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I welcome the opportunity to respond to Dr. Paganelli's reply to my *America* article, for I believe that his reflections are shared by at least very many doctors and that they cast up several important issues in contemporary medico-moral discussion. Furthermore, Dr. Paganelli's intelligence and urbanity are well known, a fact that makes exchange pleasant and enlightening. Since his remarks are, however, couched in quite sweeping terms at times, an adequate response will necessarily be a bit longer than desirable.

First off, Dr. Paganelli takes "exception to point one of Father McCormick's thesis" that "scientific changes have resulted in new medical-moral problems." This was not and is not my *thesis* (though I would defend the statement). Rather, scientific advances represent one of several factors or suppositions I mentioned which led bishops, hospital authorities, doctors, and theologians to conclude that the old code needed revision. Apparently Dr. Paganelli does not share this conclusion. I say "apparently" because he seems ambiguous. On the one hand, while admitting many scientific advances, he denies "their current, practical medical-moral importance." On the other, he concurs "with the need for a continuing review of the Code."

Much more substantive is Dr. Paganelli's next point. He notes the definition of abortion used in the code: "a procedure whose sole immediate effect is the directly intended termination of a pregnancy before viability." This, he says, is a "scientific" definition, one "based on a datum of medical experience and not on a probable theological opinion and/or legitimate theological dissent." Several things must be noted here. First of all, the definition is not a scientific (in the sense of medical) definition. Dr. Paganelli is in error here. Medicine can and does tell us what procedures end in fetal death. That is, it tells us what interventions are abortifacient as distinguished from those that are not. But the terms "direct" and "directly intended" are philosophical-theological categories, not scientific definitions. It is the competence of the theologian, not the physician, to interpret these terms. The Code was, therefore, employing

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anymore than is the daily newspaper the proper place for a scientific discussion of two radically different methods of treatment for a serious but common disease. Imagine two physicians each of a different but equally concerned specialty verbally berating the other over a treatment of a critically ill patient in front of the patient's husband! No, the theologians and bishops must settle in private their dispute as to whose charisma is more important.

I am not a scriptural scholar and I beg the indulgence of those who are when I take a certain liberty in applying to this problem the text from St. Paul, 1 Cor 1, 10-13, which begins, "I beg you, brothers in the name of our Lord Jesus Christ to agree in what you say. Let there be no factions: rather be united in mind and judgment."

I concur with Father McCormick on the need for competent multidisciplined committees in hospitals and elsewhere to review the difficult problems of medical morality. I also concur with the need for a continuing review of The Code. An instrument of this nature must be considered to be in a dynamic and not in a static state. I trust that we will be at peace at least in this mutual conclusion.

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theological language, not simply language "of a datum of medical experience."

Secondly, Dr. Paganelli says that "a scientific definition cannot be changed *arbitrarily* by the theologian to fit his change in theological perspective." That is certainly true. But after noting that "direct" and "indirect" are theological terms, I must strongly insist that the contemporary theological re-examination of the terms is anything but arbitrary. It is being undertaken by some of the most balanced and intelligent Catholic theologians in the Church (for example, Jos. Fuchs, B. Schuller, B. Haring, F. Bockle among others). Such nuancing of these terms has always gone on within the theological community. One need only return to the abortion discussions in the late 19th century (involving men of the stature of Lehmkuhl, Ballerini, Cardinal D'Annibale) to see the uncertainties surrounding the terms "direct" and "indirect." Continuing attempts to clarify the meaning and relevance of these terms is anything but an arbitrary shuffling by the theologian "to fit his change in theological perspective." I am sure that Dr. Paganelli's phrasing is much looser than he would desire.

My third comment concerns Dr. Paganelli's representation of what I said about the self-identity of the

Catholic hospital. He writes: "He suggests that because among other things the staffs and clientele 'are heavily non-Catholic' that the hospital administration can no longer *presume a position founded upon a Catholic morality.*" (Emphasis added) I am not sure what the italicized words mean. If they mean that the hospital administration can no longer establish a policy founded upon Catholic moral principles, I certainly did not say or imply that. I only stated that in contemporary circumstances the established policy (the Code) should not always be enforced as it frequently was in the past.

