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The three German bishops

By Germain Grisez

■ By the summer of 1963, some theologians were claiming that Catholic teaching on contraception did not preclude use of the birth control pill to regulate births. In response, on 10 August 1963, the Bishops of the Netherlands stated that the pill was no more acceptable than other methods of contraception, but added a crucial sentence: "In the last resort the personal conscience has to give the decisive verdict, but in each individual situation this personal conscience has to listen to the divine law and take notice of the interpretation of the divine law which the Church gives to her faithful."

Though that sentence could be read as reaffirming received Catholic teaching on contraception, the whole world read it as approving its use and implicitly denying the teaching. Controversy followed. Attempting to draw a line, the Bishops of England and Wales, on 7 May 1964, stated that the Second Vatican Council then in progress might need to give guidance on the use of the pill, but added: "Contraception itself, however, is not an open question for it is against the law of God. Many husbands and wives are trou-

bled in conscience. They know that the Church is an infallible guide in matters of faith and morals. But doubts are sown in their minds by imprudent statements."

Thus, Catholic bishops seemed to be contradicting one another. Pope Paul VI announced on 24 June 1964 that moral questions about birth regulation were being investigated, and he expanded an existing group to conduct the study. At the same time, he said that "the norms given by Pius XII in this regard . . . must be considered valid, at least until we feel obliged in conscience to change them." Seeming to admit that received Catholic teaching on contraception could change, Pope Paul's statement was taken by some bishops and many priests to justify approving its use, and as time passed they did so more and more openly. At the same time, bishops and priests who regarded the received teaching as unchangeable, not wishing to anticipate the promised papal decision, made no public statements.

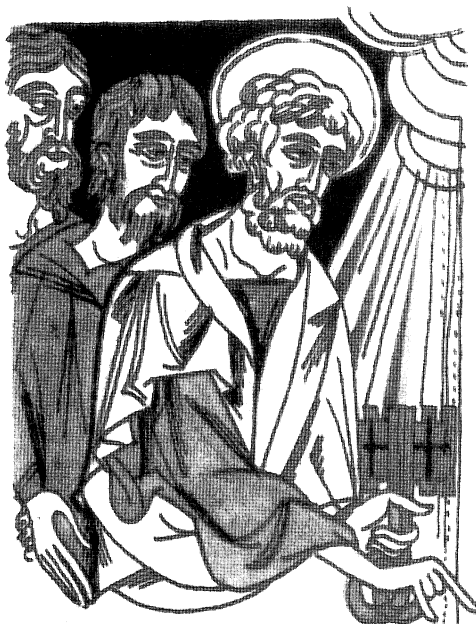
When Paul VI finally issued *Humanae Vitae*, many theologians responded by dissenting categorically. Many conferences of bishops issued statements which

affirmed the encyclical's teaching but, like the Dutch bishops' statement of 1963, stressed the ultimacy of conscience; some of those statements also explicitly allowed for theological dissent, and few of them stated clearly that it is unacceptable. To these bishops' conferences' statements, Paul VI never responded.

Cardinal Patrick O'Boyle, Archbishop of Washington, rejected the theological dissent and its implementation in pastoral practice as inconsistent with the Church's teaching and as an abuse of pastoral authority, and demanded that certain priests with faculties in his diocese withdraw from their collective public statement putting the dissenting opinion into practice. Some refused, and the Archbishop withdrew faculties.

Some of the priests eventually appealed to the Holy See. The Congregation for the Clergy resolved the case administratively by issuing, on 26 April 1971, an official communication which, while omitting to condemn the dissent or explicitly reject its implementation, affirmatively stated as "findings" relevant theological truths and pastoral norms, and "urgently recommend[ed]" that the priests who accepted the findings, without withdrawing from their collective public statement, should receive back their faculties.

Though the Congregation's findings could be read as affirming all the received Catholic teachings which had been challenged, they were worded ambiguously. The priests had maintained that an individual's conscience need not conform to Church teaching provided he or she was *guided by* the teaching, among other things. The key sentence in the findings affirmed that "in forming one's conscience one must be *guided by* objective moral norms, including authentic Church teaching." Thus, the Holy See implied



that bishops should not withdraw faculties from priests publicly committed to implementing dissenting opinions in pastoral practice.

That implication, Paul VI's silence about the statements of bishops' conferences, and the subsequent actions of many bishops tended greatly to undermine the teaching of *Humanae Vitae*. Of course, the teaching, reaffirmed repeatedly, remains the Church's teaching. With self-defeating inconsistency, however, the Church's pastoral practice often includes approving the use of contraception by couples who decide, following their own "consciences," to do so. Moreover, since the relationship between the moral norm taught, pastoral practice, and conscience is the same regardless of the matter concerned, this self-defeating inconsistency quickly pervaded Catholic moral teaching and pastoral practice as a whole. Thus, all the Catholic faithful

continue to be taught moral truth, but some bishops more or less explicitly authorize their priests to guide the faithful to act contrary to it on a few or many matters, and many priests do so without any authorization.

