

St. John-Stevás, Norman  
Birth control and public  
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# BIRTH CONTROL

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# PUBLIC POLICY



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NORMAN ST. JOHN-STEVAS

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This study of public policy with regard to birth control is part of a larger study of law and morals, which Norman St. John-Stevas has been working on with the assistance of a fellowship from the Study of Religious Institutions of the Center for the Study of Democratic Institutions. Dr. St. John-Stevas's full study will be published in England and America early next year under the title of *Life, Death and the Law*.\* Dr. St. John-Stevas, a Roman Catholic, a graduate of both Oxford and Cambridge, is the author of *Obscenity and the Law* and a highly praised study of Walter Bagehot. He has lectured at King's College, London, and tutored in jurisprudence at Christ College and Merton College, Oxford. \* Published 1963 by Indiana University Press.

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# Birth Control and Public Policy

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# FOREWORD

Americans are hopelessly divided on the question of birth control. One large group of citizens holds, with the Roman Catholic Church, that contraception is contrary to the Natural Law, is consequently immoral and thoroughly unacceptable as a solution either to the population problem facing the nations or the personal problem facing individual families. Another large group, comprising in all probability the majority of Americans, regards modern techniques of birth control as a blessing. Among these supporters of "planned parenthood" are millions of religious folk. Indeed, a number of church leaders have lately suggested that under certain circumstances the practice of birth control may be a couple's religious duty.

This division between Americans is inevitably the source of friction and religious tension in the community. From time to time the controversy over birth control flares up on the front pages; but even when things are comparatively quiet, it ticks away like an angry bomb ready to explode at any moment.

In our study of religious institutions, the issue has been unavoidable, for it is not just a private matter to be solved conscientiously by individual Americans. There are laws in some states prohibiting the practice of contraception or its promulgation. There have been bitter controversies centered around birth control and the public hospital, birth control and the social welfare agency, the teaching of birth control in the schools. There have been proposals that the United States assist foreign nations in promoting birth control, and a flat rejection



of these proposals by the Catholic hierarchy. There have been demands that candidates for office take a public position on the question. These are not "private" matters.

It is most unlikely that Americans will ever reach ultimate agreement on the morality of birth control. Conceivably, though, some working agreement about public policy can be achieved. That agreement will not be reached in an atmosphere clogged with exaggerated charges, emotional recriminations, and sloganeering. It will require a cool knowledge of the factual situation, of the arguments made for and against the disputed practice, and of the proper relationship between morals and law.

In this Report to the Center for the Study of Democratic Institutions, Norman St. John-Stevas has produced a scholarly survey of the whole birth-control controversy. We are pleased to share it with a larger public. Incidentally, as the introductory note to this Report points out, the paper forms part of a comprehensive study of morals and law which Dr. St. John-Stevas recently completed under a fellowship grant made in connection with the Center's Study of Religious Institutions.

JOHN COGLEY



## History

From the earliest times man has attempted to control conception. Anthropologists have established that both magical and rational methods were employed by primitive tribes.<sup>1</sup> Amongst the civilised nations of antiquity, the Egyptians, the Jews, the Greeks, and the Romans all possessed knowledge of contraception. Plato wished to restrict all procreation by law, confining it to men between the ages of thirty and thirty-five and women aged twenty to forty. Aristotle also recommended the legal regulation of conception and approved both abortion and infanticide. By scientific research, Greek physicians and medical writers greatly improved existing contraceptive techniques.<sup>2</sup> Their discoveries were utilised by the Romans, but, contrary to popular belief, contraceptive knowledge was not widely diffused in the Roman world, being confined in the main to medical writers, physicians, and scholars.<sup>3</sup> Islamic contraceptive medicine, which owed much to the Greeks, was

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NOTE: The word "contraception" is used throughout this Report in the sense of artificial methods of birth control.

1. See Norman E. Himes, *Medical History of Contraception* (Baltimore, 1936), chap. I. For the early history of family limitation see also, Marie Stopes, *Contraception: Its Theory, History, and Practice* (London, 1934), chap. IX.

2. Himes, chap. IV. Soranos of Ephesus (98-138) made the greatest single contribution.

3. Himes, p. 100.

developed during the middle ages, but little progress was made in Europe during the same period, the attitude of the Church being unfavourable to such researches. It was not until the sixteenth century that a new advance was made with the publication in 1564, two years after his death, of Gabriele Fallopio's *De Morbo Gallico*, a treatise on venereal disease. His treatise contained the first published account of the condom or sheath, which Fallopio claimed to have invented. The condom was employed during the eighteenth century, both in England and on the Continent, being mainly used in brothels, but also sold in shops in London and elsewhere.<sup>4</sup> At the end of the century contraceptives were still associated exclusively with immorality and vice, but by the close of the nineteenth century this position had been deeply undermined and the way prepared for the general acceptance of contraceptives which has been so marked a feature of our own time.

Thomas Malthus, an Anglican curate, was the unwitting founder of the modern birth control movement, by means of his famous *Essay on the Principle of Population*, published in 1798. His thesis was simple. Both population and food supplies tend to increase, but since population increases faster than means of subsistence, the majority of the human race is doomed to perpetual poverty and malnutrition. Disease and war act as natural checks and so prevent a universal cataclysm. In the first edition of his book Malthus offered no way of escape from this dreadful treadmill, but in 1803 the second edition of his *Essay* included recommendations for "moral restraint." By this Malthus did not mean that sexual intercourse should be restrained in marriage, but that marriages should be postponed to a late age or complete celibacy embraced. Far from advocating any means of contraception, he expressly condemned recourse to "improper arts."

Radical reaction to Malthus's pessimistic and conservative doctrine was sharp. Generally accepted, it would put an end to all efforts at social reform, for by his hypothesis these were automatically con-

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4. Francis Grose, *A Guide to Health, Beauty, Riches and Honour* (2d ed.; London, 1796), iii Mme. de Sévigné, in the previous century, had referred to the condom, in a letter written to her daughter in 1671, as "a bulwark against enjoyment, and a cobweb against danger."



demned to failure.<sup>5</sup> Godwin wrote two ineffective replies to refute Malthus, but it was left to Francis Place, in his *Illustrations and Proofs of the Principle of Population*, published in 1822, to suggest that in the use of artificial contraception lay the answer to population problems.<sup>6</sup> If, he wrote, “it were once clearly understood, that it was not disreputable for married persons to avail themselves of such precautionary means as would, without being injurious to health, or destructive of female delicacy, prevent conception, a sufficient check might at once be given to the increase of population beyond the means of subsistence; vice and misery, to a prodigious extent, might be removed from society, and the object of Mr. Malthus, Mr. Godwin, and of every philanthropic person, be promoted, by the increase of comfort, of intelligence, and of moral conduct, in the mass of the population.”<sup>7</sup> Place supplemented his argument by distributing amongst the working classes a series of “diabolical handbills” recommending contraception. Despite their outlining a particular method of contraception—the use of a sponge and attached ribbon—they were not legally suppressed. Similar immunity was enjoyed by the publications of Place’s disciples, Richard Carlile, Richard Hassell, and William Campion. Place’s influence spread to the United States, where Robert Dale Owen was emboldened in 1830 to publish the first American booklet on birth control, *Moral Physiology*.<sup>8</sup> Two years later, Dr. Charles Knowlton, a Massachusetts physician, published anonymously a further treatise on contraceptive methods, curiously entitled *Fruits of Philosophy*. Knowlton eventually served a term of imprisonment for his part in publishing this book, and later it was the subject of a celebrated English trial. Malthusian contentions

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5. It is interesting to note a similar reaction of the radical *New Statesman and Nation* to the suggestion that aid to under-developed countries was not an un-mixed benefit since it exacerbated population problems (Sept. 6, 1952, 44:253). For subsequent discussion of this editorial see 44:319, 349-50, 378.

6. Jeremy Bentham had advocated the use of birth control to reduce the poor rates in 1797 (Himes, p. 211, n. 4).

7. *Illustrations and Proofs of the Principle of Population*, ed. Norman E. Himes (London, 1930), p. 165.

8. This went through several editions within a year and had achieved an Anglo-American circulation of 75,000 by 1877, the year of Owen’s death.

were revived by George Drysdale in his *Elements of Social Science*, published in England in 1854, in which he advocated “preventive sexual intercourse.”

By mid-century Malthusian prophecies and their suggested remedies were generally discussed in educated circles, but the general public was still ignorant of contraception and the arguments for its use. In 1877, however, the trial of Charles Bradlaugh and Annie Besant for publishing an English edition of *Fruits of Philosophy* made contraception a hotly debated subject throughout the country and amongst all classes.<sup>9</sup> Mrs. Besant utilised a golden opportunity to spread the good news, speaking at inordinate length and spending much of her time addressing the public on the laws of Malthus and the necessity for birth control, rather than defending herself against the charge of publishing an obscene libel. Both defendants were found guilty, but the following year the conviction was set aside for a defect in the indictment. The effects of the prosecution were startling. Before 1876 the circulation of *Fruits of Philosophy* had been only one thousand per year, but by August 1881 no less than 185,000 copies had been sold, bearing out the words of Sir Alexander Cockburn at the trial that “a more ill advised and more injudicious prosecution never was instituted.”<sup>10</sup> Knowledge of contraceptive methods became widespread, and the work was carried forward by the Malthusian League, founded in 1878, with Annie Besant as its first secretary.<sup>11</sup>

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9. See *The Times* (London), June 18 *et seq.*, 1877, for an account of the trial. For a reconstruction of the trial see Norman St. John-Stevan, *Obscenity and the Law* (London, 1956), pp. 70-74. For the appeal decision see *Bradlaugh v. R* (1878), 3 Q.B.D. 607. See also Vol. II of Hypatia Bonner's *Charles Bradlaugh* (London, 1894).

10. Himes, *Medical History . . .*, p. 243. Edward Truelove, a Freethought publisher, was summoned in 1877 for publishing Owen's *Moral Physiology*. Hearing of the case was postponed until 1878 to enable the Bradlaugh-Besant case to be disposed of. In February 1878 the first jury failed to agree, and a second trial was instituted. Truelove was sentenced to prison, and efforts to secure his release failed. Truelove's case is an important landmark in the history of birth control in England but at the time was overshadowed by the more spectacular trial of Bradlaugh and Besant.

11. Annie Besant renounced contraception in 1891, after becoming a theosophist.



Of itself the Bradlaugh-Besant trial would not have resulted in a popularisation of contraception, but it came at a moment peculiarly favourable to the cause. Industrialisation and the fall in the death rate had resulted in a vastly increased population, the great depression of 1873-96 led to widespread dislocation in agriculture and industry, women were becoming more emancipated and unwilling to bear the burden of unrestricted families, while legislation forbidding child employment had reduced the value of children as income-earning assets.<sup>12</sup> Shortly after the trial, in 1880, education for the first time was made compulsory in England, and this increased the financial burden of large families. Contraception had still to win general social acceptance, but after 1878 few attempts were made to suppress bona fide birth control propaganda by law.<sup>13</sup> The way was thus opened for a flow of publications advocating birth control. In 1879 Annie Besant published her own treatise, *The Law of Population*.<sup>14</sup> By 1891 it had sold 175,000 copies in England alone, at the low price of sixpence each. English law had become quiescent, but private opposition to birth control was still strong. Thus in 1887 Dr. Henry Allbutt's name was erased from the medical register by the General Medical Council for publishing a popular work on birth control, *The Wife's Handbook*.<sup>15</sup> In 1913 the Malthusian League for the first time published a practical handbook on birth control, *Hygienic Methods of Family Limitation*, and put it in general circulation without legal incident. After the first world war, the social restrictions on dissemination of birth control information dissolved. Marie Stopes founded the Society for Constructive Birth Con-

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12. Not unimportant was the discovery of the vulcanisation of rubber by Good-year and Hancock in 1843-44, which made possible the production of a cheap, reliable condom.

13. Truelove's publications, as a result of an appeal, were not finally destroyed until 1879. However, this destruction order was intrinsically part of the original proceedings initiated in 1878.

14. This was never prosecuted in England but was prosecuted in Australia and condemned at first instance. The conviction for publishing was later set aside on appeal, the judge holding that the test of obscenity was not whether it promoted immoral ideas but whether the language itself was obscene. *Ex parte Collins* (1888), 9 L.R. (N.S.W.), 497; 5 W.N. 85.

15. See H. A. Allbutt, *Artificial Checks to Population* (London, 1889), p. 7.

trol and in 1921 opened the first birth control clinic in London. Her work was carried on by Harold Cox, Julian Huxley, Norman Haire, Dean Inge, Lord Dawson of Penn, and others. In 1930 the 'Lambeth Conference gave a grudging approval to family planning by contraceptives, a concession which led to a more wholehearted approval by the Lambeth Conference of 1958. The official visits paid by the Minister of Health to the headquarters of the Family Planning Association in London, in 1955 and 1958, symbolised the nearly complete triumph of the birth control movement in Great Britain.<sup>16</sup>

In the United States, the movement has not met with such unqualified success. Dr. Knowlton was succeeded by other medical writers advancing the cause of birth control, including A. M. Mauriceau, J. Soule, Edward Bliss Foote, and his son Edward Bond Foote. John Humphrey Noyes founded the Oneida colony in New York and advocated his own particular method of birth control.<sup>17</sup> Birth control suffered a severe setback in 1873 when, thanks to the efforts of Anthony Comstock, Congress enacted a statute excluding contraceptives and contraceptive information from the mails, declaring them obscene.<sup>18</sup> Many states followed suit and passed statutes banning the sale and distribution of contraceptives. These laws were enforced with varying degrees of efficiency in different parts of the country but undoubtedly hindered the acceptance of birth control by the community. In 1912 Margaret Sanger, a New York nurse, started her life's work as a zealot for birth control. She began studying the subject and gave her first public lectures. In 1914 she undertook publication of a new monthly magazine, *The Woman Rebel*, and was arrested and indicted under the Comstock law. She fled to Europe and the following year her husband was imprisoned for a short term for handing out a copy of her pamphlet on *Family Limitation*. Mrs. Sanger returned to the United States and on October 16, 1916, opened the first Birth Control Clinic in the United States in Brooklyn. The clinic was raided and closed by the

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16. Advice on contraception is still to some extent restricted when sought as part of the National Health Service. See p. 14 of this work.

17. *Coitus reservatus*: intercourse which stops short of ejaculation.

18. Sec. 211 of the Penal Code.



police, Mrs. Sanger and her sister both being sentenced to thirty days' imprisonment in 1917. Nevertheless, she continued her work and propaganda, basing her appeal on the suffering caused to women by unlimited child bearing rather than on Malthusian arguments. In 1917 the National Birth Control League was founded, and Mrs. Sanger began publication of the *Birth Control Review*. National and international conferences were held, and in 1921 the New York Birth Control Clinical Research Bureau was opened. Repeated efforts led by Mrs. Sanger and Mary Ware Dennett were made to repeal or amend the federal laws restricting birth control but were not successful.<sup>19</sup> In 1929 the New York clinic was raided and its director and assistant arrested. They were later discharged, and the clinic continued its work. Public opinion gradually began to favour birth control. The gynecological section of the American Medical Association had passed a motion in 1925 recommending the altering of the law to allow physicians to give contraceptive advice; in 1931 the Federal Council of the Churches of Christ published a report favouring birth control; support also came from the American Neurological Association, the Eugenics Society, and the Central Conference of Rabbis. In 1936 the Court of Appeals upheld a ruling of the District Court that contraceptives imported for a lawful purpose did not come within the restrictions of federal law.<sup>20</sup> In 1937 the American Medical Association unanimously agreed to accept birth control "as an integral part of medical practice and education."

Today birth control — the Roman Catholic and Orthodox Churches always excepted — is generally approved in the United States. The courts have modified the operation of federal statutes, and most state

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19. See *Birth Control Laws* by Mary Ware Dennett (New York, 1926), and *My Fight for Birth Control* by Margaret Sanger (New York, 1931). In 1929 the National Committee on Federal Legislation for Birth Control was organized with Mrs. Sanger as President to secure alteration of federal statutes. In 1930 a bill was introduced into Congress by Senator Gillett (Mass.) to exempt the medical profession from their operation. The bill failed. Earlier, in 1923, a straight repeal of the federal statutes in so far as they affected birth control had also failed (the Cummins-Vaile bill). Attacks were also made on state legislation.

20. *United States v. One Package*, 86 F. (2d) 737 (2d Cir.) (1936).

statutes have been liberally interpreted. Hundreds of different types of contraceptive are in use, and contraception has become big business. In April 1958 Robert Sheehan estimated that the contraceptive trade in the United States grossed \$200,000,000 a year, no less than \$150,000,000 being spent on condoms.<sup>21</sup> Despite this activity and considerable medical research, the ideal method of contraception still does not, and possibly cannot, exist. Such a method should display five features: it should be wholly effective and reliable; harmless to users and to subsequent children; aesthetically acceptable; moderate in price; and unobjectionable on religious and moral grounds.

## English Law

Traditionally the law in England has followed the Prayer Book in recognising the procreation of children as the primary purpose of marriage. Thus, in an early nineteenth century case, Sir John Nicholl referred to the procreation of children as "the primary and most legitimate object of wedlock."<sup>22</sup> The continued operation of the doctrine was illustrated by a Court of Appeal case of 1946, where it was held that a man who had consistently refused to have intercourse without employing a contraceptive against the wishes of his wife had wilfully refused to consummate the marriage, thus entitling her to a decree of nullity.<sup>23</sup> "We are of opinion," said Lord Justice du Parcq, "that sexual intercourse cannot be said to be complete where a husband deliberately

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21. "The Birth Control Pill," *Fortune Magazine*, April 1958. Cf. *Fortune*, February 1938, for estimation of pre-war industry.

22. *Brown v. Brown* (1828), 1 Hagg. Ecc. 523 at p. 524. Cf. *G v. M* (1885) 10 A.C. 171 at p. 204 per Lord Fitzgerald: "The procreation of children being the main object of marriage, the contract contains by implication, as an essential term, the capacity for consummation." See also *D v. A* (1845), 1 Rob. Ecc. 279 at p. 298 per Dr. Lushington.

