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LAW AND MORALS

WILLIAM J. KENEALY, S.J.*

THE RELATIONSHIP between law and morals is a prime problem of jurisprudence. It is a perennial problem in a dynamic society with its constantly changing social, economic, technological and political conditions. It is a particularly difficult and delicate problem in our pluralistic society in which large groups of citizens sincerely differ, theologically and philosophically, about the morality of many institutions and actions, and about the proper public policy of the state concerning them.

Americans were once divided on the legal and moral issues of human slavery. We are now divided on the legal and moral issues of racial discrimination. We have been divided over the legal and moral rights of capital and labor, over compulsory military service and thermonuclear weapons, loyalty oaths and flag salutes, prize-fighting and gambling, bible-reading and prayers in public schools, the equal treatment of children in private schools, the control of obscenity, the use of alcoholic beverages, and many other legal-moral questions agitating our society.

Despite our shared reverence for the sanctity of human life, for the sacredness of marriage, and for the holiness of the marriage act, the fact is that Americans have been divided at various times over public policy and laws respecting marriage and divorce, monogamy and polygamy, fornication and adultery, prostitution and homosexuality, artificial insemination and contraception, sterilization and abortion, euthanasia and suicide, capital punishment, the handling of poisonous snakes in religious services, and even the denial of medical aid or blood transfusions to sick or dying children.

Some of our differences have been satisfactorily solved in the past. Surely others will be satisfactorily solved in the future. Possibly some will never be solved to the satisfaction of all, but will merely be determined from time to time by majority vote. Nevertheless, the peace and

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good order of our society demand that we sincerely strive to resolve our present differences, as best we can, with civil dialogue and mutual respect, on sound legal and moral principles.

All Americans desire a civil society and a legal system founded upon principles of morality. We know that there is a moral order in the universe, within the range of human understanding and the competence of human virtue, distinguishing the good from the evil – an objective moral order which all civil societies and all voting majorities are bound in conscience to respect, and upon which the peace, the liberty, and the happiness of personal, national, and international life depend.

The moral order comes from God. It imposes upon us certain inalienable obligations, and bestows upon us certain inalienable rights, to enable us to cooperate in peace and prosperity, to achieve our perfection, to attain our happiness, and thereby to fulfill, in human dignity, our divine destiny. These obligations and rights are inalienable precisely because they are God-given. They are not imposed or bestowed by the state or by majority vote; wherefore they cannot be abrogated or destroyed by the state or by majority vote. They are antecedent, in nature and in logic, to the institution of governments, the ratification of constitutions, the enactment of statutes, or the casting of majority ballots. For governments are instituted among men to recognize their existence and to protect their exercise, to foster and facilitate their enjoyment, by the construction of practical codes of civil obligations and rights consonant with God's moral order. This is the philosophy solemnly proclaimed by our Declaration of Independence, which appealed to God, to the Creator, to the Supreme Judge of the

World, and committed our young nation to His Divine Providence.

The civil order depends upon the moral order. The good society cannot be organized upon police power alone. Law must rely upon morals. For it is morality which imposes the obligation in conscience to obey civil law. Without this conscientious obligation, the enforcement of law, the administration of justice, and the preservation of liberty would be impossible. It is an obvious fact of human experience that the vast majority of our people, in the vast majority of their actions, habitually obey the law of the land, not out of fear of legal sanctions, but precisely because they realize that they are morally bound to do so. The moral obligation to obey civil law is the indispensable foundation of a decent and free civil society.

Law, therefore, must respect morals. Man-made law cannot validly command the violation of any God-given obligation, nor can it validly prohibit the exercise of any God-given right. Law must be just. An unjust law cannot, of itself, bind the human conscience. An unjust law is, in reality, no law at all, but an act of governmental force and a species of immoral violence. At various times and places men have been forced to submit to immoral laws. In our own country the abomination of human slavery was once enforced by law. But no man was ever a slave in his own conscience. An immoral law contradicts conscience. Conscience repudiates immoral law.

This is not to say, of course, that every individual is sufficient unto himself to determine arbitrarily which laws he will obey and which he will disregard. In cases of genuine doubt, reason postulates a presumption that civil laws, enacted under the safeguards of constitutional processes, are consonant with the moral order. Reason, as well as good

order and respect for the conscientious convictions of others, requires that enacted civil laws be given the benefit of doubt in the midst of honest disagreement. Nevertheless, a palpably immoral law cannot, of itself, bind the human conscience. There is a moral right to disregard it. There may be a moral obligation to resist it. In the face of clear and irreconcilable conflict between law and morals, we must obey God rather than man.

