

John T. Noonan's *A Church that Can and Cannot Change*: An Evaluation

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JOHN T. NOONAN is a federal judge of the United States of Court of Appeals and a scholar well known for his work in the history of ethics. The present work takes up the problem of doctrinal development and change with regard to slavery, usury, religious freedom, and the pope's authority to dissolve natural marriages. The subject of doctrinal development and change has been an interest of Noonan's for some time, stretching back to 1947 when he studied the question of religious freedom and in a 1951 philosophy dissertation on usury. Judge Noonan is also known from his days on the so-called Papal Birth-Control Commission when he sided with those who argued for a change and reversal in the Church's teaching on contraception.

The title of the present book expresses Noonan's conviction that while the Church cannot expand or reduce the deposit of faith entrusted to her, the Church can change in "continuity with her roots."¹ It is undeniable that doctrine develops. The central argument in Noonan's book seems to be that doctrinal development in many instances involves a complete reversal of prior Church teaching that was mistaken and erroneous. Noonan thinks that development is directed by the rule of faith. He explains this rule of faith with the help of Augustine who claimed that true understanding of divine revelation is the kind that will build up the "double love of God and neighbor."² Development springs up from human experience that is deepened by faith. Social change and the identification with the

¹ John T. Noonan, *A Church That Can and Cannot Change* (Notre Dame, IN: Notre Dame, 2005), 7.

² *Ibid.*, 222.

experience of “the other” allow Christians to overcome their moral errors. Slavery, religious freedom, usury, and divorce (applied to non-sacramental marriages) all serve as examples.

The chapters discussing the Church and slavery comprise more than 50 percent of the book. Noonan argues that for most of her history the Church accepted slavery as an institution that was simply part of society. Although the New Testament did not confront the institution of slavery, Noonan believes, correctly, that it laid down the paradigms that eventually undermined it over a long period of time. The commandment to love one’s neighbor as one’s self, Paul’s injunction to treat a slave with love (Letter to Philemon) and his proclamation that in Christ Jesus there is neither slave nor free, were all things that worked against the moral acceptability of slavery. Nevertheless, Christians, even some popes, owned slaves. No Father or Doctor of the Church, no pope, and no conciliar decree of a Church council ever made a comprehensive and complete condemnation of slavery. Noonan does acknowledge that the Church did work to soften the effects of slavery in some ways. The Church upheld certain rights for slaves and the popes forbade the enslavement of the native populations of the Americas. Sometimes, according to Noonan, the Church had to be prodded into denouncing the evils that went along with slavery. The story behind the papal bull of 1839, *In Supremo Apostolatus Fastigio*, in which Gregory XVI condemned the African slave trade, serves as a prime example. All of these things, though, fell short of a direct and sweeping condemnation of slavery as an institution.

It is questionable whether Noonan completely does justice to the history of the Church’s efforts to ease the evils of slavery. Some of his handling of the historical materials seems isolated and flattened out at times. For instance, take Noonan’s account of the events surrounding Pope Gregory XVI’s 1839 condemnation of the slave trade.³ In Noonan’s telling of the story it took the urging of Protestant Great Britain to lead Gregory XVI into condemning the trade. Were the pleas of the British government the only reason the pope moved to repudiate the cruel trade in Africans across the Atlantic? Why was the pope so receptive to the British request? Noonan’s account leaves these important questions unanswered. He observes that a previous request in 1822 for a papal denunciation of the slave trade was unsuccessful. The Congregation for Extraordinary Ecclesiastical Affairs, made up primarily of cardinals who advised the pope, reported that although the trade caused suffering, nevertheless, slavery was not contrary to the natural law and that the Old

³ Ibid., 104–08.

Testament approved it in principle. But in 1839, according to Noonan, the same body of cardinal-advisors considered another British request for a condemnation of the African slave trade. The Roman Curia prepared the state of the question to the assembled papal advisors and reported to them that “‘the most competent among the authors and theologians’ refuted arguments in favor of slavery and the slave trade.”⁴ The cardinal-advisors accepted the Curia’s statement of the problem and this time, Noonan reports, the advisors proceeded to assist the pope in the formulation of a prohibition of the slave trade. But Noonan leaves obvious questions unanswered. Why did the papal advisors in 1839 give the pope a completely opposite conclusion about the trade from the one it gave in 1822? What was going on in Catholic thought at the time that lead the advisors to these different conclusions in a span of only seventeen years? The reader is left to wonder about this missing part of the story and its importance for understanding the background of the papal bull that excoriated the slave trade.

