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A CHURCH THAT  
*Can* AND *Cannot* CHANGE

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The Development of Catholic Moral Teaching

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JOHN T. NOONAN, JR.

A John W. Kluge Center Book  
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*To Erasmians, Everywhere*

And this I pray:

That your love abound more and more

In knowledge and in insight of every kind

So that you test what is vital.

(Paul to the Philippians 1:9–10.)

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P R E F A C E

In the fall of 1947, I began the study of Catholicism with a series of tutorials at the Catholic University of America. One of the first subjects I investigated was the Church's stand on religious freedom. Doing so, I encountered the unhappy story of Félicité de Lamennais, whose newspaper *L'Avenir* was the champion of religious freedom when the Church would not recognize it. I went on from Lamennais, whose mistake was being ahead of his ecclesiastical superiors, to Alfred Loisy, the quintessential Modernist, whose mistake was to reduce revelation to subjective satisfaction. Looking for a subject whose development in the Church was debatable, I turned to the history of the prohibition of usury and in 1951 completed a doctoral dissertation in philosophy upon it. It is a pleasure now, over half a century later, to bring together what I have learned about the development of moral doctrine and to think once more about Lamennais, the usury rule, and the relation of revelation to human needs.

My first effort to tie together the themes of this book occurred in the fall of 2002 when at Emory University I held the Alonso L. McDonald Chair of Jesus and Culture, addressing a topic that invited both biblical exploration and historical investigation.

Research for this study was largely conducted at the John Kluge Center for Scholars at the Library of Congress, where I held in turn the Maguire Chair of Ethics and the Kluge Chair of American Law and Government. I am grateful to James H. Billington, librarian of Congress, and to Prosser Gifford, director of Scholarly Programs, for these appointments; to Cary Maguire and John Kluge for funding them; and to Linda Harrington and Charlotte Allen, my

research assistants at this center. Working at the Library of Congress, I returned occasionally to the great reading hall where I first encountered Lamennais.

I am also indebted to the librarians of the Graduate Theological Union, Berkeley; of the Theodore M. Hesburgh Library, Notre Dame; of the Robbins Collection at Boalt Hall, the law school of University of California, Berkeley; and of the United States Court of Appeals for the Ninth Circuit.

The encouragement and the insights of my wife, Mary Lee, have as always played an important part. Neither theological cant nor legal fustian can survive in her vicinity. I am grateful to the comments and suggestions of Charles Curran, David Brion Davis, Katherine Eldred, Nancy Eisenhauer, Dagfinn Føllesdal, Richard Helmholz, Ladislav Orsy, S.J., James J. Sheehan, and Robert Sullivan. I have been greatly benefitted by the secretarial skills of Evelyn Lew.

I appreciate the invitation of the Erasmus Institute to give the Erasmus Lectures. They form the core of this book. The institute and the lectures carry a name evoking the highest standard of scholarship and the most demanding Christian commitment.

John T. Noonan, Jr.

*Notre Dame, Indiana*  
*March 25, 2004*

## THREE UNAVOIDABLE ISSUES



*Father Newman Startles*

The inventor of the idea that Christian doctrine develops is John Henry Newman. Ignoring the boast of Bossuet that doctrine is unchanging, escaping the thin theorizing that would restrict development to a movement from the implicit to the explicit, Newman pointed to transformations of doctrine as tangible and as organic, as many-sided and complex and real, as the passage from childhood to adulthood. An Anglican arguing his way into the Catholic Church, Newman saw that the anomalies and novelties of his new spiritual home were the marks of vigor, of maturity, of being alive. What Newman noticed and defended were changes in the ways that piety was expressed, in the rules guiding the governance of the Church, in the understanding of the nature of Christ. What he spent no time in either enumerating or explaining were changes in the rules of moral conduct.

