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MORAL ARGUMENT AND CHRISTIAN ETHICS*

Richard A. McCormick, S.J.**

I have chosen as my subject Moral Argument and Christian Ethics. That subject should be important for a variety of disciplines, especially law and medicine. That is the case because law, medicine, and ethics are increasingly intertwined. How they relate—whether cooperatively or confrontationally—will have more than a little to say about the shape of modern life. They will relate cooperatively only if there is reciprocal understanding of goals, methods, conceptual roots, and language. While I do not expect an attorney to have an M.D., I do expect him to be familiar with clinical realities and language if he expects to be credible in this area. The same is true, mutatis mutandis, of physicians and attorneys where ethics is concerned. Obviously I would also expect ethicists and theologians to understand legal and medical realities. With that cooperative purpose in mind, I want to offer some thoughts about moral analysis and/or argument.

The subject I have chosen is, of course, huge, even unmanageable in a brief essay. Let me delimit the subject from the outset. There are several things that I have no intention of doing, or even attempting to do. I have no intention of rehearsing and refereeing the philosophical discussions on cognitivism, noncognitivism, emotivism and so on, informative, even necessary, as these might be to a fully adequate treatise on moral arguments in ethics. Secondly, I have no intention of displaying at length and abstractly the pros and cons of the age-old and tiresome discussion between deontologists and teleologists. I am increasingly convinced of two things: 1) the terms are direction-indicators rather than informative categories; 2) very few contemporary ethicists and moral theologians fit either generic term without rather severe qualifications, at least as these terms are elegantly elaborated by C.D. Broad.1

I want to attempt something much more modest, but I hope not trivial. I propose to examine and speak out of my own Catholic tradition of normative ethics and use it as the basis for some scattered remarks about the nature of moral argument in Christian ethics. These scattered remarks will organ-

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1. C. D. BROAD, FIVE TYPES OF ETHICAL THEORY (1930).
ize around two general assertions or theses: 1) cultural factors or variables have a great deal to do with how we understand the nature and function of moral argument; 2) in contemporary moral discourse there is a great deal of patently bad moral argument going on.

As for the first point, Vatican II explicitly acknowledged it in several places. For instance, in *Gaudium et spes* it stated early on:

> Today, the human race is passing through a new stage of its history. Profound and rapid changes are spreading by degrees around the whole world. Triggered by the intelligence and creative energies of man, these changes recoil upon him, upon his decisions and desires, both individual and collective, and upon his manner of thinking and acting with respect to things and people.²

Clearly, changes that affect our way of "thinking and acting" will affect the notion of moral argument, since moral argument is precisely an attempt to render intelligible, consistent, and persuasive the ways we believe we ought to think and act. As regards the second assertion, there may seem to be no connection between it and the first; but I believe there is. Specifically, though the connection will not be elaborated, it could be argued that the root of at least some, perhaps many, of the bad arguments, is the unconscious assumption and use in moral analysis of a set of cultural variables that no longer obtain, or are at least highly suspect.

Before approaching these two points, it is necessary to state what I take to be the substance of Catholic tradition on moral argumentation and analysis. This tradition has always treasured—even if it has not always been ultimately guided or determined by—sound moral analysis. The reason for this is found in the two convictions that summarize the substance of this tradition on the nature of moral argument. First, the concrete moral implications of our being-in-Christ can per se be known by human insight and reasoning. In other words, those concrete or behavioral norms (commands and prohibitions) regarded as applying to all persons precisely as human persons,³ are not radically mysterious. Thus the traditional concept of a natural law (one based in the very being of persons) knowable by insight and reason. Over a period of many centuries, therefore, the criterion of right and wrong action was said to be *recta ratio*.⁴

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⁴. That there have been distortions of this *recta ratio* is easily seen in John Courtney Murray's enumeration of them in *We Hold These Truths* (1960).
Second, this tradition has viewed man as redeemed but still affected by the *reliquiae peccati*. In the words of the scholastics, man is *totus conversus sed non totaliter*. This means that notwithstanding the transforming gift of God’s enabling grace, we remain vulnerable to self-love and self-deception (sin) and that these noxious influences affect our evaluative and judgmental processes ("*primi hominis culpa obtenebrata*"). For this reason Vatican Council I stated that revelation is morally necessary that we may know expeditiously, firmly, and without error "*quae in rebus divinis humanae rationi per se impervia non sunt*."5

The balancing of these twin currents of Catholic tradition is often summarized in the lapidary phrase, "reason informed by faith." The balance is tricky and fragile and has not always been successfully realized. At times the word "informed" has been practically understood as "without" and Catholic moral consciousness has slipped into rationalism. At other times "informed" has been understood as "replaced by" and moral consciousness has been infected by a type of procedural gnosticism. When I say "I speak out of my own Catholic tradition," I mean to suggest the ideal mix of these two currents, that which very few of us probably achieve, try as we may. One of the reasons for this is that the "enlightened" (in "reason enlightened by faith") still cries out for penetrating and systematic study, as some contemporary debates indicate.7

*Cultural Factors Affecting the Understanding of Moral Argument in Catholic Tradition*

