

Towards an Adequate Method for Catholic Bioethics

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Theorists who have not appropriated the teaching of the 1993 encyclical letter *Veritatis splendor* continue to affect adversely important initiatives aimed at the renewal of Catholic health care. The exchanges in late 2000 among members and staff of the NCCB and various representatives of Catholic health care interests concerning revisions in the *Ethical and Religious Directives for Catholic Health Care Services* (ERDs) afford one example of what happens when certain Catholic ethicists remain stalled in pre-*Veritatis splendor* thinking. Those who have followed closely these debates can testify that a certain incommensurableness of discourse emerged as parties to the ERDs' discussions assessed differently, or ignored altogether, the definitive stamp that *Veritatis splendor* has placed on Catholic moral theology.

The issue at hand is fairly simple: the bishops want to stop Catholic health care services from cooperating with contraceptive sterilizations because direct sterilizations are among those acts that the Church teaches are "intrinsically evil" (*intrinsece malum*). *Veritatis splendor* explains that an action which is intrinsically evil remains incapable of being ordered to God and radically contradicts the good of the human person made in his image. Following what is taught in number twenty-seven of the "Pastoral Constitution on the Church in the Modern World," *Gaudium et spes*, the encyclical provides examples of such intrinsically evil actions, which includes "whatever violates the integrity of the human person, such as mutilation."¹ It is reported, however, that some advocates for Catholic health care interests introduced into the debate considerations that find warrant in neither the official teachings nor the theological suppositions of *Veritatis splendor*. The authoritative resolution of this controversy will come later. In the meantime, however, it seems opportune to comment on the entirely new direction that *Veritatis splendor* has chartered for Catholic bioethics.

¹*Veritatis splendor*, no. 80.

Veritatis Splendor and Bioethics

Recent controversies in bioethics, especially in the areas of artificial reproduction, sterilization, and end-of-life issues, raise the question of how to integrate complex bioethical questions into a general framework of Christian ethics. Elsewhere I have argued that Aquinas's teleological moral theory offers the preferred overarching structure for achieving this integration.² Allied to this teleology—a framework clearly endorsed by *Veritatis splendor*—is Aquinas's doctrine of the moral virtues. As a part of general ethics, the virtues are concerned with perfecting the human person. The moral virtues not only reveal what authentically constitutes human dignity but also display, when fully put into action, the truth of our own being, or what *Veritatis splendor* calls “the good of the person made in [God's] image.”³ All attempts to do Catholic bioethics outside of the context of a virtue-driven teleology run the risk of importing, wittingly or unwittingly, elements of outmoded moral methodologies. From the vantage point of the year 2000, it should be clear that these methods lack the moral density that informs *Veritatis splendor*.

The present controversies concerning the nature and method of moral theology in general, and of its application to the field of bioethics in particular, derive from developments in the field of religious ethics that date from the mid-1960s. Although debate about bioethical issues, e.g., those concerning the moral quality of a craniotomy, went on prior to the 1960s, something innovative occurred immediately after the Second Vatican Council (1962–1965). Certain scholars regard the 1965 publication of Peter Knauer's “La détermination du bien et du mal moral par le principe du double effet” as the starting point for the controversies that arose in the wake of the Council's call for both renewal and retrieval of Catholic theology, including moral theology.⁴ The definitive history of the efforts to implement this mandate as it applies to moral theology has yet to be written, but we already have

²See my “Moral Absolutes in the Civilization of Love,” in *The Splendor of Truth and Health Care: Proceedings of the Fourteenth Workshop for Bishops*, Dallas, Texas, ed. Russell E. Smith, (Braintree, MA: The Pope John XXIII Medical-Moral Research and Education Center, 1995) and reprinted in *Crisis* 13 (May, 1995): 18–23.

³For a discussion of the virtues of the Christian life, see my *Virtue* (Münster: Lit, Verlag, 2001), and my earlier general treatment of the relationship of virtue to the good of the human person within the context of the Christian life, *The Moral Virtues and Theological Ethics* (Notre Dame/London: University of Notre Dame Press, 1991).

