CHOOSING THE LESSER EVIL: USE AND ABUSE

Gerald W. Healy, S.J.

When facing a moral dilemma where there seems to be no solution untainted by evil, may the lesser evil be chosen deliberately? The intention is not to choose evil for the sake of evil but to minimize the evil which is intrinsic to the situation. If there were a clear way out of the moral conflict, free of all evil, the moral imperative would be clear, to avoid all evil. There would be no moral dilemma, no perplexed conscience. Unfortunately modern life seems to present more and more situations where the only choice is between the greater and the lesser evil, between the unsatisfactory and the more unsatisfactory. This is true in the Church and in politics, in business, in science, in medicine, in peace, and especially in war. Generals and foot soldiers, tycoons and peasants, rich and poor, husbands and wives, doctors and counsellors and priests may find themselves facing such dilemmas. How will they decide?

Choosing a lesser evil deliberately might appear to be a simple moral issue but the record shows that there can be much confusion even among the experts. Contradictory opinions appear in the literature concerning particular applications of the principle of the lesser evil, and even about the principle itself. Also, as we shall see, the judgment of history can be very harsh on the one who chose the lesser evil even though the decision passes the most exacting moral scrutiny. Pope Pius XII is a classical example of a severe, negative backlash which still, very unjustly, beclouds his reputation and deprives him of peaceful possession of his rightful place in history because of his carefully chosen lesser evil policy vis-a-vis the Jewish Holocaust in World War II.
The moral principle that allows the deliberate choice of the lesser evil has been part and parcel of Catholic moral theology down through the centuries. Bernard Härting’s expression of the principle in his 1963 Law of Christ (Vol. 2), may be considered as representative of the tradition. The lesser evil may be tolerated, Härting says, when it is the sole means to prevent a greater evil. It is even allowed to advise a lesser evil in some instances as a means of preventing greater sin. In such cases, “the actual object of such advice is, therefore, not the lesser sin itself — for one may never advise the commission of any sin — but the forceful admonition that one should at least shun the greater sin.”

This article will present various examples of the lesser evil solution to moral dilemmas, delaying on the more controversial ones such as that of Pius XII already mentioned, and that connected with the pastoral approach to Humanae Vitae. Likewise the AIDS-connected problem of advising the use of condom as a lesser evil, and some modern and economic problems. Finally, the morality of the nuclear deterrent policy will be examined as a lesser evil solution.

SOME HISTORY

The first recorded use of the lesser evil principle seems to be that found in the Book of Genesis, in the moving story of Joseph sold into slavery by his brothers, out of jealousy (Gen 37). Judah, one of the brothers, convinced his brothers to sell Joseph into slavery (the lesser evil) rather than killing him as was first planned. “Come, let us sell him to Ishmaelites, but let us not do any harm to him. After all, he is our brother and our own flesh. His brothers agreed” (Gen 37:27).

Judah’s awareness of the “lesser evil” solution can only be attributed to his common sense and healthy conscience. There were no theologians or schools of theology on the scene who might have influenced Judah’s decision!”

2. Homosexuality and the lesser evil are treated at length by the author in a review article on Homosexuality: The Test Case for Christian Sexual Ethics (New York: Paulist Press, 1988) by James P. Hanigan in the present issue of Landas.
ABUSE OF THE PRINCIPLE

Even on the highest level the principle can be abused as we see in the argument of Caiphas, the Jewish high priest when looking for some plausible reason for condemning Christ to death. In desperation, after his own chosen witnesses failed him by contradicting themselves, Caiphas spoke up: “It is better for one man to die for the people, than for the whole nation to perish” (Jn 11:50). John tells us that from that moment they were determined to kill Jesus (Jn 11:53). Caiphas had found a principle, so he thought, that would justify his supreme injustice, killing an innocent man. Little did he imagine that his principle would help to immortalize him in moral theology, being called pejoratively, centuries later “The Caiphas principle.”

Having determined on evil, putting the innocent Christ to death out of jealousy and envy, Caiphas invented a greater evil that must be avoided at all cost, as he portrayed it. No one had ever imagined or hinted that the whole nation would be destroyed by the Romans because of Jesus. Pretending that this imaginary greater evil was an imminent threat, Caiphas insisted on the death of Jesus as the lesser evil, an evil that he was already determined to carry out at all cost. For Caiphas the lesser evil was a good!

GOVERNMENTS AND THE LESSER EVIL: AN ECOLOGICAL CRIME OR THE LESSER EVIL?

In April 1988 the Portuguese government found itself in a moral dilemma as the result of a shipwreck of a freighter on its maiden voyage with a $100 million cargo of new Japanese automobiles. The Portuguese officials decided to send the new but ruined ship to the bottom of the Atlantic no matter what objections the ecologists offered because “no practical alternative is available.” If Portugal refused to sink the ship and its cargo they would have a disposal project costing millions of dollars. For the environmentalist, sinking the ship with its cargo would be an “ecological crime,” even if the ship is sunk in 6,000 feet of water, “because of the many tons of metal, paint, oil, rubber, plastics and textiles that could cause serious damage to marine life. One liter of oil pollutes one million liters of water as the ecologists pointed out in their rage. Such an amount of pollution is a crime
dangerous to the whole world, not just to Portugal."

The case was complicated further by the admission of the Japanese owner of the cargo that they do not have the technical, financial or even legal means to remove the ship before the usual winter storms. The first big storm could destroy the ship and spread the wreckage along Portuguese coastal waters. To prevent this greater damage to miles of coastal waters, the marine authorities were convinced that hauling the wreck out to deep water and sinking it was "the lesser evil." The Japanese owners of the cars also threatened to sue for tarnishing their image if any of the cars were sold to bargain hunters (ibid.).

