The Interaction of Religion and Law — A Post-Vatican II Roman Catholic Perspective

By James F. Bresnahan, S.J.*

The task of both this symposium on religion and law and this Article suggesting one contemporary Roman Catholic theological perspective on that issue ought to be understood as exploratory rather than definitive. This Article, therefore, will offer one contemporary Roman Catholic perspective from one theological interpretation of the kind of thinking which led to, was embodied in, and now derives from the Second Vatican Council (1962-65). The aim will be to suggest a way of seeing the religion-law relationship that allows one to take into account more than the traditional church-state relationship. The aim will be to evoke the full sociological and theological complexity of the religion-law relationship, to highlight the dynamic interaction between diverse human groupings and the developing matrices of ideas associated with them.²

* Associate Professor of Christian and Social Ethics, Jesuit School of Theology in Chicago; A.B. 1947, College of the Holy Cross; M.A., Ph.L. 1953, Weston College; J.D. 1954, as of 1956; LL.M. 1955, Harvard Law School; S.T.L. 1960, Weston College; M. Phil. 1968, Ph.D. 1972, Yale University. Member, Council on Religion and Law, 1977—; Elected Fellow, Society for Values in Higher Education, 1975—; Member, American Society of Christian Ethics, 1965—.


2. The dominant perspective, separating religion and law, has been challenged by the pioneering essay of Harold Berman, The Interaction of Law and Belief (1974).

[1361]
The means chosen for achieving this end are theological: to expose and apply the polar categories, "church" and "world," as these have been discussed by a German theologian, Karl Rahner, whose work cleared theological ground for the achievement of Vatican II and who has continued to exercise an intellectual, though unofficial, influence on Roman Catholic church policy through his theological writings.\(^3\) Thus, what follows should not be taken as any more than one theory among many for interpreting various and often conflicting practical tendencies developing among American Roman Catholics. The application of the polar categories, "church" and "world," to the problem of the interaction of religion and law is not made by Rahner himself but is the responsibility of the author of this Article alone.

Several caveats are necessary at the beginning. First, although these categories have a specifically Roman Catholic theological lineage, they reflect a widespread concern among Christian theologians generally, Protestant and Catholic, to achieve a renewed understanding of the mutually conditioning relationship between the religious and secular dimensions of human experience. There is already present in Christian theology today a functioning ecumenism that is running well ahead of what might be called official efforts by Church leadership and also what one might characterize as normal parish practice.\(^4\) Second, these categories imply something interdisciplinary. They are not merely theological; the interaction between ecclesiastical and other social groups and the ideas associated with such groups surfaces, more or less explicitly, as the categories are explained.\(^5\) These categories also manifest lines of continuity with the thinking of "natural law" in Roman Catholic theology and with conceptions of the respective realms of moral authority of church and state.\(^6\)

---


4. An outstanding example of this functioning ecumenism in theology is a work which implicitly emphasizes a concern for the church-world problematic, D. TRACY, Blessed Rags for Order, The New Pluralism in Theology (1975).


6. Concerning continuity with "natural law" tradition, see Bresnahan, Rahner's Christian Ethics, 123 AMERICA 351 (Oct. 31, 1970) and Bresnahan, The Methodology
These categories also evoke the history of actual historical conflicts between persons and groups which constitute the socio-political ambi-
ence within which such ideas develop.7

This Article first will examine the content of the categories, "church" and "world," second, it will investigate the polar categories, "integristm" and "esotericism," which present the normative implications of church and world; and third, it will note novel, contemporary trends that distinguish the content of such categories from previous Catholic thinking. Finally, this Article will suggest one example of the way in which these categories may be used as the basis for interpret-
ing and responding to contemporary problems presented by the interaction of religion and law.

Church and World: Categories for a Theological
Interpretation of the Interaction between
Religion and Law

Rahner employs the categories, church and world, to interpret a new and comprehensive set of themes undergirding Vatican Council II's statements in the Pastoral Constitution on the Church in the Modern World, the Decree on Ecumenism, the Declaration on the Relationship of the Church to Non-Christian Religions, and the widely noticed Declaration on Religious Freedom.8 In response to Pope John XXIII's call for "aggiornamento," the Council sought to articulate the self-understanding of the Church today. This effort implied the recognition of a contrast between past experience along with the theological language in which that experience was interpreted and present experience along with the theological language that must be shaped to accommodate it.

World

From the perspective of Vatican II, Rahner finds new meaning given to the word, "world":

of "Natural Law" Ethical Reasoning in the Theology of Karl Rahner and Its Supplementary Development Using the Legal Philosophy of Lon L. Fuller (1972) (unpublished Ph.D. dissertation, Yale University; University Microfilms 72-29520 (1972)).
7. An excellent example of such literature is B. Tierney, THE CRISIS OF CHURCH & STATE 1050-1300 (1964).
[T]he "world" is envisaged as it is experienced at the present time—as a history of humanity as a single whole, and as a world which is not simply an antecedent datum, a situation of interest solely in the perspective of salvation. It is a world planned and produced by man himself and it therefore concerns man even in its own empirically observable importance.9

World is creation but, with an explicit reference to human beings and human societies insofar as they are the special dimension of this creation, conscious and self-disposing. Thus, world in its relationship to church connotes all presently experienced aspects of the human earthly reality—the structural, political, social, economic, and cultural.

