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A STUDIED AMBIGUITY:
CATHOLIC MORAL TEACHING ON THE QUESTION OF
GAY AND LESBIAN RIGHTS LEGISLATION

by

Richard A. Peddicord, O.P.

A dissertation submitted to the Faculty of Theology,
Saint Paul University,
in partial fulfillment of the requirements for the
Degree of Doctor of Theology

Ottawa, Canada: Saint Paul University

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Richard A. Peddicord, Ottawa, Canada, 1993



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TABLE OF CONTENTS

INTRODUCTION.....	1
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PART ONE

SETTING THE STAGE FOR ETHICAL REFLECTION: THE GAY AND LESBIAN MOVEMENT IN THE UNITED STATES

CHAPTER ONE: TOWARD A HISTORY OF THE GAY LIBERATION MOVEMENT IN THE UNITED STATES.....	10
1.1 Introduction.....	10
1.2 The Stonewall Rebellion.....	17
1.3 The Mattachine Society.....	20
1.4 The Daughters of Bilitis.....	29
1.5 Early Successes on the Legal Front.....	31
1.6 Confrontation with the Medical Establishment.....	35
1.7 Courting the Christian Churches.....	38
1.8 Conclusion: What Do Gays and Lesbians Want?.....	47
CHAPTER TWO: THE SECULAR DEBATE ON GAY AND LESBIAN RIGHTS.....	51
2.1 Contemporary U.S. Attitudes on Gay Liberation.....	52
2.2 Michael Novak: "Homosexuality is Harmful to Society".....	63
2.3 Roger Magnuson: "Are Gay Rights Right?".....	69
2.4 Milton Gonsalves: "Right and Reason".....	84
2.5 Richard Mohr: "Gays/Justice".....	95

2.6 Conclusion.....	109
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PART TWO
A STUDIED AMBIGUITY:
CATHOLIC TEACHING ON GAY AND LESBIAN RIGHTS

CHAPTER THREE: RESPONSES TO THE GLM BY THE AMERICAN CATHOLIC HIERARCHY.....	112
3.1 John Cardinal O'Connor.....	114
3.2 Joseph Cardinal Bernardin.....	124
3.3 Archbishop John R. Quinn.....	136
3.3.1 "A Pastoral Letter on Homosexuality".....	142
3.3.2 Archbishop Quinn on Violence Against Homosexuals.....	157
3.3.3 A New Problematic: Gay and Lesbian Partnership Laws.....	161
3.4 Conclusion.....	165
CHAPTER FOUR: THE FIRST PARTNER IN AMBIGUITY: CATHOLIC SEXUAL ETHICS AND HOMOSEXUALITY.....	171
4.1 The Traditional Case Against Homosexuality.....	172
4.1.1 The Bible and Homosexuality....	187
4.1.2 Two Competing World Views.....	194
4.2 Soteriological Implications: The Damnation Factor.....	199
4.3 PCHP, the Revisionists, and Gay Rights.....	206
4.4 Conclusion.....	209

CHAPTER FIVE:	THE SECOND PARTNER IN AMBIGUITY: CATHOLIC SOCIAL TEACHING AND HOMOSEXUALITY.....	211
5.1	Catholicism and Human Rights.....	213
5.2	The C.D.F.'s 1992 Intervention on Gay Rights.....	217
5.3	Critiques of SCC.....	231
5.4	Conclusion.....	251
CODA:	CATHOLIC SEXUAL ETHICS V. CATHOLIC SOCIAL TEACHING.....	253

PART THREE
JUSTICE BEFORE SEXUAL ETHICS:
CATHOLIC SUPPORT FOR GAY AND LESBIAN RIGHTS

CHAPTER SIX:	JOHN COURTNEY MURRAY ON THE CHURCH-STATE RELATIONSHIP.....	261
6.1	Murray on Religion and Society; Church and State.....	262
6.2	Indebtedness to Thomistic Political Theory.....	270
6.2.1	A Necessary Dualism.....	272
6.2.2	Art v. Deductive Reasoning: Murray on Contraception.....	277
6.3	Conclusion.....	290
CHAPTER SEVEN:	JOHN COURTNEY MURRAY ON RELIGIOUS FREEDOM.....	292
7.1	Tolerance Revisited.....	292
7.2	The Rights of Conscience.....	302
7.3	<u>Dignitatis humanae</u>	305

7.4	Conclusion.....	312
CHAPTER EIGHT: A CATHOLIC CASE FOR SUPPORTING GAY AND LESBIAN RIGHTS ORDINANCES.....		
		316
8.1	Introduction: On Extending the <u>Modus Vivendi</u>	316
8.2	Indebtedness to JCM's Work on Church-State Relations.....	318
8.3	Justice as a Univocal Term.....	320
8.4	Indebtedness to JCM's Work on Religious Liberty.....	327
8.5	Conclusion.....	330
ABBREVIATIONS.....		332
BIBLIOGRAPHY.....		334

INTRODUCTION

In the mid 1970s, as the Gay Liberation Movement (GLM) gained momentum, a number of municipalities in the United States were faced with the question of gay rights ordinances. The framers of these ordinances sought to ensure that lesbians and gay men would not suffer the loss of their jobs, or their housing, or other social benefits offered to all citizens, should their sexual orientation come to light.¹ Whether they would advocate the legal sanctioning of their position on the human dignity and the basic human rights of homosexual people soon faced the American Catholic hierarchy.² A few bishops voiced their

¹ See E. Carrington BOGGAN, Marilyn G. HAFT, Charles LISTER, John P. RUPP, and Thomas B. STODDARD, The Rights of Gay People (New York: Bantam Books, 1975), pp. 171-178 for examples of such municipal ordinances. The anti-discrimination law of Minneapolis, Minnesota is representative: "It is determined that discriminatory practices based on race, color, creed, religion, national origin, sex, or affectional or sexual preference, with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations, and public services, or any of them, tend to create and intensify conditions of poverty, ill health, unrest, civil disobedience, lawlessness, and vice and adversely affect the public health, safety, order, convenience, and general welfare; such discriminatory practices threaten the rights, privileges, and opportunities of all inhabitants of the city and such rights, privileges, and opportunities are hereby declared to be civil rights, and the adoption of this Chapter is deemed to be an exercise of the police power of the City to protect such rights." [Amending Chapter 945 of the Minneapolis Code of Ordinances Relating to Civil Rights (99-68). In BOGGAN, et. al., The Rights of Gay People, pp. 171-172.]

² See especially the National Conference of Catholic Bishops' document, "To Live in Christ Jesus" in Robert NUGENT and Jeannine GRAMICK (eds.), A Time to Speak: A Collection of Contemporary Statements from U.S. Catholic Sources on Homosexuality, Gay Ministry, and Social Science (Mt. Rainier, MD: New Ways Ministry, 1982), p. 6. The bishops write that gays and lesbians, "Like everyone else, should not suffer from prejudice against their basic human rights. They have a right to respect, friendship and justice. They should have an active role in the Christian community. Homosexual activity, however, as distinguished from homosexual orientation, is morally wrong." The bishops conclude their reflection by adding that the Christian community ought to provide homosexuals "a special degree of pastoral understanding and care."

support for these civil ordinances; others were reticent or refused to do so.

Before long, a clear bipolarity, based on the Church's sexual ethic and its social teaching, developed in reference to this issue. From the vantage point of Catholic sexual morality, some argued that the Church could not support such legislative proposals. Homosexual behavior is taken to be objectively immoral³ and the Church should work to keep it from becoming "legalized." On the other hand, guided by nearly a century of papal involvement in the cause of social justice throughout the world, the contemporary social teaching of the Church seemed to call for non-discrimination vis-à-vis the homosexual minority. Moreover, it did not appear to preclude the incorporation of gay and lesbian rights into civil statutes.

The C.D.F.'s Interventions on Gay and Lesbian Rights

Among the directives contained in the C.D.F.'s "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (henceforth, PCHP) is one which advises the bishops to distance themselves from groups

³ Although it morally distinguished the homosexual orientation from homosexual genital expression, the C.D.F.'s Declaration on Certain Questions Concerning Sexual Ethics, (December 29, 1975), Vatican translation, L'Osservatore Romano (Boston: Daughters of St. Paul, no date given) represented an unambiguous reaffirmation of the Church's traditional evaluation of "homosexual acts."

within the Church whose unspoken agenda includes pressuring the Church to change its moral evaluation of homosexuality. It points out that "a careful examination of their public statements and the activities they promote reveals a studied ambiguity by which they attempt to mislead the pastors and the faithful."⁴ Such groups "use the word 'Catholic' to describe either the organization or its intended members, yet they do not defend and promote the teaching of the magisterium; indeed, they even openly attack it."⁵ The bishops should offer them no support.

This directive of PCHP had a chilling effect on the ministry of the Church to homosexual persons. One of the most obvious results was the distancing that took place between the American episcopate and Dignity, the largest organization of gay and lesbian Catholics. Dignity was deemed one of the groups which had consistently cultivated a "studied ambiguity" on the question of the moral valence of homosexual acts.⁶

In July of 1992, the C.D.F.'s "Some Considerations

⁴ C.D.F., PCHP, #14 in Jeannine GRAMICK and Pat FUREY (eds.), The Vatican and Homosexuality: Reactions to the "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (New York: Crossroad, 1988), p. 7. Emphasis added.

⁵ C.D.F., PCHP, #14, p. 8.

⁶ See Bishop Francis MUGAVERO's "Withdrawing Support from Certain Homosexual Groups," in Origins, 16 (1987), p. 651.

Concerning the Catholic Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons"⁷ (henceforth, SCC) appeared in the American press. The cornerstone of this document is the insistence that there are times when society ought to discriminate against homosexual persons. When gay people attempt employment which would put them in close contact with children or when they try to adopt children, they should be opposed. Moreover, as a rule of thumb, the civil rights of gays and lesbians are dependent upon their remaining invisible to society at large. For SCC, the Church's negative moral evaluation of "homosexual acts" is the principle from which all else flows.

The Present Reality

SCC notwithstanding, the bipolar nature of the question of Catholic support for gay and lesbian rights has not been transcended. A bishop's evaluation of the possibility of Catholic moral teaching sanctioning non-discrimination legislation for gay people still turns upon his decision to view the question under the rubric of

⁷ The first version of this Instruction can be found in The National Catholic Reporter (July 31, 1992), p. 10; the revised version is in Origins, 22 (August 6, 1992), pp. 173, 175-177.

sexual ethics or social ethics.⁸

From the perspective of Catholic sexual ethics, support for gay rights seems to be ruled out. Homosexual behavior is an intrinsic evil: the law should not grant people "rights" to gravely immoral behavior. Moreover, homosexuality is sometimes taken to have a deleterious effect on the institutions of marriage and the family; therefore certain forms of discrimination against gays and lesbians are justifiable.

However, if one starts from the perspective of Catholic social teaching, with its emphases on human dignity, human rights, the inviolability of the individual conscience and the respect that is owed to the conscientious judgments of others, a society's decision to give the force of law to non-discrimination relative to its gay and lesbian minority appears to be within the ambit of the Catholic moral tradition.

Sexual morality versus the Church's social teaching: such is the impasse at which one finds the Catholic hierarchy in the United States on the question of gay and lesbian rights ordinances. The fact that this impasse has been allowed to fester for several years shows that the

⁸ As we shall see, several U.S. bishops have publicly supported gay and lesbian rights ordinances since the appearance of SCC.

American Catholic Bishops are involved in fostering a "studied ambiguity" of their own: they insist upon affirming the dignity of homosexual persons (this is a refrain that one hears from even the most ardent opponents of gay rights legislation) yet they do not insist upon the codification of this dignity into protective legislation for the homosexual minority.⁹

Our thesis is not only that the moral tradition of the Catholic Church can endorse the movement whereby the human and civil rights of gays and lesbians are protected through civil legislation and (or) municipal "gay rights" ordinances; we argue that if the Church does not support such measures, it risks infidelity to its fundamental moral principles.¹⁰

Methodology

This work is composed of three precise moments: the

⁹ We will show, moreover, that the decision to broach this subject from the perspective of the Church's social teaching is more in line with the tradition of Catholic morality than is its alternative. Here, an added dimension of the episcopacy's "studied ambiguity" comes to the surface: it has allowed the impression to be given that viewing the question of gay rights under the rubric of sexual ethics has as much merit as viewing it as a question for the Church's social teaching.

¹⁰ I am indebted to John COLEMAN's "Two Unanswered Questions," in Jeannine GRAHICK and Pat FUREY (eds.), The Vatican and Homosexuality: Reactions to the "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (New York: Crossroad, 1988), pp. 59-65, for the impetus to pursue this particular problem. Particularly inspiring was his observation that the C.D.F.'s PCHP leaves unanswered the following question: "What is the relation of law and morality, and, in particular, the status of a Catholic case for supporting, in law, the civil rights of homosexual persons?" (p. 64).

historical (chapters 1-5), the metaethical (chapters 6-7), and the normative (chapter 8).

In Part I (chapters 1 and 2) we set the stage for a Catholic reflection on the issue of gay and lesbian rights. Toward this end, the first chapter examines the history of the GLM in the United States from 1945 to the present. It documents the process by which gays and lesbians identified themselves as a distinct cultural minority and it touches upon the successes of the GLM and its contemporary agenda.

The second chapter provides a summary statement on the state of the question in the secular literature. Here the position of four representative voices on the advisability of gay and lesbian rights ordinances are presented. This secular debate will provide the specific context out of which to analyze the originality of the Catholic debate.

In Part II (chapters 3-5), the terms of the "studied ambiguity" in the Church's teaching are examined. Chapter 3 presents the positions of Archbishop Quinn and Cardinals O'Connor and Bernardin. (The thought of these three Church leaders creates the parameters of the discussion for most of Catholic America.) At the end of this chapter we will be in a position to comment on the distinctiveness of the Catholic debate on the moral advisability of gay and lesbian rights ordinances.

In the fourth chapter, through an extended look at PCHP, the first partner in ambiguity comes to the fore--Catholicism's traditional moral evaluation of homosexuality. This discussion serves to explain the stance of a number of U.S. bishops and the position adopted by the C.D.F. in SCC.

Against the backdrop of SCC, the fifth chapter entails a review of the second partner in ambiguity--Catholic social teaching's espousal of the cause of global human rights. It concludes by critiquing the teaching of SCC and by showing that SCC is not the last word on Catholic support for civil protections for homosexual persons.

In chapters 6 and 7 we interpret traditional Catholic positions with a view toward finding a basis for deciding whether the question of gay rights ordinances should be considered under the rubric of sexual ethics or social ethics.

Based upon support from the theological contribution of John Courtney Murray, S.J., we argue that the issue of gay rights does not belong in the ambit of the Church's sexual ethics: the Church's social teaching must take priority.

Having made the case that the question of gay liberation is most properly one for the Church's social

teaching and that this source would not by definition be obliged to render a negative judgment concerning protective legislation for gays and lesbians, we move in chapter 8 to make a Catholic case for supporting the civil rights of gays and lesbians.

In the first place, we appeal to the present modus vivendi that the Church has accepted relative to social policy on other sexual issues. For instance, the contemporary Church leadership, while maintaining the immorality of fornication, adultery, and artificial means of birth control, has not advocated that these practices be criminated. No good reasons keep adult, consensual homosexual relations from being added to the current modus vivendi.

Secondly, we apply the work of Murray to the question. Murray's reflections on the Church-State relationship and on religious liberty provide a strong foundation for Catholic support for gay and lesbian rights in civil society.

In the end, this work intends to show that a Catholic case for supporting non-discrimination legislation for gays and lesbians can be made on traditional principles of moral theology and that such a case has more merit than those which argue otherwise.

PART ONE
SETTING THE STAGE FOR ETHICAL REFLECTION:
THE GAY AND LESBIAN MOVEMENT IN THE UNITED STATES

CHAPTER ONE:

TOWARD A HISTORY OF THE GAY LIBERATION MOVEMENT IN THE UNITED STATES

1.1 Introduction

The definitive history of the GLM in the United States is probably years away from being written. Indeed, it is only in the last few years that substantive histories of the movement have become available.¹ There is a paucity of published works on the history of gay liberation; at the same time, the GLM is still very much in process. Within these parameters, this chapter will provide a general introduction to the GLM in the United States. We will note the fundamental aims of this movement and the successes that it has known. As a means of setting the stage for what will follow in the rest of this work, we will conclude with a brief statement on the controverted relationship between the GLM and the Roman Catholic Church in the United

¹ See, for instance: Margaret CRUIKSHANK, The Gay and Lesbian Liberation Movement (New York: Routledge, Chapman & Hall, 1992); Martin DUBERNAN, About Time: Exploring the Gay Past (New York: Meridian, 1991); Jonathan KATZ, Gay American History: Lesbians and Gay Men in the U.S.A. (New York: Meridian, 1992); and Eric MARCUS, Making History: The Struggles for Gay and Lesbian Equal Rights, 1945-1990. An Oral History (New York: Harper Collins, 1992). John D'EMILIO's Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970 (Chicago: University of Chicago Press, 1983) remains the standard-bearer for gay studies in the United States.

States.

Homosexuality is a topic that few people can address without some degree of emotional response.² It is not surprising, then, that the American civil discourse on homosexuality tends to be benighted. By and large, it is fraught with myths, half-truths, and sweeping generalizations.

For instance, Marshall Kirk and Hunter Madsen, in their study, After the Ball: How America Will Conquer its Fear and Hatred of Gays in the 90's, identify "seven hallowed public myths of homosexuality." To the minds of many Americans, gay people are:

- (1) Hardly worth thinking about
- (2) Few in number
- (3) Easy to spot
- (4) Homosexual because of sin, insanity, or seduction
- (5) Kinky, loathsome sex addicts
- (6) Unproductive and untrustworthy members of society
- (7) Suicidally unhappy.³

Kirk and Madsen show that the gay and lesbian reality bears little resemblance to the various stereotypical

² Milton A. GONSALVES puts it this way: "Homosexuality, whenever it is discussed, generates a variety of reactions ranging from lurid curiosity to passionate hostility. For persons not quite secure in their own sexual identity, ... (the) discussion ... becomes highly emotional with little possibility for being objective. Even people who are more secure in their heterosexual self-identity often have irrational fears concerning homosexual persons." [See: Fagotthey's Right & Reason: Ethics in Theory and Practice (Columbus, OH: Merrill Publishing Co., 1989), p. 401.]

³ Marshall KIRK and Hunter MADSEN, After the Ball: How America Will Conquer its Fear and Hatred of Gays in the 90's (New York: Plume, 1990), p. 61.

formulations; throughout the chapters that follow, we will have occasion to reinforce this point. What will be highlighted shortly is that gays and lesbians have been--and continue to be--the recipients of a fair amount of vilification. Kirk and Madsen claim that much of the blame for this can be laid at the feet of ignorance.

People who "have a predominant erotic attraction to others of the same sex,"⁴ i.e., gay men and lesbians, are found in every social grouping in American society. They come from no particular social class, from no particular racial background or ethnic stock, from no particular geographic region. On the surface, gays and lesbians are indistinguishable from everyone else.⁵

The question of the percentage of the population who are homosexually oriented is rife with controversy. The estimates run anywhere from less than two percent to more than ten percent.⁶ In a nation the size of the United

⁴ Richard A. ISAY, M.D. Being Homosexual: Gay Men and Their Development (New York: Avon Books, 1989), p. 11.

⁵ Some gay men and lesbians are adept at "passing" in heterosexual society, i.e., they are skilled at keeping their sexual orientation secret. Others, including the effeminate gay man and the masculine lesbian, are either less gifted or simply do not find passing worth their while.

⁶ For a balanced discussion, see Richard A. POSNER, Sex and Reason (Cambridge, MA: Harvard University Press, 1992), pp. 294-295.

States, obviously, even a fraction of a percentage point involves a significant number of people. If the homosexual population of the United States were but one percent, gays and lesbians would outnumber the populations of several of the smaller states. The size of the homosexual minority alone is enough to discredit the first two operative myths identified by Kirk and Madsen.

The etiology of same-sex attraction admits of as much controversy. Is homosexuality innate or an acquired characteristic? Is it communicable--a possible contagion--or is the average person's sexual orientation more or less unaffected by the presence of gays and lesbians in society and even impervious to instances of homosexual solicitation? As Margaret Cruikshank ponders: "Is it an essence, a core self, or is it the product of social forces? Did homosexuals exist before sexologists gave them a label, or were homosexuals an invention of sexologists?"⁷

The sciences--physical and human--have not pronounced definitively on any of these questions. One point, however, seems incontrovertible: the true homosexual orientation--regardless of its cause(s)--is all but

⁷ CRUIKSHANK, The Gay and Lesbian Liberation Movement, p. 25.

unchangeable.⁸ The question of whether one's sexual orientation is shaped more by biology or more by culture is all but rendered moot by its sheer fixity.

The scientific research on the etiology of homosexuality⁹ damages the third myth identified by Kirk and Madsen. Gays and lesbians do not experience erotic attraction to members of the same sex because of personal sin, mental defect, or because of the malevolence of others. Whereas anyone could be implicated in "homosexual acts," same-sex erotic attraction is experienced by homosexual people as a given. (The last three myths are equally untenable. For them, however, personal knowledge of a law-abiding, community-minded, and God-fearing homosexual is enough to demonstrate their discontinuity with reality.)

Persecution of gay people--or, at least, people who have been found guilty of committing homosexual acts--has been a perennial feature of Western civilization. The Mosaic law demanded the death penalty for anyone caught in a homosexual liaison; much of European jurisprudence

⁸ This point is discussed further below. See *infra*, pp. 74-77.

⁹ The scientific data is discussed below. See especially p. 74, n. 49.

continued to follow suit into the nineteenth-century.¹⁰ The ideological framework of the Third Reich's war against homosexuals,¹¹ although out of step with the European practice of its time, is all but indistinguishable from the various medieval and early modern purges of homosexuals.

In the main, throughout Christian history, gays and lesbians have been targeted for persecution and treated as criminals. "The history of social policy toward homosexuals in Western culture since Christ is one of strong disapproval, frequent ostracism, social and legal discrimination, and at times ferocious punishment."¹² An in-depth accounting for this hostility is beyond the scope of this work; it is clear, however, that the Christian churches have provided much of the ideological foundation

¹⁰ See especially, David F. GREENBERG, The Construction of Homosexuality (Chicago: University of Chicago Press, 1988), pp. 301-346. Greenberg highlights that when sodomy was removed from the list of capital offenses in a given society, it nonetheless usually remained a criminal offense.

¹¹ Cf., Michael BURLEIGH and Wolfgang WIPPERMANN, The Racial State: Germany, 1933-1945 (Cambridge: Cambridge University Press, 1991), pp. 136-197. Nazi ideology held homosexuals--especially gay men--to be dangers to the 'purity of the State,' their presence in society, it was argued, would weaken ('feminize') and eventually lead to the downfall of the Fatherland. All campaigns against homosexuals--and the very existence of criminal statutes against private consensual homosexual relations between adults--assume that homosexuality has a deleterious effect on the common good. See also Heinz HEGER, The Men with the Pink Triangle [trans. by David FERNBACH] (Boston: Alyson Press, 1980) and Richard PLANT, The Pink Triangle: The Nazi War Against Homosexuals (New York: Henry Holt and Company, 1986).

¹² POSNER, Sex and Reason, p. 291. GREENBERG's, The Construction of Homosexuality and John BOSWELL's Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century (Chicago: University of Chicago Press, 1980) offer several important exceptions to Western civilization's historic hostility to homosexuals.

for what can be called a war on homosexual men and women. The most damning arguments--literally and figuratively--against homosexual people have come from conservative Christian theology, founded upon a literal interpretation of the Scriptures, and, in the case of Catholicism, buttressed by a static conception of natural law.

Derrick Sherwin Bailey's Homosexuality and the Western Christian Tradition¹³ is the classic work on this topic. Bailey examined "the historical and theological factors which have contributed to the formation of the traditional Western Christian attitude to homosexual practices."¹⁴ He concentrated on the legislation and injunctions of the Bible that bear upon homosexuality¹⁵ and the Roman laws on the subject. He concluded that these were "only the proximate or immediate determinants of the traditional Western view of homosexual practices--those which most readily lend themselves to historical investigation."¹⁶

Bailey surmised that other, more subtle factors account for the West's hostility toward gay people. For

¹³ (London: Longmans, Green and Co., 1955).

¹⁴ BAILEY, Homosexuality..., p. 153.

¹⁵ As we will have occasion to see, these are few in number and pose difficult problems for the exegete. See infra, pp. 187-193.

¹⁶ BAILEY, Homosexuality..., p. 159.

example, he commented favorably upon G. Rattray Taylor's contrasting of patrist and matrist societies on the question of the treatment of homosexuals. Taylor had found that patrist societies tend to be "repressive, authoritarian, conservative, strongly subordinationist in its view of woman, and horrified at homosexual practices," while matrist societies tend to be "liberal, enquiring, democratic, inclined to enhance the status of woman, and tolerant of homosexual practices."¹⁷ In sum, the entire blame for Western Christendom's draconian treatment of homosexual persons cannot be held by its Judeo-Christian foundation alone.¹⁸ Cultural anthropology, sociology, and psychology may play a greater role in producing hostility to homosexuals than one might be inclined to think.¹⁹

1.2 The Stonewall Rebellion

The centuries-old tradition of hostility and violence against homosexual persons records no concerted effort on their part to join together to protect themselves until one

¹⁷ In BAILEY, Homosexuality..., p. 159.

¹⁸ One notes that any number of non-Jewish and non-Christian societies have also been unaccepting of homosexuals.

¹⁹ See, for example, Joseph AGUERO, Laura BLOCH, and Donn BYRNE, "The Relationships Among Sexual Beliefs, Attitudes, Experience, and Homophobia," in John P. DE CECCO, ed., Bashers, Baiters & Bigots: Homophobia in American Society (New York: Harrington Park Press, 1985), pp. 95-108.

summer's night in 1969.

In the early morning hours of June 28, 1969, an unlikely group of gays broke the cycle of victimization. At the Stonewall Inn, a gay bar in New York's Greenwich Village, they took a forceful and violent stand against police harassment. This night witnessed the beginning of a new moment: the birth of gay liberation.²⁰

The riot at the Stonewall Inn sent shock waves through New York's small homophile circles and the wider but inchoate community of uninvolved gay men and women. The shock waves did not end at the city's boundaries. Because of New York's role as the nation's communications center, the riot at the Stonewall Inn was reported and broadcast across the nation. Although much of the news coverage was negative, the startling word of gay people fighting back inspired the formation of new, and newly radical, 'gay liberation' organizations in cities large and small and on university campuses from Berkeley to Harvard.²¹

Rey Rivera was present at the Stonewall Inn when the police entered at about 2 a.m. on Saturday, June 28, 1969.

He reports:

I don't know if it was the customers or if it was the police, but that night everything just clicked. Everybody was like . . . 'Why should we be chastised? Why do we have to pay the Mafia all this

²⁰ Up to this time, the homophile organizations that existed in the U.S. had been, by and large, conformist. Their goals were to show that homosexual people could be respectable members of American society. They tended to downplay any differences that might be thought to exist between homosexuals and heterosexuals. Above all, they longed to be left alone by society. "Liberation" entails a completely different ideology. Its battle cry, "Gay is Good," would have sounded either impudent or heretical to the members of the older organizations. See John LAURITSEN and David THORSTAD, The Early Homosexual Rights Movement, 1864-1935 (New York: Times Change Press, 1974).

²¹ MARCUS, Making History..., pp. 171-172.

kind of money to drink in a lousy ... bar? And still be harassed by the police?'²² It didn't make any sense....

When they ushered us out, they very nicely put us out the door. Then we were standing across the street in Sheridan Square Park. But why? Everybody's looking at each other. 'Why do we have to keep on putting up with this?' Suddenly, the nickels, dimes, pennies, and quarters started flying. I threw quarters and pennies and whatnot. 'You already got the payoff, and here's some more!'²³

The police were surprised by the crowd which had gathered: its intentions were not compliant. They themselves retreated into the Stonewall Inn, whereupon the establishment was bombarded with projectiles and set on fire. "Reinforcements rescued the shaken officers from the torched bar, but their work had barely started. Rioting continued far into the night, with Puerto Rican transvestites and young street people leading the charges against rows of uniformed police officers and then withdrawing to regroup in Village alleys and side streets."²⁴

Rioting continued through the next evening. That night the New York Mattachine Society put together a special edition of its newsletter and "characterized the

²² At this time, gay bars were usually owned by the Mafia. The mobsters, who charged their clientele more than other bar owners, in turn bribed the police for a laissez-faire approach. See D'EMILIO, Sexual Politics..., p. 51.

²³ "The Drag Queen: Rey 'Sylvia Lee' Rivera," in MARCUS, Making History..., p. 191.

²⁴ D'EMILIO, Sexual Politics..., p. 232.

events, with camp humor, as 'The Hairpin Drop'²⁵ Heard Round the World.'²⁶ John D'Emilio continues:

It scarcely exaggerated. Before the end of July, women and men in New York had formed the Gay Liberation Front, a self-proclaimed revolutionary organization in the style of the New Left. Word of the Stonewall riot and GLF spread rapidly among the networks of young radicals scattered across the country, and within a year gay liberation groups had sprung into existence on college campuses and in cities around the nation.²⁷

If "Stonewall" brought to the surface gay people's deep frustration with police harassment and their willingness to fight for the recognition of their civil rights, it also represented the death of the operative strategies that had guided the two largest homophile organizations--the Mattachine Society (MS) and the Daughters of Bilitis (DOB).

1.3 The Mattachine Society (MS)

It is impossible to underestimate the importance of the Second World War in furthering the cause of gay liberation in the United States. Military service brought

²⁵ Thomas Michael THURSTON, Homosexuality and Contemporary Catholic Ethical Discussion (Ann Arbor, MI: U.M.I. Dissertation Services, 1990), p. 281, n. 64, explains that in the gay argot of the time, "'dropping hairpins' meant dropping clues that one was homosexual."

²⁶ THURSTON, Homosexuality..., p. 281.

²⁷ D'EMILIO, Sexual Politics..., pp. 232-233.

together gay men and women from across the country.²⁸ Whereas a young gay adult in a small Midwestern town might have thought that he was the only one of his kind, his "uniqueness" was destroyed upon entering the armed forces. For even though the military intended to keep homosexuals out, its methods were far from effective. John D'Emilio explains:

Given the patriotic fervor that the war elicited and the stigma attached to a rejection for neuropsychiatric reasons, few gay men willingly declared themselves in order to avoid service. Moreover, the medical questioning averaged only a few minutes in duration and depended upon the most superficial signs of homosexuality. As their means of identification, doctors often relied on body type or recruits' recognition of homosexual slang. In general, only the most effeminate, those with arrest records, or those especially worried about the strain of living in an all-male environment with stringent sanctions against homosexual behavior found themselves rejected because of their sexuality.²⁹

The young gay recruit was usually relieved of his fantasy of uniqueness early on:

The sex-segregated nature of the armed forces raised homosexuality closer to the surface for all military personnel. Soldiers indulged in buffoonery, aping in exaggerated form the social stereotype of the

²⁸ "The Selective Training and Service Act of 1940 led to the immediate registration of more than 16,400,000 males between the ages of twenty-one and thirty-five....Although the military cast a wide net in order to meet its manpower needs, it preferred men who were young, single or with few dependents: a population group likely to include a disproportionate number of gay men." [D'EMILIO, Sexual Politics..., p. 24.]

²⁹ D'EMILIO, Sexual Politics..., pp. 24-25. [In ibid., D'Emilio also reports that Dr. William Menninger concluded that, "for every homosexual who was referred or came to the Medical Department, there were five or ten who never were detected."]

homosexual, as a means of releasing the sexual tensions of life in the barracks. Such behavior was so common that a towel company used the image of a GI mincing with a towel draped around his waist to advertise its product. Army canteens witnessed men dancing with one another, an activity that in peacetime subjected homosexuals to arrest. Crowded into port cities, men on leave or those waiting to be shipped overseas shared beds in YMCAs and slept in each other's arms in parks or in the aisles of movie theaters that stayed open to house them. Living in close quarters, not knowing whether they would make it through the war, and depending on one another for survival, men of whatever sexual persuasion formed intense emotional attachments. In this setting, gay men could find one another without attracting undue attention and perhaps even encounter sympathy and acceptance by their heterosexual fellows.³⁰

The same dynamic held true for the young lesbian. The Women's Army Corps played a prominent--though unwitting--role in "fostering a lesbian identity and creating friendship networks among gay women."³¹ And, the officials in the women's division of the armed forces were equally ill-equipped at screening out lesbian recruits.

Nonetheless, it would be going much too far to claim that the military was supportive of homosexuality or that it usually cast a blind eye on transgressions of the military code. Purges of gay people are well-documented.³²

³⁰ D'EMILIO, Sexual Politics..., pp. 25-26.

³¹ D'EMILIO, Sexual Politics..., p. 27.

³² See D'EMILIO, Sexual Politics..., pp. 28-30. Randy SHILTS' recently published Conduct Unbecoming: Gays & Lesbians in the U.S. Military (New York: St. Martin's Press, 1993) offers a host of examples.

What ought to be kept in mind is that in spite of the military's antihomosexual polity, "wartime conditions . . . offered a protective covering that facilitated interaction among gay men."³³ And after the war, many homosexual veterans, more secure in their sexual identities and unwilling to renounce their newly-found freedom, decided to remain in the major military ports--particularly New York and Los Angeles. Thomas Thurston describes this dynamic:

After the War, ports of entry swelled with gay people. For one thing, those stigmatized often found it difficult to return to their home towns and face neighbors and relatives. Furthermore, other veterans were loathe to abandon the freedom they found in the big cities. Gay ghettos fostered camaraderie and openness. Although police harassed ... (the clients) of gay bars and meeting places, the conflict fostered efforts at collective self-protection by gay people.³⁴

One of the first such efforts was the founding of the Mattachine Society.³⁵ In 1950, in Los Angeles, a small group of gay men³⁶--all members of the Communist Party or other left-wing groups--came together to discuss the

³³ D'EMILIO, Sexual Politics..., p. 26.

³⁴ THURSTON, Homosexuality..., p. 265.

³⁵ "According to historian John D'Emilio, the name Mattachine was taken from mysterious masked medieval figures, who, one of the organization's founders speculated, might have been homosexuals." [MARCUS, Making History..., p. 26, n. 1.]

³⁶ The founders were Harry Hay, Rudi Gernreich, Bob Hull, Dale Jennings, and Chuck Rowland. See MARCUS, Making History..., p. 32.

oppression of gay people and the possibility of doing gay community organizing. Chuck Rowland, one of the founders of MS, describes its beginnings:

We started having regular meetings. We had been saying, 'We'll just have an organization.' And I kept saying, 'What is our theory?' Having been a communist, you've got to work with a theory. 'What is our basic principle that we're building on?' And Harry (Hay) said, 'We are an oppressed cultural minority.' And I said, 'That's exactly it!' That was the first time I know of that gays were referred to as an oppressed cultural minority.³⁷

But few homosexuals in the 1950s could conceive of themselves as an oppressed cultural minority. For the most part, they simply did not want minority status. They wanted to be seen as no different than everyone else. They wanted their sex lives to be understood as falling under the rubric of privacy: it's nobody's business what goes on between adults behind closed doors. They were more than willing to keep their sexuality secret, all the while hoping that such a strategy would win them at least tacit protection from discrimination in the workplace and from the more overt forms of social coercion.³⁸

The original MS members couldn't have been farther from this grassroots stance. Thurston provides a succinct

³⁷ "The Organizer: Chuck Rowland," in MARCUS, Making History..., p. 32.

³⁸ See MARCUS, Making History..., pp. 32-36.

synopsis of the motivating ideology of the founders:

Hay and his followers focused on organizing a gay constituency capable of militant cohesive action. As Marxists, they believed injustice was deeply rooted in the structures of society, and therefore they rejected pragmatic, reformist methods. They held that homosexuals' ignorance of the fact that they were a social minority kept homosexuals imprisoned within the dominant culture. Because of this false consciousness, imposed by the hegemonic ideology, homosexuals labelled their eroticism as an individual aberration. Hay and his followers hoped that consciousness-raising would bring homosexuals to recognize their common interests. From their awareness of their status as an oppressed minority, homosexuals could evolve a 'highly ethical homosexual culture,' and 'lead well-adjusted, wholesome, and socially productive lives.' They would thus develop a new pride from participating in the cultural growth and achievements of the homosexual minority.³⁹

Chuck Rowland, at the first constitutional convention of MS (1953) made a speech in which he remembers saying: "The time will come when we will march arm in arm, ten abreast down Hollywood Boulevard proclaiming our pride in our homosexuality."⁴⁰ He recalls, as well, the less than rousing reception such an idea received: "One of my friends . . . said he almost had a coronary at such an outrageous thought I deliberately built this speech upon to what I hoped would be a rousing climax. I got some applause, but people were more in shock than anything else.

³⁹ THURSTON, Homosexuality..., pp. 268-269.

⁴⁰ "The Organizer: Chuck Rowland," in MARCUS, Making History..., p. 34.

To me, it seemed perfectly reasonable."⁴¹

With such an ideological split, it wasn't long before MS was in crisis. The radical leadership--unable to convince much of the membership of the importance of working toward the day when American society would recognize and accept gay people as equals--found itself out of office after the convention of 1953.⁴² MS from that point onward belonged to Harold L. ("Hal") Call.

Hal Call had a modest, though not uncontroversial, agenda. He believed that the one goal worth fighting for was sexual freedom; indeed, to his way of thinking, "gay rights" were identical to "sexual rights." To this day, Call remains a controversial figure. His supporters "admire him for being a tireless advocate of gay sexual freedom in the face of brutal police repression. Others accuse him of stealing the Mattachine Society from its founders and turning it into a sex club and personal profit center."⁴³

Under Call, MS adopted an accommodationist position. Gay people should present themselves as unobtrusively as

⁴¹ "The Organizer: Chuck Rowland," in MARCUS, Making History..., p. 34.

⁴² Their undoing was the decision to make MS a fully democratic organization. See Chuck Rowland's account in MARCUS, Making History..., pp. 34 ff.

⁴³ MARCUS, Making History..., p. 59.

possible; they were to make no waves, ruffle no feathers. In the struggle for (homo)sexual freedom, MS "looked to professionals and to individual efforts rather than mass action to advance . . . (its) cause."⁴⁴ Perhaps most significantly, the discussion groups of MS, which had earlier been the basis for consciousness-raising, were now better classified as fulfilling a therapeutic role: members were encouraged to share their difficulties with being gay and with fitting into heterosexual society.⁴⁵ MS had lost the vision of its founders; interestingly enough, it also lost many members.⁴⁶

In a 1992 interview with Eric Marcus, Call explained his side of the story:

I didn't just disagree with how the original Mattachine was run. I also disagreed with the philosophy of the Mattachine founders. I felt that they were sort of pie in the sky, erudite, and artistically inclined. Take Harry Hay, the kingpin of the original founders. You could never talk to him very long without him going way back in history to some ancient Egyptian cult or something of that sort. He was always making Mattachine and the homosexual of today a parallel to some of those things he found out in his historical research.... We saw Mattachine as a here-and-now, practical thing....I felt that education and getting the word

⁴⁴ THURSTON, Homosexuality..., p. 271.

⁴⁵ See THURSTON, Homosexuality..., p. 271.

⁴⁶ In 1953, MS had upwards of 2000 members; by 1960 it had about 200 members. See THURSTON, Homosexuality..., pp. 269, 273.

out was the best thing we could do, so the whole society could ultimately say, 'Homosexuals are human beings in our midst. They're only different in certain ways from the rest of us. Leave them alone.' We wanted to see those goals achieved by evolutionary methods, not revolutionary methods. We were pretty pure and bland, really. By today's standards, we were a bunch of limp-wrist pussyfoots. But we were out of the closet, and that was a very courageous thing in those days....⁴⁷

Hay and the other founders of MS had refused to accept the medical establishment's approach to homosexuality.⁴⁸ This approach classified homosexuality as a sickness--a mental disorder whose sufferers could be helped by medical treatment.⁴⁹ It did not matter to the partisans of the "medicalization of homosexuality"⁵⁰ that they were never able to reach a consensus on the etiology of their newly found disease;⁵¹ what was important was believing they could be of help in either curing the disease or in

⁴⁷ "Gay Sexualist: Hal Call," in MARCUS, Making History..., pp. 62-63.

⁴⁸ John COLEMAN reminds us that in the nineteenth-century, medicine had "displaced religion as the key social source for defining homosexual orientation and behaviors." See his "The Homosexual Revolution and Hermeneutics," in Gregory BAUM and John COLEMAN, eds., The Sexual Revolution [Concilium, (June 1984)] (Edinburgh: T. & T. Clark, 1984), p. 55.

⁴⁹ The parallel to alcoholism is noted by David F. GREENBERG: "In 1852 ... the Swedish physician Magnus Huss coined the word 'alcoholism,' a new 'disease' that medical research claimed to have discovered; before that there had only been drunkenness, condemned from the pulpit and managed by the policeman. By calling heavy drinking a disease, Huss was reclassifying it as a condition that physicians should treat." See The Construction of Homosexuality, p. 403.

⁵⁰ See especially GREENBERG, The Construction of Homosexuality, pp. 397-433.

⁵¹ Like contemporary theorists, which tend to allow for a mysterious admixture of genetic and environmental factors, the progenitors were apt to accept some type of degeneracy theory. Some of these were more weighted toward heredity, others toward social influences. See GREENBERG, The Construction of Homosexuality, pp. 397-433.

alleviating its most disturbing manifestations.⁵²

Without the original leadership at the helm and with its new accomodationist strategy, MS was helpless in the face of the medicalization of homosexuality. John D'Emilio describes the scheme that developed:

Fear, along with the lack of confidence in their own ability to speak with authority about homosexuality, created a crippling dependency. In their search for allies and their quest for legitimacy in the eyes of the establishment, movement leaders often bowed to an apparently superior professional wisdom that was part of the problem they needed to confront. It led them to open their publications to articles classing homosexuals with rapists, child molesters, and exhibitionists as sexual psychopaths, articles arguing that homosexuals were 'almost invariably neurotic or psychotic' and advising gays at least to 'try to get cured.'⁵³

1.4 The Daughters of Bilitis (DOB)

Although they were always a relatively small minority, women had been members of MS from the beginning. With the change of leadership in 1953 and the turn toward focusing primarily on sexual freedom, the lesbian contingent felt

⁵² From our vantage point, much of this "help" appears to be quackery. See, for instance, "The Therapy of C. M. Otis (1911)," in Martin DUBERMAN, About Time: Exploring the Gay Past (New York: Meridian, 1991), pp. 80-88; and Jonathan Ned KATZ, Gay American History: Lesbians and Gay Men in the U. S. A. A Documentary History (New York: Meridian, 1992), pp. 129-208. [Among other things, Katz documents the use of electroshock therapy in attempts to "cure" homosexuals. This type of therapy was in use well into the 1960s.]

⁵³ D'EMILIO, Sexual Politics..., p. 125. We shall see below (pp. 35-38) how the tables were turned on the medical establishment with the revolutionary experiments and analyses of Dr. Evelyn Hooker.

more and more left out.⁵⁴ The scene was set for the founding of an organization specifically for lesbians.

In 1955 in San Francisco, a group of four lesbian couples formed a group which they called the Daughters of Bilitis.⁵⁵ The inspiration came primarily from one of the couples: Del Martin and Phyllis Lyon. Their vision was for an organization which would help to educate the public and provide support and answers for lesbians. Billie Tallmij,⁵⁶ an early member of DOB, describes its earliest objectives:

The better known the Daughters became, the more letters and phone calls we got. We had people in Podunk, Iowa, writing letters that would break your heart. 'Here I am. I'm the only one in the world. What do I do? How do I make contact? Where do I find people? Who can I talk to? What books can I read?' Every one of them felt like she was the only voice crying out in the wilderness. If the Daughters did nothing else--and we did a lot else--we were able to bring some sense of solace to these women. Just knowing that we were there would sometimes keep them from cracking up or from suicide. I talked more than one person out of suicide in those early days. The women were so frightened because they didn't understand why they were so ... different from

⁵⁴ Indeed, as D'EMILIO makes clear, many lesbians wished to distance themselves from their gay brothers. DOB, for instance, would find "gay male promiscuity and the police harassment that accompanied it an encumbrance that seemed to make lesbians guilty by association in the eyes of society." See Sexual Politics..., p. 105.

⁵⁵ MARCUS explains the allusion: Bilitis was the "heroine of the fictional Song of Bilitis, which was written by the late nineteenth-century author Pierre Louys, who portrayed Bilitis as a sometime lesbian and contemporary of Sappho." See Making History..., p. 70.

⁵⁶ Billie TALLMIJ is a pseudonym.

everybody else.⁵⁷

Despite the antagonisms that existed between gay women and men, the DOB did collaborate from time to time with MS. One of the most significant examples of this collaboration was with the publication of The Ladder, the DOB's newsletter.⁵⁸

Like MS, the DOB adopted a strictly accomodationist approach. The political atmosphere, highly charged by the machinations of Senator Joseph McCarthy,⁵⁹ did not seem to admit of any other tactic. Even into the 1960s, the DOB held to this policy.⁶⁰

1.5 Early Successes on the Legal Front

Before the Stonewall riots, the GLM--as exemplified in the efforts of MS and the DOB--knew some significant

⁵⁷ "The Teacher: Billie Tallmij," in MARCUS, Making History..., pp. 75-76.

⁵⁸ Although The Ladder was the newsletter of the first lesbian organization, it was not the first lesbian newsletter. That distinction goes to Vice Versa. In 1947, Lisa Ben (a pseudonym) singlehandedly published the newsletter from her office typewriter and distributed it to a circle of friends. See "'Gay Gal'--Lisa Ben," in Marcus, Making History..., pp. 5-15.

⁵⁹ It is a little-known fact that during the "McCarthy era," more people lost their jobs for allegedly being homosexual than those who were accused of communist sympathies. See D'EMILIO, Sexual Politics..., chapter 3: "The Bonds of Oppression: Gay Life in the 1950s," pp. 40-56.

⁶⁰ The DOB even had a dress code for its members who wished to join pickets or other protests. Members had to wear dresses or skirts. Barbara Gittings explains: "We decided that we were the bearers of a message. To keep attention on the message, not on ourselves, we had to look unexceptional and blend into the landscape. So the order went out, and everybody followed it. The stirrings to disobey the dress code didn't really come up until 1969." See "The Rabble Rousers: Barbara Gittings and Kay Lahusen," in MARCUS, Making History..., p. 123.

successes. Many of them, of course, were inchoate: they would come to fruition many years later. Others were incapable of being fully appreciated: the support a young, suicidal gay person found in The Ladder or the Mattachine Review; the impact a picket or a protest might have had on those who witnessed it; or the undocumented acts of courage that were inspired by the knowledge that two fledgling gay organizations had been established "out there" in California.⁶¹

One of the first and most fundamental successes concerned the legal protection of the publications of the gay organizations. It was illegal to send obscene material through the mail; anything that mentioned homosexuality in a favorable light was generally regarded as obscene. John D'Emilio describes the successful challenge made against this position by the editors of ONE magazine:⁶²

In October 1954 the Los Angeles postmaster seized copies of ONE and refused to mail the magazine on the grounds that it was 'obscene, lewd, lascivious and filthy.' The editors decided to contest the government's view. In 1956 a federal district judge

⁶¹ It bears noting that the groups were covered by San Francisco's mainline press in the 1950s--albeit unfavorably. More objective reporting became the trend as the 1960s began. Life magazine's exposé on gay life in San Francisco (June 26, 1964) ought to be seen as the definitive break with the national media's decades-old "conspiracy of silence" concerning homosexuality. [See D'EMILIO, Sexual Politics..., pp. 120-122, 159-160, 165, 195.]

⁶² ONE was the brainchild of Martin Block, a disaffected member of the MS. "Writers in ONE magazine projected an image of defiant pride in their identity; they intentionally tried to shake their readers out of a resigned acceptance of the status quo." [D'EMILIO, Sexual Politics..., p. 108; see also "The Editor: Martin Block," in MARCUS, Making History..., pp. 37-42.]

sustained the postmaster's action, and the following year, an appeals court dealt ONE another blow when it characterized the magazine as 'cheap pornography.' But in January 1958 the United States Supreme Court unanimously reversed the findings of the lower courts....(From then on) homophile publications escaped any further legal action by postal authorities or local law enforcement agencies.⁶³

The homophile organizations also made progress in overcoming police harassment of gay and lesbian bars and the entrapment strategies of some police departments. Herb Selwyn, one of the first lawyers who worked for MS, recounts a case that reveals one aspect of what gay liberation was up against in the early years of the movement:

I'll never forget one case in the late fifties, in which the state tried to revoke the license of a hairdresser, a cosmetologist, for being gay. I think the hairdresser had a lewd conduct arrest for propositioning an undercover policeman or something like that. But it was a misdemeanor, and it wasn't something that affected his work. It wasn't as if he was a crook or a person who might assault somebody. It was simply that he was a homosexual, and therefore the prosecutor believed he should be stripped of his cosmetologist's license.

When we got to court, I suggested to the administrative law judge, who I knew was a married man, that he should ask his wife how many of the male hairdressers she had gone to in her life she thought might be gay. And I jokingly asked him how all of our wives and girlfriends would look if all the gay hairdressers had their licenses removed. He chuckled at that one. The prosecutor frowned. The whole thing was very amusing, but not for the poor guy whose license was at stake....If he had lost his license, it

⁶³ D'EMILIO, Sexual Politics..., p. 115.

would have caused a great deal of harm to him and to the people who depended on him.⁶⁴

Probably the most significant legal battle began in 1957 when Frank Kameny was dismissed by the United States Army Map Service because of his homosexuality. Kameny was a Ph.D. in astronomy from Harvard University. "Within the small pre-NASA world of professional astronomers, everyone knew Frank was a homosexual;"⁶⁵ he would never again be able to work in his field of specialization.

Kameny decided to fight his firing. He recalls his thinking at the time and the eventual outcome of his struggle:

I had decided that my dismissal amounted to a declaration of war against me by my government. First, I don't grant my government the right to declare war against me. And second, I tend not to lose my wars. So that started an eighteen-year war, which is this country's longest. It was fought by every possible means and ultimately ended on July 3, 1975, when the then-Civil Service Commission issued its surrender documents--in the form of a news release--saying, in effect, but not in these words, that the government was changing its policy to suit me. The commission said that they would no longer exclude homosexuals from government employment.⁶⁶

Part and parcel of Kameny's war was his founding the Washington, D.C. chapter of the Mattachine Society in

⁶⁴ "The Attorney: Herb Selwyn," in MARCUS, Making History..., p. 57.

⁶⁵ MARCUS, Making History..., p. 93.

⁶⁶ "The Very Mad Scientist: Frank Kameny," in MARCUS, Making History..., pp. 94-95.

November, 1961. The Washington MS, unlike most other chapters and unlike the official leadership of MS, did not adopt an accomodationist approach; it refused to be bullied by the prevailing "sickness discourse" of the medical profession; it saw itself as "the homosexual equivalent of the National Association for the Advancement of Colored People, and decided to adopt the strategies of the Southern Christian Leadership Conference: demonstrations and picketing."⁶⁷ In many ways the Washington MS was a precursor to the more militant wing of the GLM which was to appear after Stonewall.

1.6 Confrontation with the Medical Establishment

Thomas Thurston, following the lead of Ronald Bayer's Homosexuality and American Psychiatry: The Politics of Diagnosis,⁶⁸ advances the notion that "the gay rights movement created the conditions for the human sciences to view homosexuality more positively."⁶⁹ This conviction is certainly true when it comes to discussing the role of Dr.

⁶⁷ THURSTON, Homosexuality..., p. 274.

⁶⁸ (New York: Basic Books, 1981).

⁶⁹ THURSTON, Homosexuality..., p. 306.

Evelyn Hooker in the nascent gay liberation movement.

Evelyn Hooker's "The Adjustment of the Overt Male Homosexual"⁷⁰ sounded the death knell for the conceptualization of homosexuality as a mental disorder. Her experiment was strikingly simple: she found 30 gay men (who were not in therapy) and then matched them with 30 heterosexual men for age, education, and I.Q. These 60 men were given a standard battery of psychological tests and were asked to give a considerable amount of information about their life histories. Hooker then gave the test results to several of her colleagues and asked them to analyze the data with an eye to determining who were the homosexuals and who were the heterosexuals. These colleagues, skilled in reading test results, could not accomplish the task with any degree of accuracy. Hooker concluded that "there is no inherent connection between homosexual orientation and clinical symptoms of mental illness."⁷¹

Gay liberation simply could not have had any success without the work of Evelyn Hooker and those that have followed in her steps. Psychiatry's labelling of gays and

⁷⁰ In The Journal of Projective Techniques, 21 (1957), pp. 1-31.

⁷¹ Quoted in Martin HOFFMAN, "Homosexual," in Psychology Today, 3 (1969), p. 43; cited by Donald GOERGEN, The Sexual Celibate (Garden City, NY: Image Books, 1979), pp. 101-102.

lesbians as "sick" kept them from social participation and social equality better than any civil statute had ever been able to do.

The story that must be told, according to Dr. Hooker, is that the inspiration to do her ground-breaking study came from a gay couple, "Sammy" and "George." On Thanksgiving Day, 1945, Sammy and George invited Hooker and her husband to San Francisco's "Finocchio's," to see the female impersonators' show. . . .

After the show, we came back to the Fairmont Hotel on Nob Hill for a snack. I was unprepared for what came next. Sammy turned to me and said, 'We have let you see us as we are, and now it is your scientific duty to make a study of people like us.' Imagine that! This bright young man, somewhere in his early thirties, had obviously been thinking about this for a long time. And by 'people like us' he meant, 'We're homosexual, but we don't need psychiatrists. We don't need psychologists. We're not insane. We're not any of those things they say we are.'⁷²

Dr. Hooker continues:

I had a colleague with whom I shared an office....His name was Bruno Klopfer. Bruno was one of the world's greatest experts on the Rorschach test. So I went to Bruno and I told him about this suggestion. He jumped out of his chair and said, 'You must do it, Eee-vah-leeen! You must do it! Your friend is absolutely right. We don't know anything about people like him. The only ones we know about are the people who come to us as patients. And, of course, many of those who come to us are very disturbed, pathological. You must do it!' So I told Bruno I would do it. Bruno later served in my research as a judge. Unfortunately,

⁷² "The Psychologist: Dr. Evelyn Hooker," in MARCUS, Making History..., p. 18.

