

## The Cultural and Ecclesial Situation 1964 to 1967: Paving the Way for Dissent From Church Teaching on Contraception\*

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I WILL FIRST briefly summarize the cultural situation in the United States that paved the way for acceptance of contraception and then offer a much more substantive account of the ecclesial situation that did so.

### The Cultural Situation in the United States

In his essay of almost 100 pages, “The Bitter Pill the Catholic Community Swallowed,”<sup>1</sup> Msgr. George A. Kelly did a splendid job of summarizing the cultural situation in the United States regarding contraception from 1934, when Margaret Sanger, noted as a pioneer of contraception for eugenic purposes, wrote an article for *The American Weekly* in which she proposed an “American Baby Code,” until publication of Pope Paul VI’s *Humanae Vitae* in 1968. I will use Kelly’s work, focusing on what he has to say about the situation from 1963 to 1967, while noting some events from 1959 on. I will also note some developments in secular culture that Kelly does not comment on.

Kelly points out that in 1959 President Dwight Eisenhower buried a report by William H. Draper, a Planned Parenthood activist, calling for government financed and managed population programs. Eisenhower did

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<sup>1</sup> George A. Kelly, “The Bitter Pill the Catholic Community Swallowed,” in *Human Sexuality in Our Time: What the Church Teaches*, ed. George A. Kelly (Boston: St. Paul Editions, 1979), 13–101. He also discusses the ecclesial situation but does so in a quite different way than I will do.

more than that; he also banned all government involvement in family planning for the duration of his term in office (it would end in early 1960).<sup>2</sup> Eisenhower's opposition spurred champions of contraception to curry the favor of other politicians, including Catholics. Planned Parenthood held a World Population Emergency Conference in 1960, persuading the National Council of Churches to take a stance favorable to contraception and sterilization. Planned Parenthood also enlisted the support of prominent public figures such as former Secretary of State Christian Herter.<sup>3</sup> Moreover, by 1961 John D. Rockefeller III, a firm supporter of government supported contraceptive programs, used his considerable wealth to achieve this goal.<sup>4</sup>

In 1962 and following years, Planned Parenthood sought to enlist support of Catholics who seemed sympathetic to their ideas. Cass Canfield, chairman of the editorial board of Harper and Brother Publishers (one of the country's most prestigious at the time) and a dedicated supporter of Planned Parenthood, made overtures to some Catholic organizations. But Canfield was subtle and did not show all his cards. One major one he was counting on was a book in the works in 1962 and published in 1963 by John Rock, M.D., called *The Time Has Come: A Catholic Doctor's Proposal to End the Battle Over Birth Control*. Alfred A. Knopf and Company published the book, endorsed by Herter and others, and the author was praised as a "dedicated Roman Catholic." Rock's Catholicism was questionable, to say the least, since he had for thirty years been a dedicated member and advocate of Planned Parenthood. In his book Rock endorsed abortion as well as contraception.<sup>5</sup>

Partially as a result of all this propaganda Lyndon Johnson, on becoming president of the United States after the assassination of John F. Kennedy, endorsed government sponsored programs of contraception in January, 1965.<sup>6</sup> This act, coupled with the sexual revolution associated with the 1960s, the widespread use of contraception made possible in large part by the anovulant pill, and the Supreme Court's decision in *Griswold v. Connecticut* in 1965 (all of which Kelly did not consider) brought it about that by the middle of the decade American secular culture had warmly embraced contraception as a way of life. *Griswold v. Connecticut*

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<sup>2</sup> Kelly, "The Bitter Pill," 21–22.

<sup>3</sup> *Ibid.*, 22–23.

<sup>4</sup> I want to point out that in the late fifties and sixties both the Rockefeller and Ford Foundations were ardent supporters of contraception and Planned Parenthood. Kelly does not note this.

<sup>5</sup> Kelly, "The Bitter Pill," 25–27.

<sup>6</sup> *Ibid.*, 37.

discovered in the U.S. Constitution a so-called “right to privacy” that led the Court to strike down as unconstitutional a Connecticut state law (passed principally by Protestant legislators in earlier years) forbidding the distribution of contraceptives. It was to the same alleged “right to privacy” that the Burger-Blackman Court would appeal in 1973 in its infamous *Roe v. Wade* decision invalidating state laws against abortion.

### The Ecclesial Situation

Until 1964 no Catholic theologian had ever said that contraception could possibly be morally permissible. Until then Catholic theologians unanimously accepted this teaching of the Church. What is more, so did *educated Catholic laymen and women*, as a sociological study in the early 60s by Andrew Greeley (who later dissented from Church teaching and is still bitterly opposed to it) clearly showed.<sup>7</sup> One of the reasons why these men and women gladly embraced Catholic teaching on the subject was that during the fifties Catholic colleges and universities, and among them a great many operated by Jesuits, were proud of their Catholic faith and loyal to the Magisterium. This was also true of Catholic high schools, at that time most of them being for either boys or girls, with those for boys under the direction of Jesuits, Christian Brothers, Brothers of Mary, Benedictines and other religious congregations for men, and those for girls under the supervision of the Sisters of St. Joseph, various Franciscan communities, Dominicans, Visitation nuns, Loretta nuns, and others.

