JOHN T. NOONAN, JR.

AUTHORITY, USURY AND CONTRACEPTION

In the current controversy on contraception, parallels with the development of doctrine on usury are often alluded to, alleged, or challenged. It seems useful, therefore, to explore systematically the possible parallels. This article will compare the authority supporting the usury rule and the rule on contraception and discuss the implications of the comparisons. "Authority" will be examined in terms of the conventional divisions made by the moral theologians: Scripture, the Fathers, the Councils, the Popes, the ordinary magisterium.[1]

In analyzing the authority on usury it seems appropriate to take it when the old rule was most fully in vigor, that is about 1450. It is the rule as it flourished at this date which was supported by the most formidable authority. It is in the following century and a half that the leading moral theologians worked out the modifications, alternatives, and changes which effectively sapped the force of the old rule so that by the seventeenth century almost every modern credit transaction could be accommodated within the revised framework. What is of contemporary significance is the structure of authority facing the theologians who effected the development. The authority on contraception will be analyzed as the rule stands today, at the threshold, perhaps, of a development analogous to that on usury.

What was the prohibition which authority in 1450 supported? It was the prohibition of profit on a loan. Profit on an investment in a partnership where the investor took the risks of a partner as to capital and profit was not forbidden. Profit on credit transactions in the form of the purchase of annuities based on designated revenues was not forbidden. A minority of theological opinion even permitted profit on the credit transactions involved in the purchase of foreign exchange. Interest in the sense of compensation for a loss actually incurred by the lender was permitted.[2] But the main lines of the prohibition were clear. On a loan to a poor man or a rich man, to help the starving or to finance a mercantile enterprise, nothing could be sought or even hoped

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for. The risk inherent in lending was not a ground for taking interest; that would have been to circumvent the prohibition and destroy the normal gratuitousness of the loan.[3] Interest could never be lawfully sought as profit. To hope for interest, to seek profit, was to commit the sin of mental usury.[4] Usury, mental or actual, was a mortal sin against justice.[5]

What was meant by usury was not extortionate, excessive, or high charges for a loan. Relying on definitions going back to the Fathers, Gratian had fixed the meaning of usury for the canonists and scholastic theologians. St. Ambrose had said, "Whatever is added to the principal is usury." St. Augustine had defined lending at usury as "giving your money in a loan from which you hope to receive more than you have given." St. Jerome had declared that usury is "whatever you receive in excess of what you have given." These statements, intended as formal definitions of sinful usury by their authors, were marshalled by Gratian in his own formal treatment of usury. He concluded by exclaiming, "Behold it is shown clearly that whatever is demanded beyond the principal is usury."[6] It must be remembered that every reference of authority, biblical, patristic, or ecclesiastical, to usury was understood in 1450 to be to usury as so defined.

A. Biblical Authority

The Old Testament texts relied on to condemn usury were, of course, used as they appeared in the Vulgate. There were five texts of paramount importance. Two seemed to ask only charity or moderation in interest-taking. Ex 22.25 and Lev 25.35–37. One text confined the prohibition to the tribe, "You shall not put money nor grain nor any other thing out at usury with your brother, but with the alien" (Dt. 23.20–21). Two texts spoke with a sweeping generality. Ezekiel defined the just man as one who "will return the pledge of the debtor, take nothing by force, give his bread to the starving, clothe the naked, not lend at usury nor accept increase."[7] The unjust man is one "grasping loot, not returning a pledge, raising his eyes to idols, doing abominations, putting his money at usury and accepting increase" (Ez 18:5–9).[8] In this categorization the later scholastic line between charity and justice was not visible, but it was made evident that usury-taking was a very serious transgression of the moral law, on a par with idolatry and robbery. The affront of usury to God, and the consequence of divine punishment, were emphasized. The unjust man, Ezekiel taught, "shall die." The just man, not guilty of usury, "shall live and ascend the mount of the Lord." The same theological teaching was given in the fifth text, Psalm 14. "Who shall dwell in your tabernacle?" the psalmist asked the Lord. The question was answered by an enumeration of the actions of the just man: he "speaks truth in his heart, takes an oath and does not deceive—has not

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put out his money at usury."[9] Again usury was set on a plane with other serious moral offenses, and avoidance of this sin was made a condition of being approved by the Lord.

The teaching on usury of the Old Testament was explicitly confirmed by the New Testament. The text of the Vulgate was clear and phrased with legal exactness to condemn all profit on a loan: *Mutuum date, nihil inde sperantes,* "Lend hoping nothing thereby." The words were taken to be an express commandment. They were taken as the words of the Lord himself. Absolutely, unequivocally, without exception, all return on a loan was condemned.[10]

That both the Old and New Testaments condemned usury in this absolute and all-inclusive sense was the teaching of Fathers, Councils, and Popes. But before considering the weight of these authorities confirming the interpretation of the Bible and testifying themselves against usury, we may now turn to the present scriptural authority against contraception. Here reliance has been chiefly set on one text, Genesis 38:8–10, the story of Onan, his father Juda, and his widowed sister-in-law Thamar: "Then Juda said to Onan, 'Go to your brother's wife, perform your duty as brother-in-law, and raise up seed for your brother.' Onan knew that the descendants would not be his own, so whenever he had intercourse with his brother's wife, he let the seed be lost on the ground, in order not to raise up seed for his brother. What he did displeased Yahweh, who killed him also." Some theologians have interpreted this story to embody a commandment against contraception. Onan, they have argued, is killed by God for practicing coitus interruptus. His punishment shows that the act was a heinous one and a sin offensive to God. They go on to imply that any other contraceptive act, or at least any act preventing normal coitus is implicitly included in the condemnation of Onan.[11]

Accepting this exegesis, it is apparent that the teaching of the Old Testament is less clear on contraception than on usury. The Old Testament text does not generalize about all contraception; it does not even focus on a single act of contraception; it deals only with a pattern of contraceptive acts frustrating any possibility of offspring. To argue that condemnation of such a pattern of conduct implies condemnation of all contraceptive acts in all circumstances is to take a very large step beyond the text.

In 1450 no one disputed that the Old Testament condemned usury. On the contrary as to contraception, there is vigorous dispute as to the sense of Genesis 38. It has been variously suggested that Onan's displeasing act was to disobey the levirate law requiring a brother to marry a deceased brother's wife; to take an obligation and then deceitfully avoid it; to act egotistically without regard for his family.[12] Above all, he had disobeyed his father, and this disobedience occurs in the context of the descent of the tribe: he disobeys his father's command to perpetuate the

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name of the elder son.[13] To say that the contraceptive acts as such are what displeased Yahweh is to isolate them from their context and to suppose a focus on sexual morality in the narrative which does not otherwise appear. Moreover, sexual sins were dealt with specifically by the Mosaic law. Not only adultery, but homosexuality and bestiality, were expressly condemned. Surely, it has been reasoned, if it were necessary to legislate against these acts, it would have been at least equally necessary to condemn contraceptive behavior in marriage, if it was indeed God's will that the Hebrews be instructed that contraception was a serious offense.[14] The omission of contraception from any code of Hebrew laws underlines the ambiguities of the story of Onan. The conclusion that this story can furnish no basis for a general prohibition of contraception is at least as plausible as the interpretation which finds the rule within the tale. No consensus of exegetical or theological opinion in 1965 finds Genesis 38 to contain a commandment.[15]

Little attention has been given at any time to the New Testament as authority against contraception. It has been suggested that St. Paul's denunciation in Romans 1:25 of women who "have changed the natural use of that which is against nature" could be read as including a criticism of anal intercourse.[16] But this suggestion has not been generally accepted. It has also been noted that *pharmakeia*, the use of drugs ordinarily associated with magic, is condemned in Gal 5.20, Apoc 21.8 and Apoc 22.15. Abortifacients and contraceptive potions were sometimes classed with such drugs in Greek and Roman usage. It is not plain, however, that the New Testament authors intended to include contraceptive drugs by using a general term capable of including them; it is also not plain whether the focus of the condemnation is on the use to which the drugs were put or on their association with magic.[17] In any case, in the long history of theological writing on contraception, no appeal has been made to Galatians or the Apocalypse to demonstrate that contraception is a sin. The absence of any decisive New Testament text on contraception contrasts with the usury rule where a precisely formulated command enunciated by the Lord Himself ratified the interpretation which found an absolute prohibition of usury in the Mosaic law.

