would be necessary.

IV. Modus inusitatus utendi SS. et loquendi de dominio vitae.

Comment on Schema Documenti, p. 11, final §

"Deus qui creavit hominem masculum et feminam, ut essent duo in una carne, ut mundum dominio suo perficerent, ut crescerent atque multiplicarentur (Gen. 1-2). . ."

This use of Holy Writ is interesting, because it involves an inversion of order that can hardly have been accidental. Not only is the account of creation in Genesis 2 placed before that of Genesis 1 (something that might of itself be warranted according to current exegesis), but the two precepts contained in Gen. 1:28 are paraphrased inversely: "Increase and multiply and fill the earth, and subdue it." Thus man's mission to dominate the earth is given precedence in the schema which does not belong to it in Holy Scripture itself.

The reason for this inversion is that man's dominion over nature is offered by the majority as the ground on which contraception is to be judged morally indifferent in itself. From the point of view of the statement of Genesis, this argument seems unsound for two reasons. First, the very fact that two precepts are given in Genesis, not one, militates against conceiving man's vocation to subdue the earth as absorbing and dominating his mission to cooperate with divine love in the transmission of human life. One is surprised at the following sentences in the majority's theological "Documentum Syntheticum. . .": "Fontes vitae, sicut et ipsa vita existens non sunt magis Dei, quam tota natura creata cuius Ipse Creator est. In hoc habetur autem dignitas hominis, creati ad imaginem Dei, quod Deus ipsum in suo dominio participare voluit." Surely no Catholic doctrine like this has ever before been taught.

Another reason why the argument is unsound is found in the very inversion of order that it occasioned. That man should increase and multiply and fill the earth--this is a primary vocation. Surely, his dominion over nature, important as it is--for it, too, is a God-given mission--is subordinate to the good of human life. The majority's argumentation, however, seems to look upon the sexual characteristics of man and the human faculty of reproduction as a mere part of the earth which man is to subdue, not as something which wonderfully exceeds the dispositions of lower forms of life (Cf. Gaudium et Spes, § 51).

IV, 5

V. Admissio contraceptionis et efficacia gratiae, etc.

Comment on Schema Documenti, p. 11, final sentence

"Quis tunc dubitaret, quin coniuges, quin omnes coniuges, possint correspondere exigentiis suae vocationis?"

This sentence, placed after remarks concerned with the strength, light, love, and joy which the spouses receive "virtute Spiritus Christi," seem particularly ironical in the context of a document approving contraception. For has not the chief argument in favor of contraception really been that abstinence is too difficult for a married couple, and that it is wrong to expect heroism from the average person?

Perhaps, however, the point of the sentence is deeper and even more sinister. Might it not mean that since spouses found the precept of conjugal chastity promulgated by the Church difficult, that precept could reasonably be concluded not to be a genuine requirement of Christian morality, since any true exigency of the conjugal vocation must be easily fulfilled, or else it is fair to think that grace has not been given, and hence that God does not require rectitude in every respect? If this is the meaning of the sentence, then the document is covertly supplying a new principle for moral theology: namely, that Christians may rightly consider themselves dispensed from any precept they find difficult to fulfill.

The sentence is interesting in another respect too, in that it recalls to mind the statement of the Lambeth Conference of 1930. In reluctantly approving contraception, the Anglican Bishops made a reference to grace (in which, nevertheless, they seem to have lost confidence), by suggesting as the most desirable means of birth regulation perfect abstinence lived in a life sustained by the power of the Holy Spirit. This is the tribute human frailty pays to divine strength.

VI. Deficiens expositio argumenti ex consectariis.

Relatio Finalis, p. 12, n. 3, valde deficit in expositione argumenti Minoritatis deducti ex consectariis inadmissibilibus si contraceptio permitteretur. Vide accuratiorem expositionem hujus argumenti supra, in hujus commentarii Parte Secunda, Minority, Appendix I, pp. 14-17. Notandum praeterea quod ista consectaria exhiberi possunt : A) In linea castitatis Christianae; et B) In linea inviolabilitatis vitae humanae; C) Pro auctoritate Magisterii.

A. In linea castitatis Christianae. Quidquid sit de logica consequentia ducente ad justificationem variarum violationum castitatis Christianae, haec notanda sunt: 1) Iam nunc et de facto, aliqua membra Majoritatis admitterent mutuam masturbationem coniugum in aliquibus casibus; et admitterent masturbationem tum intra tum extra matrimonium in aliquibus casibus. 2) Iam nunc sunt Catholici auctores qui volunt divortium permittere et defendunt hanc opinionem in scriptis, e.g. Ignace Lepp, La Morale Nouvelle (Paris: Grasset, 1963). In originali schemate (projet) laboris praeparato pro sessione plenaria Commissionis nostrae, Mense Martio 1965 habitara, questio de indissolubilitate matrimonii proponebatur discutienda. Haec"projet" praeparata est ab uno ex auctoribus praesentis "Schema Documenti de Responsabili Paternitate." 3. Iam nunc theologi quidam Catholici (sane defensores quoque contraceptionis) promovent opinionem quod certi concubinarii, in matrimoniis invalidis constitutis, sed cohabitantes"affectu maritali", possunt ad Sacramentum Eucharistiae admitti etiamsi intendunt continuare relationes sexuales adulteras. (Cf. art. recens, 1966) in Homiletic and Pastoral Review, etc.) 4. Iam nunc aliqui Catholici professores theologiae moralis in seminariis (sane defensores quoque contraceptionis) tentative saltem defendunt liceitatem copulae carnalis inter eos qui serio invicem seipsos amanter donant in expectatione matrimonii plus minusve proxime

futuri. 5. Iamvero, multi ministri Protestantes permittunt relationes sexuales premaritales, immo et relationes homosexuales, dummodo genuinus amor personalis adsit inter compartes. Inter nos et Protestantes communia sunt lex naturalis et Sacrae Scripturae, et cultura civilis sat saecularizatus hujus mundi. Id quod specificum est Catholicis, id quod efficit ut nos recte interpretemur legem naturalem et Sacram Scripturam, est Magisterium Ecclesiae praesertime ordinarium. Si ejus auctoritas in rebus moralibus destruitur, quod certo certius eveniet eo ipso die quo Ecclesia approbat contraceptionem, omnino expectandae sunt interpretationes principiorum moralium semper laxiores, interpretationes Sacrarum Scripturarum semper largiores, -- sicut notorie fit apud Protestantes. In ipsa nostra Commissione, expositio doctrinae castitatis Novi Testamenti mihi videbatur innuere quod fornicatio et homosexualitas considerantur immoralia in Novo Testamento principaliter propter defectum amoris et respectus dignitatis personalis humanae in comparte.(Vide responsa P. Lyonnet ad questiones P. Visser, in documentatione hebdomadae Maii 23 - 28 circa finem.)

B. Consectaria in linea inviolabilitatis vitae humanae. Iterum, quidquid sit de logica consequentia, loquamur de semper crescente audacia cum qua aliqui Catholici auctores permittunt interventus in processum et actum generativum et in ipsam vitam humanam iam in esse constitutam.

