

12-1-2017

## "Justice and Mercy": The Question of Discordancy, the Development of Doctrine and African Catholicism

John Segun Odeyemi  
*Dominican University, Ibadan, Nigeria*

Follow this and additional works at: <https://ecommons.udayton.edu/jbcts>



Part of the [Catholic Studies Commons](#), and the [Religious Thought, Theology and Philosophy of Religion Commons](#)

---

### Recommended Citation

Odeyemi, John Segun (2017) ""Justice and Mercy": The Question of Discordancy, the Development of Doctrine and African Catholicism," *Journal of the Black Catholic Theological Symposium*: Vol. 10, Article 9.

Available at: <https://ecommons.udayton.edu/jbcts/vol10/iss1/9>

This Article is brought to you for free and open access by eCommons. It has been accepted for inclusion in Journal of the Black Catholic Theological Symposium by an authorized editor of eCommons. For more information, please contact [mschlangen1@udayton.edu](mailto:mschlangen1@udayton.edu), [ecommons@udayton.edu](mailto:ecommons@udayton.edu).

## **“Justice and Mercy”: The Question of Discordancy, the Development of Doctrine and African Catholicism**

**Rev. John Segun Odeyemi, PhD**  
**Visiting Research Fellow**  
**Veritas-Dominican University**  
**Ibadan, Nigeria**

---

**Abstract:** The call for Justice and Mercy in the teachings of Pope Francis raises critical questions across theological and secular contexts. In the light of the Pontiff’s call for a Jubilee year of Mercy, in *Evangelii Gaudium*, and references in his teachings to these themes, I intend to investigate the theological meaning of Justice and Mercy and to reconcile these with what Pope Francis means. Then proffer as a concrete example, discordancy in Africa as an opportunity for a doctrinal and magisterial definition on the use of condoms as prophylactics to show a Church that acts mercifully and does justice.

**Keywords:** Discordancy, HIV/AIDS, Africa, condom use, mercy

---

### **Introduction**

Within the last decade, there has been quite a sizeable amount of reflections and essays written on the question of condomized sexual intercourse for discordant<sup>1</sup> couples, especially couples who live in economically and technologically underdeveloped nations of the world. I am writing from my African perspective since most of our nations fit snugly into the descriptive framework of; developing economies and politics, sadly stunted by genocidal civil wars, ethnic cleansings, and violent religious extremism. Corruption and nepotism is reflective of most governments, while illiteracy and the lack of social infrastructure remains a common feature of many African nation-states. The question of discordancy is usually linked with the HIV/AIDS pandemic that is decimating large numbers in Africa and across the globe but more so in the developing nations of the world. In this paper, relying on Pope

---

<sup>1</sup> Discordancy is currently a common term descriptive of a situation where conjugality between married persons becomes problematic mostly with reference to health problems and more particularly health problems that can be infectious and fatal. Commonly referenced is the HIV/AIDS situation in marriage. In this work, discordancy references the HIV/AIDS situation mostly.

Francis' hermeneutics of mercy, I argue that making a definitive doctrinal statement permitting the use of condoms for discordant sacramentally married couples, even if on a temporary basis is not only just, it shows a Church that extends the hands of God's mercy to those who are truly '*anawim*'- the poor of the earth.

### ***Justice and Mercy: A Theological Re-Interpretation***

Since the inception of Pope Francis' papacy, his style and humility has endeared him to the world. Many, especially among world media, see him as a radical who will change what they perceive to be a derelict institution that is no longer attuned to the times. Pope Francis' constant call for 'mercy' has been interpreted by many in the main stream of liberal and secularist society to be the signal for 'change' – perhaps this is to suggest 'modernizing' the Church. However, the idea of mercy used by the Pontiff stems from a theological assumption which does not imply at any time laxity of doctrinal discipline or the accommodation of all sorts of modernist behavioral innovations. In theological terms, mercy is understood to be a virtue of care for another, a willingness to care for another even at self-sacrifice; the willingness to forgive, ease others' pains, to help. The English word 'mercy' does not do *justice* in a theological frame work to the derivative meanings found both in the Old and the New Testaments of the Christian scriptures. In the scriptures, there are three Hebrew roots to the word that shed greater light to understanding mercy from its religious and theological underpinnings. First, *hesed*, among other possible meanings refers to a love that is mutual and dependable. This is often characterized by the covenantal bond between Yahweh and Israel. Second, *rahamim*, a root word which connotes 'womb', thereby designating womb love, such as of a mother or father to a child, or of filial love of siblings who have shared the same womb. This same loving-mercy is associated with Yahweh who has parental love for Israel and as such, this love (mercy) makes it possible to forgive Israel when it strayed. The third root word is *hen/hanan* which in a sense means 'grace' or 'favor'- a free gift without mutuality of response which depends solely on the good will of the giver. From a biblical perspective, these three concepts are applied to God and in Jesus who is the incarnated mercy of God. Those who accept the incarnated son must give flesh to the virtue of God's mercy.<sup>2</sup>

---

<sup>2</sup> Joseph A. Komonchak et al (Eds.) *The New Dictionary of Theology*. (Wilmington, Delaware: Michael Glazier, Inc., 1988), 650.

Theologically, "mercy is axiomatically predicated of God as one of his essential attributes, because being infinite in every perfection, his just and holy nature precludes all cruelty and unfair severity."<sup>3</sup> God's love is analogous to his mercy, and according to Thomas Aquinas, "When God shows mercy he does not thereby defeat his own justice; but by transcending it and turning a sinner into a just man, he displays the fullness of justice."<sup>4</sup> The justice of God subsists in his mercy, it is "an act directed towards others and positive in its effects, by which one accords to them some advantage or opportunity which helps them (thereby too the doer of justice) to preserve fellowship."<sup>5</sup> The justice of God should not be misunderstood within the parlance of late 19<sup>th</sup> century and early 20<sup>th</sup> century Hobbesian and Nietzsche's humanistic positivism and sociological theories of justice in which justice implies some kind of security at law seen as a civil virtue of impartiality without a reference to the natural justice of God.<sup>6</sup> In a Christian sense, mercy leads us to justice, and doing justice entails a call to the vocation of love; "... from concern for rational definition to call to commitment to the doing of justice. Connected with this call to commitment is a stronger emphasis on love as a form of justice... Christian love radicalizes the doing of justice."<sup>7</sup>