The great body of American law is solidly grounded upon morality. In God's Providence, the incorporation of sound moral principles has been the most conspicuous and vital factor in the development and refinement of our common and constitutional law. An obvious example is seen in the fundamental axiom of our criminal law that, except for minor matters called public welfare offenses, the overt act does not make a criminal unless his mental state is criminal — *actus non facit reum nisi mens sit rea*, which was a principle of moral theology long before its adoption by our criminal law. And similarly, with understandable exceptions, the moral principle of personal responsibility, based upon the moral premise of free will, now constitutes the foundation and determines the superstructure of our entire criminal and civil law. The legality of our free society is essentially predicated upon morality.

The vital and refining influence of morals upon our law is evident in the history of equity; in the evolution of the law of contracts and of torts; in the development of the law of theft, from larceny through embezzlement through false pretenses; in the law of sales, from *caveat emptor* to decent dealing; in the law of agency, from mere authority to fiduciary obligations; in the law of property, from raw power to social duties, from *laissez-faire* rugged individualism to

social responsibility; in the law of industrial relations, from individual helplessness to collective bargaining; in our constitutional law, from slavery to freedom; in the law of due process, from procedure to substance; in the law of equal protection, from compulsory racial segregation to equal human dignity; and so with many other principles and precepts of our common and constitutional law.

But the moral order depends upon the legal order also. Civil laws are necessary for the recognition and preservation of morals in organized society. Without the support and sanction of law, many moral obligations could not be fulfilled, and many moral rights could not be protected against the encroachments of the unscrupulous and the machinations of the criminal. The law and the police power of the state are necessary to protect the vast majority of our people in their fixed desire and their conscientious obligation to observe the precepts of the moral order.

Furthermore, the law must do more than protect those obvious moral obligations and rights upon which all men agree. It must do more than enforce the immediately evident principles of public morality about which there is a general consensus. The law has an educative as well as a coercive function. It cannot escape the perplexing task of advancing from the immediately evident principles of public morality to the derivative principles which depend upon mediate and empirical evidence. The law is a practical and progressive science. It must specify and apply particular principles of public morality by enacting specific and particular rules and standards which do not bask in the sunshine of universal agreement. The law must frequently labor in the much dimmer light of argument and controversy; sometimes,

unfortunately, in the semi-darkness of strident partisanship and bitter emotionalism. Yet, in light or in darkness, the law must relentlessly pursue the public morality and common good of society.

The construction and refinement of a *corpus juris* properly implementing public morality is a monumental and perpetual task. It postulates moral sensitivity in public opinion, dedicated objectivity in the legislative process, and scholarly wisdom in the judicial process. For the principles of public morality require reasonable and practical specification and application to the constantly changing social, economic, technological and political conditions of our dynamic and pluralistic civil society.

The necessity of applying the principles of public morality postulates change in our civil laws as the circumstances of our society change. It repudiates a naive and smug complacency in the *status quo*. It commands a reasoned acceptance of the good and a rejection of the evil in all that is new. It demands a critical search for the better. It requires an intensive scrutiny of all the pertinent data of history, philosophy, politics, economics, sociology, psychology, medicine, and every other available font of human knowledge, normative and empirical, which might help to solve the perplexing problems of our society. But of primary importance, it insists that the search for a better *corpus juris* be made in the light of the origin, nature, purpose and limitations of the state; and in the knowledge of the origin, nature, dignity and destiny of man. For the law is made for man, and man is made for God.

Legality and morality are interrelated and interdependent. But they are not the same thing. Their respective fields overlap, but they are not coextensive. Many criminal acts

are sins, many sinful acts are crimes, but crime and sin are not identical. Certain crimes, such as the so-called public welfare offenses which penalize the overt act regardless of the mental element, can be committed without sin. Certain sins, such as simple lying and solitary masturbation, can be committed without crime. But lying which involves fraud or libel, and masturbation which involves public indecency, are both sins and crimes. They are crimes precisely because they offend against that aspect of the *common good* which is properly called *public morality*. It is not the purpose or function of civil law to penalize or prohibit an immoral act simply because it is immoral. The end of civil law is the common or public good of society. In the field of morals, therefore, its proper scope is not private morality, but public morality only.

