

# MORAL THEOLOGY AND CHURCH RESPONSES TO SEXUAL ABUSE

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## ABSTRACT

In the many published reports of the sexual abuse of children by priests in past years there is discernible a common pattern in the inadequate responses of Church authorities to the allegations and evidence of sexual abuse. Since judgment of conscience and moral decision flow from moral discernment, which in turn is based on moral perception, inadequate moral perception renders faulty an entire moral-response process. The moral perception underlying the decisions of Church authorities bearing responsibility in the sexual abuse scandal is seen to be, unfortunately, consonant with the moral perception cultivated in the moral theology in which they were educated.

Shortly after the sexual abuse scandal had erupted in 2002 in the Archdiocese of Boston, the United States Conference of Catholic Bishops established a National Review Board to assist them in dealing with the crisis. To research the problem the board in turn commissioned the John Jay College of Criminal Justice. The first result of the institute's research was a statistical analysis in 2004 of the clerical sexual abuse of children and youths in the years 1950–2002, showing *inter alia* that 75 per cent of the abuse incidents had occurred between 1960 and 1984.<sup>1</sup>

As the present article is being written, the institute is involved in further, more substantive research. Currently under scrutiny, for example, are the content and influence of seminary-admission policies and of priest-formation programs before and after the 1980s. The study is expected to shed light, of course, on the rise in incidence of clerical sexual abuse in the period 1960–1984. The agenda for the study, however, includes “Ecclesiastical environment and the ways in which the Church responded to reports of sexual abuse.”<sup>2</sup> These latter themes, too, are essential matters of investigation, since the scandal is rooted not only in sexual abuse but also in wrongful responses to the abuse on the part of Church authorities.

<sup>1</sup>The 27 February 2004 report is on the John Jay College website: <http://www.jjay.cuny.edu/churchstudy/main.asp> (accessed 14 September 2007).

<sup>2</sup>Agostino Bono, “John Jay College Will Conduct Major Clergy Sex Abuse Study,” *The Catholic Standard and Times*, 24 November 2005, p. 4.

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### I. The Question

It is with the ecclesiastical environment and Catholic Church responses to the sexual abuse that the present article is also concerned. Only one aspect of the ecclesiastical context, however, is focused on here, namely, the Church's moral theology. The question is whether the morally inadequate responses of Church authorities reflect teachings of moral theology. The question, however, needs further clarification, since in recent decades the term *moral theology* has become ambiguous and no longer has the univocal meaning that it carried for three-and-a-half centuries until shortly before the Second Vatican Council.

Moral theology was the name given to the discipline created at the end of the sixteenth century, distinct from dogmatic theology and historically related to the early medieval penitential books and the penitential summas of the fourteenth and fifteenth centuries. Among its measures of ecclesiastical reform the Council of Trent had called for the establishment of seminaries for the formation and education of men preparing to be priests and had decreed that in the sacrament of penance a penitent was to confess all mortal sins according to number and species. In accordance with these Tridentine mandates, the manuals of moral theology came into existence as means of preparing seminarians for the sacramental ministry of penance, and the new science was born. Moral theology was "the science of human activity as oriented to God, the ultimate supernatural end."<sup>3</sup> Human acts constituted the material object of the science, and its formal object was the orientation of acts to God as final supernatural end.

Moral theology was thus a specifically Catholic discipline. It was, in Richard McCormick's words, sin-centered, confession-oriented, and seminary-controlled.<sup>4</sup> In the more recent past, however, its name began to be applied also as a generic term for theological and pastoral reflec-

<sup>3</sup>H. Noldin, A. Schmitt, and G. Heinzl, *Summa Theologiae Moralis*, 30th ed., 3 vols. (Innsbruck: Felizian. Rauch, 1952), 1:1. See also, e.g., F. Hürth and P.M. Abellán, *De Principiis, De Virtutibus et Praeceptis: Notae ad praelectiones theologiae moralis. Ad usum privatum auditorum* (Rome: Pontifical Gregorian University, 1948), 7: "the theological science of deliberate human acts inasmuch as they are in relation to the ultimate supernatural end to be obtained through the means of salvation"; Heribert Jone, *Moral Theology*, 15th ed., trans. Urban Adelman (Westminster, Md.: Newman Press, 1956), 1: "the scientific exposition of human conduct so far as it is directed by reason and faith to the attainment of our supernatural end." Like other seminary textbooks generally, the moral theology manuals were in Latin. The extremely widely-used Jone compendium appeared originally in German in 1930 and was subsequently translated into many other languages and published in numerous editions of those languages. The translation of Latin text here and elsewhere in this article is my own.

<sup>4</sup>Richard A. McCormick, "Moral Theology 1940–1989: An Overview," in *The Historical Development of Fundamental Moral Theology in the United States. Readings in Moral Theology 11*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist, 1999), 47.

tion on moral matters,<sup>5</sup> even as the discipline which had originally borne the name for 350 years was becoming obsolete and passing into history.<sup>6</sup>

That moral theology became an obsolete science does not mean that there are no truths from it carried over into current theological reflection on the Christian moral life. It means, rather, that the advent of historical consciousness made it impossible to continue to regard the truth of Christian morality as being disclosed adequately and without distortion within the limits of a science whose material object was human acts and formal object the relation of the acts to God. Today theologians recognize that the truth of Christian morality can be adequately apprehended only within a comprehensive perception of the Christian moral life, created through theological reflection on Scripture and matters such as community, narrative, tradition, experience, character, virtue, and perspective.

The moral theology manuals, however, were standard seminary textbooks in the pre-Vatican II years when those who were leading the Church in the 1960s and '70s—and many Church leaders long after that time up to the present—were preparing to become priests. Thus the question here is whether Church leaders' wrongful responses to sexual-abuse allegations reflect teachings of the then traditional but now obsolete discipline taught in seminaries when they were students. We will examine first the nature of the responses, then the nature of moral theology, and finally the understanding of human sexuality in moral theology. The essay will conclude with a theological reflection on the present state of the matter.