The year 1964 marks a turning point. One great book, by Germain Grisez, then professor of philosophy at Georgetown University, was published that year to support the teaching that contraception is always gravely immoral. It was called *Contraception and the Natural Law*.<sup>8</sup> In his book Grisez severely criticized inadequate arguments against contraception rooted in what he called the “conventional natural law theory” based on a Suarezian understanding of natural law and developed a new argument rooted in St. Thomas’s understanding of natural law. But that year also witnessed the publication of several books and articles advocating

<sup>7</sup> Andrew Greeley, “Family Planning Among American Catholics,” *Chicago Studies* (Spring, 1963). On the basis of these sociological studies Greeley concluded that “the success of the Church’s efforts to induce the younger generation of Catholic couples to adopt approved methods [contradicts] assertions occasionally made that Catholics are increasingly adopting appliance [contraceptive] methods,” and that “the more education, the more income, the higher the occupational category, the more likely Catholics are to keep the Church’s law and the more likely they are to have or to want larger families.”

<sup>8</sup> Germain Grisez, *Contraception and the Natural Law* (Milwaukee, WI: The Bruce Publishing Company, 1964).

contraception. Among the books were Louis Dupré's *Contraception and Catholics*, Dorothy Dunbar Bromley's *The Experience of Marriage*, and two collections of essays that I will examine here insofar as I consider them typical of the arguments given and influential because of the prominence of their authors among intellectually elite Catholics. The first, entitled *Contraception and Holiness*,<sup>9</sup> carried an introduction by retired Jesuit Archbishop Thomas Roberts, and included essays by Justus George Lawler, Rosemary Ruether, Julian Pleasants, and others. William Birmingham, who with Joseph Cunneen was co-editor of the highly regarded journal *Cross Currents*, edited another, called *What Modern Catholics Believe About Birth Control*.<sup>10</sup> It included one essay defending the Church's teaching by Vernon Bourke, professor of philosophy at St. Louis University, but all other essays in the book championed contraception, and among their authors were Birmingham himself and his wife Mary Louise, Michael Novak, James Finn, Sally Sullivan, Sidney Callahan, and others. In addition to the book already noted, Dupré, at that time Grisez's colleague at Georgetown University, wrote an influential pro-contraception essay called "Toward a Re-examination of the Catholic Position on Birth Control" for *Cross Currents*, an essay that I think merits careful examination.

In 1965 John T. Noonan's very influential work *Contraception: A History of Its Treatment by Catholic Theologians and Canonists*, was published by the prestigious Belknap Press of Harvard University. In his introduction Noonan wrote as follows:

The propositions constituting a condemnation of contraception are . . . recurrent. Since the first clear mention of contraception by a Christian theologian, when a harsh third-century moralist [falsely] accused a pope of encouraging it, the articulated judgment has been the same. In the world of the late Empire known to St. Jerome and St. Augustine, in the Ostrogothic Arles of Bishop Caesarius and the Suevian Braga of Bishop Martin, in the Paris of St. Albert and St. Thomas, in the Renaissance Rome of Sixtus V and the Renaissance Milan of St. Charles Borromeo, in the Naples of St. Alphonsus Ligouri and the Liège of Charles Billuart, in the Philadelphia of Bishop Kenrick and in the Bombay of Cardinal Gracias, the teachers of the Church have taught without hesitation or variation that certain acts preventing conception are gravely sinful. No Catholic theologian has ever taught, "Contraception is a good act." The teaching on contraception is clear and apparently fixed forever.<sup>11</sup>

<sup>9</sup> *Contraception and Holiness* (New York: Herder & Herder, 1964).

<sup>10</sup> William Birmingham, ed. *What Modern Catholics Believe About Birth Control* (New York: Signet Books, 1964).

<sup>11</sup> John T. Noonan, *Contraception: A History of Its Treatment by Catholic Theologians and Canonists* (Cambridge: Belknap Press, 1965), 6.

But he ended by claiming that new conditions and the spirit of Vatican II would lead the way to change Church teaching on this point.

In addition, in the summer of 1965, before *Griswold v. Connecticut*, Richard Cardinal Cushing, commenting on a proposal in the Massachusetts state legislature to repeal the state's birth control law banning the use of contraceptives, gave us an example of one who "is personally opposed but . . ." Cushing noted that previously Catholic leaders had opposed any effort to alter laws prohibiting contraception. "But my thinking has changed on that matter," he reported, "for the simple reason that I do not see where I have an obligation to *impose my religious beliefs* on people who just do not accept the same faith as I do." I have added emphasis to show how Cushing reduces the Catholic position to a matter of purely sectarian belief—as if it would be impossible for a non-Catholic to support the purpose of the birth control law. Cushing ended by giving Catholic members of the Massachusetts legislature this advice: "If your constituents want this legislation, vote for it. You represent them. You don't represent the Catholic Church."<sup>12</sup> Cushing's message did not go unheard. Although Kelly did not refer to Cushing's remarks, he nonetheless showed, in the essay noted earlier, how Catholic legislators quickly caved in and endorsed laws encouraging contraceptive use.

