

August 2003

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Recommended Citation

Zimmerman, Anthony (2003) "Duress and Contraceptive Sterilization: A Reply to Prof. Thomas Kopfensteiner," *The Linacre Quarterly*. Vol. 70: No. 3, Article 4.

Available at: <https://epublications.marquette.edu/lnq/vol70/iss3/4>

Duress and Contraceptive Sterilization: A Reply to Prof. Thomas Kopfensteiner

by

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Contraceptive Sterilization: Japan vs. USA

Before critiquing the Kopfensteiner article, allow me to provide contrasting data on sterilization in Japan and in the USA. In Japan, where I live, contraceptive sterilization is relatively rare, 5% for women, 1.2% for men (*Mainichi Survey 1991*). In the USA it reaches to 68% for fertile couples. Anecdotal evidence from Japanese doctors indicates that this method is near the bottom of their list of preferences. And I was told that the last thing Japanese doctors would do to their wives is to sterilize them.

Contraceptive sterilization has apparently become the fashion in the USA, with all the coercion that fashions usually apply. Government statistics indicate that 68.3% of fertile couples eventually submit to surgical sterilization for contraceptive purposes. That is near the saturation point. The figure is for couples with at least one child in which the woman is 35-44 years old, among whom either the man or the woman has been surgically sterilized for contraception (1988, Advanced Data issued by National Center for Health Statistics, Dec. 4, 1990). The NCHS figures for 1995, now on line, indicate that among married women age 35-44 with a parity of one or more, 52.9% have been sterilized for contraceptive purposes, plus 7.2% for non-contraceptive reasons. On a separate table 14.5% of males age 40-45 were listed as surgically sterilized. Added to the 52.9% for women, that totals to 67.4%, slightly below the reported 68.3%, due no doubt to separate calculations and tables.

A news release issued on June 5, 1997 by NCHS states that the leading

method of contraception remains female sterilization (10.7 million women), followed by the oral contraceptive pill (10.4 million women), the male condom (7.9 million), and male sterilization (4.2 million).

During the past three decades a major shift toward female rather than male sterilization is found. In 1970 the cumulative total of sterilizations was reported to be 2,750,000 of which 52% were male and 48% female. By 1983 the trend had reversed, being 46% male, and 54% female (see report by Association for Voluntary Sterilization based on government figures). By 1995, it was 28% male vs. 72% female (NCHS, June 5, 1997).

The problem, whose moral aspects Professor Thomas Kopfensteiner dealt with in the May 2003 issue of *Linacre Quarterly*, is therefore one of staggering pastoral significance, as well as of medical concern in the USA.

The difference of 68% sterilized couples in the USA against 6% in Japan is truly remarkable. The leading method of contraception in Japan is condoms for younger and older couples alike, about 75%. Use of Pills and IUDs is minimal. In the USA, on the contrary, younger couples prefer Pills, older couples prefer sterilization. The Pill is the leading method for women below the age of 30. But among women age 35-44 Pill usage plummets to 6.3% whereas sterilization rises to a remarkable 52.9%. Migration from the Pill to sterilization indicates perhaps dissatisfaction with the Pill, perhaps also the pervasive power of fashion.

The Pill had been outlawed in Japan until recently, but even after it was authorized in 1999 with great media fanfare, not much changed. By now it appears that the Pill in Japan is not a profitable business. Suddenly the fanfare about Pills has subsided. Women generally fear side effects, and shy away from a mandatory pelvic examination. Pharmaceutical companies, to re-coup investments, recently flooded middle schools with Pill pamphlets, but a public outcry by women vigilantes soon put an end to that. The pamphlets were collected and burnt. Continued vigilance is called for, however.

The issue of sex ed is heating up year by year. What to do to prevent pregnancies among school girls? Some weeks ago NHK (National Public TV) had a program discussing sex-ed. As I listened, I heard not a word about the Pill. The condom was mentioned primarily, and abstinence. My friend Dr. Hirata is supplying government officials with materials of Abstinence Programs being used now in the USA. Diet member Eriko Yamatani is a strong advocate among Diet Members, urging the use of similar abstinence programs in Japan.

Isolating Sterilization from the Catholic Hospitals

We return to our subject, the fashion of surgical sterilization that has infatuated men and women in the USA. Professor Kopfensteiner proposes

in his article that "the element of duress can be a morally relevant factor when dealing with provisions for sterilization in some new partnerships" [of medical facilities] (p. 151).