The Portuguese marine authorities said that sinking the ship with its $100 million cargo in 6,000 feet of water is the lesser evil. The environmentalists said it would be an ecological crime. Who was correct? What solution was really the lesser evil?

The lesser evil is not always obvious!

THE LESSER EVIL OF YESTERDAY MAY BECOME TODAY’S GREATER EVIL: FRENCH HEALTH MINISTRY (1986)

A government ministry might frequently find itself in a moral dilemma and opt for a lesser evil solution. Time may prove that what was once chosen as the lesser evil was really the greater evil. New psychological insights might lead to a new evaluation.

One such case was the policy change of the French Health Ministry in 1986. For years the conventional wisdom held that it was for the best interest of a child to remove him/her from cruel parents to a foster home. The thinking today is to remove the child only as a last resort because experience has shown that it is a lesser evil to have a bad family environment than to have no family. Better any tolerable home with family life than to be raised in an institution. A deeper appreciation of the psychological needs of the growing child has led to this new approach.

The lesser evil may have to be evaluated anew as knowledge increases or circumstances change.

4. Time, 1 Sept. 1986, p. 32.
ISRAEL VIS-A-VIS THE PALESTINIANS

An expert Jewish commentator on the Israel-Palestinian conflict sees "Israel's choice today is not between good and bad, but between bad and worse." Yehoshafat Harkabi in an interview in 1988 notes the bewilderment in Israel as they realize they cannot keep the occupied territories forever. Harkabi holds that the Israeli must allow a Palestinian state, admitting it is a bad solution. "But the alternative is worse. If there is no Palestinian state, there will be 'Belfastization'; there will be continuous riots which will spill over to war in the Middle East. And with modern weaponry, such a war will be very destructive." Harkabi sees no acceptable alternative.

The lesser evil may clearly be seen as a bad solution, but a necessary one because the alternative involves so much more evil.

GOVERNMENT ABUSE OF THE LESSER EVIL PRINCIPLE

Eugene Hillman, C.S.Sp., in a 1986 article in America (May 10) condemned the dichotomy that exists between private and public morality on the American scene. It has led to support of cruel, oppressive dictatorships (Duvalier, Marcos, Somoza). The principal architects of such policy were Reinhold Niebuhr, Hans J. Morgenthau and George F. Keenan. Pseudo-philosophical arguments were offered such as Niebuhr's "the dishonesty of a nation is a necessity of political policy...one of the tragedies of the human spirit: its inability to conform its collective life to its individual ideals. ... perhaps the most significant moral characteristic of a nation is its hypocrisy." The Reagan administration's efforts to grab some credit for the overthrows of Marcos and Duvalier are cited as examples of such hypocrisy.

Morgenthau (1952) considered the aim of foreign affairs of the nation to be "the achievement of the lesser evil rather than the absolute good." Believing that nations or corporations have no social morality to guide them, "the reality of historic power strug-
gles finally determines, à la Machiavelli, what is right and what is wrong.” The possible or feasible becomes the realistic goal and a “preference for choosing the lesser evil, when possible, is taken to be morally respectable.” Hillman asks, “Does a wicked deed become good by virtue of a decision not to perpetrate a greater iniquity?”

George F. Keenan, writing in Foreign Affairs (Winter 1985/86), expressed the view that morality is for individuals, but when it comes to political decision making “the same moral concepts are no longer relevant. . . . The process of government, after all, is a practical exercise, not a moral one.”

Such amoral principles have led the U.S. Government into international intrigues and policies since World War II that “have contributed significantly to the repression of democracy and free enterprise throughout the world, thus increasing the misery of disadvantaged populations in the poorest countries, and thereby calling up legions of enemies against the United States.” Confronted with the frightening results of such a lack of morality in foreign policy, the experts cited above have begun to modify their opinions.

More and more, thoughtful and sincere men are renouncing such moral bankruptcy. The plea of former President Wilson in 1913, once dismissed as unrealistic idealism, is winning more and more adherents: “We dare not turn from the principle that morality and not expediency is the thing that must guide us and that we will never condone iniquity because it is convenient to do so.”

Credos such as “all power comes out of the barrel of a gun,” “might makes right,” “the end justifies the means,” have filled our world with death, poverty and terror. It is a caricature of the lesser evil principle to invoke it to justify situations which were the result of avoidable, freely chosen evils. Supporting oppressive dictatorships has often been justified by appealing to the lesser evil principle. “Better a corrupt dictator as long as he opposes Communism” was the excuse offered for supporting immoral rulers

9. Ibid.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid. 379.
14. Ibid. 382.
such as Marcos, Somoza, Duvalier, overlooking the killings, widespread violations of human rights, and the looting of their nation's wealth while the masses sank into poverty, as the economy stagnated.

When the regimes collapsed, it became obvious to the whole world that the evil was far greater than was ever imagined. The list of dead or missing was beyond all predictions as was the number of shattered lives. No one dared to speak of the lesser evil to justify support for such criminal regimes. All previous such arguments were seen as immoral, as abuses of a valid principle which supposes honesty and integrity in the calculus of weighing the moral options before deciding on the lesser evil.

NATIONAL ELECTIONS: UNJUST BUT PARTICIPATION AS THE LESSER EVIL

In the modern world where many nations are still in the grip of cruel, oppressive totalitarian regimes of the left or of the right, the decision to participate in an election or to boycott may become a case of choosing the lesser evil. Thus in South Africa in 1987 the Catholic Bishops decided that the election was unjust, but the lesser evil would be to participate rather than boycott the election as some advocated. The Bishops are well known for their condemnation of the immoral apartheid government policy. For this reason they declared that "an election cannot be just if the system it serves is unjust." Still they believed that, all things considered, participation was the lesser evil.¹⁵

Here in the Philippines the Communist Party made a major strategic blunder when they chose to boycott the "snap election" called by then President Marcos to vindicate his claim that his regime had a popular mandate. The cheating and fraud in the election precipitated the overthrow of Marcos. The Communists have never recovered from this error. When they were allowed to field candidates for political office under the Aquino Administration, they could not win even one seat in Congress. The recent turmoil in Russian Georgia and Armenia show that the Philippine Communists are not the only ones who made profound mistakes causing untold hardship for their people in spite of their use of the

much vaunted Marxist analysis. The economic failures of Communism in country after country are exposing the Marxist Leninist ideology as one of the most tragic utopian dreams of the ages. Millions of corpses bear mute witness to the disaster. Whatever the evils of Capitalism — and they are very real — Communism appears as by far the greater evil.