B. The Fathers

The three Fathers most responsible for shaping morality in the Western Church were strong witnesses against usury. St. Ambrose devoted a series of sermons to the depiction of its evil, and these sermons were collected as a treatise, *De Tobia*. Having described the misery to which debtors were reduced by their creditors, he continued, "Neither new nor small is this evil, which is prohibited by the prescription of the old and divine law." Exodus 22.25 and Leviticus 25.36 he found to be general

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prohibitions of usury. Loans to businessmen were not exempted: "Some, evading the precepts of the Law, when they give money to businessmen do not demand usury in money but take something from their merchandise as emolument." This is usury: "Whatever is added to the principal is usury."[18] The commandment of Christ even forbade taking of security by creditors. The Lord has "commanded that nothing ought to be hoped from those to whom we lend."[19] Comprehensively, exactly, and passionately, with a close knowledge of Roman law, Ambrose denounced taking anything on a loan as a violation of the law of God. To this special series of sermons may be added his testimony in his treatise, *The Good of Death*. Here he describes the just man entering heaven. But the infidels descend into hell. Among them is the usurer: "If one takes usury, he is a robber, he does not live with life, as you have it in Ezekiel."[20]

St. Jerome was equally emphatic on the absolute prohibition contained in Scripture. Commenting on Ezekiel, he wrote,

> In the beginning of the Law only usury from brothers was disallowed. In the Prophets, usury from anyone is prohibited, as Ezekiel says, "He did not put out his money at usury." Finally, in the Gospel there is an increase in virtue, the Lord commanding, "Lend to those from whom you hope to receive nothing..." Some think usury consists only in money. But divine Scripture foreseeing this, disallows surplus of any property, so that you may not receive more than you gave.[21]

In the New Law, there is, then, a commandment against usury, and usury is any surplus above the sum loaned.

St. Augustine, preaching, said that he forbids one to lend and receive more because God does not will it. "Where does it appear that God does not will it? It is written, 'Who has not given his money at usury, Ps. 14.5. How detestable it is, how odious, how execrable I think the usurers themselves know."[22] In the same sermon, he defined the taking of usury as follows: "You have given your money in loan from which you expect to receive something more than you gave."[23] In a general discussion of the duty of restitution in a letter to Macedonius, an imperial official, Augustine taught that all usury was subject to restitution. Its retention brought into the play the rule, "The sin is not forgiven if what has been taken is not restored."[24]

The Greek Fathers were not silent on usury either. Usury from one's coreligionist or fellow citizen was declared contrary to the law of Christ by Clement of Alexandria.[25] St. Basil devoted to the prohibition of all usury a major homily, some of which Ambrose borrowed.[26] His brother, St. Gregory of Nyssa condemned increase on a loan as "wicked union, which nature does not know," for God the creator has given fertility only to sexually differentiated animals.[27] In the so-called *Canonical Letter* to Letoius, bishop of Melitene, Gregory taught that "divine Scripture prohibits usury and increases."[28] St. John Chrysostom preached that

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civil laws were no excuse for the Christian to seek usury.[29] God forbade a creditor to give more. Luke 6:35 was absolute.[30] This array of genuine patristic texts was supplemented by another text incorrectly attributed to St. John Chrysostom in Gratian: "Of all merchants, the most cursed is the usurer, for he sells a good given by God." An analysis distinguishing usury from ordinary rent followed, and it was made plain that to take profit on a loan was both sinful and unnatural.[31]

The patristic testimony on contraception is less absolute than on usury. St. Jerome denounced the use of contraceptive potions by unmarried girls as homicide. St. Epiphanius cried out against the ritual practice of coitus interruptus as the sin of Onan. St. Augustine condemned the avoidance of all procreation by the Manichees. None of these statements testifies to opposition to limited contraception in marriage. St. Ambrose has a passage criticizing married couples who use potions to prevent transmission of life; in this context contraceptives are not distinguished from abortifacients. Unambiguous opposition to contraception in marriage is not extensive. St. John Chrysostom sharply condemns the avarice of those who for economic reasons practice contraception in marriage.[32] St. Augustine applies the story of Onan to acts of contraception in marriage and puts as a general proposition that it is lawless and shameful to lie with one's wife when the conception of children is avoided.[33] In addition to these negative statements, there was one positive rule: the only purpose for which a Christian may lawfully initiate intercourse is procreation. Ambrose, Jerome, and Augustine all adopted this rule, which had been most authoritatively set out in the second century by Clement of Alexandria.[34] This rule, if still honored as the patrimony received from the Fathers, would be of great authority against contraception. But the rule began to be attacked in the fifteenth century and was defunct by the end of the eighteenth century. It has no standing today.[35] Consequently, the chief testimony of the Fathers against contraception has already been rejected as authority. The contrast with usury in 1450 is apparent. There the principal testimonies of the Fathers were enshrined in the canon law; on contraception, only Augustine's negative statements, largely influenced by his anti-Manichean polemic, are appealed to as authority today.

C. Conciliar Authority

A theologian of 1450 was confronted not only by the express words of Scripture but by the interpretation and confirmation given these words by decrees of infallible organs of the Church. If he had any questions on the meaning of biblical texts on usury, these appeared to be answered by three general councils. They spoke with force, clarity and authority.

In 1139 the Second Council of the Lateran, presided over by Inno-

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cent II, enacted this canon: "We further condemn what has been rejected as detestable and repugnant to divine and human laws by Scripture in the Old and New Testaments, to wit, that insatiable rapacity of usurers, and we separate them from every consolation of the Church."[36] It might be argued that the condemnation touched only "rapacious usury," but this interpretation would be to misunderstand the style used. All usury was deemed rapacious. It was usurers generally who were denied the benefits of the Church. It was usury as contemporaneously defined by Gratian, that is whatever is added to principal, which was condemned. The Council presupposed, and taught, that both Testaments showed usury to be a sin.

The Third Council of the Lateran in 1179, under the presidency of Alexander III, enacted a canon denying Christian burial to manifest usurers. In the first portion of this canon where the reason for its enactment is adduced, it is stated that many practice usury "as if it were licit to practice usury and as if they never noticed how it is condemned by the pages of both Testaments."[37] The indirect teaching was that usury was condemned by Scriptures. The distinction between manifest and hidden usurers was made only to measure the sanctions employed; both manifest and hidden usurers were assumed to be sinners.

In 1314 Clement V at the Council of Vienne decreed, "with the holy council approving," that rulers enforcing the payment of usury by debtors or preventing the restitution of usury should be excommunicated. The decree continued, "If anyone falls into that error so that he presumes pertinaciously to affirm that to practice usury is not a sin, we decree that he is to be punished as a heretic."[38] This joint papal and conciliar action stops just short of saying that to deny the sinfulness of usury is heresy. The focus is on the treatment to be accorded the person affirming this; he is to be treated "as a heretic." Stopping short of defining the sinfulness of usury to be a matter of faith, this solemn denunciation indicated that this proposition is proximate to being a matter of faith.

In addition to these acts of general councils there were numerous condemnations of usury by local synods.[39] But for most theologians of 1450 it was unnecessary to consider these acts when the decisions of three general councils, taken over a period of one hundred and fifty years of intense theological activity, reinforced each other and testified so clearly. It might have been said that each council action was only disciplinary. Lateran II excommunicated usurers, Lateran II denied them sepulture, Vienne prescribed a method of punishment for defenders of usury. Yet that sanctions were the focus scarcely lessened the force of the decrees. Much authoritative teaching by the Church on morals has been in the form of legislation which culminates in the penalties set out for its violation. The laws would not be made, the penalties would not be given, if it were not believed that the acts condemned were sinful. These

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solemn acts of general councils, providing extreme sanctions for the practice or defense of usury, seemed to theologians of the fifteenth century to constitute irrefutable evidence that usury, the taking of profit on a loan, was mortal sin.