In September 1993, Archbishop Saier and Bishops Lehmann and Kasper, the bishops of the ecclesiastical province of the Upper Rhine, issued a document, dated 10 July 1993, establishing a way in which "remarried" individuals can obtain an *admission* to the sacraments which they and others will be able to regard as legitimate (see *Documentation Catholique*, 2082 [21 November 1993], 986-94). The three bishops authorize "remarried" individuals to decide for themselves whether or not they may receive Communion provided they first consider, in dialogue with a priest, eight criteria specified by the bishops; the three bishops also provide that priests will respect and defend such individuals' decisions. This procedure is offered to *all* divorced and "remarried" persons, including those who live in a sexually intimate second relationship despite having contracted and consummated a sacramental marriage of unquestioned validity with a still-living spouse. The three bishops also indicate that the same procedure is applicable for couples living together before marriage or in long-standing nonmarital relationships as well as for those who contract merely civil marriages.

A procedure more or less similar to that now publicly authorized by the three bishops has been in use in many places throughout the world for at least twenty years, but their guidelines have given public episcopal authorization to this practice. The three bishops are leaders of the German-speaking episcopacy. Archbishop Saier is Vice President of the German conference and Bishop Lehmann its

President; Bishops Lehmann and Kasper also have been leading German theologians. Probably anticipating action on the matter by the Holy See, bishops who consider the procedure established by their three German colleagues to be inconsistent with Catholic teaching on marriage have remained silent, much as did bishops, after Paul VI's June 1964 statement, who held received teaching on contraception. But thus far, the Holy See has allowed the three bishops' pastoral initiative to stand.

Press reports, however, quote Cardinal Ratzinger as recognizing that the three bishops' "text as it stands presents some problems"; yet they also quote him as saying: "Together with the three bishops we will find a way to clarify the reception of the document" (*Origins: CNS Documentary Service*, 10 March 1994, 670). This statement, if accurately reported, suggests that Cardinal Ratzinger anticipates, not the withdrawal of the three bishops' pastoral initiative, but some sort of supplementary statement. Plainly, however, such a supplementary statement would not be acceptable to both sides unless it not only affirmed, to the Holy See's satisfaction, all relevant Catholic teachings but also allowed the three bishops' pastoral initiative to stand. This could be accomplished only if the statement were worded ambiguously.

If the Holy See were to cooperate in such a solution, all that happened to Catholic teaching and pastoral practice on marital intercourse and contraception (and, by extension, on other moral matters) from the Dutch bishops' statement of 10 August 1963 to the Congregation for the Clergy's decision on 26 April 1971 would have happened, but more expeditiously, to Catholic teaching and practice on marriage and divorce.

Why should that prospect be a cause



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for alarm? Has not the ongoing inconsistency between the Church's teaching and some of its authorized pastoral practice already inflicted all possible relevant injury on the Church? No. The two cases differ in at least three ways, so that, if the Holy See were to cooperate in allowing the three bishops' pastoral initiative to stand, the Church would suffer additional grave injuries.

First, while contrary to Catholic teaching, a couple's contraceptive use is not against canon law, since it does not directly affect Church order or the rights of other Church members. For those very reasons, however, "remarriage" after divorce violates canon law. So, if the three bishops' pastoral initiative is explicitly allowed to stand, some pastoral practice explicitly authorized by bishops and implicitly by the Holy See will approve individuals' decisions of "conscience" whose implementation will directly injure the Church and violate others' rights.

Second, while the Congregation for the Clergy's resolution of the Washington case implicitly authorized priests to implement dissenting opinions in pastoral practice, its action did not logically entail the Holy See's acceptance of dissenting opinions as true, since the priests' position was predicated, not on the teaching's falsity, but on the legitimacy of dissent from it. The three bishops' pastoral initiative, by contrast, *authorizes* individuals to make, and so formally cooperates in their making, a decision of "conscience" which the bishops themselves must think to be incorrect unless they think that a relevant Catholic teaching is false. Hence, if the Holy See were to allow the three bishops' pastoral initiative to stand, it implicitly would accept as legitimate either the denial of relevant Catholic teaching or the pastoral authorization of individuals to make decisions of "conscience" known by the pastors authorizing them to be erroneous.

Third, while strong arguments exist that the Church's teaching on contraception pertains to divine revelation and has been proposed infallibly, those conclusions can be doubted even by Catholics who accept the teaching as true. By contrast, if one accepts the Church's teaching on the indissolubility of marriage as true, one accepts it as divinely revealed, for it has virtually no source but Scripture, as interpreted by the Church's teaching, including Trent's solemn definitions. Now, while the three bishops' pastoral initiative does not necessarily entail, it does strongly suggest, that the Church's teaching on indissolubility is false. Therefore, if the Holy See were to allow the three bishops' pastoral initiative to stand, the faithful would reasonably infer that the Holy See concedes in practice the acceptability of dissent even from teachings which, at the same time, it continues to propose as divinely revealed. ■