⁴Knauer's original article first appeared in *Nouvelle Revue Théologique* 87 (1965), pp. 356–376. Two years later he published “Das rechtverstandene Prinzip von der Doppelwirkung als Grundnorm jeder Gewissensentscheidung,” *Theologie und Glaube* (1967), pp. 107–33. A revised version of this article, “The Hermeneutical Function of the Principle of Double Effect,” appeared in *Natural Law Forum* 12 (1967), pp. 132–162 and subsequently in *Readings in Moral Theology No. 1: Moral Norms and Catholic Traditions*, ed. Charles E. Curran and Richard A. McCormick, S.J. (New York: Paulist Press, 1979). For further discussion, see the interesting discussion by Bernard Hoose, *Proportionalism. The American Debate and its European Roots* (Georgetown: Georgetown University Press, 1987), esp. ch. 1, “How It Began.”

several specialized studies that explain some of the circumstances that led up to the issuance of *Veritatis splendor* in 1993.⁵

One thing is sure: 1993 brought official closure to the period of inventive proposals in moral methodology. *Veritatis splendor* was addressed to the bishops of the Catholic Church and treated “certain fundamental questions of the Church’s moral teaching.” But seven years after the defining moment of *Veritatis splendor*, we find theologians who still argue as if the key principles laid down in the encyclical may be set aside with impunity. In the field of Catholic bioethics, the eclipse of *Veritatis splendor* darkens not only those who remain attached to the terms of the debate as they were developed between 1965 and 1993, but also some theologians who have tried to implement the post-conciliar teaching of Pope John Paul II.⁶ The former resort to principles or categories left over or adapted from the casuist tradition, whereas the latter prefer to rely on a kind of ecclesiastical positivism that obstructs implementing what in fact the Magisterium has provided as a sure and effective means to resolve even particular bioethical questions.

Moral philosophers should be able to answer the question whether those who hold on to casuist categories are in fact consequentialists, or whether they simply provide, as Peter Knauer had contended, a contemporary interpretation of the principle of double effect. It may be worthwhile to observe, however, that Father Charles Curran was persuaded that those who relied on what he called relational and responsible “methods” of doing Christian ethics were drifting toward consequentialism. In the 1980s, he averred that theologians working before *Veritatis splendor* fit into a position he named “mixed consequentialism.”⁷ It is important to underscore that Catholic moral theology has never accepted the weighing of good and bad results as the principal criterion for establishing the moral worth of any action. Even authors from the period of classical casuistry strenuously sought to abide by the principle set down in Romans 3: 8, “*Non faciamus mala, ut veniant bona.*” If *Veritatis splendor* is pellucidly clear about anything, it is the rejection of all forms of consequentialism, but there are nonetheless theorists, especially rhetors, who still argue by appeal to end-results.

This short essay on method in Catholic bioethics assumes that the development of Catholic bioethics must proceed from the principles embodied in *Veritatis*

⁵See William E. May, “John Paul II, Moral Theology, and Moral Theologians” in *Veritatis Splendor and the Renewal of Moral Theology*, ed. J.A. DiNoia and Romanus Cessario (Chicago, IL: Midwest Theological Forum, 1999), pp. 211–239.

⁶It may be observed that the recent treatise by Professor William E. May, *Catholic Bioethics and the Gift of Human Life* (Huntington, IN: Our Sunday Visitor Press, 2000) makes only passing references to *Veritatis splendor*, although the author interprets for a general audience the major texts of the Magisterium that deal with bioethics (see pp. 19–46).

⁷*Directions in Fundamental Moral Theology* (Notre Dame, IN: University of Notre Dame Press, 1985), p. 188, and the elaboration that follows, pp. 188–91. Brian V. Johnstone, C.S.S.R., provides a summary of the overall pre-*Veritatis splendor* situation in “The Meaning of Proportionate Reason in Contemporary Moral Theology,” *The Thomist* 49 (1985), pp. 223–247. But also see *Veritatis splendor*, nos. 74, 75.

splendor. The theological and magisterial weight of the encyclical provides sufficient warrant for this premise. If we must fully take *Veritatis splendor* into account, then arguments that summon their rhetorical power or even depend for their validity on the perspectives of post-Tridentine casuistry no longer suffice. As a preliminary step toward sketching a method for Catholic bioethics, I propose to outline some of the general features of the old casuistry in an effort to show what directions Catholic bioethicists should at all costs avoid when constructing an adequate method for Catholic bioethics.