### **Reasons Advanced Between 1964–1967 to Justify Contraception**

I will now look more closely at the *reasons given* to support contraception by influential Catholic authors between 1964 and 1967, the year before the publication of *Humanae Vitae*. I will examine the 1964 essays by Rosemary Ruether, Michael Novak, and Louis Dupré because they both illustrate the kinds of arguments used to justify contraception and foreshadow the more systematic arguments developed by the so-called "Majority" of the Papal Commission on Population, the Family, and Natality and the anthropological and moral presuppositions underlying those arguments. I will then examine in more depth the arguments of the "Majority," which were written in 1966 and released to the public in 1967.

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<sup>12</sup> For Cushing's talk see Diogenes, "Personally Opposed, but . . ." *Catholic World Report*, December 2003.

*Rosemary Ruether*

In her essay, "Birth Control and the Ideals of Marital Sexuality,"<sup>13</sup> Ruether (1) denies that there is any moral difference between contraception and use of the rhythm method; (2) offers an analysis of the levels of meaning in the marital act; and (3) proposes the "best" way for helping married couples strive for the ideals of marital union, which includes procreation.

Ruether first attacks what she considers the Church's inconsistency. The Church condemns all forms of "artificial" contraception, but it advocates the "rhythm" method. This method, Ruether claims, is also contraceptive. She thinks it ludicrous to say that an act of intercourse, deliberately chosen during a time when the wife is thought to be infertile, could possibly be "procreative." "Hence, sexual acts which are calculated to function only during the times of sterility are sterilizing the act just as much as any other means of rendering the act infertile. It is difficult to see why there should be such an absolute moral difference between creating a spatial barrier to procreation and creating a temporal barrier to procreation."<sup>14</sup> In short, couples who practice periodic continence by using the rhythm method are adopting by choice a proposal to place a temporal barrier between sperm and ovum; just as couples who use diaphragms or condoms are placing spatial barriers between them. Why is there a moral difference between the two? Later in her essay Ruether returns to rhythm and attacks it as a most "unnatural" way to solve the problems married people face.

She then analyzes the sexual act. She says that at its biological level it has as its purposive goal the generation of a new human being. But as an act of love, it expresses the interpersonal union between the spouses. Ideally, the sexual act should take place when all these purposes are realizable. But unfortunately that is not possible, especially in our fallen world. For one thing, one can never be sure when the act will in fact be procreative. Moreover, one is able to say "yes" to procreation only if one is able to say "no," and in order to say "no" he must have an effective means of birth control, to prevent "accidents" from occurring. In addition, "the demands of living in the sexual union are real and meaningful demands which impose a far more frequent use of the sexual act for its relational function than could ever be brought into harmony with procreation itself. . . . [T]he sexual act as a relational act is [moreover] a genuinely purposeful act, and not mere play or unleashing of passion.

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<sup>13</sup> Rosemary Ruether, "Birth Control and the Ideals of Marital Sexuality," in *Contraception and Holiness*, introduced by Archbishop Thomas Roberts, S.J. (New York: Herder & Herder, 1964), 72–91.

<sup>14</sup> *Ibid.*, 74.

Since this is the case, the couple cannot well dispense with the act and yet continue to live in a sexual relationship without doing extensive emotional damage to the basic stability of their marriage.”<sup>15</sup>

From this it follows that couples have no real choice “but to find some method of birth control which allows [them] to continue to use the sexual act for its relational purpose and to do this under as ideal emotional circumstances as possible.”<sup>16</sup> Ruether repudiates periodic continence as an unrealistic, inhumane option. She thinks periodic abstinence is psychologically unbearable as well as ineffective, and it is also dehumanizing.<sup>17</sup> She is not too happy over barrier methods for aesthetic, not moral, reasons, and concludes that the best way to solve the problem is to use the oral-steroid pills.<sup>18</sup>

In short, Ruether holds that the Church’s position, championed by clerical celibates who simply cannot appreciate the realities of married life, is dehumanizing and unnatural. The biological needs of procreation can be satisfied by a relatively few marital acts; the psychological needs of intercourse for relational, personal reasons demand regular marital intercourse, unhampered by the psychological duress imposed by the ineffective method of rhythm, which, after all, is just as contraceptive as other forms of birth control.

### *Comment*

Ruether, with other advocates of contraception, sees no moral difference between contraception and use of fertility awareness or natural family planning as ways of regulating conception. This, of course, is nonsense as the following analysis shows. Ruether and others reason as follows: Contraception prevents conception. “Rhythm” (fertility awareness or natural family planning) prevents conception. Therefore “rhythm” is contraception. That is like arguing: Crows are birds. Eagles are birds. Therefore eagles are crows. Obviously the reasoning here is fallacious. Moreover, no one uses “rhythm” in order to become pregnant, whereas couples seeking to conceive frequently do so in order to engage in the conjugal act at a time when the wife is ovulating. Ruether’s claim that those who practice “rhythm” are placing temporal barriers between sperm and ovum is ludicrous. That is simply not what they are “doing,” that is, choosing to do here and now.<sup>19</sup>

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<sup>15</sup> Ibid., 79.