## II. *The Nature of the Responses*

In the many recent public accounts of the clerical sexual abuse of past years there is discernible a frequent, even general pattern of behavior in how Church leaders responded to reports of sexual abuse of children and youths. Having received an allegation of such sexual abuse by a priest and found it to be credible or true, the local bishop kept the abuse secret and transferred the priest, sometimes after a period of therapy or rehabilitation, to a different place of ministry, where the wrongdoing was unknown to all. Such was the procedure in the

<sup>5</sup>See, e.g., Bernard Häring, *The Law of Christ: Moral Theology for Priests and Laity*, 3 vols., trans. Edwin Kaiser (Cork, Ireland: Mercier Press, 1963–1967), I, 3–33.

<sup>6</sup>On the obsolescence of moral theology see Norbert J. Rigali, "New Horizons in Moral Theology," in *New Horizons in Theology*, ed. Terrence W. Tilley (Maryknoll, NY: Orbis, 2005), 40–55.

notorious Boston Archdiocese cases of John Geohan<sup>7</sup> and Paul Shanley<sup>8</sup> and in very many other cases as well.

Moral discernment of what is to be done in a particular situation, of course, is dependent upon how the moral situation is perceived. Moral perception, however, is not automatic or morally neutral. As a person's "active ability to grasp the human significance of a situation," its significance in benefiting or harming people, moral perception is "determined by the moral quality of the agent and community."<sup>9</sup> It is a moral capacity that, for better or for worse, is learned and appropriated. A blind spot or weakness in perceiving the human significance of a situation can result only in inadequate moral discernment of what should be done and in faulty moral response to the situation.

### *Moral Perceptions in Official Statements*

In a number of official statements Church authorities have indicated the perceptions that in the past underlay the discernment of what to do when a priest sexually abused a child or minor. After the problem of the sexual abuse of children and minors by priests in the United States had been brought to light in 1985<sup>10</sup> and the National Conference of Catholic Bishops had subsequently discussed the matter in closed sessions at five of their meetings, in 1992 the conference president, Archbishop Daniel Pilarczyk, spoke publicly about it. Mistakes, he said, had been made in the past by treating sexual abuse as a moral fault, while now it is known to be caused by a disorder and sometimes an addiction.<sup>11</sup>

In an official statement at the time of the release in 2004 of the John Jay College statistical study Donald Wuerl, then Bishop of the Diocese of Pittsburgh, noted that since the late 1980s the United States bishops' perception of sexual abuse of a minor had changed significantly. There was now on the part of bishops, he said, "greater understanding that the

<sup>7</sup>Robert Sullivan, "Faith in Their Father?" *Time* 159/10 (3 March 2002): 54–55.

<sup>8</sup>Amanda Ripley, "In Plain Sight," *Time* 159/16 (22 April 2002): 44–45.

<sup>9</sup>William C. Spohn, *Go and Do Likewise: Jesus and Ethics* (New York: Continuum, 2003), 92.

<sup>10</sup>On 7 June 1985 the *National Catholic Reporter* published a lengthy report on cases of child abuse by priests in the United States. The report was bipartite: Arthur Jones, "Legal Actions against Pedophile Priests Grow As Frustrated and Angry Parents Seek Remedies" (4–6) and Jason Berry, "Pedophile Priest: Study in Inept Church Response" (6, 19–21). Chief researcher for both parts of the report was Jason Berry, who subsequently expanded and updated it at book-length (*Lead Us Not into Temptation* [New York: Doubleday, 1992]).

<sup>11</sup>Daniel Pilarczyk, "Painful Pastoral Question: Sexual Abuse of Minors," *Origins* 22 (1992): 177–78.

sexual abuse of a minor is far more than a moral lapse,” indeed a psychological compulsion as well as criminal behavior.<sup>12</sup>

Announcing the same study, Bishop Michael Jarrell of Lafayette, Louisiana, issued a statement apologizing to all victims and their families who had been hurt both by sexual abuse of priests and by “lack of response” on the part of Church officials. The officials, he said, had sometimes been “unaware of the serious consequences of abuse” and “insensitive to the suffering of victims and their families” and, moreover, possibly “too concerned about the image of the Church.”<sup>13</sup>

A report about clerical sexual abuse of children in the local church that Cardinal Roger Mahony submitted to the Archdiocese of Los Angeles in 2004 stated: “This painful story begins with the Church’s misunderstanding of the nature of the problem. The Church treated clerical sexual abuse primarily as a moral weakness and a sin. For years this misunderstanding underlay ineffectual policies for dealing with abuse of minors.”<sup>14</sup>

In the several legal depositions of Cardinal Bernard Law in 2002 and 2003 there are many indications of how a Church official had in the past perceived the sexual abuse of a child by a priest. Asked in one deposition what practices with regard to a priest’s sexual molestation of boys he had in place at the beginning of his tenure (1984) as Archbishop of Boston, the cardinal responded:

Obviously I viewed it as something that had a moral component. It was, objectively speaking, a gravely sinful act. And that’s something that one deals with in one’s life, in one’s relationship to God. But I also viewed this as a pathology, as an illness, and so consequently . . . my . . . modus operandi was to rely upon those whom I considered . . . to have an expertise . . . in assessing what it is that this person could safely do or not do.<sup>15</sup>

Asked in a later deposition how long the Boston Archdiocese’s policy with regard to this sexual abuse had had the protection of chil-

<sup>12</sup>Statement by Bishop Donald Wuerl, Diocese of Pittsburgh, 26 February 2004.

<sup>13</sup>Statement of Bishop Michael Jarrell on Charges of Sexual Abuse, Diocese of Lafayette, Louisiana, n.d. (announcing the 27 February 2004 release of the John Jay College statistical study), [http://www.dol-louisiana.org/abuse\\_statement.html](http://www.dol-louisiana.org/abuse_statement.html) (accessed 30 May 2007).

<sup>14</sup>*Report to the People of God: Clergy Sexual Abuse Archdiocese of Los Angeles 1930–2003*, 17 February 2004, page i. The report is found at <http://www.bishop-accountability.org/usccb/natureandscope/dioceses/reports/losangelesca-rpt.pdf> (accessed 16 September 2007).