Dr. Paganelli's wording of the point is: "to suggest that because they are publicly funded they lose the right to be distinctively Catholic etc." Nowhere do I state or imply loss of right to be distinctively Catholic. I simply point out that "to be distinctively Catholic" in our time need not imply enforcement of every directive of the code in all circumstances.

Dr. Paganelli then asks: "What of the non-Catholic community hospital with a staff and clientele heavily Catholic?" What about it? Perhaps I am missing the point, but the problems likely to arise in such a situation are radically different from the ones under discussion. In one instance it is a question of the Catholic hospital *regretfully tolerating another's actions* it judges immoral. In the second instance, there would be question of being *forced to do oneself* what one judges immoral. Cooperating with another's doing and doing oneself are distinguishable realities. To allow for the occasional possibility of the first (material cooperation) need not and does not imply acceptance of the second.

Behind Dr. Paganelli's position is his stance on cooperation. He writes: "It seems to me that one cannot be Catholic in name, philosophy, theology etc. and *ever* cooperate *in any fashion* with abortion, euthanasia, sterilization etc." (Emphasis added) This absolutist stand is defensible on only two possible grounds. First, one might argue that cooperation is the moral equivalent of doing and approving. Traditional theology will simply not support this equivalence. Cooperation is not doing; it is assisting in some way or other. And it need not mean approval. Even assisting ought to be avoided as far as reasonably possible, of course. But we have always held that circumstances could arise when failure to lend some form of assistance to procedures judged immoral would do more harm than good.

The second possible ground for excluding all cooperation is that any cooperation is avoidable. This is the position chosen by Dr. Paganelli. He states flatly: "Material cooperation in *any* procedure regarded as immoral is avoidable . . ." Here it must be said that whether cooperation is avoidable or not is a factual judgement, one dependent on circumstances. In some, perhaps very many places, cooperation in *any* procedure is avoidable. But to say that it is *always and everywhere* avoidable supposes either a uni-

formity of circumstances or an exhaustive knowledge of the diversity of circumstances. I would hope that Dr. Paganelli would make neither of these suppositions. He is left, therefore, with only one possible implied judgment to support his contention. It is this: cooperation is always avoidable because wherever it becomes unavoidable, the Catholic hospital should avoid it by simply closing its doors as a Catholic facility. This conclusion can be defended only if even single instances of cooperation would jeopardize the overall good accomplished by a Catholic health facility. That such need not be the case is clear.

Dr. Paganelli's final paragraphs on the relationship of bishops and theologians touch on very difficult and delicate problems. Unfortunately, I believe that his treatment repeatedly succumbs to caricature. For instance, of the theological reaction to *Humanae Vitae* he says "the charisma of the Spirit has exhausted itself with respect to the Pope . . . and concentrated itself *solely* in the wisdom of theologians." (Emphasis added) This leads him to wonder why he is "expected to *ignore* its (magisterium) teaching." The relationship of theologians and bishops is seen as a "dispute as to whose charisma is more important." This type of oversimplification only muddies an already difficult question.

To state that episcopal teaching must be theologically informed is not to say or imply that the charisma of the Spirit has now "concentrated itself *solely* in the wisdom of theologians." Nor is it to say or imply that theologians and bishops are in "dispute as to whose charisma is more important." It is simply to say that there are a variety of competences that go to make up the authentic teaching function in the Church.

The theological and episcopal contributions to this function are not "either-or" affairs; they are "both-and" contributions. For instance, the great documents of Vatican II would not exist without the input of both theologians and bishops. Without theological expertise they never would have been written. Without episcopal (collegial) reflection and endorsement, they would not exist as authentic pastoral and teaching documents. A cooperative relationship should not be turned into a competitive one even when disagreement and dissent enter the relationship.

Dr. Paganelli continually sees this complementary relationship in competitive terms. It is this, I believe, which is divisive, not dissent or disagreement as such. Thus he notes: "Father McCormick complains that the bishops lack moral-theological expertise and therefore it is the moral theologian's area of responsibility to make medical-moral-theological decisions." Two points. First, I did not "complain" about the bishops' lack of theological expertise. I merely noted a fact. Secondly,

nowhere did I say that "*therefore* it is the moral theologian's area of responsibility to make medical-moral-theological decisions." I have only insisted that if the authentic teaching office cannot be identified with theology, neither can it dispense with it.