What is important for Noonan, ultimately, is showing that in the case of slavery what was formerly thought not to be sinful was later declared intrinsically evil, meaning that it was always and everywhere evil. He contrasts the thoughts of John Henry Newman, the preeminent authority on the development of doctrine, with the papal teaching of Pope John Paul II. Newman once commented on a lecture given by William Allies, a Catholic convert, who argued that slavery was intrinsically evil. Newman responded that while slavery was bad, and ought to disappear, it was not intrinsically evil. Though evil, slavery was not always and everywhere evil. Not every form of it was evil per se. As much as he disliked slavery, Newman explained that the inspired writers of the Scriptures, especially Paul, held him back from pronouncing slavery as intrinsically evil. Paul did not say to Philemon: “Liberate all your slaves immediately.” Rather, he left slavery to the slow working out of Christian principles.

On the other hand, Pope John Paul taught that slavery was intrinsically evil. Noonan argues that this change in doctrine came about primarily in 1993 in the encyclical *Veritatis Splendor*, which included slavery in a list of social evils that are said to be intrinsically evil. He points also to a speech the pope gave in Senegal on the Island of Goree at the site of the infamous “House of Slaves,” where he denounced slavery and the slave trade. There the pope said: “It is fitting there be confessed in all truth and humility this sin of man against God.” Noonan remarks that what was not mentioned in this confession was how recently the sin had been

⁴ Ibid., 106.

discovered. But the reader is not alerted to the full context of the pope's speech, the tone of which stresses continuity with a statement of one of Pope John Paul's predecessors. The pope quotes Pope Pius II, who, in a letter to a missionary, called the treatment of blacks an "enormous crime," *magnum scelus*. Seen in context, the speech of Pope John Paul at Goree is not a kind of dramatic reversal of prior Church teaching. There is nothing in the pope's speech that indicates that he understood himself to be making a change in Catholic doctrine.

Noonan has a stronger argument than is taught in *Veritatis Splendor*, number 80. His argument might appear, at first glance, to be unassailable: Pope John Paul said what previous Church teaching did not, and what theologians like Newman were unwilling to say: Slavery is intrinsically evil, always and everywhere evil. The pope therefore reversed previous Church teaching. Noonan's argument here seems to be very strong. Or is it? Did the pope mean to condemn every form of slavery as evil per se? Did he really mean to correct the teaching of Paul, the Fathers of the Church and that of previous popes? Was *Veritatis Splendor* really this kind of reversal of previous teaching?

For one thing, it is crucial to ascertain what the pope meant by slavery (*servitus*) in *Veritatis Splendor*, number 80. What meaning and scope did he give to the word? Historically, there has been the kind of slavery that is absolute bondage, which deprives human persons all personal rights. There have been other forms of slavery that have deprived persons of many but not all personal rights, and there have been many lesser forms of servitude that could be considered today as amounting to slavery for all practical purposes. Did the pope intend for the word *servitus* to encompass every form of slavery that appeared in history when he gave it as an example of something intrinsically evil? Readers looking for answers to these questions will be disappointed. Noonan does not attend to them and they are important for interpreting the teaching of *Veritatis Splendor*. He supposes the meaning of term *servitus* in the encyclical to be obvious. It turns out, though, the pope used the term in the same general way that Noonan acknowledges that *Gaudium et Spes*, number 27, did when it included slavery in its list of social evils that are shameful and offensive to human dignity. Noonan admits that *Gaudium et Spes*, number 27, used the word *servitus* "without definition or elaboration, or explanation".⁵ But this applies to *Veritatis Splendor* as well, because when the encyclical mentions *servitus* as being among the social evils that are intrinsically evil it quotes verbatim the list from *Gaudium et Spes*, number 27!

⁵ Ibid., 120.

