

STERILIZATION AND THEOLOGICAL METHOD

Recently two documents on sterilization have come to public attention. One is a response of the Sacred Congregation for the Doctrine of the Faith, the other a letter to the American hierarchy communicating the substance of the Congregation's response.¹ The background for the Congregation's document consisted of doubts about, and inconsistencies in applying, directives 18 and 20 of the Ethical and Religious Directives for Catholic Hospitals. These directives read as follows:

18. Sterilization, whether permanent or temporary for men or for women, may not be used as a means for contraception.
20. Procedures that induce sterility, whether permanent or temporary, are permitted when (a) they are immediately directed to the cure, diminution, or prevention of a serious pathological condition and are not directly contraceptive (that is, contraception is not the purpose); and (b) a simpler treatment is not reasonably available. Hence, for example, oöphorectomy or irradiation of the ovaries may be allowed in treating carcinoma of the breast and metastasis therefrom; and orchidectomy is permitted in the treatment of carcinoma of the prostate.²

There can be no doubt that this represents the traditional formulation of the matter, a formulation officially stated and repeated by Pius XII and recently by Paul VI (*Humanae vitae*). Several factors have conspired to make implementation of these directives in at least some Catholic health facilities a source of problems. Among these I would highlight the following: the increasing resort to sterilization as a method of birth regulation in America; the division in the Church on the formulations of *Humanae vitae* on contraception and sterilization; the pluralistic make-up of Catholic hospital personnel (staff, patients) and the increasingly public character of these institutions; doubts surrounding the understanding and morally decisive character of the notions of directness and indirectness where sterilization is concerned. In combination, these and other influences were responsible for a pluralism of practice in Catholic

¹The first is entitled *Documentum circa sterilizationem in nosocomiis catholicis* (Responso ad quæsitæ Conferentiæ episcopalis Americae septentrionalis [Prot. 2027/69]). It was issued March 13, 1975, is published in English translation in *Origins* 6, no. 3 (June 10, 1976) 33 and 35, and is cited extensively by Kevin O'Rourke, O.P., in an article on sterilization, "An Analysis of the Church's Teaching on Sterilization," *Hospital Progress* 57 (May 1976) 68-75. Archbishop Joseph L. Bernardin's letter of April 14, 1975, communicating this to the American bishops, is given in full in *Linacre Quarterly* 42 (Nov. 1975) 220.

²*Ethical and Religious Directives for Catholic Health Facilities* (St. Louis: Catholic Hospital Association, 1975) pp. 10-11.

hospitals, with some of the practices clearly incompatible with the directives and the official formulations that stand behind and support them.

It was to this situation that the Congregation spoke. What did the Congregation say? After defining direct sterilization in the traditional way,³ the document continues: "Therefore, notwithstanding any subjectively right intention of those whose actions are prompted by the cure or prevention of physical or mental illness which is foreseen or feared as a result of pregnancy, such sterilization remains absolutely forbidden according to the doctrine of the Church." Following this general statement, the Congregation makes two points.⁴ Since they have very important theological implications and since I wish to comment on these implications in this Note, I cite the document in full on these points:

1. And indeed the sterilization of the faculty itself is forbidden for an even graver reason than the sterilization of individual acts, since it induces a state of sterility in the person which is almost always irreversible. Neither can any mandate of public authority, which would seek to impose direct sterilization as necessary for the common good, be invoked; for such sterilization damages the dignity and inviolability of the human person.⁵ Likewise, neither can one invoke the principle of totality in this case, in virtue of which interference with organs is justified for the greater good of the person; sterility intended in itself is not directed to the integral good of the person properly understood (*recte intentum*), "the proper order of good being preserved,"⁶ inasmuch as it damages the ethical good (*bono ethico*) of the person, which is the highest good, since it deliberately deprives foreseen and freely-chosen sexual activity of an essential element. Thus article 20 of the directives promulgated by the Conference in 1971 faithfully reflects the doctrine which is to be held, and its observance should be urged.