23. *Cowen v. Cowen* (1946) P. 36.



discontinues the act of intercourse before it has reached its natural termination or when he artificially prevents the natural termination, which is the passage of the male seed into the body of the woman. To hold otherwise would be to affirm that a marriage is consummated by an act so performed that one of the principal ends, if not the principal end, of marriage is intentionally frustrated.”<sup>24</sup> Two years later, the House of Lords abandoned the principle.<sup>25</sup> “It is indisputable,” said Lord Jowitt, with remarkable confidence, “that the institution of marriage generally is not necessary for the procreation of children; nor does it appear to be a principal end of marriage as understood in Christendom, which, as Lord Penzance said in *Hyde v. Hyde* (1866) L.R. 1 P & D 130, 135, ‘may for this purpose be defined as the voluntary union of one man and one woman to the exclusion of all others.’ ”<sup>26</sup> Accordingly, a spouse has no matrimonial remedy at English law if the other spouse insists that intercourse shall only take place with the employment of a contraceptive.<sup>27</sup>

As has been noted, contraceptive information was in the nineteenth century classified as obscenity, and sale of contraceptives doubtless came within the common law offence of publishing obscene matter, but this is no longer the case. Books are no longer considered obscene if they advocate or describe methods of birth control. “It cannot be assumed,” said the Home Secretary in answer to a question in the House of Commons in 1922, “that a court would hold a book to be

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24. *Cowen v. Cowen* (1945), 2 All E. R. 197 at p. 199.

25. *Baxter v. Baxter* (1948), A.C. 274. Refusal of a nullity decree to a husband whose wife declined intercourse unless the husband took contraceptive precautions. He agreed under protest.

26. Lord Penzance, when defining marriage for *this purpose*, was referring not to procreation but to the effect of polygamous marriages.

27. The effect of *Baxter v. Baxter* will largely depend on whether it is confined strictly to the category of “wilful refusal to consummate” as a ground for a nullity suit, or whether this type of consummation is accepted as valid in all matrimonial causes. Lord Jowitt’s dictum on the purpose of Christian marriage has been much criticised. See The Report of the Commission appointed by the Archbishops of Canterbury and York in 1949 to consider *The Church and the Law of Nullity of Marriage* (London, S.P.C.K. 1955).

obscene merely because it deals with the subject referred to.”<sup>28</sup> Sale of contraceptives is not subject to common law or statutory restriction save for certain by-laws which restrict the sale of contraceptives from slot machines in public places.<sup>29</sup> Advertisements for contraceptives are not per se considered obscene. This lack of legal restraint is not surprising, since it accords with prevailing English opinion on the subject, summed up by the Royal Commission on Population when it stated: “Control by men and women over the numbers of their children is one of the first conditions of their own and the community’s welfare, and in our view mechanical and chemical methods of contraception have to be accepted as part of the modern means, however imperfect, by which it can be exercised.”<sup>30</sup>

Under the National Health Service, however, advice on birth control can only be given in certain circumstances. The Ministry of Health allows contraceptive advice to be given in maternal and child welfare clinics to those married women for whom a pregnancy would be detrimental to health.<sup>31</sup> Many medical officers refer patients outside this category to the voluntary birth clinics which are found in many areas. Local Authorities may themselves, with the approval of the Minister, open contraceptive clinics and give advice to nursing mothers requir-

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28. St. John-Stevás, *Obscenity . . .*, p. 70.

29. The by-laws were suggested by the Home Secretary in a circular of October 22, 1949, after public controversy over sale of contraceptives from slot machines. He circulated a model by-law, suggesting this was the appropriate remedy since the practice was an evil only in some public places. For a discussion of what constitutes a *public place* see *The Justice of the Peace and Local Government Review*, January 7, 1950, 114:4.

30. Cmd. 7695 (1949) par. 427. The Commission hoped that voluntary parenthood would become universal (p. 430).

31. Ministry of Health Memorandum 153, *Birth Control of 1930*. Circular 1208 of 1931. Circular 1408 of 1934. Circular 1622 of 1937. Contraceptive advice is to be given only to a) married women who, being expectant or nursing mothers, are attending welfare centres and for whom further pregnancy would be detrimental to health; and b) married women attending clinics for women suffering from gynecological conditions for whom pregnancy would be detrimental to health, either because of some gynecological condition or because of some other form of sickness, physical or mental, such as tuberculosis, heart disease, diabetes, chronic nephritis, etc.



ing it on medical grounds. They may also contribute to voluntary organisations providing such advice.<sup>32</sup> Many clinics of the Family Planning Association are conducted on the premises of the Local Authority or Regional Hospital Boards.<sup>33</sup> General practitioners in the Service are not forbidden to provide contraceptive advice for their patients. They may not charge for advice given on medical grounds, but may do so when no medical reason exists for limitation of pregnancies.<sup>34</sup> Contraceptive appliances are not obtainable on National Health Service prescriptions, but if a patient needs them on medical grounds and cannot afford to pay for them, payment may be authorised by a Local Authority Medical Officer or hospital consultant. The Royal Commission on Population recommended that all restrictions on giving contraceptive advice to married women under public health services should be removed.<sup>35</sup> Public authorities, the Commission held, should not view the furnishing of advice as a concession but as a positive duty. This accords with its expressed view that "public policy should assume, and seek to encourage, the spread of voluntary parenthood."<sup>36</sup>

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32. Sec. 22 of National Health Service Act, 9 and 10 Geo. 6, c. 81 (1945-46). Government Act, 1948, 11 and 12 Geo. 6, c. 26 (1947-48), grants may be made by Local Authorities with the consent of the Minister to bodies giving services to residents in the area. These grants are not confined to medical cases. In the case of the Family Planning Association a special consent is necessary for each grant. In 1954, 76 Local Health Authorities made direct payments to the Family Planning Association; 122 referred cases to the Association; and 62 had their own clinics.

33. In 1954 three quarters of the F.P.A. clinics were held on Local Health Authority or Regional Hospital Board premises.

34. See supplement to the *British Medical Journal*, November 6, 1954, p. 166.

35. Pars. 536 and 667. The Report did not suggest giving advice to unmarried women, but this recommendation was made in the P.E.P. study *Population Policy in Great Britain* (London, 1948), p. 152. As early as April 28, 1926, the House of Lords had passed a motion introduced by Lord Buckmaster calling for the removal of restrictions on advice to married women.

36. Pars. 434 and 657.

## United States Law

FEDERAL LAW Federal law restricts the distribution of contraceptives in several ways. Knowingly to deposit any contraceptive in the mails or to take such articles from the mails for the purpose of distribution is a felony under federal law.<sup>37</sup> The ban extends to any information as to where contraceptives may be obtained, and any written or printed matter telling "how or by what means conception may be prevented." A further federal felony is constituted by depositing contraceptives or information where they may be obtained with an express company or other common carrier. Books on contraception are not specifically mentioned, but obscene books are included in the ban. To import contraceptive articles or obscene books is also a felony and prohibited by federal statute.<sup>38</sup>

Read literally, these statutes impose an absolute and universal ban, and many attempts have been made to modify their scope by legislation. All have failed.<sup>39</sup> They have, however, been modified by judicial interpretation. A first step was taken in 1930, when Judge Swan stated: "The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not

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37. 18 U.S.C.A. 1461.

38. 18 U.S.C.A. 1462 (transport and import). 19 U.S.C.A. 1305 (import). The penalties are fines of not more than \$5,000 or not more than five years imprisonment, or both, for a first offence; and fines of not more than \$10,000 or ten years imprisonment, or both, for a second offence. The higher penalties also apply to customs officers who aid or abet such offences (18 U.S.C.A. 552).

39. For example, 68th Cong., 1st Sess., H.R. 6542 and S. 2290, January 10, 1923 (Cummins-Kissel [Vaile]); 71st Cong., 2nd Sess., S. 4582, May 26, 1930, Gillet (Mass.); 72nd Cong., 1st Sess., S. 4436, April 21, 1932, Hatfield (W. Va.); 73rd Cong., 2nd Sess., S. 1842, June 6, 1933, Hastings (Del.); 74th Cong., 1st Sess., S. 600, January 10, 1935, Hastings (Del.); 74th Cong., 2nd Sess., S. 4000, February 12, 1936, Copeland (N. Y.); 75th Cong., 3rd Sess., H.R. 9786, March 8, 1938, Mead. For full list see Alvah H. Sulloway, *Birth Control and Catholic Doctrine* (Boston, 1959), p. 190, n. 20.



lightly to be ascribed to Congress.”<sup>40</sup> Without deciding the point, he suggested that the Criminal Code should be interpreted as requiring an intent on the part of the sender that “the articles mailed or sent by common carrier be used for illegal contraception or abortion or for indecent or immoral uses.” This reasoning was applied in *Davis v. United States* (1933), when an intent to use the articles for illegal purposes was held necessary for a conviction under the postal and transport statutes.<sup>41</sup> The decision permitted manufacturers of contraceptives and others in the trade to despatch their wares to druggists, jobbers, and physicians. These decisions led logically to that of *United States v. One Package* in 1936, when Dr. Hannah Stone was allowed to import a package of vaginal pessaries into the United States.<sup>42</sup> Judge Augustus Hand conceded that the Tariff Act of 1930 exempted only those articles excepted by the Comstock Act of 1873, but he went on to say that the court was satisfied “that this statute, as well as all the Acts we have referred to, embraced only such articles as Congress would have denounced as immoral if it had understood all the conditions under which they were to be used. Its design, in our opinion, was not to prevent the importation, sale, or carriage by mail of things which might intelligently be employed by conscientious and competent physicians for the purpose of saving life or promoting the well being of their patients.”<sup>43</sup> Judge Learned Hand was clearly uneasy about

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40. *Young Rubber Corporation v. Lee*, 45 F. (2d) 103 (2d Cir.) (1930) at p. 108. The case arose from an action for trademark infringement by a manufacturer of prophylactics, the defence being that redress was contrary to public policy since the federal statutes were being violated in carrying out the business. “We conclude,” said Judge Swan, “therefore . . . that a manufacturer of drugs or instruments for medical use may in good faith sell them to druggists or other reputable dealers in medical supplies, or to jobbers for distribution to such trade.” (p. 109.)

41. 62 F. 2d 473 (6th Cir.) (1933). Two charges were involved: a) mailing circulars on contraception contrary to 18 U.S.C.A. 334, and b) transporting articles for preventing conception contrary to 18 U.S.C.A. 396.

42. 86 F. 2d 737 (2d Cir.) (1936).

43. p. 739. Judge Augustus Hand stressed that all the federal statutes should be interpreted by a common standard, since they were intended to constitute a single moral code.

these verbal gymnastics but contented himself with observing that people had changed their minds about such matters in recent years, and he concurred in the judgment.

Books on contraception are specifically banned from the mails by the postal statute, but the section restricting imports mentions only "obscene" books. It is now established that a book on contraception is not per se considered obscene by the federal courts.<sup>44</sup> Dismissing a charge against *Contraception* by Marie Stopes in 1931, Judge Woolsey stated: "It is a scientific book written with obvious seriousness and with great decency, and it gives information to the medical profession regarding the operation of birth control clinics and the instruction necessary to be given at such clinics to women who resort thereto." Such a book, he held, was not obscene, "for the reading of it would not stir the sex impulses of any person with a normal mind."<sup>45</sup>

The federal statutes are accordingly by no means dead letters, but contraceptives intended for bona fide medical use, for the treatment or prevention of disease, and contraceptive books and pamphlets which are not written in obscene language may be freely imported, transported, and mailed. In practice this means that contraceptives must be going to or coming from doctors or other professional persons, or anyone acting at their direction or under their supervision. Druggists,

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44. For a first suggestion of this see *United States v. Dennett*, 39 F. 2d 564 (2d Cir.) (1930). See also *U.S. v. One Obscene Book entitled "Married Love,"* 48 F. (2d) 821 (S.D.N.Y.) (1931), where the book by Marie Stopes was declared admissible at any port in the United States.

45. *U.S. v. One Book Entitled "Contraception,"* 51 F. (2d) 525 (S.D.N.Y.) (1931), at 527-28. See also *U.S. v. Nicholas* 97 F. (2d) 510 (2d Cir.) (1938). A book for Nicholas and some magazines for Himes coming from abroad through the mails were seized under the Tariff Act. "We have twice decided," said Judge Learned Hand, "that contraceptive articles may have lawful uses and that statutes prohibiting them should be read as forbidding them only when unlawfully employed. . . . Contraceptive books and articles are of the same class and those at bar were therefore lawful in the hands of those who would not abuse the information they contained." The magazines were sent on to Himes as editor and, therefore, an appropriate person to receive them. The book was detained in the post office pending an application by the addressee. "Only the addressee can prove whether he is among the privileged classes; he ought at least to go forward with the evidence, even if the burden of proof is not eventually on him." (Judge Learned Hand at p. 512.)



jobbers, and dealers, provided they are legitimate traders, thus enjoy immunity. This rule applies to contraceptive books and pamphlets going through the mails, but not to the importation of such books or to their transport in interstate commerce.<sup>46</sup> Under the customs law, only obscene books are excluded, and, as has been noted, bona fide contraceptive manuals are not any longer within this category. To secure a conviction under the statutes an intention to use the materials illegally must be established by the prosecution. However, for administrative purposes, consignments may be stopped by the authorities temporarily, pending the production of prima facie evidence by the addressee that he is a privileged recipient. The Family Planning Association makes it a practice to consign contraceptives and information under a doctor's signature and thus obviate vexatious delays. Private persons importing, mailing, or transporting contraceptives purely for the purpose of preventing conception, with no medical indication for their employment, would still, at least theoretically, be caught by the statutes.<sup>47</sup>

THE LAW OF THE STATES      Twenty states and the District of Columbia have no legislation on the subject of contraception.<sup>48</sup> Seventeen states prohibit traffic in contraceptives but exempt doctors, pharmacists, or others operating under special license from the statutory prohibition. Five states, Connecticut, Kansas, Massachusetts, Mississippi, and Nebraska, prohibit the sale of contraceptives and advertising. The statutes make no exceptions.<sup>49</sup> Eight states have no law against contraceptives but restrict or prohibit their advertisement. In all, thirty states prohibit

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46. 18 U.S.C.A. 1462, the section dealing with inter-state transportation and import does not ban books on contraception as such, but only those "giving information directly or indirectly where or how they [contraceptives] may be obtained or made."

47. Such persons could import or transport contraceptive books, provided they did not violate the provision in n. 46 above, but presumably could not mail them except subject to the restrictions on mailing contraceptives.

48. For a table of laws in the various states, see pages 82, 83 of this Report.

49. These prohibitions, although absolute in form and theory, are not absolute in practice. See p. 25.

such advertising, fifteen making an exception for medical journals and textbooks, etc. Sixteen states regulate the trade by requiring contraceptive information to be accurate and prohibiting the sale of articles which do not comply with certain defined standards.<sup>50</sup> In some states sale of contraceptives from slot machines is forbidden.<sup>51</sup>

In New York, Connecticut, and Massachusetts considerable litigation has taken place to interpret the birth control statutes.

NEW YORK     New York law prohibits distribution of contraceptives and birth control information but contains the following proviso: "An article or instrument, used or applied by physicians lawfully practising, or by their direction or prescription, for the cure or prevention of disease is not an article of indecent or immoral nature or use, within this article. The supplying of such articles to such physicians or by their direction or prescription is not an offense under this article."<sup>52</sup> In 1917, Margaret Sanger was sentenced to thirty days' imprisonment for violating the statute. Her appeal was dismissed, but the judge gave a liberal interpretation to the section. It protected, said the court, the physician who "in good faith gives such help or advice to a married person to cure or prevent disease." "Disease" was not limited to venereal disease but defined as "an alteration in the state of the body, or some of its organs, interrupting or disturbing the performance of the vital functions, and causing or threatening pain and sickness; illness; sickness; disorder."<sup>53</sup>

CONNECTICUT     The Connecticut law forbidding birth control dates from 1879, when it was dealt with as part of the obscenity statute, but

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50. For example, Oregon, *Revised Statutes* (1957), sec. 435.090; Idaho, *Laws* (1948), sec. 39.806.

51. For example, Wisconsin, *Statutes* (1955), sec. 115.15.

52. New York, *Consolidated Laws* (1944), sec. 106.1145.

53. *People v. Sanger*, 222 N. Y. 192, 194-95, (1918), 118 N.E. 637 (1918). In *People v. Byrne*, 163 N.Y.S. 680 (1916), the statute had been held constitutional. "Nor is it to be doubted, in my opinion, that the legislature has the power to declare that articles should not be used to prevent conception by married women, except in cases where attending physicians believe that pregnancy would be dangerous to the health of the woman." (Judge Crosprey.)



since 1887 it has been a separate enactment. "Any person who shall use any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."<sup>54</sup> The statute is unique in that it prohibits not merely the sale but the use of a contraceptive. In 1940 two physicians and a nurse, indicted for counseling a married woman to use a contraceptive, contended that the statute was unconstitutional, unless it was interpreted to except the medical profession. The Supreme Court of Errors rejected this argument, which had been accepted by the lower court, and upheld the statute.<sup>55</sup> The court confined its decision to situations where the "general health" of the woman would be endangered by lack of contraception and left open the question whether an exception existed where "pregnancy would jeopardize life." This loophole was closed in 1942. In that year a doctor sought a ruling whether the statute would apply where pregnancy would entail specific dangers to health because of high blood pressure, tuberculosis, or three pregnancies within twenty-seven months. The court held (3-2) that it did apply, and that abstention in such predicaments must have been considered by the legislature as an alternative to the use of contraceptives, when passing the statute.<sup>56</sup> Various attempts have been made to modify the law, but all have failed.<sup>57</sup>

MASSACHUSETTS      Publication of any printed matter containing birth control information and distribution of instruments and articles for

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54. Connecticut, *Statutes* (1958), c. 53, sec. 32. Also c. 54, sec. 196: "Any person who shall assist, abet, counsel, cause, hire or command another to commit any offence may be prosecuted and punished as if he were the principal offender."

55. *State v. Nelson*, 126 Conn. 412; 11 A. (2d) 856 (1940). Decision taken 3-2.