1. Instruamus catalogum diversorum interventuum possibilium in processibus generativis et in vita ipsa, fere hoc modo: a) Interventus in actus sexuales imperfectos coniugum. b) Interventus in opus naturae sine mutilatione, e.g. per "pillulam". c) Interventus in opus naturae per sterilizationem irreversibiliem. d) Interventus in opus hominis, i.e. in ipsum actum conjugalem, e.g. per onanismum.

e) Interventus in fetum viventem sed non adhuc animatum. f) Interventus infetum animatum. g) Interventus in neo-natum e.g. deformem (infanticidium). h) Interventus in suiipsius vitam (suicidium). i) Interventus in vitam innocentem per euthanasiam sive voluntariam sive involuntariam. j) Interventus in vitam aliorum innocentium per bombas atomicas de industria in populationem civilem directe explosas.

2. OMNES INTERVENTUS SUPRA DESCRIPTI (SALTEM IN CASIBUS EXCEPTIONALIBUS) HODIE IAM NUNC PERMITTUNTUR A CERTIS AUCTORIBUS CATHOLICIS, nam, sicut aliqui theologi ex Majoritate, non videntur admittere malitiam intrinsecam in actionibus externis humanis. Explicatur: --

3. In catalogo supra allato (exceptis quibusdam interventibus in actibus praeparatoriis sexualibus sub littera a) Ecclesia semper rejecit quemcumque directum interventum contra inceptionem novae vitae humanae (sub litteris b, c, d) et a fortiori contra ipsam vitam (sub litteris e, f g, h, i, j). Fortissime et absolute semper rejecit occisionem fetus sive animati sive non animati, -- ne dicam infanticidium, suicidium, homicidium. Istae vero prohibitiones erant absolutae quia fundatae in principio legis naturalis statuente intrinsecam malitiam talium actionum. Semel admissa negata intrinseca malitia contraceptionis, facile est concludere idem de aliis interventibus enumeratis, et de facto sic hodie concluditur a certis Catholicis, non exclusis quibusdam membris Majoritatis quod ad aliquos casus enumeratos.

4. Paucos abhinc annos, aliqui theologi (inclusis aliquibus membris Commissionis) incipiebant permittere "pillulam", sed non sterilizationem irreversibilem, neque interventus in ipsum actum conjugalem. Mox cogebantur logice ad permanentem sterilizationem saltem in gravioribus casibus admittendam, deinde ad permittendam

6. Omnino notabile est: Inter eos qui nunc defendunt contraceptionem (tum intra tum extra Commissionem) qui nunc defendunt contraceptionem, sunt auctores Catholici qui permittunt occisionem fetus iam animati, seu abortum proprie dictum, in casibus exceptionalibus. Saepe saepius in documentatione nostrae Commissionis, abortus fortiter rejicitur tanquam medium regulandi nativitatem; sed non tanquam medium salvandi vitam matris in casibus difficillimis. (Similiter quid factum est in Sub-Commissione quae praeparavit textum de matrimonio, Gaudium et Spes, n. 51: rejecerunt modos qui petiverunt explicitam condemnationem abortus etiam therapeutici, quia, ut videtur, existimabant tales abortus aliquando esse licitos.). Inter eos qui hodie publice defendunt abortum therapeuticum est W. van der Marck, O.P., Love and Fertility (London, Sheed and Ward, 1965), p. 59,60. (Vide etiam, and Ignace Lepp, La Morale Nouvelle, (Paris, Grasset, 1963) pp. 153-164 ad p. 161.). Inter eos qui saepe nominantur in hoc sensu sunt Canonici Lovanienses de Locht, Anciauz, Del Haye et Louis Janssens. Notandum est quoque quod in textu Schematis Documenti de Responsabili Paternitate, (S.D. p. 9) legitur: "Omnino e mediis nativitatem responsabiliter praeveniendi excludi abortum, ipsum Concilium Vaticanum II gravibus verbis iterum affirmavit" in qua sententia avortus therapeuticus non tangitur sicut non tangebatur in Concilio.

7. Infanticidium (e.g. in casibus difficillimis neo-natorum valde deformium) hucusque non vidi explicite defensum ab auctoribus Catholicis; implicite vero, clare permittitur ab Ignace Lepp, La Morale Nouvelle (Paris: Grasset, 1963) pp. 162-164.

8. Praeterea notandum: Inter eos qui nunc defendunt contraceptionem, sunt Catholici (v.g. P. Bernard Haering, C.SS.R.) qui permitterent suicidium in casu extraordinario contraspeculatoris (counterspy) qui mortem sibi infligit ne secreta status, cum magno damno patriae, sub tortura revelet.

9. Ex his quoque quae hodie publice defenduntur ab auctoribus Catholicis, debemus concludere quod euthanasia sive voluntaria sive non voluntaria aliquando est licita. Sic Ignace Lepp, op. cit p. 162, qui clare permitteret talem directam invasionem vitae humanae innocentis.

10. Est quoque qui nunc vult defendere directam occisionem populationis civilis per bombas atomicas, dicendo normas ab ecclesia in hac re traditionaliter traditas esse obsoletas et ad patriam defendendam insufficientes. Cf. W. O'Brien, Georgetown University, Washington D.C., U S A, qui haec habet in libro mox publicando.

11. Ex his omnibus consideratis, licet nobis saltem suspicari, quod semel relicta doctrina Ecclesiae de malitia intrinseca contraceptionis, difficilius defendetur inviolabilitas ipsius vitae humanae. Analogia ista inter contraceptionem et homicidium, tam profunde in historia doctrinae Catholicae insita, non debet considerari utpote a longe quaesita, neque utpote reliquia aliqua inconscia cultus fertilitatis spperstitiosi. Mentalitas contraceptionis de facto non longe abest a mentalitate eorum qui volunt directe occidere vitam humanam innocentem in adjunctis supernumeratis. Qui relinquunt principium malitiae intrinsecae contraceptionis facile omnino ducentur ad ulteriora consectaria inadmissibilia.

C. Consectaria quod ad auctoritatem Magisterii.

Mutatio substantialis circa doctrinam hucusque ab Ecclesia traditam de licitu usu matrimonii, prout in Encyclica "Casti Connubii" continetur vel ab ea immediate deducitur, ita ut - saltem in nonnullis casibus - licite declararentur actus onanistici, in quibus actus naturaliter foecundus redderetur sterilis per agentia mechanica, chemica, physica vel biologica, cum voluntate directa evitandi prolem, vulnus gravissimum inferret Magisterio ecclesiastico praeterito, praesenti et futuro.

Ageretur enim de mutatione in doctrina fundamentali circa mores, quam Summi Pontifices proposuerunt modo claro, cum aperta voluntate declarandi legem divinam; et quidem consonanter cum doctrina quam Theologi per saecula tenuerant, quamque Ecclesia universa tamquam communiter receptam habuit ex magisterio suorum Pastorum.

Talis mutatio induceretur, non per actum conciliarem vel post maturam rei considerationem a Collegio Episcoporum factam cum voluntate exercendi munus docendi fideles; sed post deliberationem cuiusdam Commissionis, quae ad doctrinam Ecclesiae exponendam haud satis capax est.

