
CHAPTER 6 FEMINIST ETHICS AND CATHOLIC SEXUAL MORALITY

1. *Catholic Sexual Ethics after Vatican II*

In medieval Christian theology, human sexuality was seen as instrumental to procreation, as Thomas Aquinas states in his *Summa Theologica*:

[...] it is no sin if one, by the dictate of reason, makes use of certain things in a fitting manner and order for the end to which they are adapted, provided this end be something truly good. Now just as the preservation of the bodily nature of one individual is a true good, so, too, is the preservation of the nature of the human species a very great good. [...] therefore just as the use of food can be without sin, if it be taken in due manner and order, as required for the welfare of the body, so also the use of venereal acts can be without sin, provided they be performed in due manner and order, in keeping with the end of human procreation.¹

This interpretation of sexuality, informed by the metaphysical understanding of the subordination of the body to the soul, was cemented in the neoscholastic tradition of the 19th century. With it, the Catholic Church rejected, first and foremost, the modern interpretation of human freedom; it evokes a biological teleology that is embedded in a metaphysical ontology, and it demands of the faithful to live in accordance with this understanding. The Congregation of Faith today argues that the biological teleology as such does not entail the normative framework, which would be a naturalistic fallacy; rather, nature becomes binding in its onto-theological underpinning. The Vatican II Council broke with the neoscholastic tradition that emphasized the instrumental function of sexuality in human reproduction, establishing instead a personalist understanding in which the marital intimate relationship includes sexuality as an expression of mutual love. Pope Paul VI's encyclical *Humanae Vitae* from 1968 entails both approaches but spells out how sexuality ought to be understood and practiced, especially in view of the new developments of birth control. It prohibits any use of so-called artificial contraceptives and prescribes the inherent moral cohesion of sexual acts, marriage, and procreation. In his extensive writings on the topic, and following the outcry of moral theologians especially in Western countries, John Paul II repeatedly returned to the issue of the relation between a man and a woman and the role of sexuality in their intimate relationship. According to John Paul II whose writings Benedict XVI and Francis reaffirmed, sexuality is the expression of (mutual) love; human reproduction is understood as procreation, i. e. as the mirroring of divine creation in human self-giving love.² With its ethical interpretation

1 THOMAS AQUINAS, *Summa Theologica*, New York 1948, STH II-II, 153, 2.

2 JOHN PAUL II, *Theology of the Body. Human Love in the Divine Plan*, Boston 1997. The concept of marriage and procreation is stated in *Humanae Vitae*, cf. PAUL VI, *Encyclical Letter Humanae Vitae*,

that sexuality must exclusively take place between a man and a woman because this is naturally and theologically warranted, Catholic sexual ethics departs both from 20th century biological insight into human sexuality and from the social understanding of sexual identity and human intimate relationships that most scholars embraced over the last decades.

In contrast to the sciences and the humanities, the Catholic Church argues normatively and theologically: sexual acts are connected to procreation in the sacrament of marriage, which is the symbolic realization of the sacredness of human life in the bodily-spiritual encounter between a man and a woman, including the intimate sexual encounter. Because of this theological interpretation, the Vatican continues to reject any technical intervention into the sexual act, criticizing sexual liberation as well as the new assisted reproductive technologies for denigrating the sacramentality of the marriage act. Furthermore, it holds that reproductive autonomy exacerbates the categorical misunderstanding of human life as “chosen” rather than “given”, ultimately replacing the gift of life with the arbitrary design of life. While *Humanae Vitae* responded to the new methods of birth control, the Instruction *Donum Vitae*, from 1987, further qualified in the Instruction *Dignitas Personae* from 2008, emphasizes Pope John Paul II’s and Pope Benedict XVI’s approach to sexual ethics, however now reformulated through the lens of the emerging field of bioethics.³ To argue that Catholic sexual ethics does not rest on a biological argument but is, at its core, theological, is incorrect because the theological interpretation utilizes a particular understanding of the biological nature of humans. Theologically, however, Catholic sexual ethics rests upon a specific interpretation of the biblical story of creation (and the Book of Genesis) to argue for a particular anthropology. I agree with Todd Salzman and Michael Lawler in this respect:

Vatican 1968, http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html. It is often cited in bioethical texts, e. g. the Instruction *Dignitas Personae*: Marriage, present in all times and in all cultures, “is in reality something wisely and providently instituted by God the Creator with a view to carrying out his loving plan in human beings. Thus, husband and wife, through the reciprocal gift of themselves to the other – something which is proper and exclusive to them – bring about that communion of persons by which they perfect each other, so as to cooperate with God in the procreation and raising of new lives”. CONGREGATION OF THE DOCTRINE OF FAITH, *Instruction Dignitas Personae*. On certain bioethical questions, 2008, No 6. http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html#_ftn10.

3 CONGREGATION OF THE DOCTRINE OF FAITH, *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation. Replies to Certain Questions of the Day* (*Donum Vitae*), Roman Curiae Vatican 1987, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html; CONGREGATION OF THE DOCTRINE OF FAITH, *Instruction Dignitas Personae*.

For John Paul, sexuality is by no means purely biological, but concerns the very being of human persons as such. The pope develops his ethical theory by allying what he calls Thomistic personalism, which recognizes the importance of basic goods and the human person, with an idiosyncratic reading of Scripture to construct a definition of sexual human dignity.⁴

John Paul II and Benedict XVI have proclaimed a sexual ethics that has long been criticized and contested by theologians and many Catholics. It still does not fully acknowledge the personalist reinterpretation that began at the Vatican II Council, expressed in the document *Gaudium et Spes*. The Council had recognized that personal love between the spouses, not reproduction, is the centerpiece of marriage: marriage “is not instituted solely for procreation.”⁵

The normative interpretation of Catholic sexual morality has two sides: first, any sexual act outside of marriage does not meet the standard of the good life every Catholic ought to pursue; and second, sexual acts within marital relations must be restricted to reproduction-oriented acts – at least in principle. As explained in great detail in the theological manuals, the moral guides developed mostly for priests and mostly within the context of confession and penance, there are many ways to fall short of living up to the ontotheological moral order: one could be wrong about one’s sexual identity – being gay or lesbian, for example; one could ‘use’ the wrong body parts for sexual arousal, or one could be wrong about positions within sexual practices. Certainly, a new approach to Catholic sexual ethics has emerged since the Vatican II Council. James Keenan, for example, calls it the theological development from “confessing sins” to “liberating conscience”.⁶ This turn to a “liberation conscience” may, however, be more the conviction of Catholic theologians than the Magisterium.