56. *Tileston v. Ullman*, 129 Conn. 84; 26 A. (2d) 582 (1942). An appeal was taken to the Supreme Court and dismissed, the physician being held to lack standing to raise a constitutional issue. *Tileston v. Ullman*, 318 U.S. 44 (1943).

57. For example, 1923, 1925, 1927, 1929, 1935, 1954-57. The bills either repealed the law or inserted an exception for doctors when counselling married women for health reasons. Although sometimes passed in the House, all were defeated in the Senate.

preventing conception are prohibited by a statute dating from 1879.<sup>58</sup> The statute was upheld as constitutional and applied in 1917, when certain pamphlets containing birth control information were held to be obscene.<sup>59</sup> In 1938 the courts rejected a plea that physicians were exempt from the operation of the statute when prescribing for health reasons.<sup>60</sup> In 1940, however, it was held that the distribution of prophylactics, which could also be used for contraception, did not come within the statute, unless it could be proved that the distributor intended to prevent conception rather than venereal disease or knew that such unlawful use was intended by the buyer.<sup>61</sup> As in Connecticut, unsuccessful attempts have been made to modify the law. In 1930 a bill was introduced into the legislature to give licensed physicians the right to provide information to married couples, but it was later withdrawn. The following year a petition for change was signed by 7,000 laymen, 1,300 doctors, and 400 ministers of religion, but it failed to be implemented. An amendment to the same effect was defeated in the House of Representatives in 1941 by 133 votes to 77, and in the Senate by 18 to 16. Referendums in 1942 and 1948 also failed to alter the law.<sup>62</sup>

THE CONSTITUTIONAL QUESTION      It has been suggested that the federal and state statutes regulating birth control are unconstitutional, in that they deny the individual his personal right to pursuit of happiness

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58. Massachusetts, *Annotated Laws* (1956), c. 272, sec. 20-21. Whether information on the *safe period* would be construed as "contraceptive advice" is dubious. In 1934 the Customs allowed Mrs. Hazel Moore to import a book on rhythm but seized others on artificial contraception (Sulloway, p. 29).

59. *Cw. v. Allison*, 227 Mass. 57; 116 N.E. 265 (1917).

60. *Cw. v. Gardner*, 300 Mass. 372; 15 N.E. (2d) 222 (1938). An appeal to the U.S. Supreme Court was dismissed *per curiam* "for want of a substantial federal question." *Gardner v. Mass.*, 305 U.S. 559 (1938).

61. *Cw. v. Corbett*, 307 Mass. 7; 29 N.E. (2d) 151 (1940); *Cw. v. Werlinsky*, 307 Mass. 608; 29 N.E. (2d) 150 (1940).

62. Both referendums concerned an act "to allow physicians to provide medical contraceptive care to married persons for the protection of life or health." 1,179,023 votes were cast in 1942, the proposal being defeated by 683,059 votes to 495,964, with 247,697 blanks cast. In 1948, the proposal was defeated by 1,085,350 votes to 806,829, with 263,168 blanks.



and also take away the rights protected by the due process clause of the fourteenth amendment.<sup>63</sup> Physicians, when the laws are strictly interpreted, are also denied a fundamental right to advise patients on professional matters involving life and health. The courts have consistently taken an opposite view. The federal courts have upheld the federal statutes as constitutional, with an exemption for physicians and others professionally qualified.<sup>64</sup> Prohibition of the sale or advertising of contraceptives or the dissemination of information on birth control has consistently been held to be within the police power of individual states.<sup>65</sup> Until 1938 none of the cases had included a qualified physician as party to the proceedings, or else the statute under review contained a clause exempting physicians from its operation. In that year, however, in Gardner's case, a statute imposing an unconditional ban was upheld by the Massachusetts courts, and an appeal to the United States Supreme Court was dismissed. In June 1958 five suits were filed in the Connecticut Superior Court challenging the constitutionality of the birth control legislation. They are at present *sub judice*.<sup>66</sup>

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63. See Dudley D. Miles, "The Constitutionality of Anti-Birth Control Legislation," *Wyoming Law Journal*, VII (1952-53), 138-142. Also H. Kalven, "A Special Corner of Civil Liberties," *New York University Law Review*, XXXI (1956), 1223-29. "Despite the lack of judicial success to date it would seem that the freedom of sex relations within marriage and the freedom to have children when wanted rank high among the basic personal liberties in our society and their curtailment presents a serious civil liberties issue," pp. 1228-29.

64. See *olim*, pp. 16-19.

65. That the police power may be exercised to protect public morals, health, and safety is firmly established. See, e.g.: *Peterson v. Widule*, 157 Wis. 641; 147 N.W. 966 (1914) (physical examination required for issue of marriage license); *Zucht v. King*, 260 U.S. 174; 43 Sup. Ct. 24, 67 L ed. 194 (1922), (vaccination case). For cases on birth control see Byrne, Allison, Sanger, Nelson, Tileston, Corbett, discussed *olim*, pp. 20-22. See also *McDonnell v. Knoxville*, 110 S.W. (2d), 478 (Tenn., 1937); *State v. Arnold*, 217 Wis. 340; 258 N.W. 843 (1935); *Barretta v. Barretta*, 182 Misc. 852; 46 N.Y.S. (2d) 261 (1944); L. F., Jr., "Constitutional Law, Police Power, Birth Control and Contraceptives," *George Washington Law Review*, VII (December, 1938), 255-57.

66. In May, 1959, a county judge declared unconstitutional New Jersey's statute banning the sale and distribution of contraceptives "without just cause." He maintained that it was so vague and indefinite that it would not fairly inform a defendant "of the elements constituting a quasi-criminal infraction." See *The New York Times*, May 13, 1959, p. 27.

An attack on the birth control statutes may develop in the future on rather different grounds. While the police power may be exercised to protect public morals, it must be reasonable.<sup>67</sup> With the general acceptance of birth control as a normal part of married life, the statutes might be held unreasonable at some point in the future. The statutes could also be challenged for violating the separation of Church and State guaranteed by the first amendment. Recent theological developments have left the Roman Catholic Church practically isolated among Christian denominations in condemning artificial birth control. It could, then, be contended that the birth control statutes enforce the doctrine of a particular denomination at the expense of that of other religious communions. Alternatively, it might be argued that the statutes limited religious freedom.<sup>68</sup>

**EFFECTIVENESS OF LAWS** The effect in practice of the federal laws has already been described.<sup>69</sup> The effect of the state laws varies in different areas. In the seventeen states which exempt doctors and other qualified persons from the operation of the laws, their effect is negligible. Birth control clinics are free to operate, provided they are in charge of someone medically qualified, and contraceptives are freely purchasable at drugstores and elsewhere. In the five states that theoretically ban all sale of contraceptives, the law has practical effects only in Connecticut and Massachusetts.<sup>70</sup> There are no birth control clinics in

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67. See *Plessy v. Ferguson*, 163 U.S. 537; 16 Sup. Ct. 1138, 41 L ed. 256 (1896).

68. This point has now been raised in Connecticut. On May 4, 1959, three Protestant ministers, an Episcopalian, a Lutheran, and a Methodist, asked the Superior Court for a ruling on the Connecticut statute. The ministers claimed that the law prohibiting dissemination of birth control advice deprived them of their "liberty, freedom of speech, and right to freely practice their religions." They stated they were "bound by the teachings of the church and their own religious beliefs to counsel married parishioners on the use of contraceptive devices and to advise them and to counsel to use same and to give such advice in pre-marital counselling." *The New York Times*, May 6, 1959.

69. See *olim*, p. 18.

70. In Mississippi, despite the law, contraceptive advice is offered as part of the public maternal health services. In Nebraska, the law, while forbidding the trade, also regulates it by laying down minimum standards for prophylactics. See *Statutes* (1943), c. 71, sec. 1106.



Connecticut, although the Planned Parenthood League of Connecticut has an office in New Haven. A number of medically supervised clinics were opened in 1935, but in 1939 they were raided and after the decision of the Supreme Court in 1940 (*State v. Nelson*) all were closed and have not been re-opened since. Doctors are officially barred from prescribing birth control appliances for patients, but, as has been noted, "it is common knowledge that this statute is being violated daily, except perhaps by a few high-minded doctors."<sup>71</sup> Certain contraceptives may even be legitimately prescribed if they have other than contraceptive uses.<sup>72</sup> Contraceptives, creams, and jellies are sold everywhere, and condoms may be obtained at drugstores and even from slot machines. Supplies are sent to doctors and patients by mail, and literature on contraception is sold openly on bookstalls.<sup>73</sup>

Like Connecticut, Massachusetts has no birth control clinics. From 1932 to 1937 clinics were opened in various cities, but as a result of the Gardner case in 1938 they were closed and have not been re-opened. Thousands of doctors, in the privacy of their offices, fit and prescribe diaphragms.<sup>74</sup> Condoms may legally be sold when marked "for prevention of disease," and diaphragms are sold by drugstores using devious methods of prescription. Vaginal creams and jellies are also sold marked "for feminine hygiene." The Planned Parenthood League refers women to out-of-state clinics and is able to tell them orally of certain new and simple contraceptives. "I am not too concerned," concludes Judge Ploscowe, "about this failure of Massachusetts and Connecticut to permit the dissemination of contraceptive information. The corner

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71. *Boston University Law Review*, XXIII (1943), 117.

72. See letter from the Connecticut Commissioner for Food and Drugs to the Secretary of the Bridgeport Pharmaceutical Association, dated September 15, 1954: "Since diaphragms have such therapeutic and other uses there is no reason why vaginal diaphragms may not be prescribed or ordered by a physician and such order filled by a pharmacist. We have always taken the stand that a pharmacist is entirely within his rights to fill any prescription or order from a physician. Such order may be given orally or in writing."

73. The prohibition of the "use" of contraceptives has, of course, never been enforceable.

74. Letter of October 29, 1958, from the Executive Secretary of the Planned Parenthood League of Massachusetts to Norman St. John-Stevas.



drugstore is always available for the purchase of prophylactic devices which are used mainly for contraceptive purposes. If more is desired, then the doctors in neighboring states are available for consultation.”<sup>75</sup> This judgment is not shared by the Planned Parenthood Leagues, which point out that, whereas women who can afford a private consultation with a doctor may obtain contraceptive care, poorer women cannot; that the law makes the less efficient types of contraceptive available but outlaws the more effective; and that the poor who depend on public clinics for medical advice are kept ignorant of the subject, many of them being unaware that contraceptives can be obtained at drugstores, provided they are purchased as prophylactics.

## Extent of Contraception in England and the United States

Birth control is widely practised in England amongst all classes. In June 1956 the Family Planning Association had 181 branches, operating 215 clinics, all offering advice on contraceptive techniques. In the previous year, 250,000 people had visited the clinics. The Royal Commission on Population estimated that whereas only 15 per cent of couples married before 1910 used birth control, for those married between 1940 and 1947 the proportion had risen to 55 per cent. The Commission estimated that in this group the proportion would ulti-

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75. Morris Ploscowe, "Contraception," "Symposium on Morals, Medicine and the Law," *New York University Law Review*, XXXI (1956), 1241. Cf. the conclusion of the Am. Med. Assoc.: "The committee has been unable to find evidence that existing laws, federal or state, have interfered with any medical advice which a physician has been called on to furnish his patients. Clarification of such laws, however, is desirable." "Report of the Committee to Study Contraceptive Practices and Related Problems, appointed by the Board of Trustees of the American Medical Association," *Journal of the A.M.A.*, CVIII (1937), 2217. This judgment might now be revised.

mately exceed 70 per cent.<sup>76</sup> The result has been a heavy fall in the number of births. In the period 1931-41 there were 3,000,000 fewer births than in that from 1871-1881, the marriage rate remaining stable. The Commission found no evidence of a decline in reproductive capacity and attributed the change to "the spread of deliberate family limitation."<sup>77</sup>

In the United States birth control is equally widespread.<sup>78</sup> Planned Parenthood Centers are found in twenty-eight states and the District of Columbia; throughout the country, save in Connecticut and Massachusetts, medical birth control care is provided by 594 maternal health clinics and other child-spacing information centers. In 1942, 60 per cent of the approved medical colleges provided some instruction in contraceptive techniques.<sup>79</sup> The American Medical Association has recommended that medical students should be "taught the clinical considerations and therapeutic application of contraceptive methods."<sup>80</sup> In 1955 a national survey on family planning was carried out by a group of social scientists.<sup>81</sup> They interviewed 2,713 white wives, all in their childbearing years (18-39), as a sample of the 17,000,000 women of this group in the United States. Asked whether they approved of family limitation in any form, including the safe period, only 5 per cent

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76. *Papers of Royal Commission on Population*, Vol. I, "Family Limitation and its Influence on Human Fertility During the Past Fifty Years," pp. 7-8.

77. Pars. 617 and 619. *Report of the Royal Commission on Population*, Cmd. 7695 (London, 1959).

78. Dr. Rock estimates that 90 per cent of the married population in the United States uses some method of birth control, including the safe period and *coitus interruptus*. John Rock, "The Scientific Case against Rigid Legal Restrictions on Medical Birth Control Advice," *Clinics*, I (April, 1943), 1598.

79. A. Stone, "The Teaching of Contraception in Medical Schools," *Human Fertility*, VII (August, 1942), 108.

80. See Report of Committee, *Journal of the American Medical Association*, CVIII (1937), 2217.

81. Conducted by the Scripps Foundation and Survey Research Center of the University of Michigan. Results published in *Family Planning, Sterility and Population Growth* (New York, 1959), and also in an article by Ronald F. Freedman, Pascal K. Whelpton, and Arthur A. Campbell, "Family Planning in the United States," *Scientific American*, 200 (April, 1959), 50.

gave a negative answer. Seventy-three per cent of those questioned approved family planning, whatever the method employed. Eighty-three per cent of the fecund couples interviewed had adopted some means of birth control, and 7 per cent planned to do so after they had had the one or more children they wanted. The general consensus on the ideal size of family was not less than two children and not more than four. In seven states birth control services are made available through state or county maternal health clinics.<sup>82</sup> North Carolina was the first state to take this step in 1937. South Carolina followed suit in 1939, and Alabama in 1940.

## Christian Opinion – Other Than Roman Catholic

Outside the Roman Catholic Church, Christian opinion on contraception has undergone a profound change. Until the end of the nineteenth century contraception was condemned by all Christian denominations

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82. North Carolina, South Carolina, Alabama, Florida, Georgia, Mississippi, and Virginia. All are Southern states where the Roman Catholic population is small and uninfluential. Moya Woodside has described the position in North Carolina: "For a decade now, the material conditions for achievement of a neo-Malthusian utopia have existed in North Carolina. Incorporated as part of the public health service, contraceptive advice and supplies are provided free of charge at almost all the city and county health departments throughout the State, and public health nurses are encouraged to inform their patients about the advantage of planned pregnancy. Yet (as we shall show in the next chapter) the program fails to reach many women of normal intelligence or seriously to affect their reproductive behavior, and has had practically no success with women of borderline or subnormal mentality. Workers in the contraceptive service are unanimous about the difficulty of persuading such persons to attend clinics, of instructing them in procedures, and ensuring that advice is carried out. There is further difficulty in that many are bad contraceptive risks, due to neglected gynecological conditions following frequent childbearing, and no method available is likely to guarantee adequate protection." *Sterilization in North Carolina* (Chapel Hill, 1959), p. 105.



as immoral or unnatural and contrary to divine law. Today the Roman Catholic and Orthodox Churches are practically alone in adhering to this position. By "contraception" is meant artificial methods of birth control, since the Catholic Church is in agreement with other churches that families should be planned but limits the methods employed to abstention or use of the safe period. "To produce children without regard to consequences," states an authoritative Anglican Committee, "is to use procreative power irresponsibly, the more so when there is involved the imposition of one partner's will upon the other."<sup>83</sup> Similar judgments have been passed by Protestant leaders. Thus, Dr. Gustafson, President of the New York Conference of the Augustana Lutheran Church, recently declared: "An unrestrained production of children without realistic regard to God-given responsibilities involved in bringing them up in the discipline and instruction of the Lord may be as sinful and as selfish an indulgence of the lusts of the flesh as is the complete avoidance of parenthood."<sup>84</sup>

The changes in the Church of England attitude to contraception are interesting to trace. The first Anglican position was a clear-cut condemnation of contraception as a threat to both church and state. The Lambeth Conference of 1920 issued a solemn warning against "the use of unnatural means for the avoidance of conception" and stressed that the primary purpose of marriage was the procreation of children.<sup>85</sup>

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83. *The Family in Contemporary Society* (London, 1958), p. 15.

84. *The New York Times*, July 25, 1958.

85. The first Lambeth Conference met in 1867. Its resolutions are not theologically binding but are taken to express the mind of the Anglican Church. The 1908 Conference, like its successor of 1920, condemned contraception. The resolution of 1920, No. 68, read: "The Conference, while declining to lay down rules which will meet the needs of every abnormal case, regards with grave concern the spread in modern society of theories and practices hostile to the family. We utter an emphatic warning against the use of unnatural means for the avoidance of conception, together with the grave dangers — physical, moral, and religious — thereby incurred, and against the evils which the extension of such use threatens the race. In opposition to the teaching which, under the name of science and religion, encourages married people in the deliberate cultivation of sexual union as an end in itself, we steadfastly uphold what must always be regarded as the governing considerations of

This judgment was echoed by the House of Bishops of the Protestant Episcopal Church, meeting at Portland, Oregon, on September 15, 1922.<sup>86</sup> The Lambeth Conference of 1930 again declared that the primary purpose of marriage was the procreation of children but conceded that in certain limited circumstances contraception might be morally legitimate.<sup>87</sup> In a resolution, passed by 193 votes to 67, the Conference declared: "Where there is a clearly felt moral obligation to limit or avoid parenthood, the method must be decided on Christian principles. The primary and obvious method is complete abstinence from intercourse (as far as may be necessary) in a life of discipline and self-control lived in the power of the Holy Spirit. Nevertheless, in those cases where there is such a clearly-felt moral obligation to limit or avoid parenthood, and where there is a morally sound reason for avoiding complete abstinence, the Conference agrees that other methods may be used, provided that this is done in the light of the same Christian principles. The Conference records its strong condemnation of the use of any methods of conception-control from motives of selfishness, luxury, or mere convenience."<sup>88</sup> In 1958 the Lambeth Conference gave

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85. (*continued*) Christian marriage. One is the primary purpose for which marriage exists, namely the continuance of the race through the gift and heritage of children; the other is the paramount importance in married life of deliberate and thoughtful self-control." Resolution 70 called for a campaign against the open or secret sale of contraceptives. See *The Lambeth Conferences 1867-1930* (London, 1948).