On contraception, in contrast, no general council of the Church has ever spoken, ever punished by sanctions, ever condemned the defense of it in theory. The strongest conciliar actions against contraception have been those ascribed to local councils. The two most famous and most influential ones are apocryphal. Martin of Braga erroneously ascribed a condemnation to the Council of Ancyra of 314; Burchard of Worms erroneously ascribed another to the Council of Worms of 830.[40] These two apocryphal texts were much circulated and much relied on in the Middle Ages. Today their fictitious quality has been established. Only a comparatively few local synods have legislated against contraception, and this local legislation has played no substantial part as decisive authority on doctrine. In the twentieth century several national hierarchies have condemned contraception by letter or by statement;[41] these episcopal acts, though of obvious importance, have not been in the form of canons of a council. The teaching of three general councils on usury, as it stood in 1450, is overwhelming in comparison with the slight and scattered synodal authority on contraception.

D. Papal Authority

The phrase of Lateran II to describe usury, "rejected as detestable in the Old and New Testament" was adapted and put to use by Alexander III. The Archbishop of Palermo wrote, asking if he might dispense from the prohibition to raise funds to ransom captives from the Saracens. It was a touching cause, but the Pope stuck to principle. No dispensation was possible, he replied, "since the crime of usury is detested by the pages of each Testament."[42] The Archbishop of Canterbury inquired about the obligation of debtors to pay usury they had sworn to pay. The Pope averred that the debtors were not bound, since "the crime of usury is detestable and fearful in general, and is condemned by the pages of both Testaments."[43]

The reference to the New Testament by Lateran II and Alexander III was made specific by Urban III in 1196. A priest of Brescia asked, "Whether, in the judgment of souls, he ought to be adjudged usurious who gives his money in a loan to receive more than the principal, without any agreement to this effect, although he would not otherwise lend." Replying to this and two similar questions, Urban III declared, "But what should be held in these cases is obvious from the Gospel of Luke, in which it is said, 'Lend, hoping nothing thereby.' Men of this sort are to be adjudged to act evilly on account of the intention of profit which they have, for all usury and increase is prohibited in the law."[44] Urban

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III thus took the Gospel text, authoritatively applied it to answer the questions of a priest, and taught that his answer, excluding the hope of profit from a loan, "should be held."

The popes not only affirmed that Scripture condemned any addition to principal; they also condemned attempted evasions of the usury rule. Eugene III in 1148 struck at a favorite practice of the monasteries. He wrote that mortgages, in which the lender enjoyed the fruits of the mortgaged property without counting them towards the principal, were usurious and consequently unlawful.[45] Alexander III instructed the Archbishop of Genoa that sales on credit at a higher price than cash sales were usurious and condemned.[46] Gregory IX in 1232 attacked a favorite device of the Italian traders by finding usurious and hence unlawful the so-called sea loan where the lender assumed a partner's risk of loss of capital.[47]

The actions of the popes in conjunction with the three general councils has already been noticed. Alexander III made plain his conviction that the act of Lateran III was not mere positive law by writing the Archbishop of Salerno that usury taken before as well as after the Council was subject to restitution.[48] The acts of earlier popes were given the form of legislation binding on the universal Church by Gregory IX. Title 19 of book 5 of his Decretals was devoted to usury, and there, immediately after "Thefts" and immediately before "Falsifiers," nineteen separate canons on usury were inserted. With this legislative act the papacy set out a comprehensive teaching. Usury was condemned as contrary to Scripture, as a sin which no power could make right. Subterfuges in which usury was practiced were denounced. A range of sanctions from confession for hidden usurers to excommunication for public usurers was provided. There are few moral rules of the Church which have been so fully articulated by papal decree.

Were any of the papal statements on usury made *ex cathedra* and so marked by that infallibility which is also enjoyed by a general council teaching on faith and morals? According to many theologians, no special formula is necessary for *ex cathedra* statements, but the Pope must be acting as Supreme Pastor; he must manifest the intention of defining or passing definitive judgment; he must intend to bind the universal church; and he must be speaking on a matter of faith or morals within the deposit of divine revelation.[49] It would seem that each of these qualifications is met in the statements of Alexander III on dispensation from usury, on credit sales and on the necessity of restitution from usury; in the statement of Eugene III on mortgages; in the statement of Urban III on mental usury and the application of Luke 6:35; and in the statement of Gregory IX on the sea loan. It might, however, be objected that only in the last instance, where Gregory IX wrote a decretal for insertion in the *Decretals*, was there an intent to bind the universal church. The insertion of the papal statements of the twelfth century

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into the Decretals did not, it could be argued, change their original character of responses to particular inquiries, and Gregory IX in inserting them would only have intended to take them as they were and not extend their scope. It might be urged against these objections to infallibility that the Popes surely intended to deal with more than the immediate case when they determined that a man commits mental usury by hoping for profit from a loan or that restitution of all usuries was a condition for salvation. It might also be urged that by putting the earlier responses in the form of universal legislation Gregory IX invested them, by his own authority, with the character of infallible papal teaching.

It might be further objected to the *ex cathedra* character of the statements that their matter is not "faith or morals within the deposit of divine revelation." Yet the confident appeal to Scripture is evidence that the popes making some of these statements believed that the matter fell within the scope of deposit. Other statements interpreted the scope of infallible decrees of general councils. Yet, to apply the criteria of some modern theologians, the failure of the popes to use such solemn formulas as "We define and declare to be divinely revealed dogma" or their failure to anathematize persons holding contrary views is evidence that the papal determinations here were not infallible. Opinions might, then, differ among theologians as to whether any of the usury decretals could be considered an *ex cathedra* pronouncement. If short of infallible exercises of papal power, these statements on sin in lending, based on an interpretation of Scripture, carried a very high degree of authority.

In contrast to the papal decisions on usury grounded on the Bible and conciliar action, the first papal treatment of contraception was the decretal *Si aliquis,* a condemnation, of uncertain origin, adopted by Gregory IX for the *Decretals.*[50] This papal approbation gave the text a universal force which it had not formerly possessed. It was a condemnation of contraception by potion; it reflects the ancient and justified association of contraceptive potions with magic and with abortifacients. It provided that the person causing contraception by potion or by "doing something" should be treated as a homicide. Its present force as authority is lessened by the total abandonment of the old "homicide" approach to contraception. At the same time Gregory IX approved a new version of an old canonist teaching and made this new draft into the decretal *Si conditiones,* a canon making an agreement to use contraceptives a ground for annulment of a marriage.[51] *Si conditiones* constituted explicit papal teaching that a plan of avoiding all procreation in marriage was seriously evil.

Over three hundred years later, in 1588, Sixtus V issued a bull, *Effraenatam,* providing excommunication and punishment as murderers for abortioners and for those committing acts of contraception by means of "cursed medicines."[52] This bull took for granted the evil of contraception without defining it; like *Si aliquis* it assimilated contraception to

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homicide as far as sanction was concerned. Two and one half years later its penalties against contraception were retroactively revoked by Gregory XIV and *Effraenatam* lost thereby most of its force as papal teaching on contraception.[53]

Three hundred and fifty years later, in 1930, there issued a third papal statement on contraception, the encyclical *Casti connubii* of Pius XI. Speaking as vicar of Christ, as supreme pastor, as teacher, the Pope spoke "to turn sheep from poisoned pastures." Referring to the acceptance of contraception by the Anglican bishops as a withdrawal "from the Christian doctrine as it has been transmitted from the beginning and always faithfully kept," the Pope went on to state,

> The Catholic Church, to whom God himself has committed the integrity and decency of morals, now standing in this ruin of morals, raises her voice aloud through our mouth, in sign of her divine mission, in order to keep the chastity of the nuptial bond free from this foul slip, and again promulgates:
>
> Any use whatever of marriage, in the exercise of which the act of human effort is deprived of its natural power of procreating life, violates the law of God and nature, and those who do such a thing are stained by a grave and mortal flaw.[54]

This statement has been held by some theologians to be an *ex cathedra* pronouncement, invested with infallibility.[55] Others have taught that the Pope only purports to repeat the teaching of the Church; the Church "again promulgates."[56] The Pope may then be understood as repeating the teaching of the Church without giving it more authority than it already possesses. It is noticeable, moreover, that no solemn formulas of definition were employed and that defenders of contraception were not anathematized. Finally, despite the introductory reference to "Christian" tradition, it is not beyond debate whether the Pope means to assert that his teaching is an exposition of the deposit of revelation. The only appeal to Scripture is to the story of Onan and the interpretation given of its authority against contraception is qualified as being that of Augustine. The sin of contraception is said to violate "the law of God and nature" but it is not clear that this expression signifies more than "natural law." The Church acts "in sign of her divine mission," but this description applies to the act of teaching rather than to the content of what is taught. It cannot be said with certainty that Pius XI proclaims the condemnation of contraception as a portion of revealed truth.