The Congregation then makes the second point of theological importance. It continues:

2. The Congregation, while it confirms this traditional doctrine of the Church, is not unaware of the dissent against this teaching from many theologians. The Congregation, however, denies that doctrinal significance can be attributed to this fact as such, so as to constitute a "theological source" which the faithful

³"Quaecumque sterilizatio quae ex seipsa, seu ex natura et conditione propria, immediate hoc solummodo efficit ut facultas generativa incapax reddatur ad consequendam procreationem, habenda est pro sterilizatione directa, prout haec intelligitur in declarationibus Magisterii Pontificii, speciatim Pii XII."

⁴The document concludes with an application of the standard principles of formal and material co-operation to the hospital situation. Since I do not wish to discuss these here, I refer the reader to the careful study of O'Rourke (n. 1 above).

⁵The document refers here to Pius XI, *Casti connubii* (AAS 22 [1930] 565).

⁶Reference is made here to Paul VI, *Humanae vitae* (AAS 60 [1968] 487).

might invoke in order that, having abandoned the authentic magisterium, they might follow the opinions of private theologians dissenting from the magisterium.

After recalling the legitimacy and applicability of the traditional doctrine on formal and material co-operation, the document concludes as follows: "This Sacred Congregation hopes that the criteria recalled in this letter will satisfy the expectations of the episcopate, in order that, with the uncertainties of the faithful removed, the bishops might more easily respond to their pastoral duty."

The two points I wish to discuss in this Note are (1) the argument used by the Congregation and (2) the Congregation's assessment of the significance of theological dissent.

ANALYSIS USED BY THE CONGREGATION

The Congregation says of direct sterilization that it is absolutely forbidden (*absolute interdicta*). By this the Congregation almost certainly means that direct sterilization is intrinsically evil. For it speaks not only of official *approbation* of direct sterilization as intrinsically evil; it adds immediately "a fortiori, its management and execution in accord with hospital regulations is a matter which, in the objective order, is by its very nature (or intrinsically) evil." Any doubt on this point is removed by the argument used against direct sterilization. The Congregation argues that the principle of totality may not be invoked, because sterility intended as such (*in se*) is not directed to the integral good of the person because it is an assault on (*nocet*) the ethical good (*bono ethico*) of the person. Now clearly, anything that harms the ethical good of the person is impossible to justify. Indeed, by its very definition (analytically), it is intrinsically wrong; for the human person, in Catholic thought, finds his/her *raison d'être* in the moral order—the order of relationship to the "ground of being," the Creator, the God of salvation. This is where the person begins and ends. Or, as the document notes of the good in question, *quod est supremum*. Clearly, to compromise this good for whatever other conceivable benefit is incoherent; for it harms the supreme good of the person, and indeed on the grounds that this is good for the person. That violates not only the well-known Kantian moral maxim (a person must always be treated as an end also, and never merely as a means) but the whole Christian notion of human person as we gather this from the sources of revelation.

Why does direct sterilization attack (*nocet*) the ethical good of the person, according to the Congregation? Because it deliberately (*ex proposito*) deprives "foreseen and freely-chosen sexual activity of an essential element." That essential element is, of course, the potential to procreate.

In summary, then, the Congregation argues that deliberately to deprive freely-chosen sexual relations⁷ of the potential to procreate deprives those relations of an "essential element." But to do so is to harm the moral good (*bono ethico*) of the person. But since this good is the highest good (*quod est supremum*), an intervention that harms it (*nocet*) clearly cannot be justified by the principle of totality—a principle which justifies interventions precisely on the grounds that they are required by the over-all good of the person. In still other words, an intervention that harms the moral good of the person is intrinsically evil. But direct sterilization does this.