Catholic sexual ethics matters for a feminist ethics as much as for the overall stance the Catholic Church has taken towards its own tradition of social ethics. John Paul II, a social ethicist by training, compared the solidarity with impoverished European workers in the 19th century to human embryos threatened by to-

4 T. A. SALZMAN/M. G. LAWLER, *Vatican II and Sexual Ethics: Past, Present, Future*, in: Toronto Journal of Theology, 32/2 (2016), 297–313, 304.

5 PAUL VI, *Gaudium et spes*, 1965, No. 50. www.vatican.va/archive/hist.../ii.../vat-ii_const_19651207_gaudium-et-spes_en.html. The whole sentence reads: “Marriage to be sure is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen. Therefore, marriage persists as a whole manner and communion of life, and maintains its value and indissolubility, even when despite the often intense desire of the couple, offspring are lacking.”

6 J. F. KEENAN, *A History of Catholic Moral Theology in the Twentieth Century: From Confessing Sins to Liberating Consciences*, New York 2010.

day's medical practices and technologies – which ultimately means they are threatened by women who terminate pregnancies and physicians who “procreate” human life in the petri dish. Pope Benedict XVI, quoting John Paul II in this respect, in *Dignitas Personae* explicitly states that the 20th century question of Catholic Social Teaching (CST) is, first and foremost, the protection of the human embryo:

If initially human and social progress was characterized primarily by industrial development and the production of consumer goods, today it is distinguished by developments in information technologies, research in genetics, medicine and biotechnologies for human benefit, which are areas of great importance for the future of humanity, but in which there are also evident and unacceptable abuses.

‘Just as a century ago it was the working classes which were oppressed in their fundamental rights, and the Church courageously came to their defense by proclaiming the sacrosanct rights of the worker as person, so now, when another category of persons is being oppressed in the fundamental right to life, the Church feels in duty bound to speak out with the same courage on behalf of those who have no voice. Hers is always the evangelical cry in defense of the world's poor, those who are threatened and despised and whose human rights are violated.’⁷

This is an odd judgment. The almost-exclusive emphasis on human embryos is unjustifiable even within the context of sexual ethics, let alone in the context of the challenges elsewhere addressed in Catholic Social Teaching, such as global justice, poverty, migration, or the climate crisis. In the next section, I will show how the Vatican could have prioritized sexual violence within its own framework, before addressing the consequences of Catholic sexual ethics for the struggle against HIV/AIDS in the last part of this chapter.

2. *Sexual violence seen through the lens of John Paul II's ethical reasoning*

The theoretical framework applied in Catholic sexual morality is stated exemplarily by John Paul II:

No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.⁸

Many ethicists, including moral theologians, are – to say the least – uncomfortable with the paradigm underlying this statement, a statement that was actually

7 CONGREGATION OF THE DOCTRINE OF FAITH, *Instruction Dignitas Personae*, 37, quoting John Paul II. Cf. H. HAKER, *Catholic Sexual Ethics – a Necessary Revision: Catholic Responses to the Sexual Abuse Scandal*, in: H. HAKER/L. CAHILL/E. WAINWRIGHT (ed.), *Concilium* 47/3, Human Trafficking, London 2011, 128–137.

8 JOHN PAUL II, *Evangelium Vitae*, Vatican 1995, No. 62. http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html.

made in the context of abortion and has been repeated in similar ways up to today. However, even if we take this paradigm seriously, as I will try to do, several questions arise: the breach of God's Law, the pope states, makes an act illicit. In order to judge what counts as a breach, the pope names the common sources of practical reasoning: the 'heart', reason, and the Church's teachings. When these three sources of moral reasoning converge, the judgment about a breach of God's Law does not seem to cause any problems. Ethics, which is the reflection upon moral practices and their underlying values, dispositions, and norms, however, is called to offer reasoning concerning the many conflicts of judgment that arise in the actions of individuals, in social practices, and in the norms of a polity. Fortunately, not every area in (sexual) ethics is contested. Sexual violence, I hold, is such an area. Applied to this context, one could restate the pope's statement in such a way:

'No circumstance, no purpose, no law whatsoever can ever make licit the act of sexual violence and sexual abuse, which is intrinsically illicit. It is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.'

Nobody, I believe, would disagree with this statement. In fact, the Code of Canon Law from 1983 states in No 2356:

Rape is the forcible violation of the sexual intimacy of another person. It does injury to justice and charity. Rape deeply wounds the respect, freedom, and physical and moral integrity to which every person has a right. It causes grave damage that can mark the victim for life. It is always an intrinsically evil act. Graver still is the rape of children committed by parents (incest) or those responsible for the education of the children entrusted to them.⁹

Given this weight, one would expect to see moral statements that take up this "injury to justice and charity" again and again by the Church. Surprisingly, we do not find it at the center of the Church's normative sexual ethics or any sex/gender-related documents. Following John Paul's rehearsal of Catholic ethics, I cannot but conclude that the Church failed to either apply its own moral reasoning in an area that is of utmost importance for billions of people, most of them women or girls – or it has been utterly silent about it. Nonetheless, here is what the three sources of moral reasoning offer to a normative analysis of sexual violence: First, we are called to attend to what is "written into our heart". It means to attend to our emotional, intuitive moral sense that may make us aware of the destructive potential of sexuality, especially when it turns into violence. Listening to the heart, many of us may sense the effects of a male-centered gender order that in many ways results in structural violence. As Thomas Aquinas rightly emphasized – although it was countered by the Moral Sense school of the 17th century – moral emotions

9 JOHN PAUL II, *Code of Canon Law*, Vatican 1983, No. 2356. http://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html.

and the moral sense are no natural capacities; furthermore, they are not only shaped and informed by normative reasoning but also by experiences.¹⁰ Those of us who have, for example, experienced the manifold facets of sexual and gender-related violence, will be better able to identify it and be more sensitive to the denials of violence. Those of us who have experienced what it means to be assessed as a potential object of sexual desire, and those of us who have been silenced, treated disrespectfully, or excluded from conversations and/or practices (including certain services and offices in the Church), just because we are girls or women, will have a sharper moral sense about sexualized violence and gender discrimination. The same holds true for the children who have become the object of sexual desire, or gay men who are denigrated in their sexual identity. Although, if these experiences are not expressed and communicated, as I explained in chapter 5, if it is not possible to speak about them openly and publicly, if they are not heard or just ignored, or one is even threatened with repercussions, they remain hidden in one's "heart", with no chance to inform and shape the moral sense of others.