86. See Margaret Sanger, *My Fight for Birth Control* (New York, 1931), p. 202.

87. Resolution 13, on the purpose of marriage; Resolution 15, on contraception. *The Lambeth Conferences 1867-1930*.

88. In the Report accompanying the resolutions, "The Life and Witness of the Christian Community," it is pointed out that contraception is not condemned in the New Testament, nor by any Ecumenical Council of the Church. The Protestant Episcopal Church again followed the lead of Lambeth. On October 9, 1934, the Bishops passed a resolution by 44-38 approving "the efforts now being made to secure for licensed physicians, hospitals and medical clinics, freedom to convey such information [on birth control] as is in accord with the highest principles of eugenics and a more wholesome family life wherein parenthood may be undertaken with due respect for the health of the mother and the welfare of the child." See *Journal of Social Psychology*, VIII (May, 1936), 229.



unanimous approval to contraception, passing a resolution in the following terms: "The Conference believes that the responsibility for deciding upon the number and frequency of children has been laid by God upon the consciences of parents everywhere: that this planning, in such ways as are mutually acceptable to husband and wife in Christian conscience, is a right and important factor in Christian family life and should be the result of positive choice before God. Such responsible parenthood, built on obedience to all the duties of marriage, requires a wise stewardship of the resources and abilities of the family as well as a thoughtful consideration of the varying population needs and problems of society and the claims of future generations."<sup>89</sup>

The change in attitude from 1920 to 1958 was brought about partly by social changes. In 1920 there was widespread fear of underpopulation, while in 1958 prospects of overpopulation aroused anxiety, especially in India, Africa, and the West Indies, all strongly represented at the Conference. A second factor influencing the decision was the modern development of knowledge of the safe period, showing that nature provided her own method of birth control. Most important was the theological development of the doctrine of Christian marriage which had taken place since 1920. The Conference of that year had been unequivocal in stressing procreation as the primary purpose of marriage, and this had been repeated in 1930. The 1958 Conference, on the other hand, did not stress the reproductive end of marriage in this way. Biblical revelation, it was agreed, did not limit the function of sexuality and the family to the reproductive process but stressed equally the companionate purpose of marriage. These two ends are not separable in importance, "are not subordinated one to the other; they are not

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89. *The Lambeth Conference 1958* (London, 1958), Resolution 115. Cf. the Report on "Responsible Parenthood and the Population Problem," the conclusions of a study group appointed by the World Council of Churches which met at Mansfield College, Oxford, April 12-15, 1959. The twenty-one members were drawn from the main confessions represented on the World Council. With the exception of the Orthodox members they reached similar conclusions to the Lambeth Conference on the use of contraceptives. *The Ecumenical Review*, XII (October, 1958), 85-92.



directly related to one another; their relationship, in the developing experience of Israel, is to be found in yet a third area — that of the place of the family in giving responsible security to the children born of the love of husband and wife.”<sup>90</sup> Procreation of children and promotion of the mutual love of the spouses are thus accepted as co-equal ends.

A parallel development in Anglican theology has been the increasing stress on *henosis*, the union of man and wife in one flesh that takes place within the marriage relationship.<sup>91</sup> Christ himself stressed this aspect of marriage, and St. Paul developed the doctrine.<sup>92</sup> The act of *coitus*, far from being a merely physiological device to perpetuate the race, has a quasi-sacramental character of the highest importance in developing the personal and spiritual life of the married couple. Traditional theology is inadequate in stressing the procreative purpose of marriage and underestimating the intrinsic importance of the sexual act. Some writers have gone so far as to suggest that it is *henosis* that is primary in marriage and not procreation. Thus Canon Warner writes: “The unitive achievement of sexual intercourse precedes procreation and is primary in time sequence as well as in its inner constitutive nature as *object*.”<sup>93</sup> He adds that the traditional doctrine is right in the sense that procreation must not be totally excluded from marriage, but it is not the primary end of every act of *coitus*, nor is it its object.<sup>94</sup>

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90. *The Lambeth Conference 1958*, II, 143.

91. See, for example, D. S. Bailey, *The Mystery of Love and Marriage* (London, 1952).

92. Matt. 19:6. St. Paul. Ephesians 5:23-33.

93. “Theological Issues of Contraception,” *Theology*, LVII (January, 1954), 8-14 at p. 11. Canon Warner means by *object*, “that at which the action aims and in which it naturally results, and with the attainment of which it is completed.” R. C. Mortimer, *Elements of Moral Theology*, p. 63. Procreation is thus the possible result of *coitus* but not its object. “We are left, then, with the act of *coitus*, which, in its natural functioning, has one ‘object’ in uniting (or deepening the union of) man and woman, and an *occasional* end (among others) of fertilising the ovum.”

94. The reason for this is that the act of procreation is necessarily associated with the act of union in the natural order. The writer seeks to save himself from inconsistency by invoking the natural order at this point by stressing that the use of contraceptives must not be judged in relation to isolated acts of intercourse, but in the context of actual or prospective family life.

Given that the ends of marriage are co-equal, may the parties separate them at will or are they restricted for separation to the periods of natural infertility? Anglican theologians have given different answers to the question, but the consensus appears to be that at least in certain circumstances the use of contraceptives is legitimate. Contraception may be a positive good. It extends man's rational control over his own nature, the children born are desired and welcomed, and sexual intercourse can be regulated according to the needs of a personal relationship and not controlled by decisions about the desirability of conception. But may the couple manipulate natural processes at their own will? If one regards the biological pattern as something "given," which a couple are required by God to submit themselves to in order to receive the blessing of matrimonial union, the answer will be negative. Man may use his reason to fulfill the biological pattern more completely but not to supersede it. *Coitus* accompanied by the use of a contraceptive is ontologically and morally distinct from *coitus* without such a device. If on the other hand one regards *coitus* as a purely spatio-temporal event without metaphysical implications, then contraceptives may be freely employed.

With these considerations in mind, the anonymous author of the first of three articles on contraception in the authoritative Anglican publication, *The Family in Contemporary Society*, concludes that the Church should not give its approval to contraception as a positive good. "It is, to say the least," he observes, "suspicious that the age in which contraception has won its way is not one which has been conspicuously successful in managing its sexual life. Is it possible that, by claiming the right to manipulate his physical processes in this matter, man may, without knowing or intending it, be stepping over the boundary between the world of Christian marriage and what one may call the world of Aphrodite — the world of sterile eroticism against which the Church reacted so strongly (perhaps too strongly) in its early days? For one of the characteristics of the latter world was (and is) the exercise of unlimited self determination in sexual activity."<sup>95</sup> Despite this con-

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95. (London, S.P.C.K., 1958), p. 135. The first contribution is found at pp. 132-37.



demnation in general, the writer points out that it is possible to conclude that contraceptives may be used in particular circumstances, for although the act will be ontologically distinct, it may be morally equivalent, as the best symbol of love and union available in the circumstances. The justifying circumstances are not specified.

The second contributor concludes that contraception may be used legitimately as a normal part of married life.<sup>96</sup> It represents a responsible use of human freedom in the interests of personal relationship or the needs of the community as a whole. The conclusion is identical with that in Canon Warner's article, where he writes: "In general it is morally legitimate to use a material agent in order to forward the well-being of man in his personal relations in society; e.g., wearing glasses or deaf aid. If on moral grounds the unitive object of an act of *coitus* must be achieved without involving the procreative end, then there is nothing in principle wrong in using a material agent, for the agent is forwarding the personal relational factor essential for marriage, and good marriages are essential for society and the welfare of children."<sup>97</sup> Both these latter theologians reject the view that the spiritual effects of *coitus* are dependent on its conforming to certain empirical physiological features. But what then is the criterion by which the morality of physical sexual acts between man and woman is to be judged? The conclusion is ineluctable that there is no objective criterion, but that the rightness or wrongness of using contraceptives will depend on the integrity of the parties' assessment of the circumstances and the purity of their motives. How, then, one may legitimately ask, is one to distinguish between use of a contraceptive and other sexual actions, such as sodomy, which have

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96. pp. 137-47.

97. *Theology*, LVII, 12. Canon Warner concludes that complete abstention is morally wrong, as is the exclusive use of the safe period. *Coitus interruptus* and *reservatus* are neither procreative nor unitive in the full sense and must therefore be condemned. The use of a condom is illegitimate as it impairs "unitive orgasm." Diaphragms and suppositories are legitimate. On oral contraceptives he writes: "We have here an interference with the actual function of an organ [the ovary] by which the biological processes are prevented from achieving their 'object,'" at p. 14. Their use is not justified if a contraceptive is available which does not radically inhibit a physiological function.



a relational value but which are condemned by Christian moralists. Perhaps it might be answered that whereas the use of a contraceptive preserves the physical structure of the act, a perversion such as sodomy destroys it altogether, but this is not wholly convincing. At any rate, neither of the writers disposes of the difficulty.

The theologians whose views have just been described criticise the terms of traditional moral theology and question their applicability at the present time, but they adopt them in modified form for their own use. They are writing within the Catholic tradition. Other contemporary theologians have considered the problem from the Protestant viewpoint. Reinhold Niebuhr has not dealt with the subject at great length, but he indicated his views briefly in the course of the first series of Gifford lectures for 1939.<sup>98</sup> "The prohibition of birth control," he said, "assumes that the sexual function in human life must be limited to its function in nature, that of procreation. But it is the very character of human life that all animal functions are touched by freedom and released into more complex relationships. This freedom is the basis of both creativity and sin." In place of the Catholic idea of the law of nature, he suggests the substitution of the Lutheran notion of the "order of creation," giving as an example natural bisexuality. "It is not possible to escape the natural fact that the primary purpose of bisexuality in nature is that of procreation. But it is not easy to establish a universally valid 'law of reason' which will eternally set the bounds for the function of sex in the historic development of human personality." Dr. Niebuhr, while drawing no immediate concrete conclusions, is here asserting the transcendence of the personal and rational over the purely biological, while taking the latter into account. It would thus seem that given certain circumstances man may morally use contraceptives in sexual intercourse.<sup>99</sup> What those circumstances are must be left to

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98. *The Nature and Destiny of Man* (New York, 1949), vol. I, 281-82.

99. Cf. Joseph Fletcher: "With the medical technology of contraception, parenthood and birth control become matters of moral responsibility, of intelligent choice. We are able to control our fertility. No longer do we have to choose between reproduction and continence. Sex is no longer a helpless submission to biological consequences. Nor is the only alternative a denial of sexual love,

the Christian insight of the individual, an approach commended in the third of the articles appearing in the Anglican publication already referred to.<sup>100</sup>

This approach is at first sight identical with that of utilitarians and libertarians who assert that conception of children should be the full voluntary choice of the parents.<sup>101</sup> The difference lies in the motivation determining the choice, for utilitarians would lay no claim to Christian insight. Karl Barth is another contemporary theologian who has discussed contraception at rather greater length.<sup>102</sup> Having conceded that family planning is generally accepted by theologians as desirable, he goes on to discuss the legitimacy of the means that may be employed. Abstinence he characterises as an "heroic" course, which is not wrong in itself but may be psychologically dangerous. The safe period might seem the ideal expedient, but the anxiety caused by its unreliability, as well as its check on the spontaneous nature of sexual expression, are grave objections to its use. *Coitus interruptus* is fraught with psychological dangers and its practise may well imperil marital union. There remains the last alternative of contraception, the use of mechanical

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99. (*continued*) either *in toto* or according to lunar calculations in a sophisticated and doubtful rhythm mathematics. When such calculations enter in, the spontaneity of love goes out. Rhythm is a denial of freedom; it offers only an alternation of necessities, not a method of true control." *Morals and Medicine* (Princeton, 1954), p. 96. Also, Paul Ramsey, "Freedom and Responsibility in Medical and Sex Ethics: A Protestant View," *New York University Law Review*, XXXI (1956), 1194.

100. *The Family in Contemporary Society*, pp. 149-54. Cf. the second article: "The fact that man in his freedom stands above nature and is therefore at liberty to interpret sex in terms of personality and relation and to use it for personal and relational ends, leads to the conclusion that contraception is morally right in certain circumstances." (p. 145)

101. See Horace M. Kallen: "I similarly appraise the right of men and women to full knowledge of all that the sciences of nature and man have established regarding sex and reproduction, and to decide for themselves upon the number of children they want and the intervals at which they want them." "An Ethic of Freedom: A Philosopher's View," *NYULR*, XXXI (November, 1956) 1167. Cf. Glanville Williams, "The Control of Conception," in *The Sanctity of Life and the Criminal Law* (New York, 1957), pp. 34-74.

102. *Die Kirchliche Dogmatik*, III, 300-11.



devices which are not evil in themselves. If, says Dr. Barth, human interference with the natural act of *coitus* is regarded as wrong in itself, then all four methods must be rejected without distinction. If, on the other hand, family limitation is recognised as desirable, then it should be recognised that all the methods are open to some objection, and this is the price to be paid for an extension of freedom. In making the choice between the various methods certain considerations apply. The choice must be made in faith and with a free conscience, and it must be a joint decision of husband and wife taking into account the significance of their joint life together and the whole purpose of the matrimonial union. These Protestant approaches are similar in that they offer no binding principle which can be universally applied but rather state that in certain circumstances the informed Christian conscience can conclude that contraception is lawful without the incurring of sin.

Official acceptance of birth control by Protestant churches has kept pace with theological developments. In March 1931 the Federal Council of Churches of Christ in America approved of artificial methods of birth control by a vote of 24-4.<sup>103</sup> Since then numerous other Protestant churches and sects have followed suit.<sup>104</sup> In 1954 the Synod of the

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103. See Margaret Sanger, *My Fight for Birth Control*, p. 344.

104. These include the Connecticut Council of Churches; the American Unitarian Association; the General Council of Congregational and Christian Churches; the Protestant Episcopal Church (House of Bishops and House of Deputies); the Quakers. Baptists, Disciples, and Jehovah's Witnesses leave the matter to be decided by the individual. For various statements of Christian views see *The Churches Speak Up on Birth Control*, published by the Planned Parenthood Federation of America, New York. The pamphlet quotes a statement of the Federal Council of Churches: "The public has a right to expect guidance from the church on the moral aspects of birth control. As to the necessity for some form of effective control of the size of the family and spacing of children, and consequently of control of conception, there can be no question. It is recognized by all churches and physicians. There is general agreement that sex union between husbands and wives as an expression of mutual affection without relation to procreation is right. This is recognized by the Scriptures, by all branches of the Christian church, by social and medical science, and by the good sense and idealism of mankind." The General Assembly of the Church of Scotland has been advised by its Committee on Temperance and Morals to approve the practice of contraception provided it is not resorted to for selfish motives. See *The Times* (London), May 5, 1960.



Augustana Lutheran Church, at its meeting in Los Angeles, endorsed birth control.<sup>105</sup> The Methodist Church took unanimous similar action at its General Conference in 1956.<sup>106</sup> In England, Methodists have expressed similar views.<sup>107</sup> Typical of numerous Protestant statements is the following by the Reverend James L. Novarro: "We Baptists definitely consider fertility and conception as providential and a power given to man to be properly utilised. Fertility and conception should not be left up to accident, but should be well planned, thereby contributing to the moral, spiritual, and physical health of all concerned."<sup>108</sup> Baptists, however, like many Protestant sects, have not officially supported birth control but leave it to the consciences of individual members of their congregation to decide for themselves. It seems beyond question that the overwhelming weight of Protestant opinion favours artificial birth control at least to some degree.

Judaism has no agreed opinion on birth control. The Central Conference of American Rabbis, as well as individual Jews, have supported contraception, but Orthodox Judaism has taken a different stand. The Rabbinical Alliance has stated: "Orthodox Judaism does not condone any artificial birth control measures by the male spouse, under any circumstances. Only in cases where the health of the female is jeopardised are certain birth control measures allowed and then only through direct consultation between the medical and rabbinic authorities."<sup>109</sup>

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105. But not all Lutherans accept this; the Missouri Synod of the Lutheran Churches, for example, has condemned it as sinful.

106. *The New York Times*, May 4, 1956. See October 17, 1956, for acceptance by United Lutheran Church Convention.

107. See welcome of Norman H. Snaith, President of Methodist Conference, to the Lambeth Report. *The Times* (London), August 27, 1958.

108. See *Simple Methods of Contraception* (New York, 1958), p. 43.

109. See *Planned Parenthood News*, No. 22 (Fall, 1958), 4. See also Rabbi Emanuel Rackman, "Morality in Medico-Legal Problems: A Jewish View," *NYULR*, XXXI (November, 1956), 1207.

## Anglican and Protestant Opinion and the Law

Although Protestant opinion was responsible for the passing of the Comstock law and its state derivatives, the profound changes which have taken place in its assessment of birth control now render it hostile to such legislation. Those who accept contraception as a positive good could hardly favour its theoretical outlawing. The same is true of those who favour its use in exceptional circumstances only, and those who leave the whole matter to be decided by the individual conscience. To legislate on the matter would be to substitute the collective moral assessment of the community for that of the individual. In Connecticut and Massachusetts the Protestant churches have taken a leading part in seeking to repeal or amend the legislation passed by their predecessors. This zeal may not have been totally disinterested, since the laws in question are now by an historical paradox enthusiastically supported by the Roman Catholic community, and the movement for repeal is certainly influenced by dislike of Catholic power, as well as by a less reasonable anti-Catholicism. Protestants and others might well be satisfied by the lifting of the ban on contraceptive advice given for medical reasons, and although this limitation has become illogical with the theological acceptance of contraception as part of married life, it might well be acceptable, since in practice it means that married couples who wish to obtain contraceptives may do so. In England, of recent years, the Anglican Church has made no effort to secure legal restriction on the distribution of contraceptives, save for an intervention to ban the sale of such articles by slot machines.