It is only when a call for mercy in the Church is understood within these parameters that a clearer message of Pope Francis' call, located within magisterial tradition and in a hermeneutics of continuity, for mercy crystalizes. In *Evangelii Gaudium* Francis expounds on the idea that the Church is a place of mercy especially for the marginalized,

The Church is called to be the house of the Father, with door always wide open... so that if someone, moved by the Spirit, comes there looking for God, he or she will not find a closed door... the Church is not a tollhouse; it is the house of the Father, where there is a place for everyone,

---

<sup>3</sup> Karl Rahner et al (Eds.) *Sacramental Mundi; An Encyclopedia of Theology*. (New York: Herder & Herder, 1969), 10-11 "God's mercy is described as the readiness of God to come to the aid of his distressed creature out of free grace. Man's primal experience of God as the God of mercies, compassion, and forgiveness is recorded in many ways in the books of the Old and the New Testament."

<sup>4</sup> Thomas Aquinas, *Summa Theologia*, I, q. 21, a. 3 as quoted in *Sacramental Mundi*, Ibid.

<sup>5</sup> Komonchak, Ibid. 230.

<sup>6</sup> Prior to Vatican II, the Catholic Church also viewed justice from a definitional aspect; *Suum cuique tradere*- to render to each one his due. Cf. Komonchak, Ibid., 548-9.

<sup>7</sup> Ibid.

with all their problems... Today and always, the poor are the privileged recipients of the gospel... We have to state, without mincing words, that there is an inseparable bond between our faith and the poor. May we never abandon them... I prefer a Church which is bruised and dirty because it has been out on the streets, rather than a Church which is unhealthy from being confined and from clinging to its own security... If something should rightly disturb us and trouble our consciences, it is the fact that so many of our brothers and sisters are living without the strength, light and consolation born of friendship with Jesus Christ... More than by the fear of going astray, my hope is that we will be moved by the fear of remaining shut up within structures which gives false sense of security, within rules which makes us harsh judges, within habits which make us feel safe, while at our door people are starving and Jesus does not tire of saying to us: "Give them something to eat" (Mk. 6:37).<sup>8</sup>

### ***The HIV/AIDS Pandemic in Africa***

Demographics show that the pandemic of HIV/AIDS is of global proportions with a particular focus on the developing nations of the world. Therefore, our attention must be drawn to people who live on the margins, who are minorities in impoverished countries and who are more vulnerable to the scourge of this disease. According to theologian, James Keenan, moral questions are shifting from an "analysis of the individual set against social forces to those which weigh the balance of goods and benefits for various groups in society."<sup>9</sup> Keenan states further that since the most sophisticated treatments in technologically advanced nations do not provide a cure for this infection, the "primary prevention of HIV infection must become the focal point of our reflection. This reflection must occur with adequate attention to the concrete realities which shape the day-to-day experience of vulnerable populations."<sup>10</sup>

Many countries in Africa, among other developing nations of the world, are at the epicenter of the battle to save lives from a disease that

---

<sup>8</sup> Pope Francis. "Apostolic Exhortation *Evangelii Gaudium*", St. Peter's Basilica, Vatican City. Nov. 24, 2013 available at [http://w2.vatican.va/content/francesco/en/apost\\_exhortation/document](http://w2.vatican.va/content/francesco/en/apost_exhortation/document), 47-9. Accessed on Jan. 25<sup>th</sup>, 2016

<sup>9</sup> *Ibid.*, 38.

<sup>10</sup> *Ibid.*

is decimating populations, especially the poor, in unprecedented numbers.<sup>11</sup> Current data from the joint United Nations Program on

---

<sup>11</sup> Margaret A Farley, "Hope for the Future," *Journal of Feminist Studies* 28, no. 2 (2012), 137. Here, Farley points to developments in understanding the etiology of the disease, the demographics around the peoples most at risk of infection, possible prevention, and treatment of infected persons. There is recognition that to stop the spread of this dreadful disease, multiple factors enter in, "a paradigm that incorporates studies of gender and religion." She argues that based on the work of African women theologians, especially those of Sarojini Nadar and Isabel Phiri, empirical work on HIV and AIDS remains deficient if they continue not to take into account a "fourfold development out of a conviction that health cannot be understood without including gendered and religio-cultural aspects of health; to a prioritization of contexts over universal principles; to an opening in concern for women but also for men; to an 'active,' critical but transformative, mode of research and its deployment for behavioral change" *Ibid.*, 138. Farley agrees with the predominant school of thought that low, middle-income countries in sub-Saharan Africa, East Asia, and parts of Latin America, less than half the population has access to antiretroviral therapies. These countries depend on the largesse of other countries outside of their own regions for programs, medication, therapies, and treatments. Farley, like many other theologians, sees and supports the necessity of shifting from a predominantly regional preoccupation with HIV/AIDS to a more central global vision and discourse. *Ibid.*, 140.

In another piece, in response to the role of religions and religious leaders who were attending a summit on HIV/AIDS and the impact of world religions, Farley wrote, "... I was also confused by the relative lack of attention given to some questions directly related to the substance of religious traditions themselves. Are there, for example, any ways in which religion has shaped beliefs, attitudes, and practices that either contribute to or prevent the spread of HIV? Little was said about the impact of religious teachings on sexual practices, the status and roles of women, and the connections among gender, race, and poverty in the context of AIDS. Perhaps implicit in the whole summit was a recognition of the relevance of such questions, yet explicit attention to them was largely missing. The words spoken about compassion raised little controversy; words about sex, the place of women, and a gendered analysis of poverty might have been controversial."