On October 26, 1863, Thomas William Allies, a lecturer on history at Oxford University and a convert to the Catholic Church, sent Newman the draft of a lecture in which he pronounced slavery to be intrinsically evil. He wanted his friend's opinion. Newman replied cautiously: "I do not materially differ from you, though I do still startle at some of the sentences of your Lecture." The source of his startle was St. Paul. Newman wrote:

That which is intrinsically and per se evil, we cannot give way to for an hour. That which is only accidentally evil, we can meet according to what is expedient, giving different rules, according to the particular case. St. Paul would have got rid of despotism if he could. He could not, he left the desirable object to the slow working of Christian principles. So he would have got rid of slavery, if he could. He did not, because he could not, but had it been intrinsically evil, had it been *in se* a sin, it must have been said to Philemon, liberate all your slaves at once.

Succinctly raising his central difficulty, Newman elaborated with examples of other institutions that he saw to be bad but not to be intrinsically evil. Any army and any government offered occasions of sin and provided temptations to sin and were instruments of sin. Neither an army nor a government was to be condemned as intrinsically evil. "Which did most harm to the soul the Jewish slavery or the Jewish army?" Slavery, he surprisingly added, was not even as bad as polygamy.

Newman then appears to let his imagination wander from the slaveowner to the slave, declaring: "I had rather have been a slave in the Holy Land, than a courtier of Xerxes or a soldier of Zingis Khan." This fantasy is not a digression. In putting himself in the place of a slave, Newman is following a classic pattern. He supposes his soul to be unaffected by the body's servile state. Imagined in this way, slavery does not destroy or even impair the essential self. Newman's vision of slavery is the antithesis of an account of slavery that sees it as an assault upon the person. The dualism implicit in this view is a prime reason why slavery was so long seen as acceptable.

Newman ends as he began: "left to myself, I might be disposed to speak as strongly as you do, but that the tone of the inspired writers held me back." The possibility that what was intrinsic was subject to development was not expressed. Imperatively, the intrinsic froze his moral judgment. Convinced that slavery was evil, he was constrained to affirm that it was not always and everywhere evil. Else, how could Paul have accepted it? That question, so fairly expressed by Newman, could not be exorcised but it could, for a long time, be ignored as the Catholic Church entered the modern world.

In 1993, Karol Wojtyla, Pope John Paul II, published a small treatise on the fundamentals of moral theology, the encyclical *Veritatis splendor*, "Truth's Splendor." In it the pope emphasized and elaborated the notion of the intrinsically evil, very much along the lines indicated by Newman in his refusal to find slavery to be intrinsically evil. As John Paul II expressed it:

Reason attests that there are objects of the human act which by their nature are "incapable of being ordered to God," because they radically contradict the good of the person created in His image. These are the acts which by the moral tradition of the Church have been termed intrinsically evil: they are such always and per se, apart from the person's reason for acting and apart from other circumstances.

A little later in the encyclical, the pope declared: "the norms which prohibit such acts oblige always and forever, that is, they oblige without any exception." Emphatically, he repeated: "the universality and immutability of the moral norms make manifest, and at the same time serve, the absolute personal dignity—that is, the inviolability—of the human being, on whose face shines the splendor of God." Universal, immutable, per se, everywhere and always, the intrinsic governed the empire of actions.

Formulating the same idea another way, the pope spoke of "the negative commandments"—the commandments "expressed in negative form in the Old and New Testaments," such as "You shall not commit adultery." These commandments he declared to be indistinguishable from "the negative commandments of the natural law." These commandments set the standard that was minimal. They ruled out any reason for actions that "never, under any conditions, can be held to be a response congruent with the dignity of the person."

The attraction of the intrinsic to a moralist is that, beyond its apparent self-evidence, the intrinsic removes contingency. The act that is intrinsically of a particular character is so regardless of circumstances and motive. Judgment of the act can be certain and unchanging. With this intellectual satisfaction the act of lending was once pronounced to be intrinsically gratuitous and marriage was described as intrinsically indissoluble, and John Paul II discovered slavery to be intrinsically evil.