THE CHINESE PATRIOTIC CHURCH AND THE LESSER EVIL

Another current very complex moral problem involves the delicate relationship between the Patriotic Church in the Republic of China and the Vatican. According to Canon Law, the Chinese Bishops ordaining other Bishops and the Bishops so ordained without approval of the Pope are excommunicated and forbidden to hold the office of Bishop. In an interview published earlier this year the Jesuit Superior General in Rome, Fr. Peter Hans Kolvenbach, was asked explicitly about the Chinese Jesuit Bishop Jin Lixian who has chosen to collaborate with the Patriotic Church approved by the Communist Government as specifically rejecting the authority of the Pope. Other Jesuits consider Bishop Jing’s choice a betrayal of the true faith.

In his reply Fr. Kolvenbach, after pointing out all the complexities involved in what he termed a unique situation, invoked the principle of the lesser evil to justify the collaboration of some Jesuits. “Released from prison or camps, some among them, a few, after long and painful discernment, and while not being members of the Patriotic Church, have decided in order to avoid worse evils for the Church, to work in certain sectors with the Association approved by the Communist regime.”16 Despite this collaboration, “wherever there is an opportunity, these Jesuits seek to show that their faith is intact and express their ardent desire that a complete and full union with the Holy See may be realized as soon as possible.”17

Fr. Kolvenbach very wisely cautions all of us how very difficult it is to judge since we live outside China and cannot communicate freely with the Chinese Jesuits or other clergy.18 Whenever we

16. 30 Days 9, no. 2 (Feb. 1989).
17. Ibid.
18. Ibid.
read in the international press a statement attributed to one of the priests or bishops in Communist China, we must always be alert for possible distortions or deliberate omissions or even misquotations which put them at odds with Rome. We must remember that they are helpless to defend themselves and may never see the statements attributed to them. If all the circumstances were known to us, we might see their statement as a valid "lesser evil" solution in a very dangerous and distressing situation.

THE POPES AND THE LESSER EVIL

Pope Pius XI, in his well known encyclical on marriage Casti Connubii in 1930, expressed regret that unmarried mothers and their illegitimate offspring are given ready and bountiful assistance in various nations, assistance which is not available to legitimate mothers or given to them only sparingly and grudgingly. Still he insists that the help to the unwed mothers and their children continue to be given "to avoid a greater evil" (no. 122).

Under Pius XII, a directive from the Roman Sacred Congregation for Religious of December 8, 1957, explicitly invoked the principle of the lesser evil to justify coeducation in the lower levels of schooling. Separate education was to be the rule at certain stages of development but peculiar circumstances and local conditions could make "coeducation the lesser evil" in Catholic schools.19

PIUS XII AND THE HOLOCAUST

In the exceedingly complex political-moral issue of the decision of Pius XII vis-a-vis Hitler and the Jewish Holocaust, we see the pitfalls and dangers involved in the concrete application of the lesser evil principle. Was Pius XII morally justified in avoiding a public, forceful condemnation of Hitler’s diabolical genocide policy as the "Final Solution" to the Jewish question?

Millions of Jews were being sent to gas chambers not as part of the war effort, not to ensure a German victory, but to fulfill the evil dream of a mad man, Hitler. Silence on the part of Pius XII could be interpreted as approval in line with the unfortunate centuries-old anti-Semitism of the Church. Why did not he excommuni-

cate Hitler, announcing it over Vatican Radio to be repeated in
countless pulpits around the world?

Pius XII was aware of the ongoing murders but he was also
equally aware of the possible, even highly probable, greater danger
to all the Jews in occupied Europe if he antagonized Hitler. During
the papacy of his predecessor, Pius XI, the Vatican had been re-
proached for “mobilizing the entire world against the new Ger-
many.”

Cardinal Faulhaber of Munich had to openly label as a lie
the rumor being circulated in Germany that Pius XI had Jewish
blood in his veins, his mother being a Dutch Jewess. There was
even speculation that Hitler planned to establish a Nazi papacy,
creating another Avignon situation. The German Catholic popu-
lation was so sympathetic to the Nazi regime and so open to the racist
and anti-Semitic propaganda that there was real danger that an all-
out Papal denunciation of Hitler on the part of the German hier-
archy might have resulted in the abandonment of the Church by
large numbers of German Catholics.

Add to this the commonly held view of Nazism as the only
possible bulwark against the onslaught of Russian Communism.
At no point did the Pope wish to undermine or weaken Germany’s
war against Russia since Communism was seen as a far greater evil
than Nazism. The negative effects of Mussolini and his Fascist re-
gime aggravated the whole moral problem.

Against this tangled, fearful, existential background Pius XII
made his decision. In what has been called “probably the most im-
portant of the ninety-three Papal communications to German
Bishops in the Second World War,” Pius XII spelt out his “lesser
evil” approach to the Jewish crisis. Fear of reprisals and pressures
and other measures against the Jews if he spoke out, made Pius
XII decide that “In spite of good reasons for Our open interven-
tion, there are others equally good for avoiding greater evils by not
interfering.”