Casti connubii is the papal pronouncement of greatest authority on contraception. Its scope was enlarged by two less formal statements of Pius XII. Addressing the Italian Catholic Society of Midwives, Pius XII interpreted *Casti connubii* to mean that "any attempt by the spouses in the completion of the conjugal act or in the development of its natural consequences, having the aim of depriving the act of the force inherent in it and of impeding the procreation of a new life is immoral." This precept, he added, "will be the same always, because it does not imply

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a precept of human law, but is the expression of a law which is natural and divine."[57] Addressing an international congress of hematologists in 1957 he described as an "illicit direct sterilization" the use of progesterone pills to prevent ovulation.[58] Neither of these statements was invested with supreme authority. They were intended as guidelines by the Pope. In 1961 a broad and somewhat vague reference to contraception was made by John XXIII in his encyclical *Mater et magistra*, in the course of which he rejected solving the population problems of the underdeveloped countries by methods violating "the moral discipline determined by God" and violating "the procreation of human life itself."[59]

These strong papal statements on contraception since 1930 must, however, be considered as limited by four other papal declarations. In the Address to the Midwives in 1951, Pius XII was the first pope to approve positively and unreservedly the use of rhythm for "serious motives," motives which could be a response to "the so-called 'indications' —medical, eugenic, economic, and social."[60] A month later Pius XII said that the Address to the Midwives was meant to affirm "the lawfulness and at the same time the limits—in truth quite broad—of a regulation of offspring."[61] Pius XII thus accepted the principle of regulation. Paul VI implied that the statements of Pius XII as to mean interfering with the natural consequences of the act were not unchangeable. Speaking to the College of Cardinals on June 23, 1964, he said that "up to now we have not sufficient reason to consider the rules laid down by Pius XII in this matter to be out of date and therefore not binding."[62] In 1965, Paul VI indicated that a broader range of questions was open for examination and reexamination. Speaking to his Commission on Problems of the Family, Natality, and Population he defined the question they were to advise him on as follows: "In what form and according to what norms ought spouses to accomplish in the exercise of their mutual love that service to life to which their vocation calls them?"[63] This papal opinion that the question of norm and the question of forms may be examined, as well as the papal opinion that Pius XII's "rules" may not be eternally binding, operated to limit and hedge in the apparent absoluteness of the papal strictures of 1930 and 1951.

In addition to the statements of the Popes themselves there has been a series of decrees emanating from the Holy Office and the Penitentiary. Beginning in 1816 and running to recent times these decrees take a premise that contraception is seriously evil. They are largely concerned with three subjects: Cooperation, instruction in the confessional, and sterilization. They taught that formal cooperation in contraception is evil.[64] At the same time by postulating the concept of "passive cooperation" by a woman in coitus interruptus, they gave practical tolerance to women cooperating with husbands who engaged in this form of contraception.[65] They assumed that a confessor must instruct a penitent

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who could foreseeably be weaned from contraception.[66] At the same time, from 1842 to 1886, they encouraged confessors to tolerate the good faith of penitents practicing contraception who, it was foreseeable, would not be turned from the practice.[67] With this approach encouraged from Rome, contraception spread widely, especially in France. On sterilization they taught that "direct sterilization" was wrong.[68] The qualification "direct" led to a thorough casuistry which distinguished many operations as "indirect" with the malice or innocence of the act turning on the person's intention.[69] These Roman decrees neither carry the full authority of the Sovereign Pontiff acting *ex cathedra,* nor do they, in fact, constitute clear and certain testimony in behalf of the absolute prohibition of contraception.

The papal authority on contraception is, in short, not any stronger than the papal authority which existed in 1450 on usury. It may not be considered as strong. There is only one clear statement by a Pope himself, speaking to the universal Church, which condemns the contraceptive interruption of a coital act in marriage. This single statement, *Casti connubii,* may be evaluated as less authoritative than the repeated teaching of Popes from Lateran II to Vienne, spoken in general councils or gathered in the *Decretals.* It would be difficult to demonstrate that more papal authority was attached to *Casti connubii,* which was primarily based on natural law, than was attached to the repeated statements of medieval popes, primarily based on Scripture, that it was unlawful to seek profit on a loan.

E. The Ordinary Magisterium

In 1450, as far as can be determined from any written record, the bishops and theologians were unanimous in teaching that to seek or take profit on a loan was to commit the mortal sin of usury, condemned by divine and natural law. The unanimity had prevailed for many centuries. Before the condemnation of the ecumenical councils, national or regional synods had denounced usury; more did so after the general councils had spoken. The theologians who wrote on the subject unhesitatingly affirmed the main teachings on it of popes and councils, and their works circulated with ecclesiastical approval in the universities and schools. No theologian was found to deny that Luke 6:35 was a commandment, forbidding all usury; that risk was no reason for a lender to charge for a loan; that the very hope of profit constituted the sin of moral mental usury.[70] If, as is commonly done, the ordinary *magisterium* is identified with the common teaching of other theologians, accepted by the bishops and disseminated in the educational institutions of the Church, the teaching of the *magisterium* was indisputable.

At the same time there were signs of discontent with the rule as stated —discontent on the part of the laity most affected by the rule. As early

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as 1316, when Vienne declared that secular laws could not legitimate usury, it may be inferred that there were some bankers contending that the law of the prince gave them a moral right to usury. By mid-fifteenth century St. Bernardine had to deal with a chorus of protest in Siena, a city built on banking and commercial credit. The upper classes here, by application of the rule on usury and the supporting rules requiring restitution of usury by the heirs and donees of usurers, were almost to a man stained with sinful guilt. Bernardine faced the objection of this financial center that the state could not exist without usury. This objection, he declared, was a blasphemy against God, who would not have commanded the impossible.[71] Bernardine affirmed the old rule; the degree of lay resistance is clear.

Another instance is afforded by trading in the shares of the city debt in Florence. The debt itself had been the result of forced loans, on which, because of their compulsory character, it was deemed proper by some theologians to pay interest. But what was the position of a person purchasing a claim against the city at a discount? He was, in effect, a lender profiting both from the discount and from the interest. Did the usury rule apply to him? Some of the best Tuscan moralists wrestled with the question without being able to reach a result. All was confusion and doubt. St. Antoninus, the well-informed Archbishop of Florence, believed the traffic in city debt illicit, but would not impose this opinion on others. In preaching, he declared, the opinion that the contract was mortal was not to be rashly urged, yet neither was the contract to be publicly approved. It would be best, he concluded, to avoid the topic altogether.[72]

A fourth instance is provided by the actual practice of Catholics in the leading banking centers. They observed the usury rule as it condemned "manifest usury," that is, public pawnbroking or lending at high rates to the poor. In large part, they ignored the rule where loans to businessmen, bankers, or governments were concerned. According to the common opinion of theologians, deposits with banks were just another form of loan, on which profit was forbidden. Yet, according to the disapproving testimony of St. Antoninus, the deposits were a favorite form of investment of monied Florentines.[73] The largest banking organization the world had yet known, the Medici bank, developed with these deposits.[74] Strikingly, the laity made attempt to comply with what seemed to them the basic thrust of the usury rule: interest on the deposits was ordinarily payable only "at the discretion" of the banks; that is, assured profit on the loan was eliminated.[75] But while this common provision was a response to the one purpose of the usury rule, it was not of a kind to satisfy common theological opinion which held that any hope of profit constituted usury. In short, there was a sharp divergence between the theologians' understanding of the usury rule

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and what the faithful, in a commercial center, found applicable in their own practice.

The lending operations of the Medici bank itself illustrate the same split. The Medici, believing and sometimes pious Catholics, avoided manifest usury; more than that, they avoided direct discounting of bills of exchange, which, though not manifest usury, would still have technically constituted the sin.[76] Yet while the law of the Church was observed to this extent, the Medici carried on an immense business in the extension of credit for a profit.[77] As far as can be observed, they were undeterred and perhaps untroubled by the thought that, according to the unanimous teaching of the theologians, they were often committing sins of mental usury. In other words, they seem to have discriminated between teaching of the theologians and popes which they thought binding and teaching which, in good faith, they could not accept.

