

□ CHAPTER TEN □

*Learning to Reason Well:  
Moral Theology Since Vatican II*

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THREE CONTRIBUTORS TO this collection write about the role of the Church as she faces the social issues of our world today: David O'Brien, William McDonough, and Anthony Cernera. In many ways they rely on the great conciliar document *Gaudium et Spes*, which gave to the Church a vision for addressing social issues. But the Second Vatican Council gave no such vision for the field of moral theology. As a matter of fact, the only thing that the Council said was a practically passing remark made in the document on priestly formation: moral theology "should draw more fully on the teaching of the Holy Scripture and should throw light upon the exalted vocation of the faithful in Christ and their obligation to bring forth fruit in charity for the life of the world" (*Optatam Totius* 16).

Moral theology changed dramatically after the Council, not because of any direct intervention by the members of the Council, but rather because of the moral theologians who began changing during the years of the Council.<sup>1</sup> Only one issue was raised at the Council, and that was soon remanded to a commission: birth control. That commission, operating under the spirit of the Council, met up with another part of the Church that could not conceive of change in Church moral teaching. Though the commission's report was rejected by the Vatican, eventually its major concern, to help families to reason well in making moral

decisions, became clearly inserted into the Church's life. It is to that legacy that I now turn.

To acknowledge that legacy, I want first to discuss how I as a moral theologian reason, and then I look at four other topics: moral theology before and after the Council, prudence (the virtue of reasoning well), casuistry (the method of reasoning), and cooperation (a way of reasoning well in a pluralistic society).

### How I Reason

I am a Jesuit Casuist.<sup>2</sup> These words spoken even ten years ago would have been embarrassing to utter, for on two occasions Jesuit casuistry was repudiated. First, when Blaise Pascal wrote the *Provincial Letters* in the seventeenth century and devastated the Jesuits with ridicule and second, immediately after the Second Vatican Council, when moral theologians threw out the manuals of casuistry that they had written during the last two centuries.<sup>3</sup> In the first instance, Jesuit casuists were depicted as charlatans who did nothing but water down the demands of the Gospel and lead their faithful into perdition.<sup>4</sup> In the second, they were considered simply out of date.

Casuistry is the study of cases, and the word cases is derived from the Latin *casus*, which means "what happened."<sup>5</sup> Most of our interesting TV shows use cases in order to engage the audience. If they want to discuss big topics like abortion, euthanasia, or homosexuality, they don't ask us, "Do you think abortions are always wrong?" — that is, they don't ask us a big general question. Rather they give us a concrete case, a story of what happened to this particular woman who fell into a coma four months after becoming pregnant. After two months in the coma, the doctors are convinced that the woman's condition has worsened to an irreversible state — that is, that she has slipped into a persistent vegetative state from which it is impossible for her to return. Her husband, in deep denial, wants her to stay on the life support machinery, even though the doctors all agree that any life support for this woman is useless. Nonetheless, the doctors wonder whether they should heed the husband's request, not because his hope is reasonable, but so as to bring the fetus to term. The

woman's sister, aware that her sister's life is effectively over, sees what is happening and demands that her family be allowed to bury her sister rather than leaving her as some unliving incubator.

That's a case. It's not about every instance of abortion, but about one specific instance of protecting life in the womb. It does not pretend to deal with all cases as similar. On the contrary, it is so filled with circumstances that we can only think of the case at hand. Watch *Homicide*, *ER*, *Chicago Hope*, *Law and Order*, and so on: they all rely on cases. I will return to this topic later, but I need to first state who I am: that is, a casuist. I am a moral theologian who is more at home in the particular and the real, rather than in the general and the abstract.

### Moral Theology: Before the Council

I turn now to the next topic: moral theology, and I do so because I want to consider the most important shift in moral theology in this century. This shift concerns not a topic like intrinsic evil, or proportionalism, or the growing exercise of papal teaching, but simply the role of the moral theologian. Though much has been done to describe the change in the moral theologian *vis-à-vis* the Magisterium, I want to describe the change in the role of the moral theologian *vis-à-vis* the People of God.<sup>6</sup> This role has shifted from being judge or arbiter to being teacher, and despite this enormous shift, I believe that no one has noted it. And yet, it has had an enormous impact on the way Catholics think about morality.

After the Second Vatican Council, the late great French theologian Yves Congar argued that the greatest shift concerning authority in the Catholic Church was that the *quod* (the what) replaced the *quo* (the who).<sup>7</sup> For example, before the Council, if anyone heard a particular teaching and wanted to know how much authority to attach to it, one asked, "Who teaches this?" If the answer was "Pope Pius IX" or "Cardinal Tisserant," then it was considered true and to be held. Likewise, if it was a particular moral teaching and someone answered, "The Gregorian Professor, Father Josef Fuchs," it was also considered true. Roman moral theologians, like popes and cardinals, had a great deal of authority,

and they determined whether particular courses of action were right or wrong.

In fact, many people mistakenly believe that the only ones who taught moral theology or condemned moral theologians were popes. However, as a matter of fact, both papal teaching and their occasional condemnations are relatively new phenomena. We do well to remember that of all the major theologians of the Church who shaped the tradition — Clement, Jerome, Augustine, Gregory, Peter Lombard, Bernard of Clairvaux, Abelard, Albert, Bonaventure, Aquinas, Suarez, and Newman — only one was a pope. Likewise, the faculty of the university of Paris probably condemned more people in the thirteenth and fourteenth centuries than the Vatican has in the last two centuries.