Hitler’s reaction to the 1942 condemnation by the
Catholic Archbishop of Utrecht was cited by Pius XII. Whereas
before the condemnation by the archbishop the baptized Catho-
lic Jews were spared, after the statement all the Dutch baptized

21. Ibid.
22. Ibid.
23. Anthony Rhodes, The Vatican in the Age of the Dictators 1922-1945 (New
Catholic Jews (including Edith Stein) were deported to the gas chambers in the East. The baptized Protestant Jews were not taken. The message could not be clearer: condemnation of Hitler would do more harm to the Jews.

The International Red Cross was also forced to ignore the Jewish concentration and death camps in the Second World War for the same reason: fear of causing greater harm to the Jews. "To make a rumpus on account of the Jewish question would have meant to put in jeopardy everything, without saving one single Jew."\

Without issuing an excommunication or open condemnation, Pius XII worked ceaselessly behind the scenes to save as many Jews as possible. One Jewish writer, Pinchas E. Lapide, the Israeli Consul in Italy for some years, wrote in his book, *The Last Three Popes and the Jews* that "the Catholic Church saved more Jewish lives during the war than all the other Churches, religious institutions and rescue organisations put together. Its record stands in startling contrast to the achievements of the International Red Cross and the Western Democracies... the Holy See, the Nuncios and the entire Catholic Church saved some 400,000 Jews from certain death."\

Golda Meir, when Prime Minister of Israel, "cordially thanked Pius XII 'whose voice has been raised so often in favour of the Jews'."

In spite of this evidence Pope XII has been severely criticized for his silence about the Holocaust. One particularly obnoxious attack on his policy was by Rolf Hochhuth whose play attributed the most venal motives to Pius XII. Hochhuth’s post-war play "The Representative" was translated into some twenty languages and staged in many countries. Millions of people have seen or read it and, unfortunately, believed Hochhuth when he wrote: "Perhaps never before in history have so many people paid with their lives for the passivity of one single politician."

In defense of Pius XII, Robert Graham, an American Jesuit priest and historian, has devoted the best years of his life in

24. Ibid. 345.
27. Ibid. 340, n. 3.
searching all the archives of Europe, the United States and, of course, the Vatican to present the choice of the lesser evil in its proper context. As late as March 1987 Graham felt the need of speaking out again to justify the silence of Pius XII. In *La Civiltà Cattolica* Graham insisted that the historical evidence shows conclusively that a Papal condemnation of Hitler’s Jewish policy would have only caused a massacre of the Jews under Nazi control in Europe.29

The dangers of the best intentioned, most carefully discerned use of the principle of the lesser evil are seldom more clearly manifest than in the case of Pius XII. The biased, the uninformed, may easily see one evil and not the other in the complicated moral calculus. One evil may loom larger than the other or be made to appear greater depending on one’s perspective or prejudice or even ambition or hatred.

Long after the end of World War II in an Allocution to Catholic Jurists on December 6, 1953, Pius XII spoke of the legitimate use of the principle of the lesser evil in a world where sin and evil abound. Just as God permits the cockle to grow alongside the good grain (Mt 13:24-30), so society’s pluralistic composition demands tolerance for the peaceful coexistence of Catholics in a non-Catholic nation. While error and moral evil have no right to exist, the greater good can justify tolerance and a Catholic jurist or statesman must examine the specific situation carefully, “weighing the dangerous consequences which stem from toleration, against those from which the Community of Nations will be spared if the formula of toleration be accepted.”30

On many moral issues Pius XII spoke out in more detail than any of his predecessors in recent centuries. His long reign (1939-1958) was marked by unparalleled worldwide suffering and cruelty alongside remarkable scientific progress and human development. The result was often a felt need for new moral guidelines. Pius XII loomed large on the world stage as a moral guide for the new world taking shape all around him. Yet history has not been even handed in judging his “lesser evil” approach to the Nazi Jewish Holocaust.


HUMANAE VITAE AND THE LESSER EVIL

Issued by Pope Paul VI on July 25, 1968 Humanae Vitae proved to be perhaps the most controversial encyclical of modern times. It has an intriguing paragraph on the lesser evil approach to contraception. Paul VI denies that the lesser evil principle is valid in that area of morality. "To justify conjugal acts made infecund intentionally, one cannot invoke as valid reasons the lesser evil" (no. 14). Admitting that "it is sometimes licit to tolerate a lesser evil in order to avoid a greater evil or to promote a greater good, it is not licit, even for the gravest reasons, to do evil so that good may follow therefrom" (ibid.).

At first glance Paul VI would seem to rule out any use of the lesser evil principle in the whole area of contraception even though he admits the validity of the principle and refers to the 1953 Allocution of his predecessor Pius XII to the Jurists cited above, wherein the principle's validity was reaffirmed. The confusion arises from the use of St. Paul Epistle to the Romans 3:8. Does Paul VI mean that applying the principle of the lesser evil to contraception would already be condemned by the Pauline quotation? If so, it would seem to rule out the valid application of the principle in most cases, not only in the area of contraception. But this interpretation must be rejected as being too extensive, as going against tradition.