<sup>16</sup> Ibid., 80.

<sup>17</sup> Ibid., 81, 83, 91.

<sup>18</sup> Ibid., 83.

<sup>19</sup> For a thorough discussion of what couples rightly practicing periodic continence in order to avoid causing a pregnancy when it would not be prudent to cause

Note too that Ruether sharply distinguishes between the “biological” level of an act of intercourse and its level as “an act of love,” its “relational” or “interpersonal” level. This dualistic understanding of human sexuality (and the human person) will be developed more fully in the “Majority Papers.” Ruether also uses a form of consequentialist reasoning, claiming that contraception is needed if couples are to avoid serious problems. This is not true, as there are other ways of avoiding the problems that could arise.

As we will see, the “Majority Papers” develop in detail much of Ruether’s reasoning.

*Michael Novak*

**(Nota bene: Novak later changed his mind and repudiated  
contraception and embraced Church teaching.)**

Novak’s essay “Toward a Positive Sexual Ethic,”<sup>20</sup> has some interesting features. I will focus on the “argument” he mounts to justify the practice of contraception by married couples because of the anthropology and moral theory it presupposes.

Early in the essay he says that marriage and the marital act are ordered to the good of the species, not of individuals.<sup>21</sup> He stresses that in recent years people have begun to discover the close relationship between sexuality and personality,<sup>22</sup> and elaborates on what he terms the “totality principle.” He sees two levels of moral imperatives in the sexual act: “the first level is the biological, and its end is the preservation of the species; its imperative is ‘do not allow the species to become extinct.’ The second level is psychological: its end is the harmony and development of the human psyche, intelligence, will, emotions, and sentiments. Its imperative is ‘act toward one another as person to person; do not treat the other as an object or a means.’”<sup>23</sup>

In Novak’s view, today the “biological imperatives of the [natural] law are receding,” while the “psychological imperatives” are becoming more and more insistent.<sup>24</sup> He then writes: “The crux of this newly under-

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one are “doing,” see Germain Grisez, Joseph Boyle, John Finnis, and William E. May, “‘Every Marital Act Must Be Open to New Life’: Toward a Clearer Understanding,” *The Thomist* 52 (1988): 399–408.

<sup>20</sup> Michael Novak, “Toward a Positive Sexual Ethic,” in *What Modern Catholics Think About Birth Control*, ed. William Birmingham (New York: Signet Books, 1964), 109–28.

<sup>21</sup> *Ibid.*, 110.

<sup>22</sup> *Ibid.*, 111.

<sup>23</sup> *Ibid.*, 112.

<sup>24</sup> *Ibid.*

stood moral imperative . . . is whether it can be obeyed without at the same time obeying the biological imperative.”<sup>25</sup> He admits that we must obey the biological imperative, but holds that the moral (psychological) imperative is “even more demanding.”<sup>26</sup> He wants to get away from a negative criterion, “don’t use contraceptives,” because he deems it “inadequate,”<sup>27</sup> as it surely is. He thinks that Catholics have been conditioned to regard contraception with revulsion,<sup>28</sup> that they have overly spiritualized the marital relationship or reduced the conjugal act merely to rendering a debt, etc. He recognizes that the sexual impulse must be regulated and ordered. Nonetheless, he believes that the absolute condemnation of contraception is inadequate and the reasons for it weak.

He says that “the standard Catholic objection to my argument will be that I am dividing the sexual act between its biological and psychological imperatives. I will be told that these imperatives form a unity, indeed a ‘dynamic’ unity. One cannot do anything to interfere with the biological mechanism of the act in order to exercise only the psychological upper reaches of the act. I am also aware that many persons who use contraceptives or anovulants do so selfishly. My answer to the second objection would be that neither the use of contraceptives nor the nonuse of contraceptives guarantees the authenticity of the love between the couple. . . . My answer to the first objection would be that the fundamental issue is how to define the marriage act.”<sup>29</sup> He opines that “sexuality and fertility seem to be two separate orders” and that the conjugal act receives its nature from what it “symbolizes, and its morality is governed by the conformity of its performance to its intention: the outward expression of an inner, permanent bond.”<sup>30</sup> Since procreation includes education and since the exercise of marital sexuality is good for its own sake, he then concludes that “in the total good of marriage [the totality principle] anovulants or contraceptives seem at times to be the lesser of two evils.”<sup>31</sup>

Moreover, he contends that “if the couple has no control over pregnancy, intercourse may create anxieties that make marital love both a torture and a lie. . . . Unless, therefore, one is ready to argue that continence is a universal ideal, of itself and without reference to the natural

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<sup>25</sup> *Ibid.*, 113.

<sup>26</sup> *Ibid.*, 114.

<sup>27</sup> *Ibid.*, 115.

<sup>28</sup> *Ibid.*, 117.