Sammy was killed in a tragic automobile accident and never learned the outcome of what he urged me to do.⁷³

Because of the trust and the persistence of one gay man and the tireless and meticulous work of one psychologist, homosexuality would eventually be removed from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. "Gay men and women no longer had to live with the burden of the abhorrent official 'sickness' label."⁷⁴

1.7 Courting the Christian Churches

Three institutions in modern Western society had effectively demonized homosexuality: law, medicine, and religion. The early leaders of the GLM targeted all three. We have seen some of the effects on the legal and medical fronts. We now move to a discussion of the dialogue initiated with the Christian churches.

In 1964 the Council on Religion and the Homosexual (CRH) was founded in San Francisco. This organization was the joint effort of the MS, the DOB, and several Christian

⁷³ "The Psychologist: Dr. Evelyn Hooker," in MARCUS, Making History..., p. 19.

⁷⁴ MARCUS, Making History..., p. 173. The decision of the APA to remove homosexuality from its list of mental disorders was hotly contested and the object of much political maneuvering. BAYER's Homosexuality and American Psychiatry includes a frank discussion of the gay community's efforts in lobbying the APA to change its official designation of homosexuality as a sickness.

congregations in the city. Billie Tallmij remembers the initial meeting:

With Mattachine, we (the DOB) wrote to as many ministers as we could from as many different faiths as existed. We got representatives from the Episcopalians, the Quakers, and the Baptists. We held the conference in Marin over a three-day weekend. We had about twenty gays...and seven women....Del (Martin) and I deliberately arranged it so all the participants were brought there and dropped off. We did it that way so no one could leave. To put it bluntly, they came to convert us, and we came to convert them.⁷⁵

The upshot was that a remarkable dialogue was initiated. Most of the ministers had never had someone say to them, "I am a homosexual;" most found that they needed more understanding of the reality of homosexuality. The eagerness of the church representatives is probably best explained by an admixture of evangelical outreach and the ambience of the burgeoning civil rights movement. The cause of racial justice in American society provided a ready-made paradigm for gay and lesbian liberation; society's complicity in injustice was the insight of the age.

The MS and the DOB were able to capitalize upon this

⁷⁵ "The Teacher: Billie Tallmij," in MARCUS, Making History..., p. 78. The question of who initiated the first contact is discussed in D'EMILIO, Sexual Politics..., pp. 192 ff. It seems clear that the honor goes to the Reverend Ted McIlvenna, assistant at Glide Memorial Methodist Church. In 1962, McIlvenna had contacted the MS in an effort to get help in understanding the issues surrounding sexual identity: in his social outreach ministry he had encountered a number of gay male runaways who were involved in street hustling.

prevailing Zeitgeist. Tallmij recounts a particularly successful strategy:

...we took some of these ministers to some of the gay bars. We started with the pits--these places were toilets; they were filthy--and then we moved up to some of the better ones. Our point was, 'Because you will not allow us to be open, this is where we have to meet. Would you bring your wife here? Would you want your son to go here? Do you know that your son isn't going here?' It really jarred the living hell out of a lot of them.⁷⁶

One of the first ministers to reconsider his church's moral evaluation of homosexuality in light of his involvement with CRH was the Episcopalian priest, Robert Warren Cromey.⁷⁷ Cromey was also deeply offended by the police harassment of homosexual people (harassment that he witnessed even on the occasion of a social gathering of the CRH) and the necessity most gays and lesbians felt for keeping their true identities hidden. His first-hand experience with CRH and his ministry with gay people as rector of Trinity Episcopal Church in San Francisco no doubt greatly influenced his ability to make the following statement:

I am outraged that so many people in our society and Church hate 'faggots, queers, and dykes.' My stomach turns when I hear Christian people condemn

⁷⁶ "The Teacher: Billie Tallmij," in MARCUS, Making History..., p. 79.

⁷⁷ See Robert Warren CROMEY, In God's Image: Christian Witness to the Need for Gay/Lesbian Equality in the Eyes of the Church (San Francisco: Alamo Square Press, 1991).

homosexuality as a sin and homosexual people as perverts. I weep when I think of the long road ahead for full freedom. I pray for the souls of my fellow church people who continue to block full freedom for God's children who were given the gift of being drawn in loving and sexual communion with people of the same gender.⁷⁸

Beginning in the late 1960s, many Protestant churches began a reappraisal of the traditional condemnation of homosexuality. One commentator argues that this reappraisal was based on three basic criteria:

First, a better informed pastoral care had revealed much unnecessary suffering. Second, the issues of civil rights could not be ignored. Third, even though scholarly work on the tradition was small in quantity, it pointed in the direction of inadequate scholarly bases for the traditional positions.⁷⁹

To speak of "traditional positions" on homosexuality in Protestantism is to speak almost exclusively of the traditional interpretations of the handful of biblical texts which deal with homosexuality. Derrick Sherwin Bailey's seminal study, Homosexuality and the Western Christian Tradition raised what for many would become the critical question for biblical hermeneutics: How could the biblical authors have condemned realities which would come

⁷⁸ CRONEY, In God's Image..., pp. 19-20.

⁷⁹ S. HILTNER, "Homosexuality and the Churches," in J. MARNOR, ed., Homosexual Behavior: A Modern Reappraisal (New York: Basic Books, 1980), pp. 222-223. Cited in Robert NUGENT and Jeannine GRAMICK, "Homosexuality: Protestant, Catholic, and Jewish Issues; A Fishbone Tale," in R. HASBANY, ed., Homosexuality and Religion (New York: Haworth Press, 1989), p. 15.

into existence only centuries later?⁸⁰ The biblical authors were cognizant of a limited range of homosexual behaviors: pederasty (following the Greek pedagogical model)⁸¹ or male prostitution (ritual or not).⁸² They show no awareness of the "homosexual orientation" or that adult persons of the same sex might share an intimate relationship marked by mutuality, erotic passion, tenderness, and fidelity.

Robin Scroggs, in his magistral The New Testament and Homosexuality, offers the following conclusion on the "homosexuality" that would have been known to the authors of the New Testament:

I do not wish to...force all male homosexual activities in the Greco-Roman world to a simple form of pederasty. Obviously there were many different avenues pederasty could and did take, and, no doubt, many subtle nuances in concrete cases that would never be reflected in our texts. Nor do I wish the syllogism to be: All homosexuality was pederastic; all pederasty was constitutive of inequality and thus evil; therefore all homosexuality was evil. I do not doubt that friendships of good passion and tender

⁸⁰ In reference to the anti-homosexual verses in the Pauline corpus, Bailey asks: "(D)o the Apostle's strictures apply to the homosexual acts of the genuine invert, and in particular to those physical expressions of affection which may take place between two persons of the same sex who affirm that they are 'in love'?" To such situations it can hardly be said that the New Testament speaks, since the condition of inversion, with all its special problems, was quite unknown at that time." See BAILEY, Homosexuality..., p. 157.

⁸¹ The definitive study is K. J. DOVER, Greek Homosexuality (Cambridge, MA: Harvard University Press, 1989).

⁸² TOM HORNER, Jonathan Loved David: Homosexuality in Biblical Times (Philadelphia: Westminster Press, 1978), pp. 90-99, provides a thorough discussion of male prostitution in New Testament times.

caring existed. I am suggesting that if we interpret pederasty supplely enough to include the continuation of that model into these borderline cases, then it is certain that pederasty was the only model in existence in the world of this time. That proposed by twentieth-century gay liberation movements was, without question, entirely absent.⁸³

This type of historical-critical interpretation, with an emphasis on social and cultural contexts, has played an immense role in the liberalizing of the stances on homosexuality in mainline Protestantism. It would no longer be possible to say that 'the Bible has taken care of the problem once and for all.' This factor, added to a growing willingness of religious people to enter into dialogue with gays and lesbians ensured that changes would be forthcoming in the official positions of several Christian churches.

It is beyond our scope to present detailed documentation on the changes that have occurred in American Protestantism's moral evaluation of homosexual behavior. Let Gabriel Moran's remarks provide a summary statement for the broad lines of the developments:

Until about 1970 there was almost total silence. With the emergence of a gay rights movement, one wing of Christianity turned vocally negative. The only difference today is that their condemnation has become more strident. A visitor from another planet

⁸³ Robin SCROGGS, The New Testament and Homosexuality: Contextual Background for Contemporary Debate (Philadelphia: Fortress Press, 1983), p. 139.

listening to these preachers would assume that homosexuality is listed as the number one sin in the New Testament.

In the rest of Christianity much of the writing moved to a second stage. Here it is said that gays should not be treated badly or legally harassed--despite their acting contrary to God's will. A third stage that seems to have arrived in some quarters removes gay sex from the paragraph listing sexual problems. These books acknowledge that an aspect of some people's lives is their homosexual orientation. There is fourth stage, which I find in no textbooks but which is suggested by some writers today. They would view homosexuality as a necessary corrective to present heterosexual attitudes. The human race will never understand power, love, and transcendence so long as it fails to embrace gay sexuality.⁸⁴

Most mainline Protestant churches in the United States are somewhere between stages two and three. While one would be hard put to find the leadership of any major Protestant denomination advocating discrimination against gay people, to find a Protestant minister who would agree (say) to bless publicly a gay union may be just as difficult.⁸⁵ The Moravian Church, The Friends

⁸⁴ Gabriel MORAN, "Education: Sexual and Religious," in Robert NUGENT, ed., A Challenge to Love: Gay and Lesbian Catholics in the Church (New York: Crossroad, 1989), pp. 161-162. It is to be noted that Moran's discussion is not limited to American Protestantism. His remarks concern the entire Christian reality in the United States.

⁸⁵ A striking exception is John Shelby Spong, the Episcopal bishop of Newark, New Jersey. He writes: "If they (a gay couple) want to have a liturgy, a service, in which the holiness of their relationship is liturgically proclaimed in the company of people with whom they're comfortable, then I'm willing to do that for them." See "The Bishop: John Shelby Spong," in MARCUS, Making History..., p. 498.

("Quakers")⁸⁶ and the United Universalist Association are among the few denominations which have "endorsed same-sex genital expressions as fully compatible with Christian morality and human sexuality."⁸⁷ Most Protestant churches find themselves in the same situation as the Lutheran Church in America (LCA)--continuing to study the many interrelated issues.

The LCA issued a study document on homosexuality--"A Study of Issues Concerning Homosexuality"--in 1986. This study acknowledged that the church is in an interim situation as regards homosexuality, and, "far from being able to instruct the world about the meaning of homosexuality," the LCA "finds itself with the world struggling to understand and to know where to praise and where to judge."⁸⁸ The interim nature of the church's reflection was reaffirmed strikingly in 1987 at the LCA's national convention: The governing board determined that the local churches should be given the authority to decide whether or not they will ordain homosexual candidates for

⁸⁶ See especially Alastair HERON, ed., Toward a Quaker View of Sex (London: Friends Home Service Committee, 1963). This work was remarkable--and shocking--for its time. It proposed that mutual love, commitment, and fidelity are the only categories by which a Christian's sexual relationship ought to be judged. It was posited, therefore, that some homosexual relationships could be judged morally good.

⁸⁷ NUGENT and GRAMICK, "A Fishbone Tale," p. 26.

⁸⁸ Quoted in NUGENT and GRAMICK, "A Fishbone Tale," p. 24.

the ministry.⁸⁹

There are a number of religious organizations that have been established along denominational lines for gay and lesbian Protestants. Among these groups are Affirmation (United Methodist), American Baptists Concerned, Brethren/Mennonite Council for Gay Concerns, Evangelical Outreach Ministries, Evangelicals Concerned, Friends for Lesbian and Gay Concerns (Quakers), Lutherans Concerned/North America, Presbyterians for Gay/Lesbian Concerns, and the United Lesbian and Gay Christian Scientists.⁹⁰ The existence of a support group ought not to be taken as evidence that a particular denomination's leadership has ruled that homosexual behavior can be undertaken morally. Such is most likely not the case. What is important to note is that in mainline Protestantism a great deal of pastoral leeway exists for ministering to gay men and lesbians. The above organizations have not had to deal with the same kind of challenges that Dignity and New Ways Ministry (NWM) have had to face from members of

⁸⁹ See NUGENT and GRAMICK, "A Fishbone Tale," p. 24.

⁹⁰ See Richard WOODS, O.P., Another Kind of Love: Homosexuality and Spirituality [Third edition] (Ft. Wayne, IN: Knoll Publishing, 1988), pp. 189-191.

the American Catholic hierarchy.⁹¹

1.8 Conclusion: What Do Gays and Lesbians Want?

The goals of the contemporary GLM are not easily synthesized. "Gay liberation" is, in the end, an umbrella term which comprises many groups with potentially conflicting ideologies, value systems, and general aims. In the early years of the movement, many were satisfied with working toward the day when gay people would be "left alone," when their same-sex attraction and (private) sexual practices would have no bearing on their participation in American society. After the Stonewall Rebellion, however, the movement took on a more radical mentality; social tolerance would no longer be enough. "Lesbians and gay men wanted to be recognized as equal to heterosexuals in their sexuality, creativity, and social usefulness."⁹²

At our present historical juncture, the goals of the GLM can be generalized to include the following five points:

⁹¹ Jeannine GRAMICK and Robert NUGENT, co-founders of NWM, detail the difficulties they faced in establishing NWM and in staging some of its programs in Building Bridges: Gay & Lesbian Reality and the Catholic Church (Mystic, CT: Twenty-Third Publications, 1992), pp. 195-207. Bishop Francis MUGAVERO's "Withdrawing Support from Certain Homosexual Groups" [in Origins, 16 (1987), p. 651] is a good example for the problematic nature of Dignity's relationship with some members of the American hierarchy.

⁹² CRUIKSHANK, The Gay and Lesbian Liberation Movement, p. 9.

- (1) an end to all forms of social control of homosexuals;
- (2) civil rights legislation to prevent housing and job discrimination;
- (3) repeal of sodomy laws;
- (4) acceptance of lesbian and gay relationships;
- (5) accurate portrayal in the mass media.⁹³

From the vantage point of the contemporary American Catholic Church, all of these points are controversial. Although one would be hard-pressed to find official Catholic support for imprisoning--or even fining--those who indulge in private, adult to adult, consensual, homosexual relations, one is not going to find many Catholic leaders demanding that sodomy laws be repealed. Indeed, one might find them arguing that it is best to keep such laws in place--even if they're unenforceable--because they send a necessary message to society at large concerning the immorality of homosexual practices.

Points 1, 4, and 5 are even more contentious. The moral tradition of the Catholic Church is at odds with a completely secularist⁹⁴ understanding of human sexual relating. The Church cannot bless the "sexual freedom movement" (for lack of a better term) if its only ethical norm is the mutual consent of all involved parties.

⁹³ CRUIKSHANK, *The Gay and Lesbian Liberation Movement*, p. 9. (It should be noted that while not strictly pertaining to "liberation," most every contemporary gay and lesbian organization strongly advocates AIDS education, research, funding, etc.)

⁹⁴ "Materialist" or "rationalist" can be readily substituted here.

"Acceptance" of gay and lesbian relationships is an ambiguous concept. For some, it might mean that gay couples ought to receive all the socio-economic benefits that are afforded married couples. For others, it entails equating moral qualms over gay relationships with the basest forms of bigotry. On this reading, gay people are not merely to be tolerated, they are to be affirmed precisely in reference to their sexual selves. In other words, the message is: "Love me; love my (sexual) lifestyle."⁹⁵ Nothing short of a theological paradigm shift (the likes of which one cannot even begin to fathom) could move the Church to "accept" gay and lesbian relationships if "acceptance" is so defined.⁹⁶

The fifth point is not without its own set of difficulties. What is to count as an "accurate" portrayal of gays and lesbians? For that matter, what is an accurate portrayal of heterosexually-oriented people? The gay and lesbian experience is as varied as human experience itself: it includes people of every conceivable background; it

⁹⁵ See the editorial "Live & Let Live," in Commonweal, 120 (January 15, 1993), p. 4.

⁹⁶ Archbishop John QUINN pulled no punches on this issue in his commentary on the C.D.F.'s "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons:" "...those who entertain the hope that the Church will alter its moral teaching on homosexuality or that it can be forced to do so through various forms of pressure are soaring into the realms of fantasy." See "Toward an Understanding of the Letter 'On the Pastoral Care of Homosexual Persons,'" in Jeannine GRAMICK and Pat FUREY, eds., The Vatican and Homosexuality: Reactions to the "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (New York: Crossroad, 1988), p. 15.

includes people with the moral sensibilities of a Neanderthal, of a Gandhi, and everything betwixt and between. On this point, one gets the impression that the GLM's definition of an "accurate portrayal" is anything that presents gay people and homosexuality in a positive and affirming manner.

The bulk of this present study will be concerned with the second goal as enunciated by Cruikshank: "civil rights legislation to prevent housing and job discrimination." We will attempt to show that not only is this plank of the GLM compatible with Catholic moral teaching, it ought to be accepted by the Catholic conscience as normative. In other words, contemporary Catholicism ought to bear witness to the unacceptability of social and economic discrimination against gay people.

CHAPTER TWO:
THE SECULAR DEBATE ON GAY AND LESBIAN RIGHTS

In the preceding chapter, it became clear that one of the strategies of the GLM involved entering into a dialogue on the issues surrounding homosexuality with representatives of the legal profession, the medical establishment, and organized religion. The hope was that this dialogue would eventually succeed in softening American society's negative attitudes toward gay people. If laws could be changed, if gays and lesbians could get a clean bill of mental health, and if homosexuality could be proclaimed a natural variant in God's good creation, then, it was felt, the ancient fears and hatreds of heterosexual culture would fade into acceptance and appreciation.

It hardly needs commenting that the longed for acceptance and appreciation have not been completely forthcoming. For one thing, not all the laws have been changed; not all the members of the medical profession have assented to the APA's decision to remove homosexuality from its list of mental disorders; few Christian denominations

can use the terms "gay" and "good" in the same utterance. The GLM has faced numerous obstacles--not the least of which has been the AIDS epidemic.¹

2.1 Contemporary U.S. Attitudes on Gay Liberation

Nevertheless, the idea that the vast majority of Americans either fear or hate gay people cannot be substantiated. All impressions to the contrary notwithstanding, the American people have accepted bits and pieces of the GLM's objectives. Much ambivalence, however, remains. Bill Turque describes this ambivalence as a feeling of being "torn between a basic impulse to be tolerant and a visceral discomfort with gay culture."²

On an issue that has traditionally been paramount for gay and lesbian political organizations--equal rights in job opportunities and job protection--Americans believe, by

¹ It is impossible to completely account for the impact of AIDS on the GLM. One statistic, however, is telling: since 1980, 91,789 gay and bisexual men have died from AIDS. [See Bill TURQUE, et. al., "Gays Under Fire," in Newsweek (September 14, 1992), p. 39.] The sheer loss of manpower is staggering. Moreover, whereas AIDS has brought out the very best in some people, it has also brought out some of the most vicious examples of human behavior. For every member of society who feels sympathy for a gay man who is HIV positive, there are still significant numbers who would claim that he got exactly what he was asking for. [Richard DAVENPORT-HINES' "Hurting Others: AIDS," in his Sex, Death, and Punishment: Attitudes to Sex and Sexuality in Britain Since the Renaissance (Glasgow: William Collins Sons, 1990), pp. 330-383, offers a thoughtful discussion of the dynamics involved in blaming the homosexual community for the appearance of the AIDS virus.]

² TURQUE, et. al., "Gays Under Fire," p. 36.

an overwhelming majority,³ that sexual orientation should not figure in the equation. It is interesting to note that when pushed to be specific, a majority feel that most occupations should allow homosexuals into their ranks.⁴ Most Americans are opposed to discriminating against their fellow gay and lesbian citizens in the marketplace.

Other gay issues touching upon the marketplace also find a significant level of support among Americans. The majority support health insurance and social security coverage for gay "spouses" (67% to 27% and 58% to 35% respectively) and inheritance rights for same-sex partners (70% to 25%). However, the American public is still unwilling to allow the legal sanctioning of "gay marriages" (58% to 35%) and is opposed to adoption rights for homosexual couples (61% to 32%).⁵ In the face of these statistics, it seems safe to say that Americans are willing to admit that gay men and lesbians have been--and continue to be--the victims of injustice in American society. At the same time, most do not believe that society's

³ I.e., 78 percent to 17 percent. See TURQUE, et. al., "Gays Under Fire," p. 36.

⁴ And so, according to the Newsweek poll, 83% saw no problem with hiring homosexuals as salespersons; 64% thought that they could be a member of the president's cabinet; 59% saw no reason why they shouldn't be allowed into military service or in the medical profession; 54% would welcome gays and lesbians as high-school teachers; 51% for elementary-school teachers. See TURQUE, et. al., "Gays Under Fire," p. 36.

⁵ See TURQUE, et. al., "Gays Under Fire," p. 37.

heterosexual norm is unjust; it is not unfair, in other words, to restrict the definition of marriage to one man/one woman. Concurrently, since homosexuality is still so little understood, it seems best to reserve adoption and child-rearing to heterosexual couples. But, all things being equal, it is clear that Jerry Falwell's "national battle plan" to oppose gay rights with its rallying cry-- "We must awaken to their wicked agenda for America!"⁶--is not attractive to most Americans.

The GLM has effected modest changes on the state and local fronts. At present there are 23 states which have overturned their anti-sodomy laws; "six states and about 110 municipalities have statutes barring discrimination against gays."⁷ Nowhere are "gay marriages" recognized, but about a dozen cities provide some sort of benefit package for the same-sex partners of city employees.⁸ "A handful of private companies, including Levi Strauss and software giant Lotus Development, provide health benefits to gay partners."⁹

⁶ Quoted by TURQUE, et. al., "Gays Under Fire," p. 37.

⁷ Bob COHN, "Discrimination: The Limits of the Law," in Newsweek (September 14, 1992), p. 38.

⁸ Among these are San Francisco, Seattle, and Ithaca, New York. See COHN, "Discrimination...", p. 38.

⁹ COHN, "Discrimination...", p. 38.

However, without a federal law barring discrimination on the basis of sexual orientation, "homosexuals have little legal recourse against even blatant bias."¹⁰ In many places in the United States, there is nothing to protect gays and lesbians from losing their jobs, from being evicted from their homes, or from being denied a bank loan because of their sexual orientation.¹¹

In this, the experience of Cheryl Summerville is telling. Bob Cohn explains:

She was among a dozen or more gay and lesbian workers fired last year from a Cracker Barrel restaurant, a chain with headquarters in Tennessee. Out of the blue, the company announced that it would no longer employ people 'whose sexual preferences fail to demonstrate normal heterosexual values which have been the foundation of families in our society.' With no gay anti-discrimination laws on the Georgia books, even the ACLU refused to represent Summerville in court. 'What do you mean, I don't have a case?,' she asked them. 'How can they do this to me?'¹²

Since the Second World War, homosexuals have been explicitly barred from serving in the United States Armed Forces; the military's records show that about 1000 gay men

¹⁰ COHN, "Discrimination...", p. 38.

¹¹ See William B. RUBENSTEIN (ed.), Lesbians, Gay Men, and the Law (New York: The New Press, 1993) for a masterful accounting of the legal difficulties gays and lesbians continue to face in many American locales.

¹² COHN, "Discrimination...", p. 39.

and lesbians are expelled each year after their sexual orientation comes to light.¹³ The rationale for this overt discrimination is found in the following policy statement from the U.S. Department of Defense:

Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the military services to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members; to insure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the military services; to maintain the public acceptability of military service; and to prevent breaches of security.¹⁴

Under this policy, gay people must lie about their sexual orientation if they wish to be inducted into the Army, Navy, Air Force, Marines, Coast Guard, or college campus ROTC (Reserve Officer Training Corps) programs. "Many do lie in order to serve, and military investigators vigorously seek out and discharge. . .service members. . .

¹³ See COHN, "Discrimination...", p. 39.

¹⁴ U.S. DEPARTMENT OF DEFENSE, "Enlisted Administrative Separations," Appendix A, Part 1, Section H, 47. [Federal Regulation 10,162; 10,179 (1982).] Quoted in Thomas B. STODDARD, E. Carrington BOGGAN, Marilyn G. HAFT, Charles LISTER, and John P. RUPP, The Rights of Gay People: An American Civil Liberties Union Handbook (New York: Bantam Books, 1983), pp. 32-33.

because of their sexual orientation."¹⁵

In 1988, Dr. Ted Sarbin and Dr. Ken Karols were commissioned by the Defense Department to study homosexuality in the military as "a condition related to trust violation."¹⁶ Their report, "Nonconforming Sexual Orientations and Military Suitability," was delivered to the Pentagon in December of that same year.

Sarbin and Karols went beyond the rather narrow topic which had been assigned to them: they also addressed the general question of whether or not gay men and lesbians are appropriate candidates for military service. On this, their conclusion was that systematic exclusion of gay people from the Armed Forces is counter-indicated. Such exclusion is based on an amalgam of stereotypes, unfounded fears, and slanderous misconceptions of gays and lesbians.

It comes as no surprise that "Nonconforming Sexual Orientations and Military Suitability" was unacceptable to the Pentagon. It thereupon commissioned a second study. Michael A. McDonald, the chosen researcher, was told to stay within the confines of the following question: "whether homosexuality is an indicator that a person

¹⁵ Kate DYER, ed., Gays in Uniform: The Pentagon's Secret Reports (Boston: Alyson Publications, 1990), pp. xiv-xv.

¹⁶ DYER, Gays in Uniform, p. xvi.

possesses characteristics, separate from sexual orientation, that make one unsuitable for positions of trust."¹⁷ McDonald's conclusion, too, would be deemed unacceptable by the Defense Department:

In summary, this report has provided limited but cogent evidence regarding the preservice suitability of homosexuals who may apply for positions of trust. Although this study has several limitations, the preponderance of the evidence presented indicates that homosexuals show preservice suitability--related adjustment that is as good or better than the average heterosexual. Thus, these results appear to be in conflict with conceptions of homosexuals as unstable, maladjusted persons. Given the critical importance of appropriate policy in the national security area, additional research attention to this area is warranted.¹⁸

It is only due to the tenacity of Congressman Gerry S. Studds and his legislative assistant, Kate Dyer, that these two reports have come to light. Studds, acting on a tip, was able, with the assistance of House Armed Services Subcommittee Chairwoman Patricia Schroeder (U.S. Representative from Colorado), to get the Pentagon to release the two documents. It had been the intention of the Defense Department to keep them from being published. Given their conclusions, Schroeder is of the opinion that "the real question is how long the military can maintain a

¹⁷ See Michael A. McDONALD, "Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability," in DYER, Gays in Uniform, pp. 111-135, at p. 114.

¹⁸ McDONALD, "Preservice Adjustment....," p. 134.

personnel policy based solely on prejudice."¹⁹

The GLM suffered a significant setback in the 1986 Supreme Court ruling Bowers v. Hardwick. The case was a challenge to the constitutionality of the state of Georgia's anti-sodomy law. The Court ruled in a 5 to 4 decision that prosecuting a gay couple "for engaging in consensual sex in their own bedroom did not violate the federal right to privacy."²⁰

A number of commentators have signalled the fact that the majority opinion in Bowers is out of step with the Court's other privacy rulings. In this vein, Justice Blackmun, in his dissenting opinion

...criticized the majority opinion's focus on the particular act rather than the underlying right to freedom from government intrusion....(He) found that private consensual sodomy is protected under the right to privacy as a decision properly left to individuals and as involving places afforded privacy regardless of the particular activities taking place there. According to Justice Blackmun, a fair reading of the

¹⁹ Quoted in DYER, Gays in Uniform, p. i. It bears reporting that when President Harry Truman desegregated the Armed Forces, he was told that it would be "bad for morale." "Until 1948 the U.S. Armed Forces were racially segregated on exactly the same grounds as those adduced now for barring gays, and especially on the ground that whites could not work with blacks." [Richard D. MOHR, Gays/Justice: A Study of Ethics, Society, and Law (New York: Columbia University Press, 1988), p. 196.] Mohr also reminds his readers that most Western European nations allow gays and lesbians to serve in their armed forces with no adverse effects. (See ibid., p. 196.)

²⁰ COHN, "Discrimination...", p. 39. The Georgia law in question reads as follows: "A person commits the offense of sodomy when he performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another." See THE EDITORS OF THE HARVARD LAW REVIEW (EHLR), Sexual Orientation and the Law (Cambridge, MA: Harvard University Press, 1989), p. 11.

Court's prior privacy cases discloses a commitment to individual autonomy in matters of personal choice--a principle that should apply with full force to the decision to engage in sodomy. Justice Blackmun also criticized the majority's state-interest analysis and concluded that Georgia's interest in enforcing private morality could not sustain the statute.²¹

The majority opinion, as framed by Justice White, claimed that the privacy rights recognized by other Supreme Court cases²² encompassed only those that are "integral to procreative choice and family autonomy."²³ White argued that the recognition of a fundamental right requires that the right "be either 'deeply rooted in this nation's history and tradition' or implicit in the concept of ordered liberty."²⁴ White found homosexual sodomy to be unprotected by either standard.

The majority opinion in Bowers v. Hardwick focused on the historical condemnations of homosexuality in the Judeo-Christian tradition. Its historical exposition, however, is contentious:

Judges have no special insight to Geschichte; their

²¹ EHLR, Sexual Orientation..., pp. 12-13. Justice Stevens joined Blackmun in criticizing the majority opinion for analyzing the Georgia law as if it only applied to homosexual sodomy. As written, the law criminalizes even marital sodomy. (See ibid., p. 13.)

²² See especially, Griswold v. Connecticut (1965) which overturned Connecticut's prohibition of the use of contraceptives by married couples and Roe v. Wade (1973) which established constitutional protection for abortion. See EHLR, Sexual Orientation..., p. 12.

²³ EHLR, Sexual Orientation..., p. 12.

²⁴ EHLR, Sexual Orientation..., p. 12.

job neither allows them time nor invokes the talents required for honing historical skills to a level that might permit impartial findings; not even professional historians usually achieve that. Even for experts, Historie is controversial and as ideologically laden as any of the humanities and social sciences. Judges are as likely as any amateurs to pick and choose its variety in ways that fit their preconceived ends. Justice Burger's concurrence in Bowers provides a particularly clear instance of this vice. He claims that 'homosexual conduct...(has) been subject to state intervention throughout the history of Western Civilization' and that to protect homosexual acts 'would be to cast aside millennia of moral teaching.' He cites but one historian and makes no reference to John Boswell's magisterial Christianity, Social Tolerance, and Homosexuality...which thoroughly criticizes Burger's one source and shows that far from a uniform condemnation of gay sex 'throughout the history of Western Civilization,' over the largest stretch of that civilization--the sixth-century B.C. to the twelfth-century A.D.--there was a large variety and considerable flux in the moral, legal, and religious evaluation of gays and gay acts.²⁵

The majority of Supreme Court justices were swayed by a particular reading of Western history. It seems not to have dawned on them that the incidences of Western civilization's bias against homosexual persons might be analogous (say) to its treatment of the Jews. How free would Jewish people be in American society today if American law had to mirror the laws and practices of Western civilization down through the ages? Perhaps the animus that has been directed against gays and lesbians--like that directed against the Jews--reflects the meanest

²⁵ MOHR, Gays/Justice, p. 78.

form of bigotry.

As this brief survey of contemporary American attitudes and "trouble spots" indicates, many controversies surround the place of gay men and women in American society. The general aims of the GLM are at least problematic for most Americans. In the remainder of this chapter, we will present the positions of four American thinkers who have addressed the question of gay and lesbian rights. These four thinkers--Michael Novak, Roger Magnuson, Milton Gonsalves, and Richard Mohr--have been chosen because of the representative nature of their work. Two are opposed to gay rights (Novak and Magnuson); two are supportive (Gonsalves and Mohr). Two (Magnuson and Mohr) are so strongly involved in the discussion that they can be called "activists;" the other two are professional philosophers who represent the "conservative" (Novak) and "liberal" (Gonsalves) spectrums of thought on the question. Specifically, Mohr and Magnuson were chosen because their works are outstanding examples of the "pro" and "con" genres within the literature surrounding gay rights. On the other hand, any number of thinkers could have been chosen over Novak and Gonsalves. In the end, Novak's stature within American Catholicism and Gonsalves' use of

the Aristotelian-Thomistic synthesis in his argument accounts for the consideration of their thought here.

The discussion which is about to unfold will reveal the intellectual context within which the Catholic debate on gay rights is situated. Focusing attention now on the work of Novak, Magnuson, Gonsalves, and Mohr will eventually help us to appraise the originality of the Catholic debate.

2.2 Michael Novak: "Homosexuality is Harmful to Society"²⁶

Michael Novak, an American theologian, philosopher, and conservative theorist, is on record as a proponent of the view that homosexuality is abnormal and a detrimental force in society.

In his article, "Homosexuality is Harmful to Society," Novak limits his discussion to male homosexuality: "society is in a more troubled state about male homosexuality than about female homosexuality. Lesbianism may suggest infantile pleasure and regression, but it does not threaten the public, at least not to the same extent

²⁶ Michael NOVAK, "Homosexuality is Harmful to Society," in Bruno LEONE and M. Teresa O'NEILL, eds., Sexual Values: Opposing Viewpoints (St. Paul, MN: Greenhaven Press, 1983), pp. 71-74.

that male homosexuality does."²⁷ In his decision to avoid speaking of lesbianism and in his belief that lesbians pose no serious threat to society, Novak is in good company. The vast majority of legal codes--ancient to modern--have been surprisingly silent on the issue of female homosexuality. Historical study, being so long the domain of men who were concerned with recounting the exploits of "great men," paid scant attention to women--let alone "deviant" women.²⁸ Concurrently, most of the psychological study of homosexuality has been concerned with the etiology of male homosexuality; the Freudian theory, for instance, is noticeably maladroit in handling lesbianism. One is not surprised, then, that feminists explain the lack of scientific interest in lesbianism by reference to the preexisting male bias in society and in the sciences in particular. In a word, male homosexuality is seen as threatening because it challenges the gender-identity of the ones doing the theorizing.

Novak provides ample ammunition for a feminist critique of his position. He goes so far as to say that

²⁷ NOVAK, "Homosexuality is Harmful...", p. 72.

²⁸ Lillian FADERMAN, against this backdrop, has published two significant histories of lesbianism. See her Surpassing the Love of Men: Romantic Friendship and Love Between Women from the Renaissance to the Present (New York: William Morrow, 1981) and Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America (New York: Penguin, 1991).

"female homosexuality seems somehow more natural, perhaps harmless. Male homosexuality seems to represent a breakdown of an important form of socialization."²⁹ Novak explains this with what strikes him as a paradox. As the sex-role stereotypes continue to change in modern society, it does not seem alarming to him that women are playing roles that once belonged solely to men; the problematic development is the weakening of the "male principle:" 'Women becoming more like men' pales in significance when it is also a question of 'men becoming more like women.'

Novak provides an explanation for this paradox by attempting to put the matter in historical context:

In past ages, homosexuality was sometimes construed as a danger to the human race because it meant a) a decline in population, or b) a decline in those masculine qualities essential for survival. What happened in the socialization of the young male was perceived to be of greater significance, and of greater risk, to the race than what happened to the female.³⁰

Unfortunately, Novak does not move beyond the level of generalities. For the sake of argument, however, it probably ought to be conceded that tribal societies, for instance, seem more interested in the socialization of the young male. The existence of more or less elaborate male

²⁹ NOVAK, "Homosexuality is Harmful...", p. 72.

³⁰ NOVAK, "Homosexuality is Harmful...", p. 72.

initiation rites witnesses to this rather forcefully.

However, the problem that underlies Novak's thought is a lack of clarity on how he constructs the etiology of male homosexuality. All that he has to say implies an absolutely anti-essentialist position; he has opted for social constructionism (or, personal degeneracy) as a complete explanation for the existence of homosexually-oriented men. They exist because of a deficiency in their upbringing; they were improperly socialized.³¹ This is the gist of the following rhetorical question:

Is it true that the number of homosexuals is multiplying in our day? Who could marvel if it were? Men find it perplexing to be male....³²

It seems more than plausible to Novak that men are opting for the homosexual alternative because modern, post-industrial society has blurred the differences between the sexes and has thus made the dynamics of the progression toward full-fledged adult heterosexuality problematic for many.

Such an explanation, however, cannot hold up in the face of numerous empirical studies. Sexual orientation is

³¹ It seems unlikely, therefore, that Novak would be able to incorporate into his position the institutionalized homosexuality that exists in some societies. The "socializers" in question feel that they are responding to the preexistent dispositions of the young person: they do not see themselves as "creating homosexuals." See especially GREENBERG, The Construction of Homosexuality, chapter 2: "Homosexual Relations in Kinship-Structured Societies," pp. 25-88.

³² NOVAK, "Homosexuality is Harmful...", p. 72.

not a matter of choice; one does not choose to be sexually aroused in this way or that. The number of homosexuals who have not received a "cure" after years under the care of a psychiatrist adds pathos to the situation. Moreover, one is justified in wondering--given the signs of rampant homophobia in American society--how Novak can conceive of the "homosexual option" as the one which affords the individual less psychic struggle. If it were all a matter of personal preference, choosing to be like the majority would be the sensible option, the course of least resistance.

In Novak's thought, male homosexuality harms society by disrupting the "male principle," by tempting men away from full human development. This development calls for the entering into communion with a woman and establishing the basic unit of society--the "traditional" family. He writes:

From my point of view, homosexuals absent themselves from the most central struggles of the individual, the struggle to enter into communion with a person of the opposite sex. That is the battle most at the heart of life. Excluded from this struggle, whether by choice or by psychic endowments, the homosexual is deprived of its fruits. Those fruits are a distinctive honesty, realism and wisdom taught by each sex to the other: that complementarity in which your humanity is rejoined and fulfilled. Apart from this civilizing struggle there is a lack, an emptiness, a loss of

realism....³³

Novak cannot conceive of same-sex relationships as humanizing for those involved or as even remotely beneficial to society.³⁴ Society has an overriding interest in promoting heterosexuality and in discouraging homosexuality; as he explains: "The future depends on it."³⁵ Heterosexuality and homosexuality ought not to be treated as equals; neither should one's sexual orientation be treated as a matter of indifference.

In "Homosexuality is Harmful to Society," Novak is wearing the hat of a philosopher: he does not propose specific public policy initiatives that would be consonant with his theses. He claims to favor "a tolerant and open system" of government, one that does not put "undue coercion upon those who do not, or who cannot" share the majority's moral vision.³⁶ However, he is quick to add, "for the good of all of us, homosexuals included, it is well that society should prefer heterosexuality and

³³ NOVAK, "Homosexuality is Harmful....," p. 73.

³⁴ Cf. "Homosexual love is...apart from the fundamental mystery of bringing life into the world, and sharing in the birth and death of generations. It is self-centered in a way that is structural, independent of the good-will of the individual. Marital love has a structural role in continuing the human race that is independent of the failures of the individuals who share it." (NOVAK, "Homosexuality is Harmful....," p. 73.)

³⁵ NOVAK, "Homosexuality is Harmful....," p. 74.

³⁶ Cf. NOVAK, "Homosexuality is Harmful....," p. 74.

specially nourish it."³⁷

In the end, Novak does not reveal whether he would consider something like equal opportunity in employment for gay people as weakening society's commitment to heterosexuality. It seems likely, however, that he would oppose gay partnership laws which put gay couples on the same economic footing as married couples.

2.3 Roger Magnuson: "Are Gay Rights Right?"³⁸

Roger Magnuson's work on the question of gay and lesbian rights is a passionate plea for American society to halt the progress made by the GLM. In his "Introduction," he appeals to the slippery slope upon which the United States now finds itself:

If we extrapolate from the last two decades, we must ask where we will be two decades from now. If the breathtaking pace of acceptance of perverted sexual behavior continues, the world of the early twenty-first century will hardly be imaginable from the perspective of today....Coming into view is the homosexual vision of a world where all sexual activity is placed beyond the rule of moral norms. The final destination for this ideology is a city of polymorphous and perverse sexuality where anything

³⁷ NOVAK, "Homosexuality is Harmful....," p. 74.

³⁸ Roger J. MAGNUSON, Are Gay Rights Right? Making Sense of the Controversy (Portland, OR: Multnomah, 1990).

goes.³⁹

Magnuson's work sets out legal, medical, sociological, economic, and psychological arguments against gay rights. He recognizes that "to fight successfully against gay rights proposals, citizens must arm themselves with facts that serve as objective confirmation of their moral reservations about homosexual behavior."⁴⁰ In this fight, religious arguments such as "the Bible says homosexuality is wrong" or "God did not create the human sexual faculty for homosexual uses" have no overt role to play: "A majority which does not acknowledge these arguments is often unmoved, and the arguments are easily stigmatized as a moralistic intrusion into the political process."⁴¹ If a consensus is to be built around opposition to gay rights ordinances and (or) special privileges for homosexual people, it is necessary to focus on the lowest common denominator. For Magnuson, this is the natural revulsion

³⁹ MAGNUSON, Are Gay Rights Right?, p. 13.

⁴⁰ MAGNUSON, Are Gay Rights Right?, p. 19.

⁴¹ MAGNUSON, Are Gay Rights Right?, p. 19. However, this does not preclude the presence of a chapter entitled "Gay Rights and Religion" wherein Magnuson addresses such topics as "The Biblical View of Homosexual Behavior," "The Damaging Consequences of Homosexual Behavior" [Where Magnuson writes: "The sodomite is trapped in a lust that is destroying him by inches and yards. To tell him that he cannot help himself, to tell him to rejoice in his fatal disease, is to consign him forever to unhappiness. Much better the simple message of Christian grace. You are a responsible moral being who has sinned grievously against God. God loves you but hates your lifestyle. You are headed for judgment, but there is a way out" (In ibid., pp. 122-123).], and "The Need for Repentance." See ibid., pp. 109-126.

that the heterosexual majority feels toward homosexual behavior.

In this regard, Magnuson pulls no punches. In chapter two ("Who Are the Gays? The Image and the Reality"), he offers sections entitled "What Do Homosexuals Do?," "Where Do Homosexuals Do It?," "With Whom Do Homosexuals Do It?," and "Homosexuals and Violent Crime." Magnuson focuses on the most destructive and degrading examples of gay sex. In the section entitled, "Where Do Homosexuals Do It?," for instance, he enumerates a long list of sites for homosexual activity: public parks, public restrooms, shopping malls, public libraries, bus stations, automobiles, pornographic bookstores, peep shows, and movie houses.⁴² Magnuson gives no indication that heterosexual coupling also takes place in these locales; nor does he entertain the possibility that a gay couple might prefer the privacy of their own home for their sexual relating.

There is no denying that degrading sexual behavior takes place in the gay community.⁴³ Magnuson paints a portrait, however, where degradation is a way of life and self-destruction is the ultimate goal of all concerned

⁴² MAGNUSON, Are Gay Rights Right?, p. 42.

⁴³ KIRK and MADSEN, After the Ball, represents a frank discussion by two gay activists.

parties. He provides the following rationale for viewing the gay community in this way:

Frustrated by the biological impossibility of natural sexual relations between members of the same sex, homosexuals must use body apertures not constructed for sexual penetration or bring the mouth into contact with areas designed for the elimination of human waste, either of which causes serious hygienic and health risks....Once the natural reluctance to come into contact with human waste is broken down, a significant proportion of homosexuals go further....⁴⁴

This "going further" ultimately entails losing even the natural instinct for self-preservation.

Magnuson holds the homosexual community guilty for the AIDS epidemic. Their perverse and promiscuous sexual activity--health risks in and of themselves--are taken as the reason that much of the general population is now at risk of being infected. He is, accordingly, content to speak of "innocent" and "guilty" persons with AIDS.⁴⁵

As the actual or potential carriers of a deadly disease, homosexuals⁴⁶ ought not to be allowed to win

⁴⁴ MAGNUSON, Are Gay Rights Right?, p. 40. Magnuson does not address the reality of anal and oral sex among heterosexuals.

⁴⁵ cf. "The medical community was confronted with a frightening prospect: a gruesome disease from which there was no known cure and a group of recklessly promiscuous carriers. The disease was horrible enough when confined to the homosexual community, but equally disturbing were increasing reports of the transmission of AIDS to innocent parties: to heterosexual partners of bisexuals, to hospital patients receiving transfusions of AIDS-contaminated blood, to hemophiliacs dependent on regular infusions of new blood for life, to infants born to mothers with AIDS." See MAGNUSON, Are Gay Rights Right?, pp. 50-51.

⁴⁶ Magnuson uses "homosexual" and "homosexuals" throughout his text. Most of what he has to say is in reference to gay men, however. It is clear that lesbians are extremely low-risk candidates for HIV infection.

special societal privileges. In this, Magnuson finds an analogy with alcoholism a propos:

Just as it would be ludicrous to call for alcoholics' rights or to have a day celebrating drunkenness, it is equally ludicrous to call for gay rights legislation or to have a day celebrating perversion. The alcoholic discovers in AA (i.e., Alcoholics Anonymous) that the fault is not with others but with himself; likewise the responsibility for change lies not with others, but with himself. Those enablers who accepted him--made up excuses for his absence from work, explained away the bruises he left on his children, rationalized his behavior as inherited--were facilitating his collapse. So too the public acceptance of homosexuality expressed in gay rights laws and gay pride days provides an easy way out for those who want to appear tolerant and loving, but in actuality it promotes conduct destructive to the homosexual himself.⁴⁷

Magnuson's analogy can be criticized on a number of levels. Let the most basic suffice: since it allows for no distinction between alcoholics and the majority who partake of alcoholic beverages without addiction or compulsion, it intimates that all homosexuals are perverted sex addicts bent on self-destruction who will, by way of the AIDS virus, take many innocent lives with them.

In a somewhat curious treatment of the issues, Magnuson writes:

Homosexuals are made, not born. They are responsible for their conduct. But no person of good will should

⁴⁷ MAGNUSON, Are Gay Rights Right?, pp. 60-61.

use this as a justification for personal acts of cruelty, violence, or insult. On a personal as well as a legal basis, homosexuals are entitled to respect as human beings, as persons with immortal souls. But this respect does not require the provision of special privileges that would infringe on the rights or liberties of others. A concern for homosexuals as people will lead, paradoxically, to withholding social acceptance of their behavior.⁴⁸

Magnuson will not entertain the validity of studies which point to a biological basis for homosexuality;⁴⁹ to do so would seriously undercut his qualifying homosexuality as perverse, abnormal, and unnatural. (Only a theological argument would be left to so qualify homosexuality.) Moreover, these studies could conceivably turn the tide in favor of viewing gay people as a "valid" minority and lead to special minority status.

Instead, Magnuson relies heavily on the work of two controversial psychiatrists--Irving Bieber and Charles Socarides. Bieber and Socarides are among a minority of psychiatrists who argue that the homosexual orientation is a mental disorder; moreover, they claim success in changing the sexual object choice of homosexuals. Magnuson reports:

⁴⁸ MAGNUSON, Are Gay Rights Right?, pp. 61-62.

⁴⁹ See, for instance, Marcia BARINAGA, "Is Homosexuality Biological?," in Science, 253 (1991), pp. 956-957; Ann GIBBONS, "The Brain as 'Sexual Organ,'" in ibid., pp. 957-959; and Simon LE VAY, "A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men," in ibid., pp. 1035-1037. The work of Dr. Le Vay in identifying differences between the sizes of various brain structures in gay and straight men is probably the closest a researcher has come to demonstrating an organic basis for homosexuality. Chandler BURR's "Homosexuality and Biology," in The Atlantic, 271 (March 1993), pp. 47-65 is a helpful summary of the present state of the question.

"Irving Bieber's study of seventy-two patients revealed that 38 percent had become heterosexuals or bisexuals and 27 percent had shifted from homosexuality and bisexuality to exclusive heterosexuality."⁵⁰ 'Where there's a will, there's a way' seems to be the message in all of this; gays and lesbians who are not "cured" are castigated as having entered therapy with bad will. Here, Magnuson follows Socarides' provocative thesis: "psychotherapy appears to be unsuccessful in only a small number of patients in any age in whom a long habit is combined with . . . lack of desire to change."⁵¹

It must be acknowledged that Bieber and Socarides are on the fringe of the psychiatric community; their alleged transformations of homosexuals into heterosexuals are afforded little scientific credence. Richard Isay provides the rationale for skepticism:

Kinsey and his co-workers for many years attempted to find patients who had been converted from homosexuality to heterosexuality during therapy, and were surprised that they could not find one whose sexual orientation had been changed. When they viewed persons who claimed they had been homosexuals but were now functioning heterosexually, they found that all these men were simply suppressing homosexual behavior,

⁵⁰ MAGNUSON, Are Gay Rights Right?, p. 59. Bieber's best known work is Homosexuality (New York: Basic Books, 1962); its publication date ought to be signalled: much work has been done on the topic in the more than thirty years since its appearance.

⁵¹ MAGNUSON, Are Gay Rights Right?, p. 59; Quoting Charles SOCARIDES, "Homosexuality: Basic Concepts and Psychodynamics," in International Journal of Psychiatry, 10 (1972), p. 124.

that they still had an active homosexual fantasy life, and that they used homosexual fantasies to maintain potency when they attempted intercourse.⁵²

What is more, Wardell Pomeroy, a co-author of the Kinsey Report, "has maintained a standing offer to administer the Kinsey research questionnaires to any of the patients who were reported cured."⁵³ Irving Bieber acknowledged to Pomeroy that he had only one case that would qualify (i.e., a person who had been exclusively homosexual who successfully switched to heterosexuality), "but he was on such bad terms with the patient that he could not call on him."⁵⁴

Richard Posner sets out a balanced presentation on the controversy surrounding psychoanalytic cures for homosexuality:

The genuine bisexual is more dissuadable than a true homosexual from engaging in homosexual intercourse, because he has a good substitute; it is presumably from the ranks of the bisexuals that the occasional 'cures' of homosexuality that the literature reports are drawn. Whether his preferences are altered is another matter. Recall the analogy to left- and right-handedness. Most people are right-handed (about 93 percent); almost all the rest are left-handed; there are very genuinely ambidextrous people. But if there are heavy costs to writing with the left hand, then left-handed people will, though with difficulty,

⁵² ISAY, Being Homosexual, pp. 111-112.

⁵³ ISAY, Being Homosexual, p. 112.

⁵⁴ ISAY, Being Homosexual, p. 112.

force themselves to write with their right hand.⁵⁵

Concurrently, it is well to recall that the father of psychoanalysis--Sigmund Freud--was less than optimistic concerning the prospects of changing a true homosexual. In a well-known letter to an American mother worried about the sexual orientation of her son, Freud holds out no extravagant claims. What he does offer to bring the young man is "harmony, peace of mind, full efficiency, whether he remains a homosexual or gets changed."⁵⁶

It should be clear that Magnuson's decision to build a case upon the questionable findings of two maverick psychiatrists severely impairs the credibility of his argument. If true homosexuals cannot be changed into heterosexuals and if there are at least good possibilities that homosexuality has organic as well as social foundations, then much of what Magnuson has to say loses its force. It simply becomes problematic to call all homosexual behavior "unacceptable," "perverse," "abnormal,"

⁵⁵ POSNER, Sex and Reason, p. 298.

⁵⁶ Quoted in Peter GAY, Freud: A Life for Our Time (New York: Anchor Books, 1989), p. 610. Freud's personal views on homosexuality were also shared in this letter (written in 1935). He wrote: "Homosexuality is assuredly no advantage, but it is nothing to be ashamed of, no vice, no degradation, it cannot be classified as an illness; we consider it to be a variation of the sexual function, produced by a certain arrest of sexual development....It is a great injustice to persecute homosexuality as a crime--and a cruelty, too." In ibid., p. 610.

and "disgusting" outside a purely confessional context.⁵⁷ The scientific studies counsel against such designations.

Herein lies the serious flaw in Magnuson's presentation on gay and lesbian rights: he purports to be establishing his argument on the scientific (e.g., medical, psychological, sociological, etc.) evidence, but ultimately he is inspired by an a priori condemnation of gay sex along traditional Christian lines. Because of this, he is unable to entertain the very topic he set out to study, viz., the rights of gay people. Magnuson cannot see the people; he can only see vile behavior. Gay and lesbian rights, then, do not protect the rights of persons; they protect perversions that do not deserve protection.

In this, he comments on the GLM's unwillingness to enter into public debate on the topic of homosexual behavior. He says that its strategy is simple: "Keep the discussion as abstract as possible--civil rights, discrimination, minority status. . . .If someone brings up embarrassing facts about the homosexual lifestyle, accuse the person of being obsessed with sex and the merely physical dimension of human relationships."⁵⁸ It is, of

⁵⁷ Magnuson's text is liberally peppered with such terms.

⁵⁸ MAGNUSON, Are Gay Rights Right?, p. 142.

course, a questionable bit of semantics for Magnuson to brand civil rights, discrimination, and minority status as "abstract" while arguing that "concrete" sexual practices are at the heart of the matter.

Nowhere is Magnuson's bias in this regard more evident than in the following passage:

Jesus talked of people who would not come...(into the) light because their deeds were evil. Light exposes the darkness and what is done there. Although there is a natural and wholesome reluctance on the part of decent people to explore the details of deviant behavior, that reluctance must be tempered by a need to give society a common-sense understanding about the nature and public costs of perverted sexual behavior. While the most egregious and detailed description of perverse acts is well left in darkness, society needs to know which behavior it is being asked to accept as socially legitimate.⁵⁹

With this quotation, Magnuson's overall position comes into full view. Homosexual activity is always and everywhere wrong because it is unnatural, abnormal, and perverse. A frank discussion of the lurid goings-on between (male) homosexuals ought to convince one of this; if not, a biblically based argument is offered (chapter 4) as verification. Society has much to lose--and nothing to gain--in affording legal protection to homosexual behavior; prominent here is the inevitable rise in the death toll from AIDS and the threat posed to the sexual integrity of

⁵⁹ MAGNUSON, Are Gay Rights Right?, p. 145.

America's young people.⁶⁰ Confronted by the slick methodology of gay and lesbian rights activists, "those who believe that 'righteousness exalteth a nation' need both courage and good cheer. Because they walk in the light, they need not fear nor apologize for recognizing a difference between the normal and the deviant, the precious and the vile, in sexual expression."⁶¹

Magnuson is able to put the matter in these terms--sexual norms versus antinomianism--because he has concentrated on exposing the ideologies of the most extreme and fringe gay organizations. The very existence of the North American Man/Boy Love Association (NAMBLA) is lamentable; but to cite its ideology as representative of the GLM is unfair. The fact of the matter is that NAMBLA is far outside the mainstream of the GLM and an embarrassment for many in the movement.⁶² To concentrate on the objectives of NAMBLA at great length⁶³ and to pass over the goals of the leading gay and lesbian organizations leaves the reader with the impression that NAMBLA is a

⁶⁰ Cf. MAGNUSON, Are Gay Rights Right?, p. 137: "The fabric of society is damaged by a subgroup of citizens with serious psychological and medical problems who, because they cannot procreate, must recruit."