Presumably it was my *America* article in criticism of the Code that led Dr. Paganelli to write: "If a bishop or a simple majority of bishops cannot be convinced of a position, then the theologian is not promoting unity of the Church by taking his argument with the bishop to a medically moral-theological unsophisticated laity." My theologian-colleagues would be deeply disturbed if I failed to point out the unacceptable assumptions behind such a statement. The Code is a matter of lively concern to the Catholic community in general. This community deserves to have the pros and cons, the implications, the underlying theology spelled out in matters that concern it profoundly. Indeed, this is the only way that its level of "unsophistication" will be lowered. If the unity of a community is dependent on lack of public criticism and disagreement, then that unity is not worth having. We have long since left the day when unity can be read to mean simple uniformity. What is disruptive of unity is not criticism, but rather criticism which is rancorous, personal, uncharitable, and disrespectful of authority. Respectful public criticism is a service both to the community at large and to the bishops. Only a highly juridicized and relatively insecure episcopate would judge otherwise.

Behind Dr. Paganelli's judgment cited above is not only a point of view on unity, but also an unarticulated view of the theologian's position in the Church. I suspect that in this view the theologian is little more than a functionary of the hierarchy. Actually the theologian serves the Church not simply by being of aid to the hierarchy. He has several publics, one of which is the community at large. In earlier days when the laity were often uneducated, and had relatively little to contribute to the teaching-learning process, it was more realistic to say that the theologian's public was the hierarchy and the scholarly community. But those days have passed.

The Catholic community is better educated than ever and many of its members are capable of relating their special expertise and experience to religious and theological thought in a very enlightening way. Furthermore, an article of significance in the most obscure journal will be gobbled up by *Time* and *Newsweek* shortly after its appearance. Whether he likes it or not—and often he dislikes it—a theologian is to some extent or other a popularizer. That is, theology is in the public domain and we have to learn to live with that fact. Which

means many things of course: e.g., that theologians must take special cautions to be prudent, that the community must begin to learn that theologians, important as their work is, are not replacements for the magisterium. The practical problem is simply this: we are not yet used to the idea of public discussion and disagreement in the Church. But we had better get used to it without feeling it a threat to the basic beliefs and structures of our faith. For it is not going to go away, and it should not.

One final point. Dr. Paganelli states that "the Code is not the place for dealing with this theological issue (dissent)." I presume that he would say the same thing about the difficult situations where the issue of material cooperation might arise. I disagree with that judgment, and so did the bishops, as I shall point out. The vast majority of the practical institutional problems which were in part responsible for suggesting the desirability of a revision of the 1954 directives were precisely problems involving dissent and material cooperation. As one of the three theologians responsible for the drafting of the new Code, I had access to the dossier of letters submitted to the Department of Health Affairs over the past few years. Nearly all of them were precisely problems of this kind. During that same period nearly every medico-moral problem submitted to me personally by hospital administrators and bishops was a problem involving dissent and material cooperation. If one fails to deal with this problem he fails to face what is the most pressing institutional problem of Catholic health facilities in some areas.

Perhaps the Code itself, narrowly understood (the body of its directives), is not the place for discussion of such things, for they pertain to the interpretation and application of the Code. For this reason the three theologian-drafters decided they should be treated in a Preamble. The bishops changed the substance of this Preamble, and inserted quite the opposite of what we had written. This is, of course, their privilege. But privilege and accuracy do not always coincide. The bishops' assertions about cooperation will not, in my judgment, bear careful theological scrutiny—a point that was called to their attention privately before their adoption of the Code. Whatever one believes about dissent and cooperation, the bishops themselves certainly thought that the Code was the place to treat the matter. For in their own Preamble, they rejected the possibility of material cooperation. They stated: "*Any* attempt to use a Catholic health facility for procedures contrary to these norms would indeed compromise the board and administration in its responsibility to seek and protect the total good of its patients, under the guidance of the Church." (Emphasis added)