The authority of the theologian, Roman or otherwise, was particularly strong in this century.<sup>8</sup> Since truth relied more on the “who” than on the “what,” American Roman Catholics looked to their own moral theologians to determine the answers to their moral questions. To assist one another, these moralists met together annually to discuss cases and to consider questions that others raised. Then listening to one another, they espoused their own individual and collective opinions in various subsequent forums. But they were as vulnerable to the priority of the “who” as was everyone else.

One tale that I have often heard recounts a meeting of American Jesuit moral theologians in the mid-1960s, where they discussed, among other things, birth control. Canvassing the room, one after another declared that artificial birth control was never permitted. However, the last one remarked that he had heard that “The Gregorian Professor Josef Fuchs” was changing his mind on birth control. Then they went around the room again, and several gave other instances when artificial birth control would be permitted!

From roughly the eighteenth to the twentieth century, these meetings were not uncommon. These moral theologians decided what was right or wrong. They wrote in large textbooks or what they called “Manuals” for which reasons they were subsequently called “manualists.” In these manuals, they gave their opinions about all sorts of actions, from worshipping God, paying taxes,

masturbating, stealing and killing, to unfair prices. You name it, and they had an opinion on it.<sup>9</sup>

In seminary, local priests were taught these manuals. When those priests came to the parishes, they in turn taught from the pulpit, in the schools, and in the confessional what the moral theologians had written on all these matters. The laity learned from the priests. As the years went by, moralists updated their positions by adding new circumstances and offering new decisions that were published in later editions of their manuals.

One way that these moralists learned about new circumstances was through the laity. The laity were so familiar with the variety of theological decisions that they often wrote into their local diocesan newspaper asking circumstantial questions that were answered by the paper's own or another's syndicated columnist. This columnist, of course, relied on a noted moral theologian, and so the questions raised on the diocesan level were often eventually picked up by some moralist of note. Moreover, the columnist may also have put together a collection of letters received and answered. In other words, this system of moral deliberations and promulgated judgments was effectively a cottage industry.

Notice the overall demeanor of the parish priest and the laity. They simply wanted to know what the moral theologian permitted or prohibited. The attitude was not to read what the moral theologian wrote, but simply to find out his decision. No one during all these years wrote any book called *You Can Reason Okay*, *I Can Reason Okay* or *Ten Steps to Reasoning Well*. In fact, an essay like this one would be unthinkable. A Jesuit casuist would never teach you the method of casuistry basically for three reasons. First, because moral theologians did not believe that average persons were capable of moral reasoning about serious topics.<sup>10</sup> Moreover, they were convinced that the Church should have a universal teaching on most issues and that moral truth and moral teaching were not served well by people claiming different solutions.<sup>11</sup> Third, most of the material with which they dealt concerned whether a particular activity was a sin or not. What was not a sin was usually permitted.

This third point is very important. Moral theologians made decisions about what was sinful and what was not. They did not

consider what was a better action than another. They simply determined what was sinful. If it was not sinful, it was permitted. No one, I repeat, no one of these moral theologians was interested in recommending positive courses of action. Instead, they simply wanted to help the priest and in turn the laity find out what activity was safe and what was not. This absence of any positive recommendations is striking. Moralists did not recommend that we should be nice to our roommate, that we should develop self-esteem, that we should join JVC. In 1908, Thomas Slater, the first moral theologian to publish a manual in English, wrote in his preface:

Here, however, we must ask the reader to bear in mind that manuals of moral theology are technical works intended to help the confessor and the parish priest in the discharge of his duties. They are as technical as the text-books of the lawyer and the doctor. They are not intended for edification, nor do they hold up a high ideal of Christian perfection for the imitation of the faithful. They deal with what is of obligation under pain of sin; they are books of moral pathology. They are necessary for the Catholic priest to enable him to administer the sacrament of Penance and to fulfill his other duties.

After talking about how spiritual or ascetical theology is the study of the "lofty ideals of life," Slater adds, "Moral theology proposes to itself the humbler but still necessary task of defining what is right and what is wrong in all of the practical relations of Christian life."<sup>12</sup>

Until the Second Vatican Council, the moral theologian then determined what was permitted and what was prohibited in nearly every area of life. The laity may have understood to some extent how these theologians reasoned. But they were never taught this. Instead they were taught what the bottom-line verdicts were.

### **Moral Theology: After the Council**

After the Council, however, if one wanted to know how much authority to attach to a position, the question was not,

“Who said it?” but rather, “What are the reasons for it?” That shift from the who to the what was a shift from obedience to reason. After the Council, we considered it more important to use right reason ourselves, rather than simply to give assent to people who held a particular place of authority. This shift was a return to Thomas Aquinas’s insight that right reason, not a person sitting in a particular office, was the source of truth.<sup>13</sup>

At the Council, moral theologians were charged with the task of developing a moral theology that was nourished by the Scriptures and that would encourage all people to follow in the footsteps of Christ. Two theologians, Bernard Häring<sup>14</sup> and Josef Fuchs,<sup>15</sup> did much to advance that, but soon after these initial movements, Pope Paul VI presented the encyclical *Humanae Vitae*, the birth control encyclical. That encyclical prohibited artificial birth control but permitted the natural family planning method. (Note, please, that while moral theologians have changed their self-understanding from being judges to being teachers, other moral teachers, like bishops and popes, have not adopted that model.)