Before detailing these cultural variables, a single example may be of help, that of the sexual ethics of St. Thomas. Thomas rooted his sexual ethics in our natural tendencies and the goods to which they point. He noted three levels of natural tendencies: 1) the tendency to a good corresponding to the nature we share with all beings (e.g., self-conservation); 2) the tendency to goods relating to the nature we share with animals (e.g., coitus and care of offspring); 3) the tendency to the good corresponding to the rational nature *proper to man* (e.g., knowledge of truth and social life).8

While all sins are "contrary to nature," (in the sense of contrary to reason, *recta ratio*) still those that are violations of the second or generic level are graver than those in violation of the third level. The generic level, being common to man and animals, is a level *prior et stabilior*; hence its violation is

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6. Id., No. 3005 (1786).
more radical. On this basis Thomas concluded that masturbation (as a violation of the biological or generic function of sexuality) is a graver sin than adultery, fornication, or incest. These latter are at least *secundum naturam* in the biological sense.

This conclusion strikes the modern mind as downright odd and even plain wrong. Yet given Thomas’ assumptions it is utterly logical. This example shows how moral argument can be deeply affected by basic assumptions, and more broadly, by cultural variables. Another more recent example would be Pius XII’s condemnation of conscientious objection, which no doubt has deep roots in public awareness of totalitarian aggression, and especially of the “popularity” of World War II in allied countries.

In no special order I shall list nine variables that could deeply influence our notion of moral argument and its function in Christian ethics.

1) *Educational Status of Clergy and Laypeople in the Church.* For many understandable historical reasons, Christianity spread and matured through many centuries in societies composed of the educated and uneducated. Often enough the only ones with access to education, especially “higher” education, were the clergy. Since one of the tasks of the clergy was moral education—therefore the education by an educated elite of an illiterate and uneducated faithful—it is understandable that moral education would take the form of simple inviolable rules rather than broad principles requiring discernment when they are to be applied. It is simply easier to teach people to obey rules; it is much more difficult to teach them to use their judgment according to the circumstances. Thus organizational Christianity could well have reinforced a notion of moral teaching and learning that dispensed with moral argument and analysis on the part of the vast majority of its adherents, and underemphasized the possibility and need of exception-making and the type of moral argument required to support and control it.

Clearly things have changed in our day with the broad availability of higher education and the remarkable ability of so many in the Church to relate their own expertise in an enlightening way to moral and religious matters. Vatican II explicitly recognized this when it stated:

Let the layman not imagine that his pastors are always such experts that to every problem which arises, however complicated, they can readily give him a concrete solution, or even that such is their mission. Rather, enlightened by Christian wisdom and giving close attention to the teaching authority of the Church, let the layman take on his own distinctive role.9

9. **DOCUMENTS OF VATICAN II** *supra* note 2, at 244.
This will certainly have an impact on the way moral argument is viewed in the Church.

2) The Notion of God and His Providential Wisdom. James Gustafson has pointed out the importance in moral argument of the very notion one has of God. God is, Gustafson argues, not only the creator and preserver of order; He is the enabler of our possibilities. "God not only acts to sustain and preserve life, but his power creates the conditions in which new possibilities for well being occur, and in which different actions are required to preserve the well-being of the whole of creation." According to the scholastic theology of the seventeenth to the nineteenth century, and the modern moral manuals, the principles of our well-being were viewed as "fixed and immutable," in Gustafson's wording. Gustafson notes that this view led to moral arguments and conclusions in medical ethics that were very conservative, "formidable dikes against morally heedless actions." He further states that the "crucial theological difference between Ramsey and me is in the emphasis that I give to God as the power that creates new possibilities for well-being in events of nature and history. . . ." He explicitly notes that this emphasis opens possibilities for alteration of traditional principles and the ordering of traditional values.

I think two things are clear. First, Gustafson is correct in his contention that our notion of God will affect profoundly the shape of our moral arguments. Second, earlier theologians had a much more creator-preserver perspective than some contemporary theologians do.

There is another way of formulating this point. In a long tradition of Catholic thought, theologians developed deontological norms by appeal to the natural ends which were ascribed to certain faculties. (e.g., speech, sexual faculties). One saw providential wisdom at work in these natural purposes. Deus (natura) nihil facit inane. Thus, God gave us the faculty of speech so that through truthful speech we could live together in society. Falsehood frustrates this purpose. The grounding here is obviously teleological ("so that through truthful speech we could live"). When this natural end, by appeal to God's creative wisdom, was viewed as inviolable, the norm became deontological. In this way certain nonmoral values were elevated to the level of absolute preference. This happened with the integrity of the sexual (procreative) faculty.

Clearly natural finalities do indeed reflect the Creator's providential wis-
dom. But "the extent to which these natural ends must be respected in individual cases depends on whether they must deserve the preference when in relationship with concurring values. To make that determination is, if one cares to put it that way, the natural end of the power of judgment given to man by God." 14 (Schüller is here making almost the identical point made by Gustafson.)

The modern version of this traces to excessively anthropocentric notions of God, as Joseph Fuchs has recently noted. 15 Let Carlo Caffara be an example here. Caffara attempts to provide theological backing to the Hauptthese of Humanae vitae. The human person, he argues, cannot be a direct product of the biological procreative act, but must originate in God's creative intervention. Thus in the procreative act, God and the parents are co-operative. This co-operation supposes that the partners are open to procreation. From this perspective contraceptive intervention contravenes the rights of God. Those who intervene in this way into God's active presence in the procreative act understand procreation as a merely human undertaking and prevent God "from being God."