Margaret A. Farley, "Partnership in Hope: Gender, Faith and Responses to HIV/AIDS in Africa," *Journal of Feminist Studies in Religion* 20, no. 1 (2004): 134. Farley cautions against inertia, by positing,

If religious traditions have anything to say that is a healing word, a strengthening and promising word, in such situations, it must be a word that is embodied in deeds. Short of this, religious traditions will be, as they have all too often been in relation to the spread of HIV, more a part of the problem than a part of any remedy. The first response of most persons who stand in religious traditions and have any understanding at all of the AIDS pandemic is compassion. But compassion is an empty word unless there is a clear-sighted recognition of what compassion requires. All the major world religions have had something to say in response to the large questions of people's lives, including the question of suffering. Far from being completely irrational, religions have helped to 'make sense' of parts of life in relation to wholes, of aspects of life that philosophy alone has not been able to fathom. In so doing, they have given meaning to both ordinary and extraordinary experiences of persons, and they have shed light on our responsibilities to one another.... Faith communities must also critically review their role in shaping beliefs, constructing attitudes, and reinforcing behaviors that have contributed to the spread of AIDS. Just as religious traditions are profoundly influenced by the cultures in which they are embedded, so cultures are shaped and reinforced by the religions that are part of them." *Ibid.*, 138.

HIV/AIDS provide statistics showing that instances of infection dropped remarkably between the years 2000 and 2015. Nonetheless, according to UNAIDS current data and facts sheet, in 2014, 36.9 million people were living with HIV and the numbers continue to increase, in large part because there are more people globally accessing antiretroviral therapies and as a result are living longer, healthier lives. As of June 2015, 15.8 million people were accessing treatment. Despite obvious amelioration, the number of new HIV infections and AIDS-related deaths occurring globally each year is unacceptably high. According to this UNAIDS report, in 2014, around 2 million people were newly infected with HIV and 1.2 million people died of AIDS-related illnesses. UNAIDS states that,

[n]ew HIV infections have fallen by 35% since 2000 (by 58% among children), and AIDS-related deaths have fallen by 42% since the peak in 2004. The global response to HIV has averted 30 million new HIV infections and nearly 8 million (7.8 million) AIDS-related deaths since 2000. ...Ensuring access to antiretroviral therapy for 15.8 million people is an achievement deemed impossible 15 years ago. In 2000, less than 1% of people living with HIV in low- and middle-income countries had access to treatment. In 2014, the global coverage of people receiving antiretroviral therapy was 40%. But HIV continues to shine a harsh light on the inequalities of the world. AIDS is unfinished business.<sup>12</sup>

UNAIDS agrees that the case for change is compelling and commanding especially in developing nations and poorer populations. In these places, significant gaps and shortcomings in the response must be rectified. UNAIDS makes the claim that accelerating the AIDS response in low- and middle-income class countries could avert 28 million new HIV infections and 21 million AIDS-related deaths between 2015 and 2030. The reasons are many, but mainly poverty, illiteracy, and

---

Farley concludes that "sometimes the response within religious traditions is simply to reiterate moral rules prohibiting behaviors that happen also to put persons at risk of infection. Such a response has often not been very successful. Indeed, it has all too often heightened the shame and stigma associated with AIDS, and it has prevented behavioral changes that might be preventives against the disease, such as the use of condoms and the achievement of greater freedom of choice on the part of women." *Ibid.*, 139.

<sup>12</sup> UNAIDS, *AIDS Epidemic: Enduring the Urban AIDS Epidemic, Data and Facts Sheet, 2015*. [http://www.unaids.org/en/HIV\\_data/report](http://www.unaids.org/en/HIV_data/report), accessed Dec. 17, 2015.

economic imbalance in poor countries are key causes. Many women are exposed to illicit sexual affairs to make ends meet, and through conception, many children are exposed to infection. It is owing to this unjust social imbalance that the question of condomized sex by discordant couples becomes pertinent.

### ***Discordancy and Condomized Intercourse within Marriage***

The disagreement on the use of condoms by discordant persons among theologians has gone one of two ways; that condomized sex should be permissible between infected sacramentally married couples. Or that it may not be permitted as condoms will always interfere with the natural intention of sexual intimacy within marriage and thereby contradict doctrinal tradition. Surprisingly, the Catholic magisterium, to date, has not given an official position on this matter. Often times, people who deal with this question of discordancy in pastoral settings, especially in regions widely affected by HIV/AIDS, are in a quandary in terms of providing adequate pastoral counseling and advice. Somewhat disconcertingly, various published and unpublished positions can be found among episcopal conferences, theologians, pastoral agents and some agents who work in advocacy. Often times, bishops, theologians, and aid agents in heavily affected areas, which are usually also poor areas, seem to see a practical utility in an exemption for the use of condoms between discordant couples to prevent the spread of HIV to the uninfected partner or even to prevent conceiving a child who inadvertently will be infected.<sup>13</sup>

The first question to examine here now arises frequently: whether Catholics in the medical field, Catholic aid agencies, health care professionals, counsellors, educators, and clergy may suggest the use of condoms within marriage to reduce the possibility of transmitting the

---

<sup>13</sup> In research carried out in Ghana and published as a journal article, the authors, James Yamekeh Ackah and Benjamin Spears Ngmekpele Cheabu, point to the example of the US Catholic Bishops Conference in 1987 in a document in which they argued for a look at educational programs to be given out as accurate information about prophylactic devices or relevant means proposed by medical experts to prevent the spread of the disease. Ackah and Cheabu also allude to Archbishop Boniface Lele of Mombasa and Bishop Kevin Dowling of South Africa who stated clearly that the use of condoms for discordant couples should be encouraged to reduce reinfection. However, like Bishop Kirima of Nyeri Diocese, they are quick to point out that the best way to prevent infection or spread is through chastity and abstinence. James Yamekeh Ackah and Benjamin Spears Ngmekpele Cheabu, "Humanae Vitae and Birth Control: Practices and Perspectives from the Ghanaian Catholic," *Research on Humanities and Social Science* 4, no. 28 (2014): 51-2.