This is another reason why the sexual abuse crisis, on the theoretical level of ethical reasoning, becomes a scandal about sexual ethics, too. For even though one can find the condemnation of sexual violence in church history and even in Canon Law, up to very recently the victims' perspective was rarely addressed or heard. The silencing of the sexual abuse victims/survivors shows how little space they were given in the overall interpretation of sexual ethics. Up to today, one cannot escape the impression that the scandal in the Catholic Church is not so much about the raped and/or abused children and adolescents; it was and is much more about the institution of the Church that must be protected and 'cleansed' from the 'stain' that the abuse scandal has caused. The perpetrators are individuals who should not be confused with the institution, we hear: conversations center on their sins, their social incapacity, their illness, the consequences for them, the question of accountability, particularly in cases of a medical condition such as pedophilia, and also the call for forgiveness as part of the Christian ethos. For decades, there was no encyclical letter, no instruction, no official statement to which the victims could turn and which would have made clear what matters in normative sexual ethics. Even today, when there is so much talk about love as the

10 Cf. the works by Martha Nussbaum, for instance her study on emotions in two exemplary works: M. C. NUSSBAUM, *Upheavals of Thought: The Intelligence of Emotions*, Cambridge/New York 2001; M. C. NUSSBAUM, *Political Emotions: Why Love Matters for Justice*, Cambridge MA 2013. For a different approach cf. M. URBAN WALKER, *Moral Understandings: A Feminist Study in Ethics*, New York 1998. For the role of affects in moral judgments cf. L. M. G. ZERILLI, *The Turn to Affect and the Problem of Judgment*, in: *New Literary History: A Journal of Theory and Interpretation* 46/2 (2015), 261–286; L. M. G. ZERILLI, *A Democratic Theory of Judgment*, Chicago 2016.

centerpiece of Christian ethics, the connection between love and justice, as recognition of the persons being ill-treated, is anything but clear. The moral sense is indeed a source of moral reasoning; it is informed and formed by the accounts of the victims/survivors, without which the 'scandal' would, most likely, be still ongoing in secrecy. The moral sense is formed by experiences of love, respect, and moral standing – but also by experiences of shame, violence, and injustice that denies a person the standing as a moral agent. Moral outrage is a source that becomes part of ethical reasoning; it motivates to engage in change: what is written into one's heart must indeed matter in moral reasoning.

Second, as John Paul II states, "illicit acts" are "knowable by reason itself". In the case of sexual violence, we can employ Kant rather than Thomas Aquinas to clarify our understanding of the harm inflicted: morality, Kant holds, must be based upon the reciprocal respect of human agency, interpreted as autonomy. Sexual violence does not leave any space for a trustful, reciprocal relationship. It violates the principle of human dignity, the respect of any other person as an end in herself. Sexual violence is but one form of violence that threatens the physical, psychological, and moral integrity of a person. It involves the exploitation of an asymmetric relationship, and it involves the tacit acceptance of damaging or even destroying another person's identity, as is the case in sexual abuse, rape, domestic violence or rape as part of warfare. Sexual violence disrespects the other as a moral agent, and potentially threatens the victim's moral agency and well-being. It perverts the very basis of sexuality, namely, the trust to be recognized in personal relationships. Sexual violence is domination of another person. In the vast majority of the cases, it is women who are at risk to be harmed by sexual violence, and it is estimated that one in three women globally has been the victim of sexual assault. Moreover, sexual violence not only harms the victim but also destroys the normative basis of morality itself. Now, for practical moral reasoning, context matters, scientific findings matter, experiences matter, and phenomenological analyzes matter. All of these have an impact on the overall normative evaluation that is based upon reason, spelling out in concrete terms what the moral principle of respect for others and responsibility for one's actions states abstractly. The question, then, is whether or in what way circumstances affect the normative evaluation; and this is exactly what practical ethics is about. In the context of sexual violence, it means that for decades the moral judgments were left to male theologians, priests, and bishops – who were either not interested in speaking about sexual violence or, much worse, turned out to be perpetrators themselves.

Third, the pope wants us to consider divine law as proclaimed by the Church. Obviously, divine law is not self-explanatory. The moral views in the biblical narratives, in the biblical prescriptive codes, in the poetic imaginations, or in the Wisdom literature all need to be interpreted, which is the work of exegetical

scholarship. However, as exegetes, informed by historical-critical studies, narrative and poetic theory, and interreligious scholarship will tell, it is difficult to find a singular, consistent normative framework of sexuality in biblical texts. Instead, we will find different approaches to sexuality and gender, social norms concerning, for example, marriage or the social and political status of women and men. Many prescriptions are so clearly rooted in patriarchal societies that they cannot be uncritically applied. That is, because abstract norms – including the prescriptions of the decalogue – require further interpretation in practical moral reasoning, no norms are directly or immediately deducible as divine law, even in such a clear-cut case as sexual violence. Hence, contexts, circumstances, motives and backgrounds do actually matter not only in the philosophical analysis that is part of any theological moral reasoning, but also in the more specific theological analysis and reasoning. Still, divine law is summarized in one norm that must guide the theological-ethical reasoning, namely the demand to love God and one's neighbor, which goes beyond the Golden Rule that makes one's own perspective the guide to the treatment of others. In this respect, we need to ask, in the face of the structural sexual violence committed by billions of men to billions of women, why the Catholic Church does so little to give priority to the victims of sexual violence as addressees of neighborly love? Obviously, the emphasis on women must not brush over the fact that men and boys, too, have become the victims of sexual assault and abuse – and obviously, this is especially true in the Catholic Church.