Veritatis splendor has introduced dramatic changes into the way that moral theologians do their work. The Catholic world owes a debt of gratitude to Dominican Father Servais Pinckaers, who ranks high among those theologians who have expounded this fundamental truth of the New Evangelization.⁸ This means that when theologians propose solutions to specific bioethical questions that do not fully reflect the fundamental teachings of *Veritatis splendor*, there is reason to question whether such strategies conduce to the realization of moral good and safeguard the existence of an objective moral order.⁹ Some proposed provisions in health care may appeal to the basic inclination in fallen man to settle for what is expedient, but *Veritatis splendor* insists that only the excellent moral good can perfect the human person and bring him or her to share in the power of the Risen Christ.

Three Casuist Cadences: Law, Conscience, and Responsibility

Scholars usually date the beginnings of classical casuistry from the mid-sixteenth century when Martin Azpilcueta, known as Navarrus, published his manual of moral theology, the *Enchiridion*.¹⁰ During the next four hundred years, moral theology was dominated by persons trained in both civil and canon law. Saint Alphonsus Liguori (1696–1787) is a good representative. As a result, a jurisprudential mentality highly influenced the development of moral theory.¹¹ The casuist theologians elaborated a model for moral theology which depended in its essentials on three principal figures: law, conscience, and responsibility. But the fashion in which the old casuistry presented and interpreted these features of moral life differs in impor-

⁸For example, see his “An Encyclical for the Future: *Veritatis Splendor*” in *Veritatis Splendor and the Renewal of Moral Theology*, pp. 11–71.

⁹See *Veritatis splendor*, no. 82: “This would be to the detriment of human fraternity and the truth about the good, and would be injurious to ecclesial communion as well.”

¹⁰Martin Azpilcueta (1439–1586), known as Navarrus because of his native region, distinguished himself both as a canonist and a moralist. He served several Popes, including Pius V, Gregory XIII, and Sixtus V, as a penitentiary and advisor in morals. His *Manuale sive Enchiridion Confessarum et poenitentium* (Rome, 1588) remains a significant example of classical casuistry.

¹¹For an analysis of casuistry, the present essay relies on Servais Pinkaers, *Les sources de la morale chrétienne* (Paris: Editions du Cerf, 1985), esp. cc. X, XI, who originally provided an analysis of the theological and historical aspects of casuistry. In the United States, the English edition *The Sources of Christian Ethics*, trans. Sr. Mary Thomas Noble, O.P. (Washington, D.C.: The Catholic University of America Press, 1995) has been well received in both Roman Catholic and Protestant circles.

tant and significant ways from what may be called the long tradition of Catholic moral theology as well as from what the Church has offered as its continuation in the New Evangelization.

First, law. When he transposed law from its original setting into the world of theological discourse, Saint Thomas Aquinas introduced a highly analogical use of the term “law.” For the theologian, the concept of law extends, as Father Thomas Gilby has pointed out, from the transcendent eternal law which governs the entire moral order to the steady beats of passion and lust which, in their own way, contribute to the rhythm of human life.¹² Casuistry, on the contrary, progressively abandoned this broad theological vision of law, even though the development harmonized well with biblical usage. Instead, the legal specialists embraced a narrow and somewhat woolly view of moral law; they were given to conceptualizing and interpreting moral law along the lines of statutory law. In his 1923 *Manuale Theologiae Moralis secundum Principia S. Thomae Aquinatis*, Dominic Prümmer even suggested a comparison between Christian moral law and the *Bürgerliches Gesetzbuch* or the *Code civile*.¹³ This categorical mistake still occurs. Lawyer-theologians tend to constrain the profound implications of Christian morality by forcing them into the categories supplied by the science of human positive law.