Post talem declarationem, effectus sequerentur adeo graves, ut non solum in hac materia Magisterium Ecclesiae parvipenderetur, sed etiam relate ad alias doctrinas cum fide vel moribus intime connexas, nulla iam auctoritas esset Summis Pontificibus; et hoc quidem ex processu logico et ineluctabili.

Si enim in illa materia in qua sollemnis adeo declaratio habebatur, et quidem ex constanti Traditione ecclesiastica, Pius XI erravit et cum eo Pius XII atque tota Ecclesia docens, siquidem Pastores talem doctrinam pariter suis fidelibus authentice docuerunt, et doctrinam communem Theologorum probaverunt; adeo ut ipsa Sedes Apostolica numquam permiserit doctrinam oppositam (quae nunc declarari tamquam authentica videtur); omnibus serium et rationabile dubium erit de doctrinis moralibus quae a Summo Pontifice in futurum proponentur, imo de iis quas Concilium proposuit, cum non agatur de definitionibus dogmaticis.

Triplex effectus immediate sequetur

1.) Theologi qui "progressivi" dicuntur, iam poterunt in aliis materiis moralibus magni momenti (v.c. de indisolubilitate matrimonii, de liceitate fornicationis, de actibus solitariis venereis, etc.) in dubium vocare quidquid hucusque "ex cathedra" definitum non sit. Illa enim non habent maiorem firmitatem quam doctrina "Casti Connubii".

Imo ipsae veritates dogmaticae in dubium venient, quia earum sensus immediatus saepe non ex ipsis formulis definitionis (quae in diversas partes trahi possunt) sed ex ipsa interpretatione authentica Magisterii habetur.

Illi Theologi plaudent sine dubio huic declarationi, non solum propter illa quae in se contineat, sed maxime quia post eam vix ulla erit auctoritas finem [illegible] Magisterii Summi Pontificis, ideoque amplissimam viam ipsis aperit ut omnia defendi possint.

2.) Theologi qui hucusque [illegible] vocem Magisterii cum reverentia audierunt, eamque tamquam normam sumpserunt ad proprias doctrinas proponendas, quia in cathedra Petri videbant columnam et firmamentum veritatis, nunc, illo fundamento destituti, imo quasi traditi et profunde decepti, per viam cogitationum suarum ambulare poterunt omnimoda libertate. Argumentum Tradi[illegible]tionis in Ecclesia iam ulterius nihil valebit.

3.) Fideles autem in hac confusione opinionum ad relativismum moralem pervenient; de quo exemplum clarum habetur in his quae accidunt v.c. in Nationibus Scandinaviae circa moralem sexualem, et in effectibus quos habuit declaratio Lambethiana circa usum matrimonii apud Anglicanam confessionem.

Imo profunda tentatio habebitur de veritate Ecclesiae, quae adeo sero pervenit ad conclusiones quas aliae confessiones iamdiu admiserant, quaeque per saecula imposuit gravissimum onus fidelibus coniugatis, non per legem positivam humanam quae nunc mutatur, sed per authenticam declarationem iuris divini. Unde facile, et quidem logice, hi fideles seligent motu proprio et iuxta personalia criteria doctrinas morales, unius vel alterius Ecclesiae. Fundamentum enim quod habebant ad sequendam doctrinam moralem Ecclesiae Catholicae , per hanc declarationem penitus destructum erit.

VII. Deficiens expositio argumenti ex ratione.

In Relatione Finali, p. 11, n. 2, expositio argumenti Minoritatis ex ratione deducti valde deficiens est et fere totaliter illud misrepresentat. Hoc argumentum accuratius exppsitum videri potest supra in hujus commentarii Parte Secunda, Minority, Appendix I, pp. 10, 11; et in Parte Tertia, P. III, 6. Notanda: --

1. Nos (Minoritas) supponimus doctrinam Eccesiae esse veram ex iugi Magisterio, et deinde non demonstrationem philosophicam proponimus, sed potius rationabilitatem doctrinae exponimus -- "fides quaerens intellectum."

2. Inviolabilitas actus et processus generativus qua talis non est argumentum nostrum philosophicum. Est datum theologicum quod accipimus propter absolute constantem traditionem. Rationem philosophicam hujus inviolabilitatis quaerimus. Repetitis vicibus explicavimus processus biologicos ut tales non fuisse sacros et inviolabiles habitos, sed ut generativos.

3. Cur? Quia nemo potest hos actus et processus qua generativos destruere (i.e destituere eos vi procreativa quam habent) quin habeat voluntatem deliberate et directe oppositam inceptioni hujus novae vitae individuae quae secus ex his processibus resultaret. Aliis verbis habet voluntatem contra bonum procreationis, i.e. contra hanc novam vitam in ejus inceptione, seu in fieri.

4. Hoc argumento nullo modo fundatur in notione biologico obsoleto, sed in ipsa natura cujuscumque vitae humanae ut sacrae, et ejus inceptionis ut similiter sacrae; nam ipsum fieri rei est continuum cum reipsa, ~~et~~ in ordine morali humano, quia habet voluntatem active oppositam inceptioni (fieri) alicujus boni, analogice sed vere et realiter comparatur cum eo qui habet voluntatem active oppositam ~~ipsi~~ ipsi bono. Hinc per saecula analogia de homicidio antcipato.

Durantibus 1900 annis, omnes Christiani, inclusis omnibus Protestantibus et Orthodoxis, testificantur talem voluntatem esse immoralem quia est contr conceptionem, i.e. contra inceptionem istius vitae individuae quae secus a deliberate positis actibus conjugalibus resultaret. (Sed varias formulas et explicationes hujus rei habebant.).

5. Ad objectionem quod solummodo pauci actus sunt de facto fertiles (ac proinde reales portatores novae vitae) non respondimus appellando ad ordinem metaphysicum, sed omnino aliter, nempe: Illi actus, relative pauci, qui de facto sunt portatores novae vitae, sunt ipsi praecisi actus quos contraceptio vult destruere qua vitam novam portantes. Quis vult sterilizare actum iam cognitum esse de se sterilem? Diximus igitur: a) Si nunc certe cognoscimus quinam actus sint fertiles, etiamsi pauci, vera consequentia esset quod isti actus tanto majore respectu observentur; non sequitur quod omnes actus tum fertiles tum steriles deveniant violabiles. b) Quod ad actus cognitos ut steriles, ego saepius dixi destructionem integritatis physicae eorum non habere praecisam malitiam contraceptionis sed aliam malitiam. Cf. Documentationem, B, 14, Ford,"Introductio, Pars II" pag. 14, II, 1 - 6.

6. Nulla fuit questio in hac argumentatione praeservandi ordinem naturalem quasi haberet valorem aliquam "metaphysicum" in aere pendentem; neque fuit questio falsificandi"mechanismum" a Deo insitum in actibus etiam sterilibus. Questio fuit vel de actibus de facto fertilibus (in quo casu malitia contraceptionis haberetur), vel de actibus sterilibus seu sterilium modo perverso exercitis, (in quo casu alia malitia intrinseca contra castitatem haberetur). Tentative explicata est haec malitia eo quod actus conjugalis semper debet significare et exprimere sua figura et structura ex-

terna primordialem generativitatem sexualitatis humanae et fundamentalem seu essentialem ordinationem generativam matrimonii Christiani.

