

Reflections on Birth Control and the Law

DEAN M. KELLEY

Introduction: The Dialogue

OUR dialogue on this subject is not designed to determine whether "birth control" is morally right or wrong. We will not even limit ourselves to "birth control" per se. Rather we will use it as an example, a point of departure, to consider a much more general problem: **In what forms and forums should conscientious moral convictions be manifest for the enrichment rather than the disruption of our civil commonwealth?**

We will need to grapple with such questions as these:

1. What is the proper role of churches and churchmen* in determining public policy on "moral" problems?

2. What is the appropriate use of legislation and law-enforcement in promoting or regulating "moral" behavior?

3. When and how and on what grounds may individuals and groups legitimately foster and promote, demand recognition of, or insist upon universal conformance to, their standards of morality?

4. When and how and on what grounds may individuals and groups legitimately condemn, protest against, or refuse to support, participate in, or comply with, public or quasi-public policies or practices morally objectionable to them?

5. Are there legitimate distinctions to

*These terms will be used generically throughout to refer to Christian churches and Jewish synagogues and their adherents.

DEAN M. KELLEY is Executive Director of the Department of Religious Liberty of the National Council of Churches. This paper was presented at the Second National Institute Planning Meeting of the National Conference of Christians and Jews on the subject, "Religious Freedom and Public Affairs."

be made between public and private morality, between institutional and individual behavior?

6. What claims can be made upon society as a whole in the name of "conscience," "morality," "the moral law," "the law of nature," "the will of God," etc., and what weight should society give these claims in determining public policy?

These are questions upon whose answers much depends, and great diversity will be found among us in our approach to them. There are at least two ways in which we can proceed. One is to reveal all the conceivable hazards in views with which we disagree, and to impute unworthy and ulterior motives to those who hold them. This will bring our conversations to an early and acrimonious end, farther from the truth than we began.

The other way—the only one consonant with a "dialogue" that ensures a fair, frank, and faithful confrontation—is to seek the best as well as the worst in the views of the "other side." Not until we can understand and appreciate what beliefs which we reject mean to those who hold them can we join with them in common allegiance to the moral concerns which, beneath differing formulations, we share.

Dialogue is a process of reciprocal mutual refinement: shattering old stereotypes and caricatures of one another, whittling away old partisanships and parochialisms, polishing the unique insights shaped in each tradition by centuries of wear. In this process we discover unsuspected riches in others and in ourselves. We find new and deeper grounds for mutual respect and agreement. Where we differ, we will know why we differ, and will be able to direct our efforts to real rather than imagined disagreements, yet without (we hope) losing our mutual respect.

This proces is not promoted by such approaches to our topic as that of an article on "Responsible Parenthood" in a recent issue of *America* (May 5, 1962), in which the only motive or reason for birth control given credence is a selfish or slothful unwillingness to have children. "Contraceptionists" and "Sangerities" are characterized as "materialists" and "pessimists." They are the real irresponsibles, according to the author. Only the faithful Roman Catholic who follows the bidding of his Church is exercising truly "responsible parenthood." This is akin to calling "You're another!" over the back fence, and cannot be accepted as a serious contribution to civil conversation.

One is ready for dialogue on this subject when he recognizes that some—if not all—of the advocates of "birth control" are actuated by deep and genuine moral concern about overpopulation, the plight of unwanted and neglected children, and marriage as a spiritual relationship in which interpersonal communion is a more vital element of sexual relations than the biological mechanism of procreation. One is ready for dialogue when he recognizes that for many the use of contraceptives is not expedient or easy, but a deliberate and demanding exercise of conscience, as has been stated repeatedly by Protestant leaders. These concerns are at least as moral, and certainly as intelligible, as the rather extravagant contention that "birth control" is "murder."