<sup>29</sup> *Ibid.*, 121.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, 123.

expressiveness of marital love, one must admit that at times and in the total context of a married life continence can be an evil. For at times either the biological or else the psychological imperatives of married love must be violated. In actual experience there simply are some situations in which it is imperative 'not to have children' and yet to express one's love according to its natural sign."<sup>32</sup>

### *Comment*

It seems clear from what Novak writes here that he does indeed distinguish sharply between the "biological" meaning and the "psychological," or "personal," meaning of the conjugal act and that he regards the latter as more imperative and of higher value. This is a clue to his dualism that distinguishes between the "person" as experiencing subject and his or her biological fertility that is in some way under the dominion of the personal subject. He also invokes the so-called principle of totality to claim that at times contraception is necessary to foster the education of children and also to avoid some bad consequences for the couple, their marriage, and their children. Like Ruether, he adopts a consequentialist kind of moral methodology, justifying contraception because it allegedly helps couples avoid serious problems. All these ideas, as we will see, are more ambitiously developed by the "Majority" theologians.

### *Louis Dupré*

In the introduction to his essay, "Toward a Re-examination of the Catholic Position on Birth Control,"<sup>33</sup> Dupré says that he will not present any conclusions. He nonetheless clearly calls for the acceptance of the contraception of individual acts within marriage when necessary to achieve the ends of marriage (procreation and fostering of love) within the whole of marriage. Much that Dupré says is similar to what Ruether and Novak say. However, he introduces new considerations. Of these, one of the most important is advanced in part 1 of his paper.

There Dupré advances the view that the Church's teaching on the intrinsic malice of contraception has *not* been proposed infallibly, either by solemn definition by council or *ex cathedra* pronouncements of the pope, nor by the ordinary and universal exercise of the Magisterium.<sup>34</sup> In part 2, on natural end and natural law, he seems to me to articulate some of Grisez's arguments against the conventional natural law argument

<sup>32</sup> Ibid., 126.

<sup>33</sup> Louis Dupré, "Toward a Re-examination of the Catholic Position on Birth Control," *Cross Currents* 14 (Winter, 1964): 66–73.

<sup>34</sup> Ibid., 63–64.

against contraception—that it prevents the act of coition from attaining its natural biological end. But in his discussion of human nature he distinguishes between unchangeable aspects of human nature and aspects subject to somewhat radical change. He questions whether the norm against contraception involves violation of primary natural law precepts or secondary precepts, which he holds (and claims, falsely, that he has the support of St. Thomas) are not universally binding.<sup>35</sup> He holds that the norm against contraception involves violation of a secondary, not primary precept, of natural law.

In part 3 he asks when artificial interference with the functioning of nature (the procreative aspect of marital coition) becomes arbitrary and therefore evil.<sup>36</sup> He then asks: “[A]re the two ends of marriage [for him these are (1) the procreation and education of children, and (2) mutual aid of spouses] so independent as to allow the dilemma that one cannot be abandoned without seriously harming basic human values and the other cannot be pursued without compromising equally essential values? We do not think that the two ends must be thus separated.” He then continues as follows: “Since the primary end of marriage is not simply procreation (as is the ‘natural’ end of the *act* of marriage) but the procreation *and* raising to adulthood of the offspring, it would seem that, *at least in those cases where continence creates a tension between the parents which seriously harms the education of the children, the pursuit of the secondary end itself is essential for the full accomplishment of the primary end.*”<sup>37</sup>

In part 4, Dupré considers the argument (he refers to it as a “psychological” argument) advanced by people like the Jesuit Paul Quay, who had argued in 1961, as John Paul II was later on to argue, that contraception is immoral because it violates the meaning of the conjugal or marital act as an act of spousal “self-giving.” According to this argument against contraception, husbands and wives, by contracepting, fail to “give themselves” unreservedly and thus violate the marital act as a true act of love. They in effect “hold back something of themselves, namely, their procreativity.” He thinks this argument provocative, but not compelling because “for two marriage partners who have repeatedly proven their intention of complete surrender in creative acts of love, to exclude occasionally the fertility of their love when circumstances prevent them from taking proper care of new offspring, does not necessarily contradict the objective meaning of the marital act.” Continuing, he says, “[I]t would

<sup>35</sup> Ibid., 67–72.

<sup>36</sup> Ibid., 77.

<sup>37</sup> Ibid. (emphasis added).

*seem to me that the full meaning of these occasional acts can be grasped only by connecting them with the totality of all the others. . . .*"<sup>38</sup>

### Comment

First, I should note that Dupré, writing before Vatican Council II, retains the distinction that had become common between the "primary" and "secondary" ends of marriage. Second, and more important, he introduces two new arguments to justify contraception. The first is his claim that Church teaching against contraception has not been *infallibly* proposed by the Magisterium of the Church either by *solemn definition* or *through its ordinary and universal exercise*. The second is his assertion that for St. Thomas secondary precepts of natural law do not bind absolutely and universally but only for the "most part" and admit of exceptions, and that the norm against contraception is a norm of this kind.