Protestant opinion would not, however, favour the complete withdrawal of the law from this field. Rather, it would limit its role to preserving public order and public decency. It would be generally agreed that advertisement of contraception should be restricted, both for aesthetic reasons and as a means of keeping contraceptives from the un-



married and from the teenager. The same motivation would restrict sales from slot machines and might well favour a ban on the sale to unmarried persons under a certain age. The argument that unrestricted sale would lead to an increase in promiscuity is a powerful one and appeals to many who do not object to the use of contraceptives by married couples. The difficulty is that such laws are difficult to enforce, although they are not totally ineffective, as is illustrated by the restrictions imposed on sale of liquor to minors. The law could also be usefully employed in setting minimum standards to which manufacturers and distributors of contraceptives should adhere.

## Contraception and the Roman Catholic Church

The Catholic Church has always condemned contraception, and, despite the changed attitude of other churches, maintains its traditional position.<sup>110</sup> The Church Fathers, and later St. Thomas Aquinas, held contraception to be sinful and contrary to scriptural teaching.<sup>111</sup> Thus St. Augustine declares that "intercourse even with one's legitimate wife is unlawful and wicked where the conception of the offspring is prevented. Onan, the son of Juda, did this and the Lord killed him for it."<sup>112</sup> This interpretation of the sin of Onan is not universally accepted. Some scholars have maintained that Onan was punished not so much for indulging in *coitus interruptus* as for breaking the levirate law which required a man to raise children to his brother's widow, so that

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110. See the various condemnations of the Holy Office, *viz.*: May 20, 1851; April 19, 1853; March 26, 1897; November 23, 1922.

111. St. Augustine, *De nupt. et con.* i, 15; Lombard, *Sent.* iv, d. 31; St. Thomas, *Summa Theol.* II-II. 154:1. St. Paul, in a passage possibly referring to contraception, denounces women who "exchanged natural for unnatural intercourse," Rom. 1:26.

112. *De adulterinis conjugiiis* II. xii.

she should not be left without a child and the tribe would continue. The punishment for breach of the levirate marriage law, however, is laid down elsewhere in the Old Testament.<sup>113</sup> Apart from the Onan text, the Old Testament also contains the general injunction to “increase and multiply,” but this passage is also open to varying interpretations.<sup>114</sup> It has also been suggested that the slaying of Sarah’s seven husbands by the devil was a punishment for their employment of contraception, but this seems unlikely, since the angel, when overcoming the reasonable reluctance of Tobias to marrying her, and so risking the same fate, refers to her as a virgin.<sup>115</sup>

Scriptural texts apart, the Church has based its condemnation of contraception on the natural law. The nub of the Catholic position is contained in canon law where it is stated that the primary end of marriage is the procreation and education of children.<sup>116</sup> Pius XI, in his encyclical on Christian Marriage, stressed the “unnatural” character of contraception: “since therefore the conjugal act is destined primarily by nature for the begetting of children, those who in exercising it deliberately frustrate its natural effect and purpose, sin against nature and commit a deed which is shameful and intrinsically vicious.”<sup>117</sup> The Pope thus re-stated the traditional teaching of the Church, basing his pronouncement on the doctrine elaborated by St. Thomas Aquinas.<sup>118</sup>

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113. Deut. 25:7-10: “The woman shall come to him before the ancients, and shall take off his shoe from his foot, and spit in his face, and say: ‘So shall it be done to the man that will not build up his brother’s house’: and his name shall be called in Israel, the house of the unshod.”

114. Gen. 1:28; repeated to Noe, Gen. 9:1.

115. Tob. 3:8; 6:22. The reason given for the death of the husbands is that they were among those “who in such manner receive matrimony, as to shut out God from themselves, and from their mind, and to give themselves to their lust, as the horse and mule, which have not understanding, over them the devil hath power.” (6:17). For a discussion of the text see Michael J. Gruenthaner, *Catholic Biblical Quarterly*, VIII (1946), 98, who concludes that the text does not refer to contraception.

116. Canon 1013.1.

117. *Casti connubii* (New York, 1931), p. 26.

118. See *Summa Theol.* II-II. 154. 1.



The Catholic natural law tradition accepts as self evident that the primary purpose of sexual intercourse is procreation and relegates as secondary such ends as fostering the mutual love of the spouses and allaying concupiscence. This conclusion is based on two propositions, that man by the use of his reason can discover God's purpose in the Universe, and that God makes known his purpose by certain "given" physical arrangements. Thus, man can deduce that the purpose of sexual activity is procreation – the continuation of the human race – and the physical arrangements God has provided may not be supplanted at man's will. We now know that not every act of *coitus* is conceptual, and Catholic theology recognises that some *coital* acts are conceptual and relational, others relational only. But to recognise this fact is not to conclude that acts may be rendered conceptual or non-conceptual at man's will. Man is free to act only within the pattern imposed by nature.

It is frequently objected that this argument from "nature" is inconclusive, since in other matters nature is not allowed to run its course. Beards are shaved, fingernails are cut, rivers dammed. Catholics do not suggest that such activities are immoral. Why, therefore, should they in the single case of sexual relations equate unnatural with immoral? To this objection Catholics answer that there is no purpose perceived by reason in allowing hair or nails to grow to inordinate length or rivers to flow always in the same channels. The chief purpose of sexuality, on the other hand, is undeniably reproduction. Some Catholic writers, however, have accepted this objection to the condemnation of contraception, pointing out that the argument is not universally applicable.<sup>119</sup> They still condemn contraception as contrary to natural law, but on the grounds of its eventual harmful effects on the race rather than on its perversion of a faculty. However beneficial a contraceptive act may

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119. See W. Breen, "Neo-Malthusianism: A Critique of Its Critics," *Irish Ecclesiastical Record* (November, 1931), 467. E. J. Mahoney, "'The Perverted Faculty' Argument Against Birth Prevention," *Ecclesiastical Review*, LXXIX (1928), 133-145. Cf. *Ecclesiastical Review*, LXXIX (August, 1928), 408 and LXXIX (November, 1928), 527. One example might be "chewing gum," which employs the natural faculties of the salivary glands and frustrates their purpose yet is not considered immoral.

be in the individual case, it must be condemned, for if raised to a general line of conduct evil results would inevitably follow.

The somewhat stark Augustinian-Thomist approach to marriage, with its emphasis on its social and procreative purpose and virtual disregard of the personal factors of friendship and love between the partners, has been challenged by a number of Catholic writers and rejected as inadequate.<sup>120</sup> They would like to see stress laid on the personal aspects of marriage, its role in increasing mutual love and perfecting the personalities of the spouses. To further this aim the traditional terminology of "primary" and "secondary" ends should be abandoned. Dr. Herbert Doms, in his book entitled *The Meaning of Marriage*, denies that the constitution of marriage consists in a subservience to a purpose outside the spouses themselves, for which they marry. "It consists in the constant vital ordination of husband and wife to each other until they become one. If this is so, there can no longer be sufficient reason, from this standpoint, for speaking of procreation as the primary purpose (in the sense in which St. Thomas used the phrase) and for dividing off the other purposes as secondary."<sup>121</sup> The meaning of marriage is the community of life between the spouses, of which the child is the fruit and visible embodiment. This approach, claim its supporters, does not diminish the importance of the child in marriage but stresses it in a different way. It is peculiarly apposite at a time when many seek to explain man in purely physiological terms, and it brings theology up to date by taking into account a whole range of biological and psychological data of which scholastic theologians were unaware. It is helpful in disposing of the problems raised by sterile unions, virgin marriage, and the practice of periodic continence.

Pius XI seems to have foreshadowed this view to some extent in his encyclical on marriage. "This mutual, interior moulding of husband

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120. See Dietrich von Hilderbrand, *Die Metaphysik der Gemeinschaft* (Munich, 1930); Herbert Doms, *Sinn und Zweck der Ehe* (Breslau, 1935); Bernardine Krempel, *Die Zweckfrage der Ehe in Neuer Beleuchtung* (Zurich, 1941); Benoit Lavaud, "Sens et fin du mariage: La thèse de Doms et sa critique," *Revue Thomiste*, XLIV (1938), 737.

121. *The Meaning of Marriage* (New York, 1939), p. 87.



and wife,” wrote the Pope, “this determined effort to perfect one another, can in a very real sense, as the Roman Catechism teaches, be said to be the chief reason and purpose of matrimony, provided matrimony be looked at not in the restricted sense as instituted for the proper conception and education of children, but more widely as a blending of life as a whole, and the mutual interchange and sharing thereof.”<sup>122</sup> While retaining the traditional doctrine of the ends of marriage, the Pope is taking into account the motives of the parties, which in most cases will be based on mutual love rather than on a desire to have children. Dr. Doms and his followers have had a profound influence on contemporary Catholic writing on marriage and have concentrated the attention of religious writers on the hitherto neglected “secondary” ends of marriage, of the complexity of which theologians are now much more aware. They have not, however, secured the abandonment of the traditional terminology. Had they done so, the way might possibly have been opened for the acceptance by the Catholic Church of contraception in certain limited circumstances, and it was perhaps this fear which led to an ecclesiastical censure for Dr. Doms’ book, and a categorical reassertion of the primary and secondary ends of marriage in a Vatican decree of 1944.<sup>123</sup> Dr. Doms’ views do not, however, lead inevitably to this result. Even if relational and conceptual ends of marriage are placed on an equal basis, the condemnation of contraceptives is not excluded, for *coitus* can still be treated as a given act, the intrinsic nature of which is the giving and receiving of seed. Unless it is this, then neither its conceptual nor relational ends are achieved, and it becomes an onanistic act of self-love, ontologically distinct from true *coitus*.<sup>124</sup>

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122. *Casti connubii*.

123. The following question was addressed to the Holy Office. “Can the opinion of certain recent writers be admitted who either deny that the procreation and education of offspring is the primary end of marriage, or teach that secondary ends are not essentially subordinated, but equally principal and independent?” Reply: Negative. *A.A.S.*, XXXVI (April, 1944), 103.

124. This presumably would be the Catholic reply to the Anglican arguments discussed earlier. Furthermore, if any variation is admitted in *coitus* of a fundamental nature, unlimited variations must be allowed.

Catholics employ a number of subsidiary arguments in their condemnation of contraception. It has, they maintain, certain harmful effects on personal and social health, which are the inevitable result of disregarding natural law. First, the health of the woman suffers, for she needs certain vital substances contained in male semen, and absorption of these is greatest from the womb.<sup>125</sup> Contraception may be a contributory factor in causing cancerous growths, and cancer of the breast is more common amongst sterile married women than in those who have borne children.<sup>126</sup> It is said that the use of contraceptives induces sterility, and one physician, not a Catholic, has maintained that it causes lunacy.<sup>127</sup> By interfering with the consequences of pregnancy it may cause neurasthenia and an unsatisfied sex craving which leads to over-indulgence and destroys matrimonial harmony. These views are supported by a substantial body of medical opinion, but there is also weighty authority which rejects them. Thus the Biological and Medical Committee of the Royal Commission on Population concluded that the methods generally in use in England for preventing conception caused no injury to the genital passages, if employed in accordance with instructions, and added that there was no evidence that birth control methods approved by the medical profession impaired fecundity.<sup>128</sup> Other doctors point to the beneficial effect on a mother's health when she is relieved from the prospect of endless pregnancies, and the dangers of pregnancy to women suffering from tuberculosis, diabetes, nephritis, or heart disease. Birth control has the negative virtue that it prevents recourse to abortion, which is far more dangerous.<sup>129</sup>

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125. See Dr. Halliday Sutherland, *Laws of Life* (London, 1935), p. 41.

126. Sutherland, p. 47.

127. For the lunacy statement by Sir Robert Armstrong-Jones, see Edward Moore, *The Case Against Birth Control* (New York, 1931), p. 28. For a full discussion of the harmful medical effects of birth control, see R. de Guchteneere, *Judgment on Birth Control* (New York, 1931), pp. 135-64; Moore, *The Case Against . . .*, pp. 21-31; E. Podvin, *A Doctor Speaks Out on Birth Control* (Int. Catholic Truth Society; Brooklyn, 1937).

128. *Papers of the Royal Commission on Population*, Vol. IV (1950), pars. 46 and 52.

129. *Royal Commission on Population Report*, Cmd. 7695 (H.M.S.O., 1949), p. 159. "Our survey of the history of family limitation leaves us in no doubt that, if these methods were not available, other means would be used, and some of them, e.g., criminal abortion, the prevalence of which is even now distressingly high, are very undesirable."



Catholics further stress that the use of contraception leads to population decline, and the truth of this is now firmly established. The Royal Commission on Population concluded that the decline in the birth rate in England was not due to a fall in reproductive capacity but to the spread of deliberate family limitation.<sup>130</sup> Similar conclusions were reached by the French authorities, and in 1920 a law was passed in France outlawing sale of contraceptives in order to arrest population decline.

Whether population decline is an absolute evil is open to question. The high standard of living in Western Europe and the United States could never have been obtained without a massive growth in population, but it seems equally evident that increasing population is holding back living standards in many undeveloped parts of the world, especially in the Far East.<sup>131</sup> A nation that fails to increase its population may have valid economic reasons for not doing so, but a nation that does not replace its population, provided living standards are adequate, may justifiably be regarded as in some respects decadent. The situation revealed by the Royal Commission on Population, that the British nation is no longer replacing itself, the deficiency being in the region of 6 per cent, is certainly alarming, especially when the need of the Commonwealth for immigrants is considered.<sup>132</sup> The prospect of a rapidly aging population supported by an ever-diminishing portion of

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130. *Report*, par. 626.

131. See *Report*, pp. 60ff. This point is more fully discussed when the question of world population is considered.

132. *Report*, par. 626. The *Report* found that 2.2 is the average size of the British family. "A further spread of the practice of family limitation, and a continued improvement in its effectiveness, must be expected to take place and will tend to reduce average family size, but only slowly" (par. 630). The British birth rate has, in fact, increased from 16.1 in 1950 to 16.5 in 1957. An optimistic view was expressed by Professor P. B. Medawar in the first Reith lecture for 1959 on *The Future of Man*. "As for replacement," he said, "I do not know that any demographer, on present evidence, now fears a serious decline in the population of Great Britain. The latest estimates suggest that we are just about breaking even. . . . In so far as purely biological pressures can influence marriage rates and ages, I guess that the present upward turn may be genuine and not just temporary." *The Listener*, LXII (November 19, 1959), 865.

younger people is not encouraging. As the Royal Commission mildly concluded: "It is possible that with a diminishing proportion of young people the community might lose something in energy, initiative, enterprise, and other qualities associated with youth."<sup>133</sup>

Contraception, Catholics maintain, is corrupting to the individual, since it reduces self-control and its employment in the majority of cases will be for selfish reasons. Marriage will be degraded to a legalised form of prostitution. Furthermore, contraceptives undermine public morality by removing the fear of pregnancy, which is a powerful deterrent against promiscuous intercourse.<sup>134</sup> An argument for employing contraceptives can be made for particular cases, but once they are made generally available, no means exists of restricting their use to these cases.

These Catholic arguments are countered by those favouring contraception with a list of benefits accruing from its employment. It prevents over-population, avoids the birth of unwanted children, reduces infant mortality and juvenile delinquency, safeguards the mother's health, and facilitates early marriage. The argument on this level, however, tends to be artificial. Sociological arguments are employed by Catholics mainly for polemic purposes and as a gloss to illustrate the argument from natural law. Moreover, now that Catholic theologians have sanctioned the use of the safe period as a legitimate method of birth control, a number of the arguments have lost their force. Under-population or promiscuity might well result from a wide dissemination of knowledge of the arithmetic of periodic continence. The Catholic attitude to the safe period may here be conveniently considered at greater length.

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133. *Report*, par. 647.

134. This contention is borne out by the data available. Kinsey found that in his sample of 5,700 women, fear of pregnancy ranked third in the factors deterring them from pre-marital intercourse. 89 per cent cited moral objections, 45 per cent lack of desire, 44 per cent fear of pregnancy, 44 per cent fear of discovery, 22 per cent lack of opportunity, 14 per cent fear of disease. *Sexual Behavior in the Human Female* (Philadelphia, 1953), p. 332. Amongst college women, investigators have found that fear of pregnancy ranks as a primary factor—50 per cent. D. D. Bromley and F. H. Brillen, *Youth and Sex: A Study of 1300 College Students* (New York, 1938).



**THE SAFE PERIOD** For centuries doctors have speculated about the possibility of a sterile period in women, but until this century no reliable means was available to calculate its duration. In 1930, however, two doctors, Dr. Ogino of Japan, and Dr. Knaus of Austria, working independently, published the results of their researches, which though differing in detail indicated the same method for calculating the length of the period. A woman's menstrual period is normally twenty-eight days and during this time ovulation occurs only once, the ovum or egg being discharged from an ovary into the Fallopian tubes. Conception can only take place when the egg is present. Thus, if the date of ovulation can be accurately calculated, the commencement of the sterile period can be ascertained. The latest research based on the findings of Ogino and Knaus indicates that ovulation takes place on the fifteenth day before the onset of menstruation. The days must be computed from the beginning of the menstruation following ovulation rather than that before it, since the physiological process is leading up to the new menstruation. The method also assumes that the pattern over a year of a woman's menstrual cycle will be uniform. This does not mean that every period will be of the same length but that the variations will remain within constant limits, e.g., 25-30 days. Once a woman's particular pattern has been established by careful observation then a formula can be worked out which will indicate her sterile period. Allowance must be made for the irregularities in the cycle, a variable factor in different women but constant in the same subject, for the period in which male sperm can survive in the female genital tract, approximately two-three days, and for the period of life of the ovum, one day. Thus in the case of a woman with an absolutely regular cycle of 28 days the fertile period will be five days.<sup>135</sup>

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135. A formula commonly proposed is as follows. Take  $-15$  and  $-2$  from the minimum length of a woman's cycle and  $-15$  plus  $2$  from the maximum length and this will give the fertility period. Thus in a woman with a period pattern of 24-29 the fertile period will be from the seventh to the sixteenth day of her cycle. This condensed formula is based on the following data. Menstruation will occur between 24 and 29 days after the onset of the last menstruation. As ovulation occurs on the 15th day before menstruation, 14 days must be subtracted from 24 and 29, giving 10 and 15, the dates between which ovulation

Use of this method to control conception has a number of advantages. It involves no mechanical contrivance and allows physiological union, it avoids the risk of physical injury which appliance methods may cause, and it demands the exercise of a degree of self control. On the other hand it has obvious disadvantages. First it can only be used after a period of extended observation and the help of a competent physician. Even after the most careful observation a woman can easily make an error of calculation in using her chart. Ovulation exceptionally may take place on days other than the fifteenth or may be brought on prematurely by sexual intercourse. An emotional disturbance may upset the menstruation cycle and after pregnancy a considerable time may elapse before the cycle returns to stability. It requires absolute continence on certain days and some married couples may find this almost impossible.