HIV virus to an uninfected spouse?<sup>14</sup> Vatican II stresses the importance of an authentic conjugal love in marriage and the divine laws pertaining to the responsible transmission of life, which must be harmonized as acts proper to conjugal love and in accord with human dignity.<sup>15</sup> These issues present a modern day ethical dilemma for the Church because on both sides of the debate, one finds equally plausible yet mutually exclusive arguments, valid yet conflicting reflections from biblical and theological points of views on the use of condoms in the conjugality of monogamous unions of discordant Christian couples, among many other contemporary ethical questions. Theologian, Julie Hanlon Rubio expresses the discordancy question quite succinctly: "Is condom use morally evil, or can it be justified by double effect, the lesser of evils, compassion or justice?"<sup>16</sup> Rubio speaks to what she considers a more fundamental problem within the controversy: "Still it seems that underneath these attempts to find an exception that will save lives is an affirmation of the important place of sex in marriage."<sup>17</sup> Rubio sees as equally important and questions "[w]hether couples should be required to sacrifice sexual pleasure in order to comply with the moral duty to be open to life... whether the good of ongoing sexual practice in marriage must be forgone."<sup>18</sup> Whatever arguments one may proffer, one thing is sure; the Church needs to make a definitive statement on the matter of condomized sex in discordancy. This matter challenges prior teaching and creates an avenue for a development in doctrine. In 2010, Pope Benedict XVI appointed a commission to study the possibility of permitting the use of condoms in discordancy, to determine under which theological and ethical principles this might be permissible, and years

---

<sup>14</sup> One of the earliest documented official positions that mentions the use of a "prophylactic" to avoid further infection is found in a document prepared by the United States Catholic Conference administrative board, titled "The Many Faces of AIDS: A Gospel Response." A short paragraph in the Appendix addresses what a health worker might be permitted to do, practically speaking: "On the more personal level of the healthcare professional, the first course of action should be to invite a patient at risk, or one who already has been exposed to the disease, to live a chaste life. If it is obvious that the person will not act without bringing harm to others, then the traditional Catholic wisdom with regard to one's responsibility to avoid inflicting greater harm may be appropriately applied." Cf. James F. Keenan, ed., *Catholic Ethicists on HIV/AIDS Prevention* (London: Continuum, 2002), 21.

<sup>15</sup> *Gaudium et Spes: Pastoral Constitution on the Church in the Modern World*. Promulgated by His Holiness Pope Paul VI, December 7, 1965. <https://www.ewtn.com/library/COUNCILS/v2modwor.htm> (accessed February 5, 2016), #51.

<sup>16</sup> Julie Hanlon Rubio. "Family Ethics: Beyond Sex and Controversy." *Theological Studies* 74, no. 1 (2013): 149.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

later, the Church is still silent about the outcome of the commission's work, and provides no official magisterial and doctrinal position.

Three events in the Church make the situation more troubling; the first involves religious missionary nuns travelling to work as missionaries in the Congo during the civil war years of the early 1960s. Because they were in danger of rape, they received permission to use contraceptive drugs as a form of protection. The second case is a situation that is now often referred to as a classic example of a "double down" by Pope Emeritus, Benedict XVI, when he made comments that male prostitutes (and all who engage in dangerous sexual activities) are better off using condoms to prevent the spread of disease.<sup>19</sup> The third and final one is the comments of Pope Francis on the question of either taking the option of abortion or the prevention of conception in the light of the Zika virus situation. In the case of the Zika virus, Pope Francis referred to *Humanae Vitae* and the nuns in the Congo scenario, and with clarification later on by Fr. Lombardi, the Holy Father's spokesperson, Lombardi clarifies, "Pope Francis asserted that in cases of emergency women in good conscience may consider the use of contraceptives as a legitimate alternative for choice."<sup>20</sup> The world media have immediately translated this to mean that the Pope has endorsed the use of contraceptives in emergency cases and based on the decision of the woman when acting according to the dictates of her conscience. The import of these events is well summarized in Lisa Sowle Cahill's response to the nuns/Congo case which I believe applies also to the Pope Benedict/male prostitute case and Pope Francis' 'off the cuff' remarks in the Zika virus case. Cahill writes,

---

<sup>19</sup> Among many other commentaries on this specific statement by Pope Benedict XVI, I find the following of interest "... especially relevant in light of Pope Benedict XVI's recent statement about condom use. In an interview with a German journalist, the Pope provided a first specific example of a case in which condom use might be acceptable: the use of condoms by a male prostitute (The Economist, 2010). This statement is not anywhere close to a full approval of condom use, especially since the condom in the example has no contraceptive role. Yet, it signals some willingness for compromise within the Vatican, even if no substantial shift in doctrine has occurred so far. The magnitude of the possible effect of a complete papal proclamation in favor of condom use on sexual behavior is difficult to forecast. The current study of the events in Kenya is - to the best of our knowledge - the first attempt to rigorously estimate the causal impact of the Catholic church's teaching on condom use." Stroebel, J., & van Benthem, A. The Power of the Church-The Role of Roman Catholic Teaching in the Transmission of HIV. 2012, Quoted in Fullam, L., & O'Neill, W. R. Bioethics and public policy. *Theological Studies*, 71(1), (2010) 168-189.

<sup>20</sup> National Catholic Register. "Pope Francis and Contraception: A Troubling Scenario." By E. Christian Brugger. Available at [www.ncregister.com/daily-news](http://www.ncregister.com/daily-news), Feb. 21, 2016 print edition, accessed Feb. 28, 2016.