<sup>15</sup>Deposition of Cardinal Bernard Law, Suffolk County Superior Court, Massachusetts, 8 May 2002. [http://www.boston.com/globe/spotlight/abuse/geoghan/law\\_deposition\\_5.htm](http://www.boston.com/globe/spotlight/abuse/geoghan/law_deposition_5.htm) (accessed 30 May 2007).

dren as its primary focus, the cardinal, referring to policy changes made after the scandal erupted in 2002, stated:

What I believe has changed, from my perspective, is that the overriding concern, the moving concern for any credible policy . . . that focus needs to be the protection of children. It isn't as though you don't deal with a priest who abused the child—that person has to be dealt with—but that person is dealt with through the prism of the protection of children. And so that limits what is done. And that's one of the reasons why our policy of assignment [of priest offenders] has changed.<sup>16</sup>

### *Parental Perception*

It is difficult to imagine an ordinary parent confronted with a priest's sexual abuse of any child perceiving the abuse primarily in ways Church authorities perceived it. Images of a parent viewing such abuse primarily as a priest's moral weakness and sin and pathology, or being unaware of serious consequences to the child of such abuse, or being insensitive to the suffering of the victimized child, or being overly concerned about the image of the Church, or not being mainly concerned about the victimized child and potential victims—such images of a parent do not come readily to mind. One can hardly imagine a normal parent perceiving such abuse as primarily anything other than a priest's extremely harmful sexual violation of a very vulnerable girl or boy. And had sexual abuse of a child been perceived by Church authorities as parents would have perceived it, the moral discernment on the part of Church officials of how to respond to allegations against priests undoubtedly would have been quite different from what it was.

Certainly the experience of parenting greatly influences a person's moral perception of matters having to do with children and young persons; and the celibate clergy, of course, generally do not have this experience. Nevertheless, direct personal experience is by no means a *sine qua non* for achieving authentic moral perception of basic human situations. If, then, the relationship to their children provides parents an advantage over celibates in perceiving the moral truth about sexual abuse of a child, a cleric's lack of direct experience of fathering and raising children does not explain his failure adequately to perceive the moral truth of the situation when confronted with this abuse. Nor does lack of parental experience account for why the inadequate moral perception of Church authorities assumed the particular form it in fact

<sup>16</sup>Deposition of Cardinal Bernard Law, Suffolk County Superior Court, Massachusetts, 5 June 2002. [http://www.boston.com/globe/spotlight/abuse/shanley/law\\_deposition.htm](http://www.boston.com/globe/spotlight/abuse/shanley/law_deposition.htm) (accessed 30 May 2007).

repeatedly did, namely, perceiving a priest's sexual abuse of a child primarily as the priest's moral weakness, sin, and (beginning in the later 1980s) pathology.

To account for why bishops responded inadequately in the past to allegations against priests of sexually abusing children, it has sometimes been pointed out—rightly—that in the not too distant past significantly less was known about pedophilia than is known today and that the advice concerning priest offenders given then to bishops by professional counselors and therapists was sometimes quite different from what professional advice would be now.<sup>17</sup> This indeed explains why the depth of the psychological and moral disorder of pedophile offenders—not all offenders were pedophiles—was not adequately recognized by Church authorities. Nevertheless, while it accounts—whether entirely or in part—for why a pedophile priest was not dealt with more justly and effectively, it does not account for why a victimized child or young person was not dealt with more justly and compassionately. Nor does it answer the more basic question already raised here of why the abuse was perceived primarily as a priest's moral weakness and sin rather than as a priest's very harmful violation of a child. Even more to the point, it does not account for why the evil was not perceived as a priest's harmful violation of a child and *therefore* a priest's moral weakness and sin.

What, then, is the heart of the difference between the clerical and the parental moral perception? In the former the evil of the sexual abuse appears simply as pertaining to the doer of the deed, the priest. It is the priest's moral weakness and sin—a matter for psychological and/or spiritual counseling and for sacramental confession. In the parental perception, on the other hand, the evil is the harmful way in which persons are in relationship to one another. It is the harm the priest does to the child—a crime of one person against another and against the social order, a matter calling for justice for the victim, punishment and rehabilitation for the perpetrator, and redress of the com-

<sup>17</sup>When the first edition of *The American Heritage Dictionary of the English Language* was published in 1969, the word *pedophilia* was not in its lexicon. Nor was it listed in the revision of the mid-1970s. Only in the third edition, from the early 1990s, did the term finally appear (Boston: Houghton Mifflin Co., 1969; 2nd college ed., 1976; 3rd ed., 1992). And until the mid-1980s the subject of child abuse was not part of the required training of mental health professionals in the United States; not one question in the national qualifying examinations dealt with the topic (John R. Quinn, "Scandals in the Church: Reflections at Paschaltide," *America* 168/12 [10 April 1993]: 5). With regard to child molestation and other compulsive sexual behavior, the late 1970s were still a time when there was insufficient documentation to support the concept of sexual compulsiveness as an addiction and when networks of help programs were not yet available (Patrick Carnes, *Out of the Shadows: Understanding Sexual Addiction* [Minneapolis: CompCare Publishers, 1983], i).



munity life. What is missing from the clerical perception and is of the essence of the parental perception is the presence of *the other*—the person affected by the doer—and of the community social order.

In Christian terms, the difference of perception is a matter of the visibility of the neighbor to be loved and of the kingdom of God to be built up. The lack of visibility in the clerical perception, ironically and tragically, was also the fundamental defect in the moral science in which clerics were educated before the Second Vatican Council. We turn, then, to examining moral theology.

### *III. The Nature of Moral Theology*

The era of moral theology was a time when generally only seminarians studied theology, and only priests preparing to teach in seminaries pursued doctoral studies in it. There were virtually no lay theologians in the Church. In the United States theology was taught only in seminaries, while Catholic colleges and universities offered courses in apologetics and ethics instead. Through their pastoral ministry, of course, the clergy communicated teachings of moral theology to the laity. Nevertheless, the science of moral theology formed directly only the clergy's perception of the Christian moral life.

If today it is readily apparent that moral theology did not and could not adequately disclose the truth of the Christian moral life, the discipline obviously was viewed very differently in its own day. The sin-centered, confession-oriented science was the only systematized theology of morality the Church had at the time. Virtue ethics had fallen into desuetude; a church tradition of social ethics would be initiated with *Rerum novarum* (1891) only very late in the era of moral theology and indeed separate from that discipline; liberation and feminist theologies were far in the future. And most importantly, Scripture itself was missing from its due place in Catholic life. In this historical context moral theology served—as its name indicated—as the theology of the Christian moral life. The content, structure, and method of a sin-centered discipline thus shaped the way in which the Christian moral life was understood in the Church.