This problem alone should have lead Noonan to be cautious about concluding that the pope meant to declare slavery in all its forms to be intrinsically evil and thereby intended to correct his predecessors, many Fathers of the Church, and the sacred writers such as Paul. Such conclusions seem rash without any consideration of what the pope intended *servitus* to mean, especially, in light of the fact he took it over verbatim *Gaudium et Spes*, which used the word without precision.

There are other difficulties in interpretation, too. For instance, *Veritatis Splendor*, number 80, condemns deportation as intrinsically evil. If the pope meant to condemn every form of slavery as intrinsically evil then presumably he meant to condemn every form of deportation as well.

Are we to believe that it is intrinsically evil for a state to deport aliens who are a threat to its national security? Surely, the pontiff left room for some distinctions and qualifications that Noonan overlooks. None of this is to say that there is not something new about what the pope taught in *Veritatis Splendor* about slavery or that he intended to say, at the very least, that certain forms of it are evil per se. Whatever development there is in *Veritatis Splendor*, number 80, Noonan has not made the case that it is the kind of revolution in Catholic moral doctrine whereby a pope completely reversed the erroneous teachings of his predecessors, Church Fathers, and biblical writers *in toto*.

It seems that Noonan intends to say that if Church teachings in one area, like slavery, can be reversed, they can be reversed in other areas as well. In a telling passage Noonan chides the late John Ford, S.J., who, with Gerald Kelly, published a manual of moral theology that condemned "chattel slavery" without being aware, according to Noonan, that such a condemnation was a "major mutation" in moral doctrine.⁶ Ford was inconsistent because he admitted a change in the Church's teaching on slavery but was unwilling to admit the possibility of any development on contraception. The "development" Noonan calls for here with regard to contraception can only mean a reversal of the Church's traditional teaching that contraception is always evil. Noonan's argument seems clear enough: The change in the Church's teaching on slavery means that other moral doctrines such the one against contraception can change or be reversed, too.

There are numerous problems with this argument. It is an example of the book's failure to make important distinctions and do justice to the complexity of the development of doctrine. There is a great difference from the complex history of the Church's teaching on slavery and her teaching on contraception. For one thing, nowhere does Noonan show

⁶ Ibid., 117.

that the Church's previous acceptance of slavery, as something that was believed to belong to the structure of society, was definitive Church teaching understood to be irreversible. The Church's doctrine responding to the evil of contraception, an evil which always involves rejecting the divine design for the marital covenant, is something altogether different and is quite clearly definitive Church teaching as the last pontificate pointed out on a number of occasions. Even admitting that the Church's teaching on slavery changed for the better, it is also true that the Church's earlier toleration of slavery and the lack of a total condemnation of it did not rule out the possibility that the Church might later forbid it as sinful—especially given the fact the Church viewed it as a penalty for sin rooted in the Fall of Adam and taught, with Paul, that in Christ no one is a slave. Change and development in the Church's teaching was arguably a greater fidelity to these principles. There would be nothing of anything like this in a reversal of the Church's teaching on contraception that would involve declaring, after teaching many centuries to the contrary, that the intentional frustration of the human procreative capacity in the act of sexual intercourse is no longer something that is always evil.

In three short sober chapters Noonan gives a fair and highly informative presentation of the interaction between the Church's doctrine on usury and new forms of economics that emerged in the early modern age. He shows how the Church's teaching on usury was adapted to make room for new economic circumstances, to permit just compensation for the risk of loss of a loan, for losses incurred in collecting a loan, and for the costs associated with the business of banking. Noonan makes the argument that development of the teaching on usury was not due simply to economic circumstances. Development was also due to the "changes in the analyses made by theologians and to their acceptance of the experience of other human beings."⁷ Noonan argues the example of usury demonstrates that the development of the Church's moral teaching does take place by human experience, which leads to a sharper and better understanding of human nature.