On the other hand, Protestants are sometimes prone to see in Roman Catholic opposition to "birth control" nothing but a shrewd campaign of "biological imperialism" to win the nation by out-reproducing non-Catholics. (This misconception is strengthened by Roman Catholic spokesmen who gloatingly predict that they will have a majority of the population by such-and-such a year because of the higher birth-rate of Roman Catholics.) The same Protestants wax indignant that Roman Cath-

olics should try to outlaw birth-control for them. They cannot have it both ways: **either** Roman Catholics are trying to impose their "superstitious and prudish notions" on everybody **or** they want only Roman Catholics to have big families—but not both. Actually, of course, the Roman Catholic Church maintains that "artificial" methods of birth control are wrong for **everybody**, so the fact that this teaching is followed in direct proportion to devotion to the Church is only a felicitous by-product of virtue.

One is ready for dialogue on this subject when he recognizes that some—if not all—of the opponents of "birth control" are actuated by deep and genuine moral concern for what they conceive to be obedience to God's will, for the sacredness of life, for the preservation of morality. They are troubled about the effect of readily-available contraceptives on the sexual morality of adolescents, on the sanctity of marriage, on the spiritual commitment to child-bearing they feel should be implicit in legitimate sexual relations. In dialogue one may argue the justifications or application of these concerns, but not their sincerity.

When we can credit both Protestants and Roman Catholics with a desire to be truly "responsible parents" in the best sense of the term, as they respectively understand it, then we can proceed with a better spirit to find how this responsibility can best be defined, exercised, promoted, and regulated in our civil society without violating the conscientious scruples of any citizens beyond the strict requirements of the public safety and protection of the rights of others. It is not to a battle between white right and black wrong that we have come, but to a sane, appreciative weighing of conflicting and competing principles and values, conscientiously conceived and sincerely held. It is an exercise worthy of mature men; we must help each other to attain and maintain this maturity.

The Battle over "Birth-Control"

Two excellent sources may be cited for the substance of the differences over birth control:

Fagley, Richard M., **The Population Explosion and Christian Responsibility** (N. Y., Oxford University Press, 1960) 260 pp.

St. John-Stevas, Norman, **Birth Control and Public Policy** (Santa Barbara, California, Center for the Study of Democratic Institutions, 1960) 83 pp.

Both of these books—one by a Protestant, the other by a Roman Catholic—are models of clarity, objectivity and reasonableness. As an example of the spirit which should inform the dialogue, and as a quick recapitulation of the substance of the matter, we could not do better than to review the conclusions drawn by the latter author:

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 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 favor 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 organizations 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 favorable.

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.

From Birth Control to Bingo

If intelligence is the capacity to make significant distinctions, it is also the capacity to see significant similarities. One of the hardest similarities to see is that between my efforts to control others and **their efforts to control me**. Protestants can quickly become exercised over Roman Catholic efforts to ban birth-control, yet wonder why Roman Catholics (and volunteer firemen) resent their efforts to ban bingo and other forms of gambling.

Protestants may well demand, "What business does the Roman Catholic Church have running my life?" It is one of the most difficult but most essential of emotional gymnastics for them to realize that Roman Catholics can often ask as well, "What business does the **Protestant Church** have running my life?", and that Jews have chronically wondered the same about both of them. There is no logical, theological, or constitutional difference between Protestant attempts to prohibit the advertisement, sale, and consumption of hard liquor and Roman Catholic efforts to prohibit the advertisement, prescription, sale, or use of contraceptives.

Gunnar Myrdal has remarked (in *An American Dilemma*) upon the propensity of the American to **pass a law to make others be good**, while feeling that **he need not be bound by such laws himself**. Laws are to restrain bad people from their iniquity, he feels, and since—everybody **knows**—**he is not** bad, they do not apply to him. Many Europeans are impressed by the willingness of American legislatures to enact statutes on forms of behavior that are judged

elsewhere to be "private" rather than "public" concerns. What one eats or drinks, how he spends his leisure, how he comports himself in his sexual relationships, are deemed by many Americans (and not a few Europeans) as fitting subjects for public regulation, and are duly made the duty of the constabulary to oversee—an impossible task in many cases, and so another pious proclamation of desired civic virtue falls into desuetude. This use of law for purposes of exhortation rather than regulation does not conduce to respect for law among Americans.