Deontologically structured as moral principles and rules derived from the Decalogue, Church precepts, virtues, and sacraments, moral theology generated an understanding of the Christian life as the life of the commandments. Since through vows of poverty, chastity, and obedience in religious institutes, however, some Catholic women and men assumed additional obligations, another new, distinct discipline was created to treat what was considered a superior form of the Christian life, the life of the evangelical counsels. Moral theology was the science



of the ordinary Christian life of the commandments; ascetical and mystical theology was the science of the higher life of striving for Christian perfection.<sup>18</sup> Understanding the Christian life as the life of the commandments, moral theology was related directly and explicitly to canon law<sup>19</sup> rather than to Scripture, dogmatic theology, and spirituality and was accordingly fitted to a legalistic presentation of Christian life.

By the time of the Second Vatican Council some deficiencies of moral theology were recognized by many in the Church, largely because of pioneering reform efforts being carried out at the time by Bernard Häring.<sup>20</sup> Hence the council called for special care to be given to perfecting moral theology and making it more dependent on Scripture.<sup>21</sup> The council also rejected the dichotomous understanding of Christian life that underlay the division between moral theology and ascetical-mystical theology: “[A]ll the faithful, whatever their condition or state—though each in his own way—are called by the Lord to that perfection of sanctity by which the Father himself is perfect.”<sup>22</sup> Nevertheless, centuries-long, deeply rooted shortcomings of moral theology would continue to influence Catholic life and thought long after the council was over.

The inadequacies of moral theology originated, as noted earlier, with its nature itself, in the very definition of the discipline. Understood as the science of Christian morality and defined as a science of human acts in relation to God, their supernatural ultimate end, moral theology directly generated the false impression that Christian moral life is simply the series of individual acts it comprises and that it can be adequately understood in terms of them.

A second, no less serious deficiency of the restrictive definition flowed from the way in which the human act was understood in it. Human acts, in moral theology, were “acts which proceed from a freely

<sup>18</sup>Benedict H. Merkelbach, *Summa Theologiae Moralis: Ad Mentem D. Thomae et Ad Normam Iuris Novi*, 3 vols. (Bruges, Belgium: Desclée de Brouwer, 1954), 1:11–12.

<sup>19</sup>After the publication of the Code of Canon Law in 1917 some manuals of moral theology note their relation to the code on the title page or even, as in the previous note, as part of the title itself: *Summa of Moral Theology: According to the Mind of St. Thomas and to the Norm of the New Code*.

<sup>20</sup>The original German edition of Häring’s *The Law of Christ (Das Gesetz Christi)* was published in 1954 and went through three printings in its first year. It appeared in French the following year and soon afterward was rendered into thirteen other languages. The first of the three volumes in English appeared shortly after the beginning of Vatican II, in 1963, and the other two volumes soon followed.

<sup>21</sup>Decree on the Training of Priests (*Optatam totius*), art. 16, in *Vatican Council II: The Conciliar and Post Conciliar Documents*, ed. Austin Flannery (Collegeville, Minn.: Liturgical Press, 1975), 720.

<sup>22</sup>Dogmatic Constitution on the Church (*Lumen gentium*), art. 11, in *Vatican Council II*, 363.

acting will”<sup>23</sup> as distinguished from what were called acts of man (*actus hominis*), acts which do not depend on free will, such as involuntary thoughts and desires.<sup>24</sup> Since the human act was thus itself defined only in relation to a doer (an act of free will) and in the definition of moral theology was referred expressly only to God (as the ultimate supernatural end of human acts), in neither the definition’s material object (human acts) nor its formal object (the ordering of the acts to God) were *the other* and the social order visible. According to the definition of moral theology, therefore, Christian morality appeared to be the relationships of freely chosen acts to God, and moral theology appeared to be the science of those relationships.

### *Sin-Centeredness of Moral Theology*

As a science created to serve in the administering of the sacrament in which sins were to be confessed according to species and number, moral theology’s sin-centeredness was only the reverse side of its orientation to sacramental confession. Sin-centeredness was not a special concern with developing a theology of sin. On the contrary, moral theology treated a state of sin (“habitual sin”) only as the enduring presence in the soul of a past personal sin until remitted,<sup>25</sup> and it left to dogmatic theology the task of presenting a theology of original sin, while the category of sinful social structure remained unknown. The sin-centeredness of moral theology was, therefore, only a concentration on identifying the individual “actual sin”—defined as “the free transgression of a divine law.”<sup>26</sup> The purpose of moral theology, the science of human acts in relation to God as their ultimate supernatural end, was to distinguish acts against the law of God from lawful ones.

Since moral theology was created to distinguish sin from what is not sin, its understanding of sin was foundational to the entire thought-system. The lack of visibility of *the other* and of the social order in the definition of the discipline and in the discipline’s conception of Christian morality reflected the lack of this visibility in the understanding of sin at the heart of the discipline: sin is the free transgression of a divine law.

It is not possible, of course, for any science of morality to obscure

<sup>23</sup>Noldin, Schmitt, and Heinzl, *Summa Theologiae Moralis*, 1:42.

<sup>24</sup>*Ibid.*, 1:41.

<sup>25</sup>*Ibid.*, 1:274–75.

<sup>26</sup>Jone, *Moral Theology*, 46. See also, e.g., Eduardus Génicot, *Theologiae Moralis Institutiones*, 4th ed., 2 vols. (Louvain, Belgium: Polleunis & Ceuterick, 1902), 1:136: “a free transgression of divine law”; Noldin, Schmitt, and Heinzl, *Summa Theologiae Moralis*, 1:262: “a free transgression of the law of God”; Aloysius Sabetti and Timothy Barrett, *Compendium Theologiae Moralis*, 27th ed. (New York: Frederick Pustet, 1919): “a free transgression of any law binding in conscience.”

completely the reality of *the other* and of the social order. What can happen in an ethics, nevertheless, is that individualistic thought displaces that reality from the center of the science to a marginal place and thereby distorts the entire intellectual enterprise. In secular ethics the intrusion of individualism can be extreme, even to the point of celebrating *The Virtue of Selfishness*.<sup>27</sup> In religious ethical thinking a less radical individualism of self-perfectionism or legalism can distort its foundations, and it is legalistic individualism that displaced *the other* and the social order from the center of moral theology.<sup>28</sup>

There was, nevertheless, a strain of moral theology that remained closer to some of what was best in the Catholic intellectual tradition. The Dominican Benedict Merkelbach, for example, even though he was presenting a sin-centered science, defined sin as “a morally evil act” rather than in the generally accepted legalistic manner of the period.<sup>29</sup> Thomistic insight in moral theology, however, was overwhelmed by the predominant, legalistic doctrine, with the latter even being presented as if it were Thomas Aquinas’ teaching itself. In a very widely used moral theology compendium, for example, the following was the definition of sin (to which was appended a reference to Aquinas’ *Summa theologiae*): “Sin is commonly said to be a free transgression of any law binding in conscience, or according to St. Thomas following St. Augustine, a word, deed or desire against the eternal law of God.”<sup>30</sup> Suffice it here only to note that the compendium’s legalistic definition of sin, contrary to its authors’ intention, is not equivalent to the cited Augustine-Thomas definition. In the referenced *Summa* article, Thomas was using Augustine’s definition to show that “sin is nothing other than an evil human act.”