The case of the adaptation of the doctrine on usury to changing economic circumstances and human experience does not seem to amount to a complete reversal of the original doctrine. After all, the teaching on usury, albeit narrowly interpreted, still remains as Noonan has acknowledged in his previous work. Catholic moral principles still forbid unjust or exorbitant rates of interest. Even if one were to concede, for the sake of argument, that human experience has led to a better understanding of

⁷ *Ibid.*, 213.

human nature, it does not necessarily follow that therefore the Church's moral doctrine on other issues involving human nature are subject to the same kind of development. The example of usury does not give us reason for thinking that certain intrinsically evil acts such as contraception are capable of a similar adaptation.

For Noonan, the issue of religious freedom and the teaching of the Second Vatican Council in the declaration *Dignitatis Humanae* serve as an example of how a general council of the Church definitively rejected some 1,500 years of its magisterial teaching as well as the thought of Augustine and Aquinas on the issue. Noonan argues that Vatican II affirmed that the freedom to believe was a sacred right but it did not explain how previous teaching, "the old message of intolerance," could be swept aside by one pope and a council. The discontinuity between Vatican II's teaching and previous Church doctrine is presented as radical. Ironically, in seeing nothing but a total reversal of Church doctrine, Noonan comes to the same conclusion, albeit for different reasons, as that notorious opponent of *Dignitatis Humanae* at Vatican II, Marcel Lefebvre.

It is certainly true *Dignitatis Humanae*'s declaration of religious freedom as a right of the human person and its recognition that the Church should not expect most modern secular political societies to give it special recognition and privileges were new things. Noonan, however, exaggerates *Dignitatis Humanae*'s discontinuity with the Church's past teaching. There are plenty of reasons to think that Vatican II's teaching on religious liberty was not one of complete discontinuity with previous Church teaching. It is disappointing that Noonan does not acknowledge and discuss them in his chapters. For example, Noonan passes over in complete silence evidence in *Dignitatis Humanae* itself that shows that the council Fathers did not understand that what they were teaching was the kind of development that amounted to a complete reversal of earlier Church teachings. *Dignitatis Humanae*, number 1, declares that "the council intends to develop the doctrine of recent popes on the inviolable rights of the human person and the constitutional order of society." There would be little point in the Fathers putting it this way if all they saw themselves doing was simply reversing earlier Church teaching rather adapting and developing some of the implications of prior teachings in a new context. During the debates at the council, Emile De Smedt, bishop of Bruges and the spokesman for the commission that composed and edited the text of *Dignitatis Humanae*, argued that its teaching was compatible with previous Church teachings. Noonan does not mention that numerous theologians defended *Dignitatis Humanae* as actually standing in greater continuity with the tradition of the Church against those who saw nothing in it but

a change in the faith of the Church. Even John Courtney Murray, who was of the opinion that the Church was late in acknowledging religious liberty as an ethical principle, personally and collectively, still argued that “[T]he legitimate conclusion is that between Leo XII and the Second Vatican Council there was an authentic development of doctrine in the sense of Vincent of Lerins, ‘an authentic progress, not a change of faith.’” He also argued that Vatican II put aside “an older theory of civil tolerance in favor of a new doctrine of religious freedom more in harmony with the authentic and more fully understood tradition of the Church.” The lack of any mention of this important evidence to the contrary of Noonan’s claim that *Dignitatis Humanae* was a flat-out reversal and rejection of previous Church teaching (157) will leave the untutored reader misinformed. As later commentators have observed, what documents such as *Mirari Vos* condemned was not religious freedom itself but a particular and certain philosophical concept of religious freedom that was bound up with relativism and an antireligious secularism. Commenting on the need for theologians to carefully discern the process of change through continuity, Pope Benedict XVI recently observed that the Church has to reject a view that sees religious freedom as expressing the inability of mankind to discover the truth. Such a view entails relativism as the norm for society. There is an enormous difference between this view of religious freedom and an understanding that follows from the truth that the freedom to believe must come from within and cannot be imposed from the outside or a view that sees religious freedom as something required for peaceful human coexistence. Understood against this background, explaining the development of the Church’s teaching on religious liberty at Vatican II mainly in terms of the reversal and rejection of prior Church teaching does not do justice to the task that lies before the theologian.