The hortatory use of law has been identified with "puritanism," though it springs from a state of mind that is not limited to Puritans. In fact, the very "purist" who resents "puritanic" "censorship" would like to see his particular highbrow mode of culture or expression prevail for everyone. The urge is latent in us all to impose our accustomed norms upon the whole world (if we have lived long enough to acquire norms and become accustomed to them). Whatever does not fit our familiar modes of thought and action affronts us, shocks us, repels us. We are prone to denounce "modern art", "beatnik poetry", "the twist". Whoever has not felt the twinge of tension between what **is** and what **ought to be**, and the desire to "re-mold it nearer to the heart's desire" is either **numb** or **normless**—conditions which in advanced stages are referred to by psychiatrists as "catatonia" or "constitutional psychopathic inferiors"—that is, qualities of the **not-fully-human**.

To be fully human and alive, I submit, is to possess, and sometimes to try to exercise, an ineluctably normative urge: a normatizing urge: a sense of "**should**" and "**ought**" and even "**must**." This urge may be directed to "moral" issues or it may not; it may be applied wisely or it may not; but it is **there**. Our task is to consider when and how and where and on what basis it should be exercised or enacted in our common life together.

The Churches and Public Policy

Religious organizations are perhaps foremost among the institutions noted for focussing and crystallizing the normative urge, often expressing it as "the will of God", "conscience", "the moral law". They are credited with generating or sustaining the moral tonus of a society, and they certainly play a strong role in conserving meanings and values. Religion is not the sole or sufficient source or guarantor of morality, but it cannot be denied that the religious posture, movement, institution has as one of its main traits, effects, or functions, the forming, inculcating, and expressing of normative judgments: should's and ought's and must's.

Few in America would deny to churches and synagogues their rights to preach the difference between right and wrong. Many would say, "that's what they're there for". The argument comes on **what subjects** shall receive this treatment, how it shall be **exercised** and **implemented**, and **to whom it is addressed**. Are only matters of personal or "spiritual" concern to be discussed? Only ritual, cultic, or dietary practices? Or do social, economic, and political behavior also concern the churches? Is the action of the church confined to exhortation? Should it penalize or exclude dissident or defaulting members—"backsliders", as we Methodists put it—long ago. Should the churches speak only to their members, or should they testify to the society as a whole and to its leaders and legislators? Should the churches or church people resort to ostracism, boycott, intimidation, picketing and other forms of propagandizing pressure and direct action to enforce their understanding of right and wrong upon the whole society?

In a pluralistic democracy, I suggest, there is no basis whereby limits can be set upon the subjects which religious bodies (or anyone else) may choose for "normatizing". Freedom of expression means nothing if it does not mean free-

dom to speak and print and preach one's judgments upon whatever one chooses: the times and the customs, the rich and the poor, the government and the economy, the arts and the sciences—whatever. Each "church" is the sole judge of its own "preaching". From the Greek Orthodox Church to the Black Muslims, from the Ethical Culture Society to the Jehovah's Witnesses, there is no external restriction on exhortation (or counter-exhortation). Most Christians consider that God's will and Christ's redemption is to all the world. Nothing is excluded from the love and judgment of God. Christians are "under orders" to love, judge, serve, and redeem all of life under the aspect of eternity. When churches or individuals turn to action, another dimension is involved.

Members of a church or synagogue are also citizens. All citizens share the responsibility for determining public policy in a democracy. Religious convictions will be among the most potent considerations, we hope, determining the outlook of many citizens on various issues of public policy. They are completely within their rights as citizens to propose, promote, demand whatever courses of action they consider best for the society as a whole, or their individual or collective well being as members of the society. They are within their rights to criticize, commend, denounce legislators and executives, to campaign and vote for them or against them, according to their understanding of the public good, or even of some lesser or particular good. The enactment of the Eighteenth Amendment, for instance, was a perfectly legitimate exercise of the democratic franchise. Whether it was wise or effective is another question.

What is legal, legitimate, permissible, is not always or necessarily prudent, effective, or reliable. The "moral" campaign preached to its people by a church may fall short of being suitable public policy in several respects:

1. It may be esteemed a divine dictate independent of mundane environmental realities or objectives;

2. It may see as evil what less active or less organized citizens do not consider so; or it may intend a good not desired by them;

3. It may direct upon an evil deplored by all or a good desired by all a remedy or method that does not achieve the intended end. (Many deplore juvenile delinquency, but some remedies proposed have no demonstrated connection with the problem: i. e., censoring movies and television, prayer in schools, etc.)