These claims must be challenged. Regarding the first, a very substantive argument can be—and has been—made that the Church's teaching on the grave immorality of contraception has been proposed infallibly by the ordinary and universal Magisterium of the Church according to the criteria set forth in *Lumen Gentium*, §25.<sup>39</sup>

Regarding the second, Dupré appeals to a text of St. Thomas in *Summa theologiae* I-II, q. 94, a. 5 in which he says that the natural law in its secondary precepts, which are conclusions from its primary precepts, while unchangeable "for the most part" (*non immutatur ut in pluribus*), can be changed "in some particular case" (*potest immutari in aliquo particulari*). Dupré, with many dissenting theologians/philosophers (for example, Charles E. Curran, Richard McCormick, Franz Scholz), gravely misinterprets this passage. St. Thomas did not say that *all* specific secondary precepts of natural law can be changed in some particular cases. In fact, he clearly held that many specific secondary precepts are *absolutely immutable and admit of no exceptions whatsoever* (for example, the intentional killing of the innocent—see *ST* II-II, q. 64, a. 5).<sup>40</sup> Moreover, with

<sup>38</sup> *Ibid.*, 81 (emphasis added).

<sup>39</sup> ohn C. Ford, S.J., and Germain Grisez, "Contraception and the Infallibility of the Ordinary Magisterium," *Theological Studies* 39.2 (June, 1978): 258–312.

<sup>40</sup> For a superb study of St. Thomas's teaching on the absolute immutability of the precepts of the second tablet of the Decalogue, for example, see Patrick Lee, "The Permanence of the Ten Commandments: St. Thomas and His Modern Commentators," *Theological Studies* 42.3 (September 1981): 422–43; see also John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, DC: The Catholic University of America Press, 1991), chapter 3, where he takes up in depth St. Thomas's thought and shows how utterly false to Aquinas is the interpretation given by authors like Dupré.

respect to contraception Aquinas considered this to be a crime analogous to murder, more serious than fornication.<sup>41</sup>

I think the dualistic view of the human person (anthropology) and consequentialistic moral reasoning (morality) employed by Dupré is evident since in positively justifying contraception he offers the same kind of reasoning as that given by Ruether and Novak and later by the Majority theologians.

### *Majority Papers*

Before taking up the so-called Majority Papers and the reasoning employed in them to justify contraception, I want to say a few things about this Commission, the thesis of the “Majority,” and its tremendous impact on Catholics. The story of the Commission and its work has been told very sympathetically by the journalist Robert McClory in his book *Turning Point*. The subtitle of this book, published in 1995,<sup>42</sup> is most revealing: *The Inside Story of the Papal Birth Commission and How Humanae Vitae Changed the Life of Patty Crowley and the Future of the Church*. In it McClory shows how Patty Crowley and her husband Patrick, who were the president couple of the U.S. Catholic Family Movement and whom Paul VI had appointed to the Commission, persuaded the majority by the massive evidence they provided that showed that a great number of Catholic couples who practiced “rhythm” nonetheless conceived children when they had hoped that conception would not take place, were bitterly angry, and wholeheartedly resented the teaching of the Magisterium. Their eloquent plea that the Church accept contraception persuaded the majority to argue for its acceptance. The papers produced by the “Majority,” written in 1966, were published in 1967 in France in *Le Monde* and in the U.S. in the *National Catholic Reporter* to put public pressure on Paul VI to accept contraception. When he rejected the arguments of the “majority” in publishing *Humanae Vitae*, the objection was raised that he simply ignored their advice (he did not). Patty Crowley and her husband were especially upset and continued their advocacy of contraception and dissent from Church teaching. Patrick Crowley died in 1974, but Patty lived until November 2005 and McClory wrote her obituary in the

<sup>41</sup> See *Summa contra Gentiles* III, ch. 122. There St. Thomas says that if one deliberately impedes procreation (contracepts), one does something akin to homicide. By homicide “a human nature already in existence is destroyed.” He then says that this type of sin (contraception) “appears to take next place, for by it the generation of human nature is precluded.” One can see how badly Dupré has used Aquinas.

<sup>42</sup> Robert McClory, *Turning Point* (New York: Crossroad, 1995).

December 9, 2005 issue of *National Catholic Reporter*, still a champion of contraception. In his obituary, McClory praises Patty Crowley as deeply involved in the Call to Action group, a group that vehemently repudiates the teaching of the Magisterium on moral and faith issues.<sup>43</sup>

Now to the papers of the “Majority.”

The Papal Commission prepared four papers. One, known as the “Minority Report,” defended the Church’s teaching and argued that it could not be changed. It also argued that the reasoning used by the authors of the “Majority Papers” to justify contraception were not good and would, if true, lead to the rejection of other firm teachings of the Magisterium. There were three “Majority Papers”: (1) the *Documentum Syntheticum* or “Rebuttal”—translated in the Hoyt edition used here<sup>44</sup> as “The Question Is Not Closed: The Liberals Reply”; this was prepared by Josef Fuchs, S.J., Canon Philippe Delhay, and Raymond Sigmond, O.P.; (2) the *Schema Documenti de Responsabili Paternitate*, or “Majority Report,” translated as “On Responsible Parenthood: The Final Report”; this was prepared by Fuchs, Sigmond, Alfons Auer, S.J., Paul Anciaux, M. Ladourdette, and Pierre de Loch; and (3) a French text, *Indications pastorales*, “Pastoral Approaches.” I have not included this third text here because it adds nothing to the first two.