⁶¹ MAGNUSON, Are Gay Rights Right?, pp. 145-146.

⁶² See, for instance, KIRK and MADSEN, After the Ball, p. 43.

⁶³ See MAGNUSON, Are Gay Rights Right?, pp. 13-14, 46.

serious example of what gays really want. In any event, it is helpful to know that most of the activities that NAMBLA advocates are criminal offenses in all fifty states and that no serious attempts to change this are conceivable.

In focusing such attention on NAMBLA and in detailing some of the more lurid instances of child molestation,⁶⁴ Magnuson is offering a not-so-subtle argument against gay rights. He gives the impression that gay rights ordinances will protect the perpetrators of sexual abuse of minors; he intimates that the open presence of gays and lesbians (and their inevitable seduction of youth) will lead to a rise in the homosexual population of the country. Given his decision to view the etiology of homosexuality under the rubrics of "education," "example," and "choice," this prediction is not without its merits.

But, again, Richard Posner's work puts to rest Magnuson's most extravagant fears:

When we consider how difficult--how well-nigh impossible--it appears to be to convert a homosexual into a heterosexual, despite all the personal and social advantages to being a heterosexual in this and perhaps in any society, the issue of homosexual seduction, recruitment, or propaganda is placed in perspective. How much more difficult it must be for homosexuals to convert a heterosexual into one of

⁶⁴ See MAGNUSON, Are Gay Rights Right?, p. 47.

themselves!⁶⁵

Moreover, there is no evidence that those youths whose sexual identity seems uncertain or ambiguous can be swayed to the homosexual side of the spectrum by associating with gay people.⁶⁶

In conclusion, Magnuson's argument against gay rights legislation turns on two related points. The first is that homosexual genital behavior is morally wrong and medically dangerous. For two people of the same sex to be involved with each other genitally offends the Judeo-Christian values upon which the United States was established; because of this, it offends the moral sensibilities of a majority of Americans.⁶⁷ Robert Beatty, in a letter to the editor of Newsweek, put it this way:

Though it may be a difficult concept for the liberal mind to grasp, there are people in this nation who are as morally offended by homosexuality as liberals are by racism and sexism. Shouldn't they be accorded the same right as liberals not to have a practice that offends them shoved in their faces? Or are people allowed to take offense only in the areas that

⁶⁵ POSNER, Sex and Reason, pp. 298-299.

⁶⁶ POSNER remarks that the evidence that we do have ("the twin evidence, the comparisons between tolerant and intolerant societies, the child-development evidence") points away from such an idea. If they have not been swayed by the omnipresent heterosexual bias in society to become "straight," why would we consider a relatively weak minority to be powerful enough to make them "gay"? See Sex and Reason, p. 299.

⁶⁷ A recent Newsweek poll asked, "Is homosexuality an acceptable alternative lifestyle?" Forty-one percent said "Yes," fifty-three percent said "No." See TURQUE, et. al., "Gays Under Fire," p. 36.

liberals declare politically correct?⁶⁸

Magnuson, moreover, is convinced that if people knew the details of the mechanics of gay sex they would oppose special protective legislation for homosexuals by even greater margins than they do already.⁶⁹

Since the sexual activity of homosexuals is immoral, society has an obligation to keep it illegal. Magnuson sharply draws the lines of demarcation:

Put plainly, gay rights laws are meant to protect men and women who practice oral and anal copulation with members of the same sex....Homosexuals can be characterized by what they do (sodomy) and with whom they do it (their own sex). What gay rights laws ask for is a special privilege for homosexuals not generally available to other groups, such as those who commit incest, adultery, bestiality, pedophilia, or, for that matter, any other criminal or antisocial behavior.⁷⁰

To support gay rights legislation or protective, anti-discrimination municipal ordinances implicates one in sanctioning the immoral behavior of a deviant class of people.

⁶⁸ Robert BEATTY, "Letter to the Editor," in Newsweek (October 5, 1992), p. 19.

⁶⁹ See MAGNUSON, Are Gay Rights Right?, pp. 16-19.

⁷⁰ MAGNUSON, Are Gay Rights Right?, p. 31.

2.4 Milton Gonsalves: "Right and Reason"⁷¹

A good part of Magnuson's argument relies on denying gay people minority status. He argues that they are simply people who indulge in perverted practices; the homosexual cannot claim that her sexual preference is comparable to her race or ethnicity. Milton Gonsalves takes an opposing position.

Gonsalves' Right and Reason is a textbook for university ethics courses. It is, however, unique in its class: it is written from the Aristotelian-Thomistic perspective. Whereas most authors of texts of an introductory nature are content to present an historical overview of the chief ethical questions and the responses given by the major schools of thought, Gonsalves believes that mastering one school of thought is beneficial for the beginner; this is especially true if it happens to have the credentials of Aristotelianism/Thomism. In his preface, Gonsalves fills out his rationale:

Since everyone must begin somewhere to learn to think clearly about the moral problems we face daily at every level of our lives, the Aristotelian-Thomistic synthesis is an admirable base from which to make this start. Even in a pluralistic setting such as our own,

⁷¹ Milton A. GONSALVES, Fagothey's Right and Reason: Ethics in Theory and Practice (Columbus, OH: Merrill Publishing Co., 1989).

moral positions are seen to be the result of a process of right reasoning and not the pure subjectivism of a 'gut' reaction. Whether or not the reader is convinced by the Aristotelian-Thomistic synthesis as it is presented here, at the very least he or she has an excellent point of departure from which to discover something better or more adequate for life.⁷²

To be sure, Aristotle and Thomas Aquinas did not comment on many of the ethical issues which face our age. The Aristotelian-Thomistic synthesis, however, offers tools for critical discussion of these issues as well as principles upon which to build resolutions.

Gonsalves succinctly sets out the tradition's arguments against the morality of homosexual behavior.⁷³ Paramount here is the conviction that homosexuality--as sexual behavior--"is a perversion of the order of nature willed by God, because it can never be procreative of a new human being. . . ."⁷⁴ Homosexual genital sex falls hopelessly short of the ideal inherent in sexual communion and the fullness of human love.⁷⁵

⁷² GONSALVES, Right and Reason, p. iii.

⁷³ See GONSALVES, Right and Reason, pp. 349-357. It is to be kept in mind that the "tradition" is not a static one. It has had to grapple with new concepts and perspectives. One of the most significant is the complex issue of "sexual orientation." St. Thomas, for instance, comments on the immorality of sodomy [cf. Summa theologiae, 2a 2ae, Q. 154, aa. 11-12] but shows no understanding that a person might be "constitutionally" homosexual.

⁷⁴ GONSALVES, Right and Reason, pp. 356-357.

⁷⁵ See GONSALVES, Right and Reason, p. 357.

Gonsalves recognizes that the public consensus on the absolute immorality of homosexual activity is breaking down. The intrinsic perversity of gay and lesbian sex and the unnaturalness of the homosexual orientation are being challenged on many fronts. A statement from "the opposition," he says, would look something like this:

The tradition assumes, but does not prove, that the order of nature demands human genital expressions of love be heterosexual because only heterosexual intercourse is open to the creation of a new human being; sex organs can have more than one purpose other than procreation; the Judeo-Christian tradition has institutionalized heterosexuality as the only normal sexual orientation, but other cultures have accepted both orientations as good and valuable; to expect homosexuals to live celibate lives is a kind of persecution carried on by the heterosexual majority, but no one's sexual orientation gives him or her any special privileges; the law of nature merely enables us to predict what will be the case, not what morally ought to be the case....⁷⁶

Depending upon one's prior convictions, homosexuality can be taken as either a serious perversion of the order of nature or a natural variant in the world in which we live. Beyond a doubt, the Aristotelian-Thomistic synthesis as expressed in Catholicism has opted for the former. This choice is predicated upon a priori decisions on questions concerning proper biblical hermeneutics and the binding force of ecclesiastical pronouncements. A purely

⁷⁶ GONSALVES, Right and Reason, p. 357.

descriptive, cross-cultural (including the data on animal behavior) study would not know how to adjudicate on the question of the "naturalness" of homosexuality. Reason itself cannot say that what is ought not to be; without an appeal to an authority which stands above human reason, one cannot say definitively that all homosexual behavior is perverse.⁷⁷

Thinkers like Roger Magnuson, as we have seen, argue against gay and lesbian rights by an appeal to the immorality of homosexual practices. Gonsalves is unwilling to say that the Aristotelian-Thomistic synthesis--in order to be internally consistent--must concur in designating homosexual behavior as immoral. It seems clear that the contemporary discussion within Catholic sexual ethics on the Church's natural law tradition⁷⁸ bears out Gonsalves' hesitancy on this matter.

Given this recognition in Right and Reason, it is significant that it plays no part in Gonsalves' discussion of the GLM. One might have expected him to argue that

⁷⁷ That sexual relating between adults of the same sex cannot be summarily categorized as immoral on purely rational grounds is one of the theses of POSNER's "Moral Theory of Sexuality" [chapter 8 of Sex and Reason, pp. 220-242].

⁷⁸ The Church's natural law tradition and a modern ("revisionist") retrieval of it is at the heart of Anthony BATTAGLIA's Toward a Reformulation of Natural Law (New York: Seabury, 1981). Michael B. CROWE, in The Changing Profile of the Natural Law (The Hague: M. Nijhoff, 1977), discusses the competing interpretations of natural law in ancient, medieval, and modern thought.

since the immorality of homosexual behavior cannot be demonstrated in a fully satisfactory manner even within a system of thought like the Aristotelian-Thomistic one, it would follow that civil society has no grounds in discriminating against its gay and lesbians citizens. If one cannot say that their sexual behavior is objectively perverse and despicable--outside a specifically religious vantage point--then it would seem that one ought to reconsider the grounds of society's bias against gay people and its hostility to their full participation in social life.

Rather than taking this tack, Gonsalves' reflection on the GLM⁷⁹ is much more direct. He addresses the issue from the perspective of justice. And in no time he has condemned discrimination against gays and lesbians: "Discrimination based on sexual orientation is unjust, for this gives an unfair advantage to the heterosexual majority."⁸⁰

Justice, in the Aristotelian-Thomistic view, is the virtue by which one is disposed to give to the other his or

⁷⁹ See GONSALVES, Right and Reason, pp. 401-402.

⁸⁰ GONSALVES, Right and Reason, p. 401.

her due.⁸¹ "It supposes at least two persons between whom there can be some sort of equality, so that each person receives what really belongs to him or her."⁸²

The tradition distinguishes two types of justice: general and particular. Gonsalves offers the following clarifications:

General justice is so broad as to cover all virtue that has any social significance and is therefore not the specific cardinal virtue of justice. Particular justice, which is the cardinal virtue...(is divided) into distributive and corrective. The latter is now more commonly called commutative, a name derived from the commutation or exchange of goods.⁸³

Commutative justice exists between two individuals; it is the basis of all contracts. One party agrees to do something for another or to give something to another in exchange for a mutually agreed upon good. However, it is not limited to explicit contracts; it also exists "in those situations in which nature itself demands the balance of equality. One who has injured another by depriving that person of something rightfully his or hers is obliged in justice to restore it to that person."⁸⁴ Until such

⁸¹ Cf. THOMAS AQUINAS, Summa theologiae, 2a 2ae, Q. 58, a. 1. Here St. Thomas defines justice as the perpetual and constant will to render to each one his right. Later in this question (a. 12), he will say that (particular) justice stands foremost among all the moral virtues.

⁸² GONSALVES, Right and Reason, p. 208.

⁸³ GONSALVES, Right and Reason, p. 208.

⁸⁴ GONSALVES, Right and Reason, p. 208.

restitution is made, justice remains violated.

Distributive justice is a relation between society and its members. It refers to a "fair and proper distribution of public benefits and burdens among the members of the community."⁸⁵ As such, it applies chiefly to the state. "It does not exist between equals, but between a superior and his or her subordinates; the equality, implied in all justice, here means that each subordinate should get a proportionate or fair share, a share equal to his or her just deserts."⁸⁶

Gonsalves argues that discrimination against gay people violates both commutative justice and distributive justice. A person's sexual orientation ought to have no bearing on that person's employment or housing. For an employer to fire a gay employee solely on the basis of having discovered her sexual orientation is a serious blow to commutative justice. The same holds true for a landlord who would discriminate against gays and lesbians. In the face of such open violations of justice, writes Gonsalves, "it is quite proper to use the sanction of civil law to put

⁸⁵ GONSALVES, Right and Reason, p. 208.

⁸⁶ GONSALVES, Right and Reason, p. 209. It should be noted that under distributive justice, the citizen is obliged to contribute to the common good--he or she is called to give to the state what is its due.

an end to such unjust practices."⁸⁷ He remarks that "homosexuals have the same rights to friendship, association, and community as heterosexuals."⁸⁸

As should be clear, Gonsalves sees no good reason to hold that homosexuals do not make up a distinct minority group. The fact that in individual cases the distinctions are not always clear-cut does not diminish the reasonableness of saying that human society is made up of a heterosexual majority and a homosexual minority. The dictionary definition for "minority" offers a perfect fit for gay people: "a part of a population differing from others in some characteristics and often subjected to differential treatment."⁸⁹ A certain percentage of Americans can be distinguished by a more or less exclusive erotic attraction to members of their own sex; if this characteristic were to become common knowledge they very well might find themselves to be objects of scorn, contempt, and harassment.

Confronted with this state of affairs, Gonsalves writes:

⁸⁷ GONSALVES, Right and Reason, p. 402.

⁸⁸ GONSALVES, Right and Reason, p. 402.

⁸⁹ Webster's New Collegiate Dictionary, 7th edition (Springfield, MA: G. & C. Merriam Company, 1974), p. 733.

If society continues to deny homosexuals their civil rights and to treat homosexuals as the objects of scorn, cruel jokes, and contempt, then the homosexuals have every right to protest just as any other minority group. The homosexual needs friendship and association with other homosexuals to share, like heterosexuals, their deepest feelings, fears, and emotions. They need friendship to construct their lives meaningfully, and so they need the kind of association that they cannot find except with one another. As long as they are alienated from the largest segment of society, they will need their protest movement.⁹⁰

As we have mentioned, the stance that Gonsalves takes on gay and lesbian rights is not dependent upon the morality of concrete sexual practices.⁹¹ The sexual practice of homosexual persons cannot cancel out the moral obligation to treat them justly. Gonsalves' approach does depend, however, upon the recognition that many people have accepted slanderous myths about gay people. It is precisely on the weight of these myths that they are led to discriminate against gays and lesbians; or, more seriously, to lash out in violence against them. Justice demands that these myths be exposed and discredited. Gonsalves provides the following examples:

⁹⁰ GONSALVES, Right and Reason, p. 402.

⁹¹ He will say, moreover, that "the sanction of civil law should not be used for the purpose of restraining sexual activity between consenting adults in private" (see Right and Reason, pp. 401-402). It bears mentioning in this context that St. Thomas taught that the civil law need not repress all vice (cf. Summa theologiae, 1a 2ae, q. 96, a. 2); civil legislation ought to be primarily concerned with the common good--the basic structures of justice which make human society possible (cf. Summa theologiae, 1a 2ae, q. 104).

1. Every homosexual is attracted to children and adolescents and wishes to have genital sex with them.
2. Male homosexuals look and act effeminate, while female homosexuals look and act masculine.
3. Homosexuals can recognize one another easily.
4. Homosexuals invariably tend toward particular professions, for example, music, theatre, other fine arts, interior decorating.
5. All homosexuals are promiscuous and unable to form enduring relationships.
6. Homosexuals, having deliberately chosen their sexual orientation, can correct their situation by an act of will or by getting to know some member of the opposite sex intimately.⁹²

On the force of these sweeping generalizations, gay people are taken as a threat to human society and are often denied equality of opportunity and equal rights.

Richard Posner concurs: many of the hardships that gays and lesbians face have been built upon a collective character assassination campaign. He makes his case in reference to the attitudes of heterosexual men:

If you ask men who are disgusted by homosexuals what it is, precisely, about homosexual men that makes them disgusting, the answer will not be confined to the fact of erotic attraction and expression between two men, although that is part of it. The objection is to an entire homosexual lifestyle, involving what are believed to be characteristic demeanors, behaviors, attitudes, destinies that the heterosexual (and no doubt many a homosexual) abhors: a lifestyle believed to be pervaded with effeminacy, including physical weakness and cowardice; with promiscuity and intrigue, prominently including seduction of the young; with concentration in a handful of unmanly occupations centered on fashion, entertainment, decoration, and culture--such occupations as the theatre (above all

⁹² GONSALVES, Right and Reason, p. 349.

the ballet) and the arts, hairdressing, interior decoration, women's fashions, ladies' shops, library work; with furtiveness and concealment; with a bitchy, gossipy, histrionic, finicky, even hysterical manner; with a concern with externals (physical appearance, youth, dress); with bad health, physical and mental, including suicide and alcoholism; with a wretched old age; with a general immorality and unreliability; with an above-average I.Q., education, and income (qualities that make homosexuals even more threatening, more insidious, more seductive and manipulative); and, of course, with narcissism.⁹³

With such understandings of gay men abroad, it is no wonder that many people seem to have no qualms about refusing them fair treatment. Based on this data, it would seem that society would do well to treat gays differentially; perhaps there could be a moral obligation to keep their social advancement at bay.⁹⁴

As we mentioned at the outset of this chapter, the AIDS crisis has played a supporting role in this dynamic. Gonsalves himself observes:

The AIDS epidemic has aroused a great deal of antihomosexual sentiment around the country. Physical and verbal attacks on gay men are on the increase, fuelled by fear that the disease is going to be spread

⁹³ POSNER, Sex and Reason, pp. 300-301.

⁹⁴ One should not underestimate, for example, the impact of a case like Jeffrey Dahmer's in galvanizing public opinion against gay rights. See Tom MATHEWS, et. al., "Secrets of a Serial Killer," in Newsweek (February 3, 1992), pp. 45-49. Mathews quotes the criminologist Eric Hickey's frightening opinion: "There are other Dahmers out there. And they're busy" (in ibid., p. 49). For his part, Magnuson gets a lot of mileage from the example of John Wayne Gacy (see Are Gay Rights Right?, pp. 54, 119). He tramples upon the canons of civility when, in criticizing revisionist interpretations of Scripture, he writes: "to say that inhospitality was the essential sin of Sodom is equivalent to saying the essential offense of John Gacy, the Chicago contractor who invited scores of adolescents to his home, sodomized them, and buried them in his basement, was inhospitality" (in ibid., p. 119).

from the initially infected gay community and intravenous drug users to the general population. This, of course, is not going to happen unless the majority of the population chooses to risk becoming infected. Nevertheless, the upsurge in scapegoating of gay people by members of the heterosexual majority is in some measure an indication of how threatened, frustrated, and helpless the majority feels in the face of the AIDS epidemic.⁹⁵

Of course, understanding the causes of injustice does not absolve one of the obligation to denounce it. For Gonsalves, the issue of gay and lesbian rights is crucial. His argument is designed to elicit a sobering reflection from those who would be loathe to grant gay people protective legislation:

Freedom and the rights that stem from it are an all or nothing affair. No one can be free if all are not free. Unless all people are justly treated, no one can be sure that he or she will be justly treated by others.⁹⁶

2.5 Richard Mohr: "Gays/Justice"⁹⁷

At the time of its appearance in 1988, Richard Mohr's Gays/Justice was a first: a work by a gay academic⁹⁸ which

⁹⁵ GONSALVES, Right and Reason, p. 401.

⁹⁶ GONSALVES, Right and Reason, p. 401.

⁹⁷ Richard D. MOHR, Gays/Justice: A Study of Ethics, Society, and Law (New York: Columbia University Press, 1988).

⁹⁸ Mohr is a philosophy professor at the University of Illinois (Urbana).

set out cogently the case for gay and lesbian rights. To date, it remains the most substantial work in support of justice for gay people.

Mohr argues that justice calls for fairness; it calls for non-differential treatment of classes of people. Fair treatment and equal treatment under the law--in short, justice--has not been afforded gays and lesbians in American society:

Gay justice does not exist and does not nearly exist. The nation's institutional means for establishing justice--the courts--have completely failed in their duty when it has come to the plight of gays. Indeed, they have now become a major part of the mechanisms of gay oppression. The problem is not merely that the courts are now regularly upholding antigay laws--that alone would be reason for pointed protest. The problem chiefly is that the very procedures which the courts have adopted to address--or more accurately, to fail to address--gay issues reinforce the social view that gays are not worthy of equal respect.⁹⁹

Mohr, like Gonsalves, considers the morality of adult, consensual gay sex in private to have no bearing upon the place of gay people in society and the protection of their human and civil rights. Judging the morality of instances of genital relating is difficult enough from within one distinct school of thought--it becomes hopelessly controverted within a pluralistic society. It seems to make little sense to sanction behavior where "no one gets

⁹⁹ MOHR, Gays/Justice, p. 315.

hurt" on the grounds that some people object to it.

Of course, one might find the courage to argue that the practitioners of homosexuality are being hurt--not physically, perhaps, but psychologically and spiritually. Concurrently, one might take offense at the underlying moral relativism which inspires any number of gay and lesbian initiatives in public policy. Neither of these tacks, however, gets one very far. In the absence of a self-evident criteriology for judging the morality of genital relating among adults, homosexual behavior will remain controversial and a source of significant division between sincere partisans of all spectrums of opinion.

No participant in this debate can be demonized effectively. It makes no sense to categorize gay people as filthy, perverted sex addicts whose immoral behavior has blinded them to the most basic standards of ethical living. Likewise, only the most biased observer could advance the opinion that the opponents of gay and lesbian rights are simply religious bigots trapped by their own sexual fears and inadequacies. People of good will and intellectual vigor can, and do, disagree on the moral valence of the genital manipulations which lead to homosexual orgasm between consenting adults in private. In addition, one cannot get very far in questioning the internal logic of

the partisan positions; the critical issue lies with the choice of first principles--a choice which cannot be established by an appeal to anything resembling self-evident truth.

For Mohr, all of this amounts to an argument in favor of gay and lesbian rights. This issue cannot be satisfactorily decided in relation to the morality of particular sex acts; it must be seen as an issue of social justice. Whereas secular society on its own terms cannot decide the morality of gay sex, it can decide to treat gay people as equals under the law. Whereas society cannot arbitrate between those who would call homosexual behavior sinful and those who would celebrate it as humanizing, it can decide that discrimination against gays and lesbians will be unlawful. At present, American society is evenly divided on the issue of the rightness or wrongness of particular sexual practices between consenting gay adults.¹⁰⁰ At the very least, systematic discrimination against people who have a homosexual orientation cannot be justified in the face of this lack of consensus.

The key point in Mohr's argument is his conviction

¹⁰⁰ TURQUE, as we have seen, reports that Americans are evenly divided on this question. See "Gays Under Fire."

that sexual relations¹⁰¹ are a private matter; the state has no business monitoring the bedrooms of the nation. It is not necessarily that no immoral behavior takes place there; it is that the state has no mandate to stamp out all vice. Moreover, sexual relating manifests several significant characteristics that demand that it not be subject to governmental regulation. In chapter 4 of Gays/Justice, Mohr sets out four arguments as to why sex is private--and thus "invokes a substantive right from prosecution."¹⁰²

Mohr's first observation is that from a purely cultural point of view, Americans consider sexual relating to be a supremely private affair. And as far as the sexual act itself goes, there is a strict obligation to keep it private. Acts of copulation must not take place in public. This requirement holds for all sexual intercourse--even, of course, that which "has society's highest commendation--heterosexual intercourse with benefit of clergy for procreation."¹⁰³

Mohr argues that where there is an obligation to

¹⁰¹ In what follows, 'sexual relating,' 'sexual behavior,' 'gay sex,' and any such synonyms, must be understood in terms of adult consensual relations in private. Rape, seduction, public indecency, and pedophilia are not part of Mohr's argument.

¹⁰² MOHR, Gays/Justice, p. 94.

¹⁰³ MOHR, Gays/Justice, p. 97.

privacy, there is in turn a right to privacy. This is seen in the fact that "society cannot consistently claim that... (certain) activities must be carried out in private... and yet retain a claim to investigate such activity and so, to that extent, make it public behavior."¹⁰⁴ This applies specifically to homosexual genital behavior: "People don't want to see it and especially don't want to hear about it."¹⁰⁵

There is something of a problem with this argument. Traditionally, gay sex has been understood as something which should never take place--neither in public nor in private. In a number of U.S. states, private, consensual sodomy between adults is still a criminal offense. It would seem that one cannot invoke "privacy" if the behavior in question has been socially condemned. But Mohr explains:

To say that something ought not to occur at all is not to say that it ought not to be carried out in private when it does occur. In society's judgment, homosexuality is an evil of this sort. Now not all evil ought to be practiced in private if practiced at all. Murders, rapes, and child abuse, if they must occur, would be better to take place in public--to facilitate arrest. But the plaint from conservative quarters that gays objectionably 'flaunt' themselves would have no force if this were the sort of evil

¹⁰⁴ MOHR, Gays/Justice, p. 96.

¹⁰⁵ MOHR, Gays/Justice, p. 96, n. 9.

involved. So, in general, the argument here does not presuppose tolerance, let alone acceptance of gays, nor does it beg the question by presuming that gay sex acts are already legal. Disgust will do. So when gay sex does occur in private, it cannot be rightfully spied on--especially by the police.¹⁰⁶

From this reflection on privacy from a cultural point of view, Mohr's second argument moves to a philosophical discussion of the inherent privacy of sex. His thesis here is that "the privacy of sex acts is not only culturally based but also inherent to them."¹⁰⁷ He explains:

Sex acts are what I shall call 'world excluding.' Custom and taboo aside, sexual arousal and activity, like the activities of reading a poem or praying alone, are such as to propel away the ordinary world, the every day workaday world of public places, public function, and public observation.¹⁰⁸

The dynamics of successful sexual relating points to the privacy of sex. It calls for the willingness to enter another world of consciousness and, concurrently, it provides the pathway to this other world. The presence of an intruder is enough to destroy this fundamental meaning of sexual relating. For "such observation brings crashing in its train the everyday world of duration and distance, function and duty, will and action. Further, the gaze of

¹⁰⁶ MOHR, Gays/Justice, p. 97.

¹⁰⁷ MOHR, Gays/Justice, p. 100.

¹⁰⁸ MOHR, Gays/Justice, p. 100.

others injects into sex the waking world of vision, not the submerged and submerging world of flesh. Most importantly, it judges--even if sympathetically--causing self-reflection."¹⁰⁹ Self-reflection, Mohr reminds us,¹¹⁰ is a virtual guarantor of impotence.

A phenomenological study of human sexual behavior reveals the necessity of privacy for its success and shows that it produces a "world excluding" experience in its practitioners. Mohr concludes that "any moral theory that protects privacy as sanctuary and as repose from the world must presumptively protect sexual activity."¹¹¹

Mohr's third argument turns on viewing sex as "a central personally-affecting value."¹¹² It is far from complicated: "an impartial examination of sex's role in an individual's life would show first that, far from having any imaginable value or at most a nugatory one, sex is in general a central personal concern, and second that for those people with a sex drive, addressing sex as central and appropriating it to oneself in some way or another is

¹⁰⁹ MOHR, Gays/Justice, pp. 103-104.

¹¹⁰ Citing William H. MASTERS and Virginia E. JOHNSON, Human Sexual Inadequacy (Boston: Little, Brown, 1970), pp. 198-199, 202-203. See Gays/Justice, p. 103, n. 17.

¹¹¹ MOHR, Gays/Justice, p. 104.

¹¹² See MOHR, Gays/Justice, pp. 106-114.

probably necessary to fulfilled life."¹¹³

Given his first three points, Mohr's concluding position brings no surprises. If sex is so very central to one's self-understanding and one's being in the world, it is simply cruel for the state to bar (or attempt to bar) gay people from having sex. Such a campaign would be enough "to cast . . . (the gay person) automatically into a perpetual despair analogous to that of those whose plans are frustrated daily by ghetto, prison, or disease. But worse still, at least in prison, ghetto, or illness, one can achieve the consolation of the resigned, the comparative happiness of those who have reduced their expectations to match their prospects, or even the finality of giving up."¹¹⁴

This fourth point is drawn from a reflection of bodily privacy. First of all, it bears noting that

the body is not just one more...thing in the world that one might have or own, but rather has a special value and standing, as that in virtue of which one possesses other things and as the chief means by which

¹¹³ MOHR, Gays/Justice, p. 109. In the discussion that follows, he is quick to point out that the personal appropriation (probably) necessary for a fulfilled life does not by definition keep one from deciding to refrain from engaging in genital activity. Religious celibates, then, are not by definition "unfulfilled" as human beings. Their free decision to take a vow of celibate chastity, Mohr argues, "support(s) a belief that one's sexual choices are as central as any aspect of one's life. For vows of chastity are as central to their religious life--their most meaningful life--as any vows they take" (in ibid., pp. 109-110).

¹¹⁴ MOHR, Gays/Justice, p. 110.

other things come to have their value.¹¹⁵

The body is "the primitive precondition and foundation for a person's being in the world at all, for his projection of himself into the world through actions and for his instilling value in things."¹¹⁶ One cannot speak of human freedom in any sense of the term without recognizing the prerequisite nature of executive control over one's own body.¹¹⁷

Mohr argues that human freedom presupposes the right to do to one's body what one wishes. The human person possesses a strong presumptive right

to feed one's body, to manipulate it, to exercise it, to dress it as one sees fit, to seek medical treatment, to inject foreign bodies into it, to permit others to do so, to touch it, to have others touch it, to allow others to present their bodies to it, and to be the chief governor and guarantor of one's own feelings, emotions, and sensations--compatible with a like ability on the part of others and with other requirements for civil society.¹¹⁸

It comes as no surprise that Mohr sees the person's immunity from bodily coercion as pointing toward a general

¹¹⁵ MOHR, Gays/Justice, p. 119.

¹¹⁶ MOHR, Gays/Justice, p. 117.

¹¹⁷ MOHR is not remiss in making necessary qualifications here. He writes: "No one would claim that a person has even a prima facie right, let alone an absolute right, to do with his body as he pleases or that such use of the body grounds a right to privacy or any other. One does not have even a prima facie right to smash one's fist unprovokedly into another's face however much one might enjoy doing so" (see Gays/Justice, pp. 116-117).

¹¹⁸ MOHR, Gays/Justice, pp. 121-122.

right to enter into consensual genital relations with others. He says that "consensual sex engages and nearly exhausts the core protections of the general right to bodily based privacy. Indeed it comes close to being a perfect or complete exemplification of its provisions."¹¹⁹

For the state to bar individuals from acting upon themselves is to destroy their status as free agents in any of their projects.¹²⁰ A society which has expressly condemned the use of torture as "cruel and unusual punishment"¹²¹--and does not claim the power to inflict "wounds to advance its projects (even as punishment)--a fortiori . . . cannot bar one from acting upon oneself in consensual sex."¹²²

Mohr's bodily freedom argument has two rather obvious drawbacks. First, it seems wedded to a strict dualistic account of the human person--whereby the "body" is clearly

¹¹⁹ MOHR, Gays/Justice, p. 122.

¹²⁰ MOHR, Gays/Justice, p. 122.

¹²¹ Cf. Weems v. United States (U.S. Supreme Court, 1910), cited by MOHR, Gays/Justice, p. 122, n. 54.

¹²² MOHR, Gays/Justice, p. 122. Mohr is not necessarily asserting that all instances of adult consensual sex in private are to be taken as perfectly moral. An analogy from eating is appropriate here. It would be an outrage to personal freedom if the state were to criminalize gluttony or to attempt to enforce a mandatory daily menu for all its citizens. Even if gluttony is offensive and many people's diet is nutritionally irresponsible, the value of personal freedom in these matters must take precedence. Moreover, in this hypothetical example, one can imagine competing groups developing around different interpretations of what is to constitute "gluttony" and "good nutrition." [POSNER, Sex and Reason, p. 123 suggests an analogy between sexual relations and consumption of food.]

distinct from the "person." Second, it is at present the basis for a "pro-choice" (or, "pro-abortion") political philosophy.¹²³ How much do these factors detract from Mohr's position?

On the first score, the problem appears to be one of semantics. Where Mohr speaks of "body," one might prefer to speak of "self." Thus, 'to feed one's body' is equivalent to 'feeding oneself.' But whether one "has" a body or "is" an animated body is beside the point.¹²⁴ The question revolves around one's freedom to act; positing, for example, a "substantial unity of body and soul," does not necessitate abandoning Mohr's insight into a bodily-based privacy (or, freedom).

The second charge, that Mohr's argument is substantially that of the pro-abortion lobby is true enough. Indeed, he argues that if the Supreme Court accepted this line of reasoning in Roe v. Wade, then a fortiori complete decriminalization of consensual gay sex between adults cannot be impeded logically.

Be that as it may, the acceptability of abortion as an

¹²³ The majority opinion in Roe v. Wade (U.S. Supreme Court, 1973) identified a constitutional right to privacy and determined that a woman's decision to abort is guaranteed by this right.

¹²⁴ And Mohr at least makes clear that "having" is used equivocally in his presentation. One "has" a body like one "has" nothing else. See Gays/Justice, p. 119.

instance of "the body and privacy" is much more problematic than that of gay sex. The pro-abortionist is at pains to discredit any "rights" the fetus may be said to possess, and to show that its continuance in existence is under the executive jurisdiction of its female host. Both of these tasks are involved when it is advanced that the fetus is all but indistinguishable from the woman's body. No such task must be performed in protecting homosexual behavior as an instance of bodily privacy; Mohr's argument does not depend upon doing away with second and (or) third party claims.

This brief exposition ought to be enough to demonstrate that placing consensual gay sex under the rubric of bodily privacy is not necessarily tied to being in favor of legal abortions, let alone being of the opinion that abortion raises no moral questions. What is more, one can be convinced of Mohr's conclusion that gay people ought not to be stopped from entering into sexual communion with other gay adults and still be of the opinion that such sexual relating is always immoral.

Mohr's four points go a long way in showing that sexual relating between adults, whether heterosexual or homosexual, commands a significant claim to privacy. Thus, governments of free societies would do well to view the

consensual sexual relating of their adult citizens as off-limits. One is at a loss to articulate a social value which could conceivably trump the individual's liberty to enter into an intimate partnership of this nature. In the end, the state is patently incompetent for deciding such matters for its people.

After this discussion of sex and privacy, it comes as no surprise that Mohr identifies himself as a disciple of John Stuart Mill. One commentator on the thought of Mill says that Mill's overarching thesis in his On Liberty can be summarized in seven words: "Your rights end where his nose begins."¹²⁵ It follows, then, that "government interference with adult consensual activities is unjustified unless it can be shown to be necessary for the protection of the liberty or property of other persons."¹²⁶ Concurrently, Mohr will use Mill's philosophy to show that state coercion in the form of civil rights legislation is warranted as the most effective means of promoting and protecting individual liberty.¹²⁷

Also central to Mohr's presentation, as in that of

¹²⁵ POSNER, Sex and Reason, p. 3.

¹²⁶ POSNER, Sex and Reason, p. 3.

¹²⁷ See MOHR, Gays/Justice, pp. 144-161.

Gonsalves, is that gay people are a true minority; the record shows, moreover, systematic attempts to discriminate against gays and lesbians on the basis of the group characteristic which constitutes them as a minority--same-sex erotic attraction. He explains:

...(I)f sexual orientation is something over which an individual has virtually no control, either for genetic or psychological reasons, then sexual orientation becomes relevantly similar to race, gender, and ethnicity. Discrimination on these grounds is deplorable because it holds a person accountable without regard for anything he himself has done. And to hold a person accountable for things over which she has no control is a central form of prejudice.¹²⁸

2.6 Conclusion

Through the study of the positions of Novak, Magnuson, Gonsalves, and Mohr, one can postulate the existence of four basic options for determining the moral advisability of gay and lesbian rights legislation. Two of these options produce a positive response; two produce a negative response. Concurrently, each option is comprised of two components--the first, theoretical considerations; the second, practical considerations. The theoretical component consists of the prior ideological commitments that a person brings to the question. Simply put,

¹²⁸ MOHR, Gays/Justice, p. 188.

depending upon one's philosophical and (or) religious allegiances, one will be inclined either to support or to oppose gay rights legislation. The practical component consists in a reflection upon the effects to be produced by such legislation.

The four basic options can be outlined in the following manner: the first option (I) consists of theoretical support for gay rights legislation with practical support for the same; the second option (II), theoretical opposition with practical opposition; the third option (III), theoretical support with practical opposition; the fourth option (IV), theoretical opposition with practical support. I and II are the pure positions; III and IV are mixed.

Gonsalves and Mohr are advocates of I. Their philosophical commitments lead them to support the human and civil rights of gay people; they see nothing on the practical plane which would make them back away from supporting gay and lesbian rights legislation. Moreover, discrimination against gays and lesbians based upon their sexual orientation is seen as a clear-cut injustice.

Magnuson represents II. His philosophical and religious allegiances lead him to oppose gay rights; moreover, his hypotheses concerning the negative effects of

such legislation lead him to voice practical opposition as well.

Novak's position is not as easily classified. He is more than likely an advocate of IV. His work does not leave many questions about his theoretical opposition to gay rights--the questions are found more in how he reads the practical ramifications. His preference for an "open society" where all share the same basic rights leads us to postulate a willingness on his part to support some instances of legislative protection for gay people.

One notes that we have not identified any defenders of III (theoretical support with practical opposition) in the secular literature. It may be that once one accepts the idea that gays and lesbians deserve (and need) legislative protection against discrimination that one cannot then conceive of any possible negative effects as being significant enough as to entail practical opposition.

In the next chapter, we move to a discussion of the American Catholic debate on the question of the moral advisability of gay and lesbian rights ordinances. We will see that while this debate has much in common with its secular counterpart, it is not simply the same debate under a religious mantle. The Catholic debate in the United States will be shown to possess an originality all its own.

PART TWO
A STUDIED AMBIGUITY:
CATHOLIC TEACHING ON GAY AND LESBIAN RIGHTS

CHAPTER THREE:
RESPONSES TO THE GLM BY THE AMERICAN CATHOLIC HIERARCHY

The GLM in the United States has posed a powerful dilemma for the American Catholic hierarchy. On the one hand, the hierarchy is obliged to uphold the magisterium's evaluation of "homosexual acts" as always and everywhere gravely sinful. On the other hand, the GLM's push for the civil rights of gays and lesbians has not met complete opposition from the U.S. hierarchy: as we shall see, a number of American bishops have issued calls for the protection of the human and civil rights of homosexual persons. These bishops hold that such a programme is consonant with Catholic social teaching.

As a rule, there is warrant for claiming that the average American bishop would feel comfortable with (say) issuing a statement on the necessity of respecting the humanity of homosexual persons and on the obligation of wishing them no harm. However, this same bishop is apt to be skittish when it comes to a question of his supporting a specific piece of legislation designed to protect

homosexual persons from discrimination. Often the choice is made to oppose the legislation with a view toward publicly upholding the Church's sexual ethic and keeping at bay the trend toward a more benign interpretation of homosexuality.

The inconsistency inherent in such an approach is lost on no one. An editorial in the Newark, New Jersey diocesan newspaper, angry at hierarchical opposition to a gay rights ordinance, clearly grasped the problematic. Citing other clergy support for the measure, the author wrote: "these are people who support a proposal like this NOT because they waver in their allegiance to Christ and his Gospel, but precisely because they adhere so courageously to his Gospel of human rights based on the principle of charity."¹

In this chapter, we discuss the contributions of three American Catholic Churchmen to the question of the moral advisability of gay and lesbian rights legislation. These three--Archbishop John R. Quinn and Cardinals Joseph Bernardin and John O'Connor--have made extensive contributions to this question and have articulated stances with which other American bishops have allied themselves. From the outset it bears noting--mutatis mutandis--that

¹ Quoted in Robert NUGENT and Jeannine GRAHICK, eds., A Time to Speak: A Collection of Contemporary Statements from U.S. Catholic Sources on Homosexuality, Gay Ministry, and Social Science (Mt. Rainier, MD: New Ways Ministry, 1982), p. 2.

Bernardin espouses III, O'Connor is a proponent of II, and Quinn supports I.²

3.1 John Cardinal O'Connor

As we have seen, New York City witnessed the birth of the more militant wing of the GLM. On June 28, 1969, a group of young gay men, a few lesbians, and a handful of drag queens stood up to the New York police department and held their ground. Within the year, it was proposed that "sexual orientation"

be added to the groups protected by the city's human rights law. At that time, this was a new idea and the New York City Council was the first legislative body anywhere to consider such legislation.³

However, the City Council failed to adopt the bill; indeed, New York City would not have a gay and lesbian rights ordinance until 16 years later, after "some 50 cities and the State of Wisconsin had adopted such legislation."⁴

The birthplace of the contemporary GLM was long embroiled over the issue of non-discrimination legislation.

² We have not located an American bishop who is on record as supporting IV (i.e., theoretical opposition to gay rights proposals with practical support for the same).

³ Arthur J. MOORE, "Gay Rights and the Churches," in Christianity and Crisis, 46 (April 21, 1986), p. 127.

⁴ MOORE, "Gay Rights....," p. 127.

It is no secret that the two most powerful opponents were "the Orthodox Jewish community and the Roman Catholic Archdiocese of New York. Conservative and fundamentalist Protestantism . . . (was) not strong enough and visible enough in the city to be a significant barrier."⁵

The religious community of New York, however, did not present a united front on this issue. The Orthodox Jews and the Catholic archbishop voiced their disapproval, but the Episcopal bishop, Paul Moore, Jr., and the Reform Jews, under the leadership of Rabbi Balfour Brickner, openly backed the bill. One commentator went so far as to call Moore and Brickner "stalwart supporters" of the gay rights law.⁶

The opponents had their way over and over again; but the issue never went away. Finally, Mayor Edward Koch, a strong proponent of the legislation, devised a way of implementing part of the desired programme. In 1980 he issued Executive Order Number 50 (EO 50) which banned discrimination against gays and lesbians by agencies holding contracts with New York City.

At first, the New York Catholic Archdiocese offered no

⁵ MOORE, "Gay Rights...", pp. 126-127.

⁶ MOORE, "Gay Rights...", p. 128.

resistance to the order. But this changed with the death of Cardinal Terence Cooke and the accession of John O'Connor as archbishop. Joined with the Salvation Army, O'Connor brought a complaint to the New York State Court of Appeals.⁷ They claimed that EO 50 was an instance of interference with the free exercise of religion: under the terms of the order, religious bodies were not exempt (unless, of course, they held no contracts with the city). The archbishop argued that a Catholic institution or agency ought not to be forced to hire practising homosexuals.

The Court of Appeals agreed with the plaintiffs: EO 50 was struck down. It ruled that only explicit legislation could accomplish the goals of the order. Koch's action was deemed an abuse of his executive powers.

Arthur Moore recounts the subsequent chronology:

Meantime, Majority Leader Cuite retired and another bitter opponent of the legislation died. The new leader, though personally opposed, promised the mayor that he would allow the full council to vote on the bill. The drafters of the latest version of the bill had reworked it to meet past objections: Religious

⁷ It is important to note that Bishop Francis Mugavero of Brooklyn did not join with O'Connor in this process. In a joint memoir with Mayor Koch, Cardinal O'Connor attempted an explanation: "The issues in the EO 50 case were complex, and the fact that the Bishop of Brooklyn and I took different approaches added to the confusion. I can certainly understand the confusion on the part of the press and their question: 'If it's acceptable to Bishop Mugavero, why isn't it acceptable to you?' That's a fair question. Its answer would require an analysis of circumstances that would take too much space.... Suffice it to say, Bishop Mugavero and I are committed to the same Church doctrine. If at times we take differing approaches on how best to preserve that doctrine, such is to be expected of men of different temperaments, and in differing sets of circumstances, even though we are both headquartered in the same city." See John Cardinal O'CONNOR and Mayor Edward I KOCH, His Eminence and Hizzoner: A Candid Exchange (New York: William Morrow, 1989), pp. 123-124.

organizations were specifically exempted; sexual orientation was defined; affirmative action quotas were ruled out; there was explicit denial of endorsing 'any particular behavior or way of life' and of making lawful any act that violates the penal code of the State of New York.⁸

Even with these emendations, Cardinal O'Connor's position remained constant. In no uncertain terms he voiced the archdiocese's disapproval. Looking back on the issue, he explained:

This is an excellent example of the complexities of Church-State relationships when it comes to the formation of public policy. I see the churchman's responsibility primarily in terms of the moral dimensions of any policy. I do not believe in a 'human right' to practice homosexual behavior. I believe that constituting such behavior as either a 'civil' or a 'protected' right can have a severely damaging effect on society at large, in the long run, adversely affecting marriage, family life and young people in a particularly grave way. I see it, further, as one of the many efforts to impose a national religion of civil rights on our entire society.⁹

For Cardinal O'Connor, the issue of civil rights protection for gay people falls squarely under the rubric of the Church's sexual ethic. "Homosexual behavior" (i.e., the genital manipulations of homosexual persons) is an intrinsic evil and the law should not grant people "rights" to gravely immoral behavior. In O'Connor's vision, the

⁸ MOORE, "Gay Rights...", p. 128.

⁹ O'CONNOR and KOCH, His Eminence and Hizzoner, p. 311.

Catholic position on the moral valence of homosexual acts inspires opposition to measures which attempt to ensure fair treatment for gay men and lesbians. Since gay and lesbian sexual relating is deemed immoral, it follows logically that if it were to fail to receive social disapproval, society must be said to have taken a turn for the worse. A "live and let live" attitude on homosexuality contributes to the further erosion of the strength and vitality of American marriages and family life. Young people are particularly at risk; they are all but defenseless in the wake of militant gay ideology.

Given his past forays into this battle, few expected O'Connor to support the newly proposed legislation. However, the Coalition for Lesbian and Gay Rights believed that it had received a pledge of neutrality from the neighboring diocese of Brooklyn. Representatives from the coalition had met with auxiliary bishop Joseph Sullivan, counsel Mildred Shanley, and canonist Monsignor William Varvaro; "(i)t was reported that Bishop Sullivan had told Catholic Charities that they had no problem with the bill."¹⁰

However, Brooklyn's ordinary, Francis Mugavero, did

¹⁰ MOORE, "Gay Rights....," p. 128.

not remain neutral. He joined Cardinal O'Connor in issuing a public statement which attacked the proposal as "'exceedingly dangerous to our society' and said that 'what the bill primarily and ultimately seeks is the legal approval of homosexual conduct and activity.'"¹¹ To this, they added the interesting thought that 'it is a common perception of the public that whatever is declared legal by that very fact becomes morally right.'"¹²

It is important to note that Bishop Mugavero's pastoral letter, "Sexuality: God's Gift," which was published on February 11, 1976 in Origins, was hailed at the time by Catholic progressives. In a survey of developments in Catholic sexual ethics, Philip Keane was to write: "Individual leaders such as Bishop Mugavero of Brooklyn have tried to develop sensitive positions on issues such as homosexuality."¹³ James Hanigan remarked that Mugavero's letter had "won wide acclaim for its positive, compassionate and supportive tone, as well as its

¹¹ It is unclear whether "conduct" and "activity" here constitutes a rhetorical parallelism or if two distinct realities are envisioned.

¹² MOORE, "Gay Rights....," p. 128.

¹³ Philip S. KEANE, Sexual Morality: A Catholic Perspective (New York: Paulist Press, 1977), p. 98. On p. 206, n. 26, Keane describes Mugavero's letter "an excellent pastoral approach to homosexuals."

direct language."¹⁴ Richard McCormick, too, joined in hailing "Sexuality: God's Gift:"

Mugavero's language and tone meet people where they are. Tone in moral matters, is not everything, but it is enormously important; for it reveals attitudes towards persons, norms, conflicts, God, the human condition. Because this is so, tone not only affects communicability; at some point it also cuts close to the basic value judgments themselves....That is why a document that is tonally inadequate risks being substantially incomplete or even wrong.¹⁵

To give a picture of Mugavero's 1976 stance on homosexuality and gay rights, the following excerpt from "Sexuality: God's Gift" is relevant:

We urge homosexual men and women to avoid identifying their personhood with their sexual orientation. They are so much more as persons than this single aspect of their personality. That richness must not be lost... It is not homosexuality which should be one's claim to acceptance or human rights or to be loved by us all: it is the fact that we are all brothers and sisters under the Fatherhood of God. Our community must explore ways to secure the legitimate rights of all our citizens regardless of sexual orientation, while being sensitive to the understanding and hopes of all involved.¹⁶

Some of the Bishop's concerns here might strike the careful analyst as somewhat contrived. Does anyone really identify their very personhood with their sexual

¹⁴ James P. HANIGAN, What Are They Saying About Sexual Morality? (New York: Paulist Press, 1982), pp. 65-66.

¹⁵ Richard A. McCORMICK, Notes on Moral Theology, 1965 Through 1980 (Washington, D.C.: University Press of America, 1980), pp. 679-670. Cited in HANIGAN, What Are They Saying..., p. 66.

¹⁶ Quoted in NUGENT and GRANICK, A Time to Speak, pp. 2-3.

orientation? Surely the overwhelming majority of people can distinguish between their humanity and an aspect of their personality. Similarly, it seems that one would have to search far and wide to find an individual who holds that an aspect of her psychic composition is the source of her claim to 'acceptance or human rights or to being loved by us all.'

However, Mugavero has good reason to frame the issues in this way. If one's rights flow from one's humanity--not from one's sexual orientation--then homosexuals who act upon their sexual drives do not thereby forfeit their human or civil rights. When it is further recognized that all sorts (quantitatively the vast majority if over 90% of human society is heterosexually oriented) of intrinsically disordered and gravely immoral conduct flow from people's heterosexual orientation, the desire to discriminate against homosexual persons--even the most flamboyant--is revealed as arbitrary and unjust.

Given his pastoral letter and the repudiation of its principles implied by joining Cardinal O'Connor in opposing the new non-discrimination legislation, Bishop Mugavero was assumed to have been pressured into the stand he took. He denied any such thing, but as Arthur Moore remarks:

This denial was not widely believed, the only question

being where the pressure came from. Informed sources say that O'Connor got the apostolic nuncio to the United States, Archbishop Pio Laghi, to do the job for him.¹⁷

Cardinal O'Connor continued his attack on the legislation. The culmination of his campaign took place in a Sunday homily at St. Patrick's Cathedral, just a few days before the vote . . .

He called the measure an affront to Judeo-Christian values that would offer legal protection to sexual behavior that is 'abnormal' and 'a sin.' He warned, 'Let not any legislature impose anyone's morality on society or on the Catholic Church.'¹⁸

The Orthodox Jews, too, continued their public opposition. They targeted Mayor Koch for their displays of disapproval. On several occasions, when "Mayor Koch testified for the bill at public hearings, some 50 to 75 Hasidic Jews stood up, turned their backs on him and began jeering and booing. As the mayor left the room, they shouted, 'Shame! Shame! Shame!' Rabbi Yehuda Levin of Brooklyn said that the bill was supported by 'your corrupt mayor and his Greenwich Village buddies.'¹⁹

¹⁷ MOORE, "Gay Rights...", p. 128. Moore informs his readers that after the O'Connor-Mugavero statement, the Bishop of Brooklyn made no further public comments on the issue.

¹⁸ MOORE, "Gay Rights...", p. 128. This last statement was a masterful piece of rhetoric. It was, after all, exactly what the gay and lesbian community had been accusing Cardinal O'Connor of trying to do.

¹⁹ MOORE, "Gay Rights...", p. 128. Moore deems the Orthodox Jewish opposition as having been clearly counter-productive: "its reliance on the Levitical Code and its near advocacy of stoning homosexuals scared most of those not already committed to its point of view. As one bystander put it, he never believed that there was any need for a gay rights bill until he heard

Bishop Moore and Rabbi Brickner versus Rabbi Levin and Cardinal O'Connor. As the time came for the vote, the situation had all the makings of a religious war. Ideologies were in high gear; tempers flared. After O'Connor's appearance in the pulpit at St. Patrick's,

Moore...held a press conference with Rabbi Brickner, the Rev. William Sloan Coffin, Jr. of Riverside Church, and Roman Catholic Father Bernard Lynch endorsing the bill. Later he (Moore) went so far as to publicly snipe at Cardinal O'Connor's motives, which drew an equally irritated reply from O'Connor. Both Moore and Brickner testified for the bill at the public hearings and held a second news conference to declare passage 'a simple and urgent matter of justice' and say that 'it is high time we eliminated this last vestige of discrimination.'²⁰

"Amid great public clamor, vituperative exchanges and near-physical combat hardly observant of Marquis of Queensberry rules, the gay rights legislation passed,"²¹ is how Cardinal O'Connor described the final resolution of the conflict.

The Cardinal has remained convinced of the rightness of his stance. Indeed, he gives the impression that the only possible Catholic approach to gay and lesbian rights ordinances is active opposition:

Rabbi Levin" (in ibid.).

²⁰ MOORE, "Gay Rights....," p. 128.

²¹ O'CONNOR and KOCH, His Eminence and Hizzoner, p. 311.

What...can I say...to those I hurt because of my own belief in and attempted fidelity to Church teaching? I cannot bring myself to believe that they could ever have even a shred of respect for an archbishop, the primary teacher of Church doctrine in this or any other archdiocese, should he be unfaithful to what the Church holds and what he personally believes. Nor could they respect an archbishop who teaches or condones what he believes is ultimately damaging to homosexual persons themselves, simply for his own popularity, or so that he may be perceived as compassionate. Popularity is a heady intoxicant, but as every intoxicant, it can destroy the life of one who thirsts for it above all else.²²

3.2 Joseph Cardinal Bernardin

By all accounts, Cardinal Joseph Bernardin, archbishop of Chicago, is possessed of a temperament very much unlike that of Cardinal O'Connor. Bernardin is "the man in the middle," the great conciliator, the voice for the moderate wing of the American episcopacy.²³ Bernardin has never been accused of grandstanding; he is a man of well-measured speech and action. The adoption by the Catholic bishops of his approach to human life issues--"The Seamless Garment"--reflects well on Bernardin's insight and persuasiveness.

On the issue of gay rights, Cardinal Bernardin has

²² O'CONNOR and KOCH, His Eminence and Hizzoner, p. 310.