4. Its long-term or overall effects may counteract or cancel its short-term or local effects: this is the "boomerang" effect.

5. It may create resentment, resistance, retaliation, more disruptive or negative for the society as a whole than any desired or achieved benefit.

"You Can't Legislate Morality"

From those whose recreations have been curbed or eliminated by a new law passed by "do-gooders", the cry is often heard, "You can't legislate morality." Certainly there are some ends which statutes are minimally effective to achieve: they can do little to make men **talk** "right," and less to make them **think** "right." They do not even do a great deal to make them **do** "right." About the best that can be expected of laws and their enforcement is that they will deter to some extent some of the grosser and more obvious ways of acting "wrong." And even for this limited end, the laws must grow out of and reflect a certain degree of moral consensus, without which they go unenforced.

But after a certain measure of consensus has been reached, law can have a very stimulating educational effect upon those who do not yet share fully in the consensus. There is nothing like

a motorcycle policeman, Walter Reuther once observed, to educate a speeder in the public safety. Perhaps the law's most educational feature is the categories in which it is framed: if these assume a certain structure in society, such as "segregation" it will tend to be assumed by all, whether they obey or not. It is often more vital to remove unjust or unworthy assumptions from the law than to try to stipulate good acts or outlaw evil ones.

Laws as the official deposit of the community's consensus on the more obvious matters of collective forms of right and wrong should not require behavior that most thoughtful citizens consider wrong or prohibit what most citizens consider right. The laws should not recognize or give authority to segregation, for instance.

Legislation and litigation, however, are not the only modes of achieving or securing social change. There are many modes more spontaneous and voluntary, and also therefore more effective. Men can often be drawn by example to behavior that they would resent being driven to by compulsion of laws and courts.

Public and Private Morality

It is sobering to note how readily churches and their leaders are willing to abandon the difficult and costly (but therefore more effective) discipline of exemplification and voluntary imitation for the fleshpots of legislation. When churchmen find it too hard to give a really convincing demonstration of the good life, and their followers find it too hard to follow, then resort is had to the engine of the civil law, to whip into line not only dissident followers, but the whole population.

There is no law requiring Methodists to drink whiskey; they are free to abstain; why should they then seek laws to make everyone conform to their concept of morality? There is no law requiring Roman Catholics to utilize contraceptives; they are free to abstain;

why should they perpetuate laws to make everyone conform to their concept of morality? There is no law requiring them to attend movies or read books considered unsuitable by their Church; they are free to avoid them; why should they seek by boycott and intimidation to ban the movie or book for everyone?

We should give full credit to the best motives behind the urge to "legislate righteousness." It is not just puritanic meddlesomeness that inspires it, but a genuine concern for human fallibility and suffering, an effort to be one's brother's keeper, in the best sense of the word. If alcoholism, for instance, were really a solitary vice, with no effect on others, it would be solely a question of personal morality, and of no concern to the community. But ministers and social workers who have had to look after the family of an alcoholic have had cause to ask themselves if something cannot be done to prevent the same thing happening to others.

They may conclude that the **material agent** is the strategic factor to eliminate—the beverage alcohol (or the contraceptive, or the pornographic book, or the movie of sex and violence)—and set about to outlaw it from society, assuming perhaps that if there are no apples in the Garden man will not fall into sin.

At this point the "eliminators" will be assailed by the criticisms of the sophisticated on all sides: "You have to cure the **man**, or he'll find some other outlet," "The fault is in society as a whole, that turns out cripples who seek consolation in vice." They are adjured to cure the whole society at once, starting nowhere in particular first. The "eliminators" may well respond that their objective may be crude and simplistic, but at least it is an attempt to **do something** to raise the level of social morality, rather than sitting on their hands and uttering cynical counsels of futility.