With the Second Vatican Council the age of moral theology—although not its residual influence—came to an end, brought about by an emergent different understanding of morality. This changed way of understanding morality was not simply another science of human acts to be substituted for the old one. Nor was it even a new science to fill the same place previously held by moral theology. It was, on the contrary, a way of thinking about the Christian moral life that, instead of

<sup>27</sup>Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New York: New American Library, 1964).

<sup>28</sup>For a masterful discussion of the legalism underlying moral theology, see Charles E. Curran, *The Origins of Moral Theology in the United States: Three Different Approaches* (Washington, DC: Georgetown University Press, 1997). Although this work is concerned mainly with the origins of moral theology in the United States, it places these origins into their context by first discussing the European beginnings and development of moral theology.

<sup>29</sup>Merkelbach, *Summa Theologiae Moralis*, 1:351.

<sup>30</sup>Sabetti and Barrett, *Compendium Theologiae Moralis*, 127. The reference added in the text is *Summa theologiae* I–II, q. 71, a. 6.

being a self-enclosed science, distinct and separated from the study of Scripture, spirituality, and systematic theology, was becoming once again what it was in Aquinas' *Summa theologiae*, namely a theological focus on the Christian moral life within an integrated theology.

In the aborning theology of the Christian moral life the distinguished Dutch theologian Piet Schoonenberg presented a reformed, historically conscious understanding of sin. Divine law, he noted, is not to be conceived according to the model of positive law; nor is God well-conceived on the analogy of a civil lawgiver. God's law is to be understood as "identical with the demands which [God's] creation and salvation make upon us—demands which are identical with creation and salvation themselves." Sin, therefore, is "the refusal to commit ourselves in a history of creation and salvation," and a sinner is one who "offends against what is demanded by his and his neighbor's being."<sup>31</sup>

The perception of a priest's sexual abuse of a child as primarily a priest's moral weakness and sin, then, corresponded with the inadequate, legalistic understanding of Christian morality and of sin cultivated in moral theology. There was, however, yet another important aspect of this discipline that was conducive to perceiving the sexual abuse of a child in this morally deficient way: moral theology's inadequate treatment of human sexuality.

#### IV. *Human Sexuality in Moral Theology*

The age of moral theology coincided with a period of Western culture when human sexuality was regarded very differently from the way it is regarded today. Sexual matters were not discussed publicly nor even mentioned in polite society. Secular society lacked adequate scholarly studies of sexuality, and the Church lacked an adequate theology of sexuality.

Just as moral theology functioned as the Church's theology of the moral life, so its treatment of sexual morality functioned as the Church's theology of sexuality. The seminary curriculum included neither a course in the theology of human sexuality nor a course in theological anthropology inclusive of the study of sexuality. The seminary's only systematized study of sexuality was moral theology's sin-centered, confession-oriented treatment of sexual acts.

Moreover, since moral theology's treatment of sexuality was focused on sinful sexual acts at a time when sexuality was not openly discussed, this part of the discipline was presented with some restrict-

<sup>31</sup>Piet Schoonenberg, "Sin and Guilt," in *Encyclopedia of Theology: The Concise Sacramentum Mundi*, ed. Karl Rahner (New York: Seabury, 1975), 1581.

edness. The course dealing with sexual matters was generally offered only to those seminarians closest to priestly ordination and the ministry of sacramental confession. Indeed, a moral theology manual used in many countries until after the Second Vatican Council excluded sexual matter altogether from its regular three-volume set and confined it to a small special supplement,<sup>32</sup> which was made available only when seminarians were admitted to the course on human sexuality. Thus, abetted by secular culture, moral theology promoted the impression that sexual matters in the Church are to be dealt with secretly.

Moral theology's sin-centered study of sexual acts, of course, was no more an adequate theology of human sexuality than was moral theology in general an adequate theology of Christian moral life. The first requisite of a reform of Catholic moral teaching about sexuality, therefore, was the creation of an authentic theology of sexuality, and in this respect as in so many others Bernard Häring led the way. Already in *The Law of Christ*, his ground-breaking magnum opus before Vatican II, Häring saw the need for a foundational theology of human sexuality as the basis for all ethical evaluation of sexual acts. How well he understood this prerequisite of Christian sexual ethics is evident in the series of theological topics that outlined the brief foundation he presented: the meaning of sex; love of God and fellowman evident in sex; meaning of sex in the life with Christ; sex as natural reality and moral commitment; sex in the light of salvation history; man and woman as God's image; meaning of sexual love; sexual instinct, eros, agape; agape and sex; moral obligation arising from sexual diversity in man and woman; and the esteem for woman in the Christian world.<sup>33</sup>

This significant theological contribution, nevertheless, was no more than a very small start, for the creation of a theology of human sexuality and its taking hold in the Church as the foundation of sexual morality naturally require a communion of efforts throughout the Church that far surpass the initial work of an individual pioneering theologian with his short pages on the subject. Still, Häring's insightful series of foundational themes constituted at once a list of essentials missing from a then-dying science and an agenda for creating a new way of Catholic thinking about sexuality within a renewed theology.

### *The Challenge of the Birth-Control Pill*

While history does not wait on the Church's theological agenda, it quickly presented a remarkable opportunity for the Church to move

<sup>32</sup>Noldin, Schmitt, and Heinzl, *Summa Theologiae Moralis: Complementum: De Castitate*, 34th ed. (Innsbruck: Felizian Rauch, 1952).