7. Ex Relatione Finali, loc. cit. nemo suspicari posset quaenam fuerit vis argumenti Minoritatis, quod partialiter debetur (debeo confiteri) ineptitudini cum qua omnia haec a me explicabantur, sed etiam, nisi fallor, mentalitati quorundam totaliter deditorum ad promotionem contraceptionis. Et in omni casu, hoc argumentum non proposuimus utpote argumentum apodicticum, sed utpote rationabilem explicationem pro iis quorum fides quaerit intellectum.

VIII. Infallibilitas ex iugi Magisterio, etc.

In Relatione Finali (p. 12 ad calc. et p. 13), postquam dicitur Casti Connubii non continere declarationem infallibilem, immediate concluditur: "On est donc ramené a' examiner la valeur de l'argument avancé par la proposition du Magistère. Dans Casti Connubii, comme dans plusieurs autres rejets de la contraception, c'est le recours á la Loi Naturelle; dans le cas qui nous occupe, l'orindation naturelle de tout acte conjugal á la procréation." Commentaria: --

1. Nonne prius esset discutiendum utrum haec doctrina infallibiliter proposita fuerit ex iugi Magisterio? De quo puncto, questiones, ab Exc. Carlo Colombo in sessione Cardinalium et Episcoporum factae, non receperunt, mea mente, responsum adaequatum. Si substantia prohibitionis contraceptionis, perdurantis per omnia saecula, per tot declarationes ordinarii Magisterii, episcoporum per mundum dispersorum, et hierarchiarum regionalium, non est infallibiliter tradita, vix dari posset ulla doctrina fidei vel morum quae debet ex hoc fonte agnosci tanquam infallibiliter proposita.

2. Nemo negat Casti Connubii appellare ad legem naturalem et praesentare argumentum ex lege naturali deductum. Sed a) Veritas doctrinae traditae non pendet merè a valore argumenti dati per propositionem Magisterii ("la valeur de l'argument avancé par la proposition du Magistère") etiamsi res non infallibiliter traditur a Magisterio ordinario; et praeterea nullo modo in nostro casu excluditur doctrinam fuisse infallibiliter traditam quoad substantiam ejus. b) Praesertim notandum, veritas non pendere a praecisa forma qua proponitur in Casti Connubii argumentum philosophicum.

3. Fundamentum argumentationis Casti Connubii invenitur in sollemni parte condemnationis, ubi malitia contraceptionis tribuitur cuicumque interventui activo qui deliberate et causaliter

deprivat actum vi procreativa quam secus haberet. Sane breve post (ubi de usu periodi sterilis) Encyclica loquitur de integritate physica observanda etium actuum sterilium, sed vis ipsius condemnationis sollemnis non essentialiter pendet ab hoc loco, neque a theoria philosophica neque a consideratione metaphysica quae forte subest huic parti Encyclicae.

4. Nimis facile, mea mente, in Commissione videbantur praesumere: a) argumentum ex lege naturali solum illud esse possibile quod saepius proponebatur his ultimis saeculis; quam falsum hoc sit apparet ex egregio opere Dr. Germain Grisez: Contraception and Natural Law (Milwaukee: Bruce, 1964); b) praesumebatur, sed nunquam demonstrabatur, Ecclesia per omnia saecula fundavisse doctrinam suam in aliqua theoria philosophiae naturae in qua ordo physicus rerum ad fines suos physicos constitueret criterium generale moralitatis. Quod nullo modo demonstrari potest. Ecclesia appellavit ad specialem inviolabilitatem horum processuum, non ut biologicorum sed praecise ut generativorum. Aliis verbus proclamavit speciale dominium divinum quoad vitam humanam in ipsa ejus inceptione.

5. In discussionibus nostris, tendentia fuit, mea mente, nimis praescindendi a charactere religioso questionis et ejus intima connectione cum doctrinis Christianis de Deo speciali Creatore uniuscujusque hominis, de castitate, de sacralitate vitae cujus Deus est solus Dominus. Propter hanc rationem objectionem feci contra nimiam abstractionem faciendam quasi totalem a doctrina Ecclesiae ut tradita quae proponebatur tanquam methodus procedendi in certo puncto nostrae discussionis. Die 28 Apr., in responso ad puncta P. Lambruschini dixi:

"Mea mente, non possumus totaliter praescindere (uti suggerrere videbatur Prof. van Melsen) ab auctoritate seu a doctrina authentica Magisterii. Sane non est nunc discutienda ipsa auctoritas Magisterii sive in se sive in casu nostro. Sane non iuvat multum nunc fundare argumenta directe in auctoritate Magisterii. Ex alia parte, praescindere totaliter ab auctoritate Magisterii: a) esset negligere nimis praesumptionem veritatis doctrinae quae adhuc stat, donec oppositum probetur, quasi onus probationis esset ex utraque parte equale; b) esset practice impossibile; ... c) Mihi videtur quoque, praecisio methodologica totalis non sufficienter agnoscit specialem characterem religiosum nostrae investigationis."

6. Tandem aliquando, in Commissione mihi videbatur tendentia adesse tractandi rem modo nimis simplificato, arguendo, vel saltem cogitando ut sequitur: "Casti Connubii non est infallibilis; traditio non est apostolica; ergo res decernenda est rationibus mere philosophicis; tales rationes convincentes non inveniuntur; ergo res est dubia; ergo Pontifex potest iam nunc declarare doctrinam totaliter oppositam esse certo veram."

IX. Comparatio cum mutata doctrina de usuris.

In Relatione Finali, p. 15 fit mentio usurarum et allegatae mutationis doctrinae Ecclesiae in hac re, quasi hic casus comparabilis est cum contraceptione. Breviter argumentum (saepius in Commissione auditum) hoc modo proponitur: Ecclesia aeque sollemni ter olim condemnavit usuras ac hodie condmnat contraceptionem; tamen Ecclesia nunc permittit usuras; ergo idem potest facere quod ad contraceptionem. Hoc argumentum insistenter propositum fuit a Dr. John T. Noonan Jr., tum in sessionibus nostris, tum in recentioribus articulis scriptis.