John Paul II and John Henry Newman agreed that the intrinsically evil could never be done without sin. But Newman thought that to hold a human being in slavery was not intrinsically evil. For John Paul II, slavery was a prime example of what could never be lawfully committed, of what was indeed an instance of intrinsic evil. Their agreement on the nature of the intrinsically evil and their disagreement on slavery generates questions. Is it possible that what is intrinsically evil in one era is not so in another? How then can the intrinsically evil be universal, immutable, always and forever? Or, if the pope was right on slavery, was Newman wrong? Between Newman and John Paul II, there was a change in the theological judgment on slavery. How account for it?



Where the development of moral doctrine is concerned, the development on the subject of slavery is the prime case. At issue is not the mitigation of slavery for Hebrews that the Hebrew Bible called for, nor the fairness supposed to mark the Christian master's treatment of slaves, nor the doubts as to particular titles to slave ownership developed by Christian casuists, but the intrinsic character of a relationship in which one person bought, sold, mortgaged, and transferred another person without regard to that person's will or education or vocation, in which the one owned was a chattel of the owner. Slavery is, if you like, the elephant in the room, so large, so awkward, so threatening that everyone would prefer not to notice it or speak of it. But I will speak of it, for its own sake and for the light it sheds on what constitutes the intrinsically evil, a theme that cannot be avoided in considering the development of moral doctrine. The imperative to avoid the intrinsically evil must be confronted by the changes that have occurred in teachings on conduct, most notable of which is the teaching on slavery.

The focus of this book is on the teaching of morals within the Catholic Church. It is not, except incidentally, a sociological account of Catholic practice. In setting out the teaching on slavery, for example, I do not ask whether slavery was more or less pleasant under Christian masters or note that some slaves led more comfortable lives than others or emphasize that Christian owners sometimes gave freedom to those they owned. I focus on what appears to be true of slaveholding in every context: the right of the owner to determine the identity, education, and vocation of the slave and to possess the fruit of the slave's body. Acts exercising these kinds of domination were once accepted by the teaching Church as without sin. They are no longer.

Slavery is the first and largest subject of development that I address. Usury, religious freedom, divorce follow. Each development has had its own course—its own initiators, its own influencing events and formative forces, its own problems, compromises, and solutions. I have looked for the rules guiding development, and I have found only one, set out in the final chapter. I have discovered in the instances examined that neither the form in which a moral rule is cast, nor the analytic label attached to the acts regulated, nor the kind of human activity at issue can block development or make the teaching on it impervious to change.

The Church cannot change. In the Church's care is what is the deposit of faith—a core of revealed truth that no extrinsic force has power to enlarge or diminish. The deposit is secure in the Church's treasury. The Church proclaims what is necessary for salvation. God's requirements are stable. The revelation

that was made in the person of Jesus Christ was complete and final. No subsequent revelation was needed nor has been made.

A Church without change and with change—is one a mirage, a distortion of the facts, a lie; or is reconciliation possible even if, like John Henry Newman, we may startle? To answer the question I do not start a priori. I determine and date the changes that have occurred, then see what reconciliation is possible.

Slavery, religious liberty, usury—on these topics, the teaching of the Catholic Church has changed definitively. On divorce a change is in progress. All change, the cynics say, is glacial. So it must seem to those struggling to foster it. Mutations are small, sometimes sudden. The major mutations that have occurred exhibit what the Church is capable of.

Change is not a thing to be ashamed of, to be whispered about, to be disguised or held from the light of day, as grave guardians sometimes think. Change, in continuity with roots, is the rule of human life. It has been the way of life of the Church. It is a way of teaching celebrated in the Gospel itself in the image of the scribe learned in the law of Moses who is “like a householder who produces from his treasury what is new and what is old” (Mt 13:52). The new and the old cannot in life be neatly distinguished as the old slowly comes to fruition in the new.