In the encyclical, the Pope thanked the commission that had studied the issue but acknowledged that he could not accept its majority report. About this commission, it is helpful to remember that during the Council, Pope John XXIII appointed theologians, physicians, bishops, and married couples to study whether birth control was always wrong. When Pope Paul VI was elected, he decided that the commission needed to be toughened; some of its existing members seemed too open to the possibility of changing the teaching on birth control.<sup>16</sup> Thus he appointed several cardinals and several moral theologians, including Josef Fuchs, who at that time was, like most moral theologians, against birth control. One of the most important things that happened on that commission was that Fuchs and others changed their minds. In fact, Fuchs later became the chairman who authored the majority report, which all but four or five of the more than forty commission members approved. That report argued that the decision of how to regulate the birth of children ought to be left to married couples.

Fuchs and the others changed their position because they heard the testimony of married people talking about their

struggles and about their moral reasoning. This had an enormous impact not only on the topic of birth control, but — even more important, in my opinion — on moral reasoning. Fuchs no longer saw himself and others as the judges or determiners of what was right or wrong. Rather, in listening to these married couples who suffered from the determination of earlier moral theologians and who were forced to reason on their own, Fuchs heard that adult Catholics could indeed reason morally.

Fuchs then began writing essays not on what was right or wrong, but rather on what was right reasoning and, more important, on the primacy of the conscience and its responsibility to reason rightly. That is, he no longer wanted to be a prohibitor or a permitter of particular actions; rather, he wanted to be a teacher who helped all people — priests and laity — to reason well.

That has been an enormous shift. For instance, Fuchs never said in the majority report that married couples are *permitted* to practice birth control; rather he said that married couples must decide how morally to regulate births in their family. This is a key shift in moral instruction. Thus it is jarring for moral theologians today to hear people say things like Charlie Curran or Dick McCormick say it is okay to use birth control or things like that. Curran and McCormick, like the rest of us, gave up the role description of permitter or prohibitor. Rather we are now engaged in trying to teach others in the Church how we think one can reason and judge well. We do this by looking at method, but also by looking at our tradition and teaching it, especially those moments, like the patristic period and high scholasticism, that aimed to help ordinary people understand the Scriptures and its call to form and follow the conscience.

Of course, not every one agrees with us. The Irish Jesuit Bart Kiely argues that humans are so dysfunctional that moralists are irresponsible when they recommend to others that they should reason for themselves. Better, he argues, that we simply reiterate time-honored prescriptions that more or less keep us from worsening the state of affairs. He has some legitimacy here. Just think of how some of our best friends reason; or better yet, think of how we reason about things on occasion.<sup>17</sup> Others, like Pope

John Paul II, wonder as he did in *Veritatis Splendor* whether we are becoming relativists. That is, he wonders whether we are suggesting to people not that they should reason well, but that they should do whatever they want. In many ways, moralists have painstakingly tried to answer these charges and have shown that we are interested in right reasoning.<sup>18</sup> Still others simply presume we have given away the store.

Our task since the Second Vatican Council has been to help others to reason rightly. Moreover, besides giving up our rôle of judging others' actions, we no longer think of morals as simply avoiding sin. For the most part, we conceive of morals as what the Council commanded us to do: moral theology "should draw more fully on the teaching of the Holy Scripture and should throw light upon the exalted vocation of the faithful in Christ and their obligation to bring forth fruit in charity for the life of the world" (*Optatam Totius* 16).

### Prudence

On this note then, hopefully, we can appreciate the third concern. We moral theologians are effectively concerned with teaching the virtue of prudence. Now many think of prudence as self-interest. One sees a jacket hanging up at J. Crew and goes to put it on his credit card. His best friend, knowing that the guy is unable to pay for his food bills, asks, "Is this prudent?" In a good deal of contemporary language, the word "prudence" is used to inhibit us from acting. It is commonly used in phrases like "Are you being prudent?" which means "Are you going to regret having done the action that you seem bent on doing?" This use of prudence is peculiar, because Thomas Aquinas<sup>19</sup> and Aristotle<sup>20</sup> both considered prudence as the virtue that helps us move forward by setting reasonable goals.

One reason why this negative interpretation of prudence developed seems to be the result of what we thought of as moral theology — that is, as avoiding sin.<sup>21</sup> If the main task of moral theologians was to warn us against sin, then what they did was "prudence." Prudence kept us from doing the wrong. But Aristotle and Aquinas viewed ethics as not the avoidance of the

wrong but as the pursuit of virtue; for them prudence is the virtue of reasoning well about practical matters.<sup>22</sup> It is not at all theoretical; rather prudence is about planning to act.<sup>23</sup> The prudent person is one who sets goals. Prudence is what each of us needs in order to anticipate tomorrow: we need to know what courses to take, what programs to get degrees in, what schools to apply to. All these future-oriented activities are exercises in prudence.

Let me then summarize the two steps that we have taken: first, moral theologians no longer believe that moral theology is about determining which actions are right and which are wrong; rather it is about teaching others how to reason well. Second, the virtue of reasoning well is prudence, which looks to see how we can grow into more virtuous persons.

In light of all this optimism, let me register a bit of realism before moving on. It was believed throughout the medieval period that the majority of people were going to hell. This is a presumption that dominates from the fourth century almost until the Vatican Council II. Today, however, we seem to believe not only that everybody is going to heaven but, worse, that everyone is good. Certainly, believing that everyone is going to heaven may well be a right understanding of the Scripture. After all, revelation does refer to universal salvation and, more important, stresses the depth of God's mercy. Thus, by God's doing, we may all be going to heaven. But believing that we are all good is ridiculous, for then we believe that we are all going to heaven by our own doing.