Behind this analysis lies a concept of God as directly and immediately involved in human causality, a kind of creationism. According to this understanding of God, conflicts can indeed arise between the two causes at work (God, parents). But this notion of God's creative activity is inadequate. The analysis originally proposed by Rahner is now widely accepted. God, the transcendental ground of all created reality is causally active only through created secondary causes. He is not causally active in the way Caffara's analysis supposes.

3) Cultural Liberalism. In the past centuries moral consciousness was heavily stamped by conformity to rule and community policy as the source of moral rightfulness. By way of contrast, the contemporary liberal assumptions of western society tend to overemphasize, as a source of rightfulness, the sheer fact that the decision is the individual's. For example, we often hear: "It is not my concern what another does." "Each person must decide for him or herself." "Who am I to determine another's morals?" Or again, "I do not myself accept abortion, but I do not want to impose my morality on others." We see similar sayings frequently in many areas of moral concern. This is, of course, not an objective moral argument of any kind. Or perhaps better, it is an implicit moral analysis that identifies moral rightness and wrongness with self-determination. Americans are notoriously people

who want to get along well with others and hence tend to leave others alone as one good way of doing this. But as a libertarian emphasis that effectively renounces moral argument, or refuses to state and discuss it, this perspective will have a great deal to say about how moral argument is viewed and accepted in a particular culture. It can easily lead to an attitude of apathy or even disdain toward careful discourse.

4) **Prevalent Concept of Authority in the Church.** Where teaching authority is claimed within a religious community and where this authority is associated by divine design with officeholders (the hierarchy), there is the tendency that such authoritative teaching will become self-validating, that is, it will be regarded as correct simply because it is proposed by authorities. This is probably especially true where authority is highly centralized, either at the Roman or diocesan level.

Such perspectives have a devaluing effect on the importance of moral argument and analysis, and the processes that nourish them. Moral positions will be regarded as correct regardless of the arguments or analysis used to support them. When moral analysis is devalued and replaced by authoritative assertions in the public consciousness, there is the grave danger that it will become careless and undisciplined. The nonfunctional easily becomes the neglected. That this can happen is evident in the types of moral argument sometimes made by manualist theologians to uphold ecclesiastical positions.

However, we are in a situation now—after and largely because of Vatican II—of decentralization of authority. Collegiality at all levels is accepted in principle even if not always implemented. This is no accident. The Church lives in a world whose secular institutions are sensitive to shared decision-making, participatory democracy, etc., and she mimics in her own life many of the characteristics of the culture in which she lives. The French bishops summarized this as follows: "We have reached a point of no return. From now on the exercise of authority demands dialogue and a certain measure of responsibility for everyone. The authority needed for the life of any society can only be strengthened as a result."\(^{16}\)

The decentralization of authority in the Church—always, of course, within proper measure—suggests that moral argument will again resume its proper role in the Church's ethical enterprise.

5) **The Notion of Church.** The very self-definition of the Church can be tremendously influential in determining the nature and function of moral argument. For instance, if the prevalent notion is highly juridical, drawn up according to the pyramidal model, then this easily leads to a notion of unity

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intolerant of differences in moral analysis and conclusions. Arguments are viewed as wrong or unimportant because they lead to a difference of opinion at a very detailed and concrete level. In a juridical model of the Church, this is viewed as divisive, and intolerable, and the analysis that led to it as somehow mistaken.

With a somewhat different view of the Church, a rather different approach to moral argument becomes possible. I refer to the view which sees the Church as a *communio*, the People of God. The model is concentric, not pyramidal. The people are the repository of Christian wisdom and truth. Cardinal Suenens wrote:

> The Church seen from the starting point of baptism rather than that of the hierarchy, thus appeared from the first as a sacramental and mystical reality first and foremost, rather than—which it also is—a juridical society. It rested on its base, the People of God, rather than on its summit, the hierarchy. The pyramid of the old manuals was reversed.¹⁷

If this is the pervasive theological view, clearly moral argument will be deeply affected. For one thing, a key test of its validity will not be organizational or institutional conformity. Furthermore, purely deductive approaches will be seen as inadequate. Experience and reflection upon it will be proportionately more important in building and assessing moral analysis.¹⁸

6) *Attitudes Toward Morality and Public Policy.* It is the temptation of the Anglo-American tradition to identify these two. We are a pragmatic and litigious people for whom law is the answer to all problems, the only answer and a fully adequate answer. Thus many people confuse morality and public policy. If something is removed from the penal code, it is viewed as morally right and permissible. And if an act is seen as morally wrong, many want it made illegal. Behold the “there ought to be a law” syndrome.

When these two spheres, interrelated as they are, get confusedly identified, then the moral arguments establishing the one or the other get confusedly identified. Since public policy must be sensitive to a whole host of pragmatic considerations (e.g., enforceability, pluralism of conviction, social costs, social priorities) gatherable under the term “feasibility,” it is possible for moral argument to be affected, indeed corrupted by such considerations. Furthermore it is possible that the tactics used so often to move public policy can come to be regarded as “moral arguments.” An example of these can be

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¹⁷. *Id.* at 5.

drawn from the late sixties and early seventies when "gut feelings", confrontation, symbolic acts of protest, and other forms of nondiscursive exchanges prevailed over analytic discourse and were frequently regarded as adequate warrants for moral stances. The prophet was confused with the philosopher. That such conditions will have repercussions on the way Christian ethics is set forth, I have no doubt.