The natural law theology that was the dominant systematic framework of anthropological, moral, and theological debates in the Middle Ages reflects (a) upon moral agency as rooted in reason, and (b) upon human nature as striving toward perfection that – in the Christian interpretation – is ultimately the self-fulfillment in God. While philosophical anthropology emphasized the first part and elaborated the concept of human dignity as moral capability to make responsible decisions, theological anthropology complemented this concept with the notion of divine law, God's revelation that is interpreted by the Church.¹¹ In the specific theological anthropology embedded in the natural law tradition, sexual ethics plays an important part, due to the normative ideal of the sublimation of bodily needs or sexual desires to the sacramentality of marriage. Modern (Western) philosophy, however, questioned the ontotheological metaphysics that Catholic theology had adopted for centuries in Western Catholicism. Over the last two centuries, the Catholic Church's role in the political sphere changed as a result of

11 Importantly, the Vatican II texts emphasize that this interpretation rests upon every member of the Church – this is one of the reasons why conscience plays such a large role in the post-Vatican theological ethics.

secularization, and its authority more or less came to rest upon two pillars: its pastoral integrity, especially with respect to social institutions such as hospitals, schools, and charity organizations, and its moral authority, especially with respect to being a critical voice of social, political, and legal practices. In Western societies, which all have strong roots in Christianity but which all underwent a process of secularization, the Catholic understanding of sexuality concerned both of these pillars, affecting family counseling services, sexual education, health care services, and the overall moral guidance in new developments of medical health. Since the 1960s, the Catholic Church was more and more criticized for its repressive sexual ethics, both from theologians and lay Catholics as from other religious and/or cultural groups. Over the last decades, the hierarchical interpretation of gender and sexuality has come under attack for its authoritative interpretation of moral norms that leaves little room for the “liberating conscience” of moral agents that Keenan claims to have taken place in Catholic moral theology. The Catholic Church’s stance is promoted in national politics as well as in the political arena such as the United Nations where the Church has an observatory status that gives it the power to intervene in multiple policies. Furthermore, it is reinforced by the local churches. In public debates of liberal democracies, however, its position is taken as one view among others, and it is certainly not received as authority that trumps all other considerations.¹² Rather, in the context of public debates, the justification of moral norms is dependent firstly on the persuasiveness of arguments, secondly on the integrity of the agents and institutions making moral claims, and thirdly on the interpretation of human existence that is in accordance with the insights of the sciences and humanities.¹³

Christian ethics can indeed contribute to the understanding of sexuality when it takes phenomenology seriously, as John Paul II has begun to do. Sexuality is one of the most striking exposures of a human being’s desires, an exposure necessarily accompanied by the feeling of vulnerability. Sexuality involves the emotional and physical nakedness of the self, which is part of embodied human existence; but it is also an important part of intimate relationships, and ultimately one dimension of the infinite alterity of selfhood itself. Sexual ethics interprets this existential embodiment, the exposure of desire and vulnerability in light of the alterity of the self and the other. Ideally, sexual encounters are indeed driven by love of the other. Love is one way to care for the other and oneself, protecting

12 See, however, chapter 2 in this volume for the new developments in the US that grant the Catholic Church, together with other conservative Christian groups, much more political and legal influence than in previous decades.

13 Cf., among others, the concise reflection by M. JUNKER-KENNY, *Religion and Public Reason: A Comparison of the Positions of John Rawls, Jürgen Habermas and Paul Ricœur*, Berlin/Boston 2014.

oneself and the other against harm, and finally, the desire to be and stay with the beloved other over time. An approach that takes the line of these indications into account may serve as the hermeneutical basis for a critical examination of contemporary practices of sexuality. This, at least in part, is what Christian ethics, and a revised Christian sexual ethics, is about. It can clarify why certain practices may impoverish the potentials of human life, and why it is worthwhile to defend a personalized sexuality in our contemporary culture. Normatively, however, the moral criterion for sexual practices is respect or, in its negative form, misrecognition, disrespect, and violence that threatens the trust in the other in one's most 'exposed' vulnerability.¹⁴

To conclude the reflection of Catholic sexual ethics in view of sexual violence, one cannot escape the Magisterium's ongoing failures and shortcomings: even in the context of sexual ethics, the over-emphasis of the "threatened embryo" is misplaced. However, if that is the case, it can also not be the central goal of Catholic social ethics to protect human embryos. Quite to the contrary, we need a radical shift in the way sexual ethics is taught and proclaimed by the Church. First, it must take up the insights of the sciences as one source of theological insight, namely reason. Yet, with respect to people identifying as LGBTQI (lesbian, gay, bisexual, transgender, queer, or intersexual) – all well-documented as variations of sexual identities – the Catholic Church has decided to ignore any research and scholarship; instead it polemicizes against these insights as "gender ideology", and against the people belonging to these groups, and it uses its own ideological position for educational guidelines, medical directives, and moral guidance of individuals and couples. This Catholic sexual ethics has little foothold in either the sciences or the humanities; rather, its understanding of sexuality and human reproduction through the sacramentality of marriage still reiterates (and thereby reifies) one (outdated) biological interpretation that rests upon the scientific literature of the 19th century rather than scholarship of the late 20th or early 21st century.