²³ Such a role has exacted a certain price from the Cardinal and from the Archdiocese of Chicago. See Robert J. McCLORY, "Bernardin's Chicago Adrift in a Sea of Malaise," in National Catholic Reporter (February 14, 1992), pp. 6-9; and Robert J. McCLORY, "Interview with Cardinal Bernardin," in ibid., pp. 10-11. Bernardin responded to the first of these articles in an editorial in National Catholic Reporter (March 6, 1992), p. 2, as did Eugene Kennedy (in ibid., pp. 2, 18).

taken a highly nuanced position. In his "Letter to the Illinois Gay and Lesbian Task Force,"²⁴ (January 2, 1985), he clearly spelled out his policy. In the first place, he remarked: "Let me state clearly at the outset that I am not afraid to take an unpopular position in defense of human or civil rights. However, I know you understand that any leadership I might provide in regard to such issues would have to be exercised within the parameters of the Catholic Church's teaching."²⁵

From the dichotomy drawn between human and civil rights on the one hand, and the Catholic Church's teaching on the other, the Illinois Gay and Lesbian Task Force must have seen the handwriting on the wall: no support for protective legislation from the archbishop of Chicago. Since the publication of Pope John XXIII's encyclical Pacem in terris, however, it might seem counterintuitive that Catholic teaching can find itself in conflict with human or civil rights. What accounts for Bernardin's position?

The Cardinal enumerated four principles which guided his decision not to support a gay and lesbian rights ordinance for the city of Chicago. First, he affirmed the

²⁴ Joseph Cardinal BERNARDIN, "Letter to the Illinois Gay and Lesbian Task Force," in John GALLAGHER, ed., Homosexuality and the Magisterium: Documents from the Vatican and the U.S. Bishops, 1975-1985 (Mt. Rainier, MD: New Ways Ministry, 1986), pp. 103-104.

²⁵ BERNARDIN, "Letter...", p. 103.

human dignity of homosexual persons. Quoting the 1976 U.S. Bishops' pastoral letter, "To Live in Christ Jesus,"²⁶ he wrote: "Homosexuals, like everyone else, should not suffer prejudice against their basic human rights. They have a right to respect, friendship, and justice. They should have an active role in the Christian community."²⁷

Secondly, Bernardin affirmed:

There is no place for arbitrary discrimination and prejudice against a person because of sexual attraction. We especially deplore violence and harassment directed against such persons. Moreover, all human persons, including those with a homosexual orientation, have a right to decent employment and housing.²⁸

There is nothing in these first two principles which would demand that the Archbishop oppose a gay rights ordinance for Chicago. Gays and lesbians are said to have a right to 'respect, friendship, and justice.' Moreover, they should not be denied 'decent employment and housing.' At this point, not supporting anti-discrimination legislation sounds like a violation of the Church's teaching and the Cardinal's responsibility as a bishop.

In the third principle, Bernardin rehearsed the

²⁶ It is interesting to note that Cardinal Bernardin got the name of the bishops' letter wrong: he referred to the pastoral as "The Gift of Sexuality." This is a close approximation of the title of Bishop Mugavero's pastoral letter of the same year.

²⁷ BERNARDIN, "Letter...", p. 103.

²⁸ BERNARDIN, "Letter...", p. 103.

Church's moral evaluation of "homosexual acts." "Homosexual activity, as distinguished from homosexual orientation, is morally wrong." He then affirmed that "a corollary of this traditional teaching of the Church is that patterns of life, sometimes referred to as 'lifestyles,' which encourage immoral behavior are also morally objectionable. . . .As a Church, we do not approve of those patterns of life or lifestyles which encourage, promote, or advocate homosexual activity."²⁹

The corollary enunciated by the Cardinal is problematic. Notice that he does not speak of "lifestyles wherein immoral behavior is practised," but rather "lifestyles which encourage immoral behavior." A lifestyle, being by definition any pattern of life of fallible human beings prone to immorality, can never be free from the potential of wickedness. Sin is found in the lives of the devotees of every conceivable lifestyle. And since genital manipulations conducive to orgasm³⁰ make up only a fraction of all that might go into a "homosexual lifestyle," it would seem to be unjust to allow discrimination against gays and lesbians.

²⁹ BERNARDIN, "Letter...", p. 103.

³⁰ Technically, this is all that the Catholic Church has against the "practising homosexual" as such. "Camp" and interest in haute couture (following the stereotypical image of the gay male), for instance, have never been defined as immoral.

No doubt this is why the Cardinal moves the discussion to lifestyles which "encourage, promote, or advocate homosexual activity." However, the language used is unfortunate: it is vague and, therefore, potentially misleading. No indication is given as to which types of homosexual life patterns are implicated in promoting, encouraging, and advocating homosexual activity. Surely one would want to say that the homosexual prostitute (although he may not be a true homosexual) is involved in encouraging gay sex. The same would have to be said of the proprietor of a "sex shop" whose wares facilitate homosexual orgasms. (This businessman, too, of course, might not be gay.) However, is the celibate, lesbian, Catholic religious who works in advocacy for gay and lesbian rights guilty of advocating immoral behavior? Is the gay couple who do not "wear their lifestyle on their sleeve" guilty of encouraging others to go and do likewise?

At the same time, one is justified in questioning how much "encouragement" is thought to be necessary before the average gay man or lesbian "breaks down" and commits immoral acts. PCHP, for instance, warns against

downplaying the average homosexual's will power.³¹ Moreover, no amount of encouragement, promotion, or advocacy seems likely to entice the constitutional heterosexual to adopt a "homosexual lifestyle."³²

Bernardin's third principle, then, is much too ambiguous to be helpful in judging concrete circumstances. One is given no guidance on who is to be taken as an advocate or promoter of sinful behavior.³³

Bernardin's fourth principle, being highly controversial, warrants a full citation:

Parents have the right to keep their children free during their formative years of any person(s) or influence(s) which might draw them toward homosexual practice or condoning homosexual activity.³⁴

³¹ Cf. "What is at all costs to be avoided is the unfounded and demeaning assumption that the sexual behavior of homosexual persons is always and totally compulsive and therefore inculpable. What is essential is that the fundamental liberty which characterizes the human person and gives him his dignity be recognized as belonging to the homosexual person as well. As in every conversion from evil, the abandonment of homosexual activity will require a profound collaboration of the individual with God's liberating grace." PCHP, #11, in GRAMICK and FUREY, The Vatican and Homosexuality, p. 6.

³² As we have seen (*supra*, pp. 74-77), a person's sexual orientation is not prone to change. However, it bears noting that, given the right set of circumstances (especially the unavailability of the opposite sex), a significant percentage of the population can be enticed into isolated instances of homosexual behavior. Such activity, however, cannot be termed a "homosexual lifestyle."

³³ The traditional category of "scandal" would appear to be preferable to Bernardin's awkward use of "encourage, promote, and advocate." Scandal, moreover, entails a judgment concerning the intention of the person under question. One is guilty of scandal who intends the sin of another. This distinction could get the above-mentioned Catholic religious "off the hook" as well as the gay couple. See, for instance, Bruno SCHÜLLER, "Direkte Totung--indirekte Totung," in Theologie und Philosophie, 47 (1972): 341-357; cited in his "The Double Effect in Catholic Thought: A Reevaluation," in Richard McCORMICK and Paul RAMSEY, eds., Doing Evil to Achieve Good: Moral Choice in Conflict Situations (Chicago: Loyola University Press, 1978), pp. 165-192, at p. 166.

³⁴ BERNARDIN, "Letter...", p. 104.

The danger of such a principle ought to be apparent. Adult-child sexual activity is rightly a criminal offense in all fifty states; the Cardinal had to know that non-discrimination legislation for gays and lesbians contains no hidden clause which would decriminalize the seduction of children and (or) the corruption of minors. What, then, is the right that parents are said to have which would trump the rights of a gay person? How might society be structured so that children in their formative years do not receive a favorable impression of homosexuality?

The Cardinal, for instance, would surely not wish to claim that Catholic parents have the right to keep their children free from (say) Jehovah's Witnesses and that because of this, Jehovah's Witnesses must be made to forfeit some of the civil rights they would normally have had if they weren't such a threat to the orthodoxy of young Catholics. Even though it is clear that Roman Catholics and Jehovah's Witnesses operate in radically different dogmatic and liturgical worlds, and even though it is well-known that a significant percentage of Jehovah's Witnesses are people who have been actively recruited from Catholicism, it is inconceivable that a Catholic leader would advocate the diminishment of Jehovah's Witnesses' civil rights.

To return directly to Bernardin's fourth principle, it should be noted that the myth of homosexual recruitment seems to be lurking not far below the surface. The impression is given that gays and lesbians are likely to draw young people toward homosexual practice and the belief that there is nothing about homosexuality which raises any moral qualms. Why else would parents have a right to keep their children from the presence of such people?³⁵

Bernardin gave no explanation; but in the next paragraph he explicitly stated: "We do not assume that many homosexuals are child abusers or seducers of young people."³⁶ Moreover, he precised: "We have not recommended the firing of any persons of homosexual orientation from Church-related positions where they may be simply disliked."³⁷ The archdiocesan hiring procedures did not allow for questioning potential employees about their sexual orientation. Finally, the Cardinal said that anyone

³⁵ It is important to note in this context that in at least one survey, Catholic teenagers appear rather intolerant of gays and lesbians. Michael Maher conducted a survey among Catholic confirmation candidates for parishes in Kansas City (the research was incorporated into a master's thesis accepted by the Faculty of Education at the University of Kansas). Among his findings: "More than one of three Catholic young men...did not agree with a statement that physical violence against homosexuals is not acceptable...; almost half of the entire group...did not agree that Church leaders should speak out against derogatory terms, jokes, and physical violence directed against homosexual people...; nearly one out of four young women...and three out of five young men...did not agree that the Church should treat homosexual people with understanding" [See Kevin KELLY, "Catholic Teenagers 'Intolerant of Gays,'" in Bondings, 14 (1991), pp. 1, 111.

³⁶ BERNARDIN, "Letter...", p. 104.

³⁷ BERNARDIN, "Letter...", p. 104.

acting in a non-professional manner on the job or who publicly advocates behavior that is contrary to Catholic morality would be subject to disciplinary action. And, significantly, "that would include anyone who promotes or advocates a heterosexual lifestyle which we would consider immoral, as, for example, people living together without benefit of marriage."³⁸

Where, then, did this leave Bernardin in terms of civil legislation which would protect gays and lesbians from discrimination? By all accounts, the archdiocesan policies were moderate--not likely to anger the homosexual community nor inflame a more traditional and conservative Catholic. Toward the end of his letter, Cardinal Bernardin showed that he appreciated the bipolar nature of the question. One senses a certain ambivalence as he clarified his position:

My own position, then, is this: I firmly deplore acts of violence, degradation, discrimination, or diminishment of any human person--including anyone with a homosexual orientation. I am especially concerned that such attitudes or acts might be found at times in institutions of this archdiocese. At the same time, I am equally bound to teach that homosexual activity and patterns of life which promote it are immoral.³⁹

³⁸ BERNARDIN, "Letter...", p. 104.

³⁹ BERNARDIN, "Letter...", p. 104.

These last three sentences are a perfect accounting of the dilemma that has faced the Catholic hierarchy in the United States since the beginning of the GLM. There is no way that the Gospel and the Church's social teaching of the last 100 years could advocate remaining silent--and thus being an accomplice--when human persons are subject to violence, degradation, discrimination, or diminishment. At the same time, the Church's magisterium has, on several occasions in recent years, vigorously reaffirmed the objective immorality of homosexual behavior. On the one hand, the Church's social ethic; on the other hand, its sexual ethic: how is one to resolve this dilemma in terms of concrete policy?

In the following passage, Cardinal Bernardin came to a resolution:

My specific concern about gay rights legislation is its implications. If it implies acceptance or approval of homosexual activity or advocacy of a lifestyle which encourages homosexual activity, we will have no choice as a Church but to oppose the legislation. If it merely provides needed legal protection for people with a homosexual orientation and explicitly does not approve homosexual activity or endorse the kind of lifestyle which would promote it, we could support it.⁴⁰

Less than a year after the Illinois Gay and Lesbian

⁴⁰ BERNARDIN, "Letter...", p. 104.

Task Force received Bernardin's letter, the Chicago City Council was faced with the question of a municipal gay rights ordinance.⁴¹ As had been the experience in New York and in many other cities, this issue inflamed the passions of many Chicagoans. To the chagrin of the homosexual community, Cardinal Bernardin went on record as opposing the ordinance.⁴² He began an explanation of his opposition in the following manner:

In the case of gay rights legislation, I seek to balance two values: (1) the fact that no person should be discriminated against because of his or her sexual orientation; and (2) the normativeness of heterosexual marital intimacy as the proper context for intimate genital encounters.⁴³

In this particular instance, Bernardin judged that the

⁴¹ See the following for a summary of the controversy: "Gay Rights Ordinance Fails," in The Chicago Tribune, July 30, 1986, p. 1; "Chicago City Council Defeats Gay Rights Bill," in The Advocate, no. 454 (September 2, 1986), p. 13; "Homosexual Sex is (Objectively) Immoral," The Chicago Tribune, July 17, 1986, p. 1. [This last headline, of course, is a reference to Catholic moral teaching. It was unambiguously reaffirmed by Cardinal Bernardin. However, for a respected daily newspaper to put it in bold print on its front page counts as a serious failure to grasp the delicate nuances of the Cardinal's position. One can only imagine how the headline would have read if the Cardinal had supported the ordinance.] These sources are cited by MOHR, Gays/Justice, pp. 330-331.

⁴² Richard Mohr's exasperation is palpable: "Gays would do well to appeal to the traditional American value that religion is not to be the fount of public policy, for it is just exactly religious opposition to gays that gives their average opponent the false appearance of being himself principled in his opposition. Here the grandeurs of Catholicism are much more dangerous than Protestant fundamentalism, Bernardin more dangerous than Falwell. Catholicism's natural law theology...has an air of intellectual respectability, of transferable universality, underwritten for good measure by tradition, an air that fundamentalists and their recent and revealed gods have not. It is perfectly respectable and indeed the principled thing to do for gays to remind the nation that it is not a Catholic country; few would disagree with that. It is perfectly respectable, indeed the thing to do to remind political conservatives of what the National Conference of Catholic Bishops has to say about capitalism. To do that might just get them to reconsider the role of God in public policy. But in any case, it is time for gays to stop pondering to un-American religious immorality, to stop begging for rights from religious bigots and using religious do-gooders as their own front men." See Gays/Justice, p. 331.

⁴³ Joseph Cardinal BERNARDIN, "I, Too, Struggle," in Commonweal, 111 (December 26, 1986), p. 683.

proposed ordinance would compromise the normativity of heterosexual marital intimacy.⁴⁴ Unfortunately, he did not specify how such a compromise would have been effected. Since the ordinance did not say that anyone who is so inclined ought to partake of gay sex, and since the ordinance did not state that all Chicagoans must consider a homosexual way of life to be as valid as a heterosexual one, one is justified in surmising that the Cardinal would see heterosexuality compromised in any ordinance or any piece of legislation that purported to protect gays and lesbians. Bernardin's position seemed to have been that no matter how ordinances are phrased, if they become law, the average person is going to get the impression that "gay is now good."⁴⁵

In the end, the Cardinal was to realize that his opposition to the city's proposed gay rights ordinance produced much ambivalence. His malaise concerning this issue was clear:

I know that I have angered some in the homosexual community who would argue...that to protect orientation but not activity is unacceptable because it partitions the human person. I have angered others who feel that it is wrong to grant any rights to

⁴⁴ See BERNARDIN, "I, Too, Struggle," p. 684.

⁴⁵ See, especially, Stephen ELRED, "Gay Rights/Gay Plight: An Open Letter to Cardinal Bernardin," in Commonweal, 113 (December 26, 1986), pp. 680-682.

homosexuals. Moreover, I have learned how difficult it is in our legal system for legislators who agree with my position to draft appropriate legislation.⁴⁶

Nonetheless, the Cardinal had had his way: the ordinance failed to pass the City Council on July 29, 1986, by a vote of 30 to 18.⁴⁷ By most accounts, Bernardin's opposition was critical to its defeat.⁴⁸

3.3 Archbishop John R. Quinn

With relations between the Catholic and gay communities invariably running from bad to worse, John R. Quinn has the unenviable task of being the Catholic archbishop of San Francisco--the city which is indisputably "the capital of gay life."⁴⁹ Archbishop Quinn has issued several important pastoral letters on the constellation of issues surrounding homosexuality. These letters will eventually be the focus of this section. First, however, we will discuss the political backlash that the GLM faced by the end of the 1970s, culminating in California's

⁴⁶ BERNARDIN, "I, Too, Struggle," p. 684.

⁴⁷ See Leigh W. RUTLEDGE, The Gay Decades (New York: Penguin/Plume, 1992), p. 260.

⁴⁸ ELRED, "Gay Rights/Gay Plight," p. 680.

⁴⁹ Edmund WHITE, States of Desire: Travels in Gay America (New York: Penguin/Plume, 1991), p. 32.

Proposition 6, the so-called "Briggs Initiative."

Throughout much of the 1970s, the GLM scored modest gains. A number of municipalities enacted non-discrimination ordinances, the courts were more inclined to provide equal treatment under the law, and generally American society seemed more accepting of the aspirations of its gay and lesbian citizens.⁵⁰

All was not well, however. By the late 1970s a political backlash was gaining momentum. One of its key players was a rather unlikely figure who held minor celebrity status: Anita Bryant. Bryant had for quite some time been identified with conservative causes⁵¹ and when Miami became the first major Southern city to enact a gay rights ordinance--prohibiting housing and employment discrimination against gay men and lesbians, she organized "Save Our Children" (SOC). Her intention was to overturn the protective legislation. On March 20, 1977, SOC took out a full-page advertisement in The Miami Herald. It read as follows:

Homosexuality is nothing new. Cultures throughout history have dealt with homosexuals almost universally

⁵⁰ See MARCUS, Making History..., pp. 172-173.

⁵¹ In 1970, for instance, she was "honored by the Freedoms Foundation for her part in organizing...(the) 'Rally for Decency' at Miami's Orange Bowl. The rally--whose themes were 'We Believe in God,' 'We Love Our Families,' and 'Down With Obscenity'--drew over thirty thousand participants...." See RUTLEDGE, The Gay Decades, p. 15.

with disdain, abhorrence, disgust--even death....The recruitment of our children is absolutely necessary for the survival and growth of homosexuality. Since homosexuals cannot reproduce, they must recruit, must freshen their ranks. And who better qualifies as a likely recruit than a teenage boy or girl who is surging with sexual awareness.⁵²

The non sequiturs in this advertisement notwithstanding, SOC made great strides in the polls. It was able to get six times the required number of signatures to put the ordinance up for a city-wide vote. To the shock of gay activists throughout the country--who had, by and large, underestimated SOC and its coalition of religious conservatives⁵³--the gay rights ordinance was overturned on June 7, 1977 by a margin of more than two to one.⁵⁴

A year later, revelling in international notoriety, Anita Bryant spelled out some of her most basic beliefs in an interview in Playboy (June 1, 1978). Bryant, the interviewer reported:

-insists that homosexuality inevitably leads to

⁵² Quoted in RUTLEDGE, The Gay Decades, p. 103. It is important to note that SOC quickly gained national attention. Shortly after its formation, "the Arkansas State House of Representatives unanimously...(passed) a special resolution commending Bryant for her antigay crusade." The lawmaker who introduced the resolution explained the rationale: "When you go against God's law, you have no human rights" (quoted in ibid.).

⁵³ Bryant styled herself a Christian activist and much of the rhetoric of SOC under her leadership involved the religious condemnation of homosexuality. Although it sounds like part of a stand-up comedian's routine, one of her favorite slogans was: "If homosexuality were normal, God would have created Adam and Bruce." See RUTLEDGE, The Gay Decades, p. 101.

⁵⁴ See RUTLEDGE, The Gay Decades, p. 108. Within six months, voters in St. Paul, Minnesota; Wichita, Kansas; and Eugene, Oregon repealed gay rights ordinances (see ibid., pp. 122-123).

sadomasochism, drug abuse, and suicide
 -claims that homosexuals are called 'fruits' because they eat 'the forbidden fruit of the tree of life' (i.e., semen)
 -reveals that if the gay rights ordinance had passed in Dade County there was 'a group of prostitutes who were going to initiate similar legislation permitting whores to stand up in front of kids in the classroom and then ply their trade'
 -objects to people using the terms 'queer' or 'faggot,' but says that 'homo' isn't really all 'that bad'
 -acknowledges that she's never read the Bible cover to cover
 -advocates homosexual behavior being classified as a felony punishable by at least twenty years in prison, even for young first-time 'offenders'
 -says that all Jews and Muslims are 'going to hell' because they haven't embraced Jesus Christ as their personal savior
 -asserts that no matter what happens in her marriage, divorce isn't 'in my vocabulary'⁵⁵

It is no wonder that Anita Bryant became the American homosexuals loved to hate.⁵⁶

Less than a week after Bryant's interview appeared on the newsstands, the Briggs Initiative ("Proposition 6") qualified for the November ballot in California. This proposition, named for its author--state senator John Briggs--was designed to "bar gay people, or 'anyone

⁵⁵ In RUTLEDGE, The Gay Decades, p. 124.

⁵⁶ However, "after the breakup of her marriage a few years later, Bryant expressed regret over her previous actions in a dramatic about-face." See WOODS, Another Kind of Love, p. 62, n. 6. In the December, 1980 issue of The Ladies' Home Journal, Bryant would claim that "she no longer feels as militantly as she once did about gay rights. 'The answers don't seem so simple now,' acknowledges the singer, who also admits to having been unfaithful to her ex-husband. 'I'm more inclined to say live and let live.'" See RUTLEDGE, The Gay Decades, p. 161.

advocating a homosexual lifestyle,' from teaching in California's public schools."⁵⁷ What was remarkable in this instance was how the opposition constituted a "popular mobilisation which extended beyond normal political boundaries."⁵⁸ The Catholic archbishop of San Francisco joined his voice in opposition to the measure. In a statement issued on October 11, 1978, Archbishop Quinn wrote:

Proposition 6 involves moral, justice and civil rights issues...(T)he civil rights of persons who are homosexual must also be our concern. Hence, the American bishops affirmed the following principles in a national pastoral letter on moral values: 'Homosexuals, like everyone else, should not suffer from prejudice against their basic human rights. They have a right to respect, friendship and justice.' There is serious reason to believe that the proposed amendment in this initiative would tend to violate and would limit the civil rights of homosexual persons.⁵⁹

It is important to call attention to the form of legislation that was opposed by Archbishop Quinn. The Briggs Initiative would have excluded homosexuals from teaching in the public schools. To be against it meant,

⁵⁷ RUTLEDGE, The Gay Decades, p. 120.

⁵⁸ Jeffrey WEEKS, Sexuality and Its Discontents: Meanings, Myths, & Modern Sexualities (New York: Routledge, 1985), p. 265, n. 1. It is noteworthy that even ex-governor Ronald Reagan went on record as opposing the Briggs Initiative. Randy SHILTS, in The Mayor of Castro Street: The Life and Times of Harvey Milk (New York: St. Martin's Press, 1982), p. 243, reports: "Former Governor Ronald Reagan...went on record against Prop 6, observing, 'Whatever else it is, homosexuality is not a contagious disease like measles.'"

⁵⁹ Quoted in NUGENT and GRAMICK, A Time to Speak, p. 14.

then, that one did not believe that gays and lesbians--as a category of persons--should be declared unfit for employment by California school boards. It could not be construed as meaning that one wishes to promote the social acceptance of homosexual behavior. In other words, it would seem likely that Cardinal Bernardin's approach would not have differed from Archbishop Quinn's. In any event, supporting a "positive" ordinance is more problematic than opposing a "negative" one. The latter appears as a clear-cut instance of injustice; the former can easily be interpreted as affording "special treatment" to an undeserving minority.

In the end, the Briggs Initiative was defeated rather handily: 59 percent to 41 percent.⁶⁰ Charles Brydon, a gay rights activist, remarked: "That was an incredible achievement: a state-wide ballot issue coming through as well as it did in a state with such a diverse population."⁶¹ It is safe to say that the opposition of the Catholic Church had an important role to play in the

⁶⁰ See RUTLEDGE, The Gay Decades, p. 129.

⁶¹ "The Insider: Charles Brydon," in MARCUS, Making History..., p. 308.

defeat of Proposition 6.⁶²

3.3.1 "A Pastoral Letter on Homosexuality"

On May 5, 1980, Archbishop Quinn issued a pastoral letter on homosexuality. This document received wide attention and would eventually serve as the foundation of at least one other bishop's attempt to write cogently on homosexuality.⁶³

Quinn's pastoral letter is remarkable for its grasp of the issues involved and its willingness to tackle the difficult issues of biblical exegesis and ethical normativity. The tone that is struck throughout is clearly pastoral: sincere, serious, understanding.

In the first section, entitled "The Present-Day Situation," Quinn recognizes that much has changed in American society's understanding of homosexuality; indeed, in the not-so-distant past most people would have considered a public discourse on homosexuality to be unthinkable. Many homosexual people, too, have changed

⁶² Bishops John Cummins (Oakland) and Juan Arzube (Los Angeles) also issued strongly-worded denunciations of Proposition 6, as did the Directors of the California Conference of Catholic Charities and America magazine's editor. See NUGENT and GRAMICK, A Time to Speak, pp. 14-15 for the documentation.

⁶³ Cf. Bishop Stanislaus BRZANA (Ogdensburg, New York), "Homosexuality and Human Dignity," in Origins, 13 (February 2, 1984), pp. 75-76.

their tactics: they are unwilling to remain hidden from society, forever lurking in the shadows of polite company. No, they acknowledge who they are and they claim minority status--and the civil protection that this status ought to afford them. What is more, within and without the Church, people are clamoring for change in the traditional Catholic moral evaluation of homosexual behavior. Some see no good reasons why it shouldn't take a place beside heterosexual coupling as a valid human expression of love and commitment.

In short, we are being besieged to move from a non-prejudicial attitude toward individuals to a point of view of total acceptance of homosexuality as a legitimate personal and public choice. Thus homosexuality is seen as a legitimate alternative to heterosexuality and the society is asked to support this position. Does this warrant our agreement?⁶⁴

It will come to no one's surprise that this question will eventually be answered by the Archbishop with a resounding "No." Even at a distance of more than a decade, it is unimaginable that an American Catholic archbishop might argue for the moral legitimacy of a "homosexual lifestyle."⁶⁵ Be that as it may, it is necessary to

⁶⁴ Archbishop John R. QUINN, "A Pastoral Letter on Homosexuality," in GALLAGHER, Homosexuality and the Magisterium, p. 22.

⁶⁵ Emphasis here is placed equally on "American" as on "Catholic." [For an example of a French bishop who is willing to reconsider this question, see "Interview with Bishop Jacques Gaillot of Evreux, France: A Welcoming and Listening Church," in Bondings, 15 (Winter, 1992-1993), p. 1. The interview originally appeared in Gai Pied (October 8, 1992). It was written by Eric

highlight an exaggeration in Quinn's statement of the problem and a subtle non sequitur.

In the first place, the Archbishop claims that the Catholic Church is being asked to take on an attitude of "total acceptance of homosexuality as a legitimate personal and public choice." Insofar as the Church has not granted "total acceptance" to heterosexuality--if, for instance, one includes adultery, fornication, and rape under the umbrella of "heterosexuality"--it goes without saying that a "total acceptance of homosexuality" is out of the question. There are, however, no serious calls for the Church to bless the homosexual seduction of minors, to celebrate the S & M scene, to sanction gay promiscuity; in other words, no one is really asking for total acceptance of all that might be taken to comprise "homosexuality." At the time of Quinn's writing, as in the present-day, those who are "besieging" the Church ("beseeching" is perhaps more accurate) are doing so in the name of an extremely circumscribed range of "homosexual behaviors." Most are not even willing to put this highly limited version of "homosexuality" on the same pedestal as

"heterosexuality."⁶⁶

As for the non sequitur, Quinn gives the impression that homosexuality is the object of choice when he writes: "Thus homosexuality is seen as a legitimate alternative to heterosexuality and the society is asked to support this position." The wording here is unfortunate. The true lesbian, for instance, does not have two alternatives between which to choose, one "gay" and the other "straight." Homosexually oriented people cannot seriously opt for the "heterosexual alternative." They can choose, of course, whether to engage in this or that sexual act, but they cannot choose their sexual feelings. The Archbishop would have done well to have said something like 'thus some homosexual behavior is seen as a legitimate alternative to perpetual continence⁶⁷ and society is asked to support this position.' "Homosexuality versus heterosexuality" is by no means the choice that presents

⁶⁶ We will have occasion to discuss the proposals of revisionist Catholic moral theologians in the next chapter. It is worth stating now, however, that none of them call for a blanket approbation of "homosexuality."

⁶⁷ Perpetual continence is, of course, how the Church conceives of the homosexual person's moral obligation in the matter of sexuality. This was reiterated in the C.D.F.'s Declaration on Certain Questions Concerning Sexual Ethics (PH) (Boston: Daughters of St. Paul, n. d.), #7, p. 10: "every genital act must be within the framework of (heterosexual) marriage."

itself to the homosexually oriented man or woman.⁶⁸

Archbishop Quinn's pastoral letter is a reaffirmation of contemporary Catholic magisterial teaching on homosexuality. It unhesitatingly recognizes the justesse of the distinction between the homosexual orientation (morally blameless because it is unchosen) and homosexual behavior (morally blameworthy if freely chosen). It counsels gay people under the same rubrics as those that apply to unmarried persons:

...just as unmarried persons are not exempt from the moral teaching of the Scriptures and of the Church which has to do with sexual conduct, so homosexual persons are not exempt from this teaching either. Thus despite the difficulties, homosexual persons who wish to receive the Eucharist must be honestly following the moral teaching of the Church or at least striving to live up to that teaching. This implies that like other Christians they must take advantage of the powerful graces that come from the reverent and frequent recourse to the Sacrament of Penance. In addition, of course, the natural aids they may need such as counseling, psychological help, etc., should and must be used where indicated and as needed. In any case there is nothing to justify a departure from the Church's normative pastoral and doctrinal teaching that one who has sinned gravely cannot approach the Eucharist until he has been absolved from that sin in the Sacrament of Penance and this of course implies the firm amendment on the part of the penitent and his

⁶⁸ André GUINDON wonders: "Does a gay's moral dilemma consist in choosing between being a gay (the immoral choice) and not being a gay (the moral choice)? Is this a reasonable choice for one who is irreversibly a homosexual?" He will conclude: "There are enough gay bibliographies nowadays to convince anyone who is not incurably prejudiced that for many persons gayness is their only sane choice." The real question, then, is whether gays may morally act in accord with who they are--whether the common-sense maxim agere sequitur esse holds for the gay man and the lesbian. See André GUINDON, The Sexual Creators: An Ethical Proposal for Concerned Christians (Lanham, MD: University Press of America, 1986), pp. 160-161.

conscious intention to avoid that sin in the future.⁶⁹

When it comes to the question of the social life of gay people in American society--a society which is, by all accounts, democratic, secular, and pluralistic--Archbishop Quinn does not argue that the Church's belief in the ethical normativity of heterosexuality carries with it the obligation to deny gays and lesbians their human and civil rights. At the same time, the tension on this point is unmistakable: ". . . the Church holds that there is no place for discrimination and prejudice against a person because of sexual attraction. But this does not mean that there is nothing wrong with homosexual conduct."⁷⁰

This two-point theme is repeated throughout Quinn's letter.⁷¹ However, with just this document in hand, it is

⁶⁹ QUINN, "A Pastoral Letter...", p. 33. It should be noted that the Archbishop effectively rules out any "internal forum" solutions for the "practising homosexual." Bruce WILLIAMS, O.P., in his "Gay Catholics and Eucharistic Communion: Theological Parameters," in Robert NUGENT, ed., A Challenge to Love: Gay and Lesbian Catholics in the Church (New York: Crossroad, 1989), pp. 205-215, takes a different tack. On pp. 213-214, he writes: "Precisely in view of the singular importance of the Eucharist for the strengthening of imperfect Christians, as repeatedly underlined by the Church, gay Catholics involved in a lifestyle they honestly do not recognize as sinful should not be discouraged from this unique means of grace any more severely than other seriously errant believers who are presumably in good faith. This would seem to be the very least that is entailed in the American bishops' collective acknowledgement that homosexual persons require 'a special degree of pastoral understanding and care' from the Church."

⁷⁰ QUINN, "A Pastoral Letter...", p. 33.

⁷¹ Cf., among other examples: "Homosexual persons cannot, merely because they are homosexual, be visited with harassment and contempt. The lynch gang approach cannot be justified. At the same time, however, opposition to homosexuality as a form of conduct, opposition to homosexuality as an acceptable lifestyle, by the Church or by society, cannot be regarded as a prejudice (p. 26);" "To agree that the persecution and harassment of homosexuals is incompatible with the Gospel is...not to say that the Church and society should be neutral about homosexual activity (p. 26);" "...there is a clear difference between the acceptance of homosexual persons as worthy of respect and as having human rights, and the approval of the homosexual lifestyle (p. 30);" "(The Church) must tirelessly try to help homosexual men and women accept and live up to the

not possible to determine where the Archbishop would stand in relation to a specific instance of gay rights legislation. As we have seen, Cardinals O'Connor and Bernardin, while upholding the human rights of gay people, saw support for municipal gay rights ordinances as incompatible with their episcopal ministry. And since the city of San Francisco had already enacted positive, protective legislation well before Quinn's letter, it is understandable that he did not directly address it.⁷² Moreover, his pastoral letter primarily entailed a discussion of the morality of homosexual expression and the Church's ministry to gay people--not a social analysis of the proper place of homosexuals in American society.

Be that as it may, the Archdiocese of San Francisco's Senate of Priests' "Ministry and Homosexuality in the Archdiocese of San Francisco,"⁷³ which appeared in May, 1983 with the approbation of Archbishop Quinn, implicitly reveals the archbishop's stance. Although this document,

moral teaching which the Church has received from Christ. But in no case can such acceptance or recognition of the homosexual imply recognition of homosexual behavior as an accepted lifestyle (p. 31)." One might fear that this repetitive juxtaposition subtly undermines the teaching that gay people, as fully human, possess the same rights as others.

⁷² On March 20, 1978, the San Francisco Board of Supervisors passed a gay rights ordinance. See RUTLEDGE, The Gay Decades, p. 121.

⁷³ SENATE OF PRIESTS, "Ministry and Homosexuality in the Archdiocese of San Francisco," in GALLAGHER, Homosexuality and the Magisterium, pp. 55-78. See p. 56 for Archbishop Quinn's approval of this document.

too, is primarily concerned with the ministry of the Church to the gay community and ways in which this ministry might be more effective, there is a significant clause in the section entitled "Education" which bears on the subject of gay rights. The authors see an important connection between education and the social well-being of gay men and lesbians. They write:

The Church in the Archdiocese of San Francisco is blessed with an outstanding educational system. Through its schools, religious education programs, and youth activities, it brings the message and values of the Gospel to some seventy-five thousand young men and women each year. The schools and the catechetical programs of the Archdiocese are a rich resource, and one which can give the Church a unique opportunity to assist in the value formation of our young people. Because of this, the Church has a special responsibility to educate young people about the issues of homosexuality: about the realities of a homosexual orientation, about the teachings of the Church, about the prejudice often directed against homosexual persons, and about the Gospel imperative to respect the human and civil rights of all people.⁷⁴

The following statement amounts to a strong counterpoint to the SOC campaign:

...the grammar schools and religious education programs of the Archdiocese should make efforts to foster in their students a full and deep respect for the human and civil rights of homosexual persons. Prejudicial attitudes are developed all too young in our society, and we have an obligation to work against intolerance at all ages. Thus teachers should be careful to deal effectively in their classes with any overt incidents of homophobia; and in teaching about

⁷⁴ SENATE OF PRIESTS, "Ministry and Homosexuality...", p. 74.

the nature of Christian community, they should endeavor to promote respect for and acceptance of people of all sexual orientations.⁷⁵

These proposals, made in the context of educating Catholic youth, are remarkable for their sensitivity and compassion. Even one as "moderate" as Cardinal Bernardin felt compelled, as we have seen, to speak of parents' rights to keep their children away from those who might give them a favorable impression of homosexuality.⁷⁶ What might account for the appearance of such a teaching in the Archdiocese of San Francisco?

In this regard, one should not discount the violence which gay people (especially gay men) increasingly became subject to in the 1980s and especially the cold-blooded murders in San Francisco of Robert Hillsborough and later, of gay politico, Harvey Milk.

During the public debate surrounding the Briggs

⁷⁵ SENATE OF PRIESTS, "Ministry and Homosexuality...", p. 75.

⁷⁶ It is to be noted that Bernardin was not the first to speak of such a "right." The Archdiocese of New York, under Terence Cardinal Cooke, issued "The Rights of Homosexuals Vs. Parental Rights" on January 11, 1978 [In *Origins*, 7 (January 26, 1978), pp. 498-500]. The gist of this document is as follows: "...Catholics maintain unequivocally that homosexual activity is immoral and that patterns of life that encourage immorality are gravely wrong. Without encouraging any unkindness toward homosexuals, the Catholic moral position strongly reinforces parents' and their surrogates' determination to keep all children in their formative years free of any persons or influences that might draw them toward homosexual sympathies or practice. Parent's rights are unchallengeable in this regard....When parents' rights conflict with the rights of another person (e.g., an active homosexual) to specific housing or employment, then, in the balance of rights that inspires our laws, the basic human right to protect children from immoral influences, as their parents so determine, must prevail" (pp. 498-499). It doesn't take much thought to come up with a rather perplexing Catch-22 situation based on this principle: What of the parental rights of those who consider discrimination against homosexuals to be vile behavior and desire to keep their children away from any influences which could paint this discrimination in a positive light?

Initiative, violent acts against gay men increased sharply in San Francisco's Castro Street district. These were not robberies or muggings, they were simply violent attacks. As a result, "gays started carrying police whistles and organized street patrols."⁷⁷ Sadly, this mobilization would not be enough to save the life of Robert Hillsborough. Randy Shilts provides the following chronology:

No sooner had Robert Hillsborough and Jerry Taylor climbed from their car on that warm night of June 21 [1977] than the four attackers were upon them. The slight, thin Taylor scrambled over an eight-foot fence and hid behind garbage cans, convinced the huskier Hillsborough could handle himself. Then came the screams: 'Faggot, faggot, faggot.' A Latino youth, later identified as John Cordova, was kneeling over the prostrate body of Robert Hillsborough, stabbing him passionately, thrusting the fishing knife again and again into the gardener's chest, then into his face. Blood stained his hand, spurted into the streets and still he sank his blade into the fallen man; fifteen times he lashed out, sinking the steel into flesh, shouting 'Faggot, faggot, faggot.'⁷⁸

A shock wave went through the gay community of San Francisco with the news of the murder. "Mayor Moscone ordered the city's flags flown at half-mast and angrily

⁷⁷ SHILTS, The Mayor of Castro Street..., pp. 161-162. For an in-depth study of the phenomenon of violence against homosexuals in American society, see COMSTOCK, Violence Against Lesbians and Gay Men; he discusses the Hillsborough case on pp. 78-82; Harvey Milk's murder is treated on pp. 27-29, 88-89, 113-114, 137, and 172. Another significant study is John P. DE CECCO, ed., Bashers, Baiters & Bigots: Homophobia in American Society (New York: Harrington Park Press, 1985).

⁷⁸ SHILTS, The Mayor of Castro Street..., pp. 162-163.

blamed the killing on the anti-gay campaigns of Anita Bryant and John Briggs."⁷⁹ Helen Hillsborough, Robert's 78 year-old mother, came to the city from San Diego. In a public statement, she said: "Now that my son's murder has happened, I think about the Bryant campaign a lot. Anyone who wants to carry on this kind of thing must be sick. My son's blood is on her hands."⁸⁰

With passions riding high over the Briggs Initiative, the San Francisco police had been fearing that the Gay Freedom Day Parade (scheduled for June 26th) might erupt into violence. With the Hillsborough murder, such a possibility seemed all the more likely. However, the memorial service for Robert Hillsborough and that year's parade were surprisingly peaceful. Shilts provides the following commentary:

Nearly 250,000 assembled...along the wide Market Street Boulevard, more people than had come together in the city for nearly a decade....Television stations had to rent helicopters to get a high enough vantage point to film the entire parade. Contingents came from as far away as Denver and Alaska. Vast crowds lined the streets. Hour after hour, the demonstrators poured into the Civic Center plaza. The largest group carried uniform placards: 'Save Our Human Rights.' One row of picketers stretched the breadth of a street holding aloft large portraits of Adolf Hitler, Joseph Stalin, Idi Amin, a burning cross--and the smiling

⁷⁹ SHILTS, The Mayor of Castro Street..., p. 163.

⁸⁰ Quoted in SHILTS, The Mayor of Castro Street..., pp. 163-164.

face of Anita Bryant.

As the thousands passed the wide stairs of the majestic City Hall, one marcher dropped a flower over the headline announcing Robert Hillsborough's murder. Several more followed, the flowers falling for a man few had ever heard of a week ago. A small mound grew and, by the end of the day, thousands upon thousands of blossoms rested silently at the golden-grilled doors of City Hall, all in remembrance of a mild-mannered gardener....⁸¹

At 1977's Gay Freedom Day Parade, Harvey Milk announced his candidacy for the San Francisco Board of Supervisors. Milk, openly gay, had long been involved in city politics.⁸² In the speech announcing his candidacy, he struck deep chords with the embattled gay community: "... it's not my election I want, it's yours. It will mean that a green light is lit that says to all who feel lost and disenfranchised that you can now go forward. It means hope and we--no--you and you and you and, yes, you, you've got to give them hope."⁸³

On November 8, 1977, Milk was "elected supervisor from the newly created 5th District, encompassing the heart of the city, including the Castro area."⁸⁴ He was the first

⁸¹ SHILTS, The Mayor of Castro Street..., pp. 164-165,

⁸² He had run unsuccessfully for public office three times. See RUTLEDGE, The Gay Decades, p. 115.

⁸³ Quoted in SHILTS, The Mayor of Castro Street..., p. 165.

⁸⁴ RUTLEDGE, The Gay Decades, p. 115.

openly gay man elected to public office in San Francisco. Anne Kronenberg, his campaign manager, explained the jubilation that swept the area: "The feeling there was just one of total joy....And it was more than just a candidate winning. It was the fact that all of these lesbians and gay men throughout San Francisco who had felt they'd had no voice before now had someone who represented them."⁸⁵

Harvey Milk was to serve as a city supervisor in the administration of Mayor George Moscone for less than one year. On November 17, 1978, both the mayor and the gay supervisor were assassinated. Leigh Rutledge provides the basic outline:

Informed that San Francisco mayor George Moscone is about to announce a replacement for him on the city's Board of Supervisors, Dan White straps a snub-nosed .38 pistol to his shoulder, tosses ten extra cartridges into his pocket, and then has a friend drive him to City Hall, where he sneaks in through a side window to avoid the metal detectors. A few minutes later, he pumps two bullets into Mayor Moscone's chest, and then two more...into the mayor's skull. White then reloads his gun, crosses City Hall, and uses five bullets to assassinate gay city supervisor Harvey Milk.⁸⁶

Dan White had been San Francisco's "major anti-gay

⁸⁵ Quoted in RUTLEDGE, The Gay Decades, p. 115.

⁸⁶ RUTLEDGE, The Gay Decades, p. 130-131.

politico;"⁸⁷ in particular, there had been a history of bad blood between White and Milk. Indeed, the credit for Moscone's decision not to reappoint White (after he had resigned)⁸⁸ belongs largely to Milk. "In a conversation (he) boastingly repeated to his friends, Milk bullishly gave the mayor an ultimatum. 'You reappoint Dan White to the board and you won't get elected dogcatcher,' Harvey told him."⁸⁹

White, a former fireman and policeman of Irish extraction and a practising Catholic, gave an interview to Charles Morris, the publisher of a local newspaper, a short time before the assassinations. He was confident that he would be reappointed to the Board of Supervisors. When he was asked if he would characterize himself as being anti-gay, White said: "Let me tell you right now, I've got a real surprise for the gay community--a real surprise."⁹⁰

White did not specify what he meant. If it referred

⁸⁷ SHILTS, The Mayor of Castro Street..., p. 254.

⁸⁸ Dan White had resigned his seat three days after the defeat of the Briggs Initiative--citing financial reasons (the salary for city supervisors was but \$9600 per year). Shortly thereafter, however, he asked for his position back. SHILTS shows that White received pressure to do this from the San Francisco Police Officers' Association and the city's Board of Realtors--two groups who consistently opposed the political aims of the gay community. See The Mayor of Castro Street..., pp. 249-254.

⁸⁹ SHILTS, The Mayor of Castro Street..., p. 258.

⁹⁰ Quoted in SHILTS, The Mayor of Castro Street..., p. 258.

to the assassinations, he did much more than surprise the gay community: he shocked and stunned all San Franciscans. Acting Mayor Dianne Feinstein addressed the citizenry: "'I think we all have to share the same sense of sorrow and the same sense of anger.' Feinstein urged the public to 'go into a state of very deep and meaningful mourning and to express its sorrow with a dignity and an inner examination.'"⁹¹

The public mourning for Moscone and Milk was peaceful and respectful. Thousands participated in memorial services. The city was a model of level-headedness in the midst of tragedy.

The peace was broken, however, when the jury announced its verdict on Dan White's culpability. In what many consider to be a miscarriage of justice, White was found guilty of violating section 192.1 of the penal code: voluntary manslaughter. Whereas he could have received life imprisonment had he been convicted of first-degree murder, the most he could receive for two charges of voluntary manslaughter was seven years, eight months. "With time off for good behavior, White would probably be

⁹¹ In SHILTS, The Mayor of Castro Street..., p. 274. President Jimmy Carter also expressed his outrage at the killings. He made a point to praise Harvey Milk as "a hard-working and dedicated supervisor, a leader of San Francisco's gay community, who kept his promise to represent all constituents" (in ibid., p. 274).

out of jail in less than five years."⁹²

The indignation in the gay community was at fever-pitch and it soon erupted into rioting. This was the beginning of the so-called "White Night Riots."⁹³ "Ten years after the Stonewall Rebellion and on the opposite coast, lesbians and gay men continued to act and organize against, rather than retreat from, the violence directed at them."⁹⁴ And in this instance, the gays lashed out against the San Francisco police department: the same department which had, along with the fire department, raised \$100,000 for White's defense fund and some of whose members had been seen sporting "Free Dan White" t-shirts.⁹⁵

3.3.2 Archbishop Quinn on Violence Against Homosexuals

This brief overview of two of the most infamous gay murder cases helps to understand Archbishop Quinn's great

⁹² SHILTS, The Mayor of Castro Street..., p. 325. Shilts reports that a "gallows humor pervaded the city's newsrooms as journalists started shaping their verdict reaction stories. 'Sara Jane Moore got life for missing Gerald Ford,' a reporter commented....Gay journalist Randy Alfred wondered aloud why the jury had not just gone ahead and convicted Milk of 'unlawful interference with a bullet fired from the gun of a former police officer'" (in ibid., p. 326).

⁹³ COMSTOCK reports that this amounted to the largest gay and lesbian riot in history. In the end, it would result in the destruction of eleven police cars and the damaging of sixteen others. See Violence Against Lesbians and Gay Men, p. 28.

⁹⁴ COMSTOCK, Violence Against Lesbians and Gay Men, pp. 28-29.

⁹⁵ SHILTS, The Mayor of Castro Street..., p. 302.

emphasis on the human and civil rights of gay people; it also helps to put in context his two statements on the Church's reaction to violence against homosexuals.

Quinn published his "Letter on Violence to Archdiocesan Deans"⁹⁶ on August 2, 1984; his "Homily on Violence Against Gays,"⁹⁷ appeared on August 6, 1989. In both, his intention is crystal clear: to address the growing problem of violence against homosexuals and to denounce "gay-bashing" as morally reprehensible--something which is diametrically opposed to the Gospel of Jesus Christ.

In the 1984 letter, he begins by announcing: "Nothing can justify these attacks on homosexual persons and the Church must clearly repudiate all such acts."⁹⁸ The Archbishop is at pains to highlight the incompatibility of gay-bashing with life in Christ.⁹⁹ But to many, this might be taken as gratuitous--much like an episcopal

⁹⁶ Archbishop John QUINN, "Letter on Violence to Archdiocesan Deans," in GALLAGHER, Homosexuality and the Magisterium, p. 100.

⁹⁷ Archbishop John QUINN, "Homily on Violence Against Gays," in Origins, 19 (September 21, 1989), pp. 260-262.

⁹⁸ QUINN, "Letter on Violence...", p. 100.

⁹⁹ Cf. "I ask you (i.e., archdiocesan deans) to communicate to the priests and those who collaborate with them in roles of leadership and responsibility the utter incompatibility of such acts of violence with a witness to the Gospel." See QUINN, "Letter on Violence...", p. 100. One might hope that this was merely a rhetorical device: Did the Archbishop seriously believe that some of his priests and their co-workers needed reminding about the moral valence of violence against gays?

pronouncement condemning theft or "taking the name of the Lord in vain." It is arguable, however, that something much more subtle was behind Quinn's statement.

Quinn was undoubtedly aware that the Catholic Church's moral discourse on homosexuality can--given the right set of circumstances and a seriously deficient hermeneutic--be an accomplice in violence against gay people. The subtlety of the "hate the sin/love the sinner" approach¹⁰⁰ can be lost on many; in practice, finding the moral wherewithal to love someone who does what one considers to be reprehensible acts seems more the work of a saint than that of an "ordinary" Christian. The Church's forceful, public denunciations of homosexual behavior can incite vigilantism.¹⁰¹ Just as Quinn was quick to explain that supporting gay rights does not mean that the Church has changed its judgment on the "homosexual lifestyle," so, too, is it necessary to explain that the Church's condemnation of "homosexual acts" does not mean that gays and lesbians can be bashed with impunity.

¹⁰⁰ Cf. "Our role as priests is a difficult one. We must be faithful to the moral teaching of the Church concerning homosexual acts. At the same time we must unfailingly have the compassion and kindness of Christ in our pastoral service." See QUINN, "Letter on Violence...", p. 100.

¹⁰¹ Gary CONSTOCK reports that it is not uncommon for the perpetrators of violence against gays and lesbians to justify their activity on religious grounds. A full 39% of victims of such violence report that their attacker(s) referred to "God, religion, or the Bible" during the attack. See Violence Against Lesbians and Gay Men (New York: Columbia University Press, 1991), p. 142.

Archbishop Quinn's "Homily on Violence Against Gays" was preached at Most Holy Redeemer Church in San Francisco's Castro Street neighborhood on August 6, 1989. The context was the annual 40-Hours adoration dedicated to people with AIDS. Before all else, his homily is an eloquent testimony to his commitment to the Church's ministry to people with AIDS. It also reveals Quinn's personal contact with the afflicted:

I will always remember Jim Stolz of this parish, whom I visited just two days before he died. His hope in the resurrection shone in the way he prepared spiritually for death. Through the grace of his daily prayer and meditation, he carefully brought closure to his affairs on earth and peacefully let go in the hope of the promise of eternal life with God. And there was Julio, who could not speak but whose smile communicated his peace and trust in God.¹⁰²

Quinn's eloquence in speaking of his own experience is matched when he turns his attention to the issue of violence against homosexuals. . . .

All that I have said, all that we have heard from the word of God, makes it clear, then, how utterly foreign violence is to the way of Christ, for the sources of violence are fear and desperation, not faith and hope. And so once again in the name of Christ, I raise my voice to affirm that

- Those who perpetrate violence against others cannot call themselves followers of Christ;
- Acts of violence such as those experienced during these past weeks by men in the Sunset...and even one of the members of this parish, are absolutely incompatible with the name of Christian or Catholic;

¹⁰² QUINN, "Homily....," p. 261.

-Those who perform these acts of violence cannot consider themselves true sons or daughters of the Church. They make themselves the instruments of evil and enter into solidarity with the powers of darkness. They are the witnesses of an anti-Gospel calculated to tarnish and distort the authentic Gospel handed down in the Church from the beginning;

-In the name of Christ and of his Church, I unequivocally condemn these kinds of acts and support all efforts of the civil authority and others to control and eliminate this outrage.¹⁰³

For the Archbishop to speak expressly "in the name of Christ and his Church" shows the seriousness with which he has invested this issue.¹⁰⁴ One cannot find a clearer statement on the moral evil of gay-bashing.¹⁰⁵

3.3.3 A New Problematic: Gay and Lesbian Partnership Laws

Archbishop Quinn has spoken out strongly in defense of the human and civil rights of lesbians and gay men; his condemnation of violence against homosexual persons has

¹⁰³ QUINN, "Homily...", p. 261.

¹⁰⁴ Sadly, many did not feel that this was the case with the C.D.F.'s PCHP. At #10, after condemning violence against homosexuals, it is stated: "But the proper reaction to crimes committed against homosexual persons should not be to claim that the homosexual condition is not disordered. When such a claim is made and when homosexual activity is consequently condoned, or when legislation is introduced to protect behavior to which no one has any conceivable right, neither the Church nor society at large should be surprised when other distorted notions and practices gain ground, and irrational and violent reactions increase" (in GRAMICK and FUREY, The Vatican and Homosexuality..., p. 6).

¹⁰⁵ And in all due respect to the balance that usually characterizes episcopal statements, it is refreshing that Archbishop Quinn did not feel the need to reaffirm the Church's negative moral evaluation of "homosexual acts" at any point in this homily.

been unsurpassed by any American prelate.¹⁰⁶ Recently, however, he felt compelled to express his profound disagreement with an ordinance approved by the San Francisco Board of Supervisors.

On May 22, 1989 the Board unanimously enacted a domestic partnership ordinance. The ordinance allowed homosexual couples as well as unmarried heterosexuals "to register with the city as domestic partners, similar to the filing of marriage licenses by conventional couples."¹⁰⁷ One of the key objectives of the ordinance was to provide health insurance benefits, sick leave, and bereavement leave for the partners of gay and unmarried city workers.

For Archbishop Quinn this was an unacceptable assault on marriage. In a strongly-worded letter addressed to San Francisco mayor Art Agnos, Quinn expressed his sympathy for the idea of extending benefits to the partners of gay and unmarried city workers, but, as he explained,

the legislation passed unanimously by the Board of Supervisors last night is a serious blow to our society's historic commitment to supporting marriage and family life, and equates domestic partnerships

¹⁰⁶ In a letter to San Francisco mayor Art Agnos dated May 23, 1989 (which will shortly be subject to our consideration), Quinn explained: "I...believe that the establishment and protection of the legitimate rights of homosexual men and women is one of the important challenges we face as a city. Indeed, I have spoken out repeatedly in the past condemning violence directed against the gay and lesbian communities. And I have vigorously and publicly opposed ballot initiatives which would result in unjust discrimination against them." See Archbishop John QUINN, "Letter to Mayor Art Agnos," in Origins, 19 (June 8, 1989), p. 50.