7) Cultural Attitudes Toward Individualism and Social Insertion. This is similar to but distinguishable from the concerns mentioned previously.19 The attitudes I refer to will affect above all the substantial emphasis in a person's moral reasoning, and even the topics one considers it worthwhile arguing about. For instance, James Gustafson, once again adverting to some differences in approach between himself and Paul Ramsey, notes that Ramsey's views on medical ethics are deeply stamped by his notion of agape and covenant fidelity between persons.20

Gustafson is more comfortable with a broader canvas. He writes:

God wills the well-being of the creation. Just as there are historical occasions on which human physical life is not only risked but sacrificed for what is judged to be a human common good, for example, in the defense of a nation against unjust attack, so also there are occasions in which new possibilities for the well-being of individual persons, the human community, and the whole of creation require action that risks harm, indeed irreversible harm, to individuals.21

Different times and different cultures will reflect either Ramsey's emphasis on covenant between individuals or Gustafson's concern also with future benefits for the community. I believe that a culture or nation where individual human rights are grossly violated is one where individual rights will be highly emphasized, possibly even to the point of individualism. Thus, the years immediately following World War II (Nuremberg trials) were much more likely to reflect Ramsey's emphasis. It may be questioned whether the same is true today. Be that as it may, such cultural variations will certainly affect the kind of moral argument one constructs.

8) Unity and Pluralism of Philosophical Systems and Language. In times of unity in philosophical systems and language, moral arguments will tend to be more uniform, to share more basic anthropological assumptions, and to recommend themselves to a much broader constituency. Where such unity does not exist, just the opposite will be the case. Not only will there be diversity of emphasis, language, and conclusions, but the very moral argu-

19. See supra note 3.
20. GUSTAFSON, supra note 10, at 44.
21. Id. at 45-56.
ments used will appear to the diverging point of view to be not simply different, but erroneous.

An interesting example of this is the document of the Sacred Congregation for the Doctrine of the Faith, Declaration on Certain Questions Concerning Sexual Ethics. Issued in 1976, the document met with a veritable avalanche of severe criticism. One of the reasons for this was stated by Bernard Häring. He notes that the natural-law perspectives of the contemporary consultors to the Congregation are “represented as the constant tradition and the teaching of the Church.” He argues that “there speaks in the document not the preconciliar theology, but a very distinct preconciliar theology,” the type rejected by the Council in its rejection of several preliminary drafts for Gaudium et spes.

We exist in an age of profound philosophical pluralism. It is clear that this will affect moral argument in Christian ethics, its notion, function and acceptability.

9) Relevance of Experience and Cognate Empirical Disciplines. It seems clear that a culture which is not scientifically oriented, especially if it be one where there is a clear chasm between the few educated and the masses of uneducated, will not be terribly sensitive to the importance of empirical sciences and human experiences in the construction and evaluation of moral argument. Perhaps the brief example cited from St. Thomas earlier could stand as an example, though in all fairness it must be remembered that the scientific evidence available then (semen as containing vita, homunculus) reinforced Thomas in his convictions. Certainly in our time the enormous sensitivity to lived experience and the relevance of the cognate disciplines make moral argument much more complicated.

These are but a few of the cultural variables that can influence moral argument in Christian ethics. What is one to make of these influences? It is very dangerous to generalize, especially when some of these currents seem to be moving in opposite directions. But I would suggest the following three rather innocuous implications. First, moral argument is more important than ever in our time to the preservation of the substance of our value judgments. Why? Because many of the variables listed suggest that we are transitional between one form of argument (deductive, abstract, individualistic, authoritarian, etc.) to another (inductive, community and benefits oriented, scientifically informed, less authoritarian, etc.). However, as in most cul-

tural transitions, there will be segments that will resist the transition (even at
times with some legitimacy) and there will be segments that will promote it.
In such cases moral argument tends to collapse into the rhetoric of resist-
ance and/or of promotion. In such a situation the danger is that the very
relevance of moral argument will be questioned or lost. For resistance and
promotion are not careful analytical arguments. They are postures of theo-
logical preference resembling political agenda. We all know that such pos-
tures are terribly vulnerable to short-cuts and frequently issue in poor moral
arguments.

Second, moral argument is *more difficult* than ever to make and to make
persuasive in the public forum, precisely because so much more must be
attended to in constructing a good argument.

Third, poor arguments are often due to a failure to take these variables
seriously enough, or to a too simplistic acceptance of them. I would hasten
to add that this failure is not unique to a single school of thought, though it
is more frequently and patently revealed in more conservative circles.