Adjungitur hic responsum Dr. Thomas F. Divine, S.J., recentissime acceptum. Dr. Divine est historicus-economista, in hac re bene qualificata, qui auctor est libri qui tracta totam hanc questionem. (Notandum est quoque quod Dr. Noonan, in libro suo, The Scholastic Analysis of Usury, admittit Ecclesiam nunquam mutavisse aliquod dogma, vel fundamentale principium in materia usurarum). Sequitur responsum Dr. Divine: -

CURRICULUM VITAE

Rev. Thomas F. Divine, S.J., Ph.D.
Marquette University
Milwaukee, Wisconsin 53233

EDUCATION

B.A., 1923, Saint Louis University
M.A., 1924, Saint Louis University
Ph.D., 1938, University of London, (London School of Economics)
Summer Sessions, 1935 and 1936, Geneva Institute of International Relations

TEACHING AND ADMINISTRATION

Rockhurst College - Assistant Professor, Social Sciences, & Assistant Dean, 1931-32

Marquette University -
- Instructor & Assistant Professor of Economics, 1938-1942
- Professor of Economics, 1942-59, 1963-
- Director, Department of Economics, 1942-48
- Director, Labor College, 1942-49
- Dean, College of Business Administration, 1942-59

Saint Louis University - Professor of Economics, 1959-63

OTHER ACTIVITIES

Public Member National War Labor Board, VI Region, 1942-44
Member National Panel of Arbitrators, American Arbitration Association
Editor-in-Chief, Review of Social Economy, 1948-1959
Editor, Marquette Business Review, 1963-

MEMBERSHIP IN PROFESSIONAL AND HONOR SOCIETIES

Catholic Economic Association (First President, 1943-44)
American Economic Association
American Association of Collegiate Schools of Business. Member Standards Committee, 1952-54; Executive Committee, 1954-57; Chairman, Committee on Relationships with other Accrediting Agencies, 1957-59
Beta Gamma Sigma (National Business Administration Honor Society). Member National Executive Committee, 1955-1963
Pi Gamma Mu (National Economics Honor Society)
Delta Sigma Pi

PUBLICATIONS

Tariffs and World Peace (Pamphlet). Catholic Association for International Peace. Washington, D.C. 1934

Interest. A Historical and Analytical Study in Economics and Modern Ethics. Marquette University Press. 1959

"The Catholic Tradition in Economic and Business Ethics." Chapter 9 in Ethics and Standards in American Business, by Joseph W. Towle (ed.) and Others. Houghton, Mifflin Company, Boston, 1964. (Reprinted in Marquette Business Review, Volume VIII, No. 1.)

Contributor to: American Economic Review, America, Christian Democrat, Catholic Survey, Review of Social Economy, Encyclopedia Americana and New Catholic Encyclopedia, Marquette Business Review.

"The Purposes and Direction of Our Economy". Chapter in Business in a Changing Social Order. Council on Business Ethics, St. Joseph's College, Philadelphia, 1965

Comments on The Church's Attitude Toward Usury

As Presented by Dr. John T. Noonan

I. CROSS CURRENTS, Winter, 1966

On page 57 we find the statement that all return on a loan (usury) was condemned "absolutely, unequivocally, without exception" by both the Old and the New Testament. It is not clear whether this interpretation of the Scriptures is his or that of the Fathers and later Councils. Perhaps he is presenting it as the latter. In either case I would say that it is incorrect.

The only conclusions that we can draw from the texts of the Old Testament are that: 1) Usury was prohibited in the case of loans made to the poor. 2) The taking of interest was permitted in the case of loans to "strangers", i.e. the Egyptians, Babylonians, Phoenicians, etc. with whom they were engaged in trade. 3) Avarice and greed which resulted in amassing riches by oppressing the poor was condemned, while generosity and charity in lending without interest to needy brethren was highly praised.

In the case of the New Testament, I would say that the statement is even less defensible. For: 1) Matthew V:42 is no more than a confirmation of Old Testament exhortations to mercy and compassion toward the needy. 2) There is a difference of opinion as to whether Luke VI:34-35 should read "nihil inde sperantes" or "nihil desperantes". Yet, whether it is interpreted as a precept or as a counsel with respect either to lending or to gratuitous lending, it still applies to loans to the poor. 3) In the parable of the talents (Matt. 25:27 and Luke 19:23) our Lord makes reference to the existence of commercial lending at interest without adverse or favorable comment. If any conclusions are to be drawn as to the attitude of Christ implied in this parable, we cannot see how they can be other than favorable to the practice of lending at interest for commercial purposes. For we would not expect our Lord to compare Himself to a master who would exact of His servants conduct that is morally reprehensible.

As for the teaching of the Fathers on usury, I am in complete agreement with Father Vermeersch when he says (Catholic Encyclopedia, Usury): "Until the fourth century all that can be inferred from the Fathers and ecclesiastical writers is that it is contrary to mercy and to humanity to demand interest from a poor and needy man. The vehement denunciations of the Fathers of the fourth and fifth centuries were called forth by the moral decadence and avarice of the time, and we cannot find in them any expression of a general doctrine on this point. Nor do the Fathers of the following centuries say anything remarkable on usury; they simply protest against the exploitation of misfortune and such transactions as, under pretense of rendering service to the borrower, really throw him into greater distress. The question of moderate rates of interest seems scarcely to have presented itself to their minds as a matter for discussion".

I do not, therefore, agree with Dr. Noonan when he states (page 60) that "the patristic testimony on contraception is less absolute than on usury". For even though the Fathers condemned the practice of demanding any more than the return of the loan, this prohibition was aimed at the type of lending that was prevalent at the time. Usury was condemned not as evil of its very nature but on the basis of its origin and its effects. Its origin was avarice and greed in the heart of the usurer who, heedless of the gospel precepts of

charity, mercy, generosity and humanity towards one's neighbor, and even under the pretence of rendering service to the borrower, grew rich on the misfortunes of others. Its effects were disastrous to both the spendthrift and the poor. It was a snare entangled, a rope that strangled, a sea that overpowered, a serpent that mortally stung its victim. It stripped him of all his possessions, brought him under the yoke of slavery, often drove him to suicide as a refuge from despair. Is it then surprising that the Fathers should, in support of their position, have recourse to the scriptures which condemned usury for the very same reasons? One finds at least two cases in the writings of this period which would seem to condone the taking of interest on loans of a commercial nature, viz. the history of the Franks by St. Gregory of Tours and a letter of St. Gregory the Great to the subdeacon Athemius. Cf. Migne, P.L., t.71, cols. 266-7 and t. 77, cols. 972-3.)

Turning to the Conciliar and Papal decrees up to 1450 we can assume that since they all quote the Old and New Testaments and the Fathers as a basis of their condemnations of usury, they had in mind the same conditions as were envisioned by their sources. This is corroborated by the use of such expressions as: "We condemn that...insatiable rapacity of usurers reprobated by...the Old and New Testament (Second Lateran Council, 1139); "Usurarm voraginem quae animas devorat et facultates exhaurit" (Second Council of Lyons, 1274). In this connexion Vermeersch again remarks that the canonical laws make no formal mention of moderate rates of interest such as prevail today and that,on the contrary, the documents of this period and the very tenor of the decrees show that the usuries which engaged their attention were the exorbitant (mordentes) usuries which lay so heavily upon the poor. In confirmation of this he quotes Gaggia (Revista Internationale di Scienze Sociali, 1897) who cites rates of 23, 25, 27 and 40 percent in the 14th century and maintains that the rates for the Jews were for various places 40-90 percent, 86 per cent, 100-180 per cent. Cf. also the graves usuras mentioned by the Councils of Nicaea and Lateran II and IV. (Quaestiones de Justitia ad Usum Hodiernum Scholastice Disputatae. 2nd ed. Bruges, C. Beyaert, 1904.)

