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The Chill Factor in Moral Theology

An In-Depth Review of *The Critical Calling: Reflections on Moral Dilemmas Since Vatican II* by Richard A. McCormick, S.J., (Washington DC, Georgetown University Press, 1989).

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This collection of well-crafted essays is divided into two parts: "Fundamental Moral Theology" and "Practical and Pastoral Questions," each containing 11 essays. Its publication sums up the author's 34 years in the field of moral theology.

During these more than three decades it has been my privilege to be involved in thousands of difficult 'cases' in many committees and advisory boards and in the lives of many individuals and families. Such involvement has brought me into close contact with bishops, priests, physicians, politicians, educators, married couples, attorneys and business executives. These have included Jesuits preparing for the priesthood (they put up with me for seventeen years), priests around the country, religious women, bishops, medical personnel, and the general public. Since 1965 I have composed "Notes on Moral Theology" for *Theological Studies*, a task that has brought me both enlightenment, humility (I hope) and the friendship of colleagues around the world." (Preface, p. ix-x).

Since the second group of essays is more representative of this extensive pastoral experience of McCormick, I will begin with them before turning to the broader issues raised in the first group. Six of these essays I find "persuasive" (to use a favorite McCormick adjective). Chapter 14, on the artificial heart, and 15, on the future of genetic technology, sensitively outline the basic ethical questions that have to be asked. Chapter 15 ably defends the first draft of the U.S. Bishops' Pastoral on AIDS against the misrepresentations of the press. Chapter 10, "If I Had Ten Things to Share with Physicians", is an excellent analysis of the attitude health care professionals should take toward medical ethics. Chapter 21, on artificial nutrition and hydration, surveys the different opinions on a question not yet answered by the Magisterium and takes a stand with which I agree, namely that in certain circumstances these medical procedures are not

sufficiently beneficial to patients to be obligatory. Chapter 21 rightly advises physicians to avoid instructing teenagers in contraception and discusses those exceptional cases when the principle of the lesser evil might make this licit. In my opinion, although some of the conclusions of these essays are debatable, they are not based on dissent from magisterial teaching and are consonant with principles well-established in the Catholic moral tradition.

To these helpful discussions I would add, from the first group of essays, Chapter 10, "Fundamental Freedom Revisited", in which McCormick gives (against Finnis, Grisez, and even John Paul II's *Reconciliation and Penance*) a clarifying defense of Rahner's notion of the "fundamental option," showing that it is not itself an empirical act, but a depth of commitment qualifying a categorical act. Nor is it "unconscious," although it transcends conceptualization. In this essay also, McCormick rightly rejects the often proposed view that "serious" sin is a middle ground between mortal and non-mortal sins (p. 180-1).

The other essays of the second part, while all worth reading for the wealth of information they contain and the pertinent questions they raise, seem to me not at all "persuasive", because they fail in their attempts to demonstrate errors in current magisterial teaching. Chapter 12, "The Consistent Ethic of Life: Is There a Historical Soft Underbelly?", is an effort to refute Cardinal Bernardin's appeal to the "absolute" (exceptionless) norm against the direct killing of the innocent. Chapter 13, "Divorce, Remarriage and the Sacraments" (a bit out of place in this bioethics collection) argues that Jesus' seemingly absolute teaching against remarriage of the divorced is, in fact, only an ideal to be striven for, so that the remarried, instead of being excluded from the sacraments, should be urged to receive them. Chapter 16 argues that exceptions to the teaching of "Humanae Vitae" (hereafter HV) on contraceptive sterilization are permissible in Catholic hospitals. Chapter 17 on homosexuality, while it makes many sound points, argues that, since no one is held to the impossible, those who conscientiously judge that their homosexual orientation cannot be corrected and that for them the attempt to practice celibacy would be "self-destructive", are not obliged to refrain from homosexual activity, but only to use it with as great fidelity and exclusivity as possible.

Criticism of 'Instruction'

Finally Chapter 19 is largely a criticism of the *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation* (Donum Vitae, 1982, hereafter DV) of the Congregation for the Doctrine of the Faith (hereafter CDF). McCormick agrees with DV's rejection of surrogate motherhood and artificial insemination by a donor (AID), but he dissents from its rejection of artificial insemination by the husband (AIH) and *in vitro* fertilization (hereafter IVF).