As it come from God, this created world is good in itself. In this theologically neutral sense, world refers to material reality as a unity with regard to origin, destiny, goal, general structures, and the interdependence of part on part. This neutral connotation of world evokes the recognition that the whole of creation is the absolutely necessary reality mediating between God and man; world reveals God as its author and is the medium for human response to God through lived action. Natural law tends to focus on world in this neutral theological sense when it operates within traditional Roman Catholic theology.10

There is also a theologically pejorative sense of the category, world. It connotes the "calamitous history" of human beings and human society generally. This additional connotation of world evokes the recognition that the whole of creation is caught up in and affected by human rebellion against God and the resulting hostility among men, women, and social groups. Because in this pejorative sense world is sinful, and yet remains at the same time good, a conflict with its own ultimate structures and characteristics is implied. To world in the pejorative sense, however, God has responded with redemptive self-communication in Christ.

9. Church and World, supra note 3, at 346. For an explanation of Rahner's understanding of the central importance of "person" as self-conscious and, therefore, free in the basic sense of being capable of self-disposal (basic self-directing and self-shaping in which the world is shaped by action), see Rahner, The Experiment with Men, in 9 THEOLOGICAL INVESTIGATIONS 205 (1972); Rahner, Theology of Freedoms, in 6 THEOLOGICAL INVESTIGATIONS 178 (1969); Rahner, Works, 6 Sacramentum Mundi, AN ENCYCLOPEDIA OF THEOLOGY 373 (1970).

10. Rahner elaborates the relationship of nature as creation to the actual historical economy of salvation which includes sin and redemption. Rahner, The Theology of Power, in 4 THEOLOGICAL INVESTIGATIONS 301 (1966); see Church and World, supra note 3, at 347-49.
Yet even as this sinful world it is nevertheless loved by God. It is in need of redemption but also capable of it, enveloped by God’s grace despite its guilt and in its guilt, and its history will end in the Kingdom of God. Consequently, despite its opposition to God it constitutes a task for the Christian, who by the power of grace is to uphold its true order, discern the possibilities of its development, while critically distinguishing the forces present in it and patiently bearing its burden and darkness which will never cease until the end.11

From Rahner’s theological perspective, then, the category, world, is comprehensive because it seeks to take account of all aspects of human experience, individual and social, that are dealt with by the modern human and social sciences. This comprehensiveness, however, has a distinctly theological cast because all of the empirically available dimensions of creation are viewed in relation to faith and revelation. An interpretation based upon faith colors the account of these secular dimensions of human experience. This human world, in all of its dimensions — from a theological perspective — both good in itself and fallen but redeemed — is that which contemporary natural law examines from within an explicitly theological perspective.12

Church

Thus elaborated, the category, world, implies and stands in dialectical and mutually conditioning relationship with Rahner’s meaning of the category, church. This latter category connotes the individual and social aspects of the believer, the human being who seeks explicitly to respond to God’s self-manifestation and self-communication and does so always in communion with other believers. Church, therefore, refers first to the essentially social being of the believer and second to the empirically observable, socially organized community of believers in all of its dimensions. These structures are produced by a species of law, which in the Catholic tradition is developed very highly and has had a long and influential history.13

11. Church and World, supra note 3, at 347.
12. For the conception of a critical or revisionist natural law that functions within theology, see Theology and Law, supra note 1, and Brennan, Rahner’s Ethics: Critical Natural Law in Relation to Contemporary Ethical Methodology, 56 JOURNAL OF RELIGION 56 (1976) [hereinafter cited as Rahner’s Ethics].
13. For a popular discussion of the problems of revising Canon Law after Vatican Council II so as to reconcile the rich tradition with the contemporary need for re-structuring the Church and recapturing a sense of constitutionalism, which lately has been better developed in political than in ecclesiastical societies, see Hill, Canon Law
structured community of believers is shaped above all by the shared belief of its members that their creation in the world is the still incomplete arrival of the Kingdom of God. Grace-empowered obedience to God makes this ecclesiastical society a "people," but the action of God's grace in human hearts is believed to take shape not only within the visibly structured Church but also outside its boundaries in the world of non-Catholic Christian communities and non-Christian religions. Also, the action of God's grace, even with respect to Church members in the empirical sense, is understood never to be "solely in a secret inwardness of conscience, in metaphorical religious subjectivity;" it is always understood that this divine and Christian grace finds expression "in the concrete fulfillment of an earthly task, of active love of others." 14 The category, church, therefore, connotes both the interpenetration of the believing community with what is meant by world and also the distinctness but not separability of church from that world because the faith that grounds this ecclesiastical community must reach outward into secular action.

The theological category, church, cannot be simply identified either with the sociological definition of religion in functional terms or with its sociological competitor, the definition of religion in substantive terms. The former definition has given birth to the concept of a distinctive American civil religion to account for activity in the secular, especially the political sphere, which has religious elements. 15 The latter definition has tended to exclude the secular dimensions of human life from the realm of the religious and to restrict attention to the extraordinary and the otherworldly in human experience because religion is thought of as a belief and a relationship to the transcendent. 16 Rahner's category, church, precisely in its correlation with

After Vatican II: Renewal or Retreat, AMERICA 298 (Nov. 5, 1977). The problem of the interaction of religion and law exists within the Roman Catholic Church as a problem of the theology of law and as a problem of legal practice. For an article that discusses the latter problem, see Bresnaham, Problems of Marriage and Divorce, AMERICA 796 (May 25, 1968).