I might also point out that Dr. Noonan fails to mention that Conciliar and Papal decrees of this period exempted from the charge of usury: 1) the societas or partnership (Pope Innocent III, 1198-1216) which became one of the bases of the scholastic extrinsic titles to interest; and 2) the rent-charge which was at first limited to the "census realis" by Pope Martin V (1405) but later extended to the "census personalis" by Pope Nicholas (1452).

On page 70 Dr. Noonan states in summary that "there was authority on usury in 1450 which constituted, apparently, a formidable barrier to departing one jot or tittle from the rule. Usury is the sine of taking profit on a loan. Yet the rule was revised". This definition of usury, even at that time, is not quite complete. Though it forbidden to demand in return anything more than the amount of the loan in virtue of the loan itself, to receive more than the sum loaned was permitted on the basis of the extrinsic titles, and in cases such as the "montes profani" and "montes pietatis". To contract for the return of more than the amount loaned (more strictly invested) was also permitted where risk was involved, as in the case of the societas or partnership, loan on bottomry, etc. Hence the definition of usury as formulated and promulgated by the Fifth Lateran Council, 1515, becomes: "This is the proper interpretation of usury: when gain is sought to be acquired from the use of a thing not fruitful in itself, without labor, expense, or risk on the part of the lender".

Hence, disagreeing as I do with Dr. Noonan's interpretation of the attitude of the Church on usury up to the sixteenth century, I cannot accept his attempt to establish a parallel between the Church's teaching on usury and contraception and to conclude that since the Church has departed from its absolute condemnation of usury as found in the first fifteen centuries, it should likewise change its attitude toward contraception in the twentieth century.

II. NATURAL LAW FORUM, Volume 10, 1965

Dr. Noonan's arguments as found in this article "Tokos and Atokion" I find even less convincing. 1) He seems to make the barrenness or the fruitfulness of money the basis of Aquinas' teaching on usury. If money is barren as in the case of the mutuum where it serves merely as a medium of exchange, a charge cannot be made for its use; but such a charge can be made in the case of the societas and the census where money is "fruitful". With this view I completely disagree for reasons that I shall give later. 2) He seems to infer that Aquinas' statement, following Aristotle, that the function of money is to serve as a medium of exchange (which places it in the category of fungible goods) precludes its having any other function, or that its performing another function undermines Aquinas' analysis. Money, of course, serves many functions other than that of a medium of exchange, such as: a measure of value (which was clearly recognized by medieval theologians such as Bishop Oresme who launched one of the earliest and most forceful attacks against inflation when he stated that money as a measure of value must enjoy the greatest possible stability of value), a standard of deferred payments and a storehouse of value. Yet the function of money as a medium of exchange is still, by far, the most important function it serves even at the present day, and it almost the universal function in the case of a loan either for consumption or for production. 3) Dr. Noonan seems to imply that Aquinas' basic analysis of usury was undermined and subverted by the exceptions granted to the prohibition of usury, as in the cases of the extrinsic titles, the loan "ad pompam", the "societas", the "census", etc. Such a position I find utterly unacceptable for reasons that I mention later.

The inheritance of the past upon which scholasticism based its rationalization of the ethics of interest consisted of: 1) the probitions of usury of the Scriptures and the Fathers; 2) the Aristotelian condemnation based on the "sterility" of money which was inferred from its function as a medium of exchange; 3) the classification of voluntary contracts as found in Roman law. From the latter two Aquinas constructed his analytical apparatus by means of which he laid a rational foundation for the previous condemnations of interest.

St. Thomas's conclusion that usury, a charge for the use of money loaned to another, was of its nature a violation of commutative justice was based on his distinction (drawn from Roman law) between a mutuum - or loan of perishable, "fungible", generic goods "which are consumed by use" - and a locatio et conductio - or letting and hiring of durable, "non-fungible", specific goods "whose use does not lie in their consumption". This corresponds to our modern distinction between a good all of whose services are given off at a moment or over a very short period of time, and one whose services are given off over a long period of time. In the case of a letting out of a commodity of the second type (e.g. a house or a horse) whose use would not consist of the destruction of the commodity (really whose services were spread out over a long period of time), one would be justified in demanding,

in addition to the return of the commodity, a payment for its use during the time that it was in the borrower's possession. But in the case of commodities of the former class, whose use was identified with their destruction (e.g. grain, wine), to demand in addition to the return of the same amount of the commodity a payment for its use would be to charge for something which did not exist, and therefore to violate commutative justice. But what of a loan of money? Since the function of money was, according to Aristotle, to serve as a medium of exchange, it belonged to the class of fungible goods - not in the sense that it was destroyed by exchange, but because once the exchange had taken place its function was fulfilled and its use, as well as the money itself, ceased to exist as far as the borrower was concerned.

To put this in another way, since, as the Roman lawyers declared, the loan of a fungible good necessarily implied a transfer of ownership (mutuum, i.e. meum, tuum, mine becomes thine) the contract of mutuum is in reality a purchase and sale and is subject to the principle of the just price which demands an equivalence of value between the objects exchanged. And this equivalent would be maintained only if the contract called for a return of the same amount as was loaned. In addition to this rule of equivalence of value, the other rules of the just price were also applied to loans. To charge more than the return of the principal because of need, or because of an advantage derived from the loan by the borrower, was considered as unjust as to raise the price of merchandise above its value in view of the need or advantage gained from the sale by the buyer. Yet, as in the case of a sale, the lender might charge more than the real value of the object (in this case the return of the principal) as compensation for any damage, inconvenience or loss suffered in consequence of the loan. Hence stipulation may be made in the contract for an additional payment as a "compensation for the loss of something to which one has a right". "For this is not to sell the use of money, but merely to avoid a loss".

This laid the foundation for the justification for a charge for the loan of money, not in virtue of the loan itself, but on the basis of an extrinsic title. The earliest of these titles was damnum emergens, or actual loss incurred, which met with Aquinas' full approval. But as he did not consider the principle of compensation for loss to extend to the lucrum cessans, chance of profit foregone, he would not allow such a payment to be contracted for on the ground that the lender would lose the profit that he might make from the investment of his money. This would seem to mean that he did not consider the profit from investment to be sufficiently certain to warrant action for loss. Aquinas also exempted from the prohibition of usury the loan of money "ad pompam", i.e. for display, the loan of silver or gold vases or plate, as well as investment in a societas or partnership and purchase of a census or rent-charge, and loans involving periculum sortis, i.e. risky ventures (such as overseas commercial trading) which, if they failed, would result in the lender's losing the principal contributed to the enterprise.

Aquinas' analysis laid the foundation for later scholastic teaching on the morality of loan interest. If interest is unjust on intrinsic grounds based on the nature of the contract itself, it can be justified only because of the presence of extrinsic titles. Hence developments in the later scholastic theory consist chiefly of a broadening, in response to economic development, of the field included within the scope of these titles. This is well illustrated in the case of lucrum cessans, or chance of profit foregone. Though Aquinas hesitated to give approval to this title, later scholastic writers accepted it without question, so that, from the fifteenth century on-

wards, moralists commonly accepted the principle that in the case of merchants the need of proof of loss of profit could be dispensed with.