The *magisterium*, then, if it is taken to include the conscious acceptance of doctrine by committed Christians affected by it, was not in 1450 absolute in its condemnation of usury in all circumstances. According to the *Dogmatic Constitution of the Church* enacted by Vatican II, the laity have been given "a sense of the faith," and Christian believers announce Christ "by a living testimony" when in the ordinary surroundings of the world they live a life springing from faith.[78] If the laity have a prophetic role to play in the teaching of Christian doctrine, then, it may be argued, the refusal of some of the faithful acting in good conscience to apply the absolute prohibition in special cases in which they had peculiar competence—government bonds, deposit-banking, commercial banking—qualified and limited the apparently absolute rule proposed by the theologians.

The rule on contraception has also not been given full adhesion in the last century by many of the faithful affected by it. Contraception was first practiced on a wide scale in France at the end of the eighteenth century. Although it appears to have begun in areas lacking Christian instruction, by the middle of the nineteenth century it was practiced by many Catholics.[79] Jean Baptiste Bouvier, bishop of Le Mans, writes Rome in 1842 that "almost all the younger couples" of his diocese practice it.[80] Throughout the rest of the nineteenth century there are repeated statements by French clergy to Rome on the wide extent of contraceptive practice among the faithful.[81] There is also widespread testimony to the good faith of those who practice it. The Christian couples who practice contraception in his diocese generally assert their innocence, writes Bouvier. They cannot see what is wrong with an act which "favors mutual love." They appeal to the "more common feeling of Christian parents, otherwise known to be persons of integrity."[82] The advice from Rome until 1886 was to respect the good faith of these couples who will not be convinced to the contrary.

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In 1930 Pius XI took notice of the complaint that in some cases the rule was impossible, and rejected the objection.[83] Again, in 1951, speaking to the midwives, Pius XII spoke of the case in which for medical reasons maternity had to be absolutely avoided. For such cases, he taught, sexual abstinence alone was the answer. "But one will object that such abstinence is impossible, that such heroism is unattainable." Like his predecessor, he answered the objection: the commandment of God is not impossible.[84] Like the objections of the Sienese to St. Bernardine, these heartfelt complaints of impossibility to the modern popes constituted testimony from the laity that they found the absolute rule inconsistent with their appreciation of their duty in specific cases. The assertion of "impossibility" has, of course, to be evaluated. Is it only the language of greed, sloth, or cowardice, or does it reflect a reasoned conviction that, given the facts as the person affected by the rule experiences them, God could not have wanted the rule to apply? In the latter case, the cry of "impossible" rises to the dignity of Christian testimony.

In the last decade contraception has been reported to be practiced on a large scale by Catholics in Italy, Spain, Germany, and the Netherlands.[85] The statistical estimates do not afford any light on the good faith of those practicing it, so that it would be hazardous to draw any theological conclusions from this practice alone. After all, Christians every day violate the commandment to love one's neighbor, and no one concludes therefore that the commandment has been repudiated by the Church. The practice of the faithful becomes significant only if undertaken in good faith, with the conviction that it conforms to Christian law. But if practice alone is not cogent, there has been testimony in several books and articles that educated Christian laymen find no rational basis for the present absolute prohibition of contraception.[86] While some laymen have supported the prohibition, it seems fair to say that in the last two years of candid speech the preponderant voice has been that of rational criticism of the absolute rule. The rule is accepted by many not as a statement of conduct necessary to salvation but as a disciplinary provision of the Church. It seems possible that, since 1840, as many Catholics actually affected by the rule have rejected it as part of the permanent deposit of faith as did Catholics actually affected by the usury rule reject its absolute application in 1450.

In summary, there was authority on usury in 1450 which constituted, apparently, a formidable barrier to departing one jot or tittle from the rule, Usury is the sin of taking profit on a loan. Yet the rule was revised. In 1965 there is authority, though somewhat less authority, which constitutes a formidable barrier to modifying the rule, Any act of impeding the act of marital coitus or its generative consequences is the sin of contraception. Can a consideration of the force of the authority on usury teach us anything on the force of the authority on contraception?

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II. Implications

There are three major ways of interpreting the state of authority on usury in 1450. One way is to state that the Church was irrevocably committed by the infallible teaching of the three general councils, by the highly authoritative teaching of popes, by the testimony of the Fathers, by the unanimous agreement of the theologians, by the absolute moral commandments of the Old Testament, by the words of the Lord Himself, to this proposition: It is a mortal sin to take or to seek profit on a loan. This view of the matter has been taken from time to time by traditionalists within the Church—Peter Ballerini in the eighteenth century, Jeremiah O'Callaghan in the nineteenth century, Hilaire Belloc in the twentieth century.[87] These men have been puzzled or outraged by the fact that so many Catholics, so many bishops, so many papal administrations have lived on profits from loans. Evasion, forced compliance with the times, or actual sin have been the description these men have applied to the behavior of their fellow Catholics and their pastoral leaders.

This view that the Church was committed to the absolute rule on usury was also that of a number of rationalist critics of the Church in the nineteenth century. Andrew White, William Lecky, Henry Charles Lea all pointed to the case of usury as the case where the Church had made infallible pronouncements on moral conduct, where the Church had had to eat its words, where the Church had, in short, been proved wrong.[88] The usury rule was, for these literal readers of the ancient texts, the classic example of an about-face by the Church which disproved forever its vaunted claim to be the infallible arbiter of morals.

The traditionalist Catholics and the rationalist critics agreed in one respect: in a reading of the documents of the tradition as though the prohibitions stated were identical with dogmatic truths, as though the rules were put as eternal guides to eternal values. This way of approaching the documents cannot seem very satisfactory for Catholics today who would have to conclude that either the Church in 1450 or the Church in 1965 was in error and so deny a fundamental Catholic belief in the Church. It is, perhaps, understandable for a nonbeliever to take this approach to the documents. But the nonbeliever has not grasped the secret, that the Church is a living organism and that her law grows. Looked at as an inert rule, intended to fix the behavior of Christians for all times, the usury prohibition conflicts inexplicably with the subsequent life of the Church. To those who believe in the Church, and who consequently do not believe that error on a massive scale could dominate her teaching, there must be another approach to the documents.

A second approach then, which might recommend itself to Catholics, would be to urge that the teaching in 1450 was not as absolute as it appeared because it was limited by its partial nonacceptance by those most vitally affected by it. This solution would point to the conscious,

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good-faith rejection of the rule by Catholics in the financial centers as testimony that the rule was never taught by the Church with all the force that a simple inspection of its language would convey, that always there was an implicit exception for cases where the main purpose of the rule was not jeopardized. The *magisterium*, it would be argued, was never committeed beyond what all believers assented to. The teaching proposed by the *magisterium* was not an absolute prohibition.[89]

This approach, it may be felt, runs too much the risk of making moral law in the Church depend on democratic adhesion. After all, there had been statements by popes and councils which recognized no exceptions; after all, these statements had been accepted by those most trained to recognize the requirements of Christian moral law, that is, the theologians. If the rule on usury failed to be infallibly taught only because small, specialized minorities of Catholics failed to accept it, what other moral doctrines might not also be put in question? The doctrine on the just war might, for example, be considered fallible because so many Catholic generals at least appear never to have adhered to it. The appeal to good faith has its evident dangers. Moreover, to give practice moral validity, it is necessary to ask, Why was the rule limited? In the case of usury what was the basis on which the bankers and their deposit might legitimately claim an exception? These questions are answered only by posing, in turn, the question, What was the purpose of the usury rule? This question inescapably leads to a different, a third approach.