15. See Bellah, Civil Religion in America in RELIGION IN AMERICA 3 (W. McLoughlin and R. Bellah eds. 1968) and in AMERICAN CIVIL RELIGION 21 (R. Richey and D. Jones ed. 1974). For a basic presentation from the functional perspective, see T. O'DEA, THE SOCIOLOGY OF RELIGION (1968).

16. For a substantive approach to the sociology of religion, see F. BERGER, THE SACRED CANOPY (1969). Concerning the difference between the functionalist and sub-
the category, world, underscores in a new way the traditional Catholic belief that religious faith demands a secular involvement of the believing community and its members.\(^{17}\) Thus, what is connoted by the category church is a faith dimension of human living which produces an empirically observable community of believers distinguishable from world and which involves moral effort in every kind of worldly activity and in every kind of worldly social grouping.

At this point, then, the mutually conditioning dialectical interplay of the categories leads toward a normative position.\(^{18}\) The meaning of church already involves worldly activity, worldly society, and the meaning of world already exists within the socially organized church even while it is the constant object of church's outward moral effort. Inner-church theology also is influenced constantly by and reacting to the worldly scientific and cultural disciplines. World philosophy in all of its forms, systematic as well as popular and unsystematized, also is being influenced, in varying degrees and in a more or less explicit fashion, by the religious thinking that occurs within church. These interactions are not only connoted, they become prescribed.

To apply these categories, church and world, in a search for a deeper grasp of the religion-law relationship means suggesting an interest in more than merely analytic thinking. The categories emphasize the overlap and meshing of religion and law. Hence, they

\(^{17}\) "It follows from . . . the inseparable unity of material and formal morality, which demands definite, material, and meaningful activities in this world, and cannot be reduced to a purely religious or formally 'believing' frame of mind. It follows also from the unity of love of God and love of neighbor." Church and World, supra note 3, at 346. For further development of this active, ethical involvement in the world, see Rahner, The Function of the Church as a Critic of Society, in 12 Theological Investigations 229 (1974). For another illuminating use of Rahner's thinking on this subject, see D. Hollenbach, A Prophetic Church and the Sacramental Imagination, in The Faith That Does Justice: Examining the Christian Sources for Social Change 234 (J. Haughey ed. 1977).

\(^{18}\) There is a movement, therefore, from "description" to "prescription" and from "is" to "ought," which is characteristic of explicitly natural law thinking. See Rahner's Ethics, supra note 12. That this movement may be characteristic of any explicitly theological ethics seems likely. See J. Gustafson, The Contributions of Theology to Medical Ethics (1975); J. Gustafson, What is the Normatively Human? in Theology and Christian Ethics 289 (1974).
encourage synthetic thinking and attention to the inner relatedness of all distinguishable human phenomena such as religion and law.  

Evaluative Implications of the Church — World

Theological Categories

Rahner develops an evaluative implication in his use of the church-world theological categories to describe and thereby to comprehend polar interpretations of the religious and secular dimensions of human experience. He names two inadequate and destructive tendencies "integrism" and "esotericism." The distinction between integrism and esotericism functions for Rahner as the means of dealing with the need of the religious realm, church, to respond to the secular realm, world, as good because created and redeemed, and also to respond to that world as implicated in human sin. Thus, church responds to world by committed involvement in world and at the same time by prophetic criticism of and flight from world. This response is made the more complex by the inevitable mutual involvement of church and world.

Integrism

Integrism connotes the tendency to overcome tension between church and world by asserting the triumph of church, especially the official church, over world.

Integrism regards the world as mere material for the action and self-manifestation of the Church and wants to integrate the world into the Church. . . . It is sufficient to start from the false but widespread tacit assumption that the moral principles of human action which are defended by the official Church and applied by its pastoral ministry to men's action are of such a kind that (at least in principle) in each case a concrete prescription can be deduced from them for the particular action in question. Then all earthly action in the history of the world is nothing but the putting into practice of the principles taught, expounded and applied by the Church. The activity of the world in State, history and social life is then simply a realization of the Church's principles, and in fact an embodiment of the Church itself. The world would be the corpus Christianum and nothing else.  

20. Church and World, supra note 3, at 349. For a discussion of the necessity for the intervention of prudential judgment between abstract moral principles and the concrete risk of decisionmaking, see Rahner, Opportunities for Faith: Elements
A full exposition of the theological reasons why Rahner constructs this evaluative category is not needed here. It is enough to note that he especially emphasizes a tacit but false assumption which can be operative in either official church leaders or ordinary believing members and which misconceives the meaning of Christian ethics. Against this assumption Rahner affirms:

It is not possible wholly to derive from the principles of the natural law the gospel the human action which ought to be done here and now, although of course all action must respect those principles. Nor when such action is more than the carrying into effect of those principles and of the official instructions of the Church, does it cease to be morally important from the point of view of God and in relation to him as goal. It still concerns salvation and has to be performed with the absolute earnestness of moral responsibility. It can even be the subject of charismatic inspiration from on high, and, while remaining secular, a factor in the coming of the Kingdom of God.21

Rahner now explicitly recognizes and theoretically articulates this view by the connotations of the categories, church and world; contemporary experience permits, indeed demands, that theology recognize that:

the world is moving from a static condition and a theoretical way of looking at things to one which can be altered and manipulated by man and man's action. For then it becomes palpably evident that the actively created future is no longer wholly to be deduced from eternal principles but, as something really new and the outcome of active decision, stands under the summons of God and the responsibility of man in a way which is not the purely official, ecclesiastical way.22


21. Church and World, supra note 3, at 350. The need for real acceptance in the church of the function of "unofficial" initiative, especially of lay persons and groups, has been a consistent theme of Rahner from an early point in his published writings. See Rahner, The Dynamic Element in the Church (1964); Rahner, Free Speech in the Church (1959).