It is not easy to delineate, with abstract precision, the specific fields of public and private morality. It is difficult to draw a sharp line which will clearly and satisfactorily distinguish, in all cases, those moral actions which properly fall within the legislative competence of the state, and those which are properly beyond it. In such a task reasonable men may differ, and their opinions may vary from time to time and from culture to culture. The distinction is certainly not that between publicity and secrecy. The publicized lie is not a crime. The secret murder is. Although the field of public morality is by no means confined to criminal law, but extends to the great body of our civil and constitutional law as indicated above, nevertheless it may be helpful to approach an understanding of it by considering a number of obviously immoral actions punished as crimes by the criminal law of all mature and civilized states.

Murder, manslaughter, rape, mayhem,

assault and battery violate personal rights of life and bodily integrity; kidnaping and false imprisonment violate personal rights of liberty and locomotion; robbery, larceny, embezzlement and false pretenses violate personal rights of property; arson and burglary violate personal rights of habitation and enclosure; libel violates personal rights of reputation; perjury and bribery pervert the administration of justice and obstruct the preservation of liberty; commercialized vice corrupts the citizenry and offends the public decency; riots disrupt the public peace and order; treason invades the security of government itself — which exists to protect the personal rights and public values enumerated above.

The administration of justice, the preservation of liberty, the maintenance of peace and order, the security of government, and the protection of fundamental personal rights constitute an obvious and important part of the common good of civil society. All immoral acts, therefore, which substantially militate against them are clearly in the field of public morality, and properly subject to state legislative power.

It is a misleading half-truth, therefore, to say that the state cannot legislate morality. The state can, should, and does in fact legislate in the field of public morality. Our whole law is witness to the fact. But the state should not, and usually cannot, legislate in the field of purely private morality.

It is obvious, of course, that the state is utterly incompetent to legislate concerning *purely internal acts* of virtue or of vice. Yet purely internal acts of mind and heart comprise a large part of morality. Moreover, the state should not attempt to legislate concerning *overt moral acts* which are in the field of *private morality only*. The legislative

competence of the state reaches only to those overt moral acts which are properly in the field of *public morality*.

The stability of the marriage bond, many rights and obligations of the married, the care of orphans and illegitimate children, the rights of the unborn, the corruption of youth, the spread of sexual promiscuity and venereal disease, the growth of alcoholism and drug addiction, the fleecing of the poor by gambling syndicates, and the general condition of fundamental socio-moral standards, are matters which clearly affect the public or common good of society. For that reason they are properly within the field of public morality, and within the legitimate scope of law and public policy.

Nevertheless, as indicated above, the states differ substantially in their laws and public policies concerning marriage, divorce, separation, abortion, adoption, adultery, fornication, prostitution, homosexuality, artificial contraception, various forms of gambling, the use of alcohol and narcotics, and many similar matters. These differences reflect disagreement on one or more of three questions: (1) whether the given activity is immoral or not; (2) if immoral, whether it is in the field of private or public morality; and (3) if in the field of public morality, whether this or that public law or policy is the proper and prudent way to handle the problem in view of the primary consideration of the public or common good of society.

Recently the State of Illinois has been concerned with two such problems, namely, legalized abortion and artificial contraception. It may be of interest to consider both problems in the light of the general principles outlined above.

Abortion

The proposed Illinois Code of 1961 recommended to the Legislature the legalization of abortion by a licensed physician in a licensed hospital, provided:

- “(1) That the abortion is medically advisable because continuance of the pregnancy would endanger the life or gravely impair the health of the pregnant woman; or
- (2) That the abortion is medically advisable because the fetus would be born with a grave and irremediable physical or mental defect; or
- (3) The pregnancy of a woman has resulted from forcible rape or aggravated incest.”

The proposed code would have legalized abortion, therefore, for six different reasons. The Legislature rejected the last five but approved the first reason, which had been part of the old law of the state. Accordingly, the present Illinois Criminal Code, which became effective January 1, 1962, legalizes abortion only when “necessary for the protection of the woman’s life.” In evaluating the merits of the abortion provisions of the proposed and the enacted Illinois Code, a bit of history is pertinent.