The debate was important, instead, because it presented the possibilities that practical problems could challenge the accustomed ways of thinking about contraception, and because it joined respected theological voices in a re-examination of the prohibition on it – although it is revealing of racial attitudes that these particular circumstances were required to raise the question in the European mind. The debate was one of several movements in the Church which together, at the time of Vatican II, were to sponsor a hope among both theologians and laypersons that the traditional strictures on control of conception would be revised.<sup>21</sup>

Cahill's position resonates because to seek solutions (even if temporary) to the problem of HIV/AIDS in Africa and developing poorer nations around the world, the conversation cannot remain a theoretical European, classroom theological discourse in the west. There is the necessity for a closer study of cultural problems, marriage rites, rites of young adult initiations and passage, and the sexual mores of different societies. These varied contexts make it often more realistically difficult to navigate or to proffer one single solution as one size fits all. It is even more dangerous for the Church to remain silent on how to respond to a disease that is taking the lives of huge numbers of poor people, a silence which could be perceived and interpreted as a lack of concern or show of empathy.<sup>22</sup> For now, the Church offers the argument that since scientifically we do know that even condoms are not always 100% safe, discordant couples are encouraged to embrace abstinence even if indefinitely; "by so doing spouses affirm rather than undermine their marriage as a communion of persons which has chronological and moral priority over its one-flesh expression. They must find other ways of demonstrating love and experiencing physical and emotional intimacy together."<sup>23</sup>

Theologian, Simon Ahiokhai,<sup>24</sup> while acknowledging the Catholic Church as the largest global care giver through many of her social

---

<sup>21</sup> Cahill, Lisa Sowle, "Catholic Sexual Ethics and the Dignity of the Person: A Double Message," *Theological Studies* 50, no. 1 (1989): 129.

<sup>22</sup> God forbid that banners like "Black Lives Matter" ever show up as a reaction against the Church on this issue.

<sup>23</sup> Fisher, "HIV and Condoms," 10.

<sup>24</sup> Simon Mary A. Ahiokhai, "A Case for the Use of Condom as a Therapeutic Means by Discordant Couples in the Roman Catholic Moral Tradition," *International Journal of African Catholicism*, 4, no. 2 (2013).

agencies for those infected or affected by the HIV virus, nonetheless accuses ecclesiastical authorities of not doing enough, especially for discordant couples in Africa. Ahiokhai decries the lack of specificity in the Church's official pronouncement concerning discordancy. The often articulated position, including the comments of Pope Benedict XVI while visiting the Cameroon in 2009, constantly reiterate and emphasize responsible sexual mores and the fear that the use of condoms will bring about greater moral decay. Ahiokhai states, "This view of the pope does not address the African situation. Sexual promiscuity is not the only cause of HIV infection among discordant couples."<sup>25</sup> He further maintains that "not to call attention to the need for an approach that will address the situation faced by discordant couples is to miss a pastoral opportunity."<sup>26</sup> He argues for using the principle of *epikeia*<sup>27</sup> - acting outside of any prescribed law(s) based on the assumption that a greater good will be achieved, as a hermeneutical tool that allows for the use of condoms within the context of a sacramental, monogamous, and Catholic marital relationship.

Ahiokhai submits that since there is no canonical or juridical/sacramental legislation that bars discordant couples from sacramental marriage in the Church, especially given the framework of Africa's economic, social and cultural practices (which, in itself is disadvantageous), the Church needs to change her narrative and be more pro-active in confronting these problems. Alluding to *Humanae Vitae*, no. 15, Ahiokhai challenged the episcopal conferences in Africa<sup>28</sup>

---

<sup>25</sup> Ibid., 86.

<sup>26</sup> Ibid., 87.

<sup>27</sup> *Epikeia* requires that an individual act beyond the words prescribed by law, and having determined the intention of the legislator (not the intention which is expressed in the words of the law, but rather that which constitutes an exception or a contradiction to those words), to deviate from the course clearly prescribed by the words of the law, on the basis of the belief that the lawmaker in enacting the law benignly excluded from it the case at hand.

<sup>28</sup> According to Ahiokhai, "Since the majority of new HIV infections are in Africa, one would think that there will be a consensus among the African Catholic Bishops, who constitute part of the hierarchy of the Roman Catholic Church, in their efforts to tackle this epidemic. They have been divided on the approach to preventing HIV. Generally, most of them have accepted the general magisterial position; that any form of the use of condom is a false approach to managing and preventing the disease." Ahiokhai, "A Case," 90. Elsewhere, Ahiokhai challenges the Church in Africa: "The task of priests and bishops, as well as nuns and those with pastoral responsibilities in the African Catholic Churches ought to reflect a pragmatic approach to tackling the situation faced by discordant couples. It will be injurious to these persons if the pastoral agents simply recite to them what the official position of the magisterium is - one that does not address specifically of discordancy and HIV infections." Ibid., 110.

to be more prophetic and to speak to the reality of the suffering and pains of their people.<sup>29</sup> Ahiokhai points out that those discordant and sacramentally married couples are at a crossroad in their marital obligations to each other. The total self-giving between married people—physically, emotionally, spiritually, sexually and otherwise—all ought to be life-affirming. According to Ahiokhai, this self-giving should be “such that each partners’ health is nourished and not jeopardized. Thus, actions that are life denying ought to be avoided. In this case, unsafe sex will amount to life denying.... It is important that a distinction between medical necessity and promiscuity be made when referring to the use of contraceptives.”<sup>30</sup> In his final comments, he argues that moral theology should engage authentic human wisdom, share ideas that are relevant to bettering the lives of people in disadvantaged places, and properly apply the notion of “*epikeia* to moral dilemmas faced by the people.”<sup>31</sup> Similar arguments have been raised based on the principle of double effect, offering that the use of condoms within marriage is the lesser of two evils when the other choice is to risk infecting the uninfected partner. So far, the Roman Catholic Church has insisted on what she refers to as a “heroic self-sacrifice in abstinence” in the case of discordant couples.

Benezet Bujo is a renowned and eminent African theologian, a priest of the diocese of Bunia in the Democratic Republic of Congo, and a professor of Moral Theology and Social Ethics at the University of Fribourg, Switzerland. On the question of HIV/AIDS and discordancy, Bujo acknowledges that this scourge is afflicting great numbers of people in Africa. Bujo notes also that the effort of the Church to proffer a solution to this problem is brought about by an attempt to remain committed and defend the good news of Jesus. Bujo avers that this moral position of the Church oftentimes seems too rigorous and does not speak realistically to the lived experience of those who are affected by this scourge. Condom use as a response to HIV/AIDS, in Bujo’s opinion, was raised in the West as a panacea. This is in conflict with the traditional teaching of the Church which sees contraception as intrinsically evil and evil cannot be tolerated as a means to achieving a good. Based on this logic, discordant couples may not resort to the use of condoms but rely on permanent abstinence. Having acknowledged this official teaching and position of the Church, Bujo draws attention to

---

<sup>29</sup> Ibid., 109.