The third approach is to look at the purpose of the rule, to ask not, What was absolutely prohibited? But, Why was an absolute prohibition enacted? This question may be subdivided further: What goods was the Church attempting to protect? What goals was the Church seeking to achieve? What was the function of the rule? If these questions are posed, it may be answered that the goods the Church was protecting were justice and charity; that the goals it sought were the protection of the poor from exploitation, the encouragement of the avaricious to share their wealth, and the proper distribution of capital for the life of the community. The function of the usury rule was to achieve these ends, to protect these values. In the medieval village economy, the Church's rule functioned as it was intended to. Western Europe never knew the plague of village usurers that stifled ancient Greece or twentieth-century China.[90] Money was channelled into risk ventures. The poor were helped in gratuitous ways. The usury rule was a good rule for this society.[91] But this working rule, designed in the form of an absolute prohibition, was not to be confused with the unchanging moral law. The third approach, then, looks at the goods protected, the purposes of the rule enacted. Generalized, it takes the form of the proposition that specific moral rules enacted by the Church may be taken as sure guides for the periods for which they are enacted, but

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that they are not beyond reexamination and revision to preserve their purpose and to protect the permanent goods they safeguard.

The Church is committed to proclaim to the end of time the example of Christ, to repeat to each Christian His "new commandment" to love other men "as I have loved you." The proclamation of the Gospel necessarily involves the teaching of justice and charity. But what acts are just and charitable depends on the concrete circumstances of a society. If the economy changes, the requirements of justice and charity will change; some acts will receive more moral emphasis, others less; the moral attitude toward certain activities will be altered; the rules prescribing certain acts and proscribing others will undergo reexamination. What has been thought to have been essential may be seen as essential only in a given context. Such reexamination occurred with respect to the usury rule. The purpose of the rule, to guide men in economic transactions with each other to love each other, was better realized by a new rule, and the absolute prohibition of usury in the old sense was effectively rewritten by the theologians from 1450 to 1600. The third approach explained how this was possible without error by the Church.

Any one of the three approaches might also be taken to the rule on contraception. It might be argued that the Church by reason especially of the unbroken theological teaching, authoritatively reaffirmed by Pius XI in *Casti connubii,* is irrevocably committed to the absolute prohibition of contraception. This view has been expressly stated by some moral theologians.[92] Uppermost in their minds has been the thought that for the Church to relax its prohibition would be for the Church to change. To modify the rule would be to admit error. The infallibility of the Church would be disproved. The Church would have been wrong. These conservative voices within the Church have not been joined by those of skeptical critics outside the Church, but it is reasonable to hypothesize that if the absolute prohibition were modified, a host of unsympathetic enemies, including some now urging the Church to change, would point to the modification as evidence of fallibility. The modern counterparts of Lecky, Lea, and White would reappear to cite the case as an about-face proving the relativity of morals and unmasking the pretensions of the Church. Again conservatives and skeptics might find themselves in the same camp.

The second approach to the documents of the tradition might also be attempted. It could be argued that the *magisterium* is not clear, because, at least in the modern era beginning in the nineteenth century, many of the faithful affected by the law have refused adherence to it as a requirement of revelation and have, at most, taken it as a provisional disciplinary law of the Church. The utterance of Popes, bishops, and theologians would then be read as limited by the sense of the faithful, and it would be maintained that the clear articulations of

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ecclesiastical authority could never go beyond what the Church as a whole believed, and that the lack of true consensus among the faithful prevented the Church from pronouncing infallibly or certainly upon the subject. Again, the objection to this approach is evident. The failure of the faithful to put moral teaching into practice cannot be the test of its validity. The failure of a portion of the faithful most affected by the teaching to accept its cogency may not be a proper criterion if bias or self-interest can be found to infect their response. The lack of unanimous assent to a teaching only raises a question: On what grounds is the teaching found inapplicable? To answer this question is to turn to the third approach, which looks at the purpose of the rule.

The third approach here looks at the goods the absolute prohibition of contraception has sought to protect and the goals it has sought to achieve. These goods may be summarized in four propositions. Procreation is good. Innocent life may never be directly attacked. The personal dignity of a spouse must be respected by the other spouse. Sexual love is holy in marriage. In the context of an assault on procreation, carried on by various dualist groups for over twelve hundred years, the rule on contraception functioned to protect the value of the procreative act. In the context of environments where embryonic life was held cheap and where methods of abortion and contraception were not sharply distinguished, the rule functioned to protect innocent young life by treating every step in the process of generation as sacred. In the context of environments where personal freedom in the choice of a spouse was rare, and danger of exploitation of the woman great, the rule operated to save the procreative dignity of the wife. In the context of the close association of contraception with adultery and fornication, the prohibition reinforced marital fidelity.[93] If these goods could be safeguarded without an absolute rule on contraception, then the rule might be revised if a shift in the environment made revision desirable.

The rule on contraception worked without any criticism until the end of the eighteenth century. It very gradually became an object of criticism in the nineteenth century, and only after 1850 did environmental changes begin to accumulate which affected its validity. These changes include the immense increase in the rate of population growth largely brought about by the control of disease, the change in the legal and social status of Western women, making them in little need of paternalistic protection, and the development in the West of college education on a mass scale. The cultural environment in which marriage takes place is not that of the Roman Empire in which the rule on contraception was adopted, nor that of medieval Europe in which the rule was reaffirmed.[94] If the rule was framed to respond to the dangers of particular environments it might be reconsidered in relation to our own.

The third approach refuses to identify the rule on contraception

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with the content of Christian revelation. It denies that the rule here, any more than the rule on usury, is part of the eternal gospel of Jesus Christ. The command to "love one another as I have loved you" may be made specific in particular environments by the rule of the Church on contraception, but the Church is always free to look again, to see if, in a new environment, the rule is still the best specification of the commandment of love. It is with that sense of freedom that Pope Paul VI asked his Commission on Problems of the Family, Natality, and Population: "According to what norms and in what form should the spouses in their exercise of mutual love accomplish that service to life to which their vocation calls them?" The question, it seems, could not have been asked if the third approach had not seemed open.

NOTES

1 This conventional division does not, of course, necessarily imply acceptance of a "two-source" theory of revelation.

2 On these permitted transactions, see John T. Noonan, Jr., *The Scholastic Analysis of Usury* (Cambridge, 1957) [hereafter *Scholastic Analysis*], pp. 115–128, 134–154, 154–164, 182–184.

3 St. Bernardine of Siena, *De contractibus et usuris* 39.1.3 in *De evangelio aeterno, Opera* (Quarrachi 1959–1963); *Scholastic Analysis*, pp. 128–131.

4 St. Raymond of Pennaforte, *Summa casuum conscientiae* (Verona, 1744) 2.7.3; William of Auxerre, *Summa aurea in quatuor libros sententiarum* (Paris, 1500) 3.21; St. Antoninus, *Summa sacrae theologiae* (Venice, 1581–1582) 2.1.7; *Scholastic Analysis*, p. 115.

5 St. Antoninus, *Summa* 2.1.16.

6 "Ecce evidenter ostenditur, quod quicquid ultra sortem exigitur usura est," Gratian, *Decretum* 2.14.3.1, *Corpus juris canonici*, ed. E. Friedberg (Leipzig, 1879–1881).

7 "pignus debitori reddideret, per vim nihil raperet, panem suum esurienti dederit, et nudum operuerit vestimento, ad usuram non commodaverit, et amplius non acciperit" (*Biblia sacra iuxta latinam vulgatam versionem ad codicum fidem*, ed. H. Quentin, Rome, 1926). The Vulgate translation was the authority. Modern scholarship has done nothing to challenge its essential accuracy in rendering the Hebrew here.

8 "rapientem rapinas, pignus non reddetur, et ad idolos levantem occulos suos, abominationem fancientem, ad usuram dantem et amplius accipientem."

9 "Qui pecuniam suam non dedit ad usuram."

10 Modern exegesis here offers an alternative translation, "Lend never despairing" (Revised Standard Version). This alternative was unknown to medieval exegesis. Postmedieval exegetes were also to argue that "lend hoping nothing" was a counsel, not a command. Some support for this position might be found in its association with such sayings as "If one strikes you on the cheek, offer him the other" (Lk 6:29). On the other hand, the immediately preceding words in Lk 6:35 are "Love your enemies and do good to them," and verses 36–37 read, "Be merciful as your Father is merciful. Judge not and you will not be judged; condemn not and you will not be condemned, forgive and you will be forgiven." No Christian would have said that love of one's neighbor including one's enemy, mercy, abstention from judgment, and forgiveness were anything else but commandments. Doubtless today few exegetes, however, would sustain that "Lend, hoping nothing" were the *ipsissima verba* of the Lord, as medieval theologians supposed.