Second, family planning and parenthood have certainly become reflective 'projects' for many families, rendering the care for and life with children as a deliberate choice of one particular form of life rather than being regarded the natu-

14 Cf. chapter 5 in this volume. Vulnerability, of course, is evoked, too, in the prioritization of the human embryo as the one in need of protection. Raised as argument against abortion, it completely disregards the very particular context, namely pregnancy; raised in the context of in vitro fertilization and human embryo research, it ignores the developmental emergence of personhood. Cf. chapter 9 in this volume. For a thorough discussion of the moral status of human embryos cf. H. HAKER, *Ethik der genetischen Frühdiagnostik. Sozialethische Reflexionen zur Verantwortung am menschlichen Lebensbeginn*, Paderborn 2002.

ral form of a good life.¹⁵ However, when a particular lifeform becomes reflective, it does not at all follow that the choices it entails deny the ‘givenness’ of human life.¹⁶ To argue that the sacramental *model* of marriage and parenthood is the only feasible *norm* of sexual ethics would require that the Church argued for it in a fair assessment of alternative views, accepting plural interpretations of sex, gender, and family values. Pluralism as such does not at all threaten the principle of human dignity and the norm of love; rather, dignity and love can be practiced in different ways, all morally sound as long as they do not violate the dignity and rights of individuals.

Third, because sexual violence is the starkest example of violations of human dignity and human rights in the context of sexuality and gender norms, the Church should have publicly emphasized that rape and sexual assaults are morally harmful acts, often embedded in unjust gender orders that dehumanize especially women. Therefore, sexual violence and violence against women ought to be a priority of sexual ethics. In 2013, the WHO has called sexual violence a pandemic, and this should have initiated an outcry in all societies, so that it should have become a priority of Catholic social ethics.¹⁷ Surprisingly, it never occurred to the Vatican to prioritize sexual violence as the normative centerpiece of sexual ethics over against the condemnation of the use of contraceptives and abortion.

Fourth, since the early 1980s, the pandemic of the Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) spread globally, and it has since cost millions of people their lives. One effective strategy to prevent infection, promoted since the early days of the discovery of the virus, is the use of condoms. Yet, just like women harmed by sexual violence, the lives of those affected by the pandemic never became a priority for the Catholic Church’s sexual ethics. To this scandal I will now turn.

15 E. BECK-GERNSHEIM, *Reinventing the Family: In Search of New Lifestyles*, Malden, MA 2002; O. O’NEILL, *The ‘Good Enough Parent’ in the Age of the New Reproductive Technologies*, in: H. HAKER/D. BEYLEVELD (ed.), *The Ethics of Genetics in Human Procreation*, Aldershot 2000, 33–48; U. BECK/E. BECK-GERNSHEIM, *Riskante Freiheit*, Frankfurt a. M. 1994.

16 Ironically, one of the most-criticized philosophers, namely Judith Butler, who is criticized for being a “constructivist”, also emphasizes this fact of receptivity, givenness, and “subjectivation” as a premise of human subjectivity and agency. Cf., among others, J. BUTLER, *Senses of the Subject*, New York 2015. Cf. chapter 5 in this volume.

17 WORLD HEALTH ORGANIZATION, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence*, World Health Organization Geneva 2013, <https://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>.

3. Catholic sexual ethics and the HIV/AIDS pandemic

From the beginning in the early 1980s, the Catholic Church mainly saw HIV/AIDS through the lens of its sexual ethics framework. I will distinguish its response along some familiar lines of Catholic moral theology and social ethics.¹⁸

3.1 PROHIBITION OF THE USE OF CONDOMS

Catholic sexual ethics implicitly prohibits the use of condoms, because they are considered among the 'artificial' forms of birth control, while only the so-called 'natural' family planning method (observance of the menstrual cycle and abstinence from sexual intercourse during the period of fertility) are permitted.¹⁹ Condoms and other forms of birth control, it was held, contradict the natural purpose of procreation. The Magisterium did not correct its position when the HIV crisis began to spread from homosexual men to many other population groups, soon becoming an epidemic and then a pandemic in the terms of the World Health Organization.²⁰ The international strategy to recommend the use of condoms as a means to prevent the spread of the Human Immunodeficiency Virus, discovered in 1981, was met with mistrust or, at best, skepticism, by the Vatican theologians. Still, the introduction of condoms initiated a new debate on means of birth control among Catholic ethics scholars.²¹ Already in *Humanae Vitae*, the casuistic principle of double effect could in fact result in the permission to use means of birth control, if and only if their main purpose was medical, not repro-

18 For the following part, cf. R. AMMICHT-QUINN/H. HAKER (ed.), *HIV/AIDS*, Concilium 43/3, London 2007. Cf. also the theological responses in J. F. KEENAN/J. FULLER/L. S. CAHILL/K. T. KELLY (ed.), *Catholic Ethicists on HIV/Aids Prevention*, New York 2000. For different theological perspectives by woman theologians cf. M. J. IOZZIO/E. M. MIRANDA/M. M. ROCHE (ed.), *Calling for Justice throughout the World: Catholic Women Theologians on the HIV/AIDS Pandemic*, New York 2009. For a study of HIV/AIDS in Tanzania cf. M. BROWNING, *Risky Marriage: HIV and Intimate Relationships in Tanzania*, Lexington 2013.

19 As late as 2009, scholars still felt the need to argue against the Church in order to save lives. Cf. the short but concise paper: L. BOVENS, *Can the Catholic Church Agree to Condom Use by HIV-discordant Couples?*, in: *Journal of medical ethics* 35/12 (2009), 743–746.

20 Looking back after 25 years, Michael Merson, former executive director of the WHO Global Program on AIDS, recalls the multiple stumbling blocks in the international response: M. H. MERSON, *The HIV–AIDS Pandemic at 25 – the Global Response*, in: *New England Journal of Medicine* 354/23 (2006), 2414–2417.