*Poor Moral Arguments in Contemporary Discourse*

It may seem that there is little gain to be derived from identifying poor
arguments; for the crucial question remains: What are the constitutive in-
gredients of a good argument? However, I believe that though the gain may
be modest it is nevertheless not trivial. For poor arguments that are ac-
cepted not only establish nothing, they leave the resultant conclusions en-
trenched. Both of these considerations are formidable obstacles to the
progress of Christian ethics. Identifying them is, therefore, a necessary step
(*removens prohibens*) in the development of a sound ethic. Most of the analy-
ses that deserve the title “poor” or “invalid” fit into either of two categories:
*petitio principii* (begging the question), or *ignorantia elenchi* (missing the
point). Clearly these failures very frequently overlap and interpenetrate each
other. That is, one who begs the question misses the point; and one who
misses the point frequently begs the question. Nonetheless, it is possible in
some cases to identify the primary misstep. In what follows I shall simply
list and exemplify a series of contemporary failings in moral discourse with-
out attempting to classify them under either major fallacy.

1) *Confusion of Parenetic Discourse with Normative Discourse.* Parenesis is
a form of discourse used to exhort to a form of conduct or to pass judgment
upon it. It does not treat the pros and cons, the validity of a certain precept
or prohibition. It takes it for granted. Normative ethics deals with the pros
and cons of a prohibition, what is to count as unjust conduct and why.

A clear example of parenesis is I Corinthians 13:4-7 (“Love is patient; love
is kind. Love is not jealous, it does not put on airs, it is not snobbish," etc.). Such salutary exhortations leave totally untouched what is to count as jealousy, snobbery, self-seeking, or forbearance. Similarly the Johannine pericope on the woman taken in adultery is parenetic in character. The question is not whether adultery is right or wrong; all agree it is wrong. The only question is whether the woman has committed it and what should be done.

Confusion of these two forms of discourse is probably the most common error in contemporary Christian ethics. It results in both of the aforementioned logical fallacies (petitio principii, ignorantia elenchi). Let me list just a few examples.

Item. Paul Quay, argues that some contemporary moral theologians are trying to "'relativize' so-called 'absolute prohibitions' against defrauding laborers, adultery, abortion, and the like." Of course, adultery and defrauding laborers are always wrong. So is cruelty to children. But the normative question is: What forms of conduct are to count as adultery, cruelty, etc., and why? We have here a failure to distinguish fact-description (Tatsachenbegriff) from value-description (Wertbegriff). Certain actions (killing) are presented in terms of an already concluded value-description (murder) when the normative question is whether this or that killing truly is unjust killing, murder. Value-descriptions pertain to the area of parenetic discourse.

Item. Donald McCarthy, in describing certain recent developments in moral theology (what he calls "proportionalism") writes: "Other extenuating circumstances or good intentions as adultery for the good of marriage...can never make these actions good." Furthermore, he notes several categories of nonsexual actions described by Vatican II as "criminal" (genocide, slavery, abortion, euthanasia) and then adds: "it seems clear that the Church cannot open these actions to the kind of circumstantial justification that the ethical principle of proportionalism might allow. . . ."

When something is described as "adultery" or "genocide," nothing can justify it, for the very terms are morally qualifying terms meaning unjustified killing. That is, they are tautological. The normative question is: What (in descriptive terms) is to count as genocide?

Item. Gustave Martelet compares the evil of contraception with the use of violence and a lie. These latter, it should be noted, are two remarkably different terms. The first is descriptive and presents a premoral disvalue

(since violence is occasionally justifiable). The second is a morally qualifying term. Confusion of the two results in ignorantia elenchi. Many more examples of this could be adduced. For instance, I have frequently heard “We are baptized in the Spirit, set apart” proposed as normative warrant for the rejection of direct sterilization as intrinsically evil. As Stephen Toulmin remarks: “To show that you ought to choose certain actions is one thing; to make you want to do what you ought to do is another, and not a philosopher’s task.”

Somewhat similarly, authors like J. Ratzinger, Hans Urs von Balthasar, H. Schurmann constantly assert that “Christ is the concrete categorical imperative,” that His word is “the ultimate decisive moral norm.” These statements are, of course, true. But with such statements one does not raise the issue of how one originally knows God’s will, “whether through faith alone as a distinct manner of knowing or through human reason. Jesus’ word is the ‘ultimate decisive norm’ even when one accepts the fact that ‘Christus sua auctoritate haec praecepta (naturalia) denuo confirmavit et maiorem vim obligandi eis addidit.”

2) Rhetoric as Normative Argument. This is simply another example of the point made in note one; yet it is so frequent that it deserves to be highlighted. For instance, in the ethical debates on in vitro fertilization with embryo transfer, we frequently heard the following; “Who are we to play God? “We must not tamper with nature.” These are blatant examples of the confusion of parenesis with normative discourse ending in ignorantia elenchi.

In ecclesial circles we often hear responses to ethical analysis couched in the following words: “Theologians are causing confusion.” “The faithful have a right not to be disturbed.” Into this category also fit appeals for unity, for respect for authority, etc. Little more need be said about such “arguments” except to add, in all fairness, that “this is in violation of academic freedom” pertains to the same category. Procedural purity is confused with argumentative purity.

3) The Straightforward Petition Principii. Many forms of moral argument imply a begging of the question. Others are undisguised examples of it.