This integrism, by collapsing world into church, seeks to obliterate the distinction between them and, as a practical matter, to make worldly realities such as law merely the expression of churchly policy, a direct and unmediated expression of religion. As the church-world distinction is collapsed, so is the religion-law distinction. These irreducibly plural dimensions of human experience are not simply acknowledged to be functionally interrelated within a higher or deeper unity of living and experience; they are reduced to a flat uniformity, and that uniformity exists on the relatively superficial level which resolves any tension between religion and law by making church dominate and control world.

**Esotericism**

For Rahner the polar opposite of integrism is esotericism, which divides church from world and world from Church. Whether in theory or in practice or in both, the esotericist regards what is secular as a matter of indifference for Christianity, for a life directed toward salvation and therefore toward God's absolute future. "The decisive feature of esotericism is that the secular is abandoned to itself, as an indifferent or sinful residue in an explicitly religious life which as far as possible is carried on as exclusively as possible in the small circle of religious esoterics. It is not regarded as a positive task for the Christian as such." Rahner suggests historical precedents for this esoteric way of solving the tension between church and world by utterly separating them, precedents which would require separate consideration not possible here.

23. *Church and World*, supra note 3, at 351.

24. There can be tacit dualisms at work which destroy a distinction between two dimensions of what is the fundamentally unified reality of human experience by separating what has been distinguished. Catholic and Protestant versions of a one-sided "doctrine of the invisible Church of the predestined known only to God," have appeared wherein "what is genuinely moral and valid in God's sight is absolutely metaphistorical, beyond any concrete material determinable action... purely a disposition, inwardness (faith, a 'commitment' which remains purely formal in character)." In this view, "there is no Christian ethics with positive Christian content" but the secular in all of its dimensions, political, social, economic, and cultural is view as "totally inaccessible to a Christian attitude, remaining indifferent to this or even simply and solely sinful" and "stands only under the law, not under the gospel which redeems and sanctifies the world itself." Most interestingly, Rahner suggests that there can be a strange amalgam of both esotericism and integrism, "in the tendency, e.g., in the Irish monastic Church, to make the world a monastery" or in the "Calvinist conception of the theocracy of the Christian community with its Church discipline." *Id.* at 351.
By eliminating the functioning interrelationship between the distinct dimensions of church and world, this esotericism would as a practical matter wholly exclude the influence of religion upon secular law and of the latter on the former. No undergirding unity would remain between two dimensions of the one human experience; the individual and social human reality would simply be fractured by the intervention of God’s revelation and call of His people to flee the world.25

Church as Both Commitment to and Flight from World

Rahner’s polar categories, integristism and esotericism, are explicitly normative. They are Rahner’s point of departure for recommending a balance, a mean always difficult to achieve, between commitment to and flight from world as the correct and right expression of church today and depend upon his theological interpretation of the complex unity of human experience articulated in the church-world categories. Church must be at the same time both devotedly world-affirming and prophetically world-denying.26 This evaluative recommendation is directed to both official church leaders and church members who live and work more completely within world. As normative, these polar categories can function to illuminate possible ways in which Roman Catholics will in fact strive to maintain some form of balance between the extremes. It can be expected that tendencies to lean in one direction rather than the other will appear inevitably. The tension implied between Church and world and between the poles of integristism and esotericism can be expected to produce various balances within the contemporary Roman Catholic community as well as other Christian groups. Before examining the ways in which these balances might appear as instances of human effort to understand and act upon an understanding of the relationship between religion and law, however, it is important to take explicit note of certain distinctively contemporary trends in Roman Catholic thought that operate in Rahner’s theological categories and that place the content of these categories in a wider context.

Three New Trends in Rahner’s Church—World Categories

Theological categories such as church-world are intended by Rahner to be theoretical instruments for interpreting concrete human

25. Id. at 350.
26. Id. at 351-55.
experience in the richest and most comprehensive sense of that word. 27 What is distinctively modern about human experience, therefore, plays a role in shaping the connotations of these categories and in drawing normative implications from them through the categories, integrism, and esotericism. A theologian like Rahner tries to show how the secular dimension of experience interacts constantly with the religious dimension of the same experience.

There are at least three distinctively modern or post-modern trends in Roman Catholic theology adumbrated in the previous discussion of Rahner’s theory of church and world. They can be summed up by these phrases: consciousness of historical, evolutionary development; acceptance of pluralism; and affirmation of the creative power of human freedom. These interrelated trends are present not only in Rahner’s thought but also in the theories of other influential Catholic theologians, and they deeply affect the interpretation of modern experience expressed in the concepts of church-world and integrism-esotericism.

As quoted above, Rahner’s view of contemporary experience of “world” includes an awareness that human beings today deal with a world “planned and produced by man himself.” He notes that the Catholic Church deliberately addressed this view at Vatican II in the Pastoral Constitution on the Church in the Modern World. Because the church exists in a world of many Christian and non-Christian religions in which the state has a different function from that in an ideologically homogeneous society, the Council’s declarations on ecumenism, non-Christian religions, and religious freedom may be justifiably seen as partial answers to the issues of relations between the Church and the world. Furthermore, Rahner emphasizes that “marxism” was really the first to work out a genuine theory of a world to be constructed by man himself in order to escape his own self-alienation.” 28 In Rahner’s extensive elaboration of the Council’s response to this view, the relationship of Rahner’s own views to two other exponents of the three trends can be discerned.