<sup>33</sup>Häring, *The Law of Christ*, 3:268–86.

ahead in creating theology and ethics of human sexuality. The public availability in 1960 of the newly invented birth-control pill confronted the Church with the challenge to rethink the moral question of regulating conception. At the time the creation of a theology of human sexuality had hardly advanced beyond Häring's recent start, to be sure; nevertheless, a year earlier Pope John XXIII had announced his intention to convoke an ecumenical council to prepare the Church for its mission in the modern world, and preliminary planning for the council was already under way. To meet the challenge of the birth-control pill and to advance the creation of theology and ethics of human sexuality the Church was clearly well positioned.

After the first session of the Second Vatican Council, to assist in the ongoing preparatory work of the council, the pope created the Pontifical Commission for the Study of Population, Family and Births—the commission that eventually came to be commonly referred to as the papal birth control commission.<sup>34</sup> It was a small commission, consisting of two physicians and four social scientists. Before the commission could meet for the first time, however, the pope died and was succeeded by Pope Paul VI. Without delay the new pope confirmed the commission, and they conducted their first session just months after Pope John's death in 1963. When the commission assembled again in the following year for their second session, there had been added to their number seven new members, five of whom were theologians. The commission met subsequently in three more sessions, before each of which their membership was again increased. Among the forty-three members added for the fourth (1965) session were a bishop and an archbishop, and those added for the fifth and final (1966) session were fourteen archbishops and cardinals, who with the two previously added prelates now were assigned the responsibility of making the determination of what advice to give to the pope.

Meanwhile, during the third (1964) session of Vatican II, as the council fathers were preparing to discuss the latest draft of the pastoral constitution, the council president informed them that “at the Holy Father's request, they were not to concern themselves with birth control morality in the document, since the Pope's special Commission

<sup>34</sup>For a journalistic account of the commission's work from beginning to end, see Robert McClory, *Turning Point: The Inside Story of the Papal Birth Control Commission and How “Humanae Vitae” Changed the Life of Patty Crowley and the Future of the Church* (New York: Crossroad, 1995). It is believed, according to McClory (41), that the pope had an additional reason for establishing the commission: the following year the World Health Organization was to hold its first conference on world population problems, and the pope wanted to be prepared for what might result from the conference.

would handle the subject.”<sup>35</sup> It was a fateful decision for both the council and the commission—not to mention the Church itself.

For the council the decision meant that, now lacking authority to respond to the theological and moral sexual question of the day, it was no longer in a position to advance the Church significantly in the task of creating theology and ethics of human sexuality. With regard to the commission the decision meant that they were now, instead of a commission to assist the council, in a certain respect a “paracouncil.” As the council was charged with determining theological and moral answers for the other major topics confronting the Church in the modern world—religious freedom, ecumenism, episcopal collegiality, the vocation of the laity, atheism, total war, international community, etc.—the commission was charged with determining the theological and moral answers to the sexual question challenging the Church.

If in one major respect the commission was like the council, however, it was very different from it in every other. The council was an assembly of official leaders of the Church throughout the world who in virtue of their office bore collective responsibility for forming and proclaiming the official doctrinal and moral teaching of the Church. They were gathered together with expert theologians as advisors. Their discussions and debates took place before Catholic, Orthodox, and Protestant observers, and regular press conferences were held with an international press corps to keep Church and world informed of the council’s progress.

The commission, on the other hand, was a small group of Catholics who were generally unknown to their fellow Catholics,<sup>36</sup> a group whose membership, as noted previously, was repeatedly altered and, in its final and decisive stage, became a small group of prelates deciding what advice to give to the pope. Within the council these prelates had shared in the role of those charged collectively to determine and proclaim the official teaching of the Church; within the commission they had the role of advisors to papal authority. And last but not least among differences between council and commission, the commission’s work was carried out from beginning to end in total secrecy.<sup>37</sup>

In the 1960s the culture of secrecy surrounding sexuality that marked moral theology still retained its power: bishops were keeping priests’ sexual crimes against children secret; seminarians were studying the morality of sexual acts from a booklet meant for their eyes only;

<sup>35</sup>Ibid., 58.

<sup>36</sup>For the list of commission members, see *ibid.*, 188–90.

<sup>37</sup>For a theological study of the process that ended in the creation of *Humanae vitae*, see Norbert J. Rigali, “On the *Humanae Vitae* Process: Ethics of Teaching Morality,” *Louvain Studies* 23 (1998): 3–21.



and the universal Catholic Church was seeking an answer to the theological and moral sexual question of the day through a secret process. The upshot of the commission's secret proceedings is well known: the issuance in 1968 of the encyclical *Humanae vitae* contravening the commission's recommendations—commission reports had been leaked a year earlier to the press—followed by a major crisis in the Church. The polarization in the Church generated in the crisis was never resolved.<sup>38</sup>

### *Adequate Theology and Ethics of Human Sexuality*

Only on the basis of the moral perception of the intrinsic meaningfulness and goodness of human sexuality can there be constructed an adequate theology of human sexuality, and only on the foundation of such theology can there be an adequate theological sexual ethics. These two principles are the important start that Häring established before Vatican II. And since it is only to the extent that the inherent meaningfulness and goodness of a human reality is perceived that one can perceive the inherent moral evil of what is contrary to it, perceiving the inherent evil of sexual sin—its power of human harm and tragedy—is rooted in the perception of the meaningfulness and goodness of human sexuality. The intrinsic evil of the sexual abuse of a child can be perceived, therefore, only to the extent that one perceives not a divine law against the abuse, but rather the meaningfulness and goodness of sexuality in persons' lives in general, the meaningfulness and goodness of children's sexuality in particular, and, consequently, the great sexual and personal harm done to a child by such abuse.