An alternative method of fixing the date of ovulation is a basal body temperature chart. Directly after ovulation, the basal or lowest normal daily temperature rises and remains at the higher level until shortly before the next period of menstruation. Here again previous observation of the temperature pattern for a considerable period is necessary, and obviously mistakes can be easily made. Furthermore, the method provides no protection against conception resulting from intercourse in the two or three days before ovulation has taken place. On the other hand, by combining this method with that of Ogina-Knaus the number of days on which intercourse must be restricted can be reduced, and this is of especial importance where there is a wide variation in the menstrual cycle.

Yet another method of fixing the time of ovulation has recently been evolved. In order to nourish the egg, the womb secretes sugar, and this sugar is only present at the time of ovulation. When the egg dies, the sugar disappears. A piece of chemically prepared tape can be held against the womb, which turns green if the sugar is present and remains

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135. (*continued*) may occur. From 10 a further three is subtracted to allow for survival of fertilizing capacity in the sperm, and one must be added to 15 to allow for the survival period of the ovum. Thus if intercourse takes place from the first to the sixth day of the cycle and from the seventeenth to the twenty-ninth, no conception should occur.



neutral if it is not. A period of four days' abstention after the tape shows green is advised.<sup>136</sup> Experiments are also proceeding to develop a drug which will stabilise the menstrual period, and this would be especially helpful for women with highly irregular periods.

Various studies have been undertaken to ascertain the effectiveness of the rhythm method of birth control in practice. In an investigation carried out by the St. Louis University Department of Sociology, two-thirds of the doctors who replied to a questionnaire thought the method was not too complicated for most women.<sup>137</sup> As to its effectiveness, opinion was very divided, ranging from estimates of 5 per cent to 100 per cent, the midpoint in the distribution of estimates being 71 per cent.<sup>138</sup> An investigation of women using the rhythm method at the Free Hospital for Women at Brookline, Massachusetts, revealed that the risk of pregnancy was 14.4 per cent for every hundred years of exposure. For women using contraceptives the equivalent figure was 6 to 7.<sup>139</sup> Other doctors have estimated that if the rules are strictly observed the percentage of failures is 3 per cent.<sup>140</sup>

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136. *The New York Times*, April 24, 1958. Dr. Doyle of Boston carried out the experiments.

137. G. S. Schnepf and J. Mundi, "What Doctors Think of the Rhythm-Method," *American Ecclesiastical Review*, CXXIII (July-December, 1950), 111. The questionnaire was sent to 523 physicians, of whom 273 replied. Catholic doctors comprised 39 per cent. For an estimate of 100 per cent effectiveness see Leo J. Latz and E. Reiner, "Further Studies on the Sterile and Fertile Periods in Women," *American Journal of Obstetrics and Gynecology*, XLIII (1942), 79.

138. Schnepf and Mundi, p. 114. "Of the 192 doctors, 171 or about 89 per cent checked this question, and their opinions ranged from 5 per cent to 100 per cent effectiveness. Taking the average of all estimates, or the mean, we found it to be 65.1 per cent with a standard deviation of 25 per cent; the latter indicates a considerable spread of opinions. The median, or midpoint in the distribution of estimates, was 71 per cent effectiveness."

139. C. Tietze, S. R. Poliakoff, and J. Rock, "The Clinical Effectiveness of the Rhythm Method of Contraception," *Journal of Fertility and Sterility*, II (1951), 444.

140. S. Fleck, E. F. Snedeker, and J. Rock, "The Contraceptive Safe Period," *New England Journal of Medicine*, CCXXIII (1940), 1005-09.

From the medical and other evidence available, one may reasonably conclude that while the safe period as a method of birth control does not merit the contempt with which it has often been dismissed by those advocating the use of appliances, it is by no means foolproof, and exaggerated claims on its behalf are not supported by fact. No contraceptive is wholly reliable, but in the present state of knowledge the margin for error is greater in rhythm than in appliance control. The conclusions of Dr. Tietze and others seem justified when they write that the rhythm method offers a satisfactory degree of protection against unwanted pregnancy to "rigorously selected and carefully instructed wives, who with their husbands are intelligent and strongly motivated. For others and for those to whom pregnancy would be dangerous, the effectiveness of the method in preventing conception is not considered adequate."<sup>141</sup>

**CATHOLIC MORAL VIEWS ON RHYTHM** Despite its condemnation by St. Augustine,<sup>142</sup> use of the rhythm method is now approved by the highest authorities in the Catholic Church.<sup>143</sup> Pius XII removed all doubt from the matter in two statements in 1951.<sup>144</sup> The Catholic ideal is one of fertility, not of sterility, and, all things being equal, a large family is probably considered preferable, but the Church has not given its approval to indiscriminate breeding. Rather, the practice of family planning is enjoined as a duty, the dispute with contemporaries being

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141. Tietze *et al.*, *Journal of Fertility and Sterility*, II, 444.

142. *On the Morals of the Manichaeans*, XVIII, 65.

143. The statement of Pius XI in *Casti connubii* that married couples were not acting unnaturally if they exercised their right to intercourse "although on account of natural reasons, either of time or of certain defects, new life cannot be brought forth," is sometimes quoted as approving the deliberate use of rhythm, but strictly interpreted it has reference only to such situations as sterile marriages and the lawfulness of intercourse during the safe period.

144. Express approval to employment of the rhythm was given and the circumstances appropriate to its use discussed. See "Address to Italian Catholic Union of Midwives," *A.A.S.*, XLIII (October 9, 1951), 835, and "Address to National Congress of the Family Front," *A.A.S.*, XLIII (November 26, 1951), 855-60. For an appraisal of the statements see Gerald Kelly, S. J., *Medico-Moral Problems* (St. Louis, 1956), IV, p. 29, and *Linacre Quarterly*, XIX (1952), 39.



confined to the means employed. The general consensus of theologians is that the deliberate use of the safe period as a means of family planning is morally indifferent, and that the morality of its employment will depend on the presence of certain circumstances.<sup>145</sup> Two indispensable conditions are that both parties to the marriage freely agree to its use and both are able to bear the strain which it may impose. In addition, there must be some serious reason for its employment. "The matrimonial contract," said Pius XII in 1951, "which confers upon the parties the right to satisfy the inclination of nature, constitutes them in a state of life, the state of matrimony. Now upon the parties who make use of this right by the specific act of their state, nature and the creator impose the function of providing for the conservation of the human race. . . . It follows from this that to enter upon the state of matrimony, to make constant use of the faculty proper to it and only in matrimony allowable, and on the other hand consistently and deliberately, and without serious reason, to shirk the primary duty it imposes would be to sin against the very meaning of married life."<sup>146</sup> The extent of the duty to procreate the race will clearly vary with external circumstances, such as local population and economic conditions. Serious reasons, justifying resort to rhythm, will in most cases, however, be personal, and these may be financial, medical, eugenic, or social.<sup>147</sup> In each case the judgment whether to use rhythm must be conscientiously made by the married partners after a careful survey of the relevant circumstances.

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145. For a typical article representing the majority view see J. A. Ryan, "The Moral Aspect of Periodic Continence," *The Ecclesiastical Review*, LXXXIX (1938), 28. For a contrary view see N. O. Griese, *The Morality of Periodic Continence* (Washington, 1943). His principal conclusion is that to use the safe period systematically in marriage is "objectively unlawful," although it can be justified in individual cases for just cause. It is "*per se illicitum, per accidens autem licitum.*"

146. *A.A.S.*, XLIII, 835-54.

147. For a discussion of serious reasons see John L. Thomas, *Marriage and Rhythm* (London, 1957), pp. 85-112.

## Catholics and the Law

Does Roman Catholic theology require that contraception be banned by law? As has been seen, it is unequivocally condemned as contrary to natural law, but one cannot conclude with some rigorists that the question is immediately answered in the affirmative, since all contraventions of natural law are not fit subject for legislation. Fornication, adultery, and lying, for example, are contrary to natural law, but civil sanctions are not advocated for such offences. Non-philosophic criteria must be applied before the question can be disposed of. A breach of natural law must be a fit subject for legislation and injure the common good substantially before it is forbidden by law. The law must be capable of enforcement and equitable in its incidence. Finally, if it would cause greater evils than those it is intended to avoid, recourse to legislation must be eschewed.

The banning of the *use* of contraceptives by law, as in Connecticut, fulfills none of these criteria. Using a contraceptive is essentially a private act, and though it may have harmful social consequences it is impossible to isolate any particular act and demonstrate that harmful consequences flow from it. In practice such a law is obviously unenforceable, and the attempt to enforce it would involve an intolerable interference with the private life of individuals. Private individuals and married couples would have to be subjected to constant supervision, the home would be invaded by investigators, and the police state advanced to a new point.

Banning the sale of contraceptives and the dissemination of birth control information, on the other hand, is a possible subject for legislation, since these are public acts, capable of regulation by law. Certainly such laws are difficult to enforce, but their effect would be far from nugatory, given a climate of moral opinion which approved their content. Thus in a predominantly Catholic country such laws would not be unreasonable, and they are found in countries such as Spain,



Italy, and Ireland.<sup>148</sup> It might, of course, be maintained that moral condemnation renders a law superfluous, but this view is unrealistic, since law is closely connected with the moral opinion of the community and is a powerful, although subsidiary, means of maintaining moral standards.

Some would condemn such laws on abstract grounds, namely, that they violate the freedom of the individual to make his own choice. But on this abstract level the argument would not appeal to Catholics, who maintain that there can be no right to commit an immoral action. Nor would the contention that condemnation of contraception is a specifically Catholic doctrine fare better, since Catholics hold that the precepts of natural law are binding on all men, and the Church herself is powerless to change them. Protestants and others often argue that to allow the sale of contraceptives in no way diminishes Catholics' rights, since they are under no obligation to use them. In a certain sense this is true, but a society in which contraceptive sales and propaganda are unfettered clearly exerts a strong pressure on its members to use them or at least makes it more difficult for them to abstain from their employment.<sup>149</sup> The plain fact is that if religion is more than a

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148. In Ireland, The Censorship of Publications Act, 1929, No. 21, forbids the writing or publication of matter "which advocates or might reasonably be supposed to advocate the unnatural prevention of conception"; a law of July 31, 1920 forbids the divulging of methods of contraception, etc.

In Spain, an Act of January 24, 1941, forbids any form of public instruction on methods of birth control, and the exhibition or offering for sale of contraceptives. Customs regulations forbid the importation of contraceptives. Doctors, however, are not forbidden to prescribe contraceptives, but birth control advice may not be given as part of any public health service and there are no birth control clinics in Spain. The laws appear to be effective.

In Italy birth control propaganda is forbidden but sale of contraceptives is allowed in pharmacies. No birth control clinics exist and contraception may not be advised by those discharging public health service duties.

149. This point is illustrated unintentionally by those who produce evidence of Catholics who attend birth control clinics as part of the argument for lifting legal bans. In fact, as the United Nations Population Commission and others have recorded, while Catholics in the U.S.A. do use contraceptives, they do so less than non-Catholics. See *U. N. Economic and Social Council Report*, E/CN, (September, 1955), para. 153, and N. E. Himes, *Medical History . . .*, pp. 414-16.

purely personal and private exercise, if it sets out to provide a *Weltanschauung*, then it is bound to have social effects which may diminish the freedom of those who reject the faith. To expect a society in which the majority of its inhabitants condemn contraception as a moral and social evil to allow its unfettered spread in the name of a doctrine of abstract right is to ask for the impossible. It is only because moral opinion in Britain and the United States accepts contraception as more or less a good that it is so largely uncontrolled.

Does Catholic theology then oblige Catholics in non-Catholic countries, and specifically in England and the United States, to work for such prohibitory laws or to defend them where they exist? Such a question can certainly not be answered by means of a logical deduction from a natural law premise, but the particular social situation in the country under consideration must instead be carefully examined. By the constitution and political philosophy of both England and the United States, Catholics certainly have a right to work for the passage of such laws, using all the normal political means, such as public campaigns, distribution of literature, and lobbying of legislators, to attain their end. By such means in the past laws restricting gambling, betting, and drinking have been added to the statute book, but not by Catholics. Indeed, they reject the doctrinal suppositions which these laws embody and might argue that their personal freedom was unfairly diminished. The right then exists, but whether Catholics would be wise to follow Protestant precedent and exercise it is open to considerable doubt.

Laws embodying moral precepts are only enforceable if they are supported by a corresponding moral consensus in the community. The Volstead Act should have made this plain enough. A law forbidding the sale of contraceptives would be effective only if the vast majority of citizens believed their use to be wrongful, and possibly not even then. The laws of Connecticut and Massachusetts on birth control are not in fact enforceable and, save for the exclusion of birth control clinics, are without effect. Even here the presence of clinics over the state lines does much to neutralise their exclusion from the states themselves. Catholics, then, in campaigning for the maintenance of such laws, gain little for public morality. They do, however, increase the



fear of Catholicism in the minds of non-Catholics and increase the likelihood that when Protestants visualise the Church the image will not be that of a religious body but of a political power structure. This is a high price to pay for the maintenance of ineffectual statutes. The argument from natural law is unconvincing, since outside the Catholic Church even those who accept the concept of natural law are unable to see that it forbids birth control. While without bearing on the truth or falsity of the natural law premise, an almost universal scepticism should be treated as relevant when a policy of enforcing the precept by means of civil legislation is considered.

Aside from metaphysics, Catholics could justify a prohibitive law if they could show that demonstrable evils flow from the practice of contraception. If a declining population and a falling standard of life could be traced directly to birth control, then a strong case would have been made out for banning it. On these grounds, birth control has been banned in France, the law being inspired by imperial and sociological rather than theological reasons.<sup>150</sup> In England a similar situation might come about in the foreseeable future, but in the United States such a contingency is remote.<sup>151</sup> Again, if contraceptive methods could be shown to be harmful to health, a prohibitory law might be justified, but, as has been noted, the evidence on the point is conflicting and allows no such conclusion. Finally, the argument that recourse to contraceptives increases lust and promiscuity would, if established, give grounds for a ban, but increase in such vice is not measurable and, if it were, could not be conclusively demonstrated to result from contraception.

In summary, then, one may say, that while the prophetic mission of the Church to judge and if necessary condemn society is not questioned,

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150. By a law of July 31, 1920. Use of the mails is restricted by article 91 of the *Decree Act* of July 20, 1939. Importation of contraceptive propaganda, etc., is restricted by a decree of February 5, 1946. No birth control clinics operate, nor is advice given, under public health services. Exemptions exist for doctors to prescribe contraceptives, such as the danger to a mother's health from further pregnancies.

151. The U.S. birth rate is high; the rate of 24.9 per 1000 in 1954 having increased to 25.0 in 1957. See Table 56. *Statistical Abstract of the U.S.A.* (Washington, 1958).

a strong case exists for the abandonment of Catholic efforts to secure a total legislative ban on contraceptives. Efforts to preserve public morality would be more constructive if confined to measures commanding general support, such as the banning of sales of contraceptives from slot machines or the restriction of sales to adults.<sup>152</sup> Statutes regulating contraception belong more appropriately to the field of public nuisance than to the criminal law proper.

Catholics might also legitimately and prudently oppose laws which in any way commit the state to approve or advocate birth control. Two events in the United States during 1959 raised this issue sharply. In July 1959 the Draper committee, appointed to study the foreign aid programme, submitted its third interim report to the President.<sup>153</sup> With the report went a covering letter stating that the committee recommended that, when requested by aid-receiving nations, the United States should help them to formulate programmes "to deal with the problem of rapid population growth and should support research leading to better understanding of this problem." Mr. Draper agreed with reporters that this reference included the provision of birth control information by the United States but added hopefully that the point should not be unduly stressed.<sup>154</sup> In September the issue was raised again when the Senate Foreign Relations Committee published a report by the Stanford Research Center recommending that the United States should study the possibility of backing large-scale foreign tests of birth control devices.<sup>155</sup>

In November a reaction came from the Roman Catholic Bishops of the United States, who announced they would fight any attempt to use

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152. Where a prohibitory law is impossible a regulatory law may be desirable even if it "recognises" indirectly the existence of an evil.

153. *U.S. Government Publications*, Washington D. C., 1959: No. 776. Publication #13550. Letter to President of United States from President's Committee to study military assistance program and administration.

154. *Facts on File*, July 23-29, 1959, p. 240. The *Report* itself did not stress this point, recommending the provision to requesting countries of "demographic information."