The French Bishops, in their 1968 Pastoral Letter on Humanae Vitae, did not hesitate to affirm the liceity of a lesser evil approach in certain situations. Edward Hamel, S.J., of the Roman Gregorian University, analyzed the various pastoral letters of the National Conferences of Bishops on Humanae Vitae. He notes explicitly the lesser-evil approach of the French Pastoral. In his conclusion regarding all the pastoral letters, Hamel saw no substantial differences between the moral teaching of Humanae Vitae and that of the various pastoral letters, the French included. For Hamel there were no contradictions but rather complementarity.31

Not all agreed with Hamel's position. In a Louvain University sponsored symposium on the encyclical in 1969, two speeches severely criticized the French Bishops' approval of the lesser evil

solution for a couple in a conflict of duties: one, to avoid another pregnancy as irresponsible; two, the need to express their conjugal love. Msgr. Philippe Delhaye insists that "the French Bishops' statement goes too far in its approval of the lesser evil." 32 Msgr. Victor Heylen agrees, saying that the French statement "would bring about complete moral relativism if taken literally." 33

Msgr. Heylen does not deny the validity of the principle, in fact he even gives a clear example of it in the priest guarding the seal of confession. In his example he supposes that the priest, while hearing a confession of a prospective bride or groom, discovered an invalidating impediment for the scheduled marriage. If the parties insisted on going through with the wedding, the priest would have to perform the invalid and sacrilegious wedding, no matter how morally reprehensible and distasteful to him personally, in order to protect the seal of confession, allowing the immoral wedding to proceed as the lesser evil. After giving this example, Heylen argues that the situations in which the lesser evil is the best solution are obviously limited while the French Bishops "generalize it... a very dangerous confusion in moral theology." 34

In the same Louvain symposium, Father Jacques Etienne, a specialist in natural law, thought that the vocabulary was poorly chosen. Instead of speaking of "choosing the lesser evil," it would be better to say "choosing the greatest possible good... Speaking in this context of 'lesser evil' seems to infer that we are committing a sinful action without sinning... an unfortunate choice of vocabulary." 35

Thus, in the Louvain Symposium, the validity of the principle is admitted but the French Bishops' use of it with regard to Humanae Vitae is rejected and the traditional vocabulary is considered "unfortunate" in spite of its acceptability down through the ages with explicit papal usage at times.

On the 10th anniversary of Humanae Vitae at a Congress held in Milan, Gustave Martelet, S.J., who is widely credited with a major role in the composition of the encyclical, threw light on this controversial paragraph in no. 14. Only those who supported the

33. Ibid. 222.
34. Ibid. 223.
35. Ibid. 230.
encyclical were allowed to participate.

Martelet explained the strong statement in no. 14 against the use of the lesser evil as an effort to counteract "the redoubtable volume of opinion in favor of contraception" that had developed in the 60's. But he insisted that "it was not meant to harass individ-
ual Catholics who found themselves in the dilemma of having to limit their families but were unable to use methods allowed by the Church."36 Martelet called their use of artificial contraceptives a "disorder" which was not sinful if they acted in good conscience and had tried their best to obey the encyclical in the circumstances of their life.37

Most of the participants in the Congress adopted Martelet's position even though some objected to making such Catholics feel that they were doing something inferior and disorderly in the full expression of their conjugal love. Others preferred to say that it was not a question of choosing a lesser evil but of making a choice within a hierarchy of values (ibid.).

The words of Pope John Paul II to an International Conference on the Family of the Americas in 1982, appear quite relevant to this discussion. Realizing the special problem due to the acute poverty of the Third World, John Paul II offered these compas-
ionate words, so much in harmony with the pastoral tone of Paul VI in the encyclical itself:

... We cannot conclude these considerations without recalling that there are, in spite of everything, many families living in such circumstances — we think, for example, of the vast sectors of acute poverty in the Third World — that the putting into practice of moral law expressed in the Christian ideal may appear impossible. While continuing to maintain its validity, a great pastoral effort should be made to strengthen the faith of these persons, while leading them gradually to the knowledge and the putting into practice of the Gospel ideal according to the possibility of their strength. It is necessary as well to work hard to overcome the living conditions that are characteristic of under-development and which make well nigh impossible a cultural, human and spiritual development such as God wishes for his children. The general norms of morality must be applied in order to illuminate individual cases in the light of truth and mercy, accord-

37. Ibid.
ing to the example of Jesus. 38

Similar pastoral counsel appears in the Vatican February 15, 1989 commentary on the statement issued by some German theologians critical of the continued papal insistence on Humanae Vitae. The Vatican commentary defended the papal approach to Humanae Vitae and reprimanded the theologians who publicly challenged it for “feeding doubts and creating confusion.” 39 But, at the same time, the Vatican official, who remained anonymous, reminded all of the complexities involved in judging particular couples practicing contraception.

While the act of contraception ‘is in and of itself always a moral disorder,’ independent of a person’s ‘intentions, motivations and subjective situation,’ . . . the Church also distinguishes between ‘objective disorder and subjective fault.’ When judging subjective moral behavior, ‘it is quite legitimate to take into due consideration diverse factors and aspects,’ including a person’s ‘intentions and motivations’ and also ‘the varied circumstances of his life,’ including ‘all the causes which could injure his conscience and his free will.’ 40

All should ponder these pastoral counsels very carefully in this Third World country where over 60% of the people live below the poverty line, with their children often malnourished and forced to drop out of school, with nearly all the family concern and energy absorbed in the daily struggle for mere survival. Amidst such circumstances, often involving squalor, ignorance and disease, we should readily recognize the circumstances that “injure conscience and restrict free will” to the extent, as Pope John Paul II noted, that “the putting into practice of moral law expressed in the Christian ideal may appear well nigh impossible.” Our priority should be removing all the dehumanizing circumstances of their lives before we judge them. In their own unsophisticated way, they may have found a lesser evil approach that should be respected.

AIDS: THE CONDOM AS LESSER EVIL

AIDS (Acquired Immunological Deficiency Syndrome) is an-

40. Ibid.
other example of a current complex moral issue involving the principle of the lesser evil. As a preventive measure, for those who refuse to observe the moral obligation of chastity, some Church authorities have approved of the use of condoms to prevent passing on death, an even greater moral duty.

The two Cardinals of France publicly approved of the use of condoms as a lesser evil to prevent the spread of AIDS. The Cardinal of Lyons, Albert Decourtray, primate of France, said on French television "that the use of condoms to prevent AIDS is a lesser evil than AIDS-caused death". At the same time he criticized the French TV publicity campaign promoting the condom as an AIDS-preventive. His objection was to the way it was presented, as a general practice and a publicity campaign, with no reference to conjugal fidelity or self-control or love. The two evils, promiscuity and AIDS, were presented without any encouragement to escape from the evil-filled, freely chosen situation, wherein they left themselves no choice except to pass on AIDS or use a means which was evil — the condom.