21 Cf. the arguments within the traditional moral-theological framework – especially double effect cooperation in evil – and the rebuttal, in: J. D. FULLER/J. S. F. KEENAN, *Condoms, Catholics and HIV/AIDS Prevention*, in: *The Furrow* 52/9 (2001), 459–467. For a collection of moral-theological contributions to HIV/AIDS cf. J. F. KEENAN/J. FULLER/L. S. CAHILL/K. T. KELLY (ed.), *Catholic Ethicists on HIV/Aids Prevention*. Cf. also M. J. IOZZIO/E. M. MIRANDA/M. M. ROCHE (ed.), *Calling for Justice throughout the World*.

ductive autonomy.²² Now, in the new context of an epidemic, sexual ethics could have been reformulated and renewed. Instead, however, the Vatican stonewalled. John Paul II never gave condoms a thorough deliberation, rather promoted abstinence from sex as HIV prevention. He never wrote an Encyclical that could have clarified the use of condoms as medical, preventive method. Instead, the Congregation of Faith wrote an Instruction on the new reproductive technologies in 1987. John Paul II wrote an encyclical in 1995 centered on the value and sanctity of life, *Evangelium Vitae*, in which he emphasized the sin of abortion. In 2008, the Congregation of Faith wrote yet another Instruction, *Dignitas Personae*, that does not mention HIV/AIDS once. While millions of people lost their lives to HIV/AIDS, and while condoms could have saved millions of lives without contradicting the official teaching, the Church either remained silent or explicitly rejected condoms in the context of HIV/AIDS. When Pope Benedict XVI mused in 2009 over the permitted use of condoms in the case of prostitution, the Congregation of Faith quickly issued a clarification, arguing that the theory of double effect must not be used to justify the “evil” of condoms.²³ Yet, no pope since Paul VI has ever denied the interpretation of *Humanae Vitae* No 15 that states that contraceptives may be used for medical reasons, which one should assume includes preventive means to save life. However, neither has any of the popes, in official statements, allowed, let alone promoted the distribution and use of condoms. Independent of the philosophical soundness of the ethical argument stemming from the tradition of scholastic casuistry, which many ethicists, including Christian ethicists, would question as an overall guiding moral theory, the Vatican’s reluctance to follow *Humanae Vitae* No 15 in the case of HIV/AIDS is striking. The ignorance about *Humanae Vitae* – misinterpreted as *objecting* to the distribution of condoms as a ‘lesser evil’ instead of promoting it as an important means as ‘double effect’ judgment that aims at saving lives – did not slow down the pandemic; to the contrary, it slowed down the success of the prevention of HIV infections.

22 “Though it is true that sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good, it is never lawful, even for the gravest reasons, to do evil that good may come of it – in other words, to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general [...] On the other hand, the Church does not consider at all illicit the use of those therapeutic means necessary to cure bodily diseases, even if a foreseeable impediment to procreation should result there from provided such impediment is not directly intended for any motive whatsoever.” PAUL VI, 1968, No. 14/15.

23 CONGREGATION FOR THE DOCTRINE OF FAITH, *Note on the Banalization of Sexuality. Regarding Certain Interpretations of “Light of the World”*, Vatican 2010, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20101221_luce-del-mondo_en.html.

3.2 HIV/AIDS AND THE EFFECTS OF EVIL ACTS

Moral theological analysis correctly refers to sexual transmission as the main cause of HIV/AIDS and as the origin of the pandemic. Cardinal Lopez-Trujillo, then President of the Pontifical Council for the Family, gave the most blatant reason for the Vatican's position on condoms:

The use of condoms goes against human dignity. Condoms change the beautiful act of love into a selfish search for pleasure – while rejecting responsibility. Condoms do not guarantee protection against HIV/AIDS. Condoms may even be one of the main reasons for the spread of HIV/AIDS. Apart from the possibility of condoms being faulty or wrongly used they contribute to the breaking down of self-control and mutual respect.²⁴

From a traditional theological perspective, the underlying cause of HIV is promiscuity that is considered 'evil', and hence, the use of condoms that contributes to the misunderstanding of sexuality will result in evil effects. This scheme holds the individuals suffering from AIDS morally responsible for their condition. The sin-and-guilt-oriented ethical approach is echoed in some Catholic analyzes of HIV/AIDS that make use of the ancient scheme in such a way that infected persons cannot but feel guilty and condemned.²⁵

The effect is that people may think it less sinful to risk the infection and possible death of another person than reveal that one has previously engaged in risky practices. Given the risk to infect innocent persons by not using condoms, it is more than cynical that the Magisterium did not issue a clarifying note or speak out against such a non-disclosure.

Since the beginnings of the pandemic, the infection ways have changed dramatically: sexual intercourse is not the only way anymore to infect others or to be infected; HIV can also be transmitted from mother to a child during birth, through drug misuse (using needles from infected persons), or through blood transfusions. More important, however, is the involuntary sexual intercourse that takes place within many marriages. Considering the distribution of HIV/AIDS according to gender, the rate of female infection of others compared to male infection of others is 1:7. To blame promiscuity, understood as sex without or beyond marital relationships, and to exclusively focus on it, ignores the multiple ways how the virus is transmitted. Moreover, married couples have long heard the message of Catholic sexual ethics to mean this: fidelity within marriage protects against infection with HIV/AIDS, because it prevents partners from pro-

24 Cardinal Lopez-Trujillo, in a statement in 2003, quoted in G. BENAGIANO/S. CARRARA/V. FILIPPI/I. BROSENS, *Condoms, HIV and the Roman Catholic Church*, in: *Reproductive biomedicine online* 22/7 (2011), 701–709, 702.

25 For a short overview of moral theological and social ethics response to HIV/AIDS over the last 20 years, cf. F. SANDER, *AIDS – God's Punishment?*, in: *Concilium* 43/3 (2007).

miscuity. This is obviously empirically wrong. Moreover, it may well raise the threshold for married couples to undergo HIV tests.

3.2.1 Family Ethics

Christian sexual ethics has always been embedded in and oriented towards family ethics. Preaching abstinence, fidelity, and ‘sacrificial love’ in the case of so-called discordant couples (in which one partner is infected and at risk of infecting the other) is irresponsible.²⁶ Christian family ethics must therefore be regarded in view of the human rights of individuals. AIDS takes partners away from partners, children away from parents, and last but not least, it takes parents away from children. Aids tears many holes, and it takes lives in such numbers that the concern for the families’ well-being clearly must take priority over the concern for ‘sexual correctness’. Promoting the family as the nucleus of society while at the same time endangering the survival of its members is not only inhumane; it is also in contradiction with Catholic family ethics.²⁷ When 80% of people in sub-Saharan Africa do not know their virus status, marriage counseling and Christian family ethics must include appropriate protection of each partner. Given the fact that young married women have the greatest risk to be infected with HIV, Catholic marriage counseling in many cases does not meet the challenges of HIV/AIDS.²⁸