In the early development of our common law, nobody knew for sure exactly when individual human life commenced. It was common knowledge, of course, that the human fetus began to grow from the moment of conception. Everyone knew, therefore, that it was a living thing. But *when* it began to live as a *human being*, that is, with a *human soul*, was a matter of conjecture, theory, doubt and dispute among theologians, philosophers, biologists, physicians, judges, lawyers, legislators, and the general public.

Did human life begin at conception, at quickening, at viability, or only at birth?

Some thought it probable or possible that the fetus, at the moment of conception, began to live with some sort of a vegetable soul; that, after a considerable but indefinite period of growth, it began to live with some sort of an animal soul; that, after a further and disputed period of development, it eventually began to live with a human soul; and thus, finally, became a human being. But despite the conjectures, theories, doubts and disputes, it was universally conceded that the child born alive, however immature and undeveloped compared with the full-grown adult, was certainly a human being; and therefore was certainly the subject of moral and legal rights.

A fundamental principle of criminal law requires that all elements of a crime must be proved beyond all reasonable doubt. Since murder involved the killing of a being certainly known to be human, the crime of murder was restricted to the killing of a human being after it had been born alive. Abortion was made a lesser crime, as the killing of a potential human being or a being of doubtful humanity.

It remained for the biological and medical sciences to clear up the doubt. They did so. Scientific evidence gradually established the fact that the human fetus grows and develops internally from the moment of conception, not by leaps and starts, but evenly, steadily and purposefully to the time of its birth, just as it continues its even, steady and purposeful growth from the immaturity of the baby to the maturity of the adult. The ancient theories of different and successive souls were rendered obsolete and discarded. The continuous internal teleological development, from conception to birth to adulthood, postulates a human soul, and therefore a human being, from the first moment of conception. There

is no other rational explanation of the scientific evidence. The human fetus is a human being.

But jurisprudence is conservative. There is usually a time lag, sometimes a tragic one, between the advance of scientific knowledge and the development of the law. Nevertheless, the scientific evidence of the humanity of the unborn child has had an important impact upon the development of our law. This impact is most evident in the modern law of property and of torts.

At common law the unborn child could not take a present legal estate by means of a *deed*, because the required livery of seisin, *i.e.*, the technical transfer of possession by manual delivery of a symbol thereof, was obviously impossible. Moreover, it was originally doubtful whether the unborn child could take such an estate by means of a *will* or by *descent*, even though livery of seisin was not involved in such cases. As the law developed, however, the unborn child became legally competent to take such an estate by means of a will or by descent, provided that the child had quickened in the womb before the death of the testator or of the intestate ancestor. And in modern property law, by judicial decision or statute, quickening is not required, conception alone is sufficient. The unborn child, quickened or not, viable or not, is now competent to take a present legal estate by will or by descent; and, in a few states, by deed as well. Although the estate vested in an unborn child is defeasible in the event of death in the womb, the fact is that modern property law provides that a present legal estate can vest in the unborn child from the moment of its conception. This is a clear legal recognition of the humanity of the unborn child, and a protection of its property rights, from the

moment of its conception.

Originally, when a pregnant woman was wrongfully injured, and as a result her subsequently-born child suffered deformity, the law denied recovery to the child itself. Two reasons were given: at first, doubt as to the human existence of the child at the time of the injury; and later, difficulty in proving the causal connection between the pre-natal injury and the post-natal deformity. The doubt was dissipated by science. The difficulty was overcome by requiring clear and sufficient medical evidence of the causal connection. As a result modern tort law, in many if not in most states, now allows the child itself to recover for pre-natal injuries. It has been held that a child born alive may maintain an action for the wrongful death of its parent, caused before the child's birth. And it has been held that an action will lie for the wrongful death of a child, born alive, who died later as a result of pre-natal injuries. The development of the law of torts is another clear legal recognition of the humanity of the unborn child, and a protection of its right to life and bodily integrity, from the moment of its conception.

The advance of scientific knowledge concerning the humanity of the unborn child, and the utilization of that knowledge, is less evident in the criminal law. Even in criminal law, however, it has been held that murder was committed where a child, born alive, died later as a result of a malicious beating inflicted upon its pregnant mother. In any event, an intelligent and objective pursuit of truth and of justice requires an approach to the modern problem of legalized abortion in the light of the scientific evidence that the unborn child is in fact a human being.