I can best indicate briefly why I find McCormick's mode of argument in

this group of essays unconvincing by analyzing in some detail his discussion of IVF in this Chapter 19. He correctly states that the foundation of DV's rejection of IVF is the principle of the inseparability of the procreative and unitive aspects of sexuality and reproduction. But he then attacks this rejection by admitting the principle yet limiting it to the marital act only, so that even if it holds for contraception it does not apply to reproduction and IVF. Lastly, he argues that, contrary to HV, the principle also does not apply to single marital acts, but only to the *relationship* of the couples.

After following this strategy of admitting the principle of inseparability and then so restricting it as to empty it of the sense in which it is used by the Magisterium, McCormick gives his own substantive reasons for his dissent from HV: (1) Many legitimate acts are sterile and even if they can be said to be "open to the transmission of life", it is only in a physical, not a moral sense. (2) While it may be true that in an esthetic-ecological sense, contraceptive acts are imperfect physically, this does not prove they are so morally. (3) HV's position is only the linear descendant of the old insistence on the primacy of the procreative which rested on inadequate biology and is generally abandoned since Vatican II.

These are not new arguments, but McCormick makes no attempt here to answer the many rebuttals they have received in the literature. Nor does he devote any attention to the anthropological grounds for these magisterial teachings. To suppose that Vatican II abandoned the traditional doctrine of the "primacy of procreation" is a rank over-simplification considering that *The Church in the Modern World* (p. 254) calls children "the supreme gift of marriage". While "not making the other purposes of marriage of less account", it then goes on to say:

The true practice of conjugal love, and the whole meaning of family life which results from it, have this aim: that the couple be ready with stout hearts to cooperate with the love of the Creator and Saviour, who through them will enlarge and enrich his own family day by day.

To deny that each and every act of intercourse is a deeply significant expression of the marital *relationship*, would seem to imply that intercourse has no essential connection with that relationship, hence that extra-marital intercourse is not always wrong, and this is exactly the logical conclusion that not a few opponents of HV have drawn (although McCormick, with happy illogic, does not Cf. pp. 392-393). But if it is not possible to separate the act from the relationship, then why isn't it necessary that the procreative meaning of that relationship (on which Vatican II, with McCormick's concurrence insists) should be present in every act? The intention to contracept obviously eliminates the procreative meaning from the act, thereby separating it from the unitive meaning and thus distorting the unitive meaning itself and rendering the act unable to express the marital relationship.

McCormick escapes this conclusion only by denying the moral significance of the physical act. Now, while it is true that physical acts

merely as such are not morally determinant, the *intention* to perform a specific physical act has moral character and cannot be indifferent to the physical structure of the act intended. No one can commit adultery without intending an act which is *physically* a sexual act. Thus while the physical act is not solely determinant of the moral act (not every intention to commit a sexual act is adultery), yet it is an essential determinant. Therefore, it is not "physicalism" to say that sadistic, sodomistic, or contraceptive acts are contradictory to the moral meaning of marriage.

Nor is the intention to engage in acts of intercourse which are *de facto* sterile the intention to alter *fertile* acts so as to make them sterile (to contracept). Furthermore, to intend (for reasons of responsible parenthood) to engage in acts of intercourse *only* during sterile periods, although it is clearly an intention to avoid a non-obligatory pregnancy, is not to intend to change the physical character of the marital act. Hence this sterile act retains the orientation to procreation inherent in every natural act throughout the woman's cycle.

If McCormick's arguments against HV's strict application of the principle of inseparability to single marital acts fail to persuade, does his argument against DV's extension of the principle to reproduction and hence to IVF succeed? This argument turns out to be a historical excursus tracing this extensive use of the principle to Pius XII's allocution to midwives (1951) in which he used it to rule out the use not only of contraception, but of AIH. Since the Pope was then dealing with the new problem of AIH and since even some conservative theologians have criticized his reasoning as to "physicalist", McCormick discounts its authority, and suggests that perhaps a doctrinal development like that which culminated in the Vatican II about-face on Church-state relations is now in process which will end with his own position!