I cannot help but believe that this presumption in universal goodness is simply another reaction to three centuries of moral theologians' doing nothing but talking about sin and sinners. It is as if we rejected them without realizing that we may be going irresponsibly to the opposite extreme. I have no idea of when any of us are bad or good.<sup>24</sup> Indeed, I have no idea of whether I'm good, although it is my particular hope that God will call me to eternal life. But I do think that we should avoid presumption and that we do well to recall the words of St. Paul, later echoed by Søren Kierkegaard, that we are called to work out our redemption with fear and trembling.

Thus, as we turn to the exercise of moral reasoning, we need

to act responsibly, not only because we should be concerned out of love for our neighbor, but out of concern for our own consciences, for which we will be held accountable. Saying that, then, let me turn to a particular way of developing prudence, which is through right moral reasoning, and here is my fourth topic, casuistry.

### Casuistry

I turn to casuistry, not as an indulgent judge, but as a teacher of prudence. Instead of discussing broad rules or general theories, we need, as in television shows, to see cases in order to reason well. We need to consider Mary, who has a difficult pregnancy on *ER*, or Louise, who assists her cancer-ridden husband Joe commit suicide on *NYPD Blue*, or the priest who knows the identity of a murderer on *Homicide*. On these television programs, we see people dealing with a case. Rather than simply turning to a rule — for example that a woman has the right to decide about her pregnancy in the first two trimesters of her pregnancy — *ER* is going to raise some complications that make applying the rule difficult. In other words, *ER* will introduce a number of circumstances that will make us ask ourselves whether “a woman’s decision” is the only thing we should be considering. The circumstances will present some doubt. That is exactly what will happen on all the other programs: *NYPD Blue* may presume that all illegal killing is always wrong but will nonetheless ask whether Louise should have helped kill her husband; the police on *Homicide* will ask the priest whether he should ever break the seal of confession. All the shows will give us a strong enough case that its circumstances will produce a doubt about whether the rule applies.

That doubt is key. It is the same doubt that made Josef Fuchs rethink his position on birth control. Hearing all the different objections to the teaching on birth control, he recognized that some circumstances placed his position in doubt. When a rule is placed in doubt, what should we do?

Over the past ten years, a number of writers have urged us to investigate the way casuistry was done in the sixteenth and seventeenth centuries. One reason for that is that the casuistry

done from the eighteenth to the end of the twentieth century was fairly simplistic. In those more recent centuries, casuistry was no more than taking a rule and applying it to a case. Thus, to the rule that all lying is a sin, one could propose the case of lying to protect a life. The moral theologian solved the problem by simply applying the rule to the case, asking, "Are you in fact lying?" If you said, "Yes," then the theologian referred you back to the rule. Certainly there were some exceptions, but for the most part, the rule remained firm, and cases were solved by directly applying the rule deductively to the case.<sup>25</sup>

In order to explain the casuistry of the sixteenth and seventeenth centuries, it is helpful to see that it was not unlike the way families reason today. Indeed that method of reasoning is similar to casuistry and is precisely why we find these TV shows so engaging. For instance, consider when little Johnny asks why his sister Mary got more allowance this week. The child is asking what happened to the rule that brothers and sisters get the same allowance. Johnny is basically comparing his case against his sister's and notices a difference. He went to the rule and found an inequity. He wants an explanation to find out what makes his case different from Mary's. His mother may answer, "Because Mary babysat for us." Notice how she answers him the same way he asked, by comparing the situations or cases inductively.

One rule that children understand is the rule of fairness. They think that everyone should always get the same. They are vigilant about this: at Christmas, birthdays, family feasts, and weekly allowances. Watch their expectant faces. Any departure from the rule causes enormous problems that are only offset by another's offering reasons for why one case is not the same as another. Thus parents do not explain rules, but turn to cases: They try to explain the differences by looking to the circumstances in each case that prompt different treatments. "Mary got an expensive guitar because you got sixteen small presents." "Johnny can stay up late because he did well in school."

Likewise, students do the same. How many professors have faced a student who is asking, "By why did I get this grade; Johnny did the same work?" Such utterances are extraordinary. But whenever we are to justify our grading, we usually compare

the student's work before us with another work. And usually we make sure that the other paper to which we compare this one is excellent. Notice, here, how this other student's paper becomes the norm, the standard.

Casuistry appears then whenever there is doubt and whenever there is need to explain or illustrate some standard. The need to find another standard arises because an existing rule either does not exist or is inadequate to resolve the doubt or to set the standard. In sum, casuistry emerges as a method of moral reasoning whenever extraordinarily new issues materialize.

The reason why casuistry was developed and practiced in the sixteenth century was precisely because of this newness. In their very important work, *The Abuse of Casuistry*, Albert Jonsen and Stephen Toulmin describe the new issues in the public and private arenas of life that prompted the birth of high casuistry.<sup>26</sup> In the public world, Europeans, through the explorations of the New World and their trade with the East, could no longer accept the older moral guidelines of the past. For instance, in 1237 Pope Gregory IX declared that maritime insurance was a form of usury and morally wrong. But at the beginning of the sixteenth century, a prohibition against underwriting expeditions to the West and the East was unthinkable. No one could afford this teaching, and the teaching was considered dated. Thus, merchants petitioned faculty members of the University of Paris to render new decisions on the pope's decretal. Instead of taking the rule that Gregory offered — that is, that all usury is wrong and maritime insurance is a form of usury — the faculty responded to the doubt with a new standard, the case. They responded by asking whether the case of an insurer's guaranteeing the arrival of the worth of a cargo was any different from the case of the captain of a ship who secures the arrival of the cargo. Thus, the question became a case and was placed against another case that described a standard — that is, an already validated moral activity. By showing congruency between the two, these writers provided new ways of circumscribing the decretal, distinguishing insurance from usury and proposing ethical grounds to legitimate the insurance.<sup>27</sup> Casuistry was used to liberate institutions from normative determinations that did not keep pace with other developments.<sup>28</sup> But with this freedom came

the need for new expressions of moral guidance, and thus casuistry also provided those bankers, merchants, missionaries, explorers, and princes bent on expansionism with a new inductive method of moral logic to navigate the unfamiliar waters before them.