Let us now turn to Dr. Noonan's assertions that Aquinas' exceptions from the prohibition of usury were inconsistent with his basis analysis; that these exceptions undermined and subverted the general rule.

On page 219 he states that the rent ad pompam (when a loan of money is made to a person who intends to use it merely for display, to show how affluent he is) "showed that the Aristotelian argument appealing to natural sterility was hollow". But this example proves clearly that Aquinas' analysis of usury was not based on the sterility of money. There are various senses in which the distinction between "fungible" and "non-fungible" goods can be taken, i.e. consupption vs production goods (which would correspond in a general way to barren vs fructiferous goods), perishable vs durable goods, and generic vs specific goods. It is quite evident that Aquinas is basing his distinction on the last two categories, which are interchangeable. For when he states that money as a medium of exchange is consumed by use, he means that it is a perishable good (like grain or wine) which is the same of a generic good. As noted previously, a perishable gives off all its services at a moment of time (as food or wine), a durable good over a considerable period of time (as a house or horse). But a perishable is the same as a generic good for the reason that, if you borrow a perishable good (a cup of flour) you do not return the same good that you borrowed but only an appropriate amount in kind. On the other hand, a durable good is also a specific good. For if you are granted the use of a house for a given period (and for a stated recompense) you do not return at the close of the period a house (generic) but that specific house.

On the basis of this distinction Aquinas' decision with respect to money loaned ad pompam is perfectly logical. In this case the money loaned is not a generic but a specific good. The borrower returns not the same sum but the identical money that he borrowed. In which case the lender is justified in charging for its use. This is also consistent with Aquinas' statement that if one lends silver vases or plate to another he may charge for their use. They are specific goods. But should such vases or plate become a medium of exchange the lender could not charge for their use. They would then become generic (perishable) goods.

Dr. Noonan infers that the use of the extrinsic titles to interest undermined the Thomistic argument. Far from undermining the original argument, they followed logically from it. Aquinas' teaching on usury was but an application of his theory of the just price. Since the loan of a fungible good necessarily implied a transfer of ownership the contract of mutuum became, correctly, a purchase and sale. In the case of the just price Aquinas readily admitted that the seller might charge more than the just (market) price if for some reason (e.g. sentimental value) the estimation he placed on the object was greater than the market price. Hence, with perfect consistency, he declared that in the case of a loan the lender might demand more than the return of the principal as compensation for damage, inconvenience or loss suffered in consequence of the loan. This was the basis of the extrinsic titles.

On page 220 Dr. Noonan states that money was treated as fruitful in the cases of the societas and the census. Here he is again reverting to the contention that Aquinas analysis of usury was based on the distinction between barren and fruitful goods, which I have already denied. As Aquinas clearly points out, the case of a partnership is quite different from that of a loan.

In the former case there is no sale of money to a lender. When one joins a partnership he does not transfer dominium of the money invested. In modern terminology he becomes a stockholder rather than a bondholder. He becomes part-owner of the business operation and, as such, is entitled to a share in its profits. And the more risky the venture, the greater are the profits, if any, he may expect. This is perfectly consistent with the modern economic theory that profit is the reward for risk-bearing in the face of uncertainty that cannot be insured against. As for the census, that was but the purchase of an annuity which again differed toto coelo from lending at interest.

On page 222 Dr. Noonan sums up his argument by saying that "the vitality and relevance of the rule are not to be identified with the supporting rationale of the nature of money. The rule protected certain values. It was these values ....which were to prove to be permanent parts of the Christian tradition". These values he considers to be: Usury is uncharitable. Usury is an occasion for the sin of avarice. Usury has undesirable social consequences.

If these were the only values to be obtained from the discussion of the ethics of interest we might well stop at the thirteenth century. For all of these form the bases of the condemnation of usury as found in the Scriptures and the writings of the Fathers. What the scholastic writers undertook to add to the teaching of their predecessors was an analysis of the ethics of interest from the point of view of commutative justice. And, however faulty their analysis, it made an important contribution to the ethics of interest as a problem in modern economic life. This, I would say, is primarily a problem of commutative justice supplemented by considerations of charity, liberality, magnanimity, concern for the welfare of the poor and all the other virtues that fall within the more general category of social justice.

I have already indicated my interpretation of the attitude of the Church toward usury as found in the Scriptures and the writings of the Fathers. So I shall now attempt to carry on from there.

According to scholastic teaching from the thirteenth century onward it was considered a violation of commutative justice to demand, in virtue of the loan, any more than the amount of the money loaned. Though this may seem harsh and unrealistic at the present day, it did serve a useful purpose at a time when: 1) loans were made for the most part to the poor and needy for consumption; 2) in the absence of an organized capital market and a market rate of interest, interest was determined by bargaining between the individual lender and borrower, of whom the former was always in a position to exploit the latter. When lending for consumption yielded its place of prominence to lending for production (business and commercial purposes) in later centuries the charging of interest became justified on the basis of the extrinsic titles.

From the sixteenth century onward a new type of discussion on the ethics of interest began to appear, i.e. whether in the face of changed economic conditions it was still necessary to have recourse to the old roundabout method of extrinsic titles to justify the taking of interest, or whether the practice could be considered justifiable on the basis of the intrinsic nature of the loan. This latter position came to be defended by both Protestant and Catholic writers who based their conclusions on the fertility or quasi-fertility or quasi-productivity of money under modern economic conditions. (In my opinion these discussions added nothing to the ethics of interest, based

as they were, on the wrong distinction between fungible and non-fungible goods.) Finally, the official attitude of the Church on interest-taking was made known by some fourteen decisions of the Congregations of the Holy Office, the Penitentiary and Propaganda in the nineteenth century, the general theme of which was that the faithful, even though they be clerics and religious, who loan money at a moderate rate of interest are not to be disturbed provided that they are prepared to abide by the decisions of the Holy See. This settled the practical problem of the lawfulness of interest in the modern world. But the theoretical controversy of the basis of this justification of interest (whether on extrinsic or intrinsic grounds) continues to the present day.

My own theory of the ethics of interest, as developed in my book and article, is that, in the case of interporal exchange, one is justified in taking the market rate of interest for a loan, just as it is permissible for him to take the market price of a good in the case of intratemporal exchange (regardless of what the value of the good is to him). Hence my only criticism of Aquinas is that he refused to allow time to enter into the determination of interest in the case of a money loan. It is a matter of universal experience that a hundred dollars available a year from now is of less present value than a hundred dollars available now. And this time-preference, together with investment opportunity and liquidity-preference, enters into and determines the market rate of interest. Yet it may also be said in Aquinas' favor that in his day there was no market rate of interest, and that in the current practice of bargaining between individual lender and borrower, the lender was in a position to exploit the high time-preference of the borrower.

Dr. Noonan seems to state that, just as the Church changed her attitude toward interest in the face of changing economic conditions, so should she change her attitude toward contraception. I see no parallel in the two cases. In my opinion, for such a parallel to exist there must be a change in the nature of marital relations similar to the change in economic conditions which brought about a difference in the general attitude toward interest. To say that changes in economic conditions bring about changes in marital relations similar to changes in interest-taking is, in my opinion, an unproved statement. At least I do not consider it proved by the arguments that Dr. Noonan advances.