<sup>30</sup> Ibid., 110.

<sup>31</sup> Ibid., 111.

the specificity of the African situation. Bujo asserts, "Despite the contrary view of the Catholic Church in Africa, many believe that right now condoms are the only means to protect the population from complete extermination."<sup>32</sup> Bujo states further that experience has shown that absolute continence usually fail, leading to wider spread of the disease and the infection of a hitherto uninfected partner and most likely the newly born child. Bujo therefore advocates "a context in which the principle of the lesser evil (*minus malum*) or the application of the principle of double effect (*actus cum duplici effectui*) should be applied."<sup>33</sup> In order to clarify his point Bujo reiterates: "it must be clearly stressed that the use of condoms is to be understood as a lesser evil (*minus malum*) or avoiding the use of condoms as a lesser good (*minus bonum*), only as long as no better option is available."<sup>34</sup> In proposing an "interim ethic," Bujo sheds greater light on his position by re-emphasizing the difference between *what is*, and *what ought to be*,

... the principles of lesser evil and of double effect urgently require us to seek a more adequate solution: that is, it is legitimate to endorse an "interim ethics" only until something better comes along. The real and fundamentally valid solution, however, involves a change in behavior and demands a new lifestyle, an inner renewal of one's approach to sexuality, rather than naively trusting technical solutions. Such behavioral change concerns not just the individual; it is essential, rather, that the whole of society contribute to it.<sup>35</sup>

Recalling the 1994 Synod on Africa, in which the Bishops of Africa adopted "family" as a model for the Church in Africa, Bujo sees this model as apt and appropriate, an African understanding of family which encapsulates the living, the dead, and the yet to be born. In light of the various problems faced in Africa, Bujo appeals for a pragmatic use of this family model: "it is more urgent than ever to develop a community morality that corresponds to the Church as family according to the African model."<sup>36</sup> Bujo insists that checking HIV/AIDS in Africa is a common project between communities, the Church, and the international community, and that the situation will not improve until

---

<sup>32</sup> Benezet Bujo and Michael Czerny, eds., *AIDS in Africa: Theological Reflections* (Kenya: Paulines Publications Africa, 2007), 66.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, 67.

<sup>35</sup> *Ibid.*, 68-9.

<sup>36</sup> *Ibid.*, 76.

“the world community is ready to address all issues—particularly in relation to the people of the South, first and especially in Africa the most exploited—with justice and letting love prevail.”<sup>37</sup>

Paulinus Ikechukwu Odozor, another African theologian whose contribution to the conversation on HIV/AIDS in Africa and the situation of discordancy approaches the question with an appeal to casuistry. In Catholic theology, casuistry as a principle is an aspect of moral theology that is applied to moral singular facts in the face of moral conflict. Casuistry is employed to find practical solutions that preserve all intrinsic values. According to Odozor, humans formulate values that will help communities to flourish, but sometimes these values are incomplete in their expression— “thus, the need for constant revision of some of the norms that govern human conduct. Casuistry is an important way of effecting these revisions, which may lead to the abrogation of particular norms, the enlargement of some others or the refinement of yet others.”<sup>38</sup> Reflecting on the question of contraceptive intercourse, Odozor while acknowledging the magisterial position, also questions whether, where HIV/AIDS is concerned within discordancy, condomized sex can be seen simply as contraceptive. Following those who think that in discordancy the use of condoms is not contraceptive, Odozor agrees with them in seeing it as an example of the ordering of the hierarchy of values found in casuistry:

Life and marriage are here seen as higher values to be preserved when faced with this rather regrettable choice.

---

<sup>37</sup> Ibid., 77. An aspect of the various issues involving the international community, which Bujo addresses, is the question of the wide distribution of condoms without expounding on the underlying ethical issues. Bujo queries whether “massive condom advertising, as has been experienced above all in the Third World, can only lead to the trivialization of sexuality. It can give the impression that, with a condom, anything is allowed.... One might ask, for instance, whether the spread of condoms in sub-Saharan Africa has to do with a desire to protect people from disease or whether it leads to more problems. As in the case of gun running, business interests can thrive at the expense of the poor and the dead; the highest aim not being human health but rather condom exports and cash.” Ibid., 68. Arguing along this same line of thought, Cameroonian theologian, Elias K. Bongmba asserts that “the African Church needs to continue its fight against the disease in collaboration with other groups who are waging a war against HIV/AIDS. The medical community will continue to deepen our understanding of the disease, but Churches at the local, denominational, and ecumenical levels have a vested interest in exploring the broader social context in which HIV/AIDS occurs and in working out new intervention strategies.” Cf. Elias K. Bongmba, *Facing a Pandemic: The African Church and the Crisis of AIDS* (Waco, Texas: Baylor University Press, 2007), 7.

<sup>38</sup> Paulinus Ikechukwu Odozor, *Casuistry and AIDS: A Reflection on the Catholic Tradition*, in Keenan, *Catholic Ethicists*, 297.

Thus, when faced with AIDS and its consequences, the community is forced to rethink its moral principles and presuppositions. The goal is not to abandon the result of many years of communal wisdom taught authoritatively by the magisterium of the Church. Rather, it is to find imaginatively creative ways of understanding or coming to terms with the community's ethical commitment in the face of this entirely new and devastating phenomenon.... Catholic moral casuistic tradition has always paid attention to circumstances, principles, and the individual conscience in the search for solutions to the problems which new phenomena raise for the individual and society.<sup>39</sup>

While Odozor does not commit either to supporting or not supporting the use of condoms for discordant couples, his statement, like Bujo's, is un-nuanced and therefore open to a reader's translation. Odozor opines that in the casuistic tradition, a special value is placed on human life. Therefore, "solutions that are in favor of life are more in keeping with the best insights of our moral tradition."<sup>40</sup> Odozor supports the casuistic tradition, in which an unusual situation may call for extraordinary action. These insights in Odozor's reflection "are present in the casuistic tradition and can be used *mutatis mutandi* to treat HIV/AIDS related cases."<sup>41</sup> Odozor thinks that the application of casuistry to the problem of HIV/AIDS and the use of condoms can help to find the balance between moral idealism and reactive rigorism. The application of casuistry, in Thomistic terms, is helpful when prudent people react to diverse persons and situations; draw from past experiences to make judgements about future possibilities to arrive at sound conclusions about ethical problems, including HIV/AIDS and the use of condoms in discordancy.