In four chapters Noonan takes up the Church’s dissolution of non-sacramental marriages on the grounds of the Pauline privilege and the Petrine privilege, in “favor of the faith.” For Noonan, the complex history of the privileges shows that there has been development of the Church’s doctrine on “divorce” for the unbaptized. This acceptance of divorce is said to reveal a new understanding of the natural law and a developing interpretation of the New Testament.⁸ Judge Noonan argues that the biblical teaching “What God has joined together let no man separate” appears to be exceptionless and comprehensive. But no rule or formula is strong enough to “forestall bending or an end run.”⁹ Paul was

⁸ Ibid., 214.

⁹ Ibid., 212.

the first to bend it and make an exception to it when he permitted a married believer to separate from an unbelieving spouse.

Noonan's approach to the divine commandment on marriage and Paul's interpretation of it is very legalistic. Nothing really changes for marriage with the coming of Christ except for a repetition of a rule. In Noonan's consideration of the biblical teaching, Christ has nothing more to say, nothing more to give to man for marriage. It never seems to occur to Noonan that Paul, and his interpreters, had good reasons for thinking that the marriages between a believer and a non-believer and the marriages between believers are different because of a relationship to Christ. There is something new that Christ gives to marriage. Noonan does not consider that new life in Christ gives the grace that enables the keeping of the commandment. Nor does he ever really deal with the importance of how the marriage bond is elevated in sacramental marriage.

Noonan discusses how the Church interpreted Paul's text as the basis for permitting the believing party to remarry. He observes that the prevailing view of theologians around the time of Aquinas was that the convert's second marriage as a Christian dissolved the first marriage contracted prior to baptism. He notes that Aquinas explained that "the more firm" dissolved "the less firm." Noonan claims even though there was the doctrine that marriage was naturally indissoluble, major theologians did not challenge the exception. But, in fact, the thought of theologians, such as Aquinas went a long way toward explaining how the Church could dissolve non-sacramental marriage and still remain faithful to the biblical teaching. For example, Aquinas explained that in the baptism of a convert there is a kind of death, akin to natural death, which, in effect, dissolves the corporeal bond of natural marriage. When a convert is baptized he is regenerated and dies to his former life. He is longer bound in his life to those things to which he was bound in his old life "since the generation of one thing is the corruption of another." A man who is regenerated in Christ "is even corporeally buried together with Christ unto death" and so is freed of the obligation to "pay the marriage debt" even though the natural marriage has been consummated. Aquinas refers here to the corporeal bond of natural marriage. A wife only has a right to her husband's body insofar as he remained in the life in which he had married, since only when the husband dies is the wife delivered from the law of her husband. (Rom 7:3). Just as unbelievers (and believers for that matter) are no longer bound to one's spouse after natural death, so an unbeliever who takes baptism and dies in Christ, is no longer bound to one's unbelieving spouse (*Summa Theologiae*, Suppl., q. 59, a. 4; cf. ad. 2).

St. Thomas Aquinas, like Augustine, knew of a difference between the natural bond and the supernatural bond of marriage. The difference between the bonds was to be found in their holiness and what they signified. St. Thomas shows how the Church understands that there exists a certain hierarchy of marriage bonds. He explained that natural marriage is imperfect, and therefore “less firm,” because it has to do only with the perfection of nature, while sacramental marriage, is a perfection in grace (Suppl., q. 59, a. 2). Sacramental marriage for St. Thomas, of course, participates in the indissoluble unity between Christ and his Church. Marriage in Christ binds “more firmly” because it is perfect. “Now the firmer tie always looses the weaker if it is contrary to it” (Suppl., q. 59, a. 5, ad. 1). It is on account of this distinction that St. Thomas can speak not of a divorce but of a dissolution of natural marriage. In this light, the Pauline privilege can be seen as something that stands in complete continuity with the divine commandment, a commandment that is brought to perfection and fulfillment in Christ and his union with the Church. Dissolution of the natural bond between a non-baptized person and a newly baptized person is given in view of the possibility for the baptized believer to enter into the perfection of a sacramental marriage with another believer.