The meaningfulness and goodness of human sexuality, however, was rendered imperceptible at the very foundation of moral theology. As simply a science of human acts, moral theology had no place structurally for an authentic theology of human sexuality. As a legalistic, sin-centered science of human acts in which the visibility of *the other* and the social order was obscured, moral theology was further alienated from perception of the intrinsic meaningfulness and goodness of human sexuality. The discipline, therefore, was incapable of cultivating perception of the intrinsic moral evil of the sexual abuse of children. The moral perception of the sexual abuse of a child that the treatment of sexuality in moral theology was able to cultivate was only,

<sup>38</sup>At the 1980 Synod of Bishops Archbishop John Quinn of San Francisco proposed that the Holy See initiate a dialogue between the hierarchy and theologians to bring about "a meeting of minds" and an end to "an impasse which is so harmful to the church" (John R. Quinn, "'New Context' for Contraception Teaching," *Origins* 10 [1980]: 266), but the proposal was not accepted. See also the synod intervention of Archbishop of Cincinnati Joseph Bernardin, "Sexuality and Church Teaching," *ibid.*, 260–62.

again, a perception of moral lapse and transgression of divine law. The moral perceptions and discernments of Church authorities with regard to sexual abuse of children by priests, then, reflected not only moral theology's inadequate conception of Christian morality and of sin but also the discipline's inadequate treatment of human sexuality and the Church's lack of an adequate theology of human sexuality.

Moreover, the Church authorities' inadequate moral perceptions and discernments corresponded with moral theology not only in regard to their content but also in regard to their agents. The Church authorities' perceptions and discernments were perceptions and discernments of celibate male clerics, and moral theology was a science created and developed exclusively by celibate male clerics, taught exclusively by them, taught exclusively to male students preparing to become celibate priests, and oriented to the sacramental ministry of male celibate priests. Moral theology was thus not only male-centered, like the secular culture of its time; it was also celibate male clergy-centered. Only with the rise of modern feminism have the physical, emotional and sexual abuse of women and children found their way into public consciousness and concern and into Catholic categories of sin.<sup>39</sup> Moral theology did not treat these evils.

### V. *The Continuing Task*

The transformation of moral theology into theological ethics has long been established in contemporary theology, a transformation in which the locus of moral meaning and value is perceived as persons' relatedness through their acts to reality itself—the *other* and the social order in particular but including, too, the world of nature and things.<sup>40</sup> But its incorporation into Church practice proceeds slowly, as the many morally deficient responses of Church authorities to the sexual

<sup>39</sup>In the 1960s the term *battered child syndrome* became part of the American lexicon (*Random House Webster's College Dictionary* [New York: Random House, 1997], 113). Prior to the 1970s the term *child abuse* designated only physical mistreatment, whereas now it refers to physical, emotional, or sexual mistreatment of a child (*Encyclopedia Britannica Online*, <http://www.britannica.com/search?query=battered+child+syndrome&ct=&searchSubmit.x=0&searchSubmit.y=0> [accessed 14 September 2007]).

<sup>40</sup>Bernard Häring, for example, after having participated as a *peritus* at Vatican II, chose not to revise his earlier comprehensive study of moral theology, *The Law of Christ*, but instead to rethink moral theology around the main theme of creative freedom and fidelity in Christ and solidarity (*Free and Faithful in Christ: Moral Theology for Clergy and Laity*, 3 vols. [New York: Seabury Press, 1978–1981], 1:6). In his theology Charles Curran accomplished the transformation by replacing moral theology's deontological ethical model of understanding the Christian life with a “relationality-responsibility model” (Charles E. Curran, *Moral Theology: A Continuing Journey* [Notre Dame, Ind.: University of Notre Dame Press, 1982], 44–47). The relationality-responsibility model was an adaptation of the responsibility model proposed by H. Richard Niebuhr (*The Responsible Self* [New York: Harper & Row, 1963]).

abuse of minors have shown. And with regard to moral theology's treatment of sexuality, the twofold process of transformation and incorporation into Church life is marked by special difficulty.

Foremost among reasons for this difficulty is that while the entire discipline of moral theology was enveloped in legalism, a fundamental principle of moral theology's teaching about sexual matters took legalism to the extreme: "All directly voluntary sexual pleasure is mortally sinful outside of matrimony. This is true even if the pleasure be ever so brief and insignificant. Here there is no lightness of matter."<sup>41</sup> From the perspective of this extremist norm a theological ethics in which the morality of sexual acts is perceived primarily in a doer's relatedness to reality rather than in relationship to this foundational norm appears to be not only an ethical travesty but a spiritual disaster as well.

Secondly, since the moral theology of sexual acts existed within a context of secretiveness, the move to the open and frank discussion of sexual matters in today's theology is itself a radical change and can tend to magnify the already considerable differences between how moral theology perceived human sexuality and ways in which it is perceived in contemporary theology.

Thirdly, because human sexuality is deeply personal and indeed mysterious, and because the difference between perceiving the moral meaning of sexual acts primarily in their relation to clear-cut rules and perceiving it directly in a doer's relatedness to reality is no slight change in moral perception, the move from a legalistic to a realistic view of sexual morality can appear personally unsettling and threatening.

A fourth source of difficulty in transforming moral theology's treatment of sexual matters into an authentic theology and ethics of sexuality and in incorporating the transformation into the life of the Church is rooted in events surrounding the issuance of *Humanae vitae*. The development of the theology and ethics of sexuality that at the beginning of Vatican II appeared to be taking shape through an organic process in the Church as a community of life in the Spirit became channeled first into secret proceedings and then into the polarized stances of Catholics divided by opposite positions on the encyclical's central teaching. It is with the consequences of these infelicitous events that all subsequent work in developing the theology and ethics of human sexuality must now deal.

Difficulty, however, has not deterred the theological community

<sup>41</sup>Jone, *Moral Theology*, 146. When one considers that mortal sin is understood as an act by which a person is forever estranged from God and damned to everlasting punishment, ethical extremism appears blended here with theological extremism.

from the theological and ethical task.<sup>42</sup> With regard to moral practice, moreover, Church authorities have clearly made progress in responding to sexual abuse of the young. After the U.S. bishops' conference in 1992 established principles to be followed in such cases, "many dioceses and eparchies did implement in a responsible and timely fashion policies and procedures that have safeguarded children and young people."<sup>43</sup> But not all local churches did so. When scandal erupted ten years later, however, the bishops made further progress by creating and adopting a *Charter for the Protection of Children and Young People*. The child or young person and the social order, whose visibility had been previously eclipsed in their moral perceptions of sexual abuse, thus became in 2002 the official focus of the bishops' moral perceptions and discernments in dealing with a cleric's sexual abuse of minors.