What is to be said of this analysis? I believe that it rests on a *petitio principii*. No one would quibble with the assertion that an intervention which harms the *moral* good of the person cannot be justified by the principle of totality. That is clear from the very meaning of that principle. What is not clear, however, is that the power to procreate is an element so essential to sexual intimacy that to deprive freely-chosen intimacy of this power is in every instance to assault the ethical or moral good of the person. That is precisely the point to be proved. If it were clear, we would not have had the birth-control controversy of the past ten or twelve years. So, to draw the conclusion it does (*absolute interdicta, intrinsece mala*), the Congregation must assume what is to be established—that to deprive freely-chosen sexual intimacy of the power to procreate always harms the ethical or moral good of the person. Until this is illumined, the analysis of the Congregation is less an analysis than a reassertion. One cannot fault the Congregation for saying that this reassertion is official Catholic teaching. It can be faulted, however, for failing to illumine this teaching.

Here two additional points are in order. First, the moral issue is not precisely the understanding and reach of the principle of totality. This "principle" is, under analysis, nothing more than a way of formulating the reasonableness or unreasonableness of medical interventions. In other words, whether earlier theologians and Pius XII understood the principle of totality as covering goods beyond the integrity of the organism (goods such as relationship to family and others) is not the issue. Clearly Pius XII did not view totality in this comprehensive way. The issue is rather the reasonableness or unreasonableness—all things considered—of certain surgical or medical interventions which have as their purpose the *over-all* good of the person, "the dignity and well-being of man as a person in all his essential relationships to God, to his fellow

⁷ The wording here is very careful. By saying "freely chosen" the document rather clearly excludes sterilizing interventions (whether temporary or permanent) which are carried out as protection against sexual activity that is not freely chosen (e.g., rape).

men, and to the world around him," as Bernard Häring words it.⁸ Whether one calls this the "principle of totality" or not is quite secondary. Human and Christian reasonableness is the issue, a point suggested by the Church's long support of the notion communicated by the term "natural law."

Secondly, my suggestion that the Congregation's analysis involves a *petitio principii* should not and may not be taken as a promotion of direct sterilization. The point I am making is methodological. The first thing that is to be said about direct sterilization is that it is an evil to be avoided insofar as possible—but an evil which, until it has been properly placed in the context of its circumstances, remains nonmoral in character (Louis Janssens would say an "ontic evil," Joseph Fuchs a "pre-moral evil," philosopher W. D. Ross would term its avoidance a "prima-facie obligation"), much as killing is a nonmoral evil until more of its circumstances have been revealed. Indeed, by putting the matter in this way, one implies that we must individually and corporately thrust toward a world where the values preserved or achieved by direct sterilization can be achieved without such an intervention. In other words, the issue is not "sterilization is an evil vs. sterilization is a good"; it is rather "direct sterilization is intrinsically evil vs. direct sterilization is not intrinsically evil." If it is not intrinsically evil, many theologians argue, there remain instances of values in conflict where it cannot be shown to be morally wrong.⁹

CONGREGATION'S ASSESSMENT OF THEOLOGICAL DISSENT

The document admits the existence of dissent on the part of many (*plurimum*) theologians. But it denies that such dissent has doctrinal significance as such (*ut tali*), so as to constitute a theological source (*locum theologicum*) which the faithful might invoke in the formation of their consciences. It is absolutely correct to say that dissent has no doctrinal significance "as such." But I do not believe that anyone ever made that claim. No mere ("as such") aggregation of dissenters constitutes a *locus theologicus*. That would be to "Gallupize" moral issues.

Any doctrinal significance attributable to dissent comes from the *reasons* for the dissent. Thus, in the traditional understanding of probabilism, the opinions of four or five reputable theologians had significance because, being reputable, such external authority created the presumption of internal evidence or reasonableness. But it is this latter (internal evidence or reasonableness) that has doctrinal signifi-

⁸B. Häring, *Medical Ethics* (Notre Dame, Ind.: Fides, 1973) p. 62.

⁹I am not including in this statement coercive policies of sterilization, since these involve other considerations.

cance and becomes a *locus theologicus*. To deny this is to imply that a moral conclusion has little or no relation to the reasons and analyses available to support it or weaken it.¹⁰ Such an implication would depart from the Catholic tradition of a natural moral law based on right reasoning and would juridicize the search for truth by pitting theologians against official statements, as if the ultimate reasonableness of a formulation depended above all on the ecclesiastical position of those proposing it.