Sometimes the newness of moral dilemmas in the sixteenth century was not occasioned by expeditions. Religious and political conflicts in England at the end of the sixteenth century raised questions that at earlier times were unthinkable: Could a priest lie about his identity? Could one take an oath and not keep it? Could a Catholic landowner contribute to a “heretic” church? There were few principles that addressed these questions, and those that did were ill-equipped to answer them. But much like those at the University of Paris, these English writers sought to reexamine previous teaching by invoking not principles but rather cases and to make distinctions that were not current in earlier years. A prime example was whether there was a distinction between lying and pretense, and the case that enabled them to entertain this distinction is the pretense of the risen Christ who acted as if he meant to go on rather than to stay with the disciples at Emmaus.<sup>29</sup> In other words, since the risen Jesus used pretense so could priests.

In the face of antiquated principles, sixteenth-century ethicists, attentive to the newness of contemporary projects, turned for guidance to cases, circumstances, new distinctions, and analogous logic; likewise, we stand at the end of the century facing the new horizons of medical advances, international business, the geopolitical world, and information technology with an unimaginable set of new ethical questions, and many urge a return to casuistry. The times are similar, for ethicists and historians revisiting this material are struck by the resemblances: new questions, new meetings between people of diverse religious and cultural backgrounds, weak principles, a time bent on expansionism, and most important, a world where the advances in other fields outpace those in ethics. For these reasons, casuistry makes a comeback today.

### Cooperation

One particular issue in casuistry is the question of whether I can help someone do something wrong. It is the case of

cooperation, my final topic. As I mentioned earlier, English casuistry dealt with a series of questions never before raised in ministry. These questions and cases were raised, answered, and published at the end of the sixteenth century. Their concerns fall into one of two topics. Either it settles cases for how priests who are secretly infiltrating England should act: what they may wear, where they may say Mass, how they may refrain from bringing certain items of piety with them, and so on. Or it concerns what lay Roman Catholics may do in light of the fact that they are a diminishing group with less and less power and yet have to contend with normal affairs of land, property, taxes, government, and worship. Thus, could an innkeeper serve meat to a demanding customer on a Friday? Could she house a member of the institutional Church? Could she pay the Church tax? Could she attend those Church services, and so on? All these cases were about cooperation.

Eventually, a principle of cooperation was articulated that expressed some of the common features among these cases. Let me repeat that. Eventually, a principle of cooperation was articulated that expressed some of the common features among these cases. We must realize that principles like cooperation, double effect, and toleration did not come out of thin air. Nor did they precede the cases about cooperation, toleration, or double effect. The opposite is true. After years of solving cases that were all about cooperating with people in wrongdoing, a principle of cooperation was articulated. After years of considering cases that had two effects, one right, the other wrong, moral theologians articulated the principle of double effect. After years of treating cases of toleration, the principle of toleration was articulated. Cases preceded principles, and after years of treating similar cases with similar conclusions, moralists found common features among the cases and formulated the particular principles. Principles derived from the right solution of concrete cases; those right solutions ground today's principles.

I am giving you an abbreviated treatment of what I and others like John Kekes and Martha Nussbaum have developed elsewhere.<sup>30</sup> But what we argue is that principles are summary explanations of long-term casuistry. Thus, some may think that an

appeal to principles is always more sophisticated moral reasoning and that, for instance, Johnny's mother is using a pretty primitive type of moral reasoning in explaining apparent inequities in allowances. But as a matter of fact, Johnny's mother's use of comparative cases — that is, her inductive moral reasoning with Johnny — is the stuff that principles are made of:

The manualists of the eighteenth to the twentieth century used cooperation frequently, but it is only during the last five years that the principle has received contemporary American Catholic attention. This should not surprise us. Why? Because moral theology is no longer about avoiding sin, but rather about following in the footsteps of Christ. Thus, if moral theology is no longer about avoiding sin, it is no longer about playing it safe.<sup>31</sup>

Cooperation made its first recent appearance when the National Conference of Catholic Bishops considered the following case: What should a health care worker in a Catholic facility say when faced with a person who has recently tested HIV-positive and who insists that he will not be sexually abstinent? In the face of his refusal, should she become silent, or should she refer him to the common good and recommend that he take steps to protect it by using a condom? Let me illustrate the argument by making the case more specific — that is, the man who is positive is not a married man talking about relations with his wife, but a gay man talking about sex with a variety of different men.<sup>32</sup>

The first thing that we must do regarding cooperation is distinguish the activity of the person doing the wrong action from the activity of the person cooperating. The gay man is intending to engage in activity that the Church teaches is unethical: it teaches sexual activity outside of marriage is not permitted and that all homosexual activity is always wrong. It may be worth noting that there are many moral theologians who look at homosexual relationships from a variety of perspectives; however, in the case at hand, we have an employee in a Catholic institution. Thus, regardless of her own particular beliefs about the moral rightness or wrongness of homosexual activity, the question here is what ought the health care worker do? As an employee, she must respect the institution's policy not to recommend what the institution considers illicit moral activity. Thus she notes that she

is not recommending sexual activity; in fact, she has already recommended abstinence, without success. Now she is recommending that he use a prophylactic since he is so intent on sexual activity.