A case can be made for the claim that it is the naive but dedicated activists—fanatics, "true believers," zealots—who

have produced significant social change and regenerated society (often not without unanticipated unfortunate side-effects or backlashes). The Wesleyan Revival in England, with its central theme of social redemption of the drunkard, the destitute, the despised and fallen; the Abolitionists who led the campaign to eliminate slavery; even the too-lightly-disparaged experiment of Prohibition—these were rather remarkable movements of moral conviction on the part of masses of people, which achieved monumental effects—not always or only the ones sought,—far greater than the effects achieved by those who, seeing the "whole picture", start to act upon it nowhere. Often it is not the specific avowed objectives of such movements that have regenerated the moral climate of society so much as the fact that enough people cared enough to work and struggle and sacrifice for moral ends.

Conscience and the Law

By "conscience" I refer to a man's convictions about right and wrong, whether religiously-derived or not. The law should not require a man to do what his conscience forbids, nor forbid him to do what his conscience requires, unless his **actions** (not his words) pose a "clear and present danger" to the public peace and safety, or to the rights of others.

Churches may properly seek to instruct and inform the consciences of their adherents (and of anyone else who cares to accept their teaching). Citizens (whether or not members of those churches) to whom the churches' teaching commends itself as a suitable guide for all of society, may properly utilize the democratic processes to persuade the whole society to enact it as public policy. (Church leaders may even try to influence governmental leaders directly to this end; this is not improper as long as secret or collusive negotiations are not involved; it may, however, prove self-defeating if it provokes re-

sentment on the part of large segments of the public).

When properly-enacted public policy is repugnant to the conscience of an individual, he is faced with a difficult choice whether to obey the laws of God or the laws of men. Christians in this dilemma will appeal to Acts 5:29, "We must obey God rather than men", with recognition of the tragedy this may involve. The alternative open to any citizen confronted by a law he considers unjust or contrary to the divine will is to disobey it—and take the consequences: fine, imprisonment, even martyrdom.

Under the American Constitution, provision is often made to excuse from conformity to the law certain classes of objectors for reasons of conscience. Thus children who object to saluting the flag in public schools are excused from that practice. Conscientious objectors to combatant military service are assigned noncombatant service instead. Physicians and nurses in public hospitals in New York City who conscientiously object to birth-control are excused from participation in prescription or supplying of contraceptive devices.

In situations where there are many others willing to perform military or other services conscientiously objected to by some, the rights of the community are not seriously endangered. Where actions must be taken by one or few persons in position of leadership or responsibility, conscience must work in a different way. Rather than obstruct the working of the public will, the conscientious objector unable to fulfill that will must step aside and let others act who can. If there are no others who can . . . ?

Another dimension of the relation of conscience to public policy occurs in the use of taxes collected from all people for purposes which may be repugnant to the consciences of some. Can they legitimately withhold all or part of their taxes from this purpose? The answer in our society is No. The total tax-intake

is not meaningfully divisible in this sense. There is no precedent for legally withholding all or a portion of one's taxes, and even if there were, the deficit would doubtless be pro-rated among all or many appropriations, so that the program objected to would still be financed as substantially as other programs.

There is still the alternative for the conscientiously-objecting taxpayer to refuse to pay all or part of his taxes, and to go to jail. This alternative was taken by Rev. Maurice McCrackin of Cincinnati, by Rev. A. J. Muste of New York, and by others who refuse to pay taxes toward armaments. It was taken also by several hundred Englishmen around the turn of the century who refused to pay taxes toward the support of parochial schools. (This latter problem would probably not raise in this form in America, since under the First Amendment appropriations toward causes that can be shown to be religious rather than secular would very likely be ruled unconstitutional—if they could be brought before the courts.)

(I mention this distinction to clarify one element in the birth-control issue: though certain methods of birth-control are repugnant to the consciences of some citizens, birth-control is not a **religious** practice or rite per se, and therefore is a legitimate subject of legislation, administrative action, taxation, and appropriation. The same is true of prohibition of alcohol, narcotics, obscene literature, gambling, etc. It is **not** true of teaching or practicing religion or engaging in collective prayer, Bible-reading, or religious rites in public schools, as I understand the First Amendment; we will see if the Supreme Court will agree.)

