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*We ought not to allow current prejudice against
the unborn to blind us
to the moral truth about public programs of abortion.*

A critique of two theological papers

By Germain Grisez

■ In November 1983, the Secretariat of the Leadership Conference of Women Religious distributed a packet of papers bearing upon the handling of the case of Agnes Mary Mansour. This packet included two theological papers, one by Charles E. Curran and one by Richard McCormick, S.J. Because these papers have been widely circulated and their central arguments are often used in other contexts, I offer the following critical reflections.

In his paper, "The Differences between Personal Morality and Public Policy," Curran tries to show the relationship between morality and law. He thinks he shows with respect to the public funding of abortion that while bishops can take a position on the matter, "They must realize that they are not teaching here in the same way they teach on faith and morals. They are dealing

with the much more complex case of law and public policy."

Curran invokes John Courtney Murray, Jacques Maritain, St. Thomas Aquinas, and Vatican II in support of a distinction between the "personal moral order and the legal order." To confirm his opinion, he appeals to the U.S. bishops' support of the Hatch amendment and to statements in "The Challenge of Peace" regarding the distinction between principles and applications.

Not all the sources Curran uses are of equal weight; one could criticize some of them. One also could point out defects in Curran's use of every one of them. For example, summarizing the position of St. Thomas on the relationship between the moral and the legal orders, Curran says: "Civil laws should suppress only the more grievous vices from which the majority of human beings can abstain (I-

II, q. 97, a. 2).” Actually, Thomas says:

Law is laid down for a great number of people, of which the majority have no high standard of morality. Therefore it does not forbid all the vices, from which upright men can keep away, but only those grave ones which the average man can avoid, and chiefly those *which do harm to others* and have to be stopped if human society is to be maintained, such as murder and theft and so forth (*S.t.*, 1-2, q. 96, a. 2; emphasis added).

But no detailed critique of Curran’s paper is necessary, because his argument is beside the point. Support of public abortion funding is not simply a case of law and public policy. It is a personal moral act whose object is direct abortion.

While one must recognize the difference between law and morality, the choices by which laws are made and carried out are themselves personal choices which are morally good or bad. Neither the teaching authority of the Church nor any sound Catholic theologian ever has granted that public officials may adopt and execute as public policy what is intrinsically immoral—a program of killing the innocent.

Obviously, a legislator who really opposed abortion might vote for a bill including abortion funding, since that item could be inseparable from many others which deserve support. Likewise, a clerk might process checks paying for abortions without choosing that any abortion be done. One could have supported or voted for the Hatch amendment to prevent the abortions which would have been prevented by its adoption, only reluctantly accepting (as an unwanted side effect) those other abortions which it would not have prevented.

However, one cannot erect a wall of separation between personal morality and public policy. The public funding of

abortions is not simply a system of reimbursing poor women for their medical bills; rather, it is a system of procuring abortions for poor women in order to reduce public welfare expenditures. Anyone who advocates or supports public funding of abortions understands that fact and wills that abortions be done with these public funds. This willing of abortion is a personal moral act of the advocate or supporter of public funding.

As the point of departure for his paper, “The Magisterium,” Richard A. McCormick, S.J., cites an instance of the asserted position of many politicians and other public figures, who say they are morally opposed to abortion but favor funding of abortions. In view of the preceding, what are we to think of this position? I think it can be interpreted and evaluated in several different ways.

Many people regard the expression of this position by politicians as a typical example of professional insincerity. Rather cynically, people assume that those who say they personally oppose abortion but practically want abortions done with public funds are simply lying in an inept attempt to mollify proponents of the right to life of the unborn. But while this interpretation may be accurate in some cases, it is not the only possible one.

The politician who expresses moral opposition to abortion but supports government funding also could be confused. Prior to 1973, when laws against abortion were the issue, some politicians—sincerely or insincerely—opposed certain methods of legal control of abortion without falsifying their claim to oppose abortion itself. That was possible because moral opposition to abortion does not necessarily entail any particular

legal method of controlling it. Thus, there was a policy problem on which even sincere proponents of the right to life could disagree.

Once the 1973 decisions of the U.S. Supreme Court removed virtually all legal restrictions on abortion, the new issue of public funding of abortions emerged. The issue of funding is not a question of government reaction to abortion but of government participation in doing abortions.

However, some politicians continued to talk as though the distinction valid in the earlier situation were still relevant. In some cases, then, the inherently inconsistent position perhaps has been maintained without insincerity through confusion. Curran's paper both reflects such confusion and shows how it can be engendered.