With respect to the first two texts I intend to focus on the following issues, central to the claim made in both that married couples can rightly choose, in given circumstances, to practice contraception: namely, (1) man’s dominion over nature; (2) the criteria for determining the moral meaning of human acts; and (3) the meaning of marriage and of marital acts as a “totality.” I omit discussion of other elements in their presentation, for example, their understanding of the competence and extent of the ecclesial Magisterium in moral questions. In presenting the thought of the “Majority” of the Commission on these issues I will draw from material in both the first and the second of the reports identified above.

### *Man’s Dominion over Nature*

A key idea in the defense of contraception mounted by the “Majority” is that man’s dominion over physical nature, willed by God, justifies the use of contraceptives by married couples to prevent pregnancies that

<sup>43</sup> For McClory’s obituary see [ncronline.org/NCR\\_Online/archives2/2005d/120905/120905o.php](http://ncronline.org/NCR_Online/archives2/2005d/120905/120905o.php), accessed July 17, 2008.

<sup>44</sup> See *The Birth-Control Debate: Interim History from the Pages of the National Catholic Reporter*, ed. Robert Hoyt (Kansas City, MO: The National Catholic Reporter, 1969).

would be irresponsible. In “The Question Is Not Closed” they note that, “in the matter at hand,” namely, contraception,

there is a certain change in the mind of contemporary man. He feels that he is more conformed to his rational nature, created by God with liberty and responsibility, when he uses his skill to intervene in the biological processes of nature so that he can achieve the ends of the institution of matrimony in the conditions of actual life, than if he would abandon himself to chance.<sup>45</sup>

In “On Responsible Parenthood” they write as follows:

It is proper to man, created to the image of God, to use what is given in physical nature in a way that he may develop it to its full significance with a view to the good of the whole person.<sup>46</sup>

According to this idea, the *biological fertility* of human persons and the *biological processes* involved in the generation of human life are physical or biological “givens,” and as such need to be “assumed into the human sphere and be regulated within it.”<sup>47</sup>

The person, according to this idea, is not to be the slave of his biology (moral rightness does not consist in conformity to biological or physical laws), to have his choices determined by the rules and conditions set in physiology. To the contrary, the biological givens confronting the person are to be controlled and regulated by the person’s intelligence and freedom. And this leads to the justification of the use of contraceptives.

With respect to all this, the following passage from “On Responsible Parenthood” is quite illuminating:

The true opposition is not to be sought between some material conformity to the physiological processes of nature and some artificial intervention. For it is natural to man to use his skill in order to put under human control what is given by physical nature. The opposition is to be sought really between one way of acting which is contraceptive and opposed to a prudent and generous fruitfulness, and another way which is in an ordered relationship to responsible fruitfulness and which has a concern for education and all the essential human and Christian values.<sup>48</sup>

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<sup>45</sup> “The Question Is Not Closed,” in *The Birth-Control Debate*, 69.

<sup>46</sup> “On Responsible Parenthood,” in *The Birth-Control Debate*, 87.

<sup>47</sup> “The Question Is Not Closed,” 70.

<sup>48</sup> “On Responsible Parenthood,” 90–91.

This passage is instructive because it distinguishes between the use of contraceptives to regulate nature and what it calls a “way of acting which is contraceptive and opposed to a prudent and generous fruitfulness.” In other words, contraception by married persons is morally bad only when motivated by selfish reasons. Otherwise, it simply reflects human intelligent control of “what is given in physical nature.”

*Comment*

The principal difficulty with this idea, however, is that it presupposes a dualistic understanding of the human person. According to it, the body becomes an instrument of the person. The procreative dimension of human sexuality (biological fertility, the biological processes of human generation, etc.), according to this view, is of itself subpersonal and becomes personal only when “assumed into the human sphere and regulated within it.”

*The Criteria for Determining the Moral Meaning of Human Acts*

Here we come to the moral methodology advocated by the “Majority,” that is, the criteria they propose for distinguishing between alternatives of choice that are morally good and alternatives of choice that are not morally good. This theme overlaps with considerations to be taken up below, on the “totality” of marriage and of marital acts, but it is somewhat broader in scope.

A clue to the moral methodology adopted by the authors of “The Question Is Not Closed” is provided in the following passage:

To take his own or another’s life is a sin not because life is under the exclusive dominion of God but because it is contrary to right reason *unless there is question of a good of a higher order*. It is licit to sacrifice a life for the good of the community. It is licit to take a life in capital punishment for the sake of the community, and therefore from a motive of charity for others.<sup>49</sup>

I call this the “Caiaphas” principle. I prescind here from the question of capital punishment and its justification. I wish to draw attention to the general normative principle set forth in this passage. It is the following: one ought not to take a human life *unless there is question of a good of a higher order*. This provides a built-in exception clause to a norm such as “one ought not to kill innocent human persons.” The exception is, *unless there is question of a good of a higher order*. If such a good is present, then it

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<sup>49</sup> “The Question Is Not Closed,” 69.

follows that one can rightly kill innocent human persons. “It is licit to take another’s life if there is question of a good of a higher order.” And this would be true of *every* specific moral norm; that is, every specific moral norm (called “concrete moral norms” in “On Responsible Parenthood,” p. 81) is open to exception; that is why they “must not be pushed to an extreme,” that is, made absolute.<sup>50</sup>

In evaluating human acts, the authors suggest, one must take into account the *totality* of the act in question. They imply that one can make a moral judgment on an act only when it is seen in its “totality,” that is, in relationship to the end for the sake of which it is chosen.<sup>51</sup> This leads us to the third theme.