DV's Authoritative Character

But what about the authoritative character of DV itself? Why not conclude from McCormick's own historical account that in the years since Pius XII's allocution, the question has been extensively discussed and rethought by the Magisterium on the basis of new biological information and that the resulting doctrinal development is embodied in the more personalist and decisive magisterial rejection of AIH and IVF in "Donum Vitae"?

How, then, in the face of this magisterial decision, can McCormick so confidently assert that the opinion favoring IVF is "solidly probable" (p. 338), which as far as I can see amounts to saying that it can be followed in practice, contrary to the pastoral guidance of the Magisterium?

When we at last come to McCormick's own arguments in favor of IVF, they turn out to be: (1) intercourse is not the only loving act in marriage, and in any case IVF can be considered an extension of intercourse, so that the IVF child is still "the fruit of love". (2) The artificiality of IVF is not a sign of

moral defect, since although technology can be abused, its proper use accords with human dignity. (3) Contrary to Carlo Caffara, IVF is not the "production of an object," since the technician's intervention is only a condition, not the cause of conception, which is effected by the sperm and ovum themselves. (4) The "experience" of Christian couples favors IVF. (5) The self-stimulation generally used to obtain the semen for IVF is not, in the opinion of "many theologians", masturbation. (6) McCormick clinches these arguments by quoting an author who attributes the Magisterium's stubborn insistence on such unpopular opinions to a fear of weakening its authority.

Of these arguments (5) is secondary; (4) and (6) are only guesses; and (2) is irrelevant since the magisterial documents do not claim that the "artificiality" of an act makes it wrong, or even that it is a sign of wrongdoing. Reason (3) misses Caffara's point. In natural intercourse, the marital act of the parents is the principal cause of conception acting through the natural instruments which are the sperm and ovum. This causal act has been invested by the Creator with a unitive as well as a procreative meaning. On the contrary, in IVF a technician does not simply assist the marital act (that would be licit) but *substitutes* for that act of personal relationship and communication one which is like a chemist making a compound or a gardener planting a seed. The technician has thus become the principal cause of generation, acting through the instrumental forces of sperm and ovum, and asserting over them a dominion to which his right is questionable. The parents' role in this operation is reduced merely to supplying the biological instruments, and their right to do so is also to be questioned, just as it is questionable that a surrogate mother has a right to lend her body to such procedures, or the donor to supply the sperm for AID.

McCormick's Case for IVF

Thus McCormick's positive case for IVF really rests on argument (1), the contention that IVF, although not the act of intercourse, is still a loving act of a married couple which can even be regarded as an extension of the act of intercourse. No doubt, couples who weep to complete their sterile marriage by obtaining a child through IVF are subjectively motivated by marital love, but, as is often asserted, so are those who seek to do so by AID or surrogate motherhood, which McCormick rightly rejects. Logically by rejecting these latter procedures, he admits that a loving intention of itself is not enough to justify just any procedure to obtain a child; to be objectively "loving", the means must also be licit. DV argues that it is an injustice to a child deliberately to bring it into the world by any method which weakens its natural bond with its parents through their intercourse. The IVF child is not so deprived of the fullness of this bonding as is the illegitimate child, but it is truly and unjustly deprived. McCormick passes over this question in silence.

Finally, to argue that IVF is an "extension" of marital intercourse rather than a substitution for it, is simply contrary to fact. What is "extended" is not the act of intercourse, but the intention: from an intention to beget the child naturally to getting it by IVF, by artificial insemination, or by help of a surrogate mother.

That McCormick recognizes that he is not really able to reconcile his positions with his acceptance of the principle of inseparability is suggested when he covers these arguments saying,

Whatever the case, the aforementioned inseparability principle must promote the person 'integrally and adequately considered.' When it becomes an obstacle to that promotion, it loses its (generally operative) normative force; for it is subject to and judged by a broader criterion. (p. 340)

This broader criterion to which he wants to subordinate the principle of inseparability seems to be that stated by Vatican II in *The Church and the Modern World* (n. 51) which he has quoted on p. 267, "Objective standards which are based on the nature of the person and the person's acts." This statement is often quoted by moralists sympathetic to proportionalism, as if it somehow supports their positions. The reason seems to be that they believe HV and similar magisterial documents lay excessive emphasis on "acts" rather than on the total good of the person who performs the acts. Hence they conclude that single acts, such as that of contraception or IVF, cannot be judged wrong apart from the totality of personal relationships which give them meaning.