On this matter the document of the Congregation seems strangely to be of two incompatible minds. First, by saying accurately that the dissent of many theologians has no doctrinal significance “as such,” the Congregation must clearly imply that it is the reasons or internal evidence that provide doctrinal significance. That is the force of the words “as such.” If the Congregation would not admit this, then moral theology as a discipline would simply cease to exist. It would be unnecessary because moral positions would be conclusions unrelated to human analytic efforts and legitimated by the official position of those who issued them. If, contrarily, the Congregation would admit (as it seems to imply in the use *ut tali*) that reasons and analyses do have doctrinal significance, then it is these that must be weighed to determine whether dissent constitutes a *locus theologicus* that may rightly influence the formation of conscience.

Secondly, however, while seeming to imply this, the document does not examine the reasons and analyses of those who have dissented.¹¹ Rather, it offers its own argument (one that involves a *petitio principii*) and concludes that direct sterilization is *absolute interdicta* and suggests that this should remove all doubts of the faithful (*incertitudinibus fidelium sublatis*). This too easily suggests that uncertainties and doubts are removed not by persuasive reasons but by official statements.¹²

I raise these points not because I wish to suggest any particular

¹⁰ The letter communicating the response of the Congregation to the American bishops is quite sweeping. It states: “I am writing to give assurance that the 1971 guideline stands as written, and that direct sterilization is not to be considered as justified by the common good, the principle of totality, the existence of contrary opinion, or any other argument” (emphasis added). If taken at face value (and I am not sure it should be), this last phrase puts moral reasoning out of order in the area of sterilization.

¹¹ I do not discuss these analyses here because my emphasis is above all on methodology.

¹² The statement that this document should remove the uncertainties of the faithful—including theologians—raises several serious theological questions. For instance, what is it about the document that removes doubts and uncertainties? What is the doctrinal significance of a statement of a Roman Congregation responding on its own (scil., without claiming to be an act of the Holy Father) and one destined only for a particular episcopate? Is it properly a document of the magisterium and one that carries doctrinal weight even in other countries? If so, what is this weight and how is it to be explained? A decade or two ago

institutional policy on sterilization or a change in policy on sterilization for Catholic hospitals. There are many reasons why Catholic health-care facilities should be extremely cautious about sterilization.¹³ I do so for methodological reasons. The Congregation, in facing the institutional-policy issue, has gotten deeply involved in theological presuppositions. These must be lifted out and examined, not only because of the importance of the specific question under discussion, but above all because these presuppositions will be operative in other, and even more important, matters.

Some may view pointing out the questionable theological implications in statements of a Roman congregation as defiance and disloyalty. Quite the contrary is the case. As Avery Dulles, S.J., pointed out in his excellent presidential address to the Catholic Theological Society of America (June 1976), "Recognizing the stern demands of intellectual integrity, theology must pursue truth for its own sake no matter who may be inconvenienced by the discovery. Unless we are true to this vocation, we shall not help the Church to live up to its calling to become, more than ever before, a zone of truth."¹⁴ When the theologian follows Dulles' advice with honesty, courtesy, and a realistic awareness of his own limitations, the only threat is to an excessively juridical notion of magisterium.

Kennedy Institute
Woodstock Theological Center

RICHARD A. MCCORMICK, S.J.

the answer to these questions seemed relatively simple and clear. But it can be doubted that such clarity is present in the contemporary Church.

¹³ For instance, the fact that direct sterilization is a nonmoral evil almost always irreversible, the fact that today's exceptions become tomorrow's rules or habitual practices, the fact that in a technologically-oriented and comfort-conditioned culture many will seek sterilization where it is objectively unjustifiable, the fact that some countries may be weighing coercive sterilization policies, the fact that a prohibitory policy may be justified symbolically (even if the action is not inherently wrong)—these and other considerations could provide most Catholic health facilities with a defensible basis for a very stringent policy against sterilization. However, I do not wish to argue this at length here.

¹⁴ Forthcoming in the *Proceedings of the Catholic Theological Society of America* 31 (1976).



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