My response is negative. Because contraceptive sterilization is intrinsically evil, it can have no place in a Catholic hospital. Neither God nor man can make good what is in itself evil. Furthermore, immediate cooperation with this evil renders the cooperator evil by internalization of the malice of the act. Doing evil makes oneself evil. Duress, therefore, has no moral relevance when Catholic hospitals negotiate for new partnerships where contraceptive sterilization is a point at issue. For us, we adhere to the absolute that we will not perform an evil in order to achieve a good.

Like contraception, like abortion, so also contraceptive sterilization is intrinsically evil. Catholic administrators of hospitals remain obligated to distance themselves from the practice wholly, completely, and entirely. The hospital must have no part in it.

Practically, it may mean a complete isolation of the Catholic hospital from a nearby sterilization unit. Separate entrances, separate budgets, separate administration is mandatory. A litmus test might be this: If ever a woman would sue for malpractice, the Catholic hospital would not be among the defendants.

Intrinsically Evil

A worried young man once asked me whether a rite of exorcism is the only way to free oneself from a pact once made with the devil. He had been frightened when a stench of sulphur suddenly overwhelmed him when in a car with a friend. He dashed out of the car and ran home in fright. My response was that being exorcized formally would be a good idea even if it were not absolutely necessary.

Can a Catholic hospital ally itself with surgical contraception without actually doing evil, without an implicit pact with the devil?

There is no question of CO-operation when a Catholic Hospital is in charge. If in charge, the hospital *operates*, it does not CO-operate. The hospital initiates the act. "The buck stops here" President Truman reminded himself by the sign on top of his desk. There is no wiggle room. The hospital itself must remain free from this evil, as I wrote to the Bishops of the USA. (1).

Professor Kopfensteiner, however, seeks some wiggle room. He writes that "The principle of cooperation will require that there be institutional or social factors that go beyond any medical indications for a sterilization to be practiced" (p.152). A case would possibly be when not cooperating "will do more harm than good" (p. 153).

Implicit in the statements is reasoning used by moral theologians who follow the system of Proportionalism, and deny that there are absolute evils that cannot become licit for any reason whatsoever. Their contention is that one should weigh the foreseen outcome of an action, and follow the course that is evaluated as being proportionately advantageous. Proportionalism is a novelty in moral theology. Pope John Paul II has condemned it by writing a special Encyclical, *Veritatis Splendor*, to counteract this trend. He re-asserts the perennial teaching that what is intrinsically evil remains always evil, and that attempts to reason otherwise have no place in the Church:

80. Reason attests that there are objects of the human act which are by their nature "incapable of being ordered" to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church's moral tradition, have been termed "intrinsically evil" (*intrinsece malum*): they are such *always and per se*, in other words, on account of their very object and quite apart from the ulterior intentions of the one acting and the circumstances...

With regard to intrinsically evil acts, and in reference to contraceptive practices whereby the conjugal act is intentionally rendered infertile, Pope Paul VI teaches: "Though it is true that sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good, it is never lawful, even for the gravest reasons, to do evil that good may come of it" (cf. Rom 3:8)...

Because one may never do an evil in order to achieve good, Catholic hospitals would betray their Catholic name if they were to allow contraceptive sterilization because to refuse to do so would "do more harm than good" (Kopfensteiner, p. 153).

What "seems to be" is not always what is. Moral absolutes are written in stone, like the Ten Commandments. Proportionalist theology, denying moral absolutes, is written in sand. Anyone can change the writing. It proposes to not follow absolutes, but to allow committees to judiciously weigh foreseen good against evil.

Moral absolutes are our anchor against fads and fashions and duress. Unless decisions are embedded in cement, and are recognized as irreversible, we tend to look back, like the wife of Lot, to re-consider. From personal experience we learn that when a decision we once made may be reversible, as when weighing this evil outcome against that good, we can't help but focus the mind again and again on what might be wrong with the choice we made. Should I change or should I not? The grass on the other side of the fence appears to be greener. Eve had a tree of life in Paradise to look at, but she kept looking, instead, at the tree of knowledge of what is

good and what is bad. She is the foundress of Proportionalism.

Only when the choice we made is recognized as irreversible, only then do we begin to accept it as inevitable; having done that, we focus now on its advantages, try to make the most of it, and we are at peace. The Catholic hospital must first and last and finally accept the principle that contraceptive sterilization is totally foreign to its mission. With that decision behind it, it then looks about to minimize evils and maximize advantages. Weighing advantages against disadvantages before that is Proportionalism — an on-going process of trying vainly to balance earthly goods against those of eternity. It is like Cain calculating advantages of living without Abel.