¹⁰⁷ "On File," in Origins, 19 (June 8, 1989), p. 50.

with marriage. Such legislation, as I wrote to Mayor Feinstein in 1982, 'imperils the deepest values of our common, public moral heritage and damages the fundamental well-being of society....Injury to individual rights should be redressed by means other than the radical repudiation of fundamental values and institutions which have profound significance for a present and future viable and well-ordered society.'¹⁰⁸

Quinn held that the goal of the ordinance was acceptable but that the means chosen to achieve the goal was not. He claimed that its passage set the Board on "a clear path of connivance with the erosion and destruction of the rock-bottom institutions of both religion and society."¹⁰⁹ He ended his intervention by highlighting his "grave concern for the true well-being of our city."¹¹⁰

Archbishop Quinn's intervention was ill-received by San Francisco's gay community. An editorial in the San Francisco Examiner said that opponents of the bill "will have to argue from outdated, narrow-minded, self-serving views of morality. They will call themselves religious,

¹⁰⁸ QUINN, "Letter to Mayor Art Agnos," p. 50.

¹⁰⁹ QUINN, "Letter to Mayor Art Agnos," p. 50.

¹¹⁰ QUINN, "Letter to Mayor Art Agnos," p. 50. It is to be noted that shortly after the Board of Supervisors passed the ordinance, a petition was filed to force the issue to a city-wide vote. On November 7, 1989 the domestic partnership law was rejected by a margin of only 1700 votes. However, the ordinance made it back on the ballot in 1990 (as "Proposition K") due to the efforts of city Supervisor Harry Britt. Archbishop Quinn reiterated his opposition, along with other of the city's religious leaders.

but theirs is a religion of hate."¹¹¹

Archbishop Quinn responded to this attack in a letter to the Editor of the newspaper. He wrote:

We are all grateful for a free press and for our democratic society. The Examiner certainly has the right to voice its opinion in favor of Proposition K. But to inject this provocative and unfounded element expressive of religious bigotry is a great disservice to the public good and exceeds acceptable bounds.¹¹²

Quinn concluded by reminding the Examiner that he has "repeatedly called for civility in public discourse and spoken against violence and violent rhetoric."¹¹³ In the end, his letter was a renewal of that appeal.¹¹⁴

Archbishop Quinn, as we have seen, worked for the defeat of the Briggs Initiative and has been an outspoken opponent of violence against gay people. He has consistently supported the civil rights of gays and lesbians. However, he has taken exception with legislative proposals which might end by putting gay and lesbian couples' legal status on an equal footing with married couples. He has deemed such a development dangerous to the

¹¹¹ See "Bishop, Newspaper Clash Over Partnership Law," in Bondings, 13 (1990), p. 3.

¹¹² Quoted in "Bishop, Newspaper Clash...", p. 3.

¹¹³ Quoted in "Bishop, Newspaper Clash...", p. 3.

¹¹⁴ On November 6, 1990, San Franciscans approved the domestic partnership law. At the same time, two openly lesbian women were elected to the city's Board of Supervisors. See RUTLEDGE, The Gay Decades, p. 361.

foundation upon which society rests.

3.4 Conclusion

Three high-profile American Catholic churchmen have taken significantly different positions on gay and lesbian rights legislation. Cardinal O'Connor has strongly opposed all such legislation; his opposition is founded on the maxim that one has no "right" to homosexual behavior. Moreover, he argues that legislation which would protect homosexuals from discrimination is bound to have a deleterious effect on the institutions of marriage and the family.

Cardinal Bernardin has opposed gay rights ordinances for the city of Chicago, but in theory he supports equal rights for gay people and advocates not discriminating against them. His problem with specific instances of non-discrimination legislation revolves around the conviction that once something is "legalized," people will get the impression that it is "moral." His Christian intuition is that the rights of gays and lesbians need protection; his adherence to the Church's condemnation of "homosexual acts" makes him skittish about protective legislation. Moreover, the potentially liberalizing effect acceptance of such

legislation on society's understanding of homosexuality as a valid "alternative lifestyle" calls for the Church's opposition.

Archbishop Quinn has been a strong supporter of legislation which would protect gays and lesbians from economic and social discrimination. While he has often reaffirmed the Church's negative evaluation of "homosexual behavior," he does not see the necessity of this teaching leading to a campaign to deny gays and lesbians their human and (or) civil rights. Moreover, from the standpoint of the Church's social justice teaching, discrimination against homosexuals is counter-indicated. Of course, this is not to say that every demand of the gay and lesbian community is to be regarded as involving a human and (or) civil right.

The positions of O'Connor, Bernardin, and Quinn represent the possibilities open to members of the American hierarchy who wish to publicly confront the issue of gay and lesbian rights legislation. Following the approach of Cardinal O'Connor, they might oppose such legislative measures in the name of the Church's sexual ethic. Taking their cues from Cardinal Bernardin, they might oppose such legislation primarily because of the negative effects that are supposed to follow in its wake. Or, they might support

the legislation in the name of the Church's social teaching, as has Archbishop Quinn.¹¹⁵

All things being equal, it is unremarkable to find bishops of the Catholic Church disagreeing among themselves. However, when it comes to matters of great importance, disagreement in the hierarchy does become remarkable--and troublesome. A cursory look at the state of the "homosexual question" in contemporary American civil society is enough to convince anyone that it is a 'matter of great importance;' the fact that the stances taken by Cardinal O'Connor and Archbishop Quinn are mutually exclusive is problematic. Indeed, that such a state of affairs has been allowed to persist amounts to a "studied ambiguity."

In the end, when one compares the Catholic and the secular debates on gay and lesbian rights, one is struck by

¹¹⁵ Among those who have issued statements supporting non-discrimination legislation are Archbishop John R. ROACH (St. Paul-Minneapolis) [See his "The Rights of Homosexual Persons," in Origins, 21 (November 7, 1991), pp. 356-357]; Archbishop John F. WHEALON (Hartford, CT) [See his "The Church and the Homosexual Person," in Bondings, 13 (1991), p. 11; and the article, "Archbishop Gives OK to Gay Rights Bill," in Bondings, 13 (1991), p. 11]; Archbishop Rembert WEAKLAND (Milwaukee) [See his "Who Is Our Neighbor?," in GALLAGHER, Homosexuality and the Magisterium, pp. 34-35]; and the Washington State Catholic Conference (under the leadership of Archbishop Raymond HUNTHAUSEN) [See their "The Prejudice Against Homosexuals and the Ministry of the Church," in GALLAGHER, Homosexuality and the Magisterium, pp. 46-54]. Among those who have come out against protective legislation (emphasizing either the Church's teaching on gay sex or the potential harm to society) include the Massachusetts Catholic Conference (under the leadership of Bernard Cardinal LAW) [See "Bishops Oppose Homosexual Rights Bill," in Origins, 14 (June 14, 1984), pp. 73-74]; Archbishop Daniel KUCERA (Dubuque, IA) [See Charles ISENHART, "Dubuque Archbishop Latest to Oppose Gay Rights," in National Catholic Register, 64 (December 18, 1988), p. 1]; and Archbishop Edward MCCARTHY (Miami) [See "News Releases," Bondings, 13 (1991), p. 11].

the number of similarities. In both discourses, for instance, questions of justice and fairness loom large, as do conjectures about the impact legislative proposals will have on American society. The question of the moral status of homosexual conduct cannot be avoided in either debate; nor can either debate assume that gay people will suddenly stop asserting what they believe to be their rights as human beings and as American citizens.

At the same time, each of the Churchmen that we have studied can be easily classified according to the framework be developed in chapter 2. Archbishop Quinn is an advocate of I; Cardinal O'Connor sides with II; Cardinal Bernardin tends to support III.

Nevertheless, the Catholic debate should not be considered as a religious extension of the secular debate. Although the argumentation used by Gonsalves and Quinn is all but indistinguishable and although Magnuson and O'Connor share many of the same concerns, the originality of the Catholic debate is found in the self-understanding of its protagonists.

It should be clear from our study that when members of the hierarchy comment on the moral advisability of gay and lesbian rights legislation they do not believe that they are offering simply their personal opinions on the matter;

nor do they consider that they are acting as spokesmen for a particular philosophical school of thought. Rather, they hold that they are interpreting the exigencies of official Catholic doctrine for their contemporaries. By definition, they take this doctrine as normative; they do not feel free to build their arguments on other grounds.¹¹⁶ In other words, unlike those debating in the secular arena, the members of the Catholic debate all start from the same set of premises and argue from within a specific moral tradition.

In this regard, the disagreements in the Catholic debate are more problematic than those between the "seculars." One expects disagreements between Mohr and Magnuson--their ideological starting points are vastly dissimilar. But in the Catholic debate, to have three mutually exclusive positions (i.e., I, II, and III) come from the same foundational principles raises questions about the clarity of these principles and (or) the strength of the debating partners' grasp of these principles.

In the next two chapters, then, we will examine the general parameters of Catholic sexual ethics and Catholic social ethics. These two "partners" provide the starting-

¹¹⁶ In contrast, one notes Gonsalves' freedom to opt for the Aristotelian-Thomistic synthesis and Mohr's decision to side with John Stuart Mill.

point for the Catholic debate on gay and lesbian rights. We will see that each possesses a considerable amount of ambiguity and that failure to specify a hierarchy of values to be safeguarded accounts for the divergent stances of members of the American hierarchy.

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CHAPTER FOUR:
THE FIRST PARTNER IN AMBIGUITY:
CATHOLIC SEXUAL ETHICS AND HOMOSEXUALITY

The American Catholic bishops have serious disagreements on the moral advisability of gay and lesbian rights ordinances. From the perspective of Catholic sexual ethics, Cardinal O'Connor, for instance, has opposed non-discrimination legislation for the city of New York. From the vantage point of Catholic social ethics, however, Archbishop Quinn has fought for the rights of gay people. It does not take much reflection to realize that these positions are mutually exclusive: one cannot reconcile support for gay and lesbian rights ordinances with opposition to the same. We have argued that this state of affairs amounts to a studied ambiguity: as a body, the American bishops have not resolved a troublesome moral issue with wide-ranging social ramifications. And, since both an Archbishop Quinn and a Cardinal O'Connor would hold that they are interpreting "official Catholic doctrine" in the positions which they have taken, this "official Catholic doctrine" will be the focus of the next two

chapters of this work.

Clearly, there are two partners in the bishops' studied ambiguity: Catholic sexual ethics and Catholic social ethics. In this chapter we discuss the Church's moral evaluation of homosexuality and, as a means of focusing this teaching, we examine some of the critiques which followed the C. D. F.'s "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (PCHP). There has been much dissent from this teaching; by the end of this chapter we will see that this dissent has an important impact on the question of Catholic support for gay and lesbian rights.

4.1 The Traditional Case Against Homosexuality

John F. Harvey has devoted much of his academic and pastoral career to the question of the morality of homosexuality. He has written several articles on the topic¹ and the book, The Homosexual Person: A New Thinking

¹ See, for instance, John HARVEY, "Homosexuality as a Pastoral Problem," in IS, 16 (1955), pp. 86-108; "Attitudes of a Catholic Priest towards Homosexuality," in Bulletin of the National Guild of Catholic Psychiatrists (December 1972), pp. 52-58; "The Controversy Concerning the Psychology and Morality of Homosexuality," in American Ecclesiastical Review, 167 (1973), pp. 602-629; "Chastity and the Homosexual," in The Priest, 33 (1977), pp. 10-16; "An In-Depth Review of Homosexuality and the Christian Way of Life," in The Linacre Quarterly, 50 (1983), pp. 122-143.

in Pastoral Care.² Quite simply, Harvey "is a pioneer in the area of moral studies and research concerning homosexuality."³ Concurrently, his conclusions are strictly in line with the Church's official teaching: "He takes a strongly negative view of homosexual relationships, believing them to be contrary to God's will as revealed in Scripture and, from his own pastoral experience, humanly destructive."⁴ Father Harvey is also the founder of Courage--a "twelve-step" support group for Catholic homosexuals. Courage accepts the ideal of absolute sexual continence for gays and lesbians, an ideal which flows from recognizing the homosexual orientation as disordered and destructive of true humanity. Just as the alcoholic must abandon alcohol, so must the gay man and lesbian abandon genital relating.⁵

Harvey was the author of the article on homosexuality

² (San Francisco: Ignatius Press, 1987).

³ John J. McNEILL, The Church and the Homosexual [3rd edition, updated and expanded] (Boston: Beacon Press, 1988), p. 8.

⁴ McNEILL, The Church and the Homosexual, p. 8.

⁵ See WOODS, Another Kind of Love, p. 117. WOODS also reports that similar groups, "such as Exodus International, Homosexuals Anonymous, Metanoia Ministries, Outpost, and Regeneration exist in conservative Protestant denominations" (p. 117). It is to be noted that "these groups reflect a fundamentalistic approach to homosexuality and aim at 'curing' or reorienting homosexual persons towards heterosexuality with a view to marriage" (p. 119, n. 11). Harvey, however, warns: "Considering the poor prognosis of redirection of the deviate's sexual drive into normal channels (according to current research), it would be imprudent to counsel matrimony for any homosexual" [John F. HARVEY, "Homosexuality," in New Catholic Encyclopedia (NCE), vol. VII (Washington, D.C.: The Catholic University of America, 1967), p. 119.J.

in the New Catholic Encyclopedia; its section on the morality of homosexual behavior remains one of the most succinct expositions of Catholic teaching on the subject. To begin, Harvey writes: "Contrary to popular opinion, a person does not become a homosexual because he wants to be one."⁶ The homosexual person, therefore, bears no moral responsibility for his or her same-sex erotic attraction. Although the etiology of this attraction has yet to be fully determined, it is clear that the individual's choice does not play a role: "The condition develops gradually over many years as a result of complex influences not under the control of the potential homosexual. He cannot reasonably be expected to foresee the outcome of these influences, or to alter their course."⁷

Nevertheless, the homosexual act represents "a grave transgression of the divine will."⁸ This is due to the fact that "by its essence (it) excludes all possibility of transmission of life; such an act cannot fulfil the procreative purpose of the sexual faculty and is,

⁶ HARVEY, "Homosexuality" (NCE), p. 117. Harvey defines a homosexual as "anyone who is erotically attracted to a notable degree toward persons of his or her own sex and who engages, or is psychologically disposed to engage, in sexual activity prompted by this attraction" (p. 116).

⁷ HARVEY, "Homosexuality" (NCE), p. 117.

⁸ HARVEY, "Homosexuality" (NCE), p. 117.

therefore, an inordinate use of that faculty."⁹ Simply put, homosexual genital activity is a serious abuse of the divinely willed purpose of human sexual relating, viz., the fostering of the intimate union of husband and wife, and the propagation of the species.

This approach, based on a reflection upon the human sexual faculty,¹⁰ cannot in any way condone instances of gay and lesbian sex. The quality of the relationship, say, its stability, exclusivity, tenderness, and honesty, is a moot point. All homosexual acts are objectively evil.¹¹

On the question of the individual's subjective guilt for homosexual behavior, Harvey cautions that prudence demands that one not be quick to judge that the active homosexual has committed mortal sin. He writes:

Only truly free consent involves moral guilt; many homosexuals simply do not know whether they have given consent to the desires incessantly besieging them. Their unhappiness suggests that they have not. At times they are conscious of guilt, but more often than

⁹ HARVEY, "Homosexuality" (NCE), p. 117.

¹⁰ While it is true that Harvey accepts the idea that Scripture has definitively condemned "homosexual acts," his argument is not precisely biblical. This is due to the fact that if there were no scriptural passages that dealt with homosexuality, the condemnation of homosexual behavior would still hold. Witness the Catholic case against artificial means of birth control and masturbation. The generally accepted fact that Scripture is silent on these two issues has not kept the Church from determining that they represent serious abuses of the human sexual faculty.

¹¹ Of course gay promiscuity is "worse" than sexual relating within a stable gay relationship. But ultimately that is not to say very much. The operative analogy would be something like comparing killing ten people with killing just one person. Certainly killing ten is "worse" than killing one; but this does not change the fact that killing one innocent person is absolutely despicable.

not they seem to act under compulsion, at least in the interior realm of erotic fantasy and desire.¹²

Harvey's approach to the question of homosexuality in his article in the NCE was strongly validated by the C. D. F.'s Persona humana of 1975.¹³ Specifically, PH was the first Roman magisterial document to recognize the distinction between constitutional and situational homosexuality:

A distinction is drawn, and it seems with some reason, between homosexuals whose tendency comes from a false education, from a lack of normal sexual development, from habit, from bad example, or from similar causes, and is transitory or at least not incurable, and homosexuals who are definitively such because of some kind of innate instinct or a pathological constitution judged to be incurable.¹⁴

PH, like Harvey's presentation, assumes that the constitutional homosexual ought not to be considered at fault for his or her same-sex attraction. One's psychic and emotional constitution--at least as regards the impulse of sexual attraction--is beyond one's executive power; one does not decide to be sexually attracted this way or that. Because of this, homosexuals ought to be afforded a

¹² HARVEY, "Homosexuality" (NCE), p. 118.

¹³ See supra, p. 2, n. 3 for bibliographic citation.

¹⁴ PH, #8, p. 12.

compassionate pastoral care.¹⁵ However, "no pastoral method can be employed which would give moral justification to ... (homosexual) acts on the grounds that they would be consonant with the conditions of such people."¹⁶ The reason for this is two-fold:

... according to the objective moral order, homosexual relations are acts which lack an essential and indispensable finality. In Sacred Scripture they are condemned as a serious depravity and even presented as the sad consequence of rejecting God. This judgment of Scripture does not of course permit us to conclude that all those who suffer from this anomaly are personally responsible for it, but it does attest to the fact that homosexual acts are intrinsically disordered and can in no case be approved of.¹⁷

It is only within marriage that genital sex is morally good: "All deliberate exercise of sexuality must be reserved for this regular relationship."¹⁸ Outside marriage, sexual relating is vitiated of its divinely ordained purposes and is gravely wrong.

¹⁵ Cf., "In the pastoral field, these homosexuals must certainly be treated with understanding and sustained in the hope of overcoming their personal difficulties and their inability to fit into society." [PH, #8, pp. 12-13.]

¹⁶ PH, #8, p. 13.

¹⁷ PH, #8, p. 13. It would have been extremely helpful to the discussion if PH had been clear about the principles upon which this position is founded. If, for example, Scripture says that homosexuality results when people turn away from God (the allusion is undoubtedly to Romans 1: 18-32), how is one to judge that Scripture is "wrong" on this point, or at least that it ought not to be taken in its literal sense? If Scripture can be "wrong" or if it sometimes must not be taken literally, then how does one confidently ground 'the fact that homosexual acts are intrinsically disordered' in the self-same Scripture? Moreover, the scriptural passages that are taken to teach the intrinsic evil of all homosexual acts do not seem to warrant a pastoral programme which would treat homosexuals with understanding, patience, and compassion: it is well known that Leviticus prescribed the death penalty for people who were caught in same-sex liaisons.

¹⁸ PH, #9, p. 14.

On October 31, 1986, the C. D. F. released its "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (PCHP).¹⁹ One of its chief objectives was to undermine the trend in Catholic moral theology which affords some instances of homosexual behavior a favorable ethical analysis. Of particular importance was what was determined to have been a misuse of its own PH. At issue was PH's recognition of the "homosexual condition" as distinct from "homosexual actions:"

In the discussion which followed the publication of the Declaration (i.e., PH) ... an overly benign interpretation was given to the homosexual condition itself, some going so far as to call it neutral, or even good. Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder.²⁰

This passage is absolutely key. One could even say that the desire to declare the homosexual orientation an objective disorder precipitated the writing of PCHP.²¹ It

¹⁹ See supra, p. 3, n. 4 for bibliographic citation.

²⁰ PCHP, #3, p. 2.

²¹ William H. SHANNON, in his "A Response to Archbishop Quinn," in Jeannine GRAMICK and Pat FUREY, eds., The Vatican and Homosexuality: Reactions to the "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (New York: Crossroad, 1988), pp. 20-27, at p. 26, writes: "This latter clearly attaches great importance to this declaration. Indeed, it would not be unfair to say that the letter was written primarily in order that this declaration might be made."

is clear that this teaching represents a significant development in the magisterium's reflection on homosexuality. It is equally clear that a constellation of critical issues surrounds this declaration--all of which bear directly upon the morality of homosexual behavior.

In the first place, PCHP places itself squarely in the camp which refuses to see homosexuality as a natural variant of human sexual response. Simply stated, homosexuality (with or without genital contact between persons) is an aberration that has entered the human community. As such, it has to be the result of sin--original sin and (or) actual sin as the particular case may be. It is not proper to claim that God creates homosexually oriented people; the fact that a certain percentage of humankind is erotically attracted to members of the same sex cannot be attributed to God's will for such persons.

An analogy can be drawn, then, between homosexuals and those unfortunates who are born with physical deformities and (or) mental deficiencies. All such persons are not as they should be; but they are not at fault for their handicap. For reasons which ultimately elude human comprehension, God permits these evils which have entered his good creation because of human sin. In Eden, one would

have encountered no blindness, no withered limbs, and no same-sex attraction.²² And, if the truth be told--undoubtedly a hard truth for some--one can neither say that 'blindness is as good as sightedness' nor that 'homosexuality is as good as heterosexuality.' Benedict Ashley writes:

Current propaganda and the mistaken compassion of certain psychiatrists and theologians have encouraged many homosexuals to deny their disability by arguing that homosexuality is just a legitimate variation of human sexuality, or even that it is the will of God. But sex was not created only for pleasure or to provide companionship. The Bible and Christian tradition have always taught that sex is for marriage only, and marriage is not only for the couple but for their children as well. Hence the Congregation for the Doctrine of the Faith calls homosexual acts 'disordered,' that is, not ordered to marriage and children.²³

Honesty--and true compassion--demand that gay and lesbian people be counselled to a life of sexual continence. There is no justification for thinking that they may enter into sexual partnerships with like-oriented individuals. The objective moral order rules this out:

To choose someone of the same sex for one's sexual activity is to annul the rich symbolism and meaning, not to mention the goals, of the Creator's sexual

²² Benedict M. ASHLEY, O.P., explains: "God never wills anyone to suffer from the disability through impotence, sterility, or homosexuality of entering into marriage or of having children. He only permits such troubles, so that we will use our creativity to find their remedy or courageously bring spiritual good out of misfortune." See "Compassion and Sexual Orientation," in GRANICK and FUREY, The Vatican and Homosexuality..., p. 106.

²³ ASHLEY, "Compassion...", pp. 105-106.

design. Homosexual activity is not a complementary union, able to transmit life; and so it thwarts the call to a life of that form of self-giving which the Gospels say is the essence of Christian living.²⁴

Gay men and lesbians ought to be seen as people who are suffering from a significant disability. Those who recognize their disability for what it is (viz., 'a more or less strong tendency toward an objective moral evil') and take the necessary measures to keep it in check (for example: self-denial, prayer, frequent celebration of the Sacrament of Reconciliation²⁵) are to receive the warm welcome and support of the Church. Those who revel in their disability--unlike the blind person, who, thinking he has no problem, is to be pitied--are beyond the pale. Their revelry is not only immoral, it is supremely dangerous: "Even when the practice of homosexuality may seriously threaten the lives and well-being of a large number of people, its advocates remain undeterred and refuse to consider the magnitude of the risks involved."²⁶ Because of all of this, PCHP advises the bishops to distance themselves from any organization which has cultivated a "studied ambiguity" on the issue of the moral

²⁴ PCHP, #7, p. 4.

²⁵ Cf., PCHP, #12, pp. 6-7.

²⁶ PCHP, #9, p. 5.

valence of homosexuality. It is a matter of justice that the Church keep the "deceitful propaganda" of the "pro-homosexual movement" at bay: it "has a direct impact on society's understanding of the nature and rights of the family and puts them in jeopardy."²⁷

The C. D. F. was compelled to classify the sexual orientation of gays and lesbians as objectively disordered because PH had given people the impression that a homosexual orientation is "neutral" and that "homosexual acts" are the real moral problem for the Church. In other words, the received teaching was something like 'it's OK to be gay, just don't act like a gay person.' Before long people were saying that it's OK to be gay because God made them that way. If God made them that way, then 'gay must be good.' And, finally, if 'gay is good,' then the arguments used to keep gay people from acting on their erotic attractions must be seriously mistaken.²⁸

One of the difficulties with FCHP's stance however, is

²⁷ PCHP, #9, p. 5.

²⁸ Peter HEBBLETHWAITE offers the following explanation: "I would suggest that the reason it has been abandoned (i.e., 'orientation is OK; acts are not OK') is because it was unworkable. For it put into the hands of gay persons an extremely powerful and indeed, on one level, irrefutable argument. All theologos is ultimately talk about God. But what 'orientation is OK; acts are not OK' said was that God created human beings who were doomed to frustration in the whole of their lives since, as Persona humana asserts, sexuality 'is the source of the biological, psychological and spiritual characteristics that make a person male or female.' A God who can create such frustrated creatures has to be a sadistic monster." See "Please Don't Shoot the Bearer of Bad Tidings: An Open Letter on Cardinal Ratzinger's Document," in GRAMICK and FUREY, The Vatican and Homosexuality..., p. 139.

that it tends to make gay people feel like their personhood itself is under attack. Some ten years earlier, PH had spoken of sexuality as profoundly significant for human personality. Its opening lines read:

According to contemporary scientific research, the human person is so profoundly affected by sexuality that it must be considered as one of the factors which give to each individual's life the principal traits that distinguish it. In fact it is from sex that the human person receives the characteristics which, on the biological, psychological and spiritual levels, make that person a man or a woman, and thereby largely condition his or her progress towards maturity and insertion into society.²⁹

Few would quarrel with this position. If anything, some might insist even more strongly on the critical nature of the relationship between a person's gender, sexual self-understanding, and sexual orientation and her self-identity and personhood. To claim then, that the sexual orientation of a gay person is itself objectively disordered is qualitatively different than arguing that (say) anorexia is objectively disordered because it is structured toward an end which is itself disordered. On this point, Archbishop Quinn's defense of PCHP³⁰ is on shaky ground. Quinn wrote:

... we should advert to two things. First, every person has disordered inclinations. For instance, the

²⁹ PH, #1, p. 3.

³⁰ See Archbishop John R. QUINN, "Toward an Understanding of the Letter 'On the Pastoral Care of Homosexual Persons,'" in GRAMICK and FUREY, The Vatican and Homosexuality..., pp. 13-19.

inclination to rash judgment is disordered, the inclination to cowardice, the inclination to hypocrisy--these are all disordered inclinations. Consequently, homosexual persons are not the only ones who have disordered inclinations. Second, the letter does not say that the homosexual person is disordered. The inclination, not the person, is described as disordered.³¹

In the first place, no unbiased student of Catholic moral teaching could ever get the impression that the Church holds that only homosexuals have been adversely affected by the Fall. That all people have disordered inclinations is a self-evident truth. Therefore, to remind gays and lesbians of this is to raise a moot point. The problem is that their inclination is said to be disordered because it tends toward disordered acts which seriously threaten their salvation.³² Moreover, the coward, the hypocrite, and those disposed to rash judgment can always work on acquiring the virtues which would effectively do away with their "disorder;" the gay person can never know such victory.

William Shannon, in an article written in response to Archbishop Quinn's defense of PCHP, grasped the full import of the "disordered inclination" teaching:

³¹ QUINN, "Toward an Understanding...", pp. 16-17.

³² Cf. "Just as the Cross was central to the expression of God's redemptive love for us in Jesus, so the conformity of the self-denial of homosexual men and women with the sacrifice of the Lord will contribute for them a source of self-giving which will save them from a way of life which constantly threatens to destroy them." PCHP, #12, p. 7; emphasis added.

What this statement is saying is that a person who is not heterosexual is a person whose sexuality is an 'objective disorder.' Since our sexuality is part of what constitutes us as persons, the letter is really saying that part of what constitutes the homosexual person as a person is an 'objective disorder.' Further it is said--and this would follow logically from the 'objective disorder' evaluation--that the condition of being a homosexual person is itself 'a more or less strong tendency ordered toward an intrinsic moral evil.' Whether one agrees with this position or does not, it is not difficult to see the psychological damage that could be done to a person by telling him or her that his or her very person was ordered toward intrinsic moral evil. It would be like telling someone that he or she is carrying a moral time bomb. It would be to say that such a person is a constant proximate occasion of sin to himself or herself.³³

There are two inter-related points to underscore in the context of this particular discussion. In the first place, calling the homosexual orientation disordered flows directly from the prior moral judgment that homosexual orgasmic behaviors are immoral. This entails a unidirectional movement: gay sex is not immoral because the sexual orientation of gays is disordered. As such, the disordered designation is something of a faith stance: it can be neither verified nor falsified by scientific methodologies.³⁴

³³ SHANNON, "A Response...", p. 26.

³⁴ This is arguably the gist of the following passage from PCHP: "... the Catholic moral viewpoint is founded on human reason illumined by faith and is consciously motivated by the desire to do the will of God our Father. The Church is thus in a position to learn from scientific discovery but also to transcend the horizons of science and to be confident that her more global vision does greater justice to the rich reality of the human person in his spiritual and physical."

Secondly, then, if one were to claim (say) to know a well-adjusted lesbian couple who are every bit as happy, fulfilled, responsible, faithful, and socially conscious as their heterosexual contemporaries, it would be beside the point. The experience of faithful and faith-filled gay and lesbian couples has no bearing on the moral evaluation of their "lifestyles."³⁵

The guiding principle of PCHP is a negative moral evaluation of "homosexual acts." The genital manipulations of gays and lesbians which are conducive to orgasm are declared--always and everywhere--to be gravely immoral. If one were to engage in such activity with the requisite knowledge and freedom, one would be guilty of mortal sin: one would destroy the life of grace and become an enemy of God. Because of this drastic consequence of choosing intrinsically evil behavior, same-sex erotic attraction in and of itself raises serious concerns.

What is the basis for the Church's condemnation of "homosexual acts"? Upon what foundation does such a condemnation rest? Most would agree that this negative

dimensions, created by God and heir, by grace, to eternal life." See #1, p. 1.

³⁵ And, given the insistence that Church teaching on this matter 'transcends the horizons of science,' the fact that the American Psychiatric Association and the American Psychological Association no longer accept the idea that a homosexual orientation is a manifestation of psychological pathology can have no role in a discussion of the morality of homosexual behavior.

evaluation has two basic foci: biblical passages hostile to ranges of homosexual behavior and a time-honored philosophical world view. In the next two sections we undertake a brief examination of these two sources.

4.1.1 The Bible and Homosexuality

Modern biblical studies has played a significant role in liberalizing the approaches to homosexuality in several mainline Protestant denominations. Many of these churches have a difficult time in accepting the idea that the Bible has settled the question of the morality of all homosexual behaviors for all time. Given the fact that Roman Catholicism has little in common with the many small groups of Christian fundamentalists in the United States, it is ironic that on the question of Scripture and homosexuality PCHP unambiguously affirmed that the Bible condemns all possible homosexual behaviors and that this condemnation is for all time. PCHP comments on the two condemnations in Leviticus' Holiness Code (at 18:22 and 20:13) with one sweeping generalization: "in the course of describing the conditions necessary for belonging to the Chosen People, the author excludes from the People of God those who behave

in a homosexual fashion."³⁶

The C. D. F. is well aware that its exegesis of the handful of biblical texts which are said to bear upon homosexuality³⁷ is contentious. It recognizes that not a few biblical scholars find its approach unacceptable:

An essential dimension of authentic pastoral care is the identification of causes of confusion regarding the Church's teaching. One is a new exegesis of Sacred Scripture which claims variously that Scripture has nothing to say on the subject of homosexuality, or that it somehow tacitly approves of it, or that all of its moral injunctions are so culture-bound that they are no longer applicable to contemporary life. These views are gravely erroneous....³⁸

PCHP's position on what Scripture has to say on the morality of homosexuality is clear; its biblical hermeneutics, however, are far from clear. The problem can be boiled down to the following perplexity: If one were to grant that (say) the two verses of Leviticus condemn all homosexual behavior for all times and in all places, by what principle(s) are contemporary men and women said to be able to forgo fulfilling (say) the dietary proscriptions found in the same book? In a word, the Bible contains a great deal of ancient legislation and practical advice that

³⁶ PCHP, #6, p. 3.

³⁷ I.e., Genesis 19: 1-11; Leviticus 18: 22, 20: 13; 1 Corinthians 6: 9; Romans 1: 18-32; and 1 Timothy 1: 10.

³⁸ PCHP, #4, p. 2.

moderns intuitively determine to be presently counter-indicated. How is one to determine which scriptural injunctions are still in force?

PCHP makes reference to a 'new exegesis of Sacred Scripture.' And the tone of this reference is that this new exegesis threatens good morals. However, the exegesis that is implicated here is none other than that which was canonized by the Second Vatican Council. In Vatican II's Dei verbum (DV), we read the following on the interpretation of biblical texts:

Seeing that, in Sacred Scripture, God speaks through men in human fashion, it follows that the interpreter of Sacred Scriptures, if he is to ascertain what God has wished to communicate to us, should carefully search out the meaning which the sacred writers really had in mind, that meaning which God had thought well to manifest through the medium of their words.

In determining the intention of the sacred writers, attention must be paid, inter alia, to 'literary forms for the fact is that truth is differently presented and expressed in various types of historical writing, in prophetic and poetical texts,' and in other forms of literary expression. Hence the exegete must look for that meaning which the sacred writer, in a determined situation and given the circumstances of his time and culture, intended to express and did in fact express, through the medium of a contemporary literary form. Rightly to understand what the sacred author wanted to affirm in his work, due attention must be paid both to the customary and characteristic patterns of perception, speech and narrative which prevailed at the age of the sacred writer, and to the conventions which the people of his time followed in

their dealings with one another.³⁹

The principles enunciated in DV have led to an assault on the idea that one can find an all-inclusive ban on "homosexual behaviors" in the Bible.

Let St. Paul's reflection in the first chapter of his letter to the Romans (1: 18-34) serve as an example. Paul speaks of women who "exchanged natural relations for unnatural" (v. 26b) and of men who "gave up natural relations with females and burned with lust for one another" (v. 27). He continues: "Males did shameful things with males And since they did not see fit to acknowledge God, God handed them over to their undiscerning mind to do what is improper" (vv. 27-28).⁴⁰ If one were to follow the guidelines of DV with a view toward applying Paul's reflection in Romans to the modern reality of homosexuality, numerous problems would surface.

In the first place, what did Paul's age know of homosexuality?⁴¹ Does the context of the passage, viz., a

³⁹ DV, c. 3, #12; in Austin FLANNERY, O.P., ed., Vatican Council II: The Conciliar and Post Conciliar Documents (Collegeville, MN: Liturgical Press, 1975), pp. 757-758.

⁴⁰ This translation of the text is that of the New American Bible [revised New Testament edition] (Wichita, KS: Catholic Bible Publishers, 1987).

⁴¹ Lillianna KOPP maintains that is beyond dispute that when the Bible touches upon same-sex sexual relating, it is always within one or more of the following contexts: "(1) as acts of violence, (2) as acts of lust, and (3) as acts of sacred ritual in fertility cults." See "A Problem of Manipulated Data," in GRAMICK and FUREY, The Vatican and Homosexuality..., p. 42.

condemnation of pagan worship, have a bearing on what Paul wished to affirm? Does the fact that Paul is not elaborating a full-blown sexual ethic and is using particular homosexual behaviors as an example of the debauchery of the pagans militate against taking these verses as an out-right condemnation of all homosexual expression for all times and places? It is certain that Paul and his era knew nothing of what we call a "homosexual orientation" or "constitutional homosexuality."⁴² Does Paul's understanding that homosexual activity must therefore be the product of people intentionally perverting their natural drives provide a solid foundation for determining that homosexuality is "unnatural"? Finally, doesn't the fact that in "the original language of the Bible the terms homosexual and homosexuality are never used ... (leave) homophobic fundamentalists much room for creativity?"⁴³

Archbishop Quinn, in his defense of PCHP, is not

⁴² "Homophilia or constitutional homosexuality defined in the scientific community as a fixed, unalterable orientation toward same-sex love, was never mentioned in either Scripture or early church tradition for the simple reason that it was an unknown, unnamed phenomenon in prescientific times." [KOPP, "A Problem of Manipulated Data," p. 42.]

⁴³ KOPP, "A Problem of Manipulated Data," p. 42. André GUINDON's remarks on this topic are germane: "Since the Congregation does not indicate what methods it applies to discover what Scripture really says and what this could mean for us, the letter (i.e., PCHP) bears all the trappings of a fundamentalist approach. The text serves as a pretext for upholding positions which are grounded on extrabiblical criteria." ["Homosexual Acts or Gay Speech?," in GRAMICK and FUREY, The Vatican and Homosexuality..., p. 208.]

swayed by the reasoning involved in these questions. He is satisfied that the understanding of the six texts cited (seven, if one includes PCHP's general remarks on 'the order of creation' in reference to Genesis 1-3)⁴⁴ "has been a constant in the moral tradition of the Church."⁴⁵

Dan Grippo, however, claims that when PCHP says that the Scriptures present a unified and clear condemnation of homosexuality and homosexual behavior, "nothing could be further from the truth."⁴⁶ He explains:

The six scripture passages cited by the Vatican authors are interpreted in a distorted and woefully inadequate fashion that will only serve to perpetuate time-honored prejudices. The fact is that the Bible says very little about homosexual behavior, and nothing at all about persons with a homosexual orientation.⁴⁷

Grippo is certainly right that the Bible has very little to say about homosexuality and nothing to say about the homosexual orientation. Six terse and somewhat enigmatic verses can not pass for a complete treatment of homosexuality. Only by way of anachronism can the homosexual orientation be found in any of the biblical

⁴⁴ See PCHP, #6, p. 3.

⁴⁵ QUINN, "Toward an Understanding...", p. 14.

⁴⁶ Dan GRIPPO, "The Vatican Can Slight Scripture for Its Purpose," in GRANICK and FUREY, The Vatican and Homosexuality..., p. 33.

⁴⁷ GRIPPO, "The Vatican Can Slight Scripture...", p. 33.

writers' work. In this, Archbishop Quinn overstated the case by employing the "constant teaching of the Church" formula.⁴⁸ In truth, before PH, one would have been at a loss to find even six explicit references to homosexuality in Roman magisterial teaching. Pope Pius XII, for example, who, in his later years especially, had an authoritative opinion on just about everything, left no statement on homosexuality. Moreover, one simply cannot have a clear and constant teaching of the Church on a reality that continues to admit of new data and whose very etiology has yet to be determined.

The most that can be said is that a handful of biblical authors condemned certain homosexual couplings in particular contexts for less than clear reasons. No biblical author set out to write a treatise on sexual ethics; no biblical author ever revealed the slightest awareness that two adult gay people might be able to relate genitally out of love for each other in a relationship marked by tenderness, fidelity, and stability.

⁴⁸ It has to be conceded that John BOSWELL's Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century (Chicago: University of Chicago Press, 1980) successfully demonstrated the vagarious nature of Church teaching on the issues attendant to homosexuality. James P. HANIGAN puts it this way: "... critical historical studies have a way of showing that the tradition was often less uniform, less consistent and less certain than might appear to many in the present day.... Such studies also reveal that some positions were adopted due to incomplete or inaccurate biological or psychological or philosophical knowledge, knowledge which is available to us today." [What Are They Saying About Sexual Morality? (New York: Paulist Press, 1982), p. 15.]

4.1.2 Two Competing World Views

The hermeneutic used by those who have lined up against PCHP's blanket condemnation of "homosexual acts" admits "that the moral discernments of specific practices made by Jewish or Christian communities never definitively resolve our own moral perplexities."⁴⁹ This statement by André Guindon succinctly reveals the heart of the problem: The C. D. F. and its critics are operating out of two competing world views.⁵⁰

Robert Francoeur, in an insightful critique of PCHP claims that

(t)he philosophical mainspring behind today's conflict is that the Vatican has never resolved its centuries-old tension between the Judaic biblical world vision in which time is linear, a developmental arrow, and the Platonic-Aristotelian world view in which time is cyclic.... In the linear time of the biblical vision, creation is an epigenetic evolutionary process in which the very nature and essence of things is in the process of being created. In the archetypal world of the Vatican, all change is superficial illusion

⁴⁹ GUINDON, "Homosexual Acts or Gay Speech?," p. 208.

⁵⁰ On second thought, perhaps "sexual world views" is better nomenclature: the Roman magisterium's approach to moral issues other than sexual ones is strikingly like the "dissenting" approach. Charles CURRAN explores this conundrum in his "Catholic Social and Sexual Teaching: A Methodological Comparison," in *Theology Today*, 44 (1988), pp. 425-440. (Much earlier CURRAN had hinted at this in his "Homosexuality and Moral Theology: Methodological and Substantive Considerations," in *The Thomist*, 35 (1971), pp. 447-481.) See also Richard A. McCORMICK, S.J., "Human Sexuality: Toward a Consistent Ethical Method," in John A. COLEMAN, S.J., ed., *One Hundred Years of Catholic Social Thought: Celebration and Challenge* (Maryknoll, NY: Orbis Books, 1991), pp. 189-197. At p. 190, McCormick characterizes PCHP (and PH, *Humanae vitae*, *Donum vitae*, and *Inter insigniores*) as "deductive, nontentative, authoritarian, noncollaborative, heavily reliant on past statements." This is in sharp juxtaposition to the documents which make up contemporary Catholicism's social teaching.

because the nature of everything was established 'in the beginning' and creation is nothing more than the unfolding of eternal archetypes (eidoi) already preformed within a cosmic duration that is nothing more than a ceaseless repetition, an anakyklesis, and a shadowy incarnation of eternal eidos.⁵¹

These two world views, the "classical" and the "historically conscious,"⁵² yield strikingly different sexual moralities. The classical world view tends toward a code morality. The virtuous person follows the sexual laws as they are found in the Scriptures and in Church teaching. Never mind that "such a model of ethics leads almost inevitably to a childish and primitive pattern of taboo morality, a morality that sees certain acts as forbidden apart from any consideration of intentions and circumstances."⁵³ The goal is to stay within the sexual guidelines believed to have come directly from the unchanging will of God; for the faithful Catholic any uncertainties about these guidelines are settled by interventions from the Church's magisterium.

⁵¹ Robert FRANCOEUR, "Two Different Worlds, Two Different Moralities," in GRAMICK and FUREY, The Vatican and Homosexuality..., p. 189.

⁵² This terminology is Bernard LONERGAN's; see his "A Transition from a Classicist Worldview to Historical Mindedness," in James E. BIECHER, ed., Law for Liberty: The Role of Law in the Church Today (Baltimore: Helicon Press, 1967). [Cited by Charles CURRAN, "Natural Law in Moral Theology," in Charles E. CURRAN and Richard A. MCCORMICK, S.J., eds., Readings in Moral Theology, No. 7: Natural Law and Theology (New York: Paulist Press, 1991), pp. 247-295, at pp. 263 and 292.]

⁵³ HANIGAN, What Are They Saying..., p. 85.

Francoeur characterizes the conflict in the Church between the classical and historically-conscious world views in the following manner:

The Vatican's world view is clearly rooted in a fixed Aristotelian philosophy of nature and a creator who has created from above and outside. The hierarchy thus become the custodians of divine creation, the curators awaiting the return of the Infinite Museum Owner. (Remember the careful servant who dug a hole and hid the master's money in Matthew 25.) On the other hand, many Catholics struggle to be good and faithful servants who risk in order to return more than they were entrusted with. They take their inspiration from the Spirit and Word who move through matter. They are the creators who through faith, human experience, and risk strive to make considered judgments and take responsible actions which contribute to the unfolding of the ultimate kingdom. While the curators make rules for behavior in the museum, the creators strive to bring forth the living art works which will decorate the kingdom.⁵⁴

Francoeur does not mention any indebtedness to André Guindon for this poetic vision, but the fact is that 'the curators versus the creators' is one of the subtexts which runs throughout Guindon's The Sexual Creators: An Ethical Proposal for Concerned Christians⁵⁵ and it is founded upon understanding human sexuality as language.⁵⁶ James Hanigan provides a helpful summary:

⁵⁴ FRANCOEUR, "Two Different Worlds...", p. 190.

⁵⁵ (Lanham, MD: University Press of America, 1986).

⁵⁶ See GUINDON's earlier work, The Sexual Language: An Essay in Moral Theology (Ottawa: University of Ottawa Press, 1976).

It is Guindon's proposal ... that sexual behavior should be regarded as a form of language, as one basic way human beings have of saying what they mean, or, of course, of misleading themselves and others. The authentic expression of meaning and the integrity of human communication would then be the framework for evaluating the morality of sexual behavior.⁵⁷

In his contribution to The Vatican and Homosexuality: Reactions to the "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons", Guindon is cognizant of the fact that his approach to human sexuality, as well as those of other Catholic ethicists, has been undervalued by the C. D. F. Just as PCHP sidesteps the findings of contemporary biblical scholars, so too does it refuse to consider the validity of much of the work of modern Catholic moral theologians. "It once again takes up a pre-Vatican II discourse on human activity understood as a biopsychical function directed toward a 'complementary union, able to transmit life' (#7) and endowed with immutable 'intrinsic' and 'objective' laws of operation."⁵⁸

The problem with this approach lies in its undeniable implication, viz.,

that there are specific instances of 'physical behavior' or 'material performances' which,

⁵⁷ HANIGAN, What Are They Saying..., p. 86.

⁵⁸ GUINDON, "Homosexual Acts or Gay Speech?," p. 209.

independently of any user's meaning-making operation, have an evil meaning. Meanings would exist in the world before a community of speaking persons has structured them. Since they would be in the things themselves, 'intrinsically,' and not in the sayings of those who constitute their human world by speaking, such meanings, true or false, good or bad, never change. Human persons would not be free to create their world of meanings. They would find the world all figured out. Their task would consist merely in forming a mental replica of what is out there.⁵⁹

If human sexual relating is about the communication of meaning from one person to another, then strictly human criteria for adjudicating questions of sexual morality are demanded.⁶⁰ In other words, it does not make sense to evaluate human sexual behavior on purely "physicalist" terms or to claim that the physical dimension of the behavior in question is the morally decisive factor.

This is precisely what PCHP opted for in its discussion of the morality of "homosexual acts." And, in a very real sense the scriptural condemnations that are adduced are simply "icing on the cake:" they are welcome props for an evaluation grounded elsewhere. PCHP "does not stand or fall upon the woefully inadequate scriptural

⁵⁹ GUINDON, "Homosexual Acts or Gay Speech?," pp. 210-211.

⁶⁰ GUINDON's following point is irrefutable: "Animals, when they 'perform' sexually with a heterosexual partner for the reproduction of the species are not more moral than when they use sex, as they often do, for satisfying other individual and collective needs. Open to the transmission of life or not, animal sex is amoral because it is not meaning-creating speech. Animal sex produces nothing in terms of the historical meaningfulness of the relationship." ["Homosexual Acts or Gay Speech?," p. 212.]

exegesis found in number 6 For this document is based ... on the sexuality-for-procreation approach."⁶¹

4.2 Soteriological Implications: The Damnation Factor

Many critics of PCHP point to the image of God that is presupposed by the Church's condemnation of all instances of gay sex. Bernard East's reflection in "L'Église et l'homosexualité" is a good summary statement of this dynamic:

It seems to me to be possible for one to be homosexual, to live a privileged relationship with a person of the same sex, and that this would not automatically offend God. What kind of image of God would we have if he, the Creator of all things, permits the existence of homosexuals and at the same time refuses to allow them to live according to their nature? Would we not end up with an image of a sadistic God who takes pleasure in the suffering and the torments of his sons and daughters?⁶²

An intimately related problematic is what can be called the "damnation factor" in Catholic sexual ethics.

⁶¹ HEBBLETHWAITE, "Please Don't Shoot the Bearer...", p. 137. Hebblethwaite adds in the same place: "And the document still stands erect though tattered when you have proved that it is uncompassionate, unevangelical, unjust, fraudulent, biased, and discriminatory." (We should mention that Hebblethwaite considers all of these to be fair characterizations of PCHP.)

⁶² Bernard EAST, O.P., "L'Église et l'homosexualité," in *Présence*, 2 (février 1993), pp. 21-22. ["Il me semble qu'il est possible d'être homosexuel, de vivre une relation privilégiée avec une personne du même sexe, et ce faisant de ne pas automatiquement offenser Dieu. Quel image avons-nous de Dieu si, lui, le Créateur de toutes choses permet qu'il y ait des homosexuels à qui il refuserait de vivre selon leur nature? N'aboutissons-nous pas à une image d'un Dieu sadique qui se complait à la souffrance et aux tourments de ses fils et de ses filles?"]

Ever to be in hell, never to be in heaven; ever to be shut off from the presence of God, never to enjoy the beatific vision; ever to be eaten with flames, gnawed by vermin, goaded with burning spikes, never to be free from those pains; ever to have the conscience upbraid one, the memory enrage, the mind filled with darkness and despair, never to escape; ever to curse and revile the foul demons who gloat fiendishly over the misery of their dupes, never to behold the shining raiment of the blessed spirits; ever to cry out of the abyss of fire to God for an instant, a single instant, of respite from such awful agony, never to receive, even for an instant, God's pardon; ever to suffer, never to enjoy; ever to be damned, never to be saved; ever, never; ever, never.⁶³

Such is the image of hell that is afforded James Joyce's protagonist, Stephen Dedalus, by his Jesuit retreat master. Stephen, who is in the midst of his sexual awakening, soon finds himself at wits end. He has been led to believe that his sexual nature and the inclinations of his flesh toward sexual pleasure are evil. He comes to consider that to embrace the way of Christ would have to mean denying himself on a most profound level.

It is a dilemma as old as Christianity itself. From the outset, Christian preachers had pitted the physical against the spiritual and especially the sensual against the holy; the All-Holy One was understood as ever ready to avenge the sins of the flesh. The paradoxical nature of this vision of the Christian God is not lost on Jean

⁶³ James JOYCE, A Portrait of the Artist as a Young Man (London: Minerva, 1992, p. 137. [First published in 1924 by Jonathan Cape.]

Delumeau, whose research leads him to speak of "an infinitely kind God, who nonetheless gives terrible punishments."⁶⁴

Delumeau's Sin and Fear is a tour de force; he documents in minute detail and with great panache the development of a "guilt culture" in the West. The thirteenth through the eighteenth century witnessed what Delumeau calls a surculpabilisation--an "intensification of guilt."⁶⁵ One finds treatise after treatise on the tortures of the afterlife (Joyce's attempt to capture the horrors of the damned pales in comparison) and innumerable examples of sermons which counselled contempt for the world and its allurements. Beyond a doubt, the greatest danger that faced humankind was thought to be lust, the sins of the flesh, impurity. As an example, Delumeau quotes Hyacinthe de Montargon's Dictionnaire apostolique:

Impurity encompasses all other sins This vice ... is not only a sin like the rest, (it) is the epitome of all sins; it is sin itself A sin is more weighty according to the extent to which it outrages and injures God. Now, the sin of lust is all the greater because the thing preferred to God is more vile and contemptible. For such is the voluptuary: he prefers the pleasures of the flesh, a moment of desire, to God and a blissful eternity (I)mpurity

⁶⁴ Jean DELUMEAU, Sin and Fear: The Emergence of a Western Guilt Culture, 13th-18th Centuries [trans. by Eric NICHOLSON] (New York: St. Martin's Press, 1990), p. 401.

⁶⁵ See the "Translator's Preface" to Sin and Fear, p. ix.

profanes the entire faith of a Christian Those who have just a smattering of our holy books will note that God has always punished the sin of impurity more severely than all others.⁶⁶

In The Portrait of the Artist as a Young Man, Stephen Dedalus' dilemma, which stands as a cipher for Joyce's own, will eventually be resolved by breaking with the Catholic Church. The Church, which had earlier been implicated negatively in Irish politics,⁶⁷ would be revealed as espousing an inhuman and draconian sexual ethic.

In our day, one might find it sad, and perhaps even quaint, that the Church's sexual ethic could raise such qualms of conscience in such a sincere, and at the time of the scene in Portrait, innocent young man. One might even feel the urge to take Stephen aside and calm his fears and reassure him that the Church's teaching isn't that harsh, or (say) that with the findings of modern psychology the Church is not holding to such a strict interpretation these days, et cetera. However, such a pastoral approach was explicitly ruled out by PH.

⁶⁶ Hyacinthe de MONTARGON, Dictionnaire apostolique, v. 3, a. 2, pp. 91-100; cited by DELUMEAU, Sin and Fear, p. 439.

⁶⁷ Mr. Casey, joined in debate with Stephen's father and Dante, asks: "Didn't the bishops of Ireland betray us in the time of the union when Bishop Larigan presented an address of loyalty to the Marquess Cornwallis? Didn't the bishops and priests sell the aspirations of their country in 1829 in return for Catholic emancipation? Didn't they denounce the Fenian movement from the pulpit and in the confession box? And didn't they dishonour the ashes of Terence Bellew MacManus?" (p. 35). Key to this scene is the Irish bishops' condemnation of the Irish nationalist Charles Stewart Parnell following the revelation of an adulterous affair. Their intervention effectively ended Parnell's political career.

For instance, PH warned the faithful that certain sexual acts (especially premarital sexual relations, masturbation, and homosexual relations) are to be understood as grave moral disorders. If one engages in these actions with sufficient reflection and wilful consent, then one has committed mortal sin.⁶⁸

On the subject of masturbation, for instance, PH reads:

... both the magisterium of the Church--in the course of a constant tradition--and the moral sense of the faithful have declared without hesitation that masturbation is an intrinsically disordered act.⁶⁹

On the subject of masturbation modern psychology provides much valid and useful information for formulating a more equitable judgment on moral responsibility and for orienting pastoral action.... But, in general, the absence of serious responsibility must not be presumed; this would be to misunderstand people's moral capacity.⁷⁰

Many expositions of Catholic sexual morality fail to present clearly the soteriological consequences that the magisterium envisages for those who engage in 'intrinsically and seriously disordered acts.' These

⁶⁸ See PH, #10, pp. 17-18: "A person ... sins mortally not only when his action comes from direct contempt for love of God or neighbor, but also when he consciously and freely, for whatever reason, chooses something which is seriously disordered. For in this choice ... there is already included contempt for the divine commandment: the person turns himself away from God and loses charity."

⁶⁹ PH, #9, p. 14.

⁷⁰ PH, #9, p. 15.

consequences are simple: mortal sin (if the requisite conditions pertain, i.e., knowledge, freedom, and consent)- - which makes one an enemy of God--and eternal damnation if one never repents of the evil done. It bears stating here that the magisterium holds that two men who knowingly and willingly engage in consensual sexual relations with each other have committed mortal sin.⁷¹ Unless they turn away from such behavior, they will be eternally cut off from God. The same goes for the cohabitating heterosexual couple, the practitioners of artificial birth control, and the masturbator.