After distinguishing the two activities, she asks another question. Does she as cooperator give advice because she approves his activity? If she approves his activity then she is wrong because then she is in effect saying that she is helping him do wrong activity because she thinks he is right. Thus, she can only morally cooperate in wrong activity if she does not approve it. That is, she is helping him for some reason other than the reason why he wants to do what he wants to do. She is recommending the prophylactic because she is interested in the common good: she does not want to see more people infected with the frequently deadly virus.

The third step is to put some distance between the agent and the cooperator and their distinguishable activities. Thus, she is certainly not engaging in the sexual activity. Nor is she helping him find a partner or providing any support that may assist him in actually having sexual activity. In fact, she is so distant from his activity that literally she is not helping him in any way to have the activity. With or without a condom, he can engage in sexual activity. Her activity is so remote from the client's that it is difficult to see much of a connection.

Fourth, she needs to ask herself to what extent it is morally important to cooperate — that is, to give the advice? She has already recommended abstinence as morally and medically the proper conduct for a person who tests positive for HIV. But he has rejected that advice. Thus, given the enormity of the AIDS epidemic and given the relative utility of condoms in making sex safer (though not safe), she deems it at least fair to say that such advice to protect the common good is legitimate, indeed, necessary.

Fifth, the cooperator should ask herself whether her assistance is indispensable. That is, in cooperating, one's assistance should not be so necessary that the person doing the wrong action, could not act otherwise. In this case, clearly, the client is going to engage in the sexual activity regardless of the employee's advice. Not only

is her advice dispensable *vis-à-vis* his intention to engage in sexual activity, it is absolutely inconsequential to whether he will engage in sexual activity. Her advice only affects the possible harm to other persons.

Finally, she needs to avoid giving scandal. That is, anyone who gets involved in another's wrong-doing has a responsibility to make sure that others do not misconstrue her activity as promoting or advancing this wrongdoing.

These six conditions are then what we use for talking about cases in which we are forced to ask ourselves whether we ought ever to help another who is doing something wrong. The six conditions are: that we should be able to distinguish what we are doing from what the other person is doing; that we should not approve of the other person's wrong-doing; that we should be able to put some distance between each another's activity; that what we are doing is morally important; that our action is not indispensable for the other one's action to happen; and that we avoid scandal.

From this exercise, we can learn a few important insights. First, cooperation is not a permitting or prohibiting principle, nor is it an excusing principle. It is simply a helpful tool that assists us as we sincerely look to find out what's right. In this instance, the health care worker shows herself as a person who carefully reasons that her activity, advising to protect the common good, is different from his activity, which the Church teaches is morally wrong. She is able to explain both how their actions are different and why it is important that she acts as she does. The principle serves, then, as a guide to distinguish and to ascertain exactly what one is doing.

Secondly, the distinctions are important. Moral decision-making is not about creating artificial distinctions but recognizing real ones. Above all, when we are involved in morally complex material, we should determine exactly what it is that we believe that we are doing. For instance, we cannot say that by her advising she is promoting unethical activity. As a matter of fact, she is simply keeping unethical activity from causing greater harm. To obfuscate what she is doing serves no one.

Third, the six conditions are not specific ones for which there is an either/or answer. They are more buoys that help us navigate.

Thus, a computer could not really use the principle. The principle calls for human judgment: on each level we have to ask ourselves different questions and try to ascertain prudently how involved we ought to get.

Fourth, we implicitly live with cooperation all the time. For instance, every time we pay one cent in taxes — whether local, state, or federal — we are cooperating in wrongdoing since we can presume that somewhere along the way the government is engaged in some wrong activity. Does it fund abortions, approve nuclear testing, hunt down immigrants, conduct unlawful entries, use excessive force? If so, we are cooperating in another's wrongdoing, and unlike the health care worker who gives advice, we're giving money. But we are not alone. Even the Vatican has a long history of cooperation every time it signs treaties or concordats with another nation.

The principle works, then, in every instance where there is a question of getting our hands dirty. Here then I want to make one thing clear: I like the principle. I think that it helps us to understand what we should be doing. In the professional world, there are moral people who are trying to determine whether they should be involved in genetic counseling, in obstetrics, in in-vitro fertilization, in fetal tissue research, who try to negotiate the extent to which they believe they should be involved in the work of others that they are convinced is wrong. I think the principle helps us understand when and to what degree we should or should not cooperate in another's wrongdoing.

In concluding, let me give you some instances of when the manualists of the last three centuries used the principle of cooperation. First, manualists considered the case of employees who are somehow involved in activity that assists wrongdoing and who want to know whether they have to give up their job. For instance, centuries ago they considered the case of the servant who has among many tasks the responsibility to transport letters between his master and his master's mistress. Clearly the master is engaged in adultery, but does the servant have to quit because transporting amorous letters is included in his job description? That case has been updated to the person working at a newspaper stand where the owner has decided to add several pornographic

magazines to the stand or to the ticket salesperson at a cinema that occasionally shows a movie judged morally objectionable. Determining what one is actually doing and to what extent one is involved and why one is involved is what cooperation allows us to discern.

More recently, we find the case of a Catholic nurse working in a non-Catholic hospital where sterilizations are performed. The nurse assists as she does in other surgical procedures. She understands her activity as distinguishable from the doctor doing the sterilization. Likewise the anesthesiologist. Doing casuistry we can say that the work of both the nurse and the anesthesiologist is distinguishable from the doctor's. Both are protecting the patient from any harm and are not *per se* performing the sterilization. Moreover, their presence in the hospital we hope adds to the moral life of the hospital. Thus, these more recent cases were not simply about keeping employment, but rather that the person's presence rather than her absence may better the promotion of value in important institutions.