Dr. Margaret A. Ogola speaks in an urgent and cogent way to the situation of HIV/AIDS patient in Africa, with particular focus on women and children. Ogola is a pediatrician and director at the Cottolengo Center for Children with HIV/AIDS in Kenya. In her many years of working generally with HIV patients, she states that about half of the infected patients who come to the health center are discordant couples who often times go to a second level of re-infection and then to a third level of co-infection. Ogola avers, "The nature of this virus is such that

---

<sup>39</sup> Ibid., 298-9.

<sup>40</sup> Ibid., 301.

<sup>41</sup> Ibid., 302.



it changes its face... An individual may start an HIV journey with one strain and end up with several strains."<sup>42</sup> She notes that there has been a significant shift in the risk group for infections with the highest infection rate found among young women aged 15 to 24, single or married. Now, there are more infections found among women living in relatively stable marriages. In this cultural matrix, the women are mostly powerless. As the virus mutates and more strains of the virus are discovered, infection by spouses, re-infections, co-infections, and drug resistant strains put more people at risk. Ogola challenges the Catholic Church to courageously look at the plight of poor African women, who should not be abandoned to their fate,

This journey has taken twenty-five years. I must confess that twenty-five years ago I was in the forefront of burning condoms, which indicates something about the journey I have had to make to be able to make this statement today: In view of the fact that people are living together, the need to rethink the condom as a prophylactic is inescapable. As a church we have to look at this issue with greater clarity.

I worked for Kenyan bishops for over ten years and have helped write pastoral letters and strategic plans. Yet we are still arguing over the issue, leaving service providers who are actually dealing with patients on the front line in a fuzzy limbo over what to do with couples who come for advice... As people live longer and couples live longer, they cannot be abandoned to their fate... Statistics show that (*virucidal*) jelly gives a protection rate of 50 percent. Condoms, with all that has been said against them, provide a protection rate of 80 percent. In my view, both condoms and jellies may protect African women from their vulnerability to HIV and AIDS.<sup>43</sup>

Ogola is convinced and concludes that the condom is the cheapest and most accessible and effective way of keeping infection rates low, especially among vulnerable women; in which case, it cannot be argued that it is anti-life as in the case of condom used as contraception. When

---

<sup>42</sup> Margaret A. Ogola, "Looking Back and Looking Forward at HIV/AIDS in Africa: Serodiscordant Couples, Re-infection, the Role of Women, and the Condom," in James F. Keenan, ed., *Catholic Theological Ethics Past, Present, and Future: The Trento Conference* (Maryknoll, NY: Orbis Books, 2011), 2011.

<sup>43</sup> Ibid.

combined with antiretroviral medications, it reduces infections significantly. Ogola opines that the one thing the scourge of HIV/AIDS has been able to do is to "remove us from our comfort zones and unthought-out dogmas."<sup>44</sup> She avers further, "Unless one wishes to continue in acceptable levels of casuistry, the inescapable conclusion is that latex rubber saves lives."<sup>45</sup> Here, and again, the Church is confronted with the existential and personal experiences of people who encounter the "really-real," people who are on the side of the Church and understand a problem from a purely scientific, yet theological dimension. Not to listen carefully to voices like this is tantamount to impetuosity and arrogance.

### **Conclusion**

In conclusion, I must state that to respond from the peoples' places of suffering is to become a Church that speaks in mercy, without fear of misunderstanding; it is to adapt to a new perspective that is life giving and not death dealing. All the faithful in the Church wait in great obedience and hope for a clarified position. One cannot but recall the words of the great St. John XXIII at the opening of the second Vatican Council on October 11, 1962, reminding the council Fathers of their principal duties,

The major interest of the Ecumenical Council is this: that the sacred heritage of Christian truth be safeguarded and expounded with greater efficacy. That doctrine embraces the whole man, body and soul... And our duty is not just to guard this treasure, as though it were some museum-piece and we the curators, but earnestly and fearlessly to dedicate ourselves to the work that needs to be done in this modern age of ours, pursuing the path which the Church has followed for almost twenty centuries... Human ideologies change. Successive generations give rise to varying errors, and these often vanish as quickly as they came... The Church has always opposed these errors, and often condemned them with the utmost severity. Today, however, Christ's Bride prefers the balm of mercy to the arm of severity. She believes that, present needs are best served by explaining more fully the purport of her doctrines, rather than by publishing condemnations... The

---

<sup>44</sup> *Ibid.*, 205-6.

<sup>45</sup> *Ibid.*

great desire, therefore, of the Catholic Church... is to show herself to the world as the loving mother of all mankind; gentle, patient, and full of tenderness and sympathy for her separated children... She unseals the fountains of her life-giving doctrine, so that men, illumined by the light of Christ, will understand their true nature and dignity and purpose.<sup>46</sup>

While attentively listening to the words of St. John XXIII, Catholics are expected to acquiesce in obedience to the processes of a greatly hierarchical and magisterial Church; they are also advised to look deep into their consciences – where God speaks to every man and woman in the depths of their being. For a Church in full communion, consideration should be given to reviewing and rearticulating what ought to be done in the case of discordancy within marriage, and the use of condoms as prophylactics. This in my opinion does not distort the Church's teaching on the prohibition of contraceptives; it does not diminish in any way the sanctity of marriage, conjugality or family life. The mandate of the Church is to teach, guided by the Holy Spirit. The Church has a sacred trust to remain faithful to the message of Jesus Christ as found in sacred scripture, as it was handed down within the tradition of the apostolic Church, in collegiality and subsidiarity. Working with the theologians of the Church, the joint reflections of the entire Church must always lead us back to the truths of the faith, without curtailment or compromise. The Church must remain courageous 'in' and 'out' of season to insist on the teachings of Christ even at the possibility of alienation by society.