Yet personal relationships are only formed by and expressed in concrete acts. Thus the marriage covenant is formed by the act of vowed commitment and consummated by the first act of intercourse, and parenthood is achieved in a single such act. It is true that personal relationships grow through many acts throughout the whole of life, but this life is made up of morally significant single acts.

McCormick's Argumentation

Moreover, McCormick, in his argumentation, seldom actually uses this criterion of "the natural of the person and the person's acts" with any concrete *specificity*. There are indications, however, that his understanding of it ultimately relies on the Transcendental Thomism of Karl Rahner and Josef Fuchs and thus on an anthropology which is open to serious criticism for its dualistic and idealist bias, resulting from efforts to synthesize Aquinas and Kant. Dualism of this type tends to eliminate any *intrinsic* teleology in the human body which might reveal God's purposes for human life. Instead, moral values are sought from transcendental intuitions and can be realized in the concrete only approximately by a proportionalist calculus. The magisterial documents, on the other hand, rooted in a tradition which is not merely "classical" but *biblical*, teach that our human freedom is not absolute, but a stewardship; hence technology can only

morally further the divine purposes written in the human person in its bodily nature, not over-ride them.

McCormick, in Chapter 19, also argues that it is "solidly probable" that the "pre-embryo" (i.e., before implantation) is not a human person, as against the surprisingly strong contrary affirmation of DV (surprising because the previous document of the CDF *On Procured Abortion* had avoided any such affirmation). He argues first by appealing to the authority of the "highly respected Karl Rahner" who thought immediate hominization "highly doubtful" (perhaps because the large number of embryos that never reached term did not seem to fit well with Rahner's salvific universalism). McCormick then makes the puzzling statement:

One thing should be clear: the status of the preimplanted embryo is an *evaluative* question, not a directly scientific one. One cannot, of course, prove evaluations one way or another. One can, however, assemble information that suggests or leads to an evaluation. (p. 344).

I take this to mean that scientific criteria are insufficient to decide the question and recourse must be had to philosophical or theological principles (this seems to be the position of the document *On Procured Abortion*), but can nothing be proved by such criteria? Moreover, if this is his meaning, why does he accept without criticism the views of Grobstein and some other biologists that the pre-embryo cannot be a person, without examining how these scientists' philosophical, "unsitting assumptions" (p. 212) about personhood influence their scientific judgement? He then concludes,

I believe there are significant phenomena in the preimplantation period that suggest a different evaluation of human life at this stage. Therefore, I do not believe that nascent life at this stage makes the same demands for protection that it does later. In this sense I agree with Rahner.

Of course the CDF was well aware of any such "significant phenomena" when it made the contrary evaluation. Yet McCormick believes CDF made the mistake of failing to distinguish between "genetic" and "developmental" individuation (p. 345). He bases this criticism on the assertion of Grobstein and others that the pre-embryo is genetically individuated by the presence from completed fertilization of the genetic code, but its individuation as a human being does not take place at a point in time, but only gradually. Hence McCormick concludes that the pre-embryo is not a human individual and therefore not a human being (p. 346).

The scientific embryological evidence is not really in question. Unfortunately, McCormick does not make clear what philosophical or theological criteria he himself has used in "evaluating" these facts. As a Dominican Thomist of the "strict observance", all my own "unwitting assumptions" favored delayed hominization, but now that I have acquainted myself with the current biological evidence and evaluated it by the philosophical and theological principles of Aquinas, I can only say that to me this evidence (quite apart from the authority of DV) speaks

overwhelmingly in favor of personhood from conception. Moreover, I am convinced that the usual arguments against it are without serious probability. Since, however, McCormick does not, in this essay, defend his evaluation in detail, I will not defend mine here either.

Why is McCormick seemingly so confident in his dissent from magisterial documents which are thoroughly grounded in a long tradition and at least have an authority which he admits ought to have “a presumption of truth” (p. 44), when his own arguments are so tenuous? My impression, and I only offer it as such, is that he, and others (Bernard Haring is a notable case) although they are labeled as progressive, in fact have been unable wholly to free their thinking from the legalist tradition in which most older moralists were educated and in which the function of the moralist was to soften the rigors of the law with pastoral compassion. Consequently, faced with the moral dilemmas of modern science, especially in the field of sexual morality, the tendency of many “liberal” moralists still is to seek ways to mitigate the hard sayings of the Magisterium. The greater freedom of public discussion encouraged by Vatican II seemed to invite greater boldness in these efforts, now seemingly less encouraged in Rome.