In *The New Republic* of February 9,

1963, James Ridgeway wrote an article entitled "One Million Abortions," and subtitled "It's Your Problem, Sweetheart." The opening sentence reads, "Reform of the state abortion laws is not a popular cause even though these statutes result in extraordinary inhumanity when they are enforced, and lead to spurious medical practice when disregarded, as they commonly are." Mr. Ridgeway argues for the "reform" of the "anachronistic" and "archaic" abortion laws which restrict legal abortions to cases in which the life of the prospective mother is allegedly in danger. This restriction bothers him. He urges a "broader view of health." He advocates the enactment of statutes which, like the one proposed and rejected in Illinois, would authorize abortions for several other reasons.

Mr. Ridgeway does not bother to point out that the scientific researches of the medical profession helped to dissipate the anachronistic and archaic doubts of earlier times as to the nature of the human fetus, and to establish the modern empirical evidence of the humanity of the unborn child from the moment of conception. But he seems angered by the opposition of the medical profession to his "broader view of health." He sees the profession "mired in the 19th Century," practicing in "the Victorian era," — and preserving "its chaste veneer." Presumably he thinks, or he thinks that doctors think, that the killing of an unborn child is a matter of chastity or unchastity! The notion is novel, at least. Immediately after disparaging the "chaste veneer" of the medical profession in America, Mr. Ridgeway continues:

Society has adopted a somewhat more modern attitude toward abortion elsewhere in the world. In most Eastern European countries — which closely imitate the Soviet

Union—abortion is legal on request through the third month of pregnancy, the safest period in which to abort. . . . In Hungary the number of abortions now exceeds the number of live births. . . . Japan made abortion legal on request in 1948 for women less than three months pregnant, for the specific purpose of reducing the birth rate. As a result the rate has been halved. An estimated 1.7 million abortions are performed annually, slightly more than the 1.6 million births. . . . The Scandinavian countries have adopted abortion practices less restricted than those of the United States, but far more limited in scope than either those of Japan or East Europe. . . . It seems likely that the United States will move, albeit slowly, in the direction of the Scandinavian laws.

Mr. Ridgeway begins a paragraph, captioned "Sanctity for the Chaste," with the observation that, "The opposition to abortion reform usually has less to do with religious dogma than with vaguely Puritanical traditions which influence Protestants." Quite apart from the tasteless sneer about sanctity and chastity — virtues revered in all religious traditions — the observation strikes me as grossly unfair to Protestant principles of morality. It is documented by wisecracks which fall somewhat short of intellectual argument.

Later in his article Mr. Ridgeway states that, "There is little religious opposition to abortion in Japan. Shinto, for example, does not recognize the child as a living person until it has seen the light of day." Previously he had stated that, "Roman Catholics regard abortion at any stage of pregnancy as a form of murder: life begins at the moment of conception." These two statements would seem to indicate that the author has heard of the basic moral problem involved in abortion. But nowhere does he discuss the merits of the basic moral ques-

tions: Is the unborn child a living human being? If so, does the unborn child have a right to its life? If so, is its right to life equal to that of other human beings? Yet, without discussing the basic moral problem in terms of the basic moral questions, Mr. Ridgeway uses the term "reform" ten times in his brief three-page article.

It is necessary, of course, to keep in mind exactly what is contained in the concept of abortion. The death of an unborn child, which results from an *otherwise* proper and necessary surgical operation upon a pregnant woman, is unfortunate and regrettable. But it is neither immoral nor illegal. Nor is it an abortion. Abortion involves the direct and intentional killing of an unborn child. It means a purposive and deliberate killing of a human being. It is the direct and deliberate destruction of a human life *as a means* to some such social end as the six objectives proposed in Illinois in 1961; or the single objective of preserving the life of the mother, as enacted in the present Illinois Criminal Code. Is such a killing ever morally justified? Should it ever be legally sanctioned?

Excluding unborn children for the moment, the direct and deliberate killing of a human being is never justified in morals, or sanctioned in law, because he is weak, deformed, sick, senile or insane; or because he is a physical, financial, emotional or social burden upon others. No civilized person would suggest that a child might be put to death, morally or legally, because he was born "with a grave and irremediable physical or mental defect;" or because he was born after being conceived by "forcible rape or aggravated incest." The very concept of the direct and deliberate killing of a child after its birth is contrary to civilized reason. It is also revolting to civilized emotions.