27. Concerning the role of experience in Rahner’s theology, see Carr, Theology and Experience in the Thought of Karl Rahner, 53 JOURNAL OF RELIGION 359 (1973). The relationship of experience as Rahner understands it to “experience” as understood by the American pragmatists is noted in Theology and Law, supra note 1, and in Rahner’s Ethics, supra note 12.

28. Rahner takes note especially of the influence on theological thinking about the world which results from confrontation between the church and nineteenth century liberalism and twentieth century Marxism. Church and World, supra note 3, at 346-47.
First, his emphasis on evolutionary development in human life and thought sharply contrasts with what he has called an older static and "excessively cosmocentric" rather than "anthropocentric" theological world view. Rahner's categories reflect the break with what had seemed to be the prevailing scholastic view among Roman Catholics, one that emphasized static and immutable structures in human beings and the being of the world to the exclusion of anything but superficial change. The most striking symbol and exponent of this newer world view is the French Jesuit paleontologist, Pierre Teilhard de Chardin. Teilhard's writings became widely known immediately before Vatican Council II and have continued since then to provide inspiration for this new trend in Catholic theology. For Teilhard, the evolutionary character of human life, human thinking, and human society formed the undeniable premise for all thought about the world and humankind. Thus, Rahner's categories, church and world, manifest a generally pervasive new readiness to emphasize the real discontinuities of history even as they continue the traditional Roman Catholic search to identify more profound continuities that are presupposed by those discontinuities of development from one historical period and culture to another. The normative recommendation in the categories, integrism and esotericism, encourages an optimistic engagement with change.

29. "And despite the secular occasions of such growth and change in theory and practice, this alteration in the Church [its recognition of the relative autonomy of secular sciences and potential variety of the social, political and economic organization of human groups] is ultimately regulated by the standard of the Church's own spirit and its own ancient truth. . . . Changes in the Church and in the world mutually interact. The change in the Western mind in modern times ultimately sprang from the spirit of Christianity itself, even though it often rightly or wrongly turned against the actual existing Church and forced it slowly to learn what it really always knew. That change led from a Greek cosmocentrism to anthropocentrism, meant destroying the numinous character of the world and making it the material of human activity. Other aspects were its rationality and technology, conscious reflection on its own historical character with a consequent critical relation to the past and openness to a novel future, and the reduction of human tradition to a merely relative value." Church and World, supra note 3, at 348-49. See also Rahner, 3 Sacramentum Mundi, An Encyclopedia of Theology, Man (Anthropology) 365 (1969), reprinted in Encyclopedia of Theology: The Concise Sacramentum Mundi 887 (Rahner ed. 1973).


31. For an example of Teilhard's view of the ethical challenge, see Teilhard, Can Moral Science Dispense with a Metaphysical Foundation? in Toward the Future 130
Second, Rahner expresses throughout his exposition of the categories, church and world, a concern to deal openly with pluralism. The interaction of diverse religious and worldly movements, the dialogue between world views deriving from them, are seen as capable of correcting the inevitable one-sidedness in each, capable of producing more universally human awareness in each. The most influential exponent of this trend in modern Catholic theology is John Courtney Murray, the Jesuit theologian who so effectively espoused the value of "public argument" between "creeds at war intelligibly." Thus, Rahner's categories, church and world, embody and manifest the trend in contemporary Roman Catholic theology to take a positive advantage of pluralism both in church and world. Rahner's normative categories, integralism and esotericism, recommend a confidence in the possibility and the power of mutually corrective dialogue among opposed groups of believers and unbelievers and urge a new zeal for perpetually searching out ever more adequate formulations of "objective" truth about human beings and the world which is never exhausted by any one system or theology. There remains, too, a conviction that the Roman Catholic formulation of truth is relatively more adequate and thus continues a reverence for the received wisdom of the tradition. However, the wisdom of tradition is now understood as a point of departure for venturesome pilgrimage into the inexhaustible truth shared also with other world views rather than as a bastion to be defended against ever threatening encroachments of "error."


32. The proper balance between integralism and esotericism requires varying forms of dialogue, of persuasion by appealing to understanding and consent, rather than the use of sheer social power, whether on the part of the "official Church" or on the part of Christians taking individual or group initiative in public life. See Church and World, supra note 3, at 351-56.