Duress and Cooperation

The author adduces examples from older moral theology texts to justify cooperation in wrongdoing “in order to prevent harm that could not be repaired or to protect goods that could not otherwise be protected” (p. 154). None of his examples apply to moral absolutes. The wife who cooperates with condomistic intercourse unwillingly, is not really free. Coercion can leave her guiltless. Coercion deprives one of freedom, duress does not. Another example: Providing drink to a would-be brawler is not an intrinsically evil act. It is an inhibiting medication, like police clamping handcuffs on a dangerous man; or like a doctor administering anaesthesia to a patient before an operation. Again, it is not intrinsically evil. The person who receives the sacraments from a priest who sins thereby does not take part in the priest’s sin. The priest can make himself worthy by renouncing his sin and by following Canon Law. None of the examples adduced justify doing what is intrinsically evil under duress.

The one exception that traditional moralists allow for licit immediate cooperation applies to matters of commutative justice — money, property, food and such. Allow me to consult our old favorites of seminary days, Noldin, Merkelbach, and Zalba. They reason that necessity to preserve one’s life or major goods can extract the malice out of acts of stealing, or of cooperating in arson or bank robbery. The action is no longer evil, because the neighbor would be unreasonable if he were to refuse. If one is forced to cooperate in a bank robbery lest he be killed, to assist an arsonist to burn the neighbor’s house lest he lose life or limb — these actions are licit because the neighbor is expected to agree. There lies the difference between acts against commutative justice, and acts that are intrinsically evil. Burning a house is not an intrinsically evil act. It may be the most economical way of disposing of the wood.

But martyrs did not refuse to die rather than to deny their faith. Many did so despite leaving widows and orphans behind. Leaving them was a kind of duress that was “something over and beyond” (see author, p. 152) loyalty to the faith, but that did not excuse them from submitting to martyrdom.

Providing Contraceptive Sterilization is not a Valid "Service"

The Catholic hospital, when negotiating for a merger, cannot be said to benefit the community by providing contraceptive sterilization. The operation is a mutilation of body and spirit. Many marriages lose their esprit de corps. Sterilization is a great danger to integral marital life. It compares with the action of the tyrant Dionysius the Elder who allegedly suspended a sword by a single human hair above the place at a banquet where Damocles sat. Clinical psychiatrist Bernharda Meyer (Canada, recently died) communicated to me what she had learned from the many couples who visited her clinic in order to heal their marriages. Sterilization had done to their marriages what they had neither foreseen nor anticipated. She was successful with healing many of them by counsel, by advising religious practices, and by having them impose upon themselves a regimen of periodic abstinence, similar to what couples do when they practice natural family planning.

A book entitled *Sterilization Reversal — A Generous Act of Love* edited by John Long and published by One More Soul contains "touching stories of 20 couples who chose sterilization as a solution for family difficulties and then were given the grace to choose healing and wholeness in a radical way. Appendices of the book cover medical aspects of reversing vasectomy and tubal ligation and pastoral reflecting on sterilization and reversal by a bishop and a priest."

We accuse agencies such as the UNFPA of crimes against humanity when they participate in campaigns of forced sterilization. The Japanese government recently paid out large sums of money as compensation to victims who had been forcibly sterilized because of infection by Hansen's Disease. (3) The case of Yasuji Hirasawa made headlines. Just weeks before he was to get married he was given an ultimatum to be sterilized or the government will stop the marriage. "I was sterilized just like an animal is castrated. It was so humiliating. I just want the government to apologize and to have my dignity as a human being restored" (Mari Yamaguchi, AP, Dec. 19, 1997).

We condemn forced sterilization as a crime against humanity, as has been done in Peru, in India some years ago, and is now being done in China. But if a Catholic Hospital offers the disservice of sterilization to patients, is that not a mild form of coercion? When the priest comes in to bless the patient, and the nun hands the snipper or cauterizer to the doctor, shall the woman refuse? There is a line of demarcation between coercion by fashion and coercion by force or money, but the former may be even more oppressive than the latter. In Peru, perhaps 360,000 Indians were corralled and knifed, but that is a minority of the population. In the USA? The recent number of victims is 10,700,000 women. Fashion can be an

even more successful tyrant than coercive laws. Catholic hospitals should step back and be no part of this massive mutilation of women and men.