3.2.2 Structural Injustices

Christian theology is based on the unconditional acceptance of every individual, as realized by God’s grace; this acceptance is also the theological basis for the principle of human dignity. Sexuality in general, including homosexuality, is not against human nature but one variant of it, as studies have shown again and again. The Church fails to give appropriate answers to the most vulnerable people in the societies where HIV/AIDS has spread the most: homosexual men and heterosexual women who have few rights within their relationship. That unmarried men, and women live their sexuality as part of their adult life is a fact, and human rights include the right not to be discriminated against one’s sexuality or gender identity. Theologically, there is no norm that prevents Catholic ethics

26 Moral theologians such as J. Keenan, in contrast, promote the ABC approach (“abstain, be faithful, use condoms” or abstinence, fidelity, and condoms); others have embraced the SAVE method (Safe sexual practices, Access to Treatment, Voluntary counselling and testing, Empowerment). Cf. L. KEOUGH/K. MARSHALL, *Faith Communities Engage the HIV/AIDS Crisis: Lessons Learned and Paths Forward*, Washington 2007.

27 G. FOSTER/C. LEVINE/J. WILLIAMSON, *A Generation at Risk: The Global Impact of HIV/AIDS on Orphans and Vulnerable Children*, Cambridge MA 2005.

28 Cf. for a study of marriage and HIV/AIDS: E. REIMER-BARRY, *Catholic Theology of Marriage in the Era of HIV and AIDS: Marriage for Life*, Lexington 2015.

from conceiving sexuality as a gift that humans have been given to interact with each other as embodied beings, as long as they practice their sexuality with mutual respect, recognition and responsibility. Sexuality, including LGBTQI sexuality, is not “against human nature” because first, sexuality is not defined theologically but biologically, and second, human nature invoked in the natural law tradition addresses first and foremost what distinguishes humans from other animals, namely the capability to reason and the moral claim of responsibility. It is for this – and only this – reason that human sexuality must be guided by the universal ethical principle of respect for the individual.

Women often do not have the power or the means to stop men from having sex with them, be it before, outside or within marriages. Certainly, there are women who have the power and the social status to respond differently, but for the vast majority of women, for instance, in Sub-Saharan countries where HIV/AIDS is widespread, women often do not have equal rights in their partnerships.²⁹ Catholic Ethics has little to say to the women who cannot stop their husbands from having sex with other women – especially not in regions that have known polygamy for centuries, or in the context of migration, or in poverty, and the overall lack of equal perspectives for their life. Catholic sexual ethics does not have an answer to women who fall victim to ‘sugar daddies’ or men looking for sexual adventures, and it certainly has no answer to mass rapes of women that have become a target in ethnic and/or civil conflicts (as is the case in the Sudan, for example). Yet, rape connects HIV/AIDS to sexual violence against women; moreover, the ‘tactic’ of rape in war leaves hundreds of thousands of these already highly traumatized women infected with HIV/AIDS.³⁰

While emphasizing the need to control the sexual practices of individuals, the structural impact of cultural norms, social contexts, even the global economic order, especially the irresponsible ignorance of global poverty and health-related deaths is easily underestimated – and all of these factors hit women especially hard. On the one hand, John Paul II, Benedict XVI, and Francis all have stressed the unjust social and economic order and pointed to the tragedy of HIV/AIDS.³¹ However, none of the Popes has accepted the role the Church plays in the uphold-

29 Cf. G. PATERSON, *Escaping the Gender Trap: Unravelling Patriarchy in a Time of AIDS*, in: R. AMMICHT-QUINN/H. HAKER (ed.), *HIV/AIDS, Concilium* 43/3, London 2007, 102–111.

30 J. MATUSITZ, *Gender Communal Terrorism or War Rape: Ten Symbolic Reasons*, in: *Sexuality & Culture* 21/3 (2017), 830–844.

31 Cf. L. CAHILL, *Aids, Global Justice, and Catholic Social Ethics*, in: R. AMMICHT-QUINN/H. HAKER (ed.), *HIV/AIDS, Concilium* 3 (2007), 91–101. Though Francis has highlighted the underlying structural injustices, he has not issued a statement that would allow the use of condoms as a preventive tool.

ing of these structures. On the other hand, the care and charity work that the Catholic Church has demonstrated to millions of persons affected by HIV and/or AIDS is extraordinary; the Vatican itself estimates that a quarter of the overall HIV/AIDS related care is offered by Catholic organizations.³² Nevertheless, care and solidarity must not replace human rights and justice considerations.³³ While the Catholic Church excels in its charity work, it has no adequate ethical tools to define justice towards women and justice towards those who do not fit into the narrow framework of its sexual ethics. The consequence is that the Church's pastoral work is less effective than it would be within a new framework of sexual ethics and, in fact, within a new framework of social ethics in general.

4. *Catholic Sexual Ethics Revisited*

Current debates on sexual ethics go far beyond the narrow interpretation of the Magisterium. In the context of feminist ethics, they still concern the different kinds of birth control, especially biochemical contraceptives and pharmaceutical methods to end pregnancies at a very early stage, prenatal genetic diagnoses, infertility treatments and the different forms of human embryo research.³⁴ However, they also address women's rights, homosexuality or sexual discrimination of persons who belong to LGBTQI communities. Over the last years, the Me Too movement has revealed how deeply sexual violence is interwoven with the unequal treatment of women. Ethical works are therefore based on women's equal rights, their political participation, and new democratic concepts of citizenship in a globalized world. Feminist ethics has addressed the structures of care, the education gap in many countries, and the overall gender order that disadvantages women; and over and over again, studies have demonstrated that women are mostly affected by migration and the climate crisis. In contexts that are socially, culturally, and political diverse and which undermine the usual class and ethnic divisions, individuals and groups who are engaged in the women's movement try to find new ways to make sense of personal and social relations; we envision new

32 R. J. VITILLO, *Faith-based Responses to the Global HIV Pandemic: Exceptional Engagement in a Major Public Health Emergency*, in: *Journal of Medicine and the Person* 7/2 (2009), 77.