34. Recognition of pluralism demands, according to Rahner, a willingness to trust in the ultimate persuasive power of truth, thus a readiness to appeal to understanding and consent. The church, both in its official leadership and in its lay membership, will itself be increasingly "a community Church of those who personally believe by their own decision. . . . In this way the Church will naturally become a Church of open dialogue with the world, both within and without. Even within itself, for such a community Church, despite its abidingly hierarchical constitution, will be a Church
Third, in Rahner’s use of the church-world categories there is explicit conviction that human freedom has a creative or co-creative capacity (under grace) to shape world history even as it also shapes the inner moral quality of the person unto salvation or damnation. This conviction coheres with beliefs of both Teilhard de Chardin and Murray. It is human freedom which will effect new actuations of potentially changeable dimensions of “human nature” (also under grace!). Teilhard’s challenge to “build the earth” resonates with the existence of which is based on the laity as personal believers, and less on the institutional element . . . . A laity of that kind, however, by its very nature is the world (in the legitimate sense) in the Church. That laity’s culture, mentality, aspirations, etc. (even to the extent that they find expression in the Church) are no longer created solely by the Church as an institution (as was almost entirely the case in earlier times). They are brought into the Church by the laity as part of the already existing world, and also by the clergy themselves as men of our time. In that way there is and must be a dialogue within the Church between Church and world. Outwardly there will be a similar dialogue because a community Church in the diaspora, which also has to be a missionary one, may not and cannot shut itself off in itself in a sectarian way. It must engage openly in dialogue with the world, its civilization, endeavours and creations . . . . To be able to give, the Church must receive.” Church and World, supra note 3, at 355-56. For further discussion of how a conviction that truth still to be better achieved undergirds commitment to dialogue in pluralism — rather than skepticism or relativism — see Rahner, Reflections on Dialogue within a Pluralistic Society, in 6 THEOLOGICAL INVESTIGATIONS 31 (1969); Rahner, Ideology and Christianity, in 6 THEOLOGICAL INVESTIGATIONS 43 (1969); 2 SACRAMENTUM MUNDI, AN ENCYCLOPEDIA OF THEOLOGY, Dogma 102, 108 (1968), reprinted in ENCYCLOPEDIA OF THEOLOGY: THE CONCISE SACRAMENTUM MUNDI 300, 366 (Rahner ed. 1973). And see extensive discussion of this in Bresnahan, The Methodology of “Natural Law” Ethical Reasoning in the Theology of Karl Rahner and its Supplementary Development Using the Legal Philosophy of Lou L. Fuller (1972) (unpublished Ph.D. dissertation, Yale University).

35. It can be argued that Rahner vindicates the position: 1) that there are changeable dimensions in “human nature”; 2) that there is an unchangeable “core nature” underlying these; 3) that core nature is most clearly grasped in the tradition when human consciousness and basic freedom that constitute the human being “person” are emphasized; and 4) that whether other aspects of the spiritual-material given makeup of human beings (and societies) are possibly changeable or really unchangeable (because linked in their given reality to core nature in a necessary way) by “creative” human freedom is a) argued again and again in the light of actual human moral experience (individual and social), and b) is discovered by the experimental venture of creative human freedom in moral experience. What can be changed, then, may in one historical era be creatively changed for the better by the venture of human freedom. What cannot be changed, however, will be tampered with by human freedom only destructively. For the full argument about how these positions derive from Rahner’s metaphysics and theology, see Theology and Law, supra note 1; Rahner’s Ethics, supra note 12 and Bresnahan, The Methodology of “Natural Law” Ethical Reasoning in the Theology of Karl Rahner and Its Supplementary Development Using the Legal Philosophy of Lou L. Fuller (1972) (unpublished Ph.D. dissertation, Yale University).
this conviction. Murray's arguments for uncoerced faith and for intelligent initiative in favor of the common good echo this conviction, too. And Rahner's allusion to the Marxist problematic establishes the continuity of his theology of church-world with developments in modern papal social teachings upon which Murray commented. Also, Rahner's allusion to Marxism exemplifies the possibility of directing freedom by learning from the dialogic opponent.

Rahner's theological categories, church and world, thus resonate with optimism that the experiment of human creative freedom can and must give witness to and produce both moral dedication to the world and prophetic correction of its inadequacies. This risky experiment of creative freedom can find better solutions to individual and social moral dilemmas than have yet been found. Active but critical freedom may eliminate restrictions on the life of freedom and may open new opportunities to freedom. This possibility must be investigated not only in theory but above all through practical commitment.

These three novel trends in contemporary Roman Catholic theology decisively shape the connotations of the church-world categories. Consciousness of the way in which these trends form the substance of the normative implication in integrist and esotericism makes the application of this theological perspective to an interpreta-

36. Murray emphasizes in interpreting Pope John XXIII's encyclical letter Peace on Earth (Pacem in Terris), published in 1963 less than two months before his death and after Vatican II had completed its first session, the new importance of freedom in papal social teaching. "In the past, papal pronouncements on political and social order have always been suspended, as it were, from three great words — truth, justice and charity. These three great words are repeated in this encyclical, and the demands of each are carefully particularized. But a fourth word is added, with an insistence that is new at the same time that it is traditional. I mean the word freedom. Freedom is a basic principle of political order; it is also the political method. The whole burden of the encyclical is that the order for which the postmodern world is looking cannot be an order that is imposed by force, or sustained by coercion, or based on fear — which is the most coercive force that can be brought to bear on man.... These forces of freedom and for freedom emerge from the depths of the human person, which in the end is the creative force in human affairs." Murray, Things Old and New in 'Pacem in Terris,' America 612, 613 (April 27, 1963) reprinted as, Key Themes in the Encyclical, Pacem in Terris, (Peace on Earth) (American Press Pamphlet, 1963). Analysis would reveal the close connection between these ideas of Murray and Rahner's understanding of basic freedom and power. See notes 14 & 39 supra.

37. The fundamental importance of the venture of freedom is argued by Rahner in the essays cited supra notes 20 and 31, and in his recently published Foundations of Christian Faith, An Introduction to the Idea of Christianity (1978).
tion of the interaction of religion and law capable of unveiling implicit religious components in that interaction and, therefore, capable of opening up new ways of resolving conflict in that interaction.