The whole subject of the pope’s power to dissolve non-sacramental marriages, even between two non-baptized parties, is a complex one. Noonan, though, believes the dissolution of non-sacramental marriage in favor of the faith is something of an exception to the indissolubility of marriage. He thinks there has never really been an adequate explanation of either the privilege itself or the mode of its exercise. Noonan accuses Pope John Paul II of continuing the exercise of the privilege but without reconciling what he calls “papal divorce” with the doctrine of indissolubility.¹⁰ Of course, what the pope defended, like his many predecessors, was the absolute indissolubility of sacramental marriages. The papal dissolution of a non-sacramental marriage in favor of the faith is only granted under very strict conditions but Noonan never indicates this fact. He makes it seem otherwise when he says that the marriages of the unbaptized seem to be unlikely candidates for papal dissolution because they are really no different in degree from the marriages of the baptized as they are caring, loving, faithful, and fruitful unions, too.¹¹ Noonan’s lack of any real attention to the meaning of the sacramentality of marriage and its implications, his failure to consider how Christ brings about the perfection and elevation of

¹⁰ *Ibid.*, 189–90.

¹¹ *Ibid.*, 180.

the natural marriage bond, makes it difficult for him see the privilege as anything other than legalistic, arbitrary, and divorce by another name.

The key to understanding the pope's power to dissolve non-sacramental marriages in favor of the faith, and the limits to that power, is the newness that Christ brings to marriage. This is something more than the verbal repetition of a law. It is the perfection of the very things that are intrinsic to marriage—unity and indissolubility. It follows if Christ perfects natural marriage, raising it to the level of a sacrament, then he has governance over non-sacramental marriage. The pope, the Vicar of Christ and successor of Peter, whom Catholics believe the Lord made the rock and key bearer of the Church, shares in this governance. The pope's participation in Christ's authority over natural marriage is part of the power of the keys and the authority to bind and loose given by Christ.

Understood against this setting, the Petrine privilege does not involve an end run around a divine command but a privilege that is given to be exercised at the service of the divine command given in Genesis and repeated by Christ. Non-sacramental marriages have been dissolved in favor of the faith so that those who have been freed to marry might know, or might have the hope of knowing, the perfection that is given in sacramental marriage. The case that Noonan cites from 1959, where Pope John XXIII dissolved a non-sacramental marriage so that a Catholic could enter into a marriage with a non-believer, can be understood as standing in the service of perfection of marriage in Christ because there was the hope that the non-believer might be evangelized and converted and thus enter into the perfection of sacramental marriage. That the privilege stands at the service of evangelization can be seen in the current norms. These require a non-baptized person, who has been freed from a previous marriage bond in order to marry a Catholic, to declare that he or she is prepared to permit the Catholic spouse the freedom to practice his or her religion and to baptize and educate their children as Catholics. The deep respect that the Church has for the natural marriage bond is illustrated by the requirement of the current norms that the petitioner cannot be "the culpable, exclusive, or prevalent cause of the destruction of conjugal living," of the non-sacramental marriage that is to be dissolved in favor of the faith. Nor can the other party, with whom the new marriage is to be contracted, be guilty of provoking the separation of the spouses of the non-sacramental union. None of these things inform Noonan's presentation. They are of prime importance for understanding how the privilege is exercised within narrowly prescribed limits respecting, on the one hand, the dignity of the natural bond of marriage, and, on the other hand, the Church's responsibility to evangelize.

Noonan claims that the development from words of Jesus in Mark about marriage has been great. If the full meaning of the sacramentality of marriage is kept in mind, which entails a certain understanding of a hierarchy of marriage bonds, “the less firm” and “the more firm,” then the development is not of the kind that Noonan imagines it to be. It does not involve an end run around the doctrine of indissolubility. If anything, development has been and still is a matter of the Church discerning the implications of the sacramental meaning of marriage and applying them to new pastoral circumstances in the interest of realizing what Christ intends for the perfection of marriage.

The strength of Noonan’s work lies chiefly in the data and facts he has discovered in his research. Even if he has a tendency to present what he has discovered in an uneven and one-sided way, his research will have to be fully addressed by anyone who wants to explain development of the Church’s doctrine in the areas that Noonan treats. It cannot be said though that he has succeeded in demonstrating his thesis that doctrinal development often means a flat-out reversal of Church teachings that were mistaken and erroneous. This thesis does not do justice to the historical data that Noonan himself uncovers. **NV**