The Church cannot maintain silence interspaced by 'off the cuff' remarks, disjointed and uncoordinated statements about questions that affects people at the deepest parts of their being and existence. In the light of the pontificate of Pope Francis and his call to a jubilee year of mercy, the Church must lead this march of mercy and justice. In Francis' Bull of Indiction for the Jubilee year of mercy titled, *Misericordia Vultus*, he states,

Jesus Christ is the face of the Father's mercy. These words might as well sum up the mystery of the Christian faith... The Church is commissioned to announce the

---

<sup>46</sup> John XXIII. Address to at the Opening of Vatican Council II, The Vatican, Rome, October 11, 1962. Available at [www.catholicculture.org/culture/library/view.cfm.RecNum=3233](http://www.catholicculture.org/culture/library/view.cfm.RecNum=3233), accessed on Feb. 20, 2016.

mercy of God, the beating heart of the gospel, which in its own way must penetrate the heart and mind of every person... wherever the Church is present, the mercy of the Father must be evident... Let us open our eyes and see the misery of the world, the wounds of our brothers and sisters who are denied their dignity, and let us recognize that we are compelled to heed their cry for help... this extraordinary Jubilee Year dedicated to living out in our daily lives the mercy which the Father constantly extends to all of us... The Church feels the urgent need to proclaim God's mercy. Her life is authentic and credible only when she becomes a convincing herald of mercy... The Church is called above all to be a credible witness to mercy, professing it and living it as the core of the revelation of Jesus Christ.<sup>47</sup>

The mercy that Pope Francis advocates for is not a frivolous and irresponsible transmitting on of revelation, doctrine and dogma. Rather, it is a call to expound on the meaning of these sacred truths and making it intelligible to modern women and men. Following the example of St. John XXIII, the Church is encouraged not to be quick to invoke anathemas or hand down interdicts. The mercy of the Father must be the first recourse and must be explored to its furthest possible. Making a case for discordant couples and stating an official position is clearly one of the ways in which mercy can be pursued. Within the broad framework of human sexuality, the Church must find adequate ways to respond to the exigencies of the 21<sup>st</sup> century. The modern theologian cannot afford to gloss over the witness of the apostolic fathers and of the early Church to the work of the living Jesus among the people of his time. We cannot do theology as if there is no Holy Spirit to lead us to all truths. It is only by doing this, acting in mercy that we can break new grounds in doctrine and in our theologizing.

---

<sup>47</sup> Pope Francis. "Mercy Like the Father" *Misericordia Vultus*. Given at St. Peters, Vatican City, Rome, On 11 April, 2015. Available at [www.vatican.va](http://www.vatican.va) (copyright Libreria Editrice Vaticana) Accessed Feb. 23, 2016.

### Works Cited

- Ackah, James Yamekeh and Cheabu, Benjamin Spears Ngmekpele.  
 "Humanae Vitae and Birth Control: Practices and Perspectives from the Ghanaian Catholic," *Research on Humanities and Social Science* 4, no. 28, 2014.
- Aihiokhai, Simon Mary A. "A Case for the Use of Condom as a Therapeutic Means by Discordant Couples in the Roman Catholic Moral Tradition," *International Journal of African Catholicism*, 4, no. 2, 2013.
- Bongmba, Elias K. *Facing a Pandemic: The African Church and the Crisis of AIDS*. Waco, Texas: Baylor University Press, 2007.
- Brugger, E. Christian. [www.ncregister.com/daily-news](http://www.ncregister.com/daily-news), 2016.
- Bujo, Benezet and Czerny, Michael. eds., *AIDS in Africa: Theological Reflections*. Kenya: Pauline Publications Africa, 2007.
- Cahill, Lisa Sowle, "Catholic Sexual Ethics and the Dignity of the Person: A Double Message," *Theological Studies* 50, 1989.
- Farley, Margaret A. "Partnership in Hope: Gender, Faith and Responses to HIV/AIDS in Africa," *Journal of Feminist Studies in Religion* 20, no. 1, 2004.
- Farley, Margaret A. "Hope for the Future," *Journal of Feminist Studies* 28, no. 2, 2012.
- Hanlon Rubio, Julie. "Family Ethics: Beyond Sex and Controversy." *Theological Studies* 74, no. 1, 2013.
- Keenan, James F., S. J., ed., *Catholic Theological Ethics Past, Present, and Future: The Trento Conference*. Maryknoll, NY: Orbis Books, 2011.
- Keenan, James F., S. J., ed., *Catholic Ethicists on HIV/AIDS Prevention*. London: Continuum. 2002.
- Komonchak, A. Joseph et al. (Eds) *The New Dictionary of Theology*. Wilmington, Delaware: Michael Glazier, Inc. 1980.
- Rahner, Karl et al (Eds.) *Sacramentum Mundi: An Encyclopedia of Theology*. New York: Herder & Herder Publishers. 1969.
- John XXIII. Address to at the Opening of Vatican Council II, The Vatican, Rome,

[www.catholicculture.org/culture/library/view.cfm.RecNum=3233](http://www.catholicculture.org/culture/library/view.cfm.RecNum=3233), 1962.

Pope Paul VI. *Gaudium et Spes: Pastoral Constitution on the Church in the Modern World*.

<https://www.ewtn.com/library/COUNCILS/v2modwor.htm>  
1965.

Pope Francis. "Apostolic Exhortation Evangelii Gaudium", St. Peter's Basilica, Vatican City.

[http://w2.vatican.va/content/francesco/en/apost\\_exhortation/document](http://w2.vatican.va/content/francesco/en/apost_exhortation/document) . 2013.

Pope Francis. "Mercy Like the Father" *Misericordia Vultus*. Peters, Vatican City, Rome, [www.vatican.va](http://www.vatican.va) 2015.

UNAIDS, *AIDS Epidemic: Enduring the Urban AIDS Epidemic, Data and Facts Sheet, 2015*. [http://www.unaids.org/en/HIV\\_data/report](http://www.unaids.org/en/HIV_data/report), 2015.