The casuist tracts on laws, the so-called *De legibus*, afford a good example. While these treatises distinguished between human and divine law, they nonetheless continued to discuss the requirements of both laws as if Eternal Law supplied regulations similar to those of human positive law, instead of providing the transcendent norm for every moral action. To sum up, the casuists launched a very different conception of divine governance from that suggested by the medieval identification of the Eternal Law with the Divine Logos, whose image marks all of creation and whose wisdom guides it to fulfillment.¹⁴

The casuist interpretation of moral law as the religious equivalent of civil law still influences the way that some persons think about Catholic bioethics. There are Catholic teachers today who argue as if sin is measured by the harm that it does to the human being instead of the departure that it constitutes from the Eternal Law. For example, some in the Church find it difficult to place direct sterilization in the same moral category as abortion and euthanasia. Pope John Paul II unquestionably thinks otherwise.¹⁵ Why? Because the Pope knows that what formally constitutes

¹²See Thomas Gilby, O.P., *Law and Political Theory (Summa theologiae Ia2ae.90–97)*, vol. 28 (New York: McGraw-Hill Book Company, 1966), for a brief but clear account of this important issue in moral theology.

¹³Dominicus M. Prümmer, O.P., *Manuale Theologiae Moralis secundum Principia S. Thomae Aquinatis. Tomus I* (Freiberg-im-B.: Herder & Co., 1923), *Tractatus III: De legibus*, p. 94. As a Dominican moralist, Prümmer tried to soften the strictly legal tradition of casuistry by references to the teaching of Aquinas on the virtues and gifts of the Holy Spirit.

¹⁴Oscar Brown, *Natural Rectitude and Divine Law in Aquinas* (Toronto: Pontifical Institute of Medieval Studies, 1981) suggests the profound implications of this medieval intuition for morality.

¹⁵In addition to what is said in *Veritatis splendor* nos. 80 and 47, *Evangelium vitae* lists contraception, sterilization, and abortion together in three different numbers (16, 17 and 91),

sin is an action's falling short from the norm of reason as measured by the Eternal Law, not how a specific action is opposed to an alleged hierarchy of human goods, as if the harm of sin could be reckoned in a way similar to the *Uniform Sentence Guidelines*.

Second, conscience. Another controversial feature of casuist moral theology involves the particular interpretation that the casuist authors put on the role of conscience in the moral life. One thing needs to be made clear from the start: the old casuist conception of conscience stands at a far remove from the richly theological elaboration that Pope John Paul II gives to what he calls the "moral conscience." *Veritatis splendor* provides different remedies for the ambiguities and imperfections of finite existence than what the casuists had concocted.

Just as civil lawyers attempted to take account of the subjective factors that influenced a subject's appropriation of statutory law, so the casuists developed ways to reflect the various postures that persons found themselves in with respect to appropriating moral norms. They emphasized different kinds of consciences. Concern for formation of conscience assumes that the human subject remains bound first to learn, and then to obey, the laws set forth for human conduct. It was supposed that there exists within any given community of believers a broad spectrum of "consciences." Some persons possess correct consciences, whereas others erroneous ones; still others enjoy lax consciences, while others suffer from scrupulous ones. Many persons, however, achieved no particularly settled status, and remained with a doubtful conscience. To these souls, the casuists offered the most detailed and complex help. The believer burdened with a "*conscientia dubia*" was obligated to search out a kind of certitude the ingredients of which only a recognized moral theologian was able to provide.¹⁶

Theologians sometimes compare the role of conscience in the casuist systems with that of prudence in the virtue-centered moral theology of St. Thomas. But those familiar with the function of prudence in Aquinas's moral theory will immediately recognize the significant differences between the medieval conception of prudence as a virtue shaping practical reason and the casuist conception of conscience

but especially in no. 17: "Aside from intentions, which can be varied and perhaps can seem convincing at times, especially if presented in the name of solidarity, we are in fact faced by an objective 'conspiracy against life,' involving even international institutions, engaged in encouraging and carrying out actual campaigns to make contraception, sterilization and abortion widely available. Nor can it be denied that the mass media are often implicated in this conspiracy, by lending credit to that culture which presents recourse to contraception, sterilization, abortion and even euthanasia as a mark of progress and a victory of freedom, while depicting as enemies of freedom and progress those positions which are unreservedly pro-life."