155. *U.S. Government Publications*, Washington, D. C., 1959: No. 778. Publication #16204. U.S. foreign policy, possible non-military scientific developments and their potential impact on foreign policy problems of the United States.



foreign aid funds to promote “artificial birth prevention programmes” in underdeveloped countries. Condemning such programmes as a “morally, humanly, psychologically, and politically disastrous approach to the population problem,” they stated that the logical answer to world population problems was not to decrease the number of people but to increase the food supply, “which is almost unlimited in potential.”<sup>156</sup> This statement caused a political storm. Bishop James A. Pike, the Protestant Episcopal Bishop of California, condemned the statement and asked whether it was binding on candidates for public office. The reference was clearly to Senator Kennedy, one of the aspirants for the Democratic nomination in 1960, who replied that he thought such policies would be mistaken since they would be interpreted as discriminatory. The United States had never urged them either at home or in Western Europe.<sup>157</sup> If faced with a bill embodying such a programme, he stated he would judge the measure by whether “it would be in the interests of the United States.” If it became law, he would uphold it.<sup>158</sup>

Senator Kennedy’s replies were both judicious and constitutionally correct. The Catholic Bishops were also within their rights in making their statement, and it might well be taken as a guide for future Catholic political activity in this area. This should be limited to securing government neutrality on the issue, not an ideal objective, but one which recognises an irreconcilable conflict of moral and social views within the community.<sup>159</sup> The proposition that adoption of an artificial birth control programme should be made a condition precedent of receipt of foreign aid funds would in any event probably command little sup-

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156. *The Times* (London), November 26, 1959.

157. Mr. Stevenson and Senator Humphrey were in favour of providing information on request, only Senator Symington expressing himself unequivocally in favour of birth control. See *The Economist*, December 5, 1959.

158. *Time*, December 7, 1959. No foreign aid money has in fact been spent on this objective.

159. An example of a state government exceeding the bounds of neutrality occurred in Pennsylvania in December, 1948, when the Board of Public Assistance approved a resolution permitting case workers to refer relief clients to birth control information centres. See *Pittsburgh Post-Gazette*, December 24, 1958 and *Commonweal*, January 23, 1959.

port. The supply of foreign aid funds at the request of an individual state in order to implement such a programme would, on the other hand, be found unobjectionable by many. But just as Catholics would be wise in recognising the majority view and refraining from pressing for prohibitive domestic legislation, so the majority favouring contraception would be judicious in refusing such requests and so recognising the susceptibilities of the minority. To dub such a policy one of allowing the minority to dictate to the majority is to mis-state the issue. It would be better described as a judicious recognition of the existence of a considerable minority opinion, the flouting of which would inevitably lead to serious diminution of civil peace. Reasonable concessions to such opinion offer a better as well as a more effective basis for the working of a democracy than the mechanical application of the principle that the will of the majority must always prevail.

## Some Catholic Problems

**TAX-SUPPORTED HOSPITALS AND PUBLIC HEALTH SERVICES**      The giving of contraceptive advice in tax-supported hospitals or as part of public health services has caused sharp conflict between Catholics and Protestants. Catholics claim that since their money is being used to finance public institutions, practices which they consider immoral should not be followed. Protestants and others also claim that since their money is employed, practices which they consider morally acceptable should not be excluded by Catholic veto. In England, as has been noted, advice on contraception may be given as part of a public health service but is subject to restriction. In certain southern states in the United States, where Catholics are few, such advice is given in health centres and hospitals, but in many municipally financed hospitals in the north it is forbidden.



The issue came to a head in 1958 in New York, where for many years city hospitals had followed an unwritten rule that advice on birth control should not be given. In July 1958, a Protestant physician, Dr. Hillman, employed at Kings County Hospital, announced that he was going to fit a Protestant patient with a contraceptive diaphragm but was forbidden to do so by Dr. Morris Jacobs, New York City Commissioner of Hospitals. A public controversy followed, with Protestants and Jews demanding that the ban be lifted in the interests of accepted therapy and preventive medicine and the Roman Catholic Chancery Office stating: "It would be extremely unfortunate if our hospitals and medical faculties, aimed for the preservation of life, should be perverted to seek for the prevention of life." On September 17, 1958, the full Hospital Commission ruled in favour of Dr. Hillman and reversed the ban. The Board laid down that municipal hospitals "should provide such medical advice, preventive measures and devices for female patients under their care whose life and health in the opinion of the medical staff may be jeopardised by pregnancy and who wish to avail themselves of such health services." A certificate of medical necessity signed by two physicians must be issued, the consent of the patient, and that of her husband if possible, obtained, and the Board recommended a conference with her spiritual adviser. Physicians, nurses, and other hospital employees who have religious or moral objections to contraceptive procedures were to be excused from participation in contraceptive procedures. Later the same month, the New York Department of Welfare adopted a similar policy.<sup>160</sup>

The compromise seems reasonably satisfactory. Catholic doctors and patients are in no way obliged to follow procedures violating their moral principles and religious beliefs, while non-Catholics are assured that they will not be denied access to contraceptive medicine where this might endanger health. At the same time the susceptibilities of Catholic

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160. For an account of this incident see *The New York Times*, September 17, 18, and 23, 1958. Also *America*, October 4, 1958 and for a comment see *Commonweal*, September 12, 1958, "Controversy in New York," by James Finn. See also A. W. Sulloway, *Birth Control and Catholic Doctrine* (Boston, 1959).

taxpayers are recognised by leaving general contraceptive advice to be given by voluntary agencies founded for that specific purpose.<sup>161</sup>

**CATHOLIC HOSPITALS** In Catholic hospitals, birth control advice, unless it relates to the practice of continuous or periodic continence, may not be given.<sup>162</sup> As an internal domestic matter this raises no problem, but controversy has arisen over the position of doctors on the staff of Catholic hospitals who have associated themselves with the work of birth control organisations. Thus in 1947 six Protestant physicians were dismissed from three Connecticut hospitals for their work—outside the hospital—for the Planned Parenthood League. Again, in 1952, St. Francis Hospital in Poughkeepsie, New York, presented seven Protestant physicians with an ultimatum to quit the Planned Parenthood League or resign from the hospital staff. Three agreed to resign from Planned Parenthood, but four declined and were suspended. After a number of protests, they were reinstated at the beginning of 1953.<sup>163</sup> Other Catholic hospitals have sought to make it a condition of employment that doctors will not give birth control advice, either in the hospital or in private practice.<sup>164</sup>

To require Protestant doctors employed in Catholic hospitals to refrain from giving advice on birth control in the course of discharging their hospital duties is reasonable enough. A doctor is free to make a

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161. This compromise, because the factual situation is different, is not the same as that suggested in connection with the foreign aid programme. The two situations are also theoretically distinguishable, since artificial birth control facilities provided in municipal hospitals within these restricted limits do not commit the municipality to a policy of generally furthering birth control. The foreign aid programme, on the other hand, is an act of policy involving the whole nation as such.

162. See *Ethical and Religious Directives for Catholic Hospitals* (St. Louis, 1955), No. 30.

163. Conn., see *Time*, April 21, 1947 and *The New York Times*, April 18 and May 5, 1947. New York, see *The New York Times*, February 1 and 2, 1952, and January 22, 1953. See also *New Republic*, January 22, 1945, for a similar incident at St. Joseph's Hospital, Paterson, N. J.

164. St. Elizabeth's Hospital, Newark, N. J., set such a condition in 1945. *New Republic*, January 22, 1945.



contract with any hospital, and if he objects to any specific term he can make his services available elsewhere. But to extend hospital jurisdiction to private practice or to activities carried on outside the hospital in a personal capacity is a grave infringement of individual liberty. While there might be a case for excluding a Catholic doctor who supported Planned Parenthood, because of the scandal his attitude would give to Catholic patients and hospital personnel, the coercion of a Protestant doctor to go against his conscience is wrong in principle. It also betrays a confusion in practical aims. A Catholic hospital is primarily a hospital and exists to give the best medical treatment available to its patients. If conditions such as that forbidding Protestant doctors to prescribe contraceptives outside the hospital were generally imposed, it would materially restrict the medical talent on which the hospital could draw. Apart from this, attempts to dominate a doctor's entire professional life will be generally construed as tyrannical and can only serve to embitter relations between the Catholic and other local, religious, and civic communities.

CIVIC PROBLEMS Catholics often use local political pressure to counter birth control organisations. Thus in 1952 Planned Parenthood was excluded from membership in the Welfare and Health Council of New York because the Catholic agencies represented threatened to withdraw. Six months later, however, the Council voted for admission of Planned Parenthood, whereupon the Catholic agencies resigned, thus handicapping the Council's work.<sup>165</sup> In 1955 Catholics boycotted the Princeton, New Jersey, Community Chest fund-raising campaign, thus compelling the withdrawal of Planned Parenthood from the Chest.<sup>166</sup> Whatever one may think of the prudence of such actions, and this can only be judged in the context of local conditions, Catholics are well within their democratic social rights in taking them. They hardly, however, seem "necessary," since membership in a cooperative enterprise does not imply approval of the constituent members. Further-

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165. See *The New York Times*, January 15, 1953; March 13 and 19, 1953; May 8, 29, and 30, 1953; July 1, 1953.

166. *The New York Times*, September 1, 1955.

more, the line between legitimate and illegitimate social pressures can be easily crossed, as was the case in Holyoke, Massachusetts, in 1940, when owing to Catholic pressure Mrs. Margaret Sanger was deprived of a public meeting place to state her views, until one was provided at the last moment by the local textile workers union. Such action was clearly against the spirit of the Constitution with its guarantees of freedom of speech and the right to hold orderly public meetings.<sup>167</sup> The hostility aroused against the Catholic community by these tactics would be hard to overestimate; they strengthen in the non-Catholic mind the ever-present fear of Catholic power and do much to nullify the persuasive force of Catholic teaching. In proportion to their ill effect, their good effect is small, and Catholics would be well advised to abandon them.

THE BIRTH CONTROL PILL      Experiments have been proceeding for some time to develop an oral means of contraception.<sup>168</sup> All women, when pregnant, secrete a natural hormone, progesterone, which prevents ovulation during the pregnancy period. A synthetic substitute for this hormone, progestin, has been developed, which has the same effect of inhibiting ovulation and can be taken through the mouth. The drug has been used in tests carried out in Puerto Rico and California, and the Puerto Rican experiments have proved successful. The drugs have, however, produced bad side effects, such as nausea and dizziness, and have proved very expensive. Much remains to be done before they can be put on the market commercially.<sup>169</sup> Another method of inducing

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167. For a full description of Mrs. Sanger's experiences in Holyoke see Kenneth Underwood, *Protestant and Catholic* (Boston, 1957). The secretary of the local union providing the hall was in fact a Catholic. Catholic pressure also caused the cancellation of birth control exhibits at fairs in Chicago in 1940 (*The New York Times*, July 8, 1940) and in New York in 1941 (*The New York Times*, August 22, 1941).

168. A full account of progress and remaining difficulties is given in Richard L. Meier's *Modern Science and the Human Fertility Problem* (London, 1959).

169. See *The New York Times*, September 19, 1958, where Dr. Rock reported figures of 100 per cent success for the experiments. These varied with the results reported in June by Edward Tyler and Henry Olson which showed a 9.3 per



temporary sterility has been suggested by Dr. Sieve of Boston, who has used phosphorylated hesperedin to form a viscous barrier around the ovum and so prevent penetration by the male sperm. While early experiments met with success, later ones failed.<sup>170</sup> It has been suggested that such a drug would be acceptable to Catholics, since it leaves the physical nature of the sexual act unimpaired, but Catholic moralists have been unanimous in condemning the use of drugs as a violation of the divine law, since they prevent the natural end of the sexual act, procreation.<sup>171</sup> The only justification for their use would be a medical rather than a contraceptive motive, e.g., relief from pain caused by menstruation, when their employment would be justified on the principle of double effect. This principle, it may be noted, also justifies the sale of prophylactics, which while they may be used to prevent conception are not sold with that purpose but rather to prevent disease. Thus their distribution to members of the armed forces would not be contrary to Catholic moral teaching.<sup>172</sup>

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169. (*continued*) cent rate ineffectiveness. See Robert Sheehan, "The Birth Control Pill," *Fortune*, April, 1958. Also, Reuben Hill, J. Mayone Stycos, and Kurt Back, *The Family and Population Control* (University of North Carolina Press, 1959). See *The Times* (London), March 31, 1960, for an account of experiments in England which show that although a pill has been developed with a high degree of effectiveness, harmful side-effects persist.

170. *Science*, October 10, 1952, pp. 373-85.

171. See *American Ecclesiastical Review*, CXXII (1950), 225 and CXXXVII (1957), 50; John J. Lynch, "Fertility Control and the Moral Law," *Linacre Quarterly*, XX (1953), 83. Use of pills to regularize a woman's menstrual cycle would not be contrary to Catholic teaching. For a discussion of the moral problems raised by birth control pills see Denis Calaghan, "Fertility Control by Hormonal Medication," *The Irish Theological Quarterly*, XXVII (January, 1960), 1-15.

172. For an expression of caution lest impression given that prevention of disease is more important than avoidance of wrongdoing see *Irish Ecclesiastical Record*, January, 1942, p. 83.

## World Population Growth and Christian Responsibility

Since the end of the Second World War, experts first, and then the public in general, have been increasingly aware of the enormous problems created by the rapid rise in world population. "The problem of population," states Sir Julian Huxley, "is the problem of our age."<sup>173</sup> Numerous monographs have been published on the consequences of the rise. The United Nations has carried out an important series of investigations into the causes and extent of the increase and in 1954 convened an international conference in Rome to exchange information.<sup>174</sup> The magnitude of the problem is stated dramatically in the United Nations publication, *The Future Growth of World Population*, where the author points out that whereas the human race took 200,000 years to reach 2,500,000,000, it will take only thirty years to add another 2,000,000,000. If the present rate of increase continues, within 600 years only one square metre of earth will be left for each person to live on. In 1950 the world population was 2,500,000,000; by 1958 it had reached 2,800,000,000; by 1980 a population of 4,280,000,000 is forecast. The world population is expected to double within the next fifty to sixty years, and if current estimates are correct a world population of between 6,000,000,000 and 7,000,000,000 can be expected by the end of the century.

Population growth is a world-wide phenomenon, but it is taking place much faster in the undeveloped countries of Asia, Africa, and

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173. *Scientific American*, March, 1956, p. 2.

174. For example, *World Population and Resources* (London, P.E.P.: 1955); F. Le Gros Clark (ed.), *Four Thousand Million Mouths* (London, 1951). See also *The Family in Contemporary Society*, where world population problems are considered at length. For United Nations publications see the series of Population Studies (St/SOA/Series A), especially *The Determinants and Consequences of Population Trends* (No. 17) and *The Future Growth of World Population* (No. 28). The population estimates quoted are taken from these publications.



tropical South America than in the advanced countries of Europe and even, in some cases, the United States.<sup>175</sup> In some places, such as Puerto Rico, the annual increase is about 3 per cent, compared with an increase for the United States in 1954 of 1.8 per cent. In Africa from 1951 to 1955 the population was increasing by 2.2 per cent per year; in Asia as a whole, by 1.7 per cent, the figure being higher for individual countries. This is to be compared with a .7 per cent annual increase for Europe.<sup>176</sup> Highest rate of increase amongst the developed countries is shown by the United States, where a population estimated at 166,000,000 in 1955 is expected to reach 204,000,000 by 1970. Europe does not reflect this pattern of increase, the 51,000,000 population of the United Kingdom, for example, being expected to be only 53,700,000 by 1970. France's population of 43,300,000 will be 47,400,000 in that year. By contrast, countries such as China and India will increase from 600,000,000 to 799,000,000 and from 386,000,000 to 504,000,000 in the same period.

Industrial and agricultural revolutions have contributed to this swift growth, but the primary cause is the reduction of disease and a fall in the death rate. Modern medical science has made decline in mortality an almost universal phenomenon, the only exception being Middle Africa, where physical and cultural obstacles remain to be overcome.<sup>177</sup> In Puerto Rico, for example, the death rate fell from 11.8 per thousand in 1947 to 7.2 in 1955.<sup>178</sup> The scope for further reduction is illustrated when one considers the infant mortality rates in different countries. In Britain it is now 26.5 per thousand, but in India, despite improvement, it is 200. Countries appear to pass through a fourfold cycle in relation to births and deaths. First, both birth and death rates are high, and this is followed by a period of high birth rates and falling death

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175. Ireland is the only country where population has declined over the past fifty years.

176. *U. N. Economic and Social Council: Population Commission Report 1957*, p. 4. See also *Background Facts on World Population and Population Trends* (U.N.E.S.C.O., 1957).

177. *The Future Growth of World Population*, pp. 3-5.

178. *The Demographic Year Book* (U. N., 1956).

rates. Then both birth and death rates fall, and finally the country passes into a period of low birth and death rates. In the West, stage two of the cycle was not reached until improvements in agriculture and the industrial revolution were under way, but in the East the decline in death and disease has not been similarly matched. Thus, while the advanced countries can maintain and even raise the standard of life for their increased population, the technologically undeveloped countries, where the population by contrast is seriously undernourished, can barely maintain even existing standards, any advance being immediately swallowed up by the increased numbers. In India, for example, the average daily diet is only 1,590 calories per person—less than half that of the United States—and two-thirds of the Indian population is underfed. In all, 70 to 75 per cent of the world's population does not have enough to eat, 70 per cent of these being concentrated in Asia and 18 per cent in Africa and parts of South America.<sup>179</sup>

A world in which material resources are so unequally divided, and where the poorest parts are those where the population is increasing most rapidly, raises an acute problem for the Christian conscience. The late Pope Pius XII analysed the problem in a number of messages and encyclicals; it was discussed at Lambeth in 1958; and an international Protestant study group met at Oxford in April 1959, at the request of the World Council of Churches, to consider the world population problem and the related question of family planning. There is, however, no unanimity amongst Christians as to what action should be taken.