Moral Theology's Revision

But the revision of moral theology in our times, and especially after Vatican II, is not really aimed in that direction. Deontology and legalism are largely post-Tridentine phenomena which few moralists any longer defend. The question now is not how to mitigate the rigors of the law, but how to determine what really promotes the integral fulfillment of the person and of the community of persons. Consequently, if the principle of the inseparability of the unitive and procreative meaning of marriage is really sound (and that seems to be an authentic doctrinal development of this century), then it illuminates the marriage covenant, guides married couples to a richer life, helps them to avoid the illusions which in our culture are so inimical to family life. Moralists, therefore, should not be seeking *ad hoc* solutions to conflict situations, so much as to be showing how to help people make use of sound principles to become fully human and fully Christian in themselves and in their lives. In my opinion, John Paul II is striving to guide moral theology into this more truly teleological direction.

This is why I did not find the diagnosis of the state of moral theology presented by McCormick in his first group of essays any more convincing than his dissenting opinions on concrete pastoral issues. In Chapter I, “Moral Theology since Vatican II: Clarity or Chaos”, McCormick faults Cardinal Ratzinger for portraying this period as one in which the new theory of proportionalism has led to a chaos in Catholic moral thinking. This jaundiced view he attributes to Ratzinger’s “classicist mentality”.

I agree with McCormick that the post-conciliar period has seen a “major reexamination” of moral theology which has led not to a “New Morality”, but to the “invigorating rediscovery” of a very old one” (p. 9), characterized

by an understanding of moral life which is (1) less legalistic and more (2) profound; (3) communitarian; (4) personalist; (4) modest in its formulations; (6) aware of the true role of the moral magisterium; (7) less paternalistic in its moral pedagogy. I do not see, however, that McCormick has shown that this progress is to be attributed to the influence of proportionalism, rather than to the influence of the teaching of Vatican II which said nothing at all favoring that essentially legalistic theory. How then does this essay constitute a rebuttal of Ratzinger's well-informed judgment that the advocacy of proportionalism has significantly spoiled the fruits of this progress?

Chapter 2 Content

In Chapter 2, "Dissent in the Church: Loyalty or Liability", he answers those who believe dissent in undermining the faith by listing 12 factors, recognized by Vatican II, which help to explain the emergency of dissent in the the post-conciliar Church. He also lists ways in which "historical consciousness" affects the "outlook on the Church as teacher". He grants (p. 44) that the magisterium should have the "presumption of truth" and he opposes "dissent as a policy and method". But he also stoutly maintains that "dissent" can be an advantage, not a liability, to the Church since "In our time dissent is viewed as a contribution to a process of growth, not as a challenge to a superior" (p. 43). That it may "disturb" the faithful may be to good; they need disturbing, says McCormick.

Furthermore, he seems to favor the view that:

... the *sensus fidelium* is absolutely essential to a certain and binding proclamation of the truth. Concretely, if large segments of the community do not see the analyses and conclusions of an authoritative teacher, it is a sign that (a) either the matter is not sufficiently clear, sufficiently mature for closure, or (b) that it is badly formulated or (c) that it is wrong. (p. 37).

He does not seem to recognize the historical fact that widespread dissent in the Church can also be a sign that the "faithful" have been only superficially evangelized or even that they are not very "faithful." Otherwise how would it be possible that many times the past "large segments of the community" have succumbed to outright heresy? The difficulty with this essay is that it is by no means clear why McCormick can be so confident that "dissent" in this broad sense (from which he excludes nothing but heresy in the strict sense of the denial of infallibly defined doctrines), contributes *only* to a "process of growth." It is not obvious that it can also contribute, and very effectively, to polarization, to *anomie*, and to a kind of "disturbing the faithful" which is not growth-producing, but which ultimately results in alienation from the Catholic community?