¹⁶A doubtful conscience occurred when an individual, in the words of the Dominican casuist Charles Rene Billuart, O.P. (1685–1757), "suspended all judgment or assent and remained neutral towards both sides of a contradiction" (*De conscientia*, diss. 5, a. 6). A doubtful conscience experiences uncertainty about what the moral law requires. Such a condition occurred frequently during a period when the diversity of opinions by moralists about serious issues approached the level of *toties capita quoties sententiae*. Furthermore, casuist moral

as a judge arbitrating legal requirements.¹⁷ As *Veritatis splendor* recalls, virtue and the moral conscience that ensures its development, remain ordered to the flowering of human freedom in conformity with the good of the human person. By way of sharp contrast, the casuists construed conscience as a check on the exercise of personal liberty, even though the less high-minded among them maneuvered like tax lawyers looking to save their clients a dollar or two by finding loopholes in the law. In any event, a disproportionate part of the actual practice of casuist moral theology dealt with finding solutions to the different cases (or *casus*, from which the moral system derives its name) posed by individuals with doubtful consciences. It is not necessary to read much to see that Pope John Paul II holds out an entirely different vision: “Moral conscience does not close man within an insurmountable and impenetrable solitude, but opens him to the call, to the voice of God. In this, and not in anything else, lies the entire mystery and the dignity of the moral conscience: in being the place, the sacred place where God speaks to man.”¹⁸

Third, responsibility. A third cadence of post-Tridentine casuistry offers another example of the way that the old moral theologians skewed the categories of their science. Of course personal responsibility will figure in any account of Christian morality that takes human freedom seriously. But there is a marked difference of tone between the casuists’ emphasis on personal accountability and how *Veritatis splendor* envisages the human person entrusted to his or her own care and responsibility. Within the casuist model, personal responsibility serves a mainly utilitarian purpose, supplying both adhesive and lubricant for energizing the moral life.

Because the casuist system falls within the general category of rule-driven moral theories, insistence on responsibility was calculated to ensure that a person of conscience would observe the rule of law. Personal responsibility also serviced the

theology promoted the practice of “consulting approved authors” as a required condition for accurately informing one’s conscience. In effect, this meant that when a moral dilemma arose, the clergy urged individuals with doubtful consciences—or the “perplexed” faithful, as they were called—to research the opinions of approved authors as the first stage for resolving the moral dilemma. At the beginning of the twentieth century, Father Dominic Prümmer drew up a list of nearly three hundred such recognized authorities whose advice had served the perplexed faithful since the thirteenth century. The orthodox schools of casuistry included Probabilism, Probabiliorism, and Aequiprobabilism. Laxists and Tutorists overstretched the system either by demanding too much (in the case of rigorism) or requiring too little (in the case of laxism). The Church rejected both these extremes, and tried to manage the other approaches. For a discussion of Billuart and other Thomist moralists active in the eighteenth century, see my *Le thomisme et les thomistes* (Paris: Les Éditions du Cerf, 1999).

¹⁷For an extended treatment on personal prudence, see Benedict M. Ashley, O.P., and Kevin D. O’Rourke, O.P., *Health Care Ethics: A Theological Analysis*, 4th ed. (Washington, D.C.: Georgetown University Press, 1997), pp. 47–62, 167–176, 181–200.

¹⁸*Veritatis splendor*, no. 58, citing his “Address” (General Audience, 17 August 1983), 2. The encyclical does an admirable job of weaving together two legitimate traditions on conscience, the classical Thomist view of conscience as a judgment of practical reason about what is to be done here and now and the more inclusive understanding of conscience as a sanctuary within the human person.

casuist view of the moral life by urging the moral agent to meet the requirements of the law. Of course, not everyone bore up equally well under the weight of the heightened responsibility that the casuists imposed. It may be possible to explain the instances of scrupulousness among Catholics of an earlier period by appeal to the highly atomized notion of personal responsibility urged by casuist preachers.