Interaction of Religion and Law: Catholic Reaction to Abortion Decisions

From the Roman Catholic standpoint, a critical challenge to work out the proper balance between integrist and esotericism is presented by the recent series of United States Supreme Court decisions on abortion. These decisions began in 1973 with Roe v. Wade\textsuperscript{38} and Doe v. Bolton\textsuperscript{39} and continue to the 1977 decisions, Maher v. Roe\textsuperscript{40} and Poelker v. Doe.\textsuperscript{41} Three typical responses to this challenge can be identified, described, and interpreted from the reading of Rahner's theology of church and world elaborated above. The first response would be to advocate constitutional amendment, the second to advocate legislative action to restrict fiscal support of abortions, and the third to advocate finding positive alternatives to abortion. A theological interpretation of these positions from the understanding of Rahner's categories, integrist and esotericism, manifests the complexity of this instance of interaction between religion and law; it may lead toward realism about the depth of the challenge even if it does not produce any ready made and easily applied solution.

In anticipation of a theological interpretation of typical responses, the line of decisions can be read minimally to represent the following positions. First, there exists within the body politic\textsuperscript{42} real and substantial pluralism about the moral character of abortion or at least about what Catholic moral theology calls the subjective moral culpability of a very substantial number of the persons who obtain abor-

\textsuperscript{38} 410 U.S. 113 (1973).
\textsuperscript{39} 410 U.S. 179 (1973).
\textsuperscript{40} 432 U.S. 464 (1977).
\textsuperscript{41} 432 U.S. 519 (1977).
\textsuperscript{42} This is not a term of the Court but a category developed by J. Murray to designate "the people" who are organized under law as "political society" and served by the "state" which is one subsidiary functional organization having the common good as its goal. See Murray, The Problem of State Religion, 12 THEOLOGICAL STUDIES 155 (1951). Murray's category seems useful to designate the locus of the pluralism about abortion.
tions. Second, a constitutional penumbral right of privacy insulates the individual obtaining an abortion and those who assist her medically from either criminal penalty or its close equivalent. Moreover, the claim is denied that the fetus has the constitutional status of a person and must be protected if necessary by criminal penalties. Third, discouragement of abortion and preference for childbirth can constitutionally be made public policy by legal measures denying medicaid funds for abortions.

43. This interpretation supposes that the crucial language in Wade is the following: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." Roe v. Wade, 410 U.S. 113, 159 (1973). It is "wide divergence of thinking on this most sensitive and difficult question" that leads the Court to refuse a construction of the Constitution "adopting one theory of life." Id. at 160, 162. In fact, the moral dispute can be about whether abortion is itself, apart from the understanding and consent of particular moral agents, "objectively" immoral or about whether, the tragic evil of the act of abortion conceded, a significant number of moral agents in this concrete society are able to understand this and do seek abortions with full freedom, i.e., are "subjectively" culpable from a moral point of view. For a contemporary discussion of the traditional Roman Catholic distinction between "objective" and "subjective" morality, see A. Donagan, The Theory of Morality 52 (1977).

44. Roe v. Wade and Doe v. Bolton dealt only with criminal penalties against abortion.


46. "All this, together with our observation, supra, that throughout the major portion of the 19th century prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment does not include the unborn." Roe v. Wade, 410 U.S. 113, 158 (1973). In some Roman Catholic quarters, this observation seems to be the only statement of the Court considered important— in planning response to it.

47. This position is the thrust of the Maher and Poelker decisions, and it has provoked outrage within the Court and among commentators. See, e.g., The Supreme Court, 1976 Term, 91 Harv. L. Rev. 70, 137-40 (1977). Poelker seems to imply that legislative and executive actions which discourage abortion (or encourage it) in relation to child-bearing are inevitable, cannot be controlled except by constant judicial supervision which would, implicitly, involve the Supreme Court in the unacceptable task of resolving the moral pluralism within the body politic either by deciding that childbirth is constitutionally preferred over abortion or that abortion is constitutionally preferred over child-bearing or that there must constitutionally be equality between them. The Court seems intent on preserving the neutrality of the Constitution in respect to this existing moral pluralism and its resolution.
Roman Catholics are convinced that if done consciously and freely the act of direct abortion as a response to unwanted or even life-threatening pregnancy is not only objectively, but also subjectively immoral. At the same time, traditional Catholic moral theology also takes account of the possibility that there can be subjective inculpability in individuals, especially because of the limitations on knowledge or freedom that result from hostile social and political structures. All that has been seen in Rahner’s exposition of the categories, church and world, means at least that Catholics cannot regard this strong moral conviction as a merely private religious matter, something belonging only to an esoteric religious sect and its internal policies. The fundamental requirement that church be positively committed to making efforts toward the betterment of the world in all of its dimensions demands as a moral exigency of the fundamental faith commitment that Catholics express prophetic criticism of moral evil, even when it is merely objective and that they act to reform those social structures that unjustly restrict the subjective freedom of individuals and so involve them in objective moral evil. Love of God, inseparable from love of neighbor, demands some kind of action to succor these individuals, some effort to effect social change which will permit or encourage objectively and subjectively good moral choices. The means chosen become crucial to a theological judgment about whether official church leaders or lay members can be interpreted to be attempting simply to integrate law under church hegemony. So long as the interpretation remains on this relatively abstract level, labeling of tendencies as integrist or esotericist can remain relatively uncontroversial.