Funding is participating

Those who say they morally oppose abortion but support public funding also can be expressing a sincere view, but one which assigns "moral" a much narrower significance than it has in Catholic teaching. Thinking that the moral domain is that of personal feelings about action, their moral opposition is a genuine attitude of repugnance. But on their view, moral criteria cannot be ultimate in practical decision making. In actual practice, morality must be subject to realistic compromises.

Curran's effort to restrict the moral sphere to that of private life has something of this view. It is very different from the traditional teaching that the immorality of direct abortion is a truth to which everyone's actual choices should conform, not simply a personal attitude of limited practical relevance.

There also is a hint of subjectivism in Curran's argument when he claims that there can be differing judgments resulting in different legitimate positions

within the Catholic Church on public funding of abortions:

On the public funding question, it is quite easy to see how those opposed to abortion could be opposed to public funding of abortion. However, others could argue that poor people should not be discriminated against either in respect to more affluent people or in respect to medical procedures which they might want for themselves.

Curran ignores the fact that these differing positions logically follow from the opposed judgments they embody on the morality of direct abortion.

Those who regard direct abortion as a morally grave matter must, if they are consistent, reject public funding, for to approve it is to want abortions to be done. They will not consider refusal of public funds discrimination against the poor, for there is no discrimination in refusing to eliminate poverty by eliminating poor people and refusing to help the poor kill their children so that they might share more fully in the self-indulgence of wealthier members of society.

However, those who regard direct abortion as morally acceptable may well want abortions done with public funds, so that the poor will neither be a burden to the wealthy nor be deprived of their fair share in the liberty to kill enjoyed by the wealthy.

In "The Challenge of Peace," the American bishops do distinguish, as Curran and McCormick say, between moral principles and their application to particular policy choices. However, the bishops make it clear that the common moral teaching of the Church belongs on the side of principles. For example, the pastoral says (in 9):

In this pastoral letter, too, we address many concrete questions concerning the arms race, contemporary warfare, weapons systems, and negotiating strategies. We do not intend that our treatment of each of these issues carry the same moral authority as our statement of universal moral principles and formal Church teaching.

In other words, the option for one current policy choice among several, all compatible with the moral principles taught by the Church, does not have the same moral authority as the reaffirmation of these principles in continuity with the entire Catholic tradition.

Moral principles outweigh others

That direct abortion is always gravely excluded is a matter of universal moral principle and formal Church teaching. The issue of public funding involves no abstruse problem of application. All that is required is the specification of the general principle by referring to the method of paying for the abortions: Since it is wrong to want abortions done, it is wrong to want them done by means of public funding. This specification is just as straightforward as: Since it is wrong to want abortions done, it is wrong to want them done by D & C, by saline, or by some other method.

In "The Challenge of Peace: (105) the American bishops affirm: "We know, of course, that no end can justify means evil in themselves, such as the executing of hostages or the targeting of non-combatants," and (332): "In simple terms, we are saying that good ends (defending one's country, protecting freedom, etc.) cannot justify immoral means (the use of weapons which kill indiscriminately and threaten whole societies." Any attempt to justify public funding of abortion is an argument that some good end (reducing welfare costs and giving the poor services available to the wealthy) justifies an immoral means (procuring the death of the unborn).

From the preceding, it is clear that McCormick is mistaken in thinking that someone who favors government funding of abortion holds a position consistent with that of the magisterium. Subjectively, such as a person may be sincere. He or she may think morality is



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only a matter of private feelings or may be confused into overlooking the fact that wanting public funding of abortions is wanting abortions to be done with public funds. But objectively, anyone who tries to justify public funding of abortion takes a position contrary to that of the magisterium's absolute rejection of direct abortion.

Nor is McCormick making adequate distinctions when he claims: "Implied in the phrase 'contrary to the magisterium' is the notion that one may not, within the canons of Catholic loyalty, hold positions that diverge from those of the magisterium." For McCormick, and the theological materials he invokes in his argument, ignore a vital distinction

among the teachings proposed by the ordinary magisterium.

As *Lumen gentium*, 25, makes clear, these are of two sorts. Some, although never defined by any pope or council, are proposed infallibly by the universal, ordinary magisterium:

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 definitely.

Obviously, teachings which are proposed infallibly leave no room for dissent on the part of faithful Catholics.

However, other teachings of the ordinary magisterium can be mistaken, even though they may require and deserve religious submission of mind and will. Such teachings can deserve acceptance inasmuch as they are the magisterium's current best judgment of what God's word requires of Christians. However, that judgment, on the leading edge of developing doctrine and in truly prudential matters, can be mistaken, and faithful Christians can be led by superior claims of faith itself to withhold their submission to it.