11 *E.g.*, Francis Hürth, S.J., *De re matrimoniali* (Rome, 1955) pp. 101–103; J. P.

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Schaumberger, "Propter quale peccatum morte punitus sit Onan?" *Biblica* 8 (1927) 209–212.

[12] See John T. Noonan, Jr., *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge, 1965) [hereafter *Contraception*], pp. 34–35.

[13] David Daube, "Consortium in Roman and Hebrew Law," *Juridical Review* 62 (1950) 72–73, 79, 89, 96.

[14] *Contraception,* p. 35.

[15] André Snoeck, S.J., "Morale catholique et devoir de fécondité," *Nouvelle revue theologique* 75 (1953) p. 909.

[16] Hermann L. Strack and Paul Billerbeck, *Kommentar zum Neuen Testament aus Talmud und Midrash,* (3rd ed., Munich, 1961) vol. III, *Die Buefe des Neuen Testament und die Offenbarung Johannis,* pp. 68–69.

[17] *Contraception,* p. 44–45.

[18] "et quodcumque sorti accedit, usura est," Ambrose, *De Tobia* 14.49, *Opera,* ed. P. A. Ballerini (Milan, 1875) vol. I, col. 781. The first two quotations are, respectively, from 14.46 (col. 779) and 14.49 (col. 780).

[19] "Cum Dominus nihil ab iis quibus mutuum dederimus sperandum esse praecipiat, quod recipere debeamus, quomodo pignus secundum Legem putant esse retinendum" *(ibid,* 17:58 col. 786).

[20] Ambrose, *De bono mortis* 12.56, in *Opera,* vol. 1, col. 529.

[21] "In principio legis a fratribus tantum fenus tollitur; in propheta ab omnibus usura prohibetur, dicente Ezechiele, 'Pecunium suam non dedit ad usuram.' Porro in Evangelio virtutis augmentum est, praecipiente Domino, 'Feneramini his a quibus non speratis recipere.' Sequitur in tertiodecimo loco, 'Et amplius non acceperit.' Putant quidam usuram tantum esse in pecunia. Quod praevidens divina Scriptura, omnis rei aufert superabundantiam, ut plus non recipis quam dedisti." (Jerome, *On Ezechiel* 6.18, *Corpus christianorum. Series Latina* 75:240.)

[22] "Unde apparet Deum hoc nolle? Dictum est alio loco: 'Qui pecuniam non dedit ad usuram? Et quam detestabile sit, quam odiosum, quam exsecrandum, puto quia et ipsi feneratores noverunt" (Augustine, *On Psalm 36.3, Patrologia latina,* ed. J. P. Migne, [hereafter PL] 36:386.

[23] " 'Fineratur' quidem latine dicitur, et qui dat mutuum, et qui accipit." *(Idem).*

[24] Letter 153, To Macedonius 20,25, *Corpus scriptorum ecclesiasticorum latinorum* [hereafter CSEL] 44:419, 425.

[25] Clement, *Stromata* 2.18, *Patrologia graeca,* ed. J. P. Migne [hereafter PG] 8:204.

[26] St. Basil, *Homily 2 on Psalm 14,* PB 29:266.

[27] St. Gregory of Nyssa, *Homily 2 on Ecclesiastes,* PG 44:674.

[28] St. Gregory of Nyssa, *Canonical Letter,* PG 45:234.

[29] St. John Chrysostom, *Homily 56 on Matthew,* PG 58:556.

[30] *Ibid.* at 558.

[31] Gratian, *Decretum* 1.88.11.

[32] St. John Chrysostom, *Homily 28 on Matthew 5,* PG 57:537.

[33] St. Augustine, *Adulterous Marriages* 2.12.12, CSEL 41:396.

[34] Clement of Alexandria, *Pedagogus* 2.10.95.3, *Die griechischen christilichen Schriftsteller der ersten drei Jahrhundert* 15:228. On Ambrose, Jerome, and Augustine, see *Contraception,* pp. 79–80, 129–131.

[35] *Contraception,* pp. 306–321.

[36] "Porro detestabilem et probosam divinis et humanis legibus per scripturam in veterem et in novo testamentum abdicatam: illam, inquam, insatiabilem foeneratorum rapacitatem damnamus, et ab omni ecclesiastica consolatione sequestramus" (G. D. Mansi, ed., *Sacrorum conciliorum nova et amplissima collectio* [hereafter Mansi] 21: 529–530).

[37] "quasi licet usuras exerceant et qualiter utriusque testamenti pagina condemnentur nequaquam attendant." (Mansi 22:231).

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[38] "Sane, si quis in illum errorem incideret ut pertinaciter affirmare praesumat exercere usuras non esse peccatum, decernimus eum velut haereticum puniendum" (Clementine Constitutions, 5.5, *Corpus juris canonici*).

[39] *E.g.*, Canons 3 and 4 of Avignon (1209); canon 30 of Chateau-Gontier (1230); Canon 2 of Reims (1231) for which see Gabriel LeBras, "Usure," *Dictionnaire de théologie catholique* 152:2342.

[40] See *Contraception*, pp. 149, 169.

[41] Belgian bishops (1909); German bishops (1913); Austrian bishops (1919); French bishops (1919 and 1961); bishops of the United States (1920 and 1959); bishops of India (1957); bishops of England and Wales (1964). See *Contraception*, 420–422, 473, 510.

[42] "quum usurarum crimen utriusque testamenti pagina detestetur," in Gregory IX, *Decretals* 5.19.4, "Super eo," *Corpus juris canonici*.

[43] "cum sit usurarum crimen destalcle plurimum et horrendum, et utriusque testamenti pagina condemnatur" (Mansi 22:231).

[44] "Verum quia quid in his casibus tenendum sit ex evangelio Lucae manifeste cognoscitur, in quo dicitur, 'Mutuum date nihil inde sperantes.' Huiusmodi homines pro intentione lucri quam habent, cum omnis usura et superabundantia prohibeatur in lege, judicandi sunt male agere et ad eo, quae taliter sunt accepta, restituenda, in animarum iudicio effaciter inducendi," *Decretals*, 5.19.5, *Consuluit*.

[45] Eugene III *Epistolae* 550, *PL* 180:1567.

[46] *Decretals* 5.19.6, *In civitate tua*.

[47] *Ibid.*, 5.19.19, *Naviganti*.

[48] *Ibid.*, 5.19.5, *Quum tu*.

[49] Cf. Infallibility in *Theological Dictionary*, Rahner-Vorgrimler, (New York, 1965).

[50] "Si aliquis causa explendae libidinis vel odii meditatione homini aut mulieri aliquid fecerit, ut non possit generare aut concipere vel nascere soboles, ut homicida teneatur," *Decretals* 5.12.5. On the origin of the canon with Regino of Prüm see *Contraception*, pp. 168–169.

[51] *Decretals* 4.5.7.

[52] "Quis denique non damnet gravissimis supliciis illorum scelera, qui venenis, potionibus, ac maleficiis, mulieribus sterilitatem inducunt, aut ne concipiant, ne pariant, maleficis medicamentis impediunt?—Divinum donum est fecunditas parentis, eodemque tempore diro hoc flagitio privantur liberis parentes qui generaverant.—[After prescribing punishments for abortioners] Praeterea eisdem peonis teneri omnino statuimus eos, qui sterilitatis potiones ac venena mulieribus propinaverint, et quominus foetum concipiant impedimentum praestiterint, ac ea facienda et exequenda curaverint, sive quocumque modo in his consuluerint, ac mulieres ipsas quae eadem pocula sponte ac scienter sumpserint," *Effraenatam, Codicis iuris canonici fontes*, ed. Peter Gasparri (Rome, 1923) I, 308–310.

[53] Gregory IV, *Sedes Apostolica*, in *ibid.*, I 330–331.

[54] "Cum igitur quidam, a christiana doctrina iam inde ab initio tradita neque umquam intermissa manifesto recedentes, aliam nuper de hoc agendi modo doctrinam sollemniter praedicandam censuerint, Ecclesia Catholica, cui ipse Deus morum integritatem honestatemque docendam et defendendam commisit, in media hac morum ruina posita, ut nuptialis foederis castimoniam a turpi hac labe immunem servet, in signum legationis suae divinae, altam per os Nostrum extollit vocem atque denuo promulgat: quemlibet matrimonii usum, in quo exercendo, actus, de industria hominum, naturali sua vitae procreandae vi destituatur, Dei et naturae legem infringere, et eos qui tale quid commiserint gravis noxae labe commaculari." *Acta Apostcae Sedes* 22:560 [hereafter AAS].