Item. The Sacred Congregation for the Doctrine of the Faith issued in 1975 a document reaffirming the condemnation of all direct sterilization. It argues that the principle of totality may not be invoked, because sterility

27. S. TOULMIN, AN EXAMINATION OF THE PLACE OF REASON IN ETHICS (1950).
28. See RATZINGER, PRINZPIEN CHRISTLICHER MORAL (1975).
30. Vatican Upholds Ban on Sterilization, 6 ORIGINS 33, 35 (1976).
intended as such \textit{(in se)} is not directed to the integral good of the person because it is an assault on \textit{(nocet)} the ethical good \textit{(bono ethico)} of the person. Why does it do this? The Sacred Congregation responds: Because it deliberately \textit{(ex proposito)} deprives "foreseen and freely chosen sexual activity of an essential element" \textbf{3} (the potential to procreate).

No one would quibble with the assertion that an intervention which harms the \textit{moral} good of the person \textit{(quod est supremum)} cannot be justified by the principle of totality. That is clear from the very meaning of that principle. What is not clear, however, is that the power to procreate is an element so essential to sexual intimacy that to deprive freely-chosen intimacy of this power is in every instance to assault the ethical good of the person. That is precisely the point to be established. Until it has been, mere reassertion of the prohibition begs the question.

Donald McCarthy, in comparing the new procedure of low tubal ovum transfer (LTOT), where the ovum is transferred to the uterus to be fertilized by natural intercourse, with \textit{in vitro} fertilization (IVF), contends that it "differs radically and essentially" from the latter. \textbf{31} In IVF there is "no personal involvement of the parents with each other." They simply supply their gametes. Secondly, in IVF there is no expression of the marriage convenant and the child is produced by technology. Thus he approves LTOT but rejects IVF.

I think we must grant these differences. But what is their ethical significance? To accept one technology (LTOT) and reject the other (IVF), the meaning of McCarthy's descriptive differences must be: (1) The parents must be personally involved through sexual union in the procreation of new life. (2) In the conception of new life the marriage convenant must be expressed through sexual union. But these assertions are, of course, the very things to be established if IVF is to be totally rejected. \textit{Why} must the parents be personally involved in all, even exceptional and last-resort, cases of generation of new life? Merely to describe differences and then give them ethical mileage is what Schueller referred to as "persuasive description." It nearly always contains a \textit{petitio principii}.

Item. In attempting to justify the moral significance of the distinction between direct and indirect voluntariety, Paul Ramsey rejects the notion of proportionate reason as sufficient because it involves the weighing of incommensurables. He writes: "There is, of course, measurable meaning in some judgments of proportion, that is, in cases in which one takes (indirectly) one life to save the only one that can be saved (rather than lose two) in abortion

cases.” He then states that “obviously one should choose the lesser of these commensurate evils” but adds that such body counts “are the only instances I can think of in which there is clear commensurate meaning in the final judgment of proportion under the rule of twofold effect.”

Notice what we have here. (1) Ramsey argues that it is precisely incommensurability of goods that demands indirectness of intent. (2) He admits that there is in the case clear commensurability of the goods and evils involved. (3) Yet he asserts in such abortion decisions the notion and need for indirectness.

If evils are commensurable and one should “obviously...choose the lesser of these commensurate evils,” then what does indirectness have to do with it? This is a clear petitio principii, the smuggling in of a notion as necessary whose very necessity is the issue.

4) Doubling the Middle Term. This is a well known logical fallacy that corrupts moral analysis. What is not known is that it is a frequently used and unrecognized form of argument in contemporary discourse. Let me take an example in the form of the following syllogism:

Every action contrary to nature is morally evil.
But falsehood and contraception are contrary to nature.
Therefore they are morally evil.

In the major of the syllogism “contrary to nature” must mean unreasonable. Yet in the minor “contrary to nature” can only mean “relative disvalue,” even though the argument intends it to mean more. Therefore the argument is invalid because it equivalently says that “to cause a disvalue is unreasonable.” But such a conclusion is false and its falsehood is made apparent when we realize that all innerworldly goods are relative. This is clear when we consider the most urgent of basic goods, life itself. There are times when it may reasonably, even if tragically, be taken.

Clearly, therefore, norms that impose realization of a relative value (or avoidance of a relative disvalue) always include a built-in exception clause. That is, they have binding force unless the value they impose competes in the situation with a value to be preferred. (E.g., one must keep the entrusted secret unless the only way to prevent greater evil is to reveal it.) When we act in this way, we act “according to nature,” because we act reasonably.

5) Confusing Authority for Argument. One of the tasks of the moral theo-

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33. Id.
35 Gustafson, supra note 10, at 45
logian is to aid in purification of the conceptual models and formulations wherein we concretize our substantial moral concerns. Formulations (and conclusions) are only more or less adequate to the abiding substance. But the magisterium has frequently taught concrete morals in an authoritative way, using the formulations available at a particualr time in history. This means that theologians can sometimes suggest formulations and conclusions at variance with official ones.

In some circles this mere variation is taken to be sufficient evidence of a failed moral argument. Thus the argumentative phrases: “These are mere theological speculations.” “Who is to be followed, the Pope or theologians?” “The theologian issues personal opinions, the Pope issues authentic teaching.” “Once the hierarchy has spoken, the obligation is to assent and obey.” Etc. (Roma locuta, causa finita).