Now of course no one can ever judge the subjective guilt of those involved in sexual relating outside the marriage bond. One cannot read their hearts; nor can one know the extent of their freedom or the quality of their consent. At the same time, however, one must not presume that mortal sin has not been committed.

One of the chief problems with this teaching is its

⁷¹ Might not one claim that if persons so involved sincerely do not believe that they are doing anything wrong, then they are not subjectively guilty of wrong-doing? It is difficult to imagine the magisterium validating such an approach; indeed, it is probable that its response would be that such persons have malformed consciences for which they are morally responsible. It is, after all, a serious moral obligation to form one's conscience according to Church teaching. [This in turn leads to a Catch-22 situation whereby one is morally obligated to follow one's (malformed) conscience and is thereby guilty of serious sin (for having a malformed conscience in the first place).] For the ambiguities that Vatican II did not settle relative to conscience and Church authority, see especially Judith A. DWYER, S.S.J., "Vatican II and the Dignity of Conscience," in Lucien RICHARD, O.M.I., ed., with Daniel T. HARRINGTON and John W. O'MALLEY, Vatican II, The Unfinished Agenda: A Look to the Future (New York: Paulist Press, 1987), pp. 160-173.

aforementioned damnation factor. Joyce found it ridiculous; few Catholic moralists ever directly discuss it. These latter are content to speak of "normative" and "non-normative behavior" without consigning the wilful doers of the non-normative to an eternity in the Abyss.⁷² Neither do most seem willing to say that those so implicated have chosen, ipso facto, behavior diametrically opposed to Love.

As long as the Church holds that in matters of sexuality there is no parvity of matter,⁷³ the damnation factor is firmly in place. As long as all infractions of the Church's sexual ethic are considered to be serious by their very nature, most contemporary people's salvation must be believed to be in jeopardy. It is probable that the damnation factor has played a role in leading modern Catholic moral theologians to reconsider the Church's

⁷² Lisa Sowle CAHILL offers a good case-in-point. In "Moral Methodology: A Case Study" [in Chicago Studies, 19 (1980), p. 182] she writes: "The consistent positive contribution to the Christian tradition on sexuality is that 'normative' human sexuality is heterosexual, marital, and has an intrinsic relation to procreation, love and commitment. Hence the traditional condemnation of homosexual acts as not truly expressive of the meaning of human and Christian sexuality.... However, the sticky task of Christian ethics is determining when, why and how to make exceptions to norms." On pp. 183-184, she explains that "a normative judgment that the homosexual orientation is a less than fully human and Christian form of sexual preference does not necessarily entail a corollary prohibition of those genital acts through which confirmed homosexuals express and strengthen a committed relationship."

⁷³ This is done implicitly when all sexual behavior outside marriage is deemed 'intrinsically and seriously disordered.' Even an 'impure thought' is, in and of itself, an instance of grave matter--one of the requisite components for positing a mortal sin. (André GUINDON, in The Sexual Language, offers an in-depth look at the tradition concerning sexual fantasies on pp. 223-249.)

teaching on homosexuality. Quite simply, it is difficult for many to hold that the sexual relating within a committed gay relationship is by definition seriously evil and a probable indicator that those involved are opting for an eternity outside the love of God.⁷⁴

4.3 PCHP, the Revisionists, and Gay Rights

PCHP cast a pall over the question of Catholic support for gay and lesbian rights.⁷⁵ The following passage, for example, leaves one with the impression that the Roman magisterium is opposed to any civil legislation which would protect homosexual persons from discrimination:

There is an effort in some countries to manipulate the Church by gaining the often well-intentioned support of her pastors with a view to changing civil statutes and laws. This is done in order to conform to these pressure groups' concept that homosexuality is at least a completely harmless, if not an entirely good, thing....

(The Church's) clear position (on the morality of homosexuality) cannot be revised by pressure from civil legislation or the trend of the moment. But she

⁷⁴ Edmund HILL, O.P., in Being Human: A Biblical Perspective (London: Geoffrey Chapman, 1984), pp. 160-161, writes that homosexuality "is manifestly not oriented to marriage, and thus is of its nature defective sexual behaviour. But it does not seem to be, of its very nature, necessarily against love or charity; it may even be, like heterosexual activity, expressive of genuine love or charity. So on this line of reasoning I would argue that it is not necessarily of its nature a mortal sin."

⁷⁵ It is not beyond the pale to suggest that the prefect of the Congregation for the Doctrine of the Faith believed that some U.S. bishops had been duped by the GLM--that they were unwitting pawns in attempts to discredit Catholic sexual morality. See the "Introduction" to GRAMICK and FUREY, The Vatican and Homosexuality..., pp. xiii-xxi.

is really concerned about the many who are not represented by the pro-homosexual movement and about those who may have been tempted to believe its deceitful propaganda. She is also aware that the view that homosexual activity is equivalent to, or as acceptable as, the sexual expression of conjugal love has a direct impact on society's understanding of the nature and rights of the family and puts them in jeopardy.⁷⁶

Clearly PCHP fears that changing civil statutes and laws concerning homosexuality will have a deleterious impact on marriage and family life. It believes that the GLM uses justice arguments for ulterior motives, viz., to achieve societal approbation for homosexuality and a concomitant silencing of those who consider homosexual behavior to be immoral.

This reticence in supporting gay and lesbian rights is not found among a number of Catholic thinkers. The authors of the Catholic Theological Society of America's Human Sexuality: New Directions in American Catholic Thought, for instance, state that

(i)t should not be too much to expect that the Church and its leaders serve as more than a barometer of public moral opinion, that they take a lead in advance of the civil courts in championing the civil rights of homosexuals by working to change unjust social conditions, even when this is not a particularly popular cause. Eliminating discrimination on the basis of race and religion should extend logically to eliminating discrimination and injustice on the basis

⁷⁶ PCHP, #9, p. 5.

of sexual orientation.⁷⁷

The authors advance the opinion that gays and lesbians can validly appeal to Catholic teaching on justice for protection; however, given the fact that this statement comes in the context of a discussion of the morality of certain homosexual acts and given the fact that it comes after certain of these acts are said to be morally justifiable, one might get the impression that gay people deserve social protection because there really isn't anything wrong with their sexual lives in the first place.

This is a significant problem for the present state of the Church's teaching on gay and lesbian rights. Since many of the calls for Catholic support for such rights are made in the context of criticizing the Church's condemnation of all instances of gay sex, the impression is given that justice for gay people is dependent upon a benign interpretation of at least some of their sexual

⁷⁷ Anthony KOSNIK, William CARROLL, Agnes CUNNINGHAM, Ronald MODRAS, and James SCHULTE, Human Sexuality: New Directions in American Catholic Thought [A Study Commissioned by The Catholic Theological Society of America] (New York: Paulist Press, 1977), p. 218. Other Catholic thinkers who have endorsed this approach include Gregory BAUM, "Human Rights for Homosexuals," in Catholic New Times, January 11, 1987, p. 10; John COLEMAN, "Two Unanswered Questions," in GRAMICK and FUREY, The Vatican and Homosexuality..., pp. 59-65; André GUINDON, "Gais et lesbiennes dans l'Eglise. Pour un déplacement de la problématique," in Nouveau Dialogue, 47 (1982), pp. 25-28; and Gordon ZAHN, "The Human Rights of Homosexuals: Let Catholics Be Consistent," in Commonweal, 116 (1989), pp. 462-465 and "Let's Support Civil Rights for Homosexuals," in U.S. Catholic, 54 (1989), pp. 13-15.

practices.⁷⁸ In the end, it becomes arguable that the C. D. F.'s hesitancy on this question can be traced to this problematic; in other words, one witnesses to the immorality of homosexual behavior by speaking of this behavior as 'something to which no one has any conceivable right.'⁷⁹

4.4 Conclusion

The C. D. F. and revisionist moral theologians are at loggerheads on the morality of homosexuality.⁸⁰ To the chagrin of the former, the latter tend to allow for the moral goodness of some instances of homosexual behavior.

⁷⁸ A notable exception to this trend is Benedict ASHLEY's "Compassion and Sexual Orientation," in GRAMICK and FUREY, The Vatican and Homosexuality..., pp. 105-111. After having strenuously supported the teaching of PCHP on the morality of homosexual acts, Father Ashley writes: "Generally speaking, one's sexual orientation is a private matter. I believe the Church should support the civil rights of homosexuals and should preach that no one has any right to judge same-sex companions living privately. Such companionship without sex can be quite suitable for homosexuals and was common enough even in Victorian society without public suspicion. Nor should sexual orientation be a ground for discrimination in employment, provided that it not be made evident by public acts" (pp. 108-109).

⁷⁹ Cf. PCHP, #10, p. 6: "...the proper reaction to crimes committed against homosexual persons should not be to claim that the homosexual condition is not disordered. When such a claim is made and when homosexual activity is consequently condoned, or when civil legislation is introduced to protect behavior to which no one has any conceivable right, neither the Church nor society at large should be surprised when other distorted notions and practices gain ground, and irrational and violent reactions increase." Beyond a doubt, the more benign an evaluation one posits for "homosexual acts," the more likely one is to support gay and lesbian rights. One has no compelling reason to criminalize all the possible ranges of gay and lesbian sexual relating if some of these behaviors can be called morally good, or at least morally justifiable. *A fortiori*, one has lost strong reasons for campaigns to limit the social, cultural, and economic participation of gay people if their "lifestyles" are not ipso facto morally reprehensible.

⁸⁰ This state of affairs dramatically highlights the ambiguities present within Catholic sexual ethics. It bears noting that the "studied ambiguity" under question in this work is not only because one may give priority to one of the two partners (sexual or social ethics) in the debate on gay and lesbian rights, but because the "sexual ethics partner" is itself less than clear ... unless, of course, one holds that nothing which is proposed in the Church has any value and credibility except the Vatican's discourse.

This debate has important ramifications for a Catholic stance on non-discrimination legislation for gays and lesbians. By and large, the revisionists see no good reason to sanction discrimination against people who may be doing nothing wrong; the C. D. F. is committed to witnessing to the immorality of all instances of homosexual behavior by frowning upon Catholic support for any of the planks of the GLM. Neither, however, seem to have grasped the fact that Catholic sexual ethics is not suited to answer what is most precisely a question for the Church's social teaching.

CHAPTER FIVE:
THE SECOND PARTNER IN AMBIGUITY:
CATHOLIC SOCIAL TEACHING AND HOMOSEXUALITY

By most accounts, Catholic social teaching admits of much ambiguity. David J. O'Brien's evaluation is typical: "Internal inconsistencies, discontinuities, and sharply differing positions on key questions make it very difficult to generalize about Catholic social teaching...."¹ In this regard, it is unwise to deny that John Mahoney's way of characterizing Christian theology applies par excellence to the social teaching of the Church:

Much, if not all, of Christian theology is a theology ex convenientia, of exploring the fittingness and the intrinsic coherence of why God is as he is and why he has acted in history as he has done. It is an act of faith in the ultimate intelligibility and self-consistency of God, and a stumbling attempt to comprehend something of the mystery which one believes is not at heart an intellectual absurdity or sheer caprice.²

Concurrently, one would not be overstating the case if one were to argue that Catholic social teaching provides a

¹ David J. O'BRIEN, "A Century of Catholic Social Teaching: Contexts and Comments," in John A. COLEMAN, S.J., ed., One Hundred Years of Catholic Social Thought: Celebration and Challenge (Maryknoll, NY: Orbis Books, 1991), p. 13.

² John MAHONEY, S.J., The Making of Moral Theology: A Study of the Roman Catholic Tradition (Oxford: Clarendon Press, 1987), p. 246.

prime example for demonstrating Church teaching on the "development of doctrine."³ In fact, Catholic social teaching has witnessed dramatic developments on any number of questions.⁴

It is not our intention here to provide anything even remotely resembling a synthetic account of the Church's social teaching.⁵ Nor are we prepared to take sides in the debate surrounding the ultimate theological grounding for contemporary Catholic social ethics.⁶ We will be content

³ It is to be granted, however, that "development" as applied to the Church's social teaching is a loaded term; it presupposes a modicum of internal consistency and continuity through time. It is well to heed John Coleman's warning concerning the social teaching enunciated in the papal encyclical tradition: "The logical unity of the teaching still needs to be shown." [John A. COLEMAN, S.J., "Development of Church Social Teaching," in Charles E. CURRAN and Richard A. MCCORMICK, S.J., Readings in Moral Theology, No. 5: Official Catholic Social Teaching (New York: Paulist Press, 1986), p. 176; cited by Michael J. SCHUCK, That They Be One: The Social Teaching of the Papal Encyclicals, 1740-1989 (Washington, D.C.: Georgetown University Press, 1991), p. x.]

⁴ SCHUCK's That They Be One offers an army of examples. On p. 155, summarizing the teaching of the post-Leonine popes, he writes: "Like their predecessors, the popes consider mistaken concepts to be the solvent causing communal erosion. Again, Enlightenment atheism, naturalism, and rationalism are spurned and their varieties identified: the 'death of God' movement, the Enlightenment notion of progress, ethical hedonism. However, some social ideas considered troublesome in earlier periods are not repeated: freedom of conscience in religion, Roman Catholic collaboration with socialists, ecumenism, the religiously neutral state, the centrality of sentiment in marriage, socialism (as distinct from communism, or 'Marxist collectivism'), freedom of speech and press, artistic verism and relativism, freedom of instruction, and pedagogical naturalism. Many other social ideas thought dangerous by prior popes are repeated, with new candidates offered: the superpower 'logic of blocs' and both liberal capitalist and Marxist theories of development."

⁵ This would entail a herculean task. One notes, however, that Karen LEBACQZ, in her Six Theories of Justice: Perspectives from Philosophical and Theological Ethics (Minneapolis: Augsburg, 1986), claims that following points would have to be considered in any such synthetic account: "(1) the inviolable dignity of the human person, (2) the essentially social nature of human beings, and (3) the belief that the abundance of nature and of social living is given for all people" (p. 67).

⁶ SCHUCK, That They Be One, c. 4 ("Theories of Coherence"), pp. 173-189, succinctly spells out the parameters of this debate--at least as regards the papal encyclical tradition. David HULLENBACH's contention that "(t)he dignity of the human person ... (is) the thread that ties all these (papal and conciliar) documents together" [See his Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition (New York: Paulist Press, 1979), p. 42; cited by SCHUCK, That They Be One, p. 178] is at the heart of the debate.

to call attention to contemporary Catholicism's espousal of the cause of global human rights and how the Church's present self-understanding entails acting as universal guardian of these rights. Ultimately, this discussion will serve to highlight how the C. D. F.'s "Some Considerations Concerning the Catholic Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons" (1992) is taken by many to be seriously out of sync with a fundamental trajectory of modern Catholicism.

5.1 Catholicism and Human Rights⁷

The Roman Catholic Church is a relative new-comer to the cause of human rights. It is well-known that the Church "was a vigorous opponent of both the democratic and socialist revolutions which were the chief proponents of the civil and social rights enshrined in twentieth-century human rights declarations."⁸ In this regard, Bernard

⁷ The specific content of "human rights" admits of a certain fluidity. David Hollenbach (following John Langan) defines human rights as "moral claims that human persons can make independently of and prior to their acknowledgment by particular societies;" they are the immunities and entitlements which are due every person "simply by virtue of being a human person, irrespective of his or her social status, cultural accomplishments, moral merits, religious beliefs, class memberships, or contractual relationships." [David HOLLENBACH, S.J., "Global Human Rights: An Interpretation of the Contemporary Catholic Understanding," in Alfred HENNELLY and John LANGAN, eds., Human Rights in the Americas (Washington, D.C.: Georgetown University Press, 1982), p. 14.]

⁸ HOLLENBACH, "Global Human Rights...", p. 9.

Plonger on reminds his readers that, confronted with the Declaration of 1789 (revolutionary France's "Rights of Man"), the Catholic hierarchy "roundly declared (it) to be a work of the devil and not of the Gospel."⁹

The Second Vatican Council and the pontificates of John XXIII and Paul VI effectively put an end to this tradition of hostility. Indeed, Church teaching and praxis had so radically changed that in his eulogy for Pope Paul VI, the ecumenical patriarch Dimitrios could reverently speak of the deceased pontiff as the "defender of human dignity, herald of the rights of man and of the ending of all social discrimination, upholder of religious liberties, champion of peace in the world."¹⁰ In the same vein, François Refoulé offers the following assessment of Paul VI's work on behalf of global human rights:

Anyone who takes the trouble to glance through the late pope's output--encyclicals, addresses to the diplomatic corps, letters to secretaries-general of the UNO or to various international agencies, messages to the world, homilies, etc.--cannot but be impressed by the place occupied by the defence of the dignity and rights of man. And the words he spoke at the UNO in 1965 are unforgettable: 'We make our own the voice

⁹ Bernard PLONGERON, "Anathema or Dialogue: Christian Reactions to Declarations of the Rights of Man in the United States and Europe in the Eighteenth Century" (trans. by Lawrence GINN), in Aloïs MÜLLER and Norbert GREINACHER, The Church and the Rights of Man (New York: Seabury Press, 1979), p. 39. [Cf. Concilium, 124 (4/1979).]

¹⁰ Quoted in François REFOULÉ, "Efforts Made on Behalf of Human Rights by the Supreme Authority of the Church" (trans. by John MAXWELL), in MÜLLER and GREINACHER, The Church and the Rights of Man, p. 77.

of the poor, the disinherited, the wretched, those who long for justice, a dignified life, freedom, well-being and progress.' The same goes for the letter he wrote to Kurt Waldheim, Secretary-general of the UNO in 1972: 'The Church feels wounded in her own person whenever a man's rights are disregarded or violated, whoever he is and whatever it is about.'¹¹

Refoulé, moreover, judges it highly significant that Paul VI often referred the attention of the world to the United Nations' 1948 declaration on human rights. Paul wanted to make the "Universal Declaration of the Rights of Man" the "corner-stone of all his work, and that is why he always commended it."¹²

How is one to account for this "qualitative transformation" of the Church's involvement in social and political affairs?¹³ David Hollenbach's thesis seems irrefutable: the Second Vatican Council

launched this new phase through its recognition that the context for Christian social ministry is an inherently pluralistic world. The reality of religious, ideological, and cultural diversity was taken with great seriousness by the Council,

¹¹ REFOULÉ, "Efforts Made on Behalf of Human Rights...", p. 77.

¹² REFOULÉ, "Efforts Made on Behalf of Human Rights...", p. 78. One notes with Refoulé that Pope John XXIII had voiced some reservations about the UN's declaration. In *Pacem in terris*, he sought "to redress the imbalances of the ... (Declaration), forcefully stressing man's social being and, in consequence, the reciprocity of rights and duties." Moreover, *Gaudium et spes*' warning about the 'need to go beyond an individualistic ethic' (#30) was a not-so-subtle critique of the Declaration. Nonetheless, Paul VI was able to hail the Declaration not only "as a step towards the establishment of a juridico-political organization of the world community' but also as a meeting-place of Church and state." [In *ibid.*, p. 79.]

¹³ This characterization is David HOLLENBACH's. See his "The Church's Social Mission in a Pluralistic Society," in Lucien RICHARD, ed., with Daniel T. HARRINGTON and John W. O'MALLEY, *Vatican II, The Unfinished Agenda: A Look to the Future* (New York: Paulist Press, 1987), p. 113.

particularly in the two most important conciliar documents dealing with the social role of the church: the Pastoral Constitution on the Church in the Modern World and the Declaration on Religious Liberty.¹⁴

In the main, following Vatican II's understanding of the Church's role in guarding and guaranteeing human rights, "the central institutional organ of the Catholic Church, the Holy See, has adopted the cause of human rights as the prime focus of its ethical teaching and pastoral strategy in the domain of international justice and peace."¹⁵

In the years since Vatican II, any number of aggrieved minority groups have appealed to the Church in their struggles for justice. Groups as disparate as the United Farm Workers and particular Native American tribes have received solace and support from the Catholic Church in the United States. Since the Church's contemporary self-understanding includes being a champion of human rights, logical consistency might lead one to apply the Church's social teaching to the question of discrimination against gay people. As Archbishop Quinn has repeatedly argued, nothing in the Church's social ethics sanctions hating and vilifying gay men and lesbians; nor does the Church's

¹⁴ HOLLENBACH, "The Church's Social Mission...", p. 113.

¹⁵ HOLLENBACH, "Global Human Rights...", p. 9.

social teaching provide the rationale for opposing gay people's active participation in society at large. As human beings, gay people possess the same rights as everyone else; as American citizens, there is no reason why they should have to endure discriminatory treatment by employers or landlords. Quinn argues that faithfulness to the Church's social teaching calls for protecting the gay and lesbian minority from harassment.

Nevertheless, the C. D. F. recently questioned the legitimacy of using Catholic social teaching to support gay and lesbian rights. We move now to examine this challenge of the C. D. F. and the controversy which followed in its wake. We conclude this chapter by appraising the authoritative nature of the C. D. F.'s intervention.

5.2 The C.D.F.'s 1992 Intervention on Gay Rights

In July, 1992, the C. D. F.'s "Some Considerations Concerning the Catholic Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons" (SCC) made its appearance in the American press.¹⁶ Its public appearance, however, had not been planned by the C. D. F.;

¹⁶ The first version of SCC can be found in the National Catholic Reporter (July 31, 1992), p. 10; the revised version is found in Origins, 22 (August 6, 1992), pp. 173, 175-177.

the text of SCC was made available to the American media on July 15, 1992 by New Ways Ministry (NWM), a Catholic organization involved in gay and lesbian ministry. The pro-nuncio had sent SCC to the American bishops; one or more of the bishops passed it to NWM.¹⁷

On July 23, 1992, the C. D. F. issued a second version of the text. Joaquin Navarro-Valls, a Vatican spokesman, in a statement attached to the revised version of SCC, explained the rationale:

With the idea that the publication of the observations would be something beneficial, a slight revision of the text was undertaken and a second version prepared. In the meantime, various references to and citations from the considerations have appeared in the media. For the sake of an accurate report on the matter, the revised text ... is made public today.¹⁸

The editors of Origins remark that an official at the C. D. F. told them that "both texts were valid, but issued for different purposes: the first for bishops to use however they saw fit, the second for wider publication."¹⁹ Given the unusual existence of two valid texts of the same document in the same language, one might think that a

¹⁷ It seems safe to say that the bishop(s) doing the passing knew that NWM would make the document public and that the public reaction would not reflect positively on the C. D. F.'s position. See Laura Sessions STEPP, "Vatican Supports Bias Against Gays," in Bondings, 14 (1992), pp. 1, 6, 9.

¹⁸ Joaquín NAVARRO-VALLS, "Statement," in Origins, 22 (August 6, 1992), p. 175.

¹⁹ See "Introduction to SCC," in Origins, 22 (August 6, 1992), p. 173.

comparative study would produce deeper insights into the teaching. However, such is not the case here; Navarro-Valls' characterization of the differences as "slight" is no understatement. The editors of Origins explain that the differences are generally insignificant: most amount to "matters of rewording or of dropping or adding words."²⁰

The only significant addition comes at #14. The revised text adds the following paragraph:

In addition, there is a danger that legislation which would make homosexuality a basis for entitlements could actually encourage a person with a homosexual orientation to declare his homosexuality or even to seek a partner in order to exploit the provisions of the law.²¹

In the end, the existence of two texts which are so strikingly similar is mysterious. The bishops' version and the version for the wider public are all but indistinguishable and the changes in the latter hardly seem worth the trouble of creating a second, equally valid document.²²

As we have seen, the question of Catholic support for

²⁰ See Origins, 22 (August 6, 1992), p. 175.

²¹ SCC, revised text, #14, in Origins, 22 (August 6, 1992), p. 176.

²² For the sake of clarity, all references in this work to SCC will be to the revised version as it appears in Origins, 22 (August 6, 1992), pp. 173, 175-176.

legislative proposals which would protect gays and lesbians from discrimination has been a divisive issue for American Catholics and their bishops. We have examined the varied approaches of Cardinals O'Connor and Bernardin and Archbishop Quinn and have seen how these different approaches entail different public stands. It should be noted here that not infrequently the accusation of official Catholic hatred for gay people is one of the results of the stands taken by Catholic hierarchs.²³

The appearance of SCC had to have confirmed the above perception for many gays and lesbians. SCC pulled no punches: it set out to enumerate cases where discrimination against homosexuals is not only just, but morally required. SCC set the stage for this development in Catholic reflection on homosexuality by quoting favorably PCHP (#9): "One tactic used (by those who would subvert Catholic teaching on the morality of homosexuality) is to protest that any and all criticism of or reservations about homosexual people, their activity and lifestyle are

²³ The bad blood between the Archbishop of New York and ACT-UP is notorious. See John A. COLEMAN, S.J., "ACT-UP Versus the Church," in Commonweal, 118 (September 27, 1991), pp. 533-535. On p. 533, Coleman recounts that "(o)n December 10, 1989, ACT-UP (AIDS Coalition to Unleash Power) demonstrators disrupted Sunday Mass at New York's St. Patrick's Cathedral by shouting and lying down in the aisle; drowned out Cardinal John O'Connor's sermon with shouts of 'bigot' and 'murderer;' and desecrated the Eucharist." Because of his stance on gay rights and his opposition to AIDS education which includes any discussion of "safe sex," ACT-UP has targeted the Cardinal as a major opponent. Coleman reports that ACT-UP's video, "Stop the Church," "gives viewers a full dose of hateful and demonstrably untrue statements about the Catholic Church and about Cardinal O'Connor" (p. 533).

simply diverse forms of unjust discrimination."²⁴

Specifically, SCC teaches that sexual orientation "does not constitute a quality comparable to race, ethnic background, etc., in respect to non-discrimination. Unlike these, homosexual orientation is an objective disorder and evokes moral concern."²⁵ Gay people are not to be considered "entitled minorities," i.e., as minorities which deserve social protection and (or) special treatment of any kind. It is not that they fail to live up to a scientific definition of "minority"--sociologists are quite willing to accord gays and lesbians this status--it is rather that the catalyst which constitutes them as a minority is an objective disorder which evokes moral concern. Homosexual people are an "undeserving minority;" the factor which bestows minority status on them is something that cannot be given social approval. Consequently, to try to construe gays and lesbians as a "deserving minority" is taken to be the same as saying that homosexuality does not raise any moral qualms.

This reasoning is programmatic for SCC. The reason that one would discriminate against a gay person in the

²⁴ SCC, #4, p. 175.

²⁵ SCC, #10, p. 176; the reference to "objective disorder" is to PCHP, #3.

first place is precisely in reference to her sexual identity and the genital behaviors that she is likely to undertake. There are, of course, stereotypic assumptions underlying this, but since the orientation is itself a disorder and since any and all genital relating outside marriage is wrong, to grant rights to homosexuals qua homosexual is to enter into collusion with their (objectively) immoral lifestyle. SCC follows PCHP closely: "There is no right to homosexuality, which therefore should not form the basis for judicial claims."²⁶

SCC's argumentation thus far might appear unassailable. A legal right to homosexual behavior does sound outlandish; would most people undertake an effort to have (say) fornication or adultery recognized as legal rights for all Americans? However, the C. D. F.'s manner of proceeding pays scant attention to the history of systematic oppression of gay people. The modern homosexual movement, as we have shown in broad strokes, has been primarily concerned with protecting gay people--not the variety of their sexual activities. As long as a company, for instance, can maintain a policy of terminating the employment of anyone discovered to be homosexual, an

²⁶ SCC, #13, p. 176; PCHP, #10, p. 6, as we have seen, referred to "behavior to which no one has any conceivable right."

injustice is present; even SCC is willing to concede this point.²⁷

At this point, an analogy might be helpful. Fornication is a disvalue in official Catholic sexual ethics. It is in no way to be approved of, let alone to be advocated as morally upright behavior. Fornication is a misuse of the sexual faculty, an intrinsically evil act, and, if certain conditions obtain, it is also seriously sinful. However, fornication is not a criminal offense in the United States. Does this mean that the unmarried American has a "right" to fornication? Not at all. It simply means that she has a right not to be prosecuted and punished for her acts of fornication.

Staying with this same analogy, let us say that the fornicator is a university student who has secured a substantial loan from the government. If the governmental agency were to cancel her loan upon learning that she regularly has sexual intercourse with her boyfriend, what are we to conclude? Would this be unjust discrimination? Or, would it send a much needed message to today's youth that sex outside the marriage bond can in no way be afforded society's approval?

²⁷ In #12 (p. 176), we read: "Homosexual persons, as human persons, have the same rights as all persons, including the right of not being treated in a manner which offends their personal dignity. Among other rights, all persons have the right to work, to housing, etc."

It seems unlikely that one would wish to give fornication per se legal protection, to make it legally protected behavior. However, it doesn't follow that one would necessarily want fornicators to face the systematic loss of their jobs, their housing, or their enjoyment of the numerous social goods that are open to all citizens by virtue of their birthright. And, in the face of a campaign to deny fornicators these rights, it might strike many as reasonable to enact legislation which would make discrimination on the basis of "sex outside of marriage" illegal. One can, in other words, accept unequivocally the objective immorality of fornication while refusing to make it a criminal offense.

One of the most controversial set of guidelines in SCC concerns the obligatory nature of some discriminatory practices against gay people. At paragraph 11 we read:

There are areas in which it is not unjust discrimination to take sexual orientation into account, for example, in the placement of children for adoption or foster care, in employment of teachers or athletic coaches, and in military recruitment.²⁸

In the next paragraph, it is recognized that homosexuals qua human are the possessors of human rights. These

²⁸ SCC, #11, p. 176.

rights, however, are not absolute: "They can be legitimately limited for objectively disordered external conduct."²⁹ Moreover, "this is sometimes not only licit but obligatory."³⁰

The analogy that is used to defend this conclusion concerns society's treatment of the physically and (or) mentally ill. As regards the contagious and mentally ill, "it is accepted that the state may restrict the exercise of rights ... in order to protect the common good."³¹ The common good demands that society be protected from the carriers of contagious diseases and from the potentially dangerous behavior of those who suffer from mental disorders. It is not unjust to deny these groups of people the full exercise of their inherent human rights--a greater good is at stake.

Obviously the argument turns upon the appropriateness of identifying the average gay man and lesbian with the bearers of contagious disease or the potentially dangerous mentally ill. No one would argue that social restrictions ought to be applied to the homosexual who is incidentally

²⁹ SCC, #12, p. 176. SCC is not following the usual definition of a "human right" here. Human rights are generally considered to be "absolute," i.e., independent of any other considerations. See *supra*, p. 213, n. 7.

³⁰ SCC, #12, p. 176.

³¹ SCC, #12, p. 176.

criminally insane. It is reasonable to curtail the activities of the homosexual who happens to have a disease that admits of airborne transmission. But SCC goes much further: it advocates systematic discrimination against gays and lesbians under the rubric of protecting society from danger.

What specifically does SCC see as the danger posed to society by homosexual people? The exclusionary list enunciated at #11 is revelatory: gay men and lesbians are taken to be threats to children. Homosexuals are improper guardians of youth; they must not be allowed to be adoptive or foster parents; they should not enter into the teaching profession nor be employed as athletic coaches.

Unfortunately, SCC does not explain the threat posed to young people who find themselves in the presence of a lesbian or who are placed under the supervisory care of a gay man. However, three more or less common positions readily found among the opponents of gay liberation can be adduced. First, in the above situations children might be led to conclude that there is nothing wrong with being homosexual; second, this conclusion could lead them to homosexual experimentation and the choice of homosexuality as a lifestyle; and finally, children might be seduced and sexually molested by their gay parents, teachers, or

coaches.

And so, NWM's response to SCC, "Human Dignity and the Common Good: A Response of New Ways Ministry to the Vatican Document on Lesbian and Gay Rights" (HDCG), is quick to call attention to the 1983 declaration of the Catholic bishops of the state of Washington:

A number of Catholics are concerned about the role of homosexuals in professions which have care of their children. There are those who think that gays and lesbians inevitably impart a homosexual value system to children or that they molest children. This is a prejudice and must be unmasked as such. There is no evidence that exposure to homosexuals, of itself, harms a child Accordingly, there is no need to make efforts to screen out all homosexually oriented persons from our educational system.³²

One has to assume that the choice of singling out teaching and coaching as improper vocations for gay people was not done arbitrarily. And, in the absence of any explanation, it is reasonable to conclude that SCC accepts the stereotype of the homosexual as corruptor of youth and as sexually attracted to the young. The most basic psychology textbook counsels restraint in this regard: gay men and women are not to be identified with pedophiles; a homosexual orientation does not mean that one is desirous

³² NWM, HDCG (unpublished manuscript available from NWM).

of sexual contact with children.³³

It is equally possible that a variation on the "recruitment theory" is operative in SCC's claim that teaching and coaching ought to be off-limits to homosexuals. The classic parameters of this theory are found in the following quotation by Jerry Falwell: "Please remember, homosexuals do not reproduce! They recruit! And many of them are out after my children, and your children."³⁴

SCC is openly dependent upon PCHP--its whole first section (at least half of the document) consists of direct quotations from the 1986 letter. As we have seen, the new theological element introduced by PCHP was the understanding that the homosexual orientation is itself an objective disorder. This understanding accounts for a subtle dynamic in SCC: to designate the homosexual orientation as a disorder tempts one to look for signs of external verification. In the main, disordered things produce disordered effects. And so, it could be taken as

³³ See KIRK and MADSEN, After the Ball. On p. 43, they write: "the statistics suggest no disproportionate homosexual involvement in pederasty: about 10% of all detected child molesters are gay, just as 10% of the general population is thought to be gay; the other nine tenths of this vile business is monopolized by heterosexual men (and, to a lesser extent, women)."

³⁴ Quoted in KIRK and MADSEN, After the Ball, p. 42.

calling into question the decision to name the homosexual orientation a disorder (a decision made on philosophical grounds) if one could not find any disordered effects which flow from it. In this regard, the C. D. F. shows that it is unwilling to be satisfied with the idea that the only disordered effects are the immoral genital manipulations produced by gays and lesbians. To stop the search for disordered effects here could be construed as stopping with something of a tautology: if one designates homosexuality as a disorder, homosexual acts must be disordered by definition.

And so, SCC hypothesizes about the negative effects which society would experience should gay rights legislation be enshrined in civil statutes.³⁵ Beyond the supposed harm such legislation would have on children, the Church's responsibility to promote family life is cited as reason to oppose legal protection for lesbians and gay men. The connections, however, are never explicitly made. How would (even) conferring equivalent family status on

³⁵ In this regard, it is telling that SCC does not make reference to the experience in Europe. Most of the nations of Western Europe have recognized gay and lesbian rights for a number of years. (Homosexual couples have even been able to "marry" in Denmark since 1989.) The negative effect of their policies in this regard is far from being evident. See Neil MILLER, Out in the World: Gay and Lesbian Life from Buenos Aires to Bangkok (New York: Random House, 1992). Miller's treatment of the Danish experience (pp. 336-356) is particularly illuminating.

homosexual unions harm the traditional family?³⁶ Is the family done a serious disservice if the partners of homosexuals are allowed to share in the medical benefits of their "spouses"?³⁷

SCC simply assumes that homosexually oriented people are in an adversary relationship with marriage and family life. Moreover, the homosexual person is the designated aggressor--she is out to get things to which she has no right, things which have a deleterious effect on the good of husbands and wives and their children. How else can one explain the following guideline: "In assessing proposed legislation, the bishops should keep as their uppermost concern the responsibility to defend and promote family life"?³⁸ SCC concludes with a similar point:

... where a matter of the common good is concerned, it is inappropriate for church authorities to endorse or remain neutral toward adverse legislation even if it grants exceptions to church organizations and institutions. The Church has the responsibility to promote family life and the public morality of the entire civil society on the basis of fundamental moral values, not simply to protect herself from the application of harmful laws.³⁹

³⁶ See SCC, #15, p. 176.

³⁷ See SCC, #15, p. 177.

³⁸ SCC, #9, p. 176; see PCHP, #17, p. 10.

³⁹ SCC, #16, p. 177.

The assumption is clear: homosexuality has a negative impact on marriage and family life. This is, moreover, advanced as a statement of fact--it is not a philosophical stance nor a theological utterance. As such, it is open to scientific verification or nullification. It is difficult to refrain from charging SCC with recklessness on this point--the scientific evidence to support its claims are simply not forthcoming.

In this regard, HDCG remarks:

What is harmful to family life is the rejection of gay and lesbian members by parents and families, the pressures on homosexual people to hide their identity and enter into heterosexual marriages, and the pain and disruption of divorces which result from such unions.

The definition and experience of 'family' continue to evolve. The fear that the heterosexual family will no longer be the dominant mode of socialization if society supports civil rights for homosexual people is groundless. Empirical evidence indicates that cities, towns, and municipalities which have enacted civil rights for homosexual people remain predominantly heterosexual.⁴⁰

5.3 Critiques of SCC

The American presidential election of 1992, by all

⁴⁰ NWM, HDCG.

accounts, was one of the most unusual in many years.⁴¹ A sitting president was defeated and the Democrats gained the White House for the first time since 1976; an independent candidate garnered 19% of the popular vote; and four women were elected to the Senate. The polls gave conflicting reports on how the various candidates were doing--right up to election day.

Of all the ballot measures that voters had to consider, none was more controversial than Oregon's Ballot Measure 9 (M9). If accepted, M9 would have had homosexuality classified as "'abnormal, wrong, unnatural, and perverse' and would (have) required the state government to be assertive in discouraging homosexuality, teaching that it is a moral offense similar to pedophilia, sadism, and masochism."⁴²

M9 was sponsored by the Oregon Citizens Alliance (OCA)--an affiliate of the Reverend Pat Robertson's Christian Coalition. The OCA had to collect over 89,028

⁴¹ Russell BAKER, a columnist for the New York Times and a long-time political reporter, wrote: "For pure gaudy, obscene, hilarious, unnatural, shameful and silly politicking, the present campaign beats them all, hands down." See his "The '92 Follies: A Show with Legs," in The New York Times Magazine (November 1, 1992), pp. 27-29, 58-59, at p. 27.

⁴² Timothy EGAN, "Violent Backdrop for Anti-Gay Measure," in New York Times (November 1, 1992), p. A40. The precise ramifications of accepting M9 were not clear. The editorial staff of the New York Times explained: "Ballot Measure 9 might, for example, be used to justify firing openly gay teachers or police officers, or to deny homosexuals licenses to practice medicine or law. Librarians might be pressured to purge their shelves of works that portray homosexuality in a favorable light." See "The Oregon Trail of Hate," in New York Times (October 26, 1992), p. A26.

valid voter signatures in order to get the measure of the state ballot. This proved to be no problem: the OCA presented 115,000 signatures to qualify for admission on the November 3, 1992 ballot. Scott Lively, a spokesman for the OCA, enunciated the underlying goal of M9: "We want to prevent government from promoting homosexual behavior and from teaching our children that homosexuality is a good choice."⁴³ Many Oregonians found the proposal compelling enough to agree that it ought to be put to a statewide vote.

At face value, M9 could be taken as more than compatible with Catholic moral teaching.⁴⁴ From the vantage point of Catholic sexual ethics, the Church would have little quarrel with labelling homosexuality as 'abnormal, wrong, unnatural, and perverse.' Both PH and PCHP teach as much. While the Church preaches compassion for the homosexual, her sexual orientation and same-sex attraction is disordered: it can not be called 'natural' as it is contrary to God's will for human beings.

At the same time, the Church would instinctively

⁴³ Quoted by Charles E. BEGGS, "Proposed Anti-Gay Law Creates Tumult in Oregon," in Detroit Free Press (July 21, 1992), p. A4.

⁴⁴ Indeed, the OCA had planned to release a statement on the Catholic Church's moral evaluation of homosexuality just before the election. See Katrin SNOW, "Oregon Anti-Gay Measure Escalates Violence," in National Catholic Reporter (October 30, 1992), p. 30.

oppose any governmental initiative which would encourage people to engage in homosexual experimentation or to adopt a homosexual lifestyle. One can imagine the Church's hostility if the state were to order (say) that all public schools must teach children that homosexuality is as good as heterosexuality or that homosexual behavior must not be called immoral.

With a strong tradition of opposition to homosexuality and a recent Vatican statement warning against the social agenda of the homophile movement, one might have expected the Catholic Church in Oregon to join forces with the OCA to deny "special rights" to gay people and to amend the Oregon state constitution to be explicitly anti-gay. Yet the two bishops of the state of Oregon (William Levada, archbishop of Portland; and Thomas Connolly, bishop of Baker City) were the first religious leaders in the state to oppose M9. In a letter subsequently approved by the Oregon Catholic Conference, Archbishop Levada and Bishop Connolly explained to their priests "that they felt the measure could lead to an increase in hate crimes, as well as the denial of basic rights to lesbians and gays."⁴⁵

Bishop Connolly was later to explain:

⁴⁵ "Bishops Urge Ban on OCA Petition in their Dioceses," in Bondings, 14 (1991), p. 5.

I feel this initiative could produce very bad results. It's an overreaction by a right-wing group. It's not fair, or just, or appropriate. While the gospel (sic) says it's not right to act out homosexual behavior, it doesn't say it's wrong to be homosexual. I feel that people are not homosexual by choice We cannot condemn them for who they are, and it's wrong to deny them basic human rights This group (i.e., OCA) wants to obliterate homosexuals from the community. That's simply wrong.⁴⁶

Archbishop Levada was active in his opposition to M9. He argued that the proposed constitutional amendment was "potentially harmful and discriminatory to homosexual citizens."⁴⁷ What is more, Levada asked the parish priests of the archdiocese to prohibit circulation of the petitions for M9 on church property.

Official Catholic opposition to M9 was warmly welcomed by Linda Welch, the executive director of the political action committee "Right to Privacy"--one of the groups which had mounted a counter-offensive against OCA. She was grateful for the bishops' involvement, but couldn't help expressing some astonishment: "I must admit we're a bit surprised the Catholic bishops are ... the first to speak out against the measure."⁴⁸

⁴⁶ Quoted in "Bishops Urge Ban...", p. 5.

⁴⁷ Quoted by Mark KIRCHMEIER and Patricia LEFEVERE, "Archbishop Opposes Anti-Gay Measure," in Bondings, 13 (1991), p. 6.

⁴⁸ Quoted in "Bishops Urge Ban...", p. 5. It seems safe to conclude that Ms. Welch considered the Church's sexual ethic to be problematic for opposition to M9.

Levada and Connolly proved to be prophetic in their linking violence and hate crimes with the proposed constitutional amendment. Timothy Egan reports that the incidence of arson, vandalism, and verbal threats--from both proponents and opponents of M9--went up sharply as the campaign reached election day.⁴⁹ In the most publicized incident, a gay man and a lesbian were killed when a Molotov cocktail hit their Salem apartment.⁵⁰

In a passionate editorial against the Oregon measure, New York Times columnist Anna Quindlen lamented the death of the two gay people:

Trickle-down homophobia is what happens when government and community leaders trash gay people crudely or subtly, purse their lips and talk about 'lifestyle choice' or open their mouths wide to use Scripture to justify their prejudice. The folks who cooked up the anti-gay referendum let loose a message of hatred and, lo and behold, it turned into a skinhead's firebomb.⁵¹

Suzanne Pharr, a spokesperson for "No on 9," voiced a similar concern: "What Ballot Measure 9 has done is open up a window for people who are bigoted to display those

⁴⁹ EGAN, "Violent Backdrop....," p. A40.

⁵⁰ See EGAN, "Violent Backdrop....," p. A40; SNOW, "Oregon Anti-Gay Measure....," p. 9; and Anna QUINDLEN, "Putting Hatred to a Vote," in New York Times (October 28, 1992), p. A21.

⁵¹ QUINDLEN, "Putting Hatred to a Vote," p. A21. She concludes by saying: "For too long we dared not speak its (i.e., homosexuality's) name. Now, too often, people speak it and then lie, making monsters where there are only men and women. This puts an enormous responsibility on the leaders of this country. Trickle-down homophobia cannot exist if they speak out, loud and clear, for the rights of all people. If they speak the name, and pronounce it right. Call it gay. Call it human."

feelings, and that's what happened in the Salem slayings. Measure 9 has lit a match to a fuse that was already there."⁵²

It is significant that at least one Catholic parish was the target of anti-gay violence. In early October, 1992, St. Matthew's Church in Hillsboro was vandalized. Inside the church, intruders painted a swastika with the phrases "Catholics love gays" and "Kill gays and Catholics," and an office in the rectory was set on fire. The Reverend Carl Flach, pastor of St. Matthew's, later revealed that an anonymous caller had warned him not to say anything about the Oregon bishops' opposition to M9. Nonetheless, Flach had published the bishops' statement in the parish bulletin.⁵³

After months of rancorous debate, the citizens of Oregon voted down M9; fifty-six percent of the voters opposed the anti-gay constitutional amendment.⁵⁴ For its part, the OCA vowed to bring the question back to the voters at the next statewide election.⁵⁵

⁵² Quoted in EGAN, "Violent Backdrop...", p. A40.

⁵³ See SNOW, "Oregon Anti-Gay Measure...", p. 9.

⁵⁴ See Jeffrey SCHMALZ, "Gay Areas are Jubilant over Clinton: Oregon Defeats Bid to Curb Gay Rights," in New York Times (November 5, 1992), p. B8.

⁵⁵ See Timothy EGAN, "Oregon G.O.P. Faces Schism Over Agenda of Christian Right," in New York Times (November 14, 1992), p. A6.

The battle over M9 is a valuable indicator of the reception of SCC by the American hierarchy. Although Archbishop Levada's opposition to M9 predated SCC by several months,⁵⁶ he had to take it into consideration when it made its appearance in the final months before election day. Nevertheless, he and Bishop Connolly assured the Catholics of Oregon that opposition to M9 was consistent with papal teaching on homosexuality.⁵⁷ The Oregon Catholic Conference believed that the anti-gay measure would have been harmful and discriminatory to gay and lesbian citizens; it argued that M9 would have contributed "to attitudes of intolerance and hostility directed at homosexuals."⁵⁸ These potentialities were deemed significant enough to work toward blocking a ballot initiative which would have enshrined in the state's constitution that which is substantially the Church's moral evaluation of homosexual practice. Both PH and PCHP are in accord with designating homosexuality as 'abnormal, wrong, unnatural, and perverse';⁵⁹ SCC deemed it obligatory to

⁵⁶ Levada first spoke out against the measure in September, 1991. See KIRCHMEIER and LEFEVERE, "Archbishop...", p. 6.

⁵⁷ See SNOW, "Oregon Anti-Gay Measure...", p. 9.

⁵⁸ Quoted in SNOW, "Oregon Anti-Gay Measure...", p. 9.

⁵⁹ It is unimaginable that the antonyms for this group--'normal, right, natural, and innocent'--would ever be used in the magisterium's discourse on homosexuality.

work against the social acceptance of the "gay lifestyle." In spite of all of this, considerations of social justice were taken to trump the exigencies of Catholic sexual ethics. The C. D. F.'s observations on gay rights legislation were not considered germane to the situation in Oregon.

Ultimately, the bishops of the state refused to accept the ideology of the Christian Right, an ideology that commentators refer to as "dominion theology."⁶⁰ This ideology entails the conviction that all of the nation's legislation and public policy measures must be explicitly in line with (what is taken to be) the orthodox Christian position. Moreover, government positions must be filled by practising Christians. In the main, dominion theology revolves around refusing to accept the fact that the United States of America is a pluralistic society.⁶¹

Archbishop Levada and Bishop Connolly have not been

⁶⁰ See EGAN, "Oregon G.O.P. Faces Schism...", p. A6.

⁶¹ In the 1992 presidential campaign, dominion theology was clearly the motivation behind Patrick Buchanan's bid to wrestle the Republican Party's nomination from George Bush. See, for instance, Michael DUFFY, "How Bush Will Battle Buchanan," in *Time*, 139 (March 2, 1992), pp. 15-16. Buchanan's televised prime-time speech at the Republican National Convention wherein he called for a "cultural war" was at heart an instance of dominion theology. In this speech, Buchanan suggested that "God ... was on the Republicans' side; that Clinton had thrown in with the criminals, deviates, and baby-killers. The speech opened the proceedings on a note of intolerance, a smallness of spirit from which it never really recovered." [Peter GOLDMAN and Tom MATHEWS, "Rocky Road to Houston," in *Newsweek*, 120 (November/December 1992; special edition), pp. 65-69, at p. 69.]

the only members of the American episcopate who have distanced themselves from SCC. Three bishops⁶² were among the more than 1500 signers of a statement opposing the teaching that discrimination against gays and lesbians is sometimes obligatory.⁶³ One of these bishops, Thomas Gumbleton of Detroit, also issued a public statement recording his opposition to SCC. Gumbleton wrote that he could not in good conscience accept SCC as consistent with the Gospel: "It is ... in conflict with Gospel values that condemn discrimination and insist that we recognize the dignity inherent in all persons.... (I)t is impossible to imagine Jesus supporting this call to discrimination."⁶⁴

Archbishop Quinn has offered the most substantive critique of SCC by a member of the American hierarchy.⁶⁵ Putting the question in context, Quinn begins by saying:

I myself, the bishops of California and the national conference of bishops have over a period of many years affirmed the human and civil rights of gay and lesbian persons, including the right to be free of unjust discrimination in housing and employment. It was precisely because those rights were placed in jeopardy

⁶² They were Thomas Gumbleton (auxiliary, Detroit, MI), Walter Sullivan (Richmond, VA), and Charles Buswell (retired, Pueblo, CO).

⁶³ The statement, "A Time to Speak: Catholics for Gay and Lesbian Civil Rights," was sponsored by NWM. It appeared in the National Catholic Reporter (November 13, 1992), pp. 13-16.

⁶⁴ Bishop Gumbleton's statement appeared in Bondings, 14 (1992), p. 3.

⁶⁵ See Archbishop John QUINN, "Civil Rights of Gay and Lesbian Persons," in Origins, 22 (August 20, 1992), p. 204.

that I publicly opposed the Briggs initiative several years ago.⁶⁶

Ultimately, Quinn judged that SCC does not have the kind of binding force that would demand a change in his present opinion or a retraction his earlier stances.⁶⁷ He wrote that this judgment is founded upon "the canons of interpretation approved and used by the Vatican itself. According to those canons, this document is not a mandate but is a document intended as an informal aid to bishops looking for some assistance in dealing with problems of legislation."⁶⁸

Archbishop Quinn does not cite the pertinent "canons" which would establish his position (it is not clear, even, if he means to make reference to canon law). Even if he had done so, however, SCC is not easily classified.⁶⁹ Unhappily, the C. D. F. did not clarify its canonical significance. The problematic issue, of course, is that few American Catholics--bishops included--seem to be able

⁶⁶ QUINN, "Civil Rights...", p. 204.

⁶⁷ For instance, SCC, as we have noted, says that society is obliged to keep homosexuals from employment as teachers. This was exactly the goal of the Briggs initiative which Archbishop Quinn strongly condemned.

⁶⁸ QUINN, "Civil Rights...", p. 204.

⁶⁹ For instance, following Francis G. MORRISSEY's Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 'Code of Canon Law' (Ottawa: St. Paul University, 1992), SCC could arguably be designated an "instruction," a "declaration," or a "circular letter." See pp. 27-34.

to believe that a document from a Roman congregation--especially the Congregation for the Doctrine of the Faith--could have been issued without any binding force on the designated recipients. It is difficult for many to imagine that the prefect of the C. D. F. or one of his assistants would issue any document with a "take it, or leave it" attitude.

Yet, this seems to be the case for SCC. The editors of The Tablet report that the Vatican's spokesman, Joaquin Navarro-Valls said as much. Navarro-Valls explained that SCC was "not intended to be an official and public instruction on the matter from the congregation but a background resource offering discreet assistance"⁷⁰ for bishops perplexed about gay rights legislation. At the same time, SCC was not intended to pass judgment on any responses to such legislation that individual bishops had made in the past.⁷¹

Navarro-Valls' statement makes the canonical classification of SCC a moot point. SCC is understood to (merely) put forward some "observations" of the C. D. F. which may or may not be helpful for bishops who must decide

⁷⁰ Quoted in "Angry Reaction to Vatican Observation on Homosexuals," in The Tablet, 246 (August 1, 1992), p. 967.

⁷¹ See "Angry Reaction...", p. 967.

on a stand to take in regard to protective legislation for lesbians and gay men.

As a result, Archbishop Quinn could announce with impunity:

... my policy and the policy of the archdiocese will continue to be what it has been: to affirm and defend the human and civil rights of gay and lesbian persons; to oppose unjust or arbitrary discrimination in housing or employment; to affirm and defend the church's teaching on marriage and the family; to affirm and defend the church's teaching on the distinction between sexual orientation and behavior, but especially always to remember that 'there are three things that last, faith, hope and charity. And the greatest of these is charity' (1 Cor. 13).⁷²

Learning that SCC has no binding force on the American episcopate--that it represents just one opinion among others--may take away much of the sting initially felt by Catholic advocates of gay and lesbian civil rights. But the deeper issue--the problematic question--is how the C. D. F. was able to countenance direct discrimination against lesbians and gay men in the first place. Upon what theological or philosophical principles is such a proposal thought to rest? At the same time, it is supremely important to recognize that the C. D. F. has not retracted its opinion in SCC; it has not admitted to an erroneous judgment nor to a misapplication of general principles.

⁷² QUINN, "Civil Rights...", p. 204.

The C. D. F. stands by its belief that gays and lesbians ought to be barred from certain vocations and that it is not unjust discrimination to delimit where they may be permitted to live. Moreover, the congregation continues to hold that marriage and family life are seriously threatened by the presence of homosexuals who are "out," and by the concessions that some municipalities have given to same-sex partners. The C. D. F. may have decided not to force its position on the American bishops; nonetheless, the obligatory nature of discrimination against homosexual persons in some instances remains its "official" position.

This, too, amounts to a studied ambiguity. If it is a moral obligation to keep homosexuals away from children in their formative years, then one would expect that the Church would not allow dissent on this issue. If, moreover, the sexual orientation of young people is so fluid that knowing an openly gay person could influence them to adopt a "gay lifestyle," then Catholics might not only expect, but demand that the Church use its political clout to keep the social advancement of gay men and lesbians at bay. If, finally, the presence of homosexual persons in society does have a detrimental effect on the stability of marriage and family life, then OCA is right and an all-out cultural war can be morally justified by way

of the canons on self-defense. If the C. D. F. is convinced of these propositions, then it is irresponsible to allow its teaching in SCC to have only the force of 'one opinion among many.'