As soon as more concrete approaches are described, however, the application of the normative polar categories, integrist and esotericism, to the abortion issue as public policy provokes controversy. There are at least two opposed viewpoints from which the application can be made. One will identify strongly with the three modern trends in theology which have been interpreted here to shape Rahner’s

---

own understanding of the categories, church-world and integrism-esotericism. The other will implicitly or explicitly recoil from accepting those trends and will either reject outright or give a very different reading to Rahner’s categories.

From the first reading of Rahner’s meaning, a relatively strong tendency toward what he means by integrism will be detected in the approach that advocates a constitutional amendment, especially if this goal is sought only or principally in order to make possible re-institution of criminal penalties against abortion. Such an approach seems to have more confidence in coercion and fear as the means for resolving moral pluralism than in persuasive dialogue between the opposing parties, thus less confidence in the possibility that dialogue will produce opportunities for creative interventions by which freedom can effect social development for the better. Of course, proponents of the constitutional amendment are likely to reject Rahner or give a different reading to his categories and will challenge this present application of his thinking as deriving from an implicitly esotericist mentality.

Second, from the reading of Rahner’s meaning adopted here, a relatively less strong tendency toward integrism will be detected in advocacy not of constitutional change but of legislative action, permitted under the present line of Supreme Court decisions, which would eliminate all public funding for abortion. On first examination, such a position seems to eschew dialogue and social development through consenting freedom’s creativity, thus to be still intent upon coercion, though of a subtler kind than that involved in criminal sanctions. The position seems to advocate leaving poor persons who want abortion in severe difficulties but imposing no restrictions on the wealthy because criminal penalties which would affect all equally have been eliminated by the Supreme Court decisions. However, this apparent readiness to engage in a subtler kind of integrism, to bypass efforts for development through dialogue, may in fact be something rather different. It may in fact imply only a kind of interim toleration of the lesser evil; given the great increase in the number of abortions after criminal penalties were ruled unconstitu-

49. E.g., the reading here preferred is that which emphasizes the influence of the three trends in contemporary Catholic theology described above. See notes 27-37 & accompanying text supra.
50. Again, the reading here presented. Id.
tional and given the continued easy access to Medicaid support, abortion seems to have been made the option legally preferred over bringing pregnancy to term. So interpreted, this approach would appear less clearly integrist in tendency. At least some of those who espouse this second approach might, like proponents of constitutional change, reject Rahner or give him an entirely different reading and brand this interpretation of their position implicitly esotericist.

Third, from the reading of Rahner’s theology favored here, both integrism and esotericism seem best avoided, a balanced interaction of religion and law best achieved, by an approach that emphasizes positive measures to persuade from the abortion option and toward bringing even unwanted pregnancies to term. This approach would seek to show confidence in the possibility of historical development for the better, in the creative capacity of freedom to effect that development, and in the probability that sustained dialogue between opposing groups can be mutually corrective and produce common advocacy of measures that increase the real options other than abortion. For instance, seeking increased subsidies for prenatal care, delivery, postnatal care, and adoption and developing other ways of removing the many economic, social, and emotional penalties that contemporary American society imposes upon women who bear unwanted children might constitute a program expressing this confidence. Interestingly enough, this approach might also be based upon the prudential judgment that within a free society only such positive measures can really save fetal lives and thus really fulfill the responsibilities of love of God and neighbor in the world in an effective way. This third approach would regard the amendment proposal as tolerable, if at all, only because it might result in a constitutional mandate for these positive measures. If this approach tolerated discriminatory treatment between poor and rich with regard to use of public money for abortion, it would only be as an interim measure, reluctantly, because nothing better seems available and the alternative worse. From a rejection of Rahner or another, different reading of his categories, of course, this approach will seem hopelessly esotericist.

51. As in Id.
52. An example coming very close to this third approach is to be found in E. Carroll, M. Dowling, V. Jennings, M. Keenan & C. Moran, Choose Life, A Statement Affirming the Value of Human Life and Promoting the Quality of Life, (June 1971, Leadership Conference of Women Religious, Washington, D.C.).
These two differing interpretations of three prototypical Roman Catholic responses to the Supreme Court's line of abortion cases illustrate the complexity of the religion-law relationship as it is experienced in concrete interaction between what Rahner means by church and world. The dynamics of that interaction become more intelligible, even if a resolution of the tension seems to require a great deal more dialogue, within the Roman Catholic community and also between Catholics and those outside the Roman Catholic Church who simply disagree on the objective moral quality of the individual abortion decision. Among the topics which ought to be discussed adequately are the meaning and justification of the three contemporary trends which shape the very content of Rahner's categories, church and world and their normative correlates, integrist and esotericism. From the interpretation favored here, this discussion may make possible a mutually corrective understanding of different ways of experiencing the interaction of religion and law, may result in modifications of different ways of articulating these experiences, and so may produce a practical policy tolerable by the opposed positions. Certainly it can be said that only such dialogue will enable the parties to appeal effectively to the understanding and consent of others.

Once these theological perspectives of Rahner have been examined and applied, it does seem impossible to doubt that there exists an unavoidable interaction between religion and law and that every available means of understanding it must be employed. Even the most cynical exponent of Realpolitik has to accept and try to cope with this interaction in all of its complexity as a manifestation of tension between church and world under penalty of having otherwise to surrender the desire to make history.