The principal defect of the casuists' insistence upon personal responsibility was that it dislodged Christ from the heart of the moral life. Because of their accentuated emphasis on personal responsibility, confessors and preachers of the casuist era pushed the individual to center stage, where the believer was left to discharge unaidedly the obligations of Christian life. Of course, spiritual writers of the period, like Saint Alphonsus Liguori, compensated for this defect by their devotional treatises, but in general these efforts did not succeed in restoring Christ to where the Christian moral tradition had always put Him. What could be less congenial to the outlook of *Veritatis splendor*? The Pope assumes that the human person enjoys a connaturality with moral good, whereas the casuist doctors ignore this disposition. There is all the difference in the world between a moral theology that emphasizes that Christ effectively calls the believer to embrace the moral good and one that stresses that the human person remains a free moral agent whose main job involves negotiating guidelines. *Veritatis splendor* argues that the free and responsible person already is compelled by divine grace and Christ's call, whereas the casuist outlook assumes that these gifts are accessory to the believer's exercise of personal responsibility and human freedom.

A Different View of Freedom

Father Pinckaers has exposed the central philosophical notion that, as he expresses it, formed the hard and resistant core of the whole casuist system.¹⁹ He refers to the freedom of indifference. The general theory runs like this: Freedom of indifference identifies human freedom with the mere ability of the will to choose between contraries. It is called a "freedom of indifference" because the proponents of this notion held that freedom consists in a certain power attributed to the will which remains indifferent even in the face of a reasoned judgment about a proposed course of action. Choosing occurs either between a reasoned alternative and its contrary or between a commanded alternative, such as one enjoined by legal precept, and its contrary. The requirement that human freedom remain unaffected by, that is, "indifferent" toward, human intelligence, accounts for an essential feature of how the casuists interpreted this freedom of Either/Or. Advocates for the "freedom of indifference" even supposed that the will must remain segregated from other capacities of the human person, especially the sense appetites. For in their final analysis, human freedom amounts to nothing more than an unaffected non-direction.

Because of this atomization of freedom, the liberty of indifference effects a twofold separation in the person. One divides the dynamism of free choice from the desire of the intellect for truth, while the other cleaves the rational appetite or will from the powers of the sense appetites. Both separations, of course, pose serious

¹⁹See Servais Pinckaers, *Les actes humains, vol. II (traduction française): Somme théologique 1a-2a2, questions 18-21* (Paris: Desclée & Cie., 1966), pp. 222 ff.

problems for realizing authentic free choice in accord with the classical notion of liberty as *boulesis*, or deliberate choice in the context of both reason and appetite. The choice for contraceptive sterilization, as the emerging literature on the psychological effects of castration indicates, affords a good example of a decision that clearly separates rational choosing from the broader powers of human appetite.

The synergy of will, intellect, and appetite disappears in the casuist explanation of freedom, though it dominates the classical conception of Christian freedom. For example, both Aquinas in the West and St. John Damascene in the East held for it. In particular, no account is given of the shape that right reason (*recta ratio*) imposes on human choosing. For according to the casuists' view, there exists neither reasoned appetite nor appetitive reasoning—just a “naked” free will. A Christian believer easily should recognize the incoherence of this position when viewed within the larger context of the New Testament message. There, as *Veritatis splendor* reminds us, Jesus proclaims Himself as the one who has come to reveal the truth about God's love for us.²⁰ Further, the Beatitudes offer a picture of Christian moral life in which all of our human powers, emotions, and feelings combine to achieve the perfection of Christian existence. When Saint Augustine identified in his *De sermone Domini in monte*, especially Book II, Matthew, chapter 5, as a principal locus for the moral teaching of the New Testament, the Doctor of Grace bequeathed a rich tradition to Western moral theology.²¹ The casuists ignored it.

Modern views of freedom as self-determination and self-realization are in continuity with a notion of human freedom that proceeds entirely unaffected by anything other than its own exercise. For example, in *The Ethics of Ambiguity*, Simone de Beauvoir wrote: “One of the chief objections leveled against existentialism is that the precept ‘to will freedom’ is only a hollow formula and offers no concrete content for action.”²² She goes on to defend the existentialist view of freedom by explaining that “to will freedom” realizes itself only by engaging itself in the world. In other terms, freedom arises when the will actually makes a choice in the real world of options. De Beauvoir gives no quarter to the shaping of human freedom by a truth that surpasses it. Her existentialist outlook on freedom reveals the same shortcomings as those associated with the freedom of indifference. Although generalizations about modernity are difficult to sustain, the casuist freedom of indifference anticipates the modern effort to isolate the will from truth.