On the other hand, if the C. D. F. is not fully convinced of the underpinnings of its pro-discrimination stance, or if it cannot verify them empirically, then it is irresponsible to advocate measures that are prejudicial to gay people. It then becomes impossible to keep the applicability of the charge of homophobia--or "homohatred"⁷³--from the Roman congregation. Many letters to the Editor in The Tablet and the National Catholic Reporter after the appearance of SCC made this point.⁷⁴ If the Vatican cannot produce evidence that self-accepting gay men and lesbians are harmful to the common good, it ought

⁷³ KIRK and MADSEN prefer this term when one is not speaking of a pathological fear of homosexuals, but instances of bias against gay people. They write that homophobia "suggests that our enemies, all who oppose, threaten, and persecute us ... are actually scared of us! If we must be hated, it's comforting to imagine that we have, at the very least, the power to inspire fear. The very term 'phobia' ridicules our enemies (and intentionally so), evoking images many would find comical, such as the old lady standing on the dining-room table, hiking up her skirts, and shrieking--at a mere mouse.... (Is it phobia, or is it hatred? Common sense tells us that many of our enemies come by their queerbashing actions the old-fashioned way: by hating. Fear need have nothing to do with it" (After the Ball, p. xxiv).

⁷⁴ Cf. The Tablet, 246 (August 8, 1992), p. 984; (August 15, 1992), p. 1015; (August 29, 1992), pp. 1071-1072; (September 5, 1992), p. 1101; and the National Catholic Reporter, (July 31, 1992), p. 24; (August 14, 1992), p. 20; (August 28, 1992), pp. 20-21; (September 4, 1992), p. 17. The remarks of a priest from the Chicago archdiocese are representative: "Institutional homophobia is not new to this age or to institutional church leadership. However, current research into homosexuality and its origins, as well as contemporary scriptural exegesis, point to the dignity and self-worth of lesbian and gay people and their unique contributions to society and the church. Many in the church hierarchy are simply unwilling to listen or pay attention to it." [See Edward HARASIM, "Letter to the Editor," in National Catholic Reporter, (August 28, 1992), pp. 20-21.]

to refrain from urging society to deny them certain rights. To persist in such a stance would be not only irrational but unjust.⁷⁵

Richard Posner convincingly argues that down through the ages, Western society has punished homosexual behavior and has been unwelcoming to gay people in view of what is ultimately an unattainable goal: to destroy same-sex attraction and desire. He writes:

If you say that you would like to kill X but of course will not because you are a civilized, law-abiding person, no one is apt to think much worse of you; but if you (being male) say that you'd like to have sex with that nice-looking man but of course will not because you are law-abiding, afraid of AIDS, or whatever, you will stand condemned in the minds of many as a disgusting faggot. Homosexual acts are punished in an effort, however futile, to destroy the inclination.⁷⁶

In this view, SCC would be nothing more than the latest foray in a battle that cannot be won.

Without evidence to support its claims, SCC is patently unjust. It would be advocating none other than the systematic oppression of an already undervalued social minority.

It has to be noted that SCC never makes a direct cause

⁷⁵ This seems to be the opinion of Archbishop Rumbert Weakland of Milwaukee. He wryly confessed that he was "unaware of any other group against which the Church condoned discrimination." [Quoted in "Angry Reaction...", p. 967.]

⁷⁶ POSNER, Sex and Reason, p. 233; emphasis added.

and effect argument. It simply says that gay rights ordinances may prove to be harmful.⁷⁷ For the sake of argument, let us grant the point: it is possible that protective legislation for gay people might one day be shown to have a harmful effect on some aspect of society. Nonetheless, the Catholic moral tradition would consider it an unwarranted leap to undertake a campaign to undermine people's civil rights because of what "may" happen.

This lack of concordance with the Catholic moral tradition is the heart of John Tuohey's argument in "The C. D. F. and Homosexuals: Rewriting the Moral Tradition."⁷⁸ Tuohey, an assistant professor of moral theology at the Catholic University of America, writes:

Even if those moralists who have been criticized by the C. D. F. for suggesting that the presence or absence of proportionate reason is sufficient to judge the appropriateness of an act would never justify the performance of evil simply on the grounds that doing so might prevent some other harm that 'may' result. Even these so-called revisionist theologians insist on hard evidence to support a claim that a lesser evil is being tolerated or performed for a greater good. By calling on 'conscientious' persons (Foreword) to engage in direct discrimination on the grounds that failure to do so 'may' result in harming the goods of family and community life, the C. D. F. has rewritten the rules of moral theology: It is so opposed to

⁷⁷ Cf. "Such initiatives (i.e., gay rights ordinances) ... even where they seem more directed toward support of basic civil rights than condonement (sic) of homosexual activity or a homosexual lifestyle, may in fact have a negative impact on the family and society." [SCC, "Foreword," p. 175.]

⁷⁸ In America, 167 (September 12, 1992), pp. 136-138.

homosexuality it will sometimes make obligatory the performance of a direct evil and require no proportionate reason to justify it.⁷⁹

Tuohey explains that since at least 1950 Catholic morality has been referring to discrimination as a social evil. "Discrimination, as it has been understood in the tradition, is a moral evil when it is directly intended."⁸⁰ This teaching, he reminds his readers, was forcefully affirmed in the 1989 declaration of the Pontifical Justice and Peace Commission, The Church and Racism: Toward a More Fraternal Society.

Tuohey's critique of SCC is ultimately founded upon what all commentators would take as one of the principle pillars of Catholic morality: it is never licit to perform moral evil directly; one is never justified in doing evil--even if one's intentions were the best. Traditionally, to deal with a particular set of conflict situations wherein a contemplated action is known to produce both good and bad effects, the principle of "double effect" is invoked. In such a situation, it is said that one can justifiably posit the action as long as four conditions are met:

- (1) The action is good or indifferent in itself; it is not morally evil.

⁷⁹ TUOHEY, "The C. D. F. and Homosexuals...", pp. 136-137.

⁸⁰ TUOHEY, "The C. D. F. and Homosexuals...", p. 136.

- (2) The intention of the agent is upright, that is, the evil effect is sincerely not intended.
- (3) The evil effect must be equally immediate causally with the good effect; for otherwise it would be a means to the good effect and would be intended.
- (4) There must be a proportionately grave reason for allowing the evil to occur.⁸¹

As Richard McCormick explains: "If these conditions ... (are) fulfilled, the resultant evil is referred to as an 'unintended byproduct' of the action, only indirectly voluntary and justified by the presence of a proportionately grave reason."⁸²

The principle of double effect has had great practical importance in Catholic moral theory. It has been applied in cases involving the taking of human life (self-defense, suicide, abortion, euthanasia, and warfare), wounding the human body (surgical procedures, sterilization), scandal, and cooperation in the wrong-doing of another. Peter Knauer goes so far as to claim that the principle of double effect, since "it responds to the question of whether the causing or permitting of an injury is morally evil," is really at the heart of what morality is all about; it is

⁸¹ Richard A. McCORMICK, S.J., "Ambiguity in Moral Choice," in Richard A. McCORMICK and Paul RAMSEY, eds., Doing Evil to Achieve Good: Moral Choice in Conflict Situations (Chicago: Loyola University Press, 1978), p. 7.

⁸² McCORMICK, "Ambiguity in Moral Choice," p. 7.

"the principle of all morality."⁸³ Is SCC's proposal of denying certain rights to gay people justifiable in light of the principle of double effect?

SCC does not explicitly call attention to the Catholic tradition's use of the double effect principle. However, at #12, it seems to be implied: here SCC stated, as we have seen, that it is "accepted that the state may restrict the exercise of rights, for example, in the case of contagious or mentally ill persons, in order to protect the common good."

Certainly all self-accepting gay people whose sexual partnerships are marked by conscientious decision-making would find the analogy in this passage odious; it is incendiary to identify such persons with the insane or with the bearers of contagious disease. Nevertheless, the principle that one's rights can be legitimately limited for 'objectively disordered external conduct'⁸⁴ is one of the bedrock principles of most every governmental arrangement

⁸³ Peter KNAUER, "The Hermeneutic Function of the Principle of Double Effect," in Charles CURRAN and Richard McCORMICK, eds., Readings in Moral Theology, No. 1: Moral Norms and Catholic Tradition (New York: Paulist Press, 1979), p. 1.

⁸⁴ This phraseology is patently awkward. It seems, moreover, to be tailored to fit the homosexual problem (the use of "objectively disordered"--from the vantage point of Catholicism--most often calls to mind issues in sexual morality). Surely SCC would have to accept that subjectively disordered conduct is sometimes as harmful as the objectively disordered variety: indeed, doing a good deed with vicious intentions is usually thought to be worse than doing a bad deed with the best of intentions. Moreover, the use of "external conduct" appears redundant; its antonym, "internal conduct," would apparently refer to one's thoughts and few moderns would classify a person's mental states as "conduct."

ever devised. The "many" have to be protected against the dangerous "few." The problem is that in free societies the "external conduct" which will result in the loss of some of one's rights are spelled out in codes of law. That all homosexual behaviors ought to be criminated and that their practitioners ought to be punished by having certain rights rescinded is precisely what is in question. How does one go about arguing that gay people ought to be penalized for their 'objectively disordered external conduct' in societies where sodomy has been decriminalized? This question brings us full circle: SCC argues against gay rights ordinances in view of their (unsubstantiated) harmful effects. In light of this, one must grant Professor Tuohey's point: SCC has rewritten the rules of Catholic moral theorizing by 'sometimes making obligatory the performance of a direct evil without requiring a proportionate reason to justify it.'⁸⁵ What is more, in no way can such a programme find support by way of the principle of double effect: it does not fulfil even one of the four requirements as outlined by Richard McCormick.

5.4 Conclusion

⁸⁵ See TUOHEY, "The C. D. F. and Homosexuals...", p. 137.

SCC has not settled the question of the moral advisability of Catholic support for gay and lesbian rights ordinances; indeed, as the Vatican spokesman pointed out, its proposals do not rise above the level of "opinion." Because of this, Archbishop Quinn, along with others in the American hierarchy, has argued that SCC provides no mandate for working against the rights of gay people. Indeed, with Catholic social teaching as one's point of departure, it is all but impossible to see such work as consonant with the fundamental trajectories of Church teaching since the Second Vatican Council.

CODA:

CATHOLIC SEXUAL ETHICS V. CATHOLIC SOCIAL TEACHING

It is evident that SCC does not offer the last word on the propriety of Catholic support for gay and lesbian rights ordinances. Indeed, the impasse as we have described it--whether to broach the question from the vantage point of sexual or social ethics--remains firmly in place. For instance, at the time that Archbishop Quinn reaffirmed his support for social justice for gay people, Archbishop Daniel Pilarczyk voiced his opposition to a proposed gay rights ordinance in Cincinnati.¹ In a letter addressed to the City Council, Pilarczyk wrote that the ordinance would indirectly promote the homosexual lifestyle and that it would "seriously undermine the stability of the family in our society and the moral education and values of our youth."² The drama of Pilarczyk's intervention is heightened when one recognizes that at the time he was serving as president of the National Conference of Catholic

¹ See "Cincinnati Archbishop Opposes Gay Rights Ordinance," in Bondings, 14 (1992), p. 5.

² Quoted in "Cincinnati Archbishop...", p. 5.

Bishops.

The lack of "official" clarity on the issue of gay rights legislation became even more pronounced when, in response to SCC, Cardinal Bernardin wrote in his regular column in Chicago's archdiocesan newspaper: "I affirm the fundamental human and civil rights of persons who are gay or lesbian.... Bigotry towards persons because of race, creed, national origin, gender, or sexual orientation must be rooted out of our society."³ Robert McClory reports on the Cardinal's article:

Although 'affirming the inviolable dignity of a gay or lesbian person and the goodness of their stable, loving, and caring relationships,' the cardinal added: 'I cannot endorse homosexual genital expression. Intimate sexual relations are appropriate only in the context of heterosexual marriage.'⁴

How is the American Catholic to adjudicate between the demands of the Church's sexual morality and the ideal of "liberty and justice for all"? How is one to determine which American prelate's position has a stronger claim on

³ Quoted in Robert McCLORY, "Rome Document on Gays No 'Mandate,' Bernardin Says," in National Catholic Reporter (November 20, 1992), p. 8.

⁴ McCLORY, "Rome Document on Gays....," p. 8. It should be highlighted that it is not clear whether this latest foray into the question of gay rights by the Cardinal amounts to a reversal of his earlier position. Does he still hold, for example, that any legislation which explicitly protects gays and lesbians from discrimination amounts--*ipso facto*--to an unacceptable endorsement of the "homosexual lifestyle"? Or, might the "inviolable dignity" and the "fundamental human and civil rights" of gay people be such that gay rights ordinances are not only tolerable but also morally required? Since Chicago accepted a non-discrimination ordinance on February 17, 1989 [See RUTLEDGE, The Gay Decades, p. 310], it is conceivable that Bernardin no longer considered these questions germane. However, their importance to the Catholic debate on gay and lesbian rights cannot be denied.

one's conscience? Lacking empirical evidence which would demonstrate that non-discrimination legislation adversely affects society's foundational institutions, how can the Church be justified in sanctioning and, in some instances, advocating policies which are prejudicial to gay people? In a word, what ought to be the Church's goals in influencing the body politic in a secular, pluralistic nation such as the United States?

These questions revolve around the relationship between religion and society, or more specifically, between Church and State. Their likes have bemused clerics and public servants for generations. Although Jesus' admonition to "repay to Caesar what belongs to Caesar and to God what belongs to God,"⁵ has been used to support the idea that there are specific and delimited domains for God and Caesar, he did not catalogue the just claims of Caesar on the Christian's conscience nor did he say what is to be taken as belonging specifically to God. Minimally, we in the West--as heirs of the Enlightenment--have come to accept the idea that the State has no business in proselytizing and that, all things being equal, religious

⁵ See Matthew 22: 15-22, at v. 21.

institutions would do well to keep their clergy "in the sanctuary."⁶ The model which often commends itself is that of the United States, where the "separation of Church and State" has become something of a secular article of faith.⁷

In this arrangement, the State allows for the freedom of the religious bodies within its boundaries and does nothing to impede their flourishing. In turn, there is an unspoken understanding that these bodies will encourage good citizenship and vilify sedition.

The State's side of the bargain is relatively clear: it ought to maintain a "hands-off" policy towards the religious groups within its borders. Conversely, the Church's involvement in the life of the State is fraught with many conceptual difficulties. Catholicism and mainline Protestantism, for instance, preach a gospel of social engagement: the object of one's religious life is not to become less involved in the working of the everyday world, but more involved. 'Feed the hungry,' 'clothe the

⁶ The modern Catholic Church has incorporated this understanding in its Code of Canon Law. Canon 285, no. 3 reads: "Clerics are forbidden to assume public offices which entail a participation in the exercise of civil power." [See Code of Canon Law, Latin-English Edition. (Washington, DC: Canon Law Society of America, 1983), p. 101. The Latin text reads: "Officia publica, quae participationem in exercitio civilis potestatis secumferunt, clerici assumere vetantur."]

⁷ This characterization is John Courtney MURRAY's. See We Hold These Truths: Catholic Reflections on the American Proposition [henceforth, WHTT] (New York: Sheed and Ward, 1960).

naked,' 'instruct the ignorant,' and similar injunctions have concrete referents--they are not to be taken in some "spiritual" sense. And, all things being equal, Christians with at least a moderately developed social conscience will denounce governmental policies which would increase the number of 'hungry,' 'naked,' or 'ignorant' citizens. It is impossible to remove the socio-political dimension of the Christian message.

The practical difficulty in all of this arises when one grants that 'things are never equal.' The issues which confront modern democratic societies call for political solutions--not theological ones. In the main, one can hardly imagine finding such solutions without at least a modicum of compromise. At its best, politics is the "art of the possible," the art of creating alliances based on compromise. This dynamic raises further questions concerning the Christian churches' involvement in the political life of modern society: it must be underlined that "compromise" is usually a dirty word for the devout of all religious traditions.

The experience of countless individual Christians demonstrates that there is a permanent and fundamental tension between gospel and culture, between religion and society, between Church and State. To be a Christian is to

be, in certain respects, "counter-cultural." The bewildering question, however, revolves around how radically counter-cultural one is obliged to be.

If we concentrate attention on the Catholic Church in the United States in the last decade or so, it becomes clear that the Church's official policies are, by and large, selectively counter-cultural. The Church's most uncompromising stances have tended to revolve almost exclusively around a constellation of sexual issues.⁸ The U.S. bishops' pastoral letters on war and peace and on the American economy are, by most accounts, less "hard-line," more nuanced examples of Catholic teaching. The fact that the pastoral letter on war and peace did not go so far as to condemn the morality of producing nuclear weapons for the sake of deterrence is a case in point.⁹

To return the discussion to the issue of a Catholic stance on gay rights ordinances, one wonders if a way out of the sexual ethic/social ethic dilemma can be found. Is

⁸ In this regard, see especially Kenneth A. BRIGGS, Holy Siege: The Year that Shook Catholic America (San Francisco: Harper, 1992). The "year" to which Briggs refers ran from August 18, 1986 to September 19, 1987. During this time, the Vatican silenced Fr. Charles Curran, stripped Seattle's Archbishop Raymond Hunthausen of five areas of responsibility (notably, dealing with Seattle's gay and lesbian community), and released PCHP to the world's bishops. See also the in-depth review of Briggs' work by John C. CORT in Commonweal, 119 (November 6, 1992), pp. 37-38.

⁹ See NATIONAL CONFERENCE OF CATHOLIC BISHOPS, The Challenge of Peace: God's Promise and Our Response. A Pastoral Letter on War and Peace (Washington, D.C.: United States Catholic Conference, 1983), pp. 52-56.

there anything in the Catholic tradition which might clarify, for instance, which ethic ought to take precedence on this question? Is there any way to determine which choice may have a greater claim on the Catholic conscience?

In Part Three we turn to the work of John Courtney Murray, S.J. for guidance on this question. Choosing Murray's work for this task will surprise no one. Murray, an American theologian of international repute, spent his professional life dealing with the issues surrounding the relationship between Catholic theology and American civil life. What is more, with Vatican II's acceptance of Dignitatis humanae ("Declaration on Religious Liberty"), Murray became one of the few theologians to have seen his own work become part of the Catholic Tradition.

In the chapters that follow, we argue that choosing justice for gay people rather than demanding that every instance of public policy witness to the immorality of homosexual behavior can be grounded in the thought of John Courtney Murray. Murray's contribution to Catholic theological reflection, then, will be shown to validate the approach to gay and lesbian rights that has been advocated by Archbishop Quinn (and Milton Gonsalves). In the main, Murray's work on the Church-State relationship, on Thomistic political theory, and on religious liberty

provide a strong rationale for insisting that the Church's social teaching--specifically its teaching on human rights and justice--ought to take priority over its sexual ethic as regards the moral advisability of protecting gay and lesbian people from discrimination.

PART THREE
JUSTICE BEFORE SEXUAL ETHICS:
CATHOLIC SUPPORT FOR GAY AND LESBIAN RIGHTS

CHAPTER SIX:

JOHN COURTNEY MURRAY ON THE CHURCH-STATE RELATIONSHIP

John Courtney Murray, S.J. (JCM) is generally regarded as the most important theologian the Catholic Church in the United States has yet to produce.¹ Born in 1904,² he joined the Society of Jesus and embarked upon a theological career. He was professor of theology at Woodstock College (Maryland) for three decades, as well as the founding editor of the prestigious Theological Studies. He was the author of several books and numerous scholarly articles. Above all, JCM is known for his pivotal role in the Second Vatican Council's acceptance of Dignitatis humanae (DH)--the "Declaration on Religious Liberty;" indeed, as we shall see, DH is substantially his work. JCM died in 1967, just two years after the closing session of the Council.

¹ See James BACIK, "John Courtney Murray: Living as a Christian in a Pluralistic Society," in his Contemporary Theologians (Chicago: Thomas More Press, 1989), p. 139. David HOLLENBACH enthusiastically concurs with this judgment: "John Courtney Murray's contributions to Christian life and thought qualify him to be called the most outstanding theologian in the history of American Catholicism." [See his "The Growing End of an Argument," in America, 153 (November 30, 1985), p. 363.]

² It is a curiosity that four of modern Catholicism's greatest thinkers were born in 1904: Karl Rahner, S.J.; Yves Congar, O.P.; Bernard Lonergan, S.J.; and JCM.

6.1 Murray on Religion and Society; Church and State

JCM spent his adult life grappling with the issues surrounding the place of religion in modern, pluralistic societies. Specifically, he was drawn to reflect upon his own experience as a committed Christian living in the archetypical pluralistic society--the United States of America. JCM became convinced that the U.S. Constitution's guarantee of religious freedom and its insistence that the State should recognize no "State Church" are "justifiable" in light of the history of the United States and in light of the religious diversity that has existed from the founding of the Thirteen Colonies.

The desire to justify the individual's religious liberty or, for that matter, the separation of Church and State may strike one as odd; most Americans have come to see these tenets of the United States' civil life as self-evident truths. Not only is the existence of a State Church unimaginable, it is unsavory. Before the Second Vatican Council, however, the generally accepted Catholic position was that the American arrangement on these issues could not be taken as a model; all things being equal, the Catholic Church was taken to have a right--as the one, true Church of Christ--to be officially recognized by secular

society.³

The syllogisms underlying this proposition tended to proceed as follows: one ought to belong to the Church established by Jesus Christ; the Catholic Church alone was established by Jesus Christ; therefore, one ought to belong to the Catholic Church. At the same time, because the State must submit to God--its Author and Guarantor--it ought to grant official standing to the Church established by Christ; the Church established by Christ is the Catholic Church; therefore, the State ought to officially recognize the Catholic Church. Finally, anything which might confuse people about the claims of the Catholic Church should not be tolerated; "religious liberty" and the presence of non-Catholic religious bodies confuse people concerning the claims of the Catholic Church; therefore, religious liberty as a public policy ought not to be tolerated and non-Catholic groups have no rights to exist in the (well-ordered) State.

Depending upon one's ideological commitments, these propositions will elicit a range of responses from heart-felt agreement, to amusement over the quaint thought forms

³ In Longinqua Oceani (1895), Pope Leo XIII had "declared it erroneous to teach that American-style separation of church and state is the ideal situation or that it would be good for church and state to be separated everywhere." [William A. HERR, Catholic Thinkers in the Clear: Giants of Catholic Thought from Augustine to Rahner (Chicago: Thomas More, 1985), p. 234.]

of the Catholic past, to horror over the Catholic triumphalism of days gone by. But when JCM began his theological career, these propositions were firmly entrenched in the Catholic consciousness. In this regard, the opening line of his "The Problem of State Religion"⁴ is revelatory: "Courteous objection was recently raised against my suggestion that the legal establishment of Catholicism as the religion of the state need not be considered a permanent and unalterable exigence of Catholic principles governing Church-State relations."⁵ Any number of Catholic theologians were unwilling to grant that the separation of Church and State was anything more than a lamentable necessity, a "lesser evil."⁶ In other words, in societies where Catholicism was the majority religion, an obligation to "establish" the Church was said to obtain.

The article on tolérance in the influential Dictionnaire de théologie catholique, written in 1946, is an important indicator of the state of the question before Vatican II. In the first place, the very framing of the

⁴ In TS, 12 (1951), pp. 155-173.

⁵ JCM, "The Problem of State Religion," p. 155. The "courteous objection" had been raised by George W. SHEA in his "Catholic Doctrine and 'The Religion of the State,'" in American Ecclesiastical Review, 123 (1950), pp. 161-174.

⁶ The "greater evil" was understood to be the social disharmony which would result in religiously diverse societies if Catholicism were to be made the religion of the state.

question is telling: " ... it amounts to knowing just at what point the Catholic Church, without infidelity to its mission, can, in the exercise of its power of governing (magisterium), tolerate speculative doctrines (dogma) or practices (morals) which are opposed to orthodoxy."⁷ The Catholic Church is the guardian of Christian orthodoxy and orthopraxis; it belongs to the Church, as a sacred mission, to ensure that heresy and heterodoxy do not gain adherents.

Consequently,

... the Church is unable to tolerate that which spreads teachings harmful to the faith of its members. From the earliest days of her existence, the Church has had to profess this intolerance: to the high priests who gave the order to be quiet, Saint Peter responded: 'Whether it is right in the sight of God for us to obey you rather than God, you be the judges. It is impossible for us not to speak about what we have seen and heard.' (Acts 4: 19-20; translation from the New American Bible)⁸

This approach is, beyond a doubt, unproblematic as long as the Church has minority status and is fighting to keep its doctrinal purity in the midst of syncretic tendencies within its own ranks. It is quite another

⁷ A. MICHEL, "Tolerance," in Dictionnaire de theologie catholique, volume XV (Paris: Librairie Letouzey et Ane, 1946), p. 1209. ["... il s'agit de savoir jusqu'a quel point l'Eglise catholique, sans manquer a sa mission, peut, dans l'exercice de son pouvoir de gouvernement (magistere), tolerer des doctrines speculatives (dogme) ou pratiques (morale) opposees, a quelque titre que soit, a l'orthodoxie."]

⁸ MICHEL, "Tolerance," p. 1209. ["... l'Eglise ne saurait tolerer que se propage un enseignement nocif pour la foi des fideles. Des les premiers jours de son existence, il lui a fallu professer cette intolerance: aux princes des pretres qui lui intimaient l'ordre de se taire, saint Pierre repond: 'Jugez vous-memes s'il est juste devant Dieu de vous obeir plutot qu'a Dieu. Pour nous nous ne pouvons pas ne pas parler' (Actes 4: 19-20)."]

matter when the Church can count on the power of the State to enforce its campaign for doctrinal purity and when the objects of such a campaign are religious outsiders. One needs no more than a passing acquaintance with the general parameters of the history of the Inquisition to question the ethics of this type of intolerance.

By the time of the publication of the Dictionnaire de théologie catholique, of course, the Church had long repudiated the use of force in this regard; however, it had not backed down from its theoretical hegemony on the religious question:

While recognizing that from a theoretical point of view the Catholic Church alone has rights and because of this merits special privileges, the civil legislator has the right and the duty--as regards the good order of society and the general welfare--not to impede the free exercise of other religious bodies.⁹

In other words, the Catholic Church claimed that it alone had any right to exist; the other Christian bodies--because schismatic and (or) heretical--could not validly make such a claim. Their existence, in the Catholic mind, was tied to the benevolent tolerance of the Church and to the fact that a campaign of suppression would jeopardize the good order of society.

⁹ MICHEL, "Tolérance," p. 1221. ["Tout en reconnaissant que l'Église catholique a seule théoriquement tous les droits et en lui manifestant, de ce chef, une déférence toute particulière, le législateur civil a le droit et le devoir, pour des motifs suffisants de bon ordre et d'intérêt général, de ne pas empêcher le libre exercice d'autres cultes."]

The conclusion of the article on tolérance is worthy of a full quotation: it sets the stage for a discussion of one of JCM's theses:

Ecclesiastical intolerance might be an unpopular term, but the reality underlying it is in harmony with that which is the highest and most generous in our nature. It speaks of conviction and confidence, where toleration speaks of skepticism and despair; it reveals strength, where toleration reveals only weakness; it inspires a saving zealotry, while toleration inspires an egotistical indifference. The Catholic Church cannot hate anyone, nor can she be indifferent to any human suffering. She is the most intransigent, the most intolerant of Churches, but she is also the most loving. According to the expression of a French archbishop, 'the Church has the intransigence of truth and of love.'¹⁰

JCM's rejoinder to this particularly controversial dichotomy between tolerance and intolerance as it bears on Church-State relations, begins with the following reflection: "It is not the direct function of the Church to create a social order, any more than it is the direct function of the state to save souls. The contribution of each to the work of the other is indirect but indispensable; the Church creates a Christian spirit within the temporal order, and the state aids in creating a

¹⁰ MICHEL, "Tolérance," p. 1222. ["L'intolérance ecclésiastique peut être un mot impopulaire, mais la réalité sympathise avec ce que nous avons en nous de plus élevé et de plus généreux. Elle dit conviction et confiance, là où la tolérance dit scepticisme et désespoir; elle prouve une force, là où la tolérance n'accuse que faiblesse et impuissance; elle inspire un zèle sauveur tandis que la tolérance engage plutôt à une indifférence égoïste. L'Eglise catholique ne peut haïr personne ni passer indifférente à côté d'une seule misère. Elle est la plus intransigente, la plus intolérante des Eglises, mais aussi la plus aimante. Suivant l'expression d'un archevêque français, 'l'Eglise a l'intransigence de la vérité et de la charité.'"]

temporal structure that may be a proper milieu of the Christian spirit."¹¹

In this, a rootedness in, for lack of a better term, "historical consciousness" is absolutely required. While it is true that the overarching principles in the matter of the Church's relation to the state are unchangeable, "the reality to which she must relate herself is a variable, not only in its institutional forms but also in the idea that men make of it."¹² Ultimately, it cannot be denied that the "history of Church-State relations is the history of ... adaptive application. It records many compromises, but no ideal realizations."¹³

An historical study of the question reveals that the "institution of the state-church was an adaptation to a particular historical context."¹⁴ Given the etiology of the state-church, it does not "represent a permanent and unalterable exigence of Catholic principles"¹⁵--other

¹¹ JCH, "The Problem of State Religion," p. 159.

¹² JCH, "The Problem of State Religion," p. 160.

¹³ JCH, "The Problem of State Religion," pp. 160-161.

¹⁴ Viz., "the dissolution of medieval Christendom," the "era of 'confessional absolutism' under the royal governments in the 'Catholic nations' of post-Reformation Europe," and the "monarchic restorations of the nineteenth century." See JCH, "The Problem of State Religion," p. 161.

¹⁵ JCH, "The Problem of State Religion," p. 161.

"institutionalizations of Church-State relationships ... (can be regarded as) aequo iure valid, vital, and necessary adaptations of principle to legitimate political and social developments."¹⁶

By way of conclusion, Murray garners support from St.

Thomas:

What theory asserts, history confirms. In fact, as St. Thomas taught, and many forget, in what concerns that branch of moral science which is the science of law, history makes the first affirmations: what pertains to moral science is known mostly through experience. Here then is the place to make the decisive historical argument.... (T)he legal institution of the state-church and the later constitutional concept of 'the religion of the state' did not come into being as pure deductions from the nature of the Church and the nature of the state; nor do they owe their origin to a situation characterized by the sheer fact that the population, rulers and ruled, were Catholic. They owed both their origin and their justification to a necessary effort on the part of the Church to apply her permanent principles in the new historical situation....¹⁷

This new situation included, among other things, the anti-Church ideology of the French Revolution and "the institution of religious freedom, theoretically predicated on the premises of rationalist Continental Liberalism (with its absolutist concept of 'the sovereignty of the people') and practically converted into an engine of war upon the

¹⁶ JCH, "The Problem of State Religion," p. 162.

¹⁷ JCH, "The Problem of State Religion," p. 178.

freedom of the Church...."¹⁸

6.2 Indebtedness to Thomistic Political Theory

JCM's commitment to Thomism is reflected in no small measure in the overarching schema of his political theory.¹⁹ In his article, "John Courtney Murray, S.J.: A Catholic Perspective," William R. Luckey²⁰ maintains that Murray's thought is substantially in accord with the following summary statement of Aquinas' teaching on politics:

first, that the right of political authority to command derived from social needs inherent in human nature as such, and was not postulated because of corrupt proclivities due to original sin. Law was not restricted to the criminal code; power had the positive function of encouraging virtue as well as the negative function of checking vice.... Secondly, this authority, at least in the abstract, was distinct from and not of itself beholden to the authority of the church.... Third, ... that temporal power was immediately concerned only with temporal affairs although its purpose was to promote social virtue and its commands obliged in conscience.... Fourth ...

¹⁸ JCM, "The Problem of State Religion," p. 178. These particular issues were explored further in his "The Church and Totalitarian Democracy," in TS, 13 (1952), pp. 525-563. Here, Murray suggests that Leo XIII's aversion to the "modern liberties" (freedom of speech, the press, association, and religion) came from an inability to consider whether they "could be projected on other than rationalist and Jacobin premises, and directed towards other than Jacobin purposes" (in *ibid.*, p. 562).

¹⁹ This point is made over and over again in the essays collected by Robert P. HUNT and Kenneth L. GRASSO in their John Courtney Murray and the American Civil Conversation (ACC) (Grand Rapids, MI: William B. Eerdmans, 1992).

²⁰ In HUNT and GRASSO, ACC, pp. 19-43.

government and legislation were more directly functions of art than of ethics.²¹

Luckey believes that two of these points, since they provide an insight into the distinctiveness of Aquinas' and Murray's approach, bear insisting upon. The first is the divinely sanctioned dignity of secular government. Government "receives its authority directly from God, without the mediation of the Church, for purposes that are natural and moral."²² For all intents and purposes, this teaching coincides with John of Paris' contention that the prince "is not minister ecclesiae, but minister Dei. The finality of his power is determined by its origin; it is of the natural moral order."²³ Such a teaching precludes a monistic conception of the Church's competence in human affairs, it endorses a separation between the civil and the ecclesiastical domains.

The second point which Luckey is at pains to highlight is the last: that government and legislation are more directly functions of art than of ethics. Murray, following Aquinas, would insist on the real distinction

²¹ In LUCKEY, "J. C. Murray...", pp. 31-32. This summary statement is borrowed from Thomas GILBY, O.P. It can be found in Gilby's The Political Thought of Thomas Aquinas (Chicago: University of Chicago Press, 1958), pp. xxi-xxiv.

²² LUCKEY, "J. C. Murray...", pp. 32-33.

²³ LUCKEY, "J. C. Murray...", p. 32, citing JCH, "Governmental Repression of Heresy," in Proceedings of the Catholic Theological Society of America (1948), p. 56.

between law and morality; "political decisions ought not to be conceived as deductions from clear natural-law principles but rather as choices 'between alternatives both of which may have good moral reasons in their favor:' political decisions are arrived at by a 'kind of poetic freedom, not by determinism proper to the deductive sciences.'"²⁴

Following Luckey's lead, we will now explore in greater detail these two significant theses.

6.2.1 A Necessary Dualism

Dualism ... is a term very much out of favor in current discussions on many fronts. It is thought to be a virtue of almost any approach to almost anything that it is integrated, harmonious, and 'wholistic' (or 'holistic,' as in holy).... Most views that boast of being 'holistic,' one suspects, have achieved that status by leaving out arguments and evidences that do not fit in the scheme being advanced.²⁵

Fully aware of the negative connotations of the term, Murray would argue in favor of a dualistic conception of the secular and the sacred, and of the authority invested in "the cleric" and "the prince." As Richard John Neuhaus

²⁴ LUCKEY, "J. C. Murray...", p. 33; he is once again quoting GILBY, The Political Thought..., p. xxiv.

²⁵ Richard John NEUHAUS, "Democracy, Desperately Dry," in HUNT and GRASSO, ACC, p. 12.

puts it, dualism was "the unfashionable term that Murray employed to posit his challenge to ever fashionable monisms."²⁶

JCM used the term "monism" to refer to any of the unitary conceptions of the human good. In particular, in his work, it refers to the perduring drive in Western culture to find the principle which can put to rest the competition between the "radically different concepts of how the earthly city is to be ordered."²⁷

In "The Church and Totalitarian Democracy,"²⁸ Murray succinctly described his definition of monism:

(the totalitarian's) cardinal assertion is a thoroughgoing monism, political, social, juridical, religious: there is only one Sovereign, one society, one law, one faith. And the cardinal denial is of the Christian dualism of powers, societies, and laws--spiritual and temporal, divine and human. Upon this denial follows the absorption of the Church in the community, the absorption of the community in the state, the absorption of the state in the party, and the assertion that the party-state is the supreme spiritual and moral, as well as political authority and reality. It has its own absolutely autonomous ideological substance and its own absolutely independent purpose: it is the ultimate bearer of human destiny. Outside of this One Sovereign there is nothing. Or rather, what presumes to stand outside is

²⁶ NEUHAUS, "Democracy...", p. 13.

²⁷ NEUHAUS, "Democracy...", p. 9.

²⁸ In TS, 18 (1952), pp. 525-563.

'the enemy.'²⁹

It would be difficult to find a better description of the twentieth-century Nazi and Stalinist regimes; indeed, in this article, JCM is intent upon discussing the horrors of these particular monistic structurings of society. However, it is obvious that through the ages the Church has also attempted to foist a monistic arrangement upon Western civilization. In We Hold These Truths, Murray remarks that people "might share the fear of Roger Williams, that the state would corrupt the church, or the fear of Thomas Jefferson, that the church would corrupt the state."³⁰ History is replete with examples vindicating both Williams' and Jefferson's fears; history taught Murray the absolute necessity of insisting upon the Gelasian teaching on "the dualism of mankind's two hierarchically ordered forms of social life"³¹--the church and the state. In this, Murray argued that "the monist ambition to establish a coherent or 'integral' Christian social order is dangerously misguided."³²

²⁹ JCM, "The Church and Totalitarian Democracy," p. 531; cited by NEUHAUS, "Democracy...", p. 9.

³⁰ JCM, WHTT, p. 64.

³¹ JCM, WHTT, p. 64.

³² NEUHAUS, "Democracy...", p. 15.

Pope Gelasius I (pope, A.D. 492-496), in his "Letter to Emperor Anastasius,"³³ taught "that before the coming of Christ, rulers assumed the function of divine worship, but after his coming, 'he distinguished between the offices of both (i.e., sacred and secular) powers according to their own proper activities and separate dignities ... so that Christian emperors would need priests for attaining eternal life and priests would avail themselves of imperial regulations in the conduct of temporal affairs.'"³⁴

Gelasius' point was far from an egalitarian conception of the sacred and secular powers; his teaching announced the superiority of the sacred power: it is more weighty than the royal power, it possesses a greater dignity. Nonetheless, it was definitely not the "political Augustinism" that Murray saw in the theories of John of Salisbury and Giles of Rome, theories which blurred "the distinction between the two powers by attributing to the civil power an excessively religious function, making it a disciplinary agent for the restraint of concupiscence and

³³ The "Letter" can be found in Brian TIERNEY, ed., The Crisis of Church and State, 1050-1300 (Englewood Cliffs, NJ: Prentice, 1964), pp. 13-14. It is quoted from this source in LUCKEY, "J. C. Murray...", pp. 27-28.

³⁴ LUCKEY, "J. C. Murray...", p. 28; citing Gelasius' "Letter," p. 14.

an instrument of man's supernatural redemption."³⁵

JCM held that the Gelasian teaching was the "authoritative" teaching of the Church on the matter.³⁶ He was of the opinion that it could have served as the foundation for theologically sound policy regarding issues of "Church and State." The problem was that

it was completely misinterpreted when it was initially delivered. Modern Roman Catholic teaching is formulated on the basis of principle--theory precedes practice. But during the Middle Ages, the process of formulating teaching regarding the proper relationship of both powers more characteristically involved moving in the opposite direction--from practice (specifically papal practice) to theory. In this case ... the meaning of Gelasius's statement was determined on the basis of how the popes (especially the medieval popes) acted on specific occasions.³⁷

In We Hold These Truths, Murray was to claim that the American "separation of Church and State" is compatible with Catholic teaching: he did not argue that the American arrangement could claim normativity for other societies. For JCM, the Catholic tradition calls one to a fundamental recognition that the church is not the state and the state is not the church. In other words, each has a competence of its own and a proper sphere of activity. Ultimately,

³⁵ JCM, "Governmental Repression of Heresy," p. 62; cited by LUCKEY, "J. C. Murray...", p. 29.

³⁶ See LUCKEY, "J. C. Murray...", p. 27.

³⁷ LUCKEY, "J. C. Murray...", p. 29.

secular attempts to dominate the church and ecclesiastical attempts to dominate the state cannot be justified by the "best" of Catholic tradition.

6.2.2 Art v. Deductive Reasoning: Murray on Contraception

In her contribution to John Courtney Murray and the American Civil Conversation, Professor Mary Segers³⁸ of Rutgers University corroborates the importance of highlighting Murray's acceptance of the Thomistic preference to view politics (and hence public policy decisions) as an instance of art rather than as an instance of deductive reasoning from "first principles." In this, she reminds her readers that St. Thomas refused to identify law and morality: "legal" and "moral" were far from synonymous for Aquinas. In this same vein, she writes that Murray,

offered four significant qualifications concerning the use of positive law to enforce standards of public morality. First, the scope of law is limited to the protection and maintenance of relatively minimal standards of public morality. A minimum of public morality is a social necessity; moreover, the force of law is coercive, and people can normally be coerced into the observance of only minimal standards. Second, this minimalist approach to the use of law to

³⁸ See Mary C. SEGERS, "Murray, American Pluralism, and the Abortion Controversy," in HUNT and GRASSO, ACC, pp. 228-248.

enforce moral norms holds with particular force in the case of a free society, in which government is not paternal and the jurisprudential rule obtains: as much freedom as possible; as much restriction and coercion as necessary. Third, the measure of public morality that can and should be enforced by law is necessarily a matter of public judgment, especially in a democratic society. Consensus is crucial: the people whose good is at stake have a right of judgment with regard to the measure of public virtue that is to be enforced and the manner of public evils that are to be repressed. Fourth, Murray emphasizes issues of legal efficacy and enforceability. He stressed that there must be a reasonable correspondence between the moral standards generally recognized by the conscience of the community and the legal statutes concerning public morality. Otherwise laws will be unenforceable and ineffective, and they will be resented as undue restrictions on civil personal freedom.³⁹

The law ought to enforce the minimal standards of public morality; legal efficacy and enforceability preclude anything more. When a given law no longer reflects the moral consensus of the community, it becomes a source of resentment and undermines the bonds that hold people together in the project of communal living. Drawing upon unpublished materials in the John Courtney Murray Archives, Segers shows how Murray applied these principles to the volatile question of reforming the birth control laws in Massachusetts.⁴⁰

³⁹ SEGERS, "Murray, American Pluralism...", pp. 238-239.

⁴⁰ Murray would also eventually comment upon the birth control law in Connecticut. The Connecticut law read: "Any person who uses any drug, medicinal article, or instrument for the purpose of preventing contraception shall be fined no less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned. Any person who assists, abets, counsels, causes, hires, or commands another to commit any offense may be

The Massachusetts birth control law was one of the most restrictive in the country: it "prohibited the manufacture, sale, and distribution of contraceptives and permitted no exceptions to this rule."⁴¹ It dated to the late nineteenth-century and was enacted by the Protestant Brahmins.⁴² By the early 1960s, "there was widespread noncompliance with and nonenforcement of the Massachusetts birth control law."⁴³ There were ever more insistent calls for the repeal of the law.

The Catholic archdiocese of Boston had long been embroiled in the controversy surrounding the question of maintaining the legal ban on contraception. Cardinal William O'Connell managed to prevent reform of the law in the 1940s. His successor, Richard Cushing, began his tenure as archbishop by upholding the archdiocese's opposition to overturning the birth control statute, but by

prosecuted and punished as if he were the principal offender" [Connecticut General Statutes (1958 Revised), title 53, ch. 939, sec. 53-32, and title 54, ch. 959, sec. 54-196; cited by SEGERS, "Murray, American Pluralism...", pp. 233-234]. In WHTT, Murray wrote: "... the Connecticut statute confuses the moral and the legal, in that it transposes without further ado a private sin into a public crime" (p. 157; see SEGERS, in *ibid.*, pp. 233-236).

⁴¹ SEGERS, "Murray, American Pluralism...", p. 236.

⁴² Murray would use the fact that the country's birth control laws were not inspired by either Catholic sexual or social teaching against his co-religionists who argued that the laws should not be reformed. See SEGERS, "Murray, American Pluralism...", p. 235.

⁴³ SEGERS, "Murray, American Pluralism...", p. 237.

the mid-1960s he had begun to have a change of heart.⁴⁴

Cardinal Cushing's experience at the Second Vatican Council was the prime mover in this change of heart. At the Council, he "had come to recognize the importance of tolerance and mutual respect in a pluralist society"⁴⁵ and he was one of the Council Fathers who championed DH. Between the years 1963 and 1966, Cushing "indicated in a variety of public forums (on television, in testimony before congressional and state legislative committees, and in private correspondence) that he did not feel obligated to oppose a change in the law."⁴⁶ And this, he would add, was not because he considered contraception to raise no moral questions, but because "Catholics do not need the support of civil law to be faithful to their religious convictions, and they do not seek to impose by law their

⁴⁴ See SEGERS, "Murray, American Pluralism...", p. 237. In 1948, Cushing's opposition was considered crucial to the failure to reform the law. Francis G. McMANAMIN writes: "An initiative bill, seeking to reverse the state law prohibiting physicians from giving contraceptive advice, was introduced into the (Massachusetts) legislature in the spring of 1948. On April 6, the Catholic Bishops of the state presented a statement to the Joint Committee on Public Health in which they declared the bill to be ethically unsound and socially ill-advised. The opposition was effective, for the House of Representatives defeated the measure 180-84, and the Senate followed suit, 22-15. [See Francis G. McMANAMIN, "American Bishops and the American Electorate," in American Ecclesiastical Review, 151 (1964), p. 224.]

⁴⁵ SEGERS, "Murray, American Pluralism...", p. 237.

⁴⁶ SEGERS, "Murray, American Pluralism...", p. 237.

moral views on other members of society."⁴⁷

In 1963, at the beginning of another attempt to repeal the law, Cushing said that his policy would be "just to explain our position, but not go out campaigning."⁴⁸

Francis McManamin relates the following scenario:

When asked whether he regarded the statute as 'a bad law,' the cardinal replied that this was a particular field in which he was not proficient. 'What the considered opinion of the experts will be in the future concerning the legislation of this kind of information,' he added, 'I do not know.' He acknowledged that he would confer with the best authorities to find out how he would be obligated in the matter.⁴⁹

Cardinal Cushing turned to JCM for advice on this most delicate issue.⁵⁰

In his "Memorandum to Cardinal Richard Cushing,"⁵¹

⁴⁷ Cardinal Richard CUSHING, quoted by C. DIENES, Law, Politics, and Birth Control (Urbana, IL: University of Illinois Press, 1972), pp. 149-150; cited by SEGERS, "Murray, American Pluralism...", p. 237. McMANAMIN, in "American Bishops...", pp. 224, 228-229, discusses Cardinal Cushing's change of heart on the Massachusetts law.

⁴⁸ CUSHING, quoted in McMANAMIN, "American Bishops...", p. 224. (The reference McManamin gives is to the February 23, 1963 edition of the Pilot, Boston's archdiocesan newspaper.)

⁴⁹ McMANAMIN, "American Bishops...", p. 224; citing the February 23, 1963 edition of the Pilot.

⁵⁰ Relying upon Timothy BOUSCAREN and Adam ELLIS [Canon Law: A Text and Commentary (Milwaukee: Bruce, 1957), pp. 172-173, 725], Francis G. McMANAMIN, in his article "Episcopal Authority in the Political Order" [In Continuum, 2 (1965), pp. 632-638] shows that part of the problem for Cushing was strictly canonical. The pre-1983 Code of Canon Law said that the "local ordinary has 'the right and duty to govern the diocese both in temporal and spiritual matters, with legislative, judicial, and coercive power.' In addition to his specific command to govern he also has the obligation to teach the moral law and, consequently, has the right and obligation to ensure the careful instruction and direction of his flock in conformity with the teachings of the Church" (p. 633).

⁵¹ JCM, "Memorandum to Cardinal Richard Cushing," Murray Archives, Languiner Library, Georgetown University, n.d. Quoted in SEGERS, "Murray, American Pluralism...", at pp. 238-241.

Murray presented his considered opinion on the matter of the Massachusetts birth control law. To begin, he rehearsed the Thomistic distinction between "legal" and "moral." Segers offers the following commentary on this first part of the "Memorandum:"

Appealing first to traditional notions of jurisprudence, Murray maintained that it is not the function of civil law to prescribe everything that is morally wrong. As an instrument of social order, the scope of law is limited to the maintenance and protection of public morality. Matters of private morality lie beyond the scope of law and are properly left to personal conscience. Issues of public morality arise, however, 'when an act or practice seriously undermines the foundations of society or gravely damages the moral life of the community, in such a way that legal prohibition becomes necessary in order to safeguard the social order as such. So, for instance, offenses against justice must be made criminal offenses, since justice is the foundation of civil order.⁵²

The central question, then, was whether contraception ought to be viewed as an issue for public or private morality. Murray admitted that, at present, the question was disputed among Catholics. "Nevertheless, he found the case for affirming contraception a matter of private morality to be sufficiently conclusive."⁵³ He would argue that the scales were tipped toward private morality since so much of the discussion surrounding contraception came

⁵² SEGERS, "Murray, American Pluralism...", p. 238; quoting JCH, "Memorandum...", p. 1.

⁵³ SEGERS, "Murray, American Pluralism...", p. 239.

under the rubric of "responsible parenthood:" the decision of a husband and wife to limit the size of their family through artificial means of contraception cannot easily be categorized as a practice which 'seriously undermines the foundations of society or gravely damages the moral life of the community.' Moreover, the coup de grâce had been delivered by mainline Protestantism: "It is difficult to see how the state can forbid, as contrary to public morality, a practice that numerous religious leaders approve as morally right. The stand taken by these religious groups may be lamentable from the Catholic moral point of view. But it is decisive from the point of view of law and jurisprudence, for which the norm 'generally accepted standards' is controlling."⁵⁴

Next, Murray moved to a consideration based on the concept of religious freedom.⁵⁵ Segers recounts his argument in this regard:

Here Murray held that ... religious liberty includes a twofold immunity from coercion. 'First a man may not be coercively constrained to act against his conscience. Second, a man may not be coercively restrained from acting according to his conscience, unless the action involves a civil offense--against the public peace, against public morality, or against

⁵⁴ JCM, "Memorandum...", p. 1.

⁵⁵ In chapter 7, attention will be focused on JCM's work on religious liberty.

the rights of others.⁵⁶

Since the practice of contraception is best understood as falling under the rubric of private morality, and since it is then by definition improper to categorize it as a civil offense, JCM held that the above "religious liberty immunities" ought to obtain. "On this reading, the Massachusetts birth control statutes were contrary to religious freedom. Thus, from the perspective of traditional jurisprudence and religious liberty, the Massachusetts statutes could not pass muster as sound law."⁵⁷

In the end, Cardinal Cushing accepted JCM's reading of the situation. The following statement of the Cardinal is clearly indebted to the approach advocated by Murray: "In the present case, especially in the light of the position taken by other religious groups in our plural society, it does not seem reasonable for one to forbid by civil law a practice that can be considered a matter of private morality."⁵⁸

The point of Segers' article is to apply Murray's

⁵⁶ SEGERS, "Murray, American Pluralism...", p. 239; quoting JCM, "Memorandum...", p. 2.

⁵⁷ SEGERS, "Murray, American Pluralism...", p. 240.

⁵⁸ CUSHING, quoted in DIENES, Law, Politics, and Birth Control, p. 201; cited by SEGERS, "Murray, American Pluralism...", p. 241.

approach to the Massachusetts birth control law to the contemporary debate surrounding the legal status of abortion. She is not blind to the controversial nature of her enterprise; she does not wish to put words in JCM's mouth, but rather desires to draw out the implications for sound abortion policy in the United States.⁵⁹ She is equally aware that Murray left nothing explicit on this topic; nonetheless, she holds that his opera provide much needed guidance on this issue of great social importance. Therefore, Segers asks: "(1) Were Murray with us today, would he favor the use of coercive law to prohibit or severely restrict abortion? and (2) How might he advise American Catholics to approach the question of abortion policy in the United States?"⁶⁰

Highlighting the lack of consensus on the morality of abortion; the fact that "most Episcopalians, Methodists, Presbyterians, Lutherans, Baptists, Reform Jews, and other religious groups regard abortion as morally permissible;"⁶¹ and the inability of many to decide whether abortion is an

⁵⁹ See her comments on p. 231 of "Murray, American Pluralism...".

⁶⁰ SEGERS, "Murray, American Pluralism...", p. 243.

⁶¹ SEGERS, "Murray, American Pluralism...", p. 246.

instance of public or private morality,⁶² Segers asserts that

(w)ere Murray alive today, I think he would stress the Church's positive role in society rather than its political role in shaping a more restrictive abortion policy. Murray would hold that prudence dictates that the Church should not focus primarily on using coercive law to restrict abortion; rather, the Church's role in this controversy should be to exemplify Christian charity by using its resources to assist women who are involuntarily pregnant. If we assume that the Church's goal is to reduce the incidence of abortion without coercing women, then as a practical matter it would be less advantageous to endorse coercive laws and policies, the effectiveness of which is dubious, than to provide the social and economic support that many women need in order to bear and rear their children. It is possible, even probable, that in taking such measures, the Church and indeed individual Catholic Christians would play a more prophetic role and set a more convincing example of genuine respect for life than they would by using political pressure to pass coercive abortion laws.⁶³

Segers' article is well-researched and well-argued; its conclusion is an "educated guess." Even though JCM was "a loyal, faithful Jesuit," it doesn't seem likely to Segers that if he were alive today that he "might be leading the charge of Catholic antiabortion activists seeking to make the nation's laws reflect Catholic moral

⁶² Segers rightly notes that this question turns on the moral status of the fetus. "If the fetus is defined as a human being from conception, then abortion is an other-regarding action that raises questions about justifiable killing." In this view, governmental restriction is required; although "issues of enforceability and legal efficacy would still influence the degree of governmental regulation" (in "Murray, American Pluralism...", p. 243).

⁶³ SEGERS, "Murray, American Pluralism...", p. 247.

opposition to abortion."⁶⁴ She concludes:

Murray knew that American Catholics had to recognize that law seeks to establish and maintain only that minimum of morality necessary for a stable, functioning society. His sophisticated jurisprudence led him to recognize that not every sin need or should be a crime. He stressed legal efficacy and enforceability in approaching the question of legislating morality. Above all, he was respectful of religious liberty and tolerant of religious differences in a free society.⁶⁵

Would JCM have emphasized "political prudence" and "religious tolerance" over the moral evil of direct abortion? Would he have been comfortable with the "I'm personally opposed to abortion, but ..." approach to the question? Finally, would he have counselled a "non-coercive" approach to instances of involving the taking of fetal life? Segers answers each of these questions affirmatively; and, as we mentioned above,⁶⁶ much turns upon the moral status of fetal life. Faced with an instance of direct killing of human life, questions involving prudence and tolerance pale in significance. Laws restricting abortion might very well be less than efficacious and all but unenforceable, but in the end, Segers' belief that Murray would acquiesce in viewing

⁶⁴ SEGERS, "Murray, American Pluralism...", p. 248.

⁶⁵ SEGERS, "Murray, American Pluralism...", p. 248.