The Archbishop Cardinal of Paris, Jean-Marie Lustiger, also recommended that "those with AIDS who are unable to live chaste lives . . . take the means proposed to you out of respect for yourselves and out of respect for others. . . . You must not pass on death. . . . Those who cannot do so [live chastely] must avoid worse evils . . . Do not add one evil to another." These remarks of Cardinal Lustiger were released by the French Bishops’s Conference.

In this case we have two Cardinals counselling the use of a means to prevent infecting a partner in what is clearly an immoral sexual relationship. But both Cardinals, unlike the French TV publicity campaign, stressed first the positive values of chastity, fidelity and self-control before counselling the lesser evil in a death-threatening situation. There was no approval of illicit but "safe sex" as it is popularly known in the AIDS literature, but a reluctant counselling of the use of the condom for the protection of those too weak to control themselves.

This application of the lesser evil principle is unusual inasmuch

42. Ibid.
as there is clearly another solution — self-control. But granting the alarming increase in the number of AIDS victims, there is need to stress the moral obligation to avoid endangering life on the part of those who have no regard for chastity. It is a case of reminding a sinful person not to make his evil action even more sinful by endangering life itself.

In the United States the Bishops’ Conference became involved in controversy when this question of counselling the use of condoms arose in preparing a pastoral letter on AIDS. Some Cardinals publicly dissociated themselves from the approval voiced by the majority of the Bishops.

After a careful analysis of the complex moral issues involved, David M. Hollenbach, S.J., a moral theologian, favored the U.S. Episcopal Conference counselling the use of the condom. “Its treatment of the appropriateness of including information on condoms in AIDS-education programs is carefully and narrowly based on the traditional understanding of the circumstances under which one may tolerate or even positively counsel the choice of a lesser evil”... not to “compound their wrongful behavior by placing their own lives or the lives of other innocent persons in danger by risking the transmission of the AIDS virus.”

Insisting that “the duty not to endanger human life is clearly more grave than the obligation not to use contraceptives,” Hollenbach also insists that “the standard Catholic teaching on the legitimacy of tolerating the choice of a lesser evil clearly applies.” He cites leading conservative theologians as approving the advice “against the worse of the possible sins which someone is going to commit. Traditionally, this sort of advice is called counseling the lesser evil. But a more accurate description would be: dissuading from the greater evil.”

As the U.S. Bishops’ statement made clear, “The teaching of classical theologians might provide assistance as we search for the way to bring into balance the need for a full and authentic understanding of human sexuality in our society and the issues of the common good associated with the spread of the disease.”

45. Ibid.
46. Ibid.
Bishops then cite St. Thomas Aquinas to the effect 'that human government can sometimes tolerate an evil lest greater evils follow or some good is hindered.'

Pushing the argument even further, given the seriousness of the AIDS crisis, Hollenbach is convinced that the use of the condom in those circumstances and under the conditions enumerated "should not only be presented as morally tolerable but, beyond the bishops' statement, should be positively counselled." Hollenbach believes that the Bishops even have an obligation to speak out, to destroy the illusion that the use of condoms removes all danger of AIDS as government programs wittingly or unwittingly insinuate when they talk of "safe sex." To ignore this misleading propaganda "would be a form of moral negligence and would amount to unwitting encouragement of objectively sinful behavior."

To hear of cardinals and bishops approving the use of the condom in any situation makes all of us uncomfortable as another moralist points out. Dennis Regan, moralist in a New York seminary, argues that the worldwide AIDS crisis has forced the condom issue onto the agenda. The scandal of the uninformed must be weighed in the balance as another lesser evil aspect of the question, one that can be removed by proper instruction.

Seldom are we faced with a moral problem wherein the sinfulness of the human condition is so manifest and, at the same time, so terrifying and so poignant as when we hear of innocent children dying of AIDS. The sinful abuse of God's great gift of human sexuality as the prime cause of the spread of the deadly virus is an obvious evil that must be condemned. When such condemnations are proven insufficient and the deadly disease begins to spread, the greater evil takes center stage. Reluctantly, no matter how aesthetically distasteful, recourse must be had to a lesser evil solution as the best moral advice in a most sinful situation.

NUCLEAR WEAPONS: POLICY OF DETERRENCE
AS A LESSER EVIL

A nuclear terror haunts our age as Pope John Paul II has noted.

48. Ibid.
49. Ibid.
50. Ibid.
Within the thicket of moral questions connected with nuclear power is what Joseph Cardinal Bernardin of Chicago has labelled "the hard question," the morality of a policy of deterrence, another contemporary moral question that is most revelatory of our fractured, sinful human condition.

May a nation keep nuclear weapons, poised for launching, with threat to use them only in retaliation for a nuclear attack? Even in retaliation, a nuclear response has been condemned as immoral since it will mean the death of countless innocent victims, and unleash unimaginable destruction on our "space ship earth" as the 1986 Chernobyl disaster in Russian proved to a horrified world, because of an accidental breakdown in a single nuclear power plant.

The World War II atomic bombing of Hiroshima and Nagasaki were described by Pope Paul VI as a "butchery of untold magnitude." Compared to the destructive power of the latest "state of the art" nuclear weapons those atomic bombs of World War II were puny, Model-T types. How then can a people who profess to be civilized and Christian threaten this far greater slaughter and butchery, in the name of peace, to prevent a nuclear attack out of fear of the threatened massive retaliation? MUTUAL ASSURED DESTRUCTION (MAD) is the military code name.