33 For an overview of faith-related work cf. the comprehensive report: L. KEOUGH/K. MARSHALL, *Faith Communities Engage the HIV/AIDS Crisis*. They emphasize the "feminization" of HIV/AIDS: "For a variety of biological, cultural, and social reasons, the disease affects and infects women in markedly different ways than men. Girls and women are biologically more vulnerable to sexual transmission of HIV. Girls and women are also at greater risk of infection due to economic and social inequities that limit their choices or force them into transactional sex. At the root of these and other factors are gender inequality and the poverty that often accompanies it." (p. 36)

34 Cf. chapter 9 in this volume.

forms of personal relationships that respect the freedom of those involved, including sexual relationships and gender roles; we struggle to develop new social practices concerning, for example, the family, care work and community structures that are able to provide a sense of belonging under the conditions of globalization; and, last but not least, we debate how political institutions can secure participatory structures that are based on justice that protect and respect the dignity of every individual and their equal right to the social, cultural, and economic goods that are necessary to have a decent life.

Situating sexual ethics and healthcare ethics (or bioethics) in the broader framework of Catholic Social Teaching – “personalist in its foundation, social in its scope”, as Bryan Hehir states³⁵ – US Catholic ethicists call for the attention to social contexts, structural injustices, and political institutions. Theological ethics in general, and theological sexual ethics, healthcare ethics, and bioethics in particular, have gone beyond the issues favored by the Vatican. Theologians attended to the global health disparities, to the global health discrimination against women, to the lack of participatory justice in medical research decisions, or to the global epidemics or the pandemic of HIV/AIDS. In contrast to many of their European colleagues, however, in the USA, Catholic ethicists rely more often on a reinterpreted natural law tradition as the normative foundation of Catholic ethics,³⁶ and they often take as their normative lens the principles of Catholic Social Teaching. In contrast, I believe that practical reasoning is already theological when it engages with philosophical ethics, taking human experiences and faith as a hermeneutical lens.

The critical political ethics that I envision departs from the Catholic sexual ethics framework in many ways. I embrace an ethics framework that critiques the practices and recommendations of Catholic sexual ethics and proposes the social issues of sexual ethics as part of a critical political ethics. Christian sexual ethics is, however, not *only* a social ethics. It must respond on several levels. Unconditional acceptance (*Annahme*) and dignity, which is the core principle of Christian ethics, means to accept and acknowledge any person’s vulnerable agency on the three levels of ontological, moral, and structural vulnerability and agency. Social visions and social imaginaries of sexuality and gender concepts are indeed need-

35 B. J. HEHIR, *Policy Arguments in a Public Church: Catholic Social Ethics and Bioethics*, in: *Journal of Medicine and Philosophy* 17/3 (1992), 347–364, 348.

36 Cf. C. L. H. TRAINA, *Feminist Ethics and Natural Law: The End of the Anathemas*, Washington, D.C. 1999. L. S. CAHILL, *Theological Bioethics: Participation, Justice, and Change*, Washington, D.C. 2005. For an overview of many different approaches cf. M. TH. LYSAGHT/M. P. MCCARTHY/L. S. CAHILL, *Catholic Bioethics and Social Justice: The Praxis of US Health Care in a Globalized World*, Collegeville MS 2018. For a discussion cf. L. S. CAHILL/H. HAKER/E. MESSI METOGO (ed.) *Human Nature and Natural Law*, London, Concilium 4 (2010).

ed, and they are strongest when they embrace the local as much as the global conditions.³⁷

In contrast to premodern ethical theories, including the scholastic natural law theology, and in contrast to modern utilitarian theories, critical political ethics insists that the individual subject takes priority over the principle of the common good.³⁸ This priority keeps the common or public good perspective in check so that it does not override individual rights.³⁹ Moreover, it also goes beyond charity and solidarity: it demands to acknowledge, respect, and protect the dignity of all human beings while supporting them in their struggle to secure and/or defend their human rights. Since questions of the individual's life cannot be separated from either the social conditions and/or norms or from the overall institutional frameworks that structure health care policies and policies of development, just policies must secure the human rights of all individuals. Justice theories spell out how economic and social goods must be distributed fairly and equally, how unjust structures must be corrected by granting those who have been discriminated against the possibility of an equal share and equal status in the present and future, and how justice can be restored when harm has been done. All these elements of the concept of justice make sense only when they are embedded in a framework of human dignity and human rights.

Catholic sexual ethics must radically shift its normative emphasis. A critical ethics places violence, misrecognition, disrespect, discrimination, and structural injustice at the center of practical reasoning. In this chapter, I have considered Catholic sexual ethics through the lens of sexual violence and the prevention of HIV infection. But human dignity and human rights do not only entail responses to vulnerability; they also claim the right to agency. Feminist scholarship has offered new ways to understand freedom as relational and interdependent. It has not only shifted the focus in political ethics – stressing women's right to participate in all decisions of a given institution, including the Church – but also regarding their sexual and reproductive agency. Whether the Catholic Church is ready and willing to learn from this scholarship remains to be seen.

37 Among others, M. Farley's and C. Traina's works are indispensable for Catholic sexual ethics; likewise are J. Butler's works on gender. Cf. M. A. FARLEY, *Just Love: A Framework for Christian Sexual Ethics*, New York 2006; J. BUTLER, *Gender Trouble: Feminism and the Subversion of Identity*, New York 1990; J. BUTLER, *Undoing Gender*, New York 2004; C. L. H. TRAINA, *Erotic Attunement: Parenthood and the Ethics of Sensuality between Unequals*, Chicago, IL 2011.

38 Cf. chapter 13 in this volume.

39 Cf. for a Catholic defense of the common good ethics: D. HOLLENBACH, *The Common Good and Christian Ethics*, Cambridge, UK/New York 2002. For a much-discussed report that reflects a recent shift towards an ethics of the public good in bioethics cf. NUFFIELD COUNCIL ON BIOETHICS, *Emerging Biotechnologies: Technology, Choice, and the Public Good*, London 2012, <http://nuffieldbioethics.org/project/emerging-biotechnologies/>.

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