### *The Totality of Marriage and of Marital Acts*

Here the basic idea underlying the “Majority” reports is set forth luminously in the following passage:

When man intervenes with the procreative purpose of individual acts by contracepting he does this with the intention of regulating and not excluding fertility. Then he unites the material finality toward fecundity which exists in intercourse with the formal finality of the person and renders the entire process human. . . . Conjugal acts which by intention are infertile [here the authors are referring to conjugal acts chosen during the infertile period of the woman; they see no moral difference between “artificial” and “natural” contraception] or which are rendered infertile [by the use of artificial contraceptives] are ordered to the expression of the union of love; that love, however, reaches its culmination in fertility responsibly accepted. For that reason other acts of union are in a certain sense incomplete and they receive their full moral quality with ordination toward the fertile act. . . . Infertile conjugal acts constitute a totality with fertile acts and have a single moral specification.<sup>52</sup>

This is a remarkable passage and sums up the basic argument used to justify contraception; it also illustrates the moral methodology of the authors. Note that they here claim that individual conjugal acts do not have a moral specification of their own. If they are contracepted marital acts, they are not specified precisely as acts of contraception. Rather, they receive their moral species from the whole ensemble of marital acts, and these, the authors maintain, must be ordained both to love and to a generous fecundity. Thus we could say that the “single moral specification” of

<sup>50</sup> “On Responsible Parenthood,” 81.

<sup>51</sup> Cf. “On Responsible Parenthood,” 72.

<sup>52</sup> “On Responsible Parenthood,” 72.

these individual acts is “the fostering of love responsibly toward a generous fecundity.” But this is obviously good, not bad; therefore the individual contracepted marital acts ought properly to be described not as “contraceptive” acts but as acts of fostering love responsibly toward a generous fecundity.

I believe that this is an accurate rendition of the central argument. The problem with it, however, is that it *redescribes* the action one chooses to do (namely, to contracept) in terms of the hoped for consequences of the act (namely, the fostering of love responsibly toward a generous fecundity). While it is true that one cannot judge an act to be morally *good* unless one takes it in its “totality,” including the end for the sake of which it is chosen—*bonum ex integra causa*—it is not true that one cannot judge an act to be morally *bad* unless one takes it in its “totality”; one can judge an act to be morally bad if *any element* of the act is morally bad—*malum ex quocumque defectu*. Thus, if one knows that the object of choice is bad, then one can judge the whole act morally bad, even if the end for the sake of which the act is chosen is good and if the circumstances in which it is chosen are good.

The authors of the “Majority Report” claim that the object of choice is the whole ensemble of marital acts; the choice is to procreate responsibly within the marital covenant. They need to distinguish different kinds of choices. A couple can choose, in the sense of a commitment, to procreate responsibly within the marital covenant. But this commitment entails further choices, namely, *what to do in order to procreate responsibly within the marital covenant*. Those who contracept choose to contracept; one can hardly deny this! Whether the choice to contracept is morally good or morally bad is another question. But one cannot justify the choice to contracept simply because it is the means adopted to carry out the commitment to procreate responsibly within the marital covenant. One can ask whether this means is indeed compatible with responsible procreation. I hope you see the point.

The authors of “The Question Is Not Closed” maintain that their standards are really strict and would in no way justify anal/oral sex, asserting that “in these acts there is preserved neither the dignity of love nor the dignity of the spouses as human persons. . . .”<sup>53</sup> But this is no explanation at all, since an act accords with human dignity in the morally relevant sense by being reasonable and right in accordance with the truth.<sup>54</sup>

<sup>53</sup> “The Question Is Not Closed,” 76.

<sup>54</sup> Cf. *Gaudium et Spes*, §14, where it is said that “human dignity itself involves that one glorify God in one’s body” by “not allowing it to serve the depraved inclinations of one’s heart”. Also cf. *Gaudium et Spes*, §16).

### Conclusion

Unfortunately even today many Catholics reject the teaching of the Magisterium on contraception. But, as I hope I have shown, contraception, because of the dualistic anthropology at its heart and the consequentialist/proportionalist moral methodology that it uses, is at the root of the culture of death. Moreover, today social scientists, such as W. Bradford Wilcox of the University of Virginia, and economists are amassing evidence that supports the teaching of Pope Paul VI in *Humanae Vitae*. Let those who have ears to hear, listen.<sup>55</sup>

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<sup>55</sup> I have summarized the evidence marshaled by Wilcox and others in my recent essay, “*Humanae Vitae* at Forty,” *Catholic World Report*, July 2008.