Without wishing to forfeit the kernel of truth in these statements, one can still insist that as used they tend to replace moral argument with merely juridical assertions. Authoritative assertions can never replace moral argument. That is why moral positions asserted authoritatively against a prevailing consensus of moral analysis become simply incredible. But when “loyalty to the Holy See” becomes the test of the legitimacy of a moral argument, then things are upside down. Truth becomes subordinate to institutional purposes and the instruments of its search. Stephen Toulmin remarked in a slightly different context that if we are never to be allowed to question the pronouncements of those who administer a moral code, then we are no longer dealing with morality but with authority.36

6) Various Forms of the "Genetic Fallacy." By this I refer to the "argument" which identifies (labels) the argurer (the source), and thereby thinks to have discredited the argument or to have clinched it. For instance, some Catholic theologians are identified as "deviants" or "dissenters" and that is taken to be an adequate refutation of what they say. This is a blatant ignorantia elenchi. But the shoe fits the other foot too. It simply misses the point to respond to an argument that it is "conservative."

A more subtle form of this type of thing is seen in M. Zalba's recent statement made of Charles Curran: "The ecclesiastical magisterium cannot be accused of physicalism without grave injustice, since it is stated without any demonstration or possibility thereof, that the magisterium 'identifies' the human and moral act with the physical structure of the conjugal act."37 Whether there is injustice or not depends entirely on the correctness of the conclusion that every act must always remain open to the possibility of pro-

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creation if it is to avoid being intrinsically evil. It would have been more helpful and enlightening had Zalba discussed the arguments for the traditional conclusion rather than justice-injustice. These latter categories suppose that the argument is clear and the conclusion correct. Thus the genetic fallacy leading to ignorantia elenchi. One’s position is “argued” in terms of unjust accusations.

Some of the most mischievous forms of the genetic fallacy are involved with the terms teleology (consequentialism, utilitarianism) and deontology. In some circles it is considered a sufficient dismissal of an argument or analysis to say that it is “teleological” —or, if better mileage is desired from the stereotype, “utilitarian.”

Actually, these terms are so diversely understood that they have become all but useless. For instance, some identify teleological and utilitarian; others do not. Some talk of “mixed deontologists”, others do not. In other words, the terms are often used as if they are clear when they are not.

For the record, let me say that I believe there are at least three theories about rightness and wrongness of actions. (1) Actions are right or wrong depending solely on the consequences. (2) Some actions are right or wrong regardless of the consequences. (3) Consequences play a determining but not the only role in rightness or wrongness.

There is, of course, an enormous ambiguity about the meaning of the term “consequence.” (For example, is the death of an aggressor a consequence of my act, or part of the very definition of the act?) Even after this ambiguity has been clarified, I am convinced that most contemporary Catholic moral theologians fit the third category, a grouping best named “moderate teleologists” or “mixed deontologists” if a name is considered essential. In this group I would include Joseph Fuchs, Franz Böckle, Bernard Häring, Bruno Schüller, Charles Curran, Alfons Auer, Louis Janssens, Franz Scholz, and most Catholic moral theologians writing today.

This is not surprising. Anyone familiar with the centuries old tradition of Catholic moral theology would have to agree with Schüller “that the normative ethics of Catholic tradition...is overwhelmingly teleological.” Similarly, James Gustafson rightly notes that “the teleological framework of Catholic theology and ethics has always set the concern for consequences in a central place in moral theology.” Even the deontologically understood rules that did develop had a teleological basis. Thus, as Gustafson notes, adultery not only violates a convenant but the rule against it has validity because adultery is harmful to the parties involved.

38. SCHÜLLER, MORAL THEOLOGY No. 1 188 (1979).
One can see that teleology at work in the process of restrictive interpretation given over the centuries to the commandment “Thou shalt not kill.” If we adhere to the prohibition literally, we find that our hands are tied against unjust aggressors who disdain the rule. The result is that more lives are lost than if we had not adopted the rule. Therefore we qualify the rule, interpreting it as forbidding the taking of innocent human life. Then there are cases (birth room conflicts) that are not covered by the exceptions comprised under “innocent.” So we refine the rule further, distinguishing between direct and indirect killing, the latter being at times permissible. The rule is, in a sense, as acceptable as it is capable of being restricted to accommodate our sense of right and wrong, and our firm commitment to save more lives than we lose in situations of conflict.

Another form of what we call the “genetic fallacy” is a confusion between Christian ethics in the normative sense and Christian ethics in the genetic-historical sense. The traditional thesis for centuries has been that the moral rules incumbent on a Christian are materially identical with the precepts or prohibitions of the so-called natural law (recta ratio). Joseph Ratzinger denies this and one of his reasons is that faith is reliable but reason is not.40

Here we must distinguish between the truth value or internal validity of moral judgments, and the genetic explanation of true and false judgments. Thus we may distinguish between (1) Christian ethics in the normative (truth value) sense—what Christ said and did. In this sense the ethic is absolutely true. (2) Christian ethics in the genetic-historical sense—e.g., St. Thomas’ interpretation of what Christ said and did. In this second sense it remains questionable whether the ethic is truly Christian.41

Similarly one can distinguish (1) philosophical ethics in the normative sense, that is, the law of reason, and (2) philosophical ethics in the genetic-historical sense, that is, Kant’s understanding of this.

In saying that faith is more reliable than reason, Ratzinger confuses these two levels. Reason is more reliable than faith if philosophical ethics is taken in the normative sense and Christian ethics in the genetic-historical sense. However, faith seems more reliable if taken in the normative sense and philosophical ethics in the genetic-historical sense. The traditional teaching on norms (revelation does not add anything concretely to them) concerns only the epistemological status of norms, not the sociological, historical, or psychological conditions that may hinder reason from arriving at true value judgments. This is overlooked by Ratzinger.