But reasons for invoking cooperation are as numerous as its settings. For instance, in the bedroom, what happens when one spouse practices birth control and another does not approve? Or what about the judge in family court division who tries to bring Christian values to that setting, but who must occasionally preside over divorces? Or what about the priest who is distributing communion and knows that the person standing before him is a known sinner?

These are all different cases of cooperation. None of them are answered with an unequivocal no or an unequivocal yes. As the manualist Henry Davis wrote about trying to figure out how cooperation applies in any instance: "there is no more difficult question than this in the whole range of moral theology."<sup>33</sup> For the principle of cooperation is not a permitting principle, rather it helps us to decide prudently how involved we ought to be with others whose activities occasionally overlap with ours and whose activities do not reflect the values that our Church promotes. But, like the cases in England at the beginning of the seventeenth century, these cases of cooperation help guide us to reason well as we see how we should act in a world in which values conflict.

This method of moral reasoning from the tradition teaches us that avoiding evil isn't the only thing that Catholics should look to do when they want to reason well and act well. Rather, as prudent people, we know that to withdraw completely from the world with all its complexity is not right. To be immersed in the world is to get entangled with it. And so cooperation, an instance of moral reasoning that teaches us a lot about the richness of the tradition, helps us to reason prudently.

I conclude by noting that a university that upholds its Catholic identity while facing courageously the modern world invites a casuist to write on moral theology after the Council. In answering the invitation, I must consider the world in which we actually live. Thus, I hopefully respond to the invitation with a sense of the tradition. But I also leave it as a post-conciliar casuist, not telling the university what to do or not to do, but rather offering its audience a teaching moment about the tools that we use to reason well. That is, after all, what Josef Fuchs taught me: to teach others how to reason well with the tools from the tradition so that we may not worry so much about whether we do wrong, but whether we are following Christ.

#### Notes

1. For other contributions that occurred after the Council, see my "Theological Trends: Christian Ethics: The Last Ten Years," *The Way* 32 (1992): 215-24.

2. Jesuits have long been associated with casuistry, so much so that if you pick up your dictionary, you may find, as I found in my *Webster's New World Dictionary*, this definition of "Jesuit": "A crafty schemer; cunning dissembler; casuist."

3. Blaise Pascal, *The Provincial Letters* (Baltimore: Penguin Books, 1967).

4. For an impressive defense of the Jesuits see Margaret Sampson, "Laxity and Liberty in 17th-century English Political Thought," in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites, (Cambridge: Cambridge University Press, 1988), 72-119; see also Jean Delumeau, "Prescription and Reality," *Conscience*, 134-58.

5. See John Arras, "Getting Down to Cases: The Revival of Casuistry in Bioethics," *Journal of Medicine and Philosophy* 16 (1991): 29-

51; James Keenan, "Casuistry," in *Oxford Encyclopedia of the Reformation* (New York: Oxford University Press, 1996).

6. Ronald Hamel and Kenneth Himes, eds., *Introduction to Christian Ethics: A Reader* (New York: Paulist Press, 1989), 313-405; Charles Curran and Richard McCormick, eds., *Readings in Moral Theology No. 3: The Magisterium and Morality* (New York: Paulist, 1982); Charles Curran and Richard McCormick, eds., *Readings in Moral Theology No. 6: Dissent in the Church*, (New York: Paulist, 1988).

7. Yves Congar, "A Brief History of the Forms of the Magisterium and Its Relations with Scholars," *Readings*, No. 3, pp. 314-31.

8. John Gallagher, *Time Past, Time Future: An Historical Study of Catholic Moral Theology* (New York: Paulist Press, 1990).

9. See, for example, Henry Davis, *Moral and Pastoral Theology in Four Volumes* (New York: Sheed and Ward, 1943), especially the second volume; Thomas Slater, *Questions of Moral Theology* (New York: Benziger Brothers, 1915). Charles Curran provides a fascinating description of the Italian Jesuit manualist who taught at Woodstock at the start of this century; see "The Manual and Casuistry of Aloysius Sabetti," in *The Context of Casuistry*, ed. James Keenan and Thomas Shannon (Washington: Georgetown University Press, 1995), 161-87.

10. The Irish Jesuit Bartholomew Kiely still holds this position. See his *Psychology and Moral Theology* (Rome: Gregorian University Press, 1980); "The Impracticability of Proportionalism," *Gregorianum* 66 (1985): 655-86.

11. See one of the most important articles in moral theology of this century, Josef Fuchs, "The Absoluteness of Moral Terms," in *Readings in Moral Theology No. 1: Moral Norms and Catholic Tradition*, ed. Charles Curran and Richard McCormick (New York: Paulist Press, 1979), 94-137.

12. Thomas Slater, *A Manual of Moral Theology*, 2nd ed., 2 vols. (New York: Benziger Brothers, 1908), 1:6. In his *Cases of Conscience* (1:36) he writes that the object of moral theology "is not to place high ideals of virtue before the people and train them in Christian perfection . . . its primary object is to teach the priest how to distinguish what is sinful from what is lawful . . . it is not intended for edification nor for the building up of character." As quoted in Henry McAdoo, *The Structure of Caroline Moral Theology* (London: Longmans, 1949), 10-11.