One could argue that casuist moral extrinsicism, which urges the imposition of a moral norm to restrain unadorned human freedom, has been a seed-bed for the complex tensions in moral theology today. A principal feature of *Veritatis splendor* emphasizes the way that the New Testament affirms the complementarity, not the opposition, of Divine Law with human liberty. The encyclical in fact provides an

²⁰See Jn 14: 6, and *Veritatis splendor*, nos. 2, 19, 83 and 86.

²¹For a popular account of this classical theme in moral theology, see Servais Pinckaers, O.P., *The Pursuit of Happiness—God's Way: Living the Beatitudes*, trans. Sr. Mary Thomas Noble, O.P. (New York: Alba House, 1998).

²²Simone de Beauvoir, *The Basic Ethics of Ambiguity*, trans. B. Grechtman (New York, 1948), p. 78.

essay on interiority. St. Augustine expresses the relationship well in his *De doctrina Christiana*: “From the law comes knowledge of sin; by faith the reception of grace against sin; by grace the soul is healed of the imperfection of sin; a healthy soul possesses freedom of choice; freedom of choice remains ordered to the love of righteousness; and, finally, love of righteousness results in the accomplishment of the law.”²³ The old-time casuist presentation of moral law and regulation proceeded as if human freedom is neither open, nor in some ways even ordered, to evangelical justification.

A familiar adage of the casuist era, “*Possidet lex, possidet libertas,*” announced that liberty of spirit depends on getting the law right. *Veritatis splendor* offers another perspective. To explain how the person who embraces the law also discovers true freedom, the encyclical points us back to both the *Summa theologiae* and *Gaudium et spes*:

The teaching of the Council emphasizes, on the one hand, the role of human reason in discovering and applying the moral law: the moral life calls for that creativity and originality typical of the person, the source and cause of his own deliberate acts. On the other hand, reason draws its own truth and authority from the Eternal Law, which is none other than Divine Wisdom itself. [See Saint Thomas Aquinas, *Summa theologiae* I–II, q. 93, a. 2, ad 2um, cited by John XXIII, Encyclical Letter, *Pacem in terris* (11 April 1963): AAS 55 (1963), 271.] At the heart of the moral life we thus find the principle of a “rightful autonomy” (*Gaudium et Spes*, no. 41) of man, the personal subject of his actions. The moral law has its origin in God and always finds its source in him: at the same time, by virtue of natural reason, which derives from divine wisdom, it is a properly human law.²⁴

This integration, which remains essential to the realization of divine truth in the world, is precisely what was lost in the casuist era when the theorists pitted law against freedom.

The casuist systems had the effect of directing freedom toward a negative goal, namely, the avoidance of sin, instead of toward embracing the uncreated goodness of God. Casuistry thereby distanced itself from the authentic tradition of Christian freedom which has always identified freedom with the believer’s possession of God. “But the Holy Spirit,” writes Aquinas, “so inclines us to act that he makes us act voluntarily, in that He makes us lovers of God.”²⁵ And he continues, “That is why the Apostle says in 2 Corinthians 3:17, ‘Where the Spirit of the Lord is, there is freedom.’”

Realist moral theology, such as illustrated in the works of Thomas Aquinas, establishes the moral value of an action on the basis of how the action corresponds to the requirements of the good of the human person. But casuistry ignored this classi-

²³“Sed per legem cognitio peccati, per fidem inpetratio gratiae contra peccatum, per gratiam sanatio animae a vitio peccati, per animae sanitatem libertas arbitrii, per liberum arbitrium iustitiae dilectio, per iustitiae dilectionem legis operatio” (*De doctrina Christiana* 30, 52).

²⁴*Veritatis splendor*, no. 40.