The strongest argument of its military advocates is the utilitarian one: It works! It has prevented a nuclear war for over 40 years. There have been many localized, conventional wars, perhaps 130 of them, but they have been contained with no recourse to nuclear weapons, neither, for example, in Korea nor in Vietnam, even though worldwide perhaps 30 million people have died.52

Deterrence does work. It has prevented a nuclear war. But is it moral? That is "the hard question."

In his State of the Union message in 1984 President Ronald Reagan stated that "'a nuclear war cannot be won and must never be fought. The only value in possessing nuclear weapons is to make sure they will never be used'. This is our position and we trust it has become official policy."53

SECOND VATICAN COUNCIL AND DETERRENCE

In the Second Vatican Council there were only two condemnations, one of abortion, the second of nuclear war: "Every act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and man, which merits firm and unequivocal condemnation." This strong condemnation was specifically joined to the previous condemnations of total warfare issued by Popes Pius XII, John XXIII and Paul VI.

But when it came to deterrence the Bishops of the Council acknowledged that there was a new dimension "hitherto unthought of" in the possession of arms as a deterrent to potential aggressors. "Many people look upon this as the most effective way known at the present time for maintaining some sort of peace among nations." The Council refused to pass final moral judgment on this new use of arms but noted that it "is no infallible way of maintaining real peace and that the resulting so-called balance of power is no sure and genuine path to achieve it." Since the Second Vatican Council bishops, individually, and in their National Conferences, theologians and philosophers have tried to evaluate the morality of this policy of deterrence.

POPE JOHN PAUL II ON DETERRENCE – 1982

Pope John Paul II on June 11, 1982 in his "Message to the Second Special Session of the United Nations Assembly Devoted to Disarmament" gave his conditional approval to deterrence: "In current conditions 'deterrence' based on balance, certainly not as an end in itself but as a step towards a progressive disarmament, may still be judged morally acceptable. Nonetheless in order to endure peace, it is indispensable not to be satisfied with this minimum which is always susceptible to the real danger of explosion.

55. Ibid.
56. Ibid. no. 81.
57. Ibid.
UNILATERAL DISARMAMENT

One possible alternative to the nuclear impasse is unilateral disarmament by the West. However, it is seen as ultimately radically changing the balance and upsetting the stability achieved by deterrence. "It would engender greater fear and increase the risk of conflict in both the long and the short run." 59

Since unilateral disarmament is considered an option only for the West, it must mean that Russians as an atheistic Communist power with dreams of worldwide conquest would never consider it. Unilateral disarmament for the West would mean subjugation to an atheist regime. If the only alternative is the use of atomic or nuclear weapons, one noted American moralist, John C. Ford, S.J., dared to think the unthinkable and suggest that "the followers of Christ should abandon themselves to divine providence rather than forsake (Christian moral) imperatives." 60 This is the same Father Ford who dared to go against the war hysteria and, almost alone, condemned the "obliteration bombing" of Germany and Japan during World War II. 61

Unilateral disarmament is not the common opinion among Catholics. The majority Catholic opinion was probably best summed up by E.I. Watkin, when he wrote: "I fear most Catholics are persuaded that the evil of worldwide subjection to Communist governments is so great that the deployment of any means indispensable for preventing it, even the worldwide slaughter and ruin of atomic warfare, is justifiable" (ibid).

THE FRENCH BISHOPS' PASTORAL

The French Bishops put it very clearly in their 1983 Pastoral "On Winning Peace." "Faced with a choice between almost unstoppable evils, capitulation or counterthreat, one chooses the lesser [evil] without claiming to make good of it." 62 This lesser evil solution requires that certain conditions be fulfilled before it is

61. Ibid.
morally acceptable: that the whole purpose is defense, that once deterrence is attained further escalation of armaments cease, that all danger of error, of stumbling into war, be guarded against, that constructive efforts for true peace never cease.\textsuperscript{63} Being realists, the French Bishops see this brinkmanship as very dangerous, requiring all of us to get out of this "logic of the absurd" as soon as possible, lest we fall into the abyss.\textsuperscript{64} A direct, suicidal confrontation between the superpowers has been avoided but this "non-war" built on fear, is not peace as the Bishops insist.\textsuperscript{65} It is a necessary but insufficient condition for peace, and deterrence is a "distress solution, a highly provisional one . . . It is a temporary response, a temporary solution, to meet a limited situation, from which it is necessary to emerge as soon as possible, so great is the risk."\textsuperscript{66} An intervation in the Second Vatican Council in 1965 is cited by the French Bishops. The then Archbishop of Liverpool, Msgr. Beck, is quoted wherein he analyzed deterrence as a situation in which the government possessing and threatening to use nuclear weapons is in a proximate occasion of grave sin. The great risk to its liberty and cultural and spiritual values requires the protection provided at present only by deterrence. Being so required, the occasion of grave sin is proximate and necessary. Like every such proximate occasion it must be made remote as soon as possible. There can be no complacency, no resignation to the status quo. Commenting on this, the French Bishops see deterrence as an "ethic of distress," "acceptable only on condition that it be placed in a dynamic perspective, one of gradualness, of moving beyond and on condition of not making the lesser evil a good!"\textsuperscript{67}

**U.S. BISHOPS ON NUCLEAR DETERRENCE – 1983**

In their joint pastoral 1983 the U.S. Bishops also expressed approval for deterrence only if certain strict conditions were fulfilled, emphasizing its transitional nature and requiring an aggressive pursuit of arms control and disarmament objectives. This

\textsuperscript{63} Ibid.
\textsuperscript{64} Ibid. 441.
\textsuperscript{65} Ibid. 444.
\textsuperscript{66} Ibid.
\textsuperscript{67} Ibid. 446, Ref. no. 20.
judgment of strict conditional acceptance has generally been regarded as a more stringent criticism of the entire strategy of deterrence than the French Bishops' analysis of the "logic of distress," as Joseph Cardinal Bernardin noted in his 1984 address at Louvain where he compared the German, French and U.S. Pastors on War and Peace. But all the pastoralts that have appeared in the various countries are in agreement with the teaching of Vatican II and the Popes of the nuclear age: deterrence must be carefully circumscribed and limited before it is morally acceptable even as a transitional strategy.