Thomas F. Divine, S.J.
Marquette University

X. Essentialiter mutata definitio matrimonii?

In Relatione Finali, p. 54, refertur inaccurate interventio mea in Sessione Episcoporum, quae non fuit de consectariis mere canonicis, sed de mutata ipsa essentiali definitione matrimonii, sè contraceptio approbatur. Nam matrimonium definitur essentialiter (etsi partialiter) ex actu coniugali. Si vero actus contraceptivus nunc agnoscitur ut actus vere coniugalis, essentia matrimonii mutatur. Exempla cononica dedi ad hoc illustrandum. Nescivi Msgr. Abbo accepisse meas questiones ut ad eas respondeat; et dubito quin totam meam interventionem viderit, nam responsum eius nullo modo tangit punctum centrale obiectionis.

Ac proinde adiungo infra meam interventionem. Videtur esse alicuius momenti, cum primo ei respondit P. Fuchs, postea per quindecim saltem momenta Can. Anciaux, tandem Msgr. Abbo per tres paginas (Relatio Finalis, 55, 56, 57). Quaestio de facto est magni momenti quia involvere potest essentialem mutationem totius iurisprudentiae iuxta quam validitas matrimonium diiudicanda est quando, e.g., questio est de consummatione matrimonii, vel de conditione contra bonum prolis. (N.B.: In responso ad questionem de hac re a Card. Heenan proposito, P. Fuchs [Jun. 23] eronee citat Pium XII, Alloc. ad Obstetrices, quasi Pontifex dixerat restrictionem consensus ad tempora infertilia invalidare matrimonium si restrictio fit "conditio sine qua non." Pius XII hoc non dixit, sed distinxit inter restrictionem iuris ipsius et restrictionem usus iuris. Restrictio in usu iuris, etiamsi esset conditio sine qua non, matrimonium non necessario invalidaret.)

Ecce textus istius interventionis:

Interventio P. Ford, respondendo Can. Anciaux. June 24, 1966
(Cum permissu Presidentiae, non legebatur in sessione ad tempus conservandum, sed scriptis traditur.)

Can. Anciaux dicit (Jun. 23, sessione postmeridiana): "Quaesitum propositum a P. Ford dividitur in duo: 1) Quaenam est natura metaphysica actus coniugalis (actus sexualis et matrimonialis)? 2) Quomodo eius moralitas evaluatur iuxta perspectivam documenti a maioritate redacti?" Non proposui haec quaesita, ne per implicationem quidem. Saltem nihil huiusmodi invenitur in pagella ex qua legebam meam interventionem, et pauca fuerunt quae addebam legendo illam. Ecce textus meus scriptus qum legi: "Matrimonium definitur partialiter sed essentialiter in ordine ad actum coniugalem. Vel actus coniugalis definitur per relationem ad naturam essentialem matrimonii. Invicem essentialiter (sed partialiter) referuntur. Iamvero: An haec Paragraphus [documenti maioritatis permittens contraceptionem] mutat definitionem essentialem actus coniugalis? Ergo: An modificatur definitio matrimonii? Si ita est, oriuntur difficultates canonicae. 1) Quomodo iudicatur consummatio matrimonii in ordine ad dissolubilitatem? 2) Relate ad consensum et exclusionem prolis? 3) Estne nova definitio retroactiva, ita ut aliqua matrimonia nunc valida declarata, debeant reiudicari."

Ratio proponendi haec quaesita mea, (quae tangunt punctum centrale) haec fuit. Ex documentationis studio mihi videbatur quod in nova theoria definitio actus coniugalis essentialiter differret ab illa hucusque communiter tradita, quia nunc non requiritur ad matrimonium "actus per se aptus" sed sufficere videtur actus contraceptivus. Responsum scriptum Can. Anciaux omnino confirmare videtur hanc interpretationem documentorum.

Sed in tota iurisprudentia ecclesiae per multa saecula actus contraceptivus numquam agnoscebatur esse ille actus in quem partes habent ius -- ius quod est essentiale ad matrimonium. Sane notio "actus per se apti" scatet difficultatibus

(ad quas partialiter solvendas multum scripsi per multos annos), sed nunquam fuit difficultas seu dubitatio quod ad nostrum punctum centrale, nempe: actus contraceptivus non est actus per se aptus et non est actus conigualis et essentialiter differt ab actu coniugali et nequit esse obiectum istius iuris in corpus quod essentialiter requiritur ut matrimonium habeatur. Ergo omnia testimonia allata ex documentis cononistarum de aliis punctis disputatis mihi videntur non esse ad rem. Questio et res nostra est de puncto aliquo de quo hucusque nunquam fuit disputatio in iudicatura ecclesiastica; de puncto nempe in lege naturali fundato, non de positiva aliqua dispositione ecclesiae

Ergo nunc non quaero sed assero: Nova theoria mihi omnino videtur introducere essentialiter novam definitionem actus coniugalis, quod videtur logice implicare essentialiter novam definitionem matrimonii. Hoc ostenditur exemplo supra allato de matrimonii consummatione. In nova theori aliqua matrimonia antea invalida nunc erunt valida, et vice versa; et hoc non propter dispositiones canonicae positivae quae conantur praecisare rem in concreto pro praxi, sed propter iustificationem et liceitatem actus contraceptivi, hucusque absolute exclusi utpote contra legem naturae. Haec differentia mihi videtur magna, immo et essentialis. Nam resultat (non accidentaliter sed ex principio noviter stabilito et ex natura rei) in differentiam inter matrimonium et non-matrimonium.

Relate ad casum ab Em.mo Card. Heenan propositum, nempe mulieris quae rationem proportionatam salutis vult inire matrimonium ea ratione et intentione ut semper ipsa et maritus contraceptive copulentur. Non video in documento proposito ullam rationem claram declarandi tale matrimonium invalidum. Nam post matrimonium contractum possent esse circumstantiae ubi perpetua contraceptio iustificaretur.

Si recte intelligo Patrem Fuchs, ipse iudicaret tale matrimonium invalidum in nova theoria, appellando tanquam ad criterium tales casus diiudicandi ad dictum aliquod Pii XII de validitate matrimonii initi cum intentione observandi tempora agneseos. Sed Pius XII dixit matrimonium initum cum intentione oginoistica non invalidari si ius ipsum ad usum in temporibus fertilibus non excluditur; si proinde solummodo usus iuris excluditur matrimonium est validum. Neque exclusit intentionem perpetuam utendi methodo Ogino-Knaus, dummodo ius ipsum non excluditur.

Haec omnia dicere quasi cogor, quia mihi videtur summi momenti attentionem membrorum Em.issimorum et Exc.issimorum dirigere in hoc quod hic agitur mutatio aliqua fundamentalis pro toto scopo theologico et canonico matrimonii. Pro me questio est de consequentia aliqua tam fundamentali ut essentialis §§§§ definitio tum actus coniugalis tum ipsius matrimonii non possit non mutari.

Joannes C. Ford, S.J.