7) Misplaced or Misnamed Pairs. Here two examples will suffice. Theolo-

40. See supra note 7.
41. See supra note 8.
gian and friend, Norbert Rigali, contrasts abstract with historical. Thus, "while the preacher can discuss morality in an abstract way, the confessor, if he is performing his duty in an even minimally adequate way, must become historically involved with morality; the confessor is involved with an individual in his or her personal life." Here we have abstract contrasted with historical and then historical defined in terms of individual or personal life.

Two remarks. First, this identifies and confuses normative ethics with pastoral understanding and compassion, and raises this latter to the status of the former. The proper contrast is abstract and concrete; for a norm can be at once abstract and historical. Second, this identification, if pushed, does away with the possibility of generalization in ethics, which means it does away with ethics as a science. (In other words, unless I misunderstand him, Rigali has so described historical consciousness that it wipes out the pair right-wrong to concentrate on the pair good-bad, and at the level of individual discernment).

A second instance is contained in the excellent study by Robert Weir, Selective Nontreatment of Handicapped Newborns. Weir mentions several ethical options or approaches, among them the best-interests criterion and a quality-of-life approach. He rejects the latter for the former. This is a misnamed pair because it is impossible to determine the best interests of a handicapped newborn without reference to the kind of life he or she would experience as a result of treatment or its withholding. Weir makes this clear repeatedly. For instance, "the central question in the best interests position is this one: given the possibility that a handicapped infant will not have a meaningful life by normal standards, is that life likely to represent a fate worse than death or a life worth experiencing even with the handicaps." A "life likely to represent a fate worse than death" is, in my judgment, a straightforward quality-of-life-assessment.

8) Post Hoc Ergo Propter Hoc. There is a fairly heavy body of Roman Catholic literature that groups together contraception-sterilization-abortion. Furthermore, such literature frequently blames the frequency of abortion in this country on the acceptance of contraception.

I have no doubt that there are those who view contraception and abortion along a psychological continuity. That is, they are prepared to do anything to avoid having a child. Thus if contraception fails or is not used, they are ready for abortion. However, contraception and abortion are entirely different procedures. To use the prevalence of abortion as a form of argument to reject every contrapective act as intrinsically evil is to use a non-argument.

42. Rigali, Morality and Historical Consciousness, 18 CHI. STUD. 161-68 (1979).
Furthermore, it is inconsistent with a tradition which holds that not every killing need be murder, not every falsehood is a lie, not every violation of a promise is infidelity, not every taking of another's property is theft, etc.

9) Attributing and Attacking Positions No One Holds. This is transparently bad argument and a case of ignorantia elenchi. But in a polarized church it is unfortunately increasingly frequent. For instance, William May criticizes the work of those theologians who base their exception-making on what has been called for decades in Catholic tradition "proportionate reason." While he concedes that estimating proportions in conflict is not solely the prerogative of the individual and therefore is not necessarily subjectivistic, he does believe that this structure of moral reasoning is relativistic. That is, an act is not wrong "simply because the community deems that it is." To think so is "cultural relativism." 44

May seems to believe that certain Catholic revisionists hold an act to be objectively wrong "because the community deems that it is." Of course that is untenable. But, to be blunt, no one says this nor is anyone who recommends communal discernment vulnerable to such accusations. We are a believing community; hence we learn within a community and form our consciences within a community. This does not imply that the community is always right. It says only that a realistic individual will understand the dangers of trying to discover moral truth alone. Pilgrims are imperfect even when they join hands and minds. But no one of these reflections leads to the conclusion that an act is objectively wrong because the community thinks so.

Another example of this type of thing is found in the writings of Gustav Ermecke. Ermecke has been among the gloomiest commentators on recent trends in moral theology. He rejects a teleological understanding of moral norms outright. One of his reasons: a value measure or scale must be based in Christian ontology and anthropology. Of course it must. Furthermore, he argues, the use of prudence must conform to an objective value scale. Of course it must. But what does that have to do with a rejection of teleology, except to attribute imprudence and an un-Christian anthropology to those whose teleology he rejects? 45

I believe this listing has gone far enough, even though it could be prolonged much further by pointing up the following errors: biblical literalism; appeal to experience alone as if it were a sufficient moral warrant; mistaking givenness or facticity for the normative (a mistake that runs wild in discus-


sions of birth regulation); accepting mere descriptions as "proofs" (this too in re birth regulation): confusing ideal statements (e.g., "No more war, never") with their application in conflict situations, etc.

Moral analysis—the struggle to arrive ever closer to a genuine convergence of probabilities in our value judgments, a convergence that is based in human reality as the Christian sees it and that is consistent—will always retain a central place in Christian ethics because, I submit, this ethics takes its Christology seriously. An ethics that takes the Incarnation seriously will be the very last to abandon moral reasoning and argument; for the Incarnation, no matter what the depth of its mystery, was, as Vatican II repeatedly noted, an affirmation of the human and its goodness. And this "human," however nondiscursive it may be in our future life, is one that presently builds its moral norms, understands exceptions to them, and communicates them through a difficult discursive process known as moral analysis.