Conclusion

Man, who is an image of God, distorts his own mirror image if he decides differently than God does. When our actions mirror the thoughts of God, they are beautiful. When beauty is distorted, it can become truly ugly. When the space telescope Hubble's mirror needed fixing, a shuttle was dispatched to do the repair work. The distorted image, which had been an eyesore, now straightened out and became beautiful. More recently Professor Joseph K. Nariai managed the construction of the largest telescope in the world, called Subaru. You can enjoy the majestic image of Jupiter, and the rings of Saturn so sharp they make you gasp, by clicking on <http://www.asahi-net.or.jp/~uy2h-trt/lsnetj/Subaru/index.html>. I printed out the images to enjoy them all the more. The least flaw in the mirror would have distorted this beauty. Like Hubble, like Subaru, so also may every Catholic hospital mirror the beauty of God.

The elegance of God so fascinates the angels that their speech turns into song, their joy leaps into the hearts of the shepherds, the night turns to day: "Glory to God in the highest, and on earth peace to men of good will," even so did they sing.

Bathed in the glory of God, hastening to Bethlehem with the joy of shepherds, flourishing as communities of love — such are those faithful Catholic hospitals strung from Maine to California, from Florida to Washington, from Alaska to Hawaii, with their priests, their sisters, doctors, nurses, auxiliaries, volunteers, patients and visitors, their surgery rooms, their pharmacies, their flower shops. They are a presence of God, a warmth of heaven's love, a dance of angels where ever their banners fly: St. Luke's, Mercy, Providence, St. Mary's, St. Martha's. Let not surgical contraception "black out" these shining cities on the hill. May Catholic hospitals flourish, their staffs make music to the Lord, their presence radiate His glory into the communities round about them. I rest my case.

(1) To the Bishops I wrote: "The hospital becomes guilty of evil — of black pitch, smelling of sulphur, stinging the eyes as it boils out of the bowels of hell. Such action would ally the Church, in some manner, with the devil. The stench might not easily be contained in the surgery room alone of that hospital. The hospital is a unit which can be termed "good" only if it embraces no evil: *bonum ex integra causa*. The hospital makes itself "bad" inside and outside, at all entrances and on all floors if it authorizes this single evil: *malum ex quocumque defectu*."

2) Let us hear them out. Noldin, Schmitt, Heinzel (*Editio XXXI*, 1955, Vol 2, No. 118 #3) teach that, with the exception of doing damage to someone's property, "*Cooperatio materialis immediata illicita est...*" So does Benedictus Henricus Merkelbach (*Editio IX*, 1954, Vol I, No. 489b: "*Cooperatio immediata etiam mere materialis est illicita.*" He also allows the exception of Noldin, but adds that to cooperate immediately in an act, which is itself intrinsically evil, is tainted with the same specific malice as that of the principle agent (Merkelbach loc. cit.). Marcellinus Zalba, S.J. states that when in the concrete circumstances one's action cannot but be a part of the sin, then it is necessarily formal cooperation, always illicit (*Theologiae Moralis Compendium*, II, Madrid, 1958, No. 249 and 244). The authors would not have written so didactically had there been a controversy at their time.

Then what about the exception? Noldin explains as follows: Immediate material cooperation is illicit except in certain cases of sins against justice. For immediate cooperation is ordinarily evil from the nature of the act, therefore in itself; it follows that it is never licit to cooperate immediately in killing another. However, in certain actions which are against justice, sometimes the nature of evil (*ratio mali*) ceases. So for a very serious reason it is permissible to cooperate immediately in bringing harm to a neighbor in regard to goods of fortune (*in bonis fortunae*.)

Noldin continues, explaining in finer print: It is permissible, for example, to help in the burning of another's house out of fear of death: a) provided the cooperator wants to make up for the damage later; b) if the damage would be inflicted even without his cooperation; c) if by cooperating he can prevent an even greater harm to the neighbor; for in all these cases the neighbor cannot be opposed reasonably.

3) Surgical sterilization, whether coerced or voluntary, degrades women and men by physical and spiritual mutilation. Japanese men and women who were sterilized under a sweeping eugenics program during 1949-1996 feel only anger today. Their resentment against a wrong done by public authority finally brought an end to the program. Health Ministry statistics indicate that 844,939 people were sterilized during the almost 50 years for mental or physical handicaps including Hansen's Disease.