[55] These theologians include Arthur Vermeersch, S.J., Felix Capello, S.J., A. Gennaro, S.S., A. Piscetta, S.S., Francis Ter Haar, C.SS.R. See John C. Ford, S.J. and

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Gerald Kelly, S.J. *Contemporary Moral Theology II: Marriage Questions* (Westminster, Md.) 263–264.

[56] Joseph Creusen, S.J., L'Onanisme conjugal, *Nouvelle revue théologique* 59 (1932) 132.

[57] [Pius XI taught] "che ogni attentato dei coniugi nel compimento dell atto coniugale o nello sviluppo delle sue consequenze naturali, attentanto avente per scopo di privarlo della forza ad esso inerente e di impedire la procreazione di una nuova vita, è immorale; e che, nessuna indicazione o necessita può mutare un azione intrinsamente immorale in un atto morale e lecito.

Questo prescrizione è in pieno vigore oggi come ieri, e tale sara anche domani e sempre, perchè non è un semplice precetto di diritto umano, ma l'espressione di una legge naturale e divina" (Pius XII, Address to the Italian Catholic Society of Midwives, *AAS* 43:843).

[58] "Mais on provoque une stérilisation *directe*, et donc illicite, lorsqu'on arrête l'ovulation, afin de preserver l'uterus et l'organisme des consequences d'une grossesse, qu'ils ne sont pas capables de supporter" (Pius XII, Address to the Seventh International Congress of Hematology, *AAS* 50:735).

[59] "non ea profecto via consilii est invenienda, qua, praeter morum disciplinam a Deo statutam, item humanae ipsius vitae procreatio violetur." John XXIII, *Mater et magistra, AAS* 53:446.

[60] "Da quella prestazione positiva obligatoria possono esimere, anche per lunga tempore, anzi per l'intera durata del matrimonio, seri motivi, come quelli che si hanno non di rado nella considetta 'indicazione' medica, eugenica, economica, e sociale. Da cio consique che l'osservanza dei tempi infecondi puo essere *lecita* soto l'aspetto morale; a nelle condizioni menzionate e realmente tale" (*AAS* 43:846).

[61] "Perciò nell' ultima Nostra allocuzione sulla morale coniugale abbiamo affermato la legittimatà e al tempo stesso i limiti—in verità ben larghi—di una regolazione della prole, la quale, contrarimente al cosidetto 'controllo delle nascite' e compatibile con la legge di Dio." (Address to the Association of Large Families and the Family Front, *AAS* 43:859.)

[62] *AAS* 56:588.

[63] "Dans le cas present, le probleme pose peut se resumer ainsi: dans quelle forme et selon quelles normes les époux doivent-ils accomplir, dans l'exercice de leur amour mutuel, ce service de la vie auquel leur vocation les appelle?" *L'Osservatore romano,* March 29, 1965.

[64] Response of the Sacred Penitentiary November 15, 1816, in *Decisiones Sanctae Sedis de usu et abusu matrimonii,* ed. Hartman Ratzill (Rome, 1943), p. 11; Decree of the Holy Office, April 19, 1853, in *ibid.,* p. 21, Response of the Sacred Penitentiary, in *ibid.,* p. 35.

[65] Responses of the Sacred Penitentiary dated November 15, 1816, April 23, 1822, February 1, 1923, in *ibid.,* pp. 11–15.

[66] Responses of the Sacred Penitentiary June 8, 1842 and 1886 in *ibid.,* p. 18 and p. 30.

[67] Responses of the Sacred Penitentiary June 8, 1842, in *ibid.*, p. 30. For a discussion, see *Contraception*, pp. 400–405, 416–419.

[68] Decree of the Holy Office, 1931, in Hürth, *De re matrimoniali* p. 105. Decree of the Holy Office, February 21, 1940, *AAS* 32:73.

[69] See *Contraception*, pp. 457–460.

[70] The first theologian to challenge Urban III's interpretation of Luke 6:35 as a commandment of Christ was Dominic Soto in the first quarter of the sixteenth century (see *The Scholastic Analysis*, p. 346). Soto also made serious inroads on the doctrine of mental usury by teaching that if a man had a right to interest he had a right to hope for it (*ibid.*, p. 257). The first theologian to defend risk as a ground for charging interest was another Spanish innovator, John Medina in the early sixteenth century. This

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basis was accepted by a Roman congregation only over 100 years later in a decision by the Congregation of the Propaganda for Chinese Christians (*ibid.*, pp. 283–285, 289).

71 St. Bernardine, *De contractibus et usuris* 43.3.1.

72 St. Antoninus, *Summa* 2.1.11 (at the beginning). For a discussion of the controversy, see *The Scholastic Analysis*, pp. 166–169.

73 St. Antoninus, *Summa* 2.1.6, 2.1.7.

74 Raymond De Roover, *The Rise and Decline of the Medici Bank* (Cambridge, 1963), p. 100.

75 *Ibid.*, p. 102.

76 *Ibid.*, p. 108–109.

77 *Ibid.*, pp. 132–135, 141.

78 *Dogmatic Constitution on the Church*, 4.35. *AAS* 57.30.

79 Philippe Ariès, *Histoire des populations françaises et de leurs attitudes devant la vie depuis le XVIIIe siècle* (Paris, 1948), p. 470.

80 Jean Baptiste Bouvier, *Dissertatio in sextum decalogi praeceptum et supplementum ad tractatum de matrimonio* (Paris, 18th ed., n.d.) 2.1.3.4.

81 See *Contraception*, pp. 401–405, 415–419.

82 Bouvier, *Dissertatio*, 2.1.3.4.

83 Pius XI, *Casti connubii*, *AAS* 22:559.

84 Pius XII, Address to the Midwives, *AAS* 43: 846–847.

85 See *Contraception*, p. 504; Bernard Häring, *Ehe in dieser Zeit* (Salzburg, 1960) p. 365.

86 E.g., Louis Dupré, *Catholics and Contraception* (Baltimore, 1964); William Birmingham, *What Modern Catholics Think About Birth Control* (New York, 1964); Michael Novak, ed. *The Experience of Marriage* (New York, 1964).

87 Pietro Ballerini found most of Italy sunk in usury by application of the medieval rules, Ballerini, *De jure divino et naturali circa usuram* (Bologna, 1747). Jeremiah O'Callaghan's quixotic work attacking all banking as usury and finding it practiced in nineteenth-century America by Catholic bishops and laity alike is *Usury* (New York, 1856). Hilaire Belloc taught that all consumption loans were usurious and that the present world economy was dominated by international usurers, *The Restoration of Property* (New York, 1936).

88 See Andrew White, *The History of the Warfare of Science with Theology in Christendom* (New York, 1922) II, 264; William Lecky, *History of the Rise and Influence of the Spirit of Rationalism in Europe* (London, 1904) II, 258 ff; Henry Charles Lea, *The Ecclesiastical Treatment of Usury, Yale Review* 2 (1894) 375–385.

89 This kind of reasoning would start from the proposition that "The entire body of the faithful anointed as they are by the Holy One, cannot err in matters of belief. They manifest this special property by means of the whole people's supernatural discernment in matters of faith when, 'from the bishops down to the last of the day faithful' they show universal agreement in matters of faith and morals" (*Constitution on the Church* 2.12). But if all the faithful can't be wrong in such a case, does the dissent of some of the faithful mean that the bishops are wrong? An affirmative answer is not compelled by the propositions quoted.

90 For a comparison of medieval Europe and ancient Greece, see Henri Pirenne, *Medieval Cities* (trans. F. D. Halsey, Princeton, 1925), p. 126. On the extremely high interest rates that existed in China, see Lien-sheng Yang, *Money and Credit in China* (Cambridge, 1952), pp. 93–98.

91 *Scholastic Analysis*, p. 195.

92 See Ford and Kelly, *op. cit. supra*, n. 55 and authorities collected there.

93 *Contraception*, pp. 532–533.

94 On these environmental changes, *Contraception*, pp. 476–480.

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