After birth, when the child is seen, heard, touched and fondled, powerful and praiseworthy human emotions spontaneously arise to reinforce the obvious dictates of human reason. The child is precious. Its right to life is sacred. The moral law vindicates it. The civil law protects it.

Despite the nobility of the emotions which properly surround the newborn child, morality is discovered, and legality should be determined, not by emotion, but by reason. But reason, premised upon scientific evidence, concludes that the child is essentially the same human being before as after its birth. The passage of birth adds nothing to its essential nature. Reason indicates, therefore, that the child has the same moral right to life before as after its birth. For the moral right to life emanates, not from the event of birth, but from the nature of *human being*. And the moral right of a human being to its life is one of the fundamental rights which governments are instituted to secure. Moreover, the civil law should be especially solicitous and vigilant to protect the lives of the unborn. For the unborn constitute the most voteless, voiceless, helpless, unrepresented and unorganized minority in the land.

The direct and deliberate killing of a human being is never morally justified except in legitimate warfare, legitimate execution for crime, legitimate prevention of crime, or in legitimate defense of self or others. But the unborn child is neither an enemy nor a criminal. There remains only the question of the legitimate defense of self or others, specifically the pregnant mother.

The civil law will not sanction the direct and deliberate killing of an innocent human being, after its birth, *merely* because such a killing would save the life of the killer or

of another. It is clearly murder, for instance, directly and deliberately to kill an innocent person when ordered to do so, even under pain of one's own immediate death. This is true regardless of the age, health, sex, character, or the personal, marital, financial, national, political, racial, religious or social status, or any other differences between the killer and the killed. All human beings are essentially equal. One human life is fundamentally as sacred as another. No human life is intrinsically inferior or subordinate to another. This is what is meant by the moral and legal principle of human equality.

Both morals and law, however, recognize the right to kill an *unjust aggressor*, when such action is genuinely necessary to defend the life of an innocent human being. Moreover, for this right of defense to arise, it is not necessary that the aggressor be formally or consciously and responsibly unjust; it is sufficient, for instance, if he is an insane and irresponsible maniac whose activity here and now gravely threatens the life of an innocent person who cannot be protected except by the killing of such a materially unjust aggressor.

But even the materially unjust aggressor must be an *aggressor*. And aggression must consist at least in the exercise of some volitional or active force directed by the aggressor against the life to be defended. But the unborn child directs no active or volitional force against the life of the pregnant woman. The unborn child simply exists and grows, passively and without volition, in the womb of its mother. To say that it is an aggressor, by reason of its physical existence and natural growth in the place intended for its existence and growth, is to do violence to meaningful language. Even in the supposition that the mother's life is in danger, and that the death of the child is

the only available means to avoid that danger, the direct and deliberate killing of the child in the womb can be predicated only upon an essential and intrinsic inferiority or subordination of the infant to the maternal right to life. Such a supposition involves tremendous emotion. But reason supplies no justification for killing the child to save its mother, as it supplies no justification for killing the mother to save her child. For all human beings have an essentially and fundamentally equal right to life. And this intrinsic equality is a basic principle of morality, as it should be of legality.

The direct and deliberate killing of an innocent human being, even as a means to preserve the life of another human being, is immoral. Moreover, since the state is instituted to protect fundamental moral rights, including the right to life, such a killing is in the field of public immorality. The civil law, therefore, should prohibit abortion for *any* reason, in order to fulfill its obligation to protect the fundamental right to life of *all* the human beings within its jurisdiction.

Artificial Contraception

Some months ago the Illinois Public Aid Commission voted to adopt a public policy of furnishing contraceptive devices and services to recipients of public welfare relief. The policy was intended to apply to all mothers on relief, whether married or single, whether living alone or with their husbands.

The announcement created a storm of controversy. The policy found favor with those who advocate population control by means of artificial contraception. It appealed to those who believe there is a moral right to contraceptive intercourse, which should be enjoyed by the poor as well as

the rich. It appealed to many tax-payers who think that the burden of relief is too heavy already, and who wish to lower their taxes by cutting down the number of persons on relief. It also appealed to some people who consider that there are too many Negroes in Cook County already, and who desire to check the growing percentage of Negroes in the Chicago area.