⁶⁶ See supra, p. 286, n. 62.

direct abortion as a matter of private morality is less than completely convincing. Moreover, since there is simply no evidence that Murray would dissent from the magisterial teaching which accords "human status" to intra-uterine life, it is impossible to say that he would not hold abortion to be a matter of public morality, since it would then have to be an other-regarding action.

The fact remains that JCM held that the Church need not insist that civil law reflect Catholic opposition to contraception. Even though contraception is considered a grave moral evil--an intrinsically disordered act which implicates its agents in (objectively) serious sin--the best of the Catholic tradition would hold that it need not be the object of crimination.⁶⁷ Since Cardinal Cushing's support of legal reform in Massachusetts and the Supreme Court's ruling on the Connecticut case,⁶⁸ the American Catholic hierarchy has been quiet on the question of the legality of contraception; it has not raised problems with

⁶⁷ John J. LYNCH, S.J., a contemporary of Murray and a colleague at Theological Studies, concurred with Murray's judgment. In reference to the Connecticut ban on birth control, he wrote: "Since it cannot be proven that the private act of contraception, always a serious objective violation of the moral law is also necessarily a threat to the common good, it is difficult to see jurisprudential justification for that portion of Connecticut's law which forbids and sanctions with punishment either the contraceptive act as indulged in by husband and wife or a doctor's transmission of contraceptive instructions upon request from his patient" [John J. LYNCH, "Notes on Moral Theology," in TS, 22 (1961), pp. 235-236].

⁶⁸ The law was declared unconstitutional. See Griswold v. Connecticut, 381 U.S. 479 (1965).

the legal use of contraceptives by adults. And, we should add, this silence cannot be taken as an indication that the American hierarchy has changed its mind on the moral valence of birth control. Moreover, it seems that the majority of American Catholics know that even though contraception is "legal," the official teaching of the Church is that it is "immoral."

John J. Lynch, S.J., writing in Theological Studies' "Notes on Moral Theology" during the height of the controversy in Massachusetts (and Connecticut), offered the following reflection:

A year ago in these Notes the fear was expressed that scandal through misunderstanding might be occasioned by communication to the general laity of (the) ... distinction between the demands of the natural law as regards contraception and the possible inexpediency of positive civil legislation as added sanction. Subsequent events suggest that perhaps this fear was unfounded.... In several publications intended principally for lay people, the substance of this doctrine has since been proposed in terms which seem to preclude all reasonable misinterpretation. (Even Planned Parenthood Federation prefaced with this statement its survey of Catholic opinion on the point as culled from the current literature: 'In order to avoid confusion, it should be noted clearly at the outset that all of the writers here affirm their adherence to the traditional Catholic doctrine on medical birth control.') If any untoward reaction has greeted the presentation of this thesis to the public, it has not come to attention here.⁶⁹

⁶⁹ LYNCH, "Notes....," pp. 236-237.

American Catholics did not confuse a change in the civil law--and official Catholic support for said change--with a change in the Church's official evaluation of artificial means of birth control. They were aware that the Church's support for legal reform in the matter of contraception did not entail that contraception would henceforth be considered a moral choice.

6.3 Conclusion

Following St. Thomas, JCM distinguished between the powers appropriate to the Church and those appropriate to the State. At the same time, he maintained that there is a real difference between morality and legality. It was clear to him that it is not up to civil law to criminate all vice; every sin need not also be a crime. Civil law exists to maintain the fundamental structures of society that ensure justice and stability. Murray's approach to this complex of issues is well-exemplified in his "behind the scenes" work on the question of Catholic support for repealing anti-contraception laws.

In the next chapter, we treat JCM's greatest contribution to modern Catholicism--his work on behalf of religious liberty, a work which culminated in Vatican II's

acceptance of DH. In Chapter Eight, we will have occasion to apply all of this to the contemporary question of Catholic teaching on the moral advisability of gay and lesbian rights ordinances.

CHAPTER SEVEN:

JOHN COURTNEY MURRAY ON RELIGIOUS FREEDOM

7.1 Tolerance Revisited

Demonstrating that the "State-Church" was not a theological necessity went hand in hand with JCM's work on the question of the religious freedom of the individual--a question which was no less controversial and no less fraught with conceptual difficulties.

Murray first addressed the issue of the individual's "freedom of religion" in a series of two articles published in 1945.¹ As we have seen, for a number of very practical reasons the Catholic Church had long looked askance at the idea of religious liberty. It seemed to demand the acceptance of religious indifferentism; it was often predicated upon social theories that the Church found unacceptable. By the time Murray began his first article on the question, however, it had become "a political problem of the first magnitude."² Here, the international

¹ See "Freedom of Religion," in TS, 6 (1945), pp. 85-113; and "Freedom of Religion: I. The Ethical Problem," in TS, 6 (1945), pp. 229-286.

² JCM, "Freedom of Religion," p. 87.

community's experience with Nazism played a key role:

Within our own memory, both open and subtle persecutions have been directed against Catholics, Protestants, and Jews by States which have claimed the right to put the human conscience in bondage to themselves and to their pagan theories of race and state and culture. And their policies in the matter of religion have powerfully contributed to the contemporary political tumult and social upheaval.³

When the individual is not allowed freedom of religion, his conscience is held in bondage and consequently, his human dignity is diminished. Whenever a State refuses to acknowledge the religious liberty of its citizenry and undertakes the regulation of religious beliefs and practices, it has gravely over-stepped its bounds. One ought not to be surprised if social discord were to follow.

The Catholic Church had long demanded freedom for itself from the individual nations of Europe. The problematic issue concerned the "rights" of the individual in the religious domain. If, for example, one adheres to the proposition that the Catholic Church is the "one, true Church" and that the other Christian communions are, as a result, taken to be "false religions," one may be led to ask if someone can have a right to belong to one of these

³ JCM, "Freedom of Religion," p. 87.

erroneous expressions of Christianity.⁴ Can one logically maintain that a person has a "right" to hold erroneous beliefs and a "right" to concretize them in religious practices? This amounts to a claim that the human person has a right to do wrong--a proposition which is dangerously close to arguing in favor of anarchy.

And so, the Catholic solution to the problem moved, as we have seen, to a reflection on tolerance. The Church would tolerate the existence of other religious bodies and allow for their freedom--in the name of social order. Wherever repressing "false religions" would be detrimental to the peace, it ought to be left undone. JCM reports on how this position was received in the non-Catholic world:

It is said that we are not interested in freedom, but in maintaining or acquiring political control, in order to get a free field for our 'totalitarian claims,' 'religious monopoly,' 'spiritual imperialism,' 'cultural domination,' 'ecclesiastical arrogance,' etc.... (O)ne of the most powerful contemporary attacks is being launched against the Church, in the attempt (conscious or unconscious) to drive a wedge between her and the modern world, which she is mightily striving to save. In this connection, I suggest that this attack will not be successfully met simply by the strenuous defense of the position that the Catholic Church is the one true Church.... So far as freedom of religion is concerned, what is properly at issue and what troubles a good many Catholic as well as Protestant minds is rather the political implications of our position in the present

⁴ From within this ideological framework, the adherents of non-Christian religions are in an even less tenable position.

world situation.⁵

One of the problems with "tolerance" is that it bespeaks putting up with something that one cannot do much about. Therefore, 'tolerating someone's religious beliefs' can mean that one would prefer that the person pledge allegiance to a different set of beliefs (ideally, one's own) and that, if push comes to shove, one would be willing to insist upon it. In this context, tolerance is not indicative of respect for the dignity of the other's conscience; it is a not-so-subtle put-down. Those who are doing the "tolerating" cannot but appear small-minded and bigoted by those who are on the receiving end of their tolerance.

Murray's strategy in his first article on religious liberty was to move the question out of the domain of ecclesiology--beyond "the hypothesis of a divine revelation whereby God, through Christ, may have determined the existence of a spiritual and juridically perfect society whose rights and freedoms are not simply the projection of the *jusnatural* rights and freedoms of its individual members."⁶ His focus would be on social ethics:

⁵ JCM, "Freedom of Religion," p. 90.

⁶ JCM, "Freedom of Religion," p. 92.

The human person, as the image of God, is natively the equal of the other persons with whom he shares a community life; he has therefore the natural right to participate on terms of equality with others in the full political, economic, and social life of the community. Consequently, the State has a duty to respect this right, and not arbitrarily to limit it. I say, arbitrarily; for there are reasonable causes which justify its limitation, as when the State limits the right of suffrage to the literate, or inhibits the contractual competence of minors, or deprives criminals of civic rights, etc. Limitations or disabilities are reasonable and not injurious when they are necessary for the common good, and approved as such by the conscience of the community. But religious belief is not per se a reasonable cause for imposing such disabilities. The reason of course, is emphatically not that given by the older liberalistic individualism--the false assertion that a man's religious beliefs bear no relation to his social activities. Rather, the reason is that a man's religion will not per se influence his social action in such wise as to make it at all prejudicial to the common good, and thus justify the State in imposing limitations upon it. I say all this under the qualification, per se, since we are here speaking in terms of principle, and not in terms of the special problems created per accidens by peculiar religious tenets, or by the special exigencies of particular social contexts, which may qualify the concept of the common good.⁷

The question of religious liberty, then, need not call into question the Catholic Church's claim to be the "one, true Church;" nor is it necessarily predicated upon the assertion that 'one religion is as good as another.' Rather, the individual's freedom to follow the dictates of her conscience in matters of religious belief and practice

⁷ JCM, "Freedom of Religion," pp. 92-93.

is founded upon a natural-law argument: the principle of religious liberty flows from a reflection upon the nature of human life in society.⁸

In his next article on the subject, Murray offered a further critique of the "traditional" Catholic position on religious freedom, a position that had come to be capsulized by two complementary formulae: "dogmatic intolerance" and "personal tolerance." From the outset, JCM was completely forthcoming with his dissatisfaction with this terminology: "For my own part, I feel that neither of these formulas is happy, as a formula; in fact, I should like to see both of them disappear from circulation as rapidly as possible."⁹

In this regard, the connotations raised by the terminology account for Murray's discomfort. The formula "dogmatic intolerance"

is particularly objectionable.... We are normally desirous of showing that our position with regard to religious liberty, although complex, is quite reasonable. It would seem, therefore, advisable not

⁸ In this regard, JCM is quick to specify that "if one chooses to stay simply on the plan of natural law, one has to admit that a protest in a particular case against disabilities, made in the name of man as the image of God and in the name of the religious conscience as such, will always depend for its validity upon proof that the action of the State in the particular case has been arbitrary. In other words, an essential part of a case against such disabilities, as violations of individual rights, is proof that they are not demanded by the common good, and therefore are unreasonably imposed by the State. And, from the standpoint of natural law, the ultimate judge of the cogency of the proof would be the enlightened collective conscience of the community" ("Freedom of Religion," pp. 93-94).

⁹ JCM, "The Ethical Problem," p. 230.

to state it in a formula that from the outset prejudices the case against its reasonableness. As a matter of sheer fact, the word 'intolerance' is synonymous in the popular mind with all that is unreasonable, and positively hateful. In customary usage, it does not designate a considered and serene intellectual and emotional attitude, formed in the light of the full truth and impregnated with profound charity; on the contrary, it stands for the entirely detestable tone and temper of mind that is narrow, one-sided, impatient of argument, obstinate, prejudiced, aggressive, arrogant, and persecuting.¹⁰

Moreover, "the addition of the adjective 'dogmatic' effectually locks all the doors to understanding that were already slammed shut by the word 'intolerance;' in customary usage, it means 'opinionated; asserting a matter of opinion as if it were fact' (Webster)."¹¹

Compared with "dogmatic intolerance," the formula "personal tolerance"

is hardly more acceptable.... It seems to be a particularly horrid way of describing the Christian virtues of justice and charity, which are the sole norms that govern relations between persons as persons. Perhaps there is no need to say more about it. It just doesn't say what it is supposed to say; and that is rather a good test for a bad formula.¹²

Murray claimed that no double formula can capture the

¹⁰ JCM, "The Ethical Problem," p. 231.

¹¹ JCM, "The Ethical Problem," p. 231. Murray will go on to show that the effort to "purify the word 'intolerance' of its invidious connotations" (p. 231) is a waste of time. To maintain that 'truth is intolerant' is an inexact metaphor; to say that 'everybody is intolerant on certain subjects' merely answers one charge with another charge; and to claim that 'we are not intolerant in the way that it is really intolerant to be intolerant' involves a subtlety that is lost on many (see p. 231).

¹² JCM, "The Ethical Problem," p. 232.

radical tension that ought to inform a Catholic position on religious liberty.¹³ For, on the one hand, the Catholic is challenged to "love God and His Truth with a loyalty that forbids compromise of the truth, even at the promptings of what might seem to be a love of man; were it otherwise, our love both of God and man would be a caritas ficta."¹⁴ But, on the other hand, the Catholic is called to "love man and his conscience with a loyalty that forbids injury to conscience, even at the promptings of what might seem to be a love of truth; were it otherwise, our love both of God and man would again be a caritas ficta."¹⁵

With the tension stated in these terms, the double formula "dogmatic intolerance" and "personal tolerance" is shown to be woefully inadequate:

At its worst, it suggests ... that we begin with arrogant assertion and end with persecution, being withheld from the latter only by a lack of sufficient political power. Even in the minds of the more intelligent, the implications may very well be that we begin with an appeal to the authority of the Church, and end, if we can, by an appeal to the authority of

¹³ He is willing to grant, however, that St. Francis de Sales probably came closest with his "la vérité charitable" and "la charité véritable." See "The Ethical Problem," p. 232.

¹⁴ JCM, "The Ethical Problem," p. 232.

¹⁵ JCM, "The Ethical Problem," p. 232.

the State to uphold the authority of the Church.¹⁶

JCM recognized that the tolerance/intolerance heuristic as regards religious liberty was, for all intents and purposes, a legacy of Pope Pius IX (pope, 1846-1878). Pius IX reigned during the solidification of the revolutionary era in Europe; given the anti-Catholic polemic rampant at the time, he anathematized the idea that the Roman pontiff ought to accommodate himself to the spirit of the modern age.¹⁷ Pius' profound suspicion of the so-called "modern liberties" would color much of official Catholic teaching up until the Second Vatican Council.¹⁸

It comes as no surprise that JCM cautions against taking Pius IX's teaching out of its historical context:

¹⁶ JCM, "The Ethical Problem," p. 233. This quotation helps one to understand more profoundly the difficulties that John F. Kennedy's Catholicism brought to the 1960 U.S. presidential campaign. In this regard, it is telling that the Reverend Billy Graham and the Reverend Dr. Norman Vincent Peale, two moderate American evangelists with a wide national following, met with 25 other leaders of American Protestantism to discuss how they might block the election of Kennedy. See Peter STEINFELS' review of Carol V. GEORGE's biography of Peale--God's Salesman (New York: Oxford University Press, 1992)--in New York Times (October 31, 1992), p. A10.

¹⁷ Pius IX's Syllabus of Errors condemned the following proposition: "Romanus Pontifex potest ac debet cum progressu, cum liberalismo et cum recenti civilitate sese reconciliare et componere" [LXXX; in Lettres apostoliques de Pie IX, Gregoire XVI, Pie VII. Texte latin avec la traduction française en regard. (Paris: R. Roger et F. Chernoviz, n.d.), pp. 19-35, at p. 35].

¹⁸ The formula "error has no rights," for instance, while not being directly attributable to Pius IX, is certainly a reflection on his approach to the question of religious liberty. See, for example, #XV of the Syllabus which condemns the following assertion: "Liberum cuique homini est eam amplecti ac profiteri religionem, quam rationis lumine quis ductus veram putaverit" (See Lettres apostoliques de Pie IX..., p. 21).

it cannot be understood apart from a number of unfortunate historical events and the reactions of concrete personalities to those events. However, one is not quite prepared for the way Murray goes beyond this truism: he argues that a good part of the problem was that Pius was simply not a great philosopher. He writes: "If he had been, or if he had been surrounded by great philosophers, or, in a word, if the neo-Scholastic revival had taken place a century earlier, the whole polemic of the Church during the revolutionary era might well have had a different character, and perhaps a different outcome."¹⁹ What was at stake were "a series of points in moral and political philosophy--what is liberty, what is conscience, what is the State, what are the 'freedoms' of conscience and of the State."²⁰ Religious liberty is not per se a theological question; in particular, it ought not to be seen as resting upon "the dogmatic assertion of a theology of ... (the Church's) authority, but on a philosophical explanation of the human conscience and of the State."²¹

Even so, "the whole problem cannot be solved simply in

¹⁹ JCM, "The Ethical Problem," p. 233.

²⁰ JCM, "The Ethical Problem," p. 233.

²¹ JCM, "The Ethical Problem," p. 234.

terms of philosophy."²² This is due to the fact that in

the present order of the Incarnation, philosophy is not the supreme wisdom, nor is reason man's most decisive guiding light. Faith is the fuller light, and the principles of theology complete, without destroying, those of philosophy. Consequently, the problem of religious liberty must move on from its initial philosophical position and be given a theological formulation. However, when this happens, the philosophy of conscience and the State is gathered up and carried along to the new ground; and it is made pivotal even in the theological solution to the problem. Finally, since freedom of religion is a problem that intimately concerns the social life of man, as that life is lived in a particular set of conditions, the problem must receive its final formulation in terms of the varied and contingent realities of an individual social context. Here, too, a philosophy of conscience and of the State is still integral to its solution.²³

7.2 The Rights of Conscience

Murray's proposal begins by recognizing as absolutely foundational "the freedom of the human person to reach God, and eternal beatitude in God, along the way in which God wills to be reached."²⁴ At rock bottom, this is the ethical challenge that faces every human person and from which no one can claim an exemption. With a little

²² JCM, "The Ethical Problem," p. 234.

²³ JCM, "The Ethical Problem," p. 234.

²⁴ JCM, "The Ethical Problem," p. 236.

reflection, it becomes clear that the only way to ensure the dignity of this sacred quest is to insist upon the freedom of the individual conscience--"the proximate subjective norm of human action."²⁵

... the nature and function of conscience are rather admirably summed up in the traditional metaphor: 'Conscience is the voice of God.' This statement immediately cuts between two extreme, and false, positions. First, it asserts that conscience is the voice of God; it not God Himself. Hence it is not the final arbiter of truth and falsity, right and wrong. Man is indeed judged in the light of his conscience; but it is God who judges conscience. Only God is law in its source; conscience is but law in its application. On the other hand, conscience is the voice of God; it is not merely a human voice. Hence its commands come to us vested with a divine authority, that may not be disregarded under penalty of sin. Conscience is a sacred and sovereign monitor; for in its utterances we hear God Himself speaking.²⁶

From this reflection on the dignity of the human conscience ultimately flows JCM's proposal for compromise. As an American and cognizant of the mutual animosities between the Catholics and Protestants of his time, he explains:

²⁵ JCM, "The Ethical Problem," p. 254.

²⁶ JCM, "The Ethical Problem," p. 255. On pp. 257-262, Murray deals with the problem of the "erroneous conscience." His discussion is openly indebted to St. Thomas' teaching (Summa theologiae, 1a-2ae, Q. 19, a. 5, ad. 2): "When reason erroneously proposes anything as the precept of God, then to despise the dictate of reason is the same as despising the precept of God" (p. 259). However, it is important to note that JCM takes it as legitimate for the State to "forbid a man to marry more than one wife at a time, and to steal for the sake of almsgiving; and it can prosecute him as a criminal, if he disobeys. By so doing, the State violates no right of conscience, because there is no right there to violate; the erroneous conscience has no juridical status, when it issues in acts repugnant to the natural law or to the common good or to the legitimate rights of others" (p. 261).

As far as I can see, the only solution ... must be along the following lines. Our subsistent theological disagreements will cease to generate suspicion and separatism on the level of social life, when both sides have the assurance that their opposing theologies of the Church are projected against the background of an ethic of conscience and a philosophy of political life that are based on reason, that are therefore mutually acceptable, and that are not destroyed by the disagreements in ecclesiology. This ethic of conscience and this political philosophy will stand guarantee that our respective theologies can under no circumstances have such implications in the temporal order as would be injurious to the integrity of conscience, be it Catholic or Protestant.²⁷

Rather than allowing herself to be thought an enemy of conscience, the Church ought to see her mission in the world as none other than "the protection, support, and perfecting of man to reach his eternal destiny."²⁸ This idea, in light of a document like Gaudium et spes, now seems elemental;²⁹ that the Church has a mandate to protect human dignity and to call for an end to abuses of human rights is hardly controversial. But before the Second Vatican Council, Murray's ideas were hotly contested--

²⁷ JCH, "The Ethical Problem," pp. 240-241.

²⁸ JCH, "The Ethical Problem," p. 237.

²⁹ Cf. Gaudium et spes, #21 [in Austin FLANNERY, O.P., ed., Vatican Council II: The Conciliar and Post Conciliar Documents (Collegeville, MN: Liturgical Press, 1980), pp. 920-922]. In this section, the Church confronts the question of what its attitude toward atheism ought to be. It is nothing short of a revolution in official Catholic teaching for the Council to proclaim: "Although the Church altogether rejects atheism, she nevertheless sincerely proclaims that all men, those who believe as well as those who do not, should help to establish right order in this world where all live together. This certainly cannot be done without a dialogue that is sincere and prudent. The Church therefore deplores the discrimination between believers and unbelievers which some civil authorities unjustly practice in defiance of the fundamental rights of the human person" (p. 922). For centuries, of course, the Church had acted as if "right order" demanded brutal campaigns to crush not only heresies, but also heretics themselves.

before long he was to join an expanding list of Catholic theologians who had been "silenced" by the Roman authorities.³⁰

7.3 "Dignitatis Humanae"

The curial officials and theologians who opposed JCM's work on religious freedom were operating out of the theological perspective known as "integrism."³¹ The integrist position held that "the state is bound to promote Catholic belief, and wherever possible to establish Catholicism as the religion of the state."³² The integrists argued that Murray's ideas on religious liberty--more than simply being poor theology--would have the deleterious effect of strengthening "the currents of secularism and indifference running through modern Western culture."³³ They held that "believing what is true is a human good that all are morally obligated to seek, ... that this good is social in nature (and) that government

³⁰ Donald PELOTTE offers an excellent overview of Murray's difficulties with the Holy Office. See his John Courtney Murray: Theologian in Conflict (New York: Paulist Press, 1976).

³¹ See HOLLENBACH, "The Growing End...", p. 364.

³² HOLLENBACH, "The Growing End...", p. 364.

³³ HOLLENBACH, "The Growing End...", p. 364.

has charge of enforcing this obligation."³⁴

Murray accepted all but the last bit: he held that good government is limited government. Government ought to serve the many communities and forms of association that exist within society; its power pertains to "protecting the basic prerequisites of communal life within society, prerequisites that Murray described as 'necessary for the sheer coexistence of citizens within conditions of elemental social order.'"³⁵

David Hollenbach offers the following explanation:

There are four such prerequisites, which together define what is meant by public order: justice (which secures for people what is due them, that is, their fundamental human rights); public peace (which will only be genuine peace when it is built on justice); public morality (the minimum standards of public behavior on which consensus exists in society); and finally, public prosperity (which makes possible the material welfare of the people). Only when one or more of these fundamental prerequisites of social existence is violated should government intervene. Otherwise, freedom is to prevail.³⁶

JCM's approach to religious liberty was vindicated at the Second Vatican Council when the Council Fathers

³⁴ HOLLENBACH, "The Growing End....," p. 364.

³⁵ HOLLENBACH, "The Growing End....," p. 364.

³⁶ HOLLENBACH, "The Growing End....," p. 364.

accepted DH.³⁷ Pietro Pavan summarizes the main doctrinal points in this declaration in the following fashion:

1. Every man has a right to religious freedom because he is a person.
2. The object or content of this right is freedom from coercion on the part of individuals or of social groups or any human power.
3. This freedom from coercion has a double meaning: 'in matters religious no one is to be forced to act in a manner contrary to his own beliefs; within due limits no one is 'to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others.'
4. This right has its foundation in the dignity of the human person, such as it is known in the light of revelation and by reason.
5. It is a right of the person which is to be recognized as a civil right in the constitutional law of the political society.³⁸

DH announced the death knell for official Catholic support for the idea that "error has no rights." Rights are not to be understood as having their direct foundation upon spiritual values such as truth and goodness. "(R)elations involving rights are always inter-personal relations, not

³⁷ It would take our study too far afield to document the course of events which would ultimately turn out to vindicate JCH. However, it is safe to say that John XXIII's inspiration to call a council of the Church and New York's Cardinal Francis Spellman's decision to name Murray as his socius to the Second Vatican Council figure prominently in this process.

³⁸ Pietro PAVAN, "Declaration on Religious Freedom," in Herbert VORGRIMLER, ed., Commentary on the Documents of Vatican II, volume IV (New York: Herder and Herder, 1967-1969), pp. 64-65.

relations between persons and spiritual values."³⁹ And, "the basic rights of the person with regard to spiritual values are freedom from external coercion or the secure practice of worship and freedom to accept such values."⁴⁰

With the acceptance of DH, the Council Fathers ratified JCM's thesis that "tolerance" is not the proper framework from which to approach religious liberty. It is not a question of tolerating non-Catholic worship; it is a question of respecting the religious conscience (and consciousness) of non-Catholics. The opening phrase of DH is programmatic for the entire document (hence its Latin title): "Contemporary man is becoming increasingly conscious of the dignity of the human person...."⁴¹

Part and parcel of this recognition is the conviction that civil society (and a fortiori, the Church) has no business interfering with the individual's choice to worship God in the manner that she deems fitting. And this is not because the good order of society would be jeopardized or because it would entail an unjustifiable level of governmental intrusion. She is to be "left alone"

³⁹ PAVAN, "Declaration....," p. 82.

⁴⁰ PAVAN, "Declaration....," pp. 82-83.

⁴¹ DH (in FLANNERY, Vatican Council II...., pp. 799-812), #1, p. 799.

on the religious question because a fundamental human right is at stake. DH states the matter succinctly:

The Vatican Council declares that the human person has a right to religious freedom. Freedom of this kind means that all men should be immune from coercion on the part of individuals, social groups and every human power, so that, within due limits, nobody is forced to act against his convictions nor is anyone to be restrained from acting in accordance with his convictions in religious matters in private or in public, alone or in association with others. The Council further declares that the right to religious freedom is based on the very dignity of the human person as known through the revealed word of God and by reason itself. This right of the human person to religious freedom must be given such recognition in the constitutional order of society as will make it a civil right.⁴²

Religious liberty is accepted by modern Catholicism as a fundamental human right. It is so basic as to demand explicit incorporation into the 'constitutional order of society:' it should be recognized as a civil right. DH announces that the individual's freedom in the religious realm is predicated only upon his dignity as one created in the image and likeness of God.

Since the appearance of Pope John XXIII's encyclical Pacem in terris (PT) in 1961, the social doctrine of the Church had been more and more grounded upon a reflection

⁴² DH, #2, p. 800.

upon human dignity.⁴³ In particular, the Church's teaching on human rights had been intimately linked to the inviolable dignity that inheres in each person. John XXIII expressed it this way:

Any human society, if it is to be well-ordered and productive, must lay down as a foundation this principle, namely, that every human being is a person; that is, his nature is endowed with intelligence and free will. Indeed, precisely because he is a person he has rights and obligations flowing directly and simultaneously from his very nature. And these rights and obligations are universal and inviolable, so that they cannot in any way be surrendered.⁴⁴

John XXIII held that human reason itself could grasp the exigencies of human dignity; in this regard, faith and divinely revealed truth help one to esteem human dignity all the more, for all "are redeemed by the blood of Jesus Christ, they are by grace the children and friends of God and heirs of eternal glory."⁴⁵ John claimed for every person the rights to "life, to bodily integrity, and to the means which are suitable for the proper development of life; these are primarily food, clothing, shelter, rest,

⁴³ See Robert TRAER, Faith in Human Rights: Support in Religious Traditions for a Global Struggle (Washington, D.C.: Georgetown University Press, 1991), p. 36.

⁴⁴ JOHN XXIII, PT, #9 [in David J. O'BRIEN and Thomas A. SHANNON, Renewing the Earth: Catholic Documents on Peace, Justice, and Liberation (Garden City, NY: Doubleday, 1977), p. 126]. See TRAER, Faith in Human Rights, p. 37.

⁴⁵ JOHN XXIII, PT, #10, p. 126.

medical care, and finally the necessary social services."⁴⁶ Moreover, he taught that the natural law demands that every human being has the right "to respect for his person, to his good reputation; the right to freedom in searching for the truth and in expressing and communicating his opinions...."⁴⁷

Traditionally, Catholic reflection on rights entailed a concomitant plea to recognize the duties that are inseparable from rights. PT, for instance, argued that "the right of every man to life is correlative with the duty to preserve it; his right to a decent standard of living with the duty of living it becomingly; and his right to investigate the truth freely, with the duty of seeking it every more completely and profoundly."⁴⁸ Ultimately, the recognition of one person's right carries with it "a duty in all other persons: the duty, namely, of acknowledging and respecting the right in question. For every fundamental human right draws its indestructible moral force from the natural law, which in granting it

⁴⁶ JOHN XXIII, PT, #11, p. 126.

⁴⁷ JOHN XXIII, PT, #12, p. 127.

⁴⁸ JOHN XXIII, PT, #29, p. 130.

imposes a corresponding obligation."⁴⁹

DH represented a profound development in the Church's understanding of its relationship with civil society; it entailed a paradigm shift as regards the tolerance-intolerance debate. Pavan writes that "as regards religious freedom as a right of the person not to be prevented from practising one's religion whatever it may be, the Church began to recognize this only in modern times...."⁵⁰ In all of this, the framework of PT was validated⁵¹ and given even greater clarity.⁵²

7.4 Conclusion

Murray wrote the commentary and notes on DH for Walter Abbott's edition of the documents of the Second Vatican Council. In this work, he is forceful in maintaining that DH contains more than practical, prudential advice for the Church. DH's content is "properly doctrinal." In

⁴⁹ JOHN XXIII, PT, #30, pp. 130-131.

⁵⁰ PAVAN, "Declaration....," pp. 83-84.

⁵¹ JCM notes that DH is in "direct continuity with two basic doctrinal themes of John XXIII in the encyclical *Pacem in terris*: the dignity of the human person and the consequent necessity of constitutional limits to the powers of government" [See his "Religious Freedom" (a commentary on DH, henceforth RF), in Walter M. ABBOTT, ed., *The Documents of Vatican II* (New York: The Guild Press, 1966), p. 676, n. 2].

⁵² PT, #14, for instance, does not answer the following questions: "What precisely does religious freedom mean? Does it find place among the inalienable rights of man?" (JCM, RF, p. 677, n. 4).

particular, three doctrinal tenets are declared:

the ethical doctrine of religious freedom as a human right (personal and collective); a political doctrine with regards to the functions and limits of government in matters religious, and the theological doctrine of the freedom of the Church as the fundamental principle in what concerns the relations between the Church and the socio-political order.⁵³

While Murray acknowledged that no one would be tempted to call DH "a milestone in human history--moral, political, or intellectual"⁵⁴--since the principle of religious liberty had long been established as a human right in the West, it was nonetheless "a significant event in the history of the Church."⁵⁵

Murray held that the significance of DH lies in the fact that it validated the theological principle of development of doctrine⁵⁶ and that it

opens a new era in the relations between the People of God and the People Temporal. A long-standing ambiguity has finally been cleared up. The Church

⁵³ JCH, RF, pp. 672-673. One notes that this tripartite doctrine was present in Murray's first two articles on religious freedom (1945).

⁵⁴ JCH, RF, p. 673.

⁵⁵ JCH, RF, p. 673. Murray writes in this regard: "The principle of religious freedom has long been recognized in constitutional law, to the point where even Marxist-Leninist political ideology is obliged to pay lip service to it. In all honesty it must be admitted that the Church is late in acknowledging the validity of the principle" (in *ibid.*).

⁵⁶ "The notion of development, not the notion of religious freedom, was the real sticking-point for many of those who opposed the Declaration even to the end. The course of the development between the Syllabus of Errors (1864) and Dignitatis humanae personae (1965) still remains to be explained by theologians. But the Council formally sanctioned the validity of the development itself; and this was a doctrinal event of high importance for theological thought in many areas." [JCH, RF, p. 673.]

does not deal with the secular order in terms of a double standard--freedom for the Church when Catholics are a minority, privilege for the Church and intolerance for others when Catholics are a majority. The Declaration has opened the way toward new confidence in ecumenical relationships, and a new straight-forwardness in relationships between the Church and the world.⁵⁷

The ambiguity that was "cleared up" concerned the status of the integrist position. As noted above, this position rested upon "the abstract juridical maxim that error has no rights and on the correlative abstract political maxim that government is to repress error whenever possible and tolerate it only when necessary, as a concession to circumstances of religious pluralism."⁵⁸ JCM would write that the integrist theory was presented at the Council by a few of the conciliar Fathers. But

(i)t impressed the assembly chiefly by its archaism. It obviously stands in dependence on a sociological situation, not so much of religious unity as of religious illiteracy. It also rests on the concept of government as paternal in character, charged with a duty toward the religious welfare of the 'illiterate masses,' to use the phrase of Leo XIII. It was not considered necessary at the Council to refute the theory; it was sufficient quietly to bid it good-bye. Certain adversaries--as Santayana pointed out--are better treated thus. In any case, the theory was seen to be irreconcilable with the exigencies of the personal and civil consciousness at its contemporary

⁵⁷ JCM, RF, p. 673.

⁵⁸ JCM, "This Matter of Religious Freedom," in America, 112 (January 9, 1965), p. 42.

height.⁵⁹

DH is radically indebted to the diligent study and heroic patience of JCM; the document which Pope Paul VI termed "one of the major texts of the Council"⁶⁰ bears Murray's imprint at every turn. James Bacik notes that Murray was able to facilitate the development of Church doctrine as enunciated by DH

by combining a brilliant historical analysis of the intent of official church teaching ... with an insightful examination of democratic structures in the United States. Through this scholarly effort he was instrumental not only in freeing Catholics from the suspicion of being unpatriotic, but also in bringing the American political experiment with religious liberty into the official consciousness of the whole Catholic Church.⁶¹

⁵⁹ JCM, "This Matter of Religious Freedom," p. 42. The reference to the teaching of Pope Leo XIII is far from glib. JCM's articles on Leo's social doctrine qualify him as a Leonine scholar. See: "Leo XIII on Church and State: The General Structure of the Controversy," in TS, 14 (1953), pp. 1-30; "Leo XIII: Separation of Church and State," in TS, 14 (1953), pp. 145-214; "Leo XIII: Two Concepts of Government," in TS, 14 (1953), pp. 551-567; and "Leo XIII: Government and the Order of Culture," in TS, 15 (1954), pp. 1-33.

⁶⁰ Quoted in JCM, RF, p. 674.

⁶¹ BACIK, "John Courtney Murray...", p. 140.

CHAPTER EIGHT:
A CATHOLIC CASE FOR SUPPORTING
GAY AND LESBIAN RIGHTS ORDINANCES

8.1 Introduction: On Extending the 'Modus Vivendi'

In most U.S. states, sodomy (defined usually as both oral/genital and anal/genital contact) between consenting adults is no longer a criminal offense. In the states that continue to maintain anti-sodomy statutes,¹ it is only rarely that people are arrested and prosecuted on sodomy charges. It is germane to our study to note that the American Catholic hierarchy has been silent on this development in American jurisprudence. One looks in vain for a contemporary American bishop who teaches that private instances of genital contact between consenting adult homosexuals ought to be criminal offenses. For all intents and purposes, the Catholic hierarchy in the U.S. has acquiesced in the decriminalization of homosexuality; its silence on the issue cannot but be taken as tacit support for this development.

¹ It is something of an embarrassment that most outlaw all instances of "sodomy": heterosexual as well as homosexual; and in the case of the former, distinctions tend not to be made between the married and the unmarried.

This is far from shocking. As our study of JCM's work revealed, the Catholic tradition--at least as represented by St. Thomas--has consistently held that the Church is under no obligation to ensure that there be a direct correspondence between what is considered immoral and what is to be considered illegal. The bishops' silence on efforts to overturn anti-sodomy legislation can be interpreted, therefore, as meaning that private, adult, consensual sexual relations between people of the same gender are not of such significance to the common good that society is strictly obligated to punish those who would become so engaged. Indeed, American Catholicism, as represented by the hierarchy, has accepted a basic modus vivendi with the GLM. It amounts to the following statement: 'While we do not approve of your sexual practices, we see no reason why you should be imprisoned and (or) fined because of them.'

This chapter brings us to our fin ultime, viz., the construction of a Catholic case for extending the bishops' modus vivendi with the GLM to include explicit Catholic support for gay and lesbian rights legislation and (or) municipal ordinances. JCM's work on the relationship between Church and State and on religious freedom will have

an important part to play in this undertaking.

8.2 Indebtedness to JCM's Work on Church-State Relations

From all that has been said about the limited nature of human law in the Thomistic synthesis and from what we have seen of Murray's application of this tradition to the question of the legal availability of contraceptives, it seems clear that JCM would have had little trouble with decriminalizing the private sexual acts of gay men and lesbians. While nothing in Murray's theological legacy raises questions about his acceptance of the magisterium's evaluation of the objective immorality of these acts, his belief that civil law exists to protect the minimum requirements for successful social living would have kept him from advocating retribution for the private sex acts of the homosexual minority. JCM held that good government is limited government; no government is competent to tell people how to structure the intimate details of their private sexual lives. The proper aims of government are much less invasive. On the other hand, while the Church is entrusted with a divinely sanctioned moral code, she has no mandate which includes competence for producing civil legislation or public policy.

In his lecture, "Spirituality, Morality, and Our

Political Life,"² Charles Bouchard, O.P. noted that for JCM "morality is an internal reality ... (which) aims at personal perfection; public policy, or law, on the other hand, has the more modest goal of public order. Good laws are those which protect and enhance public order and which provide the context in which we can pursue morality."³ Bouchard reminded his audience that morality and public policy are related, but not identical. "In a sense it is correct to say that you 'can't legislate morality.' Good laws create the context in which people can live together and pursue the moral life, but they cannot enforce morality."⁴

Given the lack of consensus in contemporary American society on the moral valence of homosexual relations between consenting adults, the more or less benign interpretations given to a range of such relations by prominent Christian thinkers, and the all but insurmountable difficulties law enforcement agents face in enforcing anti-sodomy laws, it is unlikely that JCM would have held that "practising homosexuals" ought to face

² Unpublished manuscript; quoted in part in Aquinas News, 11 (1992), p. 1. [This is a publication of the Aquinas Institute of Theology (St. Louis, MO).]

³ BOUCHARD, "Spirituality, Morality...", p. 1.

⁴ BOUCHARD, "Spirituality, Morality...", p. 1.

criminal charges. Logical consistency with his considered judgment on the Massachusetts birth control law would have precluded his taking such a tack.⁵

8.3 Justice as a Univocal Term

In moving the discussion to whether or not gay people ought to be legally protected from discrimination--the heart of the question posed by this work--the following question demands to be posed: Is there a "justice" for heterosexually oriented people that stands over and above the "justice" for homosexually oriented people? Or, is "justice" a univocal term?

It goes without saying that gay people are sometimes harassed, cheated, defamed, and murdered. Sometimes their

⁵ Although JCM never wrote on the question of decriminalizing homosexuality, the English Dominican, Thomas Gilby, himself an expert on the Thomistic synthesis, held that there was nothing in the tradition which would demand that homosexuals ought to face civil punishment for their sexual relating. In his commentary on Thomistic political theory [i.e., Law and Political Theory (volume 28 of the "McGraw-Hill" Summa theologiae, covering 1a 2ae, QQ. 90-97) (New York: McGraw-Hill, 1966)], Gilby remarks: "Whether complete homosexual practices ... should be penalized by human legislation is for the judgment of statesmanship or political prudence" (p. 97, n. "c"). Legislation on this issue cannot be deduced from "first principles;" the objective immorality of homosexual acts is not determinative of any specific public policy.

It is noteworthy that Gilby offered this opinion at a time when British society was faced with the question of decriminalizing homosexuality. Eventually, after several years of debate, the British parliament decriminalized most homosexual acts between men (sex acts between women had never been criminal offenses in Great Britain). Just as Cardinal Cushing's role in overturning the Massachusetts law against contraceptives ought not to be underestimated, so, too, one recognizes the role of Cardinal Griffin in the demise of anti-homosexual legislation in Britain. In 1956, Griffin offered the Church's support to the voices calling for the decriminalization of adult, consensual homosexual relations. [See C. R. A. CUNLIFFE, "Troubled Ministry" (A review article of Building Bridges: Gay and Lesbian Reality and the Catholic Church by Robert NUGENT and Jeannine GRANICK), in The Tablet (August 8, 1992), pp. 986-987.] In testimony before Parliament's Wolfenden Committee, Griffin made it clear that Catholic teaching did not necessarily call for the criminalization of homosexual acts--even though such acts are considered to be objectively immoral.

homosexual orientation is incidental to all of this; at other times knowledge of their sexual identity has a role to play in the fact of victimization. Gays and lesbians suffer injustices every day--accidentally and intentionally.

From within the Christian moral tradition, a person's accidental characteristics (whether innate or acquired) do not alter the necessity of treating him fairly: justice is a univocal term. Moreover, there is no Christian warrant for the belief that a person's homosexual orientation effectively trumps his right to be treated fairly; even if someone wilfully consented to acquiring a homosexual orientation with a view to living a life of homosexual promiscuity, the obligation that justice be done in his regard would not be countermanded.

The gay and lesbian rights ordinances that have been accepted in a number of American municipalities have a very specific aim--to punish discrimination against gay people as regards their employment, their housing, and their social participation. In view of judging the compatibility of such ordinances with Catholic moral teaching, it bears highlighting that the Catéchisme de l'Église catholique⁶--

⁶ (Paris: Mame/Plon, 1992).

the 'Catechism of Vatican II'--notes that

A non-negligible number of men and women experience a deep-rooted homosexual tendency. They do not choose their homosexual condition; for most, it amounts to a burden. Such people ought to be welcomed with respect, compassion, and understanding. One ought to avoid even the semblance of unjust discrimination in their regard. They are called to fulfill the will of God in their lives, and if they are Christians, they are called to unite the sufferings associated with their condition to the sacrifice of the Cross of the Lord.⁷

It is hard to imagine a direct violation of a gay and lesbian rights ordinance as anything but 'unjust discrimination;' it ought to go without saying that if one were barred from (say) union membership because of one's homosexuality that the basic canons of 'respect, compassion, and understanding' would have been violated.

The passage quoted from the Catéchisme is proof-positive that calling for justice for gay people need not be grounded upon dissent from magisterial teaching condemning sexual relating between the unmarried.⁸ Justice precedes sexual ethics: regardless of the private sexual acts to which adults give their consent, they are, as human

⁷ Catéchisme de l'Église catholique, #2358, p. 480. [Un nombre non négligeable d'hommes et de femmes présentent des tendances homosexuelles foncières. Ils ne choisissent pas leur condition homosexuelle; elle constitue pour la plupart d'entre eux une épreuve. Ils doivent être accueillis avec respect, compassion et délicatesse. On évitera à leur égard toute marque de discrimination injuste. Ces personnes sont appelées à réaliser la volonté de Dieu dans leur vie, et si elles sont chrétiennes, à unir au sacrifice de la Croix du Seigneur les difficultés qu'elles peuvent rencontrer du fait de leur condition.]

⁸ The Catéchisme reiterates the magisterial teaching which condemns homosexual activity at #2357, p. 480.

beings, to be treated fairly--with the respect that is their due as children of the one God and Father of all. Thus, Benedict Ashley, O.P., the only contributor to Gramick and Furey's The Vatican and Homosexuality who could say that he "entirely agrees with the substance of PCHP,"⁹ was also able to voice support for the civil rights of gay people.¹⁰

Ashley concluded his article with a list of tasks that ought to be fulfilled by the Church's ministries. The first two are stated in the following terms: "(1) We should be advocates for the protection of the civil rights of homosexuals. (2) We should preach on this subject to inform Christians of the problems of the homosexual and to create respect for their human dignity and compassion for their problems."¹¹ Ashley argues that the Church is charged with speaking the whole truth vis-à-vis the complex reality of homosexuality. The Church cannot be satisfied, then, with simply reiterating moral condemnations against gay sex: part of her task is to promote and defend the human and civil rights of gay people. In so far as this

⁹ ASHLEY, "Compassion and Sexual Orientation," p. 109.

¹⁰ See supra, p. 209, n. 78.

¹¹ ASHLEY, "Compassion and Sexual Orientation," p. 109.

seems controversial or even paradoxical to the average Christian, the Church has failed in her preaching of gospel justice.

We began this section with the question as to whether or not justice is to be taken as a univocal term in the Christian tradition. At this point, after having shown that justice does not mean one thing for gays and another thing for straights, a second question asks to be posed: Ought civil society penalize injustices that are perpetrated upon gay people because of their homosexuality? In other words, ought the awareness that unjust discrimination against gays and lesbians exists in American society be reflected in civil statutes?

It is difficult to envision a negative response to this question. If one grants that gay people can be the victims of injustice, how can one argue that they ought not to have recourse to the legal system? How could one maintain that their victimization must go without redress? One would be hard-pressed to call a society "just" which would knowingly cast a blind eye to the injustices suffered by a segment of its population.

Because of this, one is not unjustified in questioning the sincerity of calls for justice for gays and lesbians which would not allow recourse to the nation's courts.

Such calls amount to empty exhortation: by excluding the means of ensuring compliance, they lack even a modicum of real conviction. The American Civil Rights Movement provides an important case in point. One wonders how successful this movement would have been (granting, of course, that much work remains to be done) if its leaders refused to work for legal change on the federal, state, and local levels. Without the Civil Rights Act, it is difficult to imagine the defeat of segregationist policies throughout the United States.

As we have had occasion to see a number of times, the biggest obstacle that keeps people of good will from accepting gay rights ordinances is the fear that such a change in the legal statutes will have an overall negative effect on marriage and family life. From within contemporary Catholicism, the stance of Cardinal O'Connor and SCC's reading of the situation are a strong case in point. O'Connor fears that family life will suffer if gay people are granted legal protection from discrimination;¹² SCC argues that in certain instances direct discrimination against gay people is not only licit but morally

¹² See supra, pp. 114-124.

required.¹³

What bears repeating in all of this is that there is no scientific discourse which verifies that punishing instances of discrimination against gay people affects the well-being of heterosexual couples and (or) their children. The fears of a number of American churchmen in this regard do not rest upon rational grounds. What is more, there are studies which have had some success in demonstrating that the decriminalization of homosexuality and the adoption of gay and lesbian rights ordinances do not have an appreciable effect on the general population's willingness to enter into marriage, to raise families, and to do both of these without interference; nor do they entail more public solicitation, an increase in sexually transmitted diseases, or other "negative consequences so often detailed in parliamentary debates and arguments of opponents"¹⁴ of the GLM. In light of this research, allowing oneself to be guided by the fear that gay rights legislation will sound

¹³ See supra, pp. 217 ff.

¹⁴ Ken SINCLAIR and Michael ROSS, "Consequences of Decriminalization of Homosexuality: A Study of Two Australian States," in The Journal of Homosexuality, 12 (1985), p. 127. See also Gilbert GEIS, Richard WRIGHT, Thomas GARRETT, Paul WILSON, "Reported Consequences of Decriminalization of Consensual Adult Homosexuality in Seven American States," in The Journal of Homosexuality, 1 (1976), pp. 419-426; and The Journal of Homosexuality, 13 (1986/7) which was devoted to "Interdisciplinary Research on Homosexuality in the Netherlands." David GREENBERG (The Construction of Homosexuality) and Richard DAVENPORT-HINES (Sex, Death, and Punishment) discuss the problem of attributing cataclysmic effects to the decriminalization of homosexuality and the protection of gay people at numerous points in their work.

the death knell for marriage and the family is at least as problematic as opposing the legal availability of contraceptives for the same reason.¹⁵

8.4 Indebtedness to JCM's Work on Religious Liberty

The acceptance of DH by the Fathers of the Second Vatican Council has an indirect application to the question of civil legislation protecting homosexual persons from discrimination. If, for instance, one accepts that people have the right to follow their conscience on such an important matter as their religious affiliation and practice, a fortiori, it would follow that one should be free from societal and (or) governmental interference in terms of a conscientious decision to enter into an intimate relationship with a member of the same sex.

Given the fact that Catholicism has been careful in recent years to distinguish between a "homosexual orientation" and "homosexual acts," the former being blameless (though still "disordered") and the latter--defined as genital contact with another--blameworthy, and given the fact that what is condemned in the "homosexual lifestyle" is precisely the sexual acts that take place

¹⁵ This was once an argument against the legalization of contraceptives. It was feared that if people could obtain contraceptives and thus partake of sexual intercourse without the possibility of producing a child, they would forgo entering into marriage and forming families.

therein,¹⁶ it follows that discrimination against lesbians and gay men on the basis that they are likely to have sex with members of their own sex is arbitrary and indefensible: a fair percentage of heterosexuals are at least as likely to indulge in illicit sexual congress.

In other words, if the Church authoritatively teaches that the adherents of all religions ought not to face discrimination because of their beliefs or practices, by what logic are gays and lesbians subject to discrimination? DH accepts the propositions that, all things being equal, one ought not to lose one's job for denying the divinity of Christ and that one ought not to lose one's lease for failing to keep the Sabbath holy. Does it not follow that people ought not to face social penalties for denying--theoretically and (or) in practice--that the sharing of sexual intimacy is only licit between a wife and her husband?

JCM was able to show that advocating religious liberty does not have to be founded upon religious indifferentism: one does not have to accept the idea that 'one religion is as good as another' in order to argue for religious

¹⁶ André GUINDON puts it this way: "In ethical discussions, gay behavior is controversial as a sexual reality and in no other capacity. Lesbians and gays are not taken to task for their food preferences, their driving habits, their political views, or their working patterns" (The Sexual Creators, p. 160).

freedom.¹⁷ Likewise, to argue that gay people ought not to suffer discrimination for their homosexual orientation and (or) their decision to enter into a sexual partnership does not have to be predicated upon the acceptance of the idea that homosexuality is equal in dignity with heterosexuality; it doesn't even have to mean that one sees any dignity in homosexuality per se. All that needs to be admitted is that government has no business demanding that people structure the intimate details of their private lives in this way or that. As long as we are dealing with the conscientious decisions of consenting adults in private, government has no rationale for involvement and the Church has no mandate to demand that people be coerced to accept its reading of the moral valence of such behaviors.

At the same time, protecting the individual's right to structure the intimate details of her private life does fall to the government. Open, democratic societies have taken measures to ensure that their citizens not be discriminated against on the basis of race or creed or ethnic background; one looks in vain for compelling reasons

¹⁷ HUNT and GRASSO put it this way: Murray's theological reflection "culminated in his developing a theory of religious freedom rooted not in religious indifferentism but in the exigencies of the objective moral order and Christian revelation" (see their "Introduction" to ACC, p. viii).

why sexual orientation should not to be added to this list of personal characteristics for which one ought not to face penalization.

From the vantage point of the Church's insistence on human dignity, human rights, and the dignity of the human conscience, Gregory Baum writes: "Even if Catholics are convinced that homosexual love is unethical, justice demands that they defend the human rights of gay people."¹⁸ Baum's reflection makes for a fitting conclusion to our study:

Over the last decades, the Catholic Church has become the defender of humanity in an increasingly harsh and oppressive world. The Church has committed itself to human rights. The Church has made itself the defender of minorities suffering discrimination. This surely includes defending the dignity of homosexual men and women, a minority that suffers discrimination in our societies and is exposed to brutal repression in fascist and communist countries.¹⁹

8.5 Conclusion

Support for gay and lesbian rights legislation and (or) municipal ordinances is well within the parameters of Catholic moral teaching. Indeed, the theological synthesis of St. Thomas as interpreted by a thinker like John

¹⁸ Gregory BAUM, "Human Rights for Homosexuals," in Catholic New Times (January 11, 1987), p. 10.

¹⁹ BAUM, "Human Rights for Homosexuals," p. 10.

Courtney Murray, S.J., (and advanced through Murray's work on religious freedom) arguably demands such support. In the main, the virtue of justice, upon which civil society rests, cannot countenance treating people unfairly; it stretches the meaning of the terms to breaking point if one attempts to characterize (say) firing someone because of her sexual orientation as "fair" or "just." Concomitantly, it is inconsistent for members of the American Catholic hierarchy to call for justice for gay people and then attempt to block the legislation which would serve to ensure this justice. Opposing the morality of certain sexual practices ought not to entail collusion with campaigns to place social and economic obstacles in the path of an already undervalued social minority.

ABBREVIATIONS

ACC.....	<u>John Courtney Murray and the American Civil Conversation</u> by Robert P. HUNT and Kenneth L. GRASSO (eds.)
C. D. F.	Sacred Congregation for the Doctrine of the Faith
CRH.....	Council on Religion and the Homosexual
DH.....	<u>Dignitatis humanae</u> (The Second Vatican Council's "Declaration on Religious Liberty")
DOB.....	Daughters of Bilitis
DV.....	<u>Dei verbum</u> (The Second Vatican Council's "Dogmatic Constitution on Divine Revelation")
EHLR.....	Editors of the <u>Harvard Law Review</u>
GLM.....	Gay Liberation Movement
HDCG.....	"Human Dignity and the Common Good" (a statement by NWM)
HM.....	<u>Homosexuality and the Magisterium: Documents from the Vatican and the U.S. Bishops, 1975-1985</u> by John GALLAGHER (ed.)
JCM.....	John Courtney MURRAY, S.J.
M9.....	Oregon Ballot Measure 9 (1992)
MS.....	Mattachine Society
NAMBLA.....	North American Man/Boy Love Association

NCE.....	<u>New Catholic Encyclopedia</u>
NCR.....	<u>National Catholic Reporter</u>
NWM.....	New Ways Ministry
NYT.....	<u>New York Times</u>
OCA.....	Oregon Citizens' Alliance
PCHP.....	"Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" (C. D. F.)
PH.....	<u>Persona humana</u> (C. D. F.)
PT.....	<u>Pacem in terris</u> (encyclical letter of Pope John XXIII)
RF.....	"Religious Freedom" (JCM's commentary on DH in Abbott's edition of the documents of Vatican II)
SCC.....	"Some Considerations Concerning the Response to Legislative Proposals on the Non-Discrim- ination of Homosexual Persons" (C. D. F.)
SOC.....	Save Our Children
TJH.....	<u>The Journal of Homosexuality</u>
TS.....	<u>Theological Studies</u>
TVH.....	<u>The Vatican and Homosexuality: Reactions to the "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homo- sexual Persons" by Jeannine GRAMICK and Pat FUREY (eds.)</u>
WHTT.....	<u>We Hold These Truths: Catholic Reflections on the American Proposition</u> by JCM

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