BASIL CARDINAL HUME: LONDON

In London in 1983 Basil Cardinal Hume affirmed that nuclear deterrence could be tolerated as the lesser of two evils. He also insists that there be "a firm and effective intention to extricate ourselves from the present fearful situation as quickly as possible."

CATHOLIC CONDEMNATION OF DETERRENCE

Given the complexity of the problem and the enormity of the danger, no one should be surprised to find Catholic writers who argue forcefully and passionately against the morality of deterrence in spite of the authoritative statements we have noted. A most formidable trio of dissenters, the well-known conservatives, John Finnis of University College, Oxford, Joseph Boyle of St. Michael's College, University of Toronto, and Germain Grisez of Mount Saint Mary's College, Emmitsburg, Maryland, co-authored the strongest attack, to date, on the moral arguments favoring deterrence.

Arguing from what they consider the high ground of the deontological, Finnis-Boyle-Grisez attack the consequentialist basis of deterrence morality as they see it. Granting that the West has a moral responsibility to preserve its independence and even grant-

70. Ibid.
ed that said independence cannot be preserved without deterrence, they argue that it does not follow that deterrence is morally justified. When there is no moral way to discharge one’s positive duties, then one should not discharge them. For them, “the deterrent does involve the intent to kill the innocent.”

Facing head-on the “lesser evil” approach and specifically that of the French Bishops, they see it as a consequentialist argument, weighing the harms and losses involved in various states of affairs: capitulation, maintenance of the deterrent and the use of nuclear weapons. They fault the French Bishops for failing to note that the central moral question about deterrence is finally “the conditional intention to kill innocents which is necessarily involved in the present public policy and act of nuclear deterrence.” Like John C. Ford, S.J., cited above, they stress the role of divine providence. “Neither Soviet domination of the world nor a nuclear holocaust need be considered the falling of the heavens.” Admitting that either would be a great catastrophe, “the Christian is to say: We look for the resurrection, and everlasting life.” And no one has spelled out more clearly what a catastrophe a nuclear war would be with its “Nuclear Holocaust,” its “Nuclear Winter,” its millions killed instantly, the radiation fall-out effects on humans, on animals, on crops, etc.

Since John Paul II has already stated that deterrence may still be judged morally acceptable, as has been noted above, Finnis-Boyle-Gresiz have to face the unpleasant fact that they seem to be in open disagreement with the Pope. Given their ultra-conservative image, this is very embarrassing. They solve it by analyzing the Pope’s statement and concluding that “John Paul’s message to the United Nations, reasonably interpreted, provides no solid ground for thinking that the threats of city swapping and final retaliation, with the intentions they actually embody, are consistent with the norm which forbids intentional killing of the innocent . . . There is thus a real and important sense in which they (the Pope and moral

71. Ibid. 75.
72. Ibid. 78.
73. Ibid. 30.
74. Ibid.
75. Ibid. 382.
76. Ibid.
77. Ibid. 213 ff.
teachers who cite the Pope) have not yet reached a judgment about deterrence — that is about the deterrents which actually exist.'"78

Thus the words of John Paul II that deterrence "may still be judged morally acceptable" are qualified by Finnis-Boyle-Grisez with the phrase "but perhaps not when the question will have been fully classified."79 Shades of the medieval appeal from the Pope less informed to the Pope fully informed!

The unrest that is characteristic of almost all Communist countries today has temporarily eased the tension in the East-West political arena. The growing internal discontent with the economic failures of Communism, the hunger for freedom and democracy, may put an end to all Russian dreams for world conquest. Russian offers to initiate disarmament are greeted with hope mixed with suspicion. "Trust but Verify" is seen as the only prudent answer to their proposals. "Perestroika" and "Glasnost" are most encouraging harbingers of peace if they are allowed to fully develop. During this most promising period of watching and waiting and hoping, it seems that the "lesser evil" principle still justifies deterrence as a transitional moral solution in spite of all its weaknesses and imperfections and critics.

CONCLUSIONS

The lesser evil solution should never be made into a good, sought as an end in itself. It should be a temporary, transitional choice while searching for the true good, free of all evil. There should be no preference for the lesser evil in general. In our fractured, broken, sin-stained world, it may become a necessary choice more frequently than we would like in many painful human situations. The actual choice of the lesser evil is not always an easy one and may require long and painful, even agonizing discernment. Over time, what was once commonly considered the lesser evil may become the greater evil as circumstances change or new depths of understanding are attained.

As with nearly all things human, the principle is open to abuse but that does not deny its moral validity. There is no certainty

78. Ibid. 98.
79. Ibid.
that it will be understood by others or not be the cause of scandal. It requires a case by case application and usually demands the verification of certain, sometimes stringent conditions that must be conscientiously fulfilled.

It is a distress solution, after a choice between the unsatisfactory and the still more unsatisfactory. But when the proper conditions are fulfilled, it is a morally acceptable solution even though not all will agree with it. It has served well down through the ages and there is every reason to think that it will be needed until the Parousia. Those who use the principle conscientiously should feel at peace, knowing that it has a long and respected history in the life of the Church, having been openly used by Popes at times. Efforts to minimize even the lesser evil may be required at times by true charity.

Perhaps no one will ever be canonized for choosing the lesser evil, even after due discernment. But no one will be condemned since it is an exercise of the virtue of prudence, often in most trying circumstances. To let greater preventable evils overwhelm an individual or a people or a nation could be deserving of condemnation for failing to apply the principle of the lesser evil.