Catholic teaching that direct abortion is always gravely wrong has been proposed down the centuries by Catholic bishops, in communion with one another and the popes, all teaching authoritatively and agreeing in the same judgment as absolutely binding on every conscience. Generally, this teaching on abortion has been proposed as part of the revealed truth that innocent human life ought never to be taken by human authority. Thus, although there is no

solemn definition of the grave immorality of abortion, faithful Catholics have rightly accepted this truth as part of their faith in God's law: "Thou shalt not kill"; "The innocent and just thou shalt not slay."

How can you rationalize killing?

It follows that a bishop makes no mistake when he implies that there is no room for dissent against the teaching of the ordinary magisterium on abortion. Moreover, in excluding dissent on a teaching such as this, he by no means absolutely excludes dissent from those teachings of the ordinary magisterium which are not proposed infallibly. Conversely, a bishop or body of bishops who allow for dissent from teachings not proposed infallibly do not thereby approve dissent on the morality of abortion.

The samples of theological opinion McCormick offers all ignore the vital distinction between teachings infallibly proposed by the ordinary magisterium and those which could be mistaken. Yves Congar, O. P., in criticizing the teaching on the magisterium in *Humani generis*, makes it clear that even Pius XII did not always attend sufficiently to this distinction.

McCormick cites passages from Karl Rahner, S. J., André Naud, and Bernard Häring, C.Ss.R. These passages show only that other theologians who ignore the status of the teachings from which they dissent agree with McCormick in claiming both that their dissent is justified and that the teaching of Vatican II summarized above has been nullified by dissenting theological opinion.

This line of argument by dissenting theologians is question begging, for by it they try to ground their authority in their

own opinion and consensus. One might call this line of argument a strategy of theological boot-strapping.

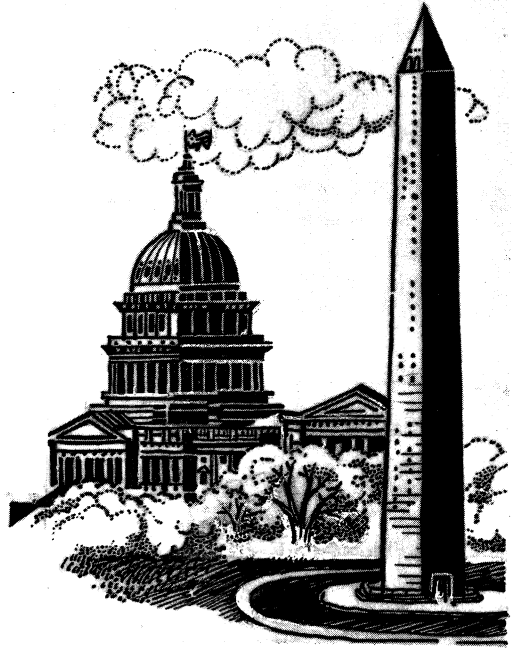
Rahner argues that the magisterium's toleration of dissent from *Humanae vitae* falsifies the teaching of *Lumen gentium*, 25. This argument is fallacious. As Rahner and other theologians long urged, disciplinary and legal measures to enforce theological assent to teaching are of little use and only drive errors underground. For that reason, since Vatican II the magisterium has used such methods very sparingly.

But in the doctrinal field itself, the magisterium has by no means yielded to dissenting opinions. *Familiaris consortio*, for example, not only reaffirms the doctrine to which Rahner refers, but clarifies it, calls for further theological effort to explain it, and directs that pastoral practice uniformly conform to it.

André Naud says of *Lumen gentium*, 25: "The thought of the Church has, therefore, advanced in this matter." Thus, he preempts for himself and theologians who agree with him the claim not only to speak for the Church but to be the Church.

Vatican II rightly ended the self-identification of the hierarchy with the Church. Now some theologians presume to omit from the Church the pope, the bishops who teach in union with him, the many theologians who firmly reject dissenting theological opinions, and the faithful who continue to try to live by traditional Christian moral teaching.

If those public figures who express moral opposition to abortion but support public funding had lived in Nazi Germany, would they have said: "Personally, I am morally opposed to killing Jews, but I support the government's final solution to this problem?" Undoubtedly, they would vehemently reject



this analogy. But what is the difference? Surely, in Nazi Germany they also could have found learned persons to argue in their defense.

What is at stake here is not a matter of universal moral principle—the morality of killing human innocent beings—but a particular public policy for dealing with the Jewish problem. The magisterium has never addressed this particular matter, and what is true in the personal moral order is not by that fact necessarily to be incorporated into law. In any case, there is nothing contrary to the magisterium in favoring the government's final solution, because reputable theologians agree that the magisterium might well be wrong on this complex question.

That line of argument surely would have appealed to antisemites, but it is transparently fallacious to us. We ought not to allow current prejudice against the unborn to blind us to the moral truth about public programs of abortion. ■