A number of Catholic writers dismiss the population problem as an illusion. They point out that the problem is theoretical rather than practical, since the prophesied catastrophe is dependent on the present rate of expansion of the race continuing into the future. Some resort to ridicule, pointing out that if the egg of every housefly was hatched, the whole surface of the globe would be covered by a mass of flies to a height of three miles within ten years. Again, projecting present

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179. Speech of Sir Russell Brain to Annual General Meeting of Family Planning Association in London, June 7, 1958. *Family Planning*, VII (July 2, 1958), pp. 3-5.



population increases into the future, they show that in 5,000 years the weight of human beings would equal the weight of the earth; in 14,000, the weight of the universe; and, even given stellar emigration, within a few thousand years the stars themselves would be fully occupied.<sup>180</sup> This *reductio ad absurdum* is hardly helpful, any more than is the attitude of those religious writers who maintain that, whatever the figures of expansion, God in due course will provide means of subsistence. Such a total rejection of reason is alien to the tradition of Western Catholicism. Others draw comfort from Thomas Doubleday's law first enunciated in 1837, stating that Nature always counteracts the endangering of the existence of a species by an increase in fertility, and this is especially so when the danger arises from lack of food. Consequently, "the state of depletion or the deplethoric state is favourable to fertility, and . . . on the other hand, the plethoric state, or state of repletion, is unfavourable to fertility in the ratio of the intensity of each state."<sup>181</sup> Thus, once the general standard of living is raised, the population problem will solve itself.<sup>182</sup>

Of course, the raising of the standard of living to the requisite level will need an intense and concerted international effort, but Catholic social scientists welcome this. They see the population problem as a spur driving mankind forward to the development of a universal community. This positive attitude is evident in the writings of all Catholic thinkers who recognize the urgency of the problem. They stress that individual states have no absolute ownership of territories and natural resources but hold them on trust for the whole of the human race. Thus in his very first encyclical Pope Pius XII declared that the human race has a true unity of nature, a unity of purpose, and a unity of dwelling place on earth, "of whose resources all men can by natural

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180. See John L. Russell, "Christian Theology and the Population Problem," *The Month*, XIX (April, 1958), 197 at 198. The article as a whole is a serious discussion of the problem.

181. Halliday Sutherland, *Laws of Life*, p. 197.

182. Doubleday's law in modified form has received recent support in Dr. Eversley's *Social Theories of Fertility and the Malthusian Debate* (Oxford, 1959).

right avail themselves to sustain and develop life."<sup>183</sup> The goods created by God should be equitably shared, and wealthier countries are bound by principles of justice and charity to share their resources with countries which are less well provided.

It follows, writes Cardinal Montini, "that a really adequate study of the relations between population and density and means of subsistence must tend to take place on a world-wide scale, while the problem to which they give rise cannot be solved except on that same scale, through the industrious solidarity of all peoples, so that those artificial barriers which divide them being removed, there may arise a more orderly circulation of people, of capital, and of material goods. With this subordination of particular national economic welfare to the common good of the society of nations, frontiers will no longer be valleys which divide, but bridges which unite, and material goods will be free to fulfill their natural function of satisfying everyone's needs."<sup>184</sup> The Protestant and utilitarian approach of reducing population pressure by spreading contraception as a social policy is condemned not only as a violation of natural law but as a facile avoidance of the true solution to the problem. "What an error it would be," stated Pius XII in his Christmas message of 1952, "to blame the natural law for the present miseries of the world, when it is clear that these derive from the lack of mutual solidarity of men and peoples."<sup>185</sup>

Given, then, a high degree of international co-operation to raise living standards, how many people could the earth support? Estimates

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183. "Summi pontificatus," *A.A.S.*, XXI (October 20, 1939), 426. See also letter to Archbishop McNicholas, *A.A.S.*, XXXI (December 24, 1948) 69-70: "The Creator of the Universe has provided all His good gifts primarily for the good of all; consequently, the sovereignty of individual states, however much this is to be respected, ought not to be carried so far that access to the earth's bounty, which is everywhere adequate to support multitudes of human beings should be denied to needy but worthy persons who have been born elsewhere."

184. Letter to Cardinal Siri on 26th Italian Catholic Social Week held at Palermo, September 27, 1953. *L'Osservatore Romano*, September 28-29, 1953.

185. *A.A.S.*, Series 2, XX, 42. Mgr. Montini in his letter also rejected attempts to solve population problems by contraception. "Such attempts include, not only the direct killing of the innocent, but also any defrauding of nature's intentions, which, as such, express the will of the Creator Himself."



vary from 5,000,000,000 on to 16,000,000,000, Colin Clark calculating in 1953 that the world could support 10,000,000,000 to 15,000,000,000 if cultivation and conservation of agricultural land were to reach Dutch standards.<sup>186</sup> To achieve this a great technological effort would have to be made by the richer nations. More scientists and agricultural experts would have to be trained and made available, new methods of crop rotation and soil management introduced, and more arable land developed by irrigation, possibly using sea water. Genetic improvement of seed and stock would also help to raise yields. Japan provides an encouraging example of how food production can be raised. During the last sixty years, food supplies have increased faster than the population, and Japan now supports 3.6 times as many people per hectare of cropland than the rest of the Far East, despite the lower fertility of her land.<sup>187</sup> China has also made extraordinarily rapid progress, increasing food production by 50 to 100 per cent, according to Lord Boyd Orr, in the past three years. He attributes the increase to a substitution of deep ploughing for the old earth-scraping techniques and the use of fertilisers and insecticides. "China," says Lord Orr, "has one quarter of the world's population but seems capable of feeding it well."<sup>188</sup> Great areas of forest and scrub land could be cleared and brought under cultivation.<sup>189</sup> New sources of food supplies could be developed from soil-less agriculture and synthetic manufacture, and the oceans themselves could be utilised for the vegetable

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186. James J. Norris, "The Population Explosion," *America*, CI (April 25, 1959), No. 4. P.E.P. estimated that an annual increase of 2.25 per cent per acre in food production was essential to provide a minimum diet for all. *World Population and Resources* (London, 1955), xviii.

187. See A. F. Zimmerman, *Overpopulation* (Washington, 1957), p. 32. Japan supports seven times as many people per hectare of cropland as the world average and fourteen times as many as the United States.

188. *The New York Times*, May 14, 1959.

189. Estimates vary as to how much of the earth is cultivatable but a common figure is 4,000 million acres, or 12 per cent of the area. Of this four-fifths is under cultivation (*U. N. Determinants and Consequences of Population Trends* [1954], p. 182). An increase of 25 per cent is possible and perhaps more. Once pests were cleared from the tropic zones cultivation could proceed rapidly.

substances and fungi which they contain. All this would involve astronomical expenditure, one estimate of the aid required to raise undeveloped countries to a subsistence level being \$18,000,000,000 per year. Huge as this figure is, it moves into the range of the attainable, when one considers that the military expenditure of the United States and the Soviet Union is already at least five times the amount.<sup>190</sup> Utilisation of solar and atomic energy could speed this revolution considerably.

A supplementary solution to world population problems stressed by Catholic writers is increased opportunity for emigration. In a letter to the American Bishops in 1948, Pius XII declared that man had a natural right to emigrate, since God had provided material goods for the use of all. "If then," said the Pope, "in some locality, the land offers the possibility of supporting a large number of people, the sovereignty of the state, although it must be respected, cannot be exaggerated to the point that access to this land is, for inadequate or unjustified reasons, denied to needy and decent people from other nations, whenever this does not hinder the public welfare as measured on honest-weight scales."<sup>191</sup> Immigration laws should be liberalised, but there are obvious limits to this process. If Australia, for example, were to be peopled by Indians, the maximum that could be absorbed over a long period would be 15,000,000, which in 1955 represented the annual increase of India's population for only three years.<sup>192</sup> Again, the capacity of individuals to cross from one culture to another of a radically different nature is clearly limited, and a wholesale immigration would be destructive to the migrants and the social structure of the receiving countries.<sup>193</sup>

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190. Norris, *America*, CI, No. 4. Much progress has been made. The *F.A.O. Report* for 1958-59 notes that while food production rose by 4 per cent during the period, world population rose 1.6 per cent.

191. Letter dated December 24, 1948. (*A.A.S.*, 2nd Series XVI, 69-71.) For other statements of Pius XII on migration see "*Exsul familia*," *A.A.S.*, 2nd Series, XIX, 649-704.

192. *World Population and Resources*, p. 180.

193. For a symposium on emigration problems see *The Catholic Lawyer*, IV (Spring, 1958), No. 2, 103-51.



Sharing of resources, increase of food supplies, more emigration, are the solutions put forward by Catholics for solving the problems created by world population increase. Protestants and others also support these measures, but emphasise them rather less, because they advocate the spread of family planning as a remedy.<sup>194</sup> It should be made clear that while family planning in the long run may have a material effect on the increase in population, it cannot be adopted quickly enough to stem the minimum increase of 1,000,000,000 people which is likely to be achieved by 1980.<sup>195</sup> This would be so even if the United Nations used its influence to encourage world-wide family planning, but attempts to secure the adoption of such a policy have been blocked by Roman Catholic and Communist countries.<sup>196</sup> Thus in 1952 the World Health Organisation dropped a Norwegian proposal to study contraception as part of its official programme after opposition from Catholic delegates.<sup>197</sup> The United Nations has accordingly adopted

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194. For example, Karl Barth has stated: "It is the duty of Christians a) to support policies which involve sacrifices by the developed countries on behalf of the underdeveloped ones and b) to advocate policies designed to increase the mobility of capital and labor between the developed and underdeveloped parts of the world." *The Family in Contemporary Society*, p. 163. For a typical Protestant article advocating family planning see Theodore A. Gill, "The Demographic Explosion," *Christian Century*, LXXV (August 6, 1958), No. 32, 895.

195. See George L. Zeegers, "The Meaning of the Population Problem of the World," *Cross Currents*, VIII (Winter, 1958), 22. Also *Simple Methods of Contraception* (New York, 1958), p. 11.

196. Communism maintains that there is no true population problem, but shortage has been created by the capitalist system. China adopted a birth control programme in 1956-57, but at the end of the year it was rumoured that it had been abandoned. The last public statement on the Soviet position was made at the Population Conference of 1954 when contraception was condemned. In April 1960, however, it was announced from Peiping that Professor Ma Yin-Chu had been dismissed from his post as President of Peiping University. The significance of this is that Professor Ma had urged that China's enormous population was an obstacle to progress. It would seem that China has now given up controlled population policies and is relying exclusively on increased agricultural production to raise the standard of living. See *The Times* (London), April 19, 1960. For a discussion of the significance of Professor Ma's dismissal see Stephan Schattmann, "The Case of Mr. Ma Yin-Chu," *The Listener*, May 19, 1960.

197. *The New York Times*, May 20, 1952.

a policy of neutrality on the subject, one of the agreed principles of co-operative action established at the 1954 World Population Conference being to respect different ethical and religious values and to promote mutual understanding. This attitude of Roman Catholic countries has been severely criticised but is not unreasonable. The United Nations is not a super-state whose majority decisions are binding on all members but an agency for co-operation between equal partners. If delegate countries take radically conflicting stands on birth control, the only possible line for the United Nations to follow is neutrality. At the same time advice and the services of experts are available to individual states on request.

A way out of the United Nations dilemma, as far as Catholic countries are concerned, might be offered by the rhythm method of birth control. Catholic theologians are generally agreed that a justifying cause for resorting to rhythm would be the social welfare of a particular community which would benefit by a reduction in population.<sup>198</sup> This of course would mean a widespread public dissemination of knowledge about rhythm, and many moralists consider that communication should be cautious.<sup>199</sup> On the other hand, these scruples might well be counter-balanced by the knowledge that the alternative would be use of unnatural means of birth control. As early as 1939 Catholic writers were advocating the foundation of Catholic medical bureaus to give rhythm advice, and the need has become very much more urgent since then.<sup>200</sup> From 1952 to 1954, with the help of the United Nations, experiments were in fact carried out in India in the use of the rhythm method. Two locations were selected, Lodi colony, an urban middle class centre, and Ramangaram, a small rural town in Mysore. The project ended

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198. See John L. Thomas, *Marriage and Rhythm* (London, 1957), p. 117. Also *America*, XCII (October 9, 1954), 2; *Commonweal*, LXII (June 3, 1955), 9; William Gibbons, *The Catholic Value System in Relation to Human Fertility: Studies in Population* (Princeton University, 1949), pp. 107-34.

199. For the controversy see *The Clergy Review*, XIII (1937), 150, 199, 273, 358, and XIV (1937), 92, 184, 469.

200. For example, John O'Connell, "Birth Control Clinics Needed," *American Ecclesiastical Review*, CI (1939), 246.



abruptly in 1954. About 75 per cent of the 2,362 married couples in the two centres expressed a desire to learn about family planning, but only 13.6 per cent of the couples in Ramangaram and 28.3 per cent of those in Lodi colony proved capable of learning the method. By the end of March 1954 only 5 per cent and 7.5 per cent respectively were known to be following the method regularly. Difficulties reported were a wide variation in women's cycles, mistakes in calculation, and the reluctance of husbands to agree to long periods of abstinence.<sup>201</sup> On the other hand, Dr. Abraham Stone who went to India to give instruction in rhythm methods under the auspices of W.H.O. in 1951 reported a success rate of 65 per cent.<sup>202</sup>

India has not confined its activities to propagating the rhythm method, and like Japan, the other Eastern country with a population policy, has sought to increase knowledge of contraception.<sup>203</sup> The possibilities of wider application of rhythm, however, remain, and as scientific advance renders it a more reliable and simple method of control, it may well be more widely employed. Its major advantage is that it is the only possible method of international family planning, being acceptable to all major world religions, not only Judaism and Christianity, but also Buddhism, Hinduism, Confucianism, and Islam.

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201. *World Population and Resources*, p. 219.

202. *The New York Times*, October 20, 1951, p. 17.

203. Japan has also legalised abortion for medico-social reasons by the Eugenics Protection Law of 1948, subsequently amended. The results have been astonishing, 2,679,000 births in 1947 having been reduced to 1,563,000 in 1957, over 70 per cent of the reduction being attributable to abortion. The effects on health have been deplorable and the policy may be modified. 763 health centres in Japan give advice on abortion, sterilisation, and contraception. See *Family Planning*, VII (October, 1958), No. 3.

## Conclusions

1. The use of contraceptives is accepted by the majority in England and the United States as a normal and acceptable practice in married life.
2. Although books advocating or describing artificial birth control were at one time considered obscene by courts in England and America, they are not so today, unless their manner of presentation is intentionally prurient.
3. In England sale and advertisement of contraceptives is not subject to common law or statutory restriction, save for certain by-laws which restrict the sale of contraceptives from slot machines in public places.
4. In the United States distribution and advertisement of contraceptives are restricted by federal law. Importation is similarly restricted. Federal law has been interpreted so that the statutes only operate if the articles are to be "unlawfully employed."
5. In the United States, twenty states and the District of Columbia have no legislation on contraception. Seventeen prohibit traffic in contraceptives subject to various exceptions. Five states prohibit sale and advertisement of contraceptives absolutely. Eight states restrict advertisement only. Sixteen states regulate the trade by statute.
6. Statutes restricting or prohibiting the distribution of contraceptives are not per se contrary to the United States Constitution.
7. The state laws restricting or prohibiting sale, etc., of contraceptives have practical effect only in Connecticut and Massachusetts. The effect of the laws in these two states is to exclude birth control clinics.
8. Christian opinion is united in approving family planning but divided over the moral legitimacy of different methods employed.



9. The Anglican Church and many Protestant churches accept the use of contraceptives in marriage, subject to the consent of the spouses, as not being contrary to Christian moral principles.
10. Anglicans and Protestants would limit the role of law in relation to contraceptives to preserving public order and decency and might favour a ban on sale to unmarried persons under a certain age.
11. The Roman Catholic and Orthodox Churches reject contraception as contrary to the law of God. The Roman Catholic Church bases its condemnation on the natural law, binding on all men, and not merely on Roman Catholics.
12. The decline of population in England and Western Europe is traceable to the widespread use of contraceptives, but population decline is not of necessity an evil.
13. The medical evidence of the effect of contraceptives on health is conflicting.
14. The methods of family planning acceptable to the Roman Catholic Church are limited to abstinence and use of the safe period.
15. Medical evidence shows that the use of the safe period is a reasonably reliable method of birth control but that the margin for error is greater than in appliance control. Its successful employment requires intelligence and self-control.
16. Roman Catholic opinion and the law: The proposition that an act is contrary to the natural law does not imply that the act should be forbidden by the law of the state. Whether such legislation is desirable is a jurisprudential rather than a theological question, which must be decided in relation to the conditions prevailing in a given community. While Roman Catholics in a democracy have every right to work for legislation outlawing the sale and distribution of contraceptives, the conclusion is reached, for reasons given in the text, that the Roman Catholic community in England and the United States would be wise not to attempt to secure a total legislative ban on contraceptives but

should limit its efforts to securing a policy of state neutrality on the issue and the passing of measures to preserve public morality, commanding the general support of the community. The particular conclusion is reached that a statute, such as that in Connecticut, which forbids the *use* of contraceptives violates Catholic principles of jurisprudence.

17. The conflicts of principle between Catholics and Protestants as to whether birth control advice should be given in tax-supported hospitals are irreconcilable, and only a compromise is possible. The three principles now acted on by the New York city hospitals might well be generally followed: 1. Birth control advice should be available to any female patient if a) she wishes to avail herself of it; b) her health would be jeopardised by pregnancy. 2. Employees of the hospital having religious or moral objections to contraceptive procedures should be excused from participation. 3. Contraceptive advice not required for medical reasons should be left to voluntary agencies and doctors in private practice.

18. Catholic hospitals are justified in imposing conditions of employment that exclude the giving of birth control advice to patients in the hospital, but such conditions should not extend to a doctor's practice unconnected with the hospital. The association of non-Catholic doctors, outside the hospital, with birth control organisations is no concern of the hospital authorities.

19. The medical experiments now in progress to develop a contraceptive pill, even if successful, will not lessen Catholic-Protestant conflict over birth control, since such a pill is subject to the same condemnation by Roman Catholic theologians as other forms of contraception. The only "pill" acceptable to Roman Catholics would be one to regularise periodicity in women.

20. World population growth presents a challenge to the Christian conscience to secure an intense and concerted international effort to raise living standards. Given such an effort, the prospects for a very considerable increase in world food production are favourable.



21. Increased opportunity for emigration from the more densely to the less densely populated parts of the world would alleviate but not solve world population problems.

22. Receipt of help under the United States foreign aid programme should not be made conditional on the adoption of artificial birth control policies by the recipient state, nor should foreign aid funds be used to implement such programmes, even at the request of the designated state.

23. The United Nations policy of neutrality on the question of contraception is the only one possible in view of the conflicting opinions of member states. Rhythm is the only method of birth control that would be acceptable as a means of international family planning.

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