### *The Charter*

The charter calls for local churches to have policies providing that "for even a single act of sexual abuse . . . of a minor—past, present, or future—the offending priest or deacon will be permanently removed from ministry."<sup>44</sup> Sexual abuse of a minor is understood as "an external, objectively grave violation of the sixth commandment" and includes "behavior by which an adult uses a minor as an object of sexual gratification." Therefore, it "need not be a complete act of intercourse" or "involve force, physical contact, or a discernible harmful outcome."<sup>45</sup>

Important as it is, the practical moral progress represented by the charter is nevertheless not enough to fulfill all relevant moral requirements. While in order for justice to prevail it is necessary to have, as the charter does, *the other* and the social order visible in moral perception and discernment, it is not sufficient. The locus of moral meaning and value is not simply *the other* and the social order; it is, rather, the doer's relatedness through action to this reality. And it is the locus of moral meaning and value—not simply some elements of it—that needs to be the focus of moral perception and discernment in order to arrive at truly just moral decisions.

<sup>42</sup>Among recent contributions are Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2006); Michael G. Lawler and Todd A. Salzman, "Quaestio Disputata. Catholic Sexual Ethics: Complementarity and the Truly Human," *Theological Studies* 67 (September 2006): 625–52.

<sup>43</sup>*Charter for the Protection of Children and Young People*, Preamble. The charter was approved by the U.S. bishops at their semiannual meeting in June 2002 and is at the website of the United States Conference of Catholic Bishops, <http://www.usccb.org/ocyp/charter.shtml> (accessed 16 September 2007).

<sup>44</sup>*Ibid.*, Article 5.

<sup>45</sup>*Ibid.*, note to Article 1.

In the generalized moral perception that leads to the charter's generalized discernment and decision to remove any offender permanently from ministry, although a victim and a social order are visible, it is the visibility of an offender's particular relatedness to a victim and a social order that is missing. The term *sexual abuse of a minor* is very broadly defined to include many very different kinds of acts and circumstances in which perpetrators are related to victims and to the social order in many very different ways. The charter disregards these differences and perceives the variety of acts and their circumstances simply as generalized sexual abuse of a minor and prescribes a generalized punishment of permanent removal from ministry.

The fundamental principle of penal justice, however, is that a punishment should fit the crime—not a generic concept of the crime. In reality there are essential moral—not to mention criminal—differences among the acts that in the charter coalesce simply into the generic category of sexual abuse of a minor. Essentially morally different, for instance, are the relatedness to his victim and to the social order of a cleric (priest A) who has raped a nine-year-old child and that of a cleric (priest B) who in a moment of intoxication thirty years ago was involved with a seventeen-year-old youth in “an external, objectively grave violation of the sixth commandment” that did not “involve force, physical contact, or a discernible harmful outcome,” an act soon repented and never repeated in the subsequent decades of the priest's faithful service to the Church. These two very different moral cases need to be perceived in their essential moral differences in order to discern a proper moral response to each of them.

In moral theology, as seen earlier, the visibility of *the other* and of the social order was lost in moral perception, eclipsed by a perception of a perpetrator's transgression of a divine law. In the charter the visibility of the perpetrator's real—i.e., specific and particular, not just generically conceived—relationship to the victim and to the social order disappears, obscured by a perception of the perpetrator's relationship to a human-made rule of zero tolerance.

What is being maintained here, of course, is not that the charter should not have established a long overdue rule of zero tolerance. The point is, rather, that a moral rule should express moral reality, not take its place. Clearly there is no place in the ministry of the Christian community for a priest who has raped a nine-year old child, and a rule of zero tolerance with regard to such an act accurately reflects the due relationship of every community minister to others and to the social order in this community. Another matter altogether, however, is the banning of priest B—whom no reasonable person can consider a threat to others—from his long and faithful ministry in a community called to

witness to God's mercy and forgiveness. The two permanent removals from ministry are no more essentially morally the same act on the part of Church authorities than are the two acts of sexual abuse essentially morally the same on the part of the offenders. That the one permanent removal from ministry is a morally right act does not mean that the other also is.

### *Well-ordered Church Life*

In well-ordered church life, as in the life of any community, some decisions should be predetermined in community policies while others should depend on a timely prudential judgment of a community leader, and community members trust their leaders to employ the kind of decision-making a particular situation calls for. With regard to the status of priest A in the Church there should indeed be a policy, just as in secular society there is a law with regard to his status there. With regard to the status in the Church of priest B, however, an appropriate decision-making process in a well-ordered Church requires only practical wisdom and prudential judgment on the part of a Church authority. And there is the rub, for at present the Catholic Church in the United States is not perceived by many of its own members as a well-ordered church.

After decades of wrongful moral responses to the sexual abuse of minors on the part of bishops, many U.S. Catholics have lost confidence in the ability of their Church leaders to make correct moral judgments in such matters. Acknowledging that they had a role in causing the pain and suffering of victims and their families and that they often failed victims and the Church community, the bishops recognize in the charter that they have forfeited the community's "bonds of trust," and they pledge to work toward the restoration of that trust, beginning with the actions represented by the charter itself.<sup>46</sup> The extending of a rule of permanent removal from ministry to every single act categorized as sexual abuse of a minor is thus seen by the bishops as part of their effort to have the Church's trust in them restored. That trust, however, cannot be restored through a rule that disregards essential moral differences. It must be earned through the long and difficult work of creating authority in the Church that is perceived as dealing wisely and justly in both its policies and its prudential judgments with victims and offenders alike.

Besides its undifferentiated application of a zero-tolerance policy there is another imbalance in the charter that prevents it from adequately representing justice and being an apt instrument for restoring

<sup>46</sup>*Ibid.*, Preamble.

“the bonds of trust.” Although they begin the charter by acknowledging that they share responsibility with priest and deacon offenders for the terrible suffering of the victims of sexual abuse and their families and for the harm done to the Church, the bishops proceed to call for the extreme penalty of permanent removal from ministry for all priest and deacon offenders without even suggesting that bishop wrongdoers should be punished in any way whatsoever for the suffering they have caused victims and their families and for the harm they have done the Church. (While canon law does not authorize bishops to penalize another bishop, the point is not about prescribing penalties but about bishops recognizing and acknowledging that grave harm done by them, like that by priests and deacons, should be punished.) There is a great imbalance indeed in bishops decreeing that priest B—and deacon B—be permanently banned from ministry while indicating no concern at all that a bishop be penalized in any way for even the most egregious wrongdoing on his part, such as that in which the scandal originated.

Much moral progress has been made in the Church; the work needs to continue.