13. See Daniel Nelson, *The Priority of Prudence* (University Park, Pa.: Pennsylvania State University Press, 1992).

14. See Bernard Häring, *The Law of Christ* (Westminster: Newman Press, 1961).

15. See Josef Fuchs, *Human Values* (Dublin: Gill and Macmillan, 1970).

16. Robert McClory, *Turning Point* (New York: Crossroad, 1995).

17. See Gallagher, *Time Past, Time Future*.

18. See Joseph Selling and Jan Jans, eds., *The Splendor of Accuracy* (Grand Rapids: William Eerdmans Publishing Company, 1994); John Wilkins, ed., *Understanding Veritatis Splendor* (London: SPCK, 1994).

19. See Thomas Aquinas, *Summa Theologiae*, I-II.57.4,5; 58.2,5; 61.3,4; II-III.47-56.

20. See Aristotle, *Nicomachean Ethics*, VI.v-xiii.

21. See the interesting article by John Treloar, "Moral Virtue and the Demise of Prudence in the Thought of Francis Suarez," *American Catholic Philosophical Quarterly* 65 (1991): 387-405.

22. Besides Nelson's *The Priority of Prudence*, see my "Distinguishing Charity as Goodness and Prudence as Rightness: A Key to Thomas' *Pars Secunda*," *The Thomist* 56 (1992): 407-26; and *Goodness and Rightness in Thomas Aquinas' Summa Theologiae* (Washington: Georgetown University Press, 1992).

23. See the fine first chapter in Daniel Westberg, *Right Practical Reason* (New York: Oxford, 1994), pp. 3-42.

24. See my "A New Distinction in Moral Theology: Being Good and Living Rightly," *Church* 5 (1989): 22-28.

25. For even development during this period, see Thomas Kopfensteiner, "Science, Metaphor, and Casuistry," in *The Context of Casuistry*, 207-20; John T. Noonan, Jr., "Development in Moral Doctrine," *Theological Studies* 54 (1993): 662-77, reprinted in *The Context of Casuistry*, 188-204.

26. Albert Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California Press, 1988).

27. An analysis of this case appears in Louis Vereecke, "L'assurance maritime chez les theologiens des XVe et XVIe siecles," *Studia Moralia* 8 (1970): 347-85. See a discussion of Mair's casuistry in James Keenan, "The Casuistry of John Mair, Nominalist Professor of Paris," *The Context of Casuistry*, 85-102.

28. Precisely the argument of Kopfensteiner above. In a different vein Edward Long argued years ago that casuistry was needed to apply the absolute ideal of love to the concrete; see *Conscience and Compromise: An Approach to Protestant Casuistry* (Philadelphia: Westminster Press, 1954).

29. "The Allen-Parsons Cases," in *Elizabethan Casuistry*, ed. Peter Holmes (London: Catholic Record Society, 1981), 63. Johann P. Sommerville argues that among seventeenth-century English Roman Catholic, Anglican, and Puritan writers there is greater similarity than previously acknowledged in their attempt to deal with equivocation; see his "The 'New Art of Lying': Equivocation, Mental Reservation, and Casuistry," in *Conscience and Casuistry in Early Modern Europe*, 159-84.

Much work has been done on seventeenth-century English casuistry, especially about Protestants: Kevin Kelly, *Conscience: Dictator or Guide? A Study in Seventeenth-Century English Protestant Moral Theology* (London: Geoffrey Chapman, 1967); Henry McAdoo, *The Structure of Caroline Moral Theology*; John McNeill, "Casuistry in the Puritan Age," *Religion in Life* 12 (Winter 1942-43): 76-89; Elliot Rose, *Cases of Conscience: Alternatives Open to Recusants and Puritans Under Elizabeth I and James I* (New York: Cambridge University Press, 1975); Thomas Wood, *English Casuistical Divinity during the Seventeenth Century* (London: SPCK, 1952). More recent work includes Keenan, "William Perkins (1558-1602) and the Birth of British Casuistry," *The Context of Casuistry*, 105-30, and Richard Miller, "Moral Sources, Ordinary Life, and Truth-telling in Jeremy Taylor's Casuistry," *The Context of Casuistry*, 131-58.

30. Martha Nussbaum writes with an Aristotelian assumption that "principles are perspicuous descriptive summaries of good judgments, valid only to the extent to which they correctly describe such judgments." *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (New York: Cambridge University Press, 1986), 299. Elsewhere she states "a good rule is a good summary of wise particular choices and not a court of last resort." "Non-Relative Virtues: An Aristotelian Approach," in *Midwest Studies in Philosophy. Vol. 13. Ethical Theory: Character and Virtue*, ed. P. French, T. Uehling, and H. Wettstein (Notre Dame: University of Notre Dame Press, 1988), 44. John Kekes argues that principles are derived from conventional conduct: "practice is primary and principles are secondary." *The Examined Life* (Lewisburg: Bucknell University Press, 1988), 50. For a concrete investigation of how a principle results from cases and what methodological difference this claim makes, see my "The Function of the Principle of Double Effect," *Theological Studies* 54 (1993): 294-315.

31. It is the belief of many moral theologians that as a matter of fact we have confused sin with wrong action and that what we really have been avoiding for centuries is what was considered wrong, not what was considered sinful. See my "The Problem with Thomas Aquinas's Concept of Sin," *Heythrop Journal* 35 (1994): 440-44.

32. This case and all the background that follows can be found in my "Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles," *International Philosophical Quarterly*, 29 (1989): 205-20. See also James F. Keenan, S.J., with Thomas Kopfensteiner, "The Principle of Material Cooperation," *Health Progress* 76, no. 3 (April 1995): 23-27.

33. Davis, *Moral and Pastoral Theology*, 1:342.