(Thus it is apparent that Roman Catholic or other citizens who consider birth-control morally repugnant would not have a right to ban its use or availability in public institutions for those who desire it, as long as the due processes of decision-making of the whole

public have not rejected it. Practice in a private hospital is a different question entirely. But when a private hospital accepts grants of tax funds for construction or operation, or allocations of Community Chest or United Fund monies contributed by the whole population, it takes on a certain quasi-public character. It should recognize some resulting obligations to members of the public who have contributed to its support, especially if it is the only medical facility accessible in the community. Citizens should be able to obtain through it whatever approved medical services they need without medical restrictions based upon religious doctrines they do not accept).

Approved Medical Services

The concept of "approved medical services" has not had the attention it deserves. Approved by whom? For whom? Does this approval nullify conscientious objections? Of course not. Vaccinations, inoculations, and blood transfusions are "approved medical practice," yet they are stoutly rejected for reasons of conscientious conviction by various religious groups. However, courts will compel Christian Scientists to submit to vaccination if danger of an epidemic is imminent; they will compel blood transfusions for the child of Jehovah's Witnesses against their will in order to save the child's life. It is conceivable that in certain circumstances the courts might enforce an individual's right to birth-control services.

"Approved medical practice" generally refers to demonstrated efficacy in protecting or preserving individual or public health. It does not mean unanimous or infallible commendation by the medical profession. It simply means that human experience has shown that in a statistically preponderant number of cases certain desired physical effects have been secured by the use of certain medical procedures, not without some risks and not without some failures.

The non - physical, non - medical im-

plications are left to the individual patient to weight and decide for himself whenever possible — or they should be. In the case of minor children or adults unconscious or otherwise incapable of rational decision, the choice is left to the next-of-kin—occasionally overruled for cause by the courts. But according to the American respect for the responsible individual, **each person should be free to choose for himself** whether or not to avail himself of "approved medical means" for achieving certain legitimate ends. This decision should not be made for him without due process by other citizens who think they "know best what's good for him."

In other words, until and unless the whole community or society decides through its customary democratic processes that birth-control is not good public policy, as long as it is recognized as "approved medical practice", every adult citizen who desires it should have access to birth-control information and facilities under certain suitable civic safeguards against misuse. Those for whom certain forms of birth-control are objectionable are not obligated to use them.

Post-script: The Vocabulary of Appeal

Is there a basis on which differing religious and secular traditions can communicate? Is there an underlying structure of moral uniformity or continuity in the universe or human life to which we can all appeal? Roman Catholics cite the "natural law" which, they tell us, is accessible to the reason of all men. Yet somehow, it doesn't seem to occur to all men in the same way. As John C. Bennett has said of "natural law" in his Morgenstern Lecture, "Catholics know too much about it". Alfred North Whitehead said "the instability of evil is the moral order of the universe." Scott Buchanan has written a pamphlet in the Fund for the Republic series entitled "Rediscovering Natural Law", and George Forell is working on a book for the National Council of Churches on the subject of "universal law"—what

moral uniformities or formulations really do commend themselves to the reason of all rational men?

The trouble with much of the discussion about birth-control is that it is carried on in terms mutually unintelligible to the discussing parties. When Roman Catholics say birth-control is contrary to natural law and therefore no one has a right to it, Protestants reply, "Says you!" or words to that effect, and we are off to a grand discussion. Actually, Protestants and other concerned citizens feel that there are underlying uniformities of human behavior ordained by God or part of the structure of creation, and the sooner men discover and respect them, the better. They just don't think birth-control is one of them.

Any really "natural" law for human

conduct should be readily demonstrable to inspection. Honesty IS the best policy and Crime does NOT pay. Some of these instabilities take longer to discern than others, but there should be some objective basis for determining what is good and what is evil in terms of human conduct—at least if it is to be the subject of restrictive legislation. If birth-control or any other disputed form of conduct cannot be shown to have clear ill effects that cannot be controlled by safe-guards, there is no objective ground for outlawing it. This is the case that has not yet been made, except for bare assertions that it is against the natural law. This leaves the issue in the realm of political pressures and counter-pressures. Surely we can find a more rational level of discourse than that.

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