On the other hand it was argued that, if public funds are to be expended for contraceptive purposes, such expenditures should be restricted to those women on relief who are living with their husbands, on the ground that otherwise the policy would encourage and support adultery and fornication, which are contrary to the public policy of the state. Others opposed the proposed policy in its entirety, on the ground that artificial contraception is immoral in itself, and that its official encouragement and support, by public authority and public funds, would be an official policy of public immorality.

A bill was introduced into the Illinois Senate to limit the policy to women on relief living with their husbands. It was passed by a wide margin. Then a similar bill was introduced into the House of Representatives. But the Speaker of the House, in the exercise of his large parliamentary powers, refused to allow the bill to come to a vote. A filibuster was threatened, and a compromise was finally reached. On June 28, 1963, the House voted to establish a fifteen-member legislative commission to study the entire question of public relief and artificial contraception over a two-year period, and to submit a report to the Illinois Legislature in 1965. The commission will consist of five Senators, five Representatives, and five members of the public to be appointed by the Governor. The Senate agreed to the

establishment of the commission. At the same time the Governor agreed that, pending the report of the commission in 1965, the use of public funds for contraceptive purposes will be restricted to married women on relief living with their husbands. Presumably, the entire policy will be decided by legislative action in 1965.

One of the unfortunate and distressing aspects of the controversy during the past several months was the rather frequent accusation that those who opposed the use of public funds for contraceptive purposes were attempting "to force their particular religion down the throats of others." The charge was usually aimed at Catholics. It was unfortunate because it did nothing to clarify the intellectual issues. It was distressing because it tended to increase rather than lessen religious tensions.

The accusation seemed to be based upon the erroneous assumption that Catholic belief concerning the immorality of artificial contraception is the product of Church legislation, rather than Church teaching about the natural law—or possibly upon an ignorance of this important distinction. The accusation seemed to be grounded upon the equally fallacious assumption that a Catholic's religious belief could not be in harmony with his sincere conviction, based upon philosophical and moral reasons, as to the common good of civil society—or possibly upon an ignorance of this critical distinction also. Finally, the accusation seemed to ignore entirely the fundamental distinction between private and public morality.

There are intellectual reasons which lead me to conclude that artificial contraception is morally wrong. I shall not indicate them in this brief article. Suffice it to say that there are theological arguments which lead me, as

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a Catholic, to that conclusion. There are philosophical arguments which lead me, as a citizen, to the same conclusion. But neither my theological nor my philosophical arguments lead me to the further conclusion that, simply because artificial contraception is morally wrong, therefore it should be penalized or prohibited by the state. I do not support the Connecticut law, for instance, which makes the actual use of a contraceptive a crime. For reasons which I cannot recount in this brief article, it seems to me that the use of a contraceptive device is a matter of private morality, and not of public morality. It seems to me, therefore, to be beyond the proper competence of the police power of the state. I do not speak of laws which would prevent the *public display* of contraceptive devices in store windows or shop counters under the eyes of teen-agers. I speak of the *use* of a contraceptive device.

Nevertheless, the use of public agencies and of public funds to encourage and support artificial contraception is surely a different, although a related, problem. When public authority and public funds are employed to encourage and support contraception, it seems to me that we are confronted

with a question of public morality. All citizens have an interest in the common good of society, and therefore in public morality. This interest is not to be destroyed or ignored because of religious belief or unbelief. Wherefore citizens with religious beliefs should not be disenfranchised or silenced because their religious beliefs coincide, in whole or in part, with their sincere civic convictions as to what is good for the society in which they live. When the Baptist or Methodist or anyone else urges legal restrictions upon the use of alcoholic beverages or gambling, and does so because he sincerely believes that such restrictions are necessary or good for the common welfare of civil society, he exercises a right and fulfills an obligation of citizenship. It would be stupidity or bigotry, it seems to me, to accuse him of attempting to force his particular religion down the throats of others. All citizens, of all faiths and of no faith, have the civic interest and the civic obligation to speak out and to work for the common good, including the public morality, of the nation and the state. I suggest that the distinction between purely private morality and public morality, outlined above, may be of some help in clarifying the issues which divide us.