McCormick is more helpful when in some of the other essays he addresses himself to the question of how theological discussion can be conducted in a constructive way, but there is also a real need to discuss how to avoid the degeneration of legitimate theological criticism of magisterial

documents into a “dissent as a policy and method” which he claims to reject. Consequently, I hoped to find such a discussion in Chapter 3, “Moral Argument in Christian Ethics”; Chapter 5, “Bishops as Teachers, Scholars as Listeners”; Chapter 6, “L’Affaire Curran”; Chapter 7, “Pluralism in Moral Theology”; Chapter 8, “Catholic Moral Theology: Is Pluralism Pathogenic?”; Chapter 9, “Matters of Free Theological Debate”, and Chapter 11, “Theology in the Public Forum”.

Excellent Suggestions

Indeed, these chapters do contain many excellent suggestions for ways in which theologians can carry on rational discussion of moral issues and the Magisterium can encourage such efforts. Many of these have been also proposed and implemented by the CDF and by the U.S. Committee on Doctrine in various magisterial documents. The Magisterium has often acknowledged the importance for the Church of responsible theological criticism and of legitimate pluralism. This still does not bring us to grips with the real difficulty which is, What are the *limits* (and McCormick admits there are limits) to such discussion beyond which it becomes counter-productive?

I have searched in this and other works of McCormick and other moral theologians of what he often calls “the main stream” to discover how they would set these limits. First of all they generally admit that responsible Catholic theological discussions cannot call into question infallibly defined doctrines (as Hans Kung did, although some deplored the actions of the CDF even in his case). Yet they then hasten to explain that in the field of morals, there seem to be no infallibly defined or even definable doctrines. This eliminates any limitations from the side of Tradition, since “historical consciousness” permits us to call into question any non-infallibly defined element of the Tradition.

If one then appeals to the Bible for moral teaching which, although not defined, is nevertheless secure, we are told (again with an appeal to “historical consciousness”) that the Bible contains parenthesis or exhortation to do good and avoid evil but that all the content of its teaching about concrete moral right and wrong is so historically conditioned as to be subject to radical revision in the light of “modern experience”. “Modern experience” then turns out to be the impressions of theologians as to the *sensus fidelium* of our times and the ethical reasoning of moralists based on various current philosophies.

The room for the “right of dissent” from the Magisterium thus becomes very wide indeed, everything short of true heresy even the possibility of which is questioned. Besides the fact that Vatican II contains no warrant for such notions, what they do not sufficiently take into account is the Magisterium’s responsibility to witness to the Church’s tradition and to give ongoing pastoral guidance to its members. By reason of this responsibility the Magisterium may, very reasonably and without being accused of

excessive concern for its own authority, come to the conclusion, based on its day-to-day experience of the life of the Church, that the limits of legitimate discussion *are*, in fact, being transgressed in certain cases by prominent, competent, and no doubt well-meaning theologians. Hence, regrettably, disciplinary steps to maintain the limits of legitimate disagreement become necessary.

The failure on McCormick's part to recognize this as sensitively as he recognizes the concerns of theologians for their own proper freedom of inquiry, is apparent in what seems to me the essay which states the real thrust of his whole book, Chapter 4, "The Chill Factor in Contemporary Moral Theology". McCormick here complains about many recent procedures and actions of the CDF which seem to him to create an atmosphere of fear and discouragement among theologians and which, consequently, he fears may stifle the great progress which has been made in moral theology as a result of Vatican II.

If McCormick's criticisms took adequately into account the real problems which face the Magisterium today in maintaining the Church's moral tradition in the face of the serious moral decadence of our society and the influence it is having on sexual morality and family life, they would be convincing. Instead, he seems to have an unbounded confidence that this tradition will be strengthened by severely restricting the Church's disciplinary restraints and trusting peer-pressure within the academy to maintain theological sobriety.

Now, I am sure that Father McCormick, like most of us in the field of bioethics, would hesitate to put full confidence in the medical profession to police itself. Why, then, such confidence in the theological profession? He certainly does not seem to have it in the theologians of the Roman Curia. No doubt the doctrine of checks and balances has application here, and the Magisterium needs some outside criticism. Certainly, it gets a good deal these days, as witness this book. At the same time, when theology grows feverish, a little cool breeze from the Tiber may not only chill but refresh and invigorate.