²⁵St. Thomas Aquinas, *Summa contra Gentiles*, Bk. IV, ch. 22.

cal intuition. It may be that one can explain the acceptance of Hume's critique of so called naturalistic ethics, that is, his proposed divorce between fact and value, by recalling that from the eighteenth to the mid-twentieth century Roman Catholic moral theology receded from the perspectives of moral realism.²⁶ Failure, however, to take full account of the inbuilt teleologies of human nature in ethical matters always results in producing some form of ethical idealism. Did the fact that the casuist authors constructed an ideal moral world that obscured from the eyes of believers the loving Father of our Lord Jesus Christ contribute to the sudden demise of casuistry?

It is not surprising to discover that the treatise on beatitude, usually found at the beginning of classical treatises in moral theology, where it served to remind readers that Christian morality transcends the limits set by ethical discourse, was absent from many casuist manuals. When beatitude gained an entry in the table of contents, the casuist authors placed this section like the proverbial carrot before the donkey at the end of their heavy treatises. As a result, the very structure of the manuals suggested that beatific union with the Blessed Trinity constitutes only the reward for a morally good life. But Catholic doctrine holds that God is the principle in whom every good moral action finds both its beginning and its end. From within the logic of casuistry, however, putting beatitude at the end instead of at the beginning of the presentation of morals made sense. Heaven, according to the casuist theologians, provided the reward for having negotiated well the intricacies of their systems. Of course, it is possible today to question to what extent this kind of eschatological inducement to good behavior would work among Catholic people who have been persuaded that God in the end will make up for their failures. Much that today passes for Christian anthropology abets a sin against the theological virtue of hope: presumption.

Neo-Casuistry and Exception Arguments

The terms of engagement for the Church with the world are much different now than they were in the mainly European context of the seventeenth and eighteenth centuries. The casuist system had turned the New Law of grace into something which very much resembled the Old Law of written precepts and punishments. The Letter to the Hebrews evokes the moral stance of the old dispensation: "For they could not endure the order that was given, 'If even a beast touches the mountain, it shall be stoned.' Indeed, so terrifying was the sight that Moses said, 'I tremble with fear'" (Heb 12: 20, 21). It may be argued that the contemporary climate of moral indifference will not quickly restore the Fear of the Lord that old-time casuistry was able to rely on. Even if not the case, it would be a terrible mistake to allow Catholic bioethics to re-pristiniate the categories of casuistry. To allow casuistic expediency to dominate Catholic bioethics will direct Catholic health care practice away from the directions set by *Veritatis splendor*. At stake is the

²⁶For an account of moral realism, see my forthcoming *Introduction to Moral Theology* (Washington, D.C.: The Catholic University of America Press, 2001). This volume is the first in a series of textbooks by different authors that cover the principal branches of moral theology based on the teaching of *Veritatis splendor*.

good of the human person created in the image of God. It was axiomatic that casuistic argumentation could not be applied to the natural law. When certain moralists wanted to argue that the time of carnival in Latin countries provided a *vacatio legis* from the precepts of the natural law, they were roundly corrected. There is a lesson to be learned from this historical incident. To incorporate casuistic exception clauses into directives for how Catholic health care facilities should observe what is taught in *Humanae vitae* risks producing a moral and personal harm far more serious than what is at stake in a troubled or doubtful conscience.²⁷

Neo-casuistry, to the extent that it rejects or rationalizes the teaching of *Veritatis splendor*, will provide an excuse for many persons to act against the good of the human person. Casuistic exception arguments, such as recourse to the alleged principle of duress, to take an example from the recent crisis in Catholic health care management, offers no easy way out for the Christian believer. Can one imagine that the person who has become accustomed to think in terms of duress, when contemplating a contraceptive sterilization, will be better prepared and strengthened to fulfill the other imperatives of the Gospel of Life? No wonder the Church places contraception, abortion, sterilization, and euthanasia, in a continuum of sins that strike against not only Catholic moral teaching, but also the natural law that undergirds it. In late November 2000 it has been reported that one out of every ten persons who dies in Belgium is a victim of active euthanasia. If true, one can only observe that this circumstance indeed represents a very odd exercise of human freedom.

²⁷See the reference to Paul VI's Encyclical Letter, *Humanae vitae* in *Veritatis splendor*, no. 79.