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Direct Sterilization: An Intrinsically Evil Act – A Rejoinder to Fr. Keenan

by

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When the Church teaches, for example, that abortion, sterilization or euthanasia are always morally inadmissible, she is giving expression to the universal moral law inscribed on the human heart, and is therefore teaching something which is binding on everyone's conscience. Her absolute prohibition that such procedures be carried out in Catholic health care facilities is simply an act of fidelity to God's law. As Bishops you must remind everyone involved – hospital administrators and medical personnel – that any failure to comply with this prohibition is both a grievous sin and a source of scandal. (For sterilizations cf. Congregation for the Doctrine of the Faith, *Quaecumque sterilizatio*, 13 March 1975, AAS [1976] 738-740). This and other such instances are not, it must be emphasized, the imposition of an external set of criteria in violation of human freedom. Rather, the Church's teaching of moral truth "brings to light the truths which [conscience] ought already to possess," (*Veritatis splendor*, n. 64) and it is these truths which make us free in the deepest meaning of human freedom and give our humanity its genuine nobility. Pope John Paul II in his speech to American bishops in Rome for their *ad limina* visit on June 27, 1998.¹

I wish to thank Fr. James Keenan for his response to my article, "An Excessive Claim: Sterilization and Immediate Material Cooperation."² Several issues and a question he puts to me together with some events that have taken place since we have both written make a rejoinder from me appropriate.

In my original essay I pointed out that careful interpretation of the

papal magisterium's restatement of the Church's teaching on direct sterilization, the Holy See's 1975 *Responsum, Quaecumque sterilizatio*, shows that Catholic health care facilities are prohibited from engaging in any cooperation that involves approval of or allows direct sterilization. I argued that the claim that Catholic health care institutions, by reason of immediate material cooperation under duress, may at times permit contracting physicians to perform some direct sterilizations is based upon a faulty reading of relevant Church documents. I also argued that such a position fails to grasp the Church's teaching that direct sterilization is an intrinsic evil and as such can never be justified by any circumstances. Since the time of my original article there has come to my attention some comments by Pope John Paul to a group of US bishops as well as some statements from the Congregation of the Doctrine of the Faith which, I believe, further confirm what I wrote. It has also come to light that the Holy See has asked the US bishops to revise certain parts of the Ethical Religious Directives. Some of the Holy See's concerns I believe also confirm the correctness of my interpretation of the Church's teaching. To be fair, these events have occurred after Fr. Keenan wrote his response.

First of all, I wish to address a point that Fr. Keenan raised regarding my representation of his views. He says in his response to me that he simply claimed that the *Responsum* allows for material cooperation in sterilization. He insists that he never claimed that magisterial documents addressed the distinction between immediate material cooperation and implicit formal cooperation.³ But Fr. Keenan has misunderstood my argument. My point was that he should not cite these documents as somehow compatible with his argument regarding immediate material cooperation under duress. The *Responsum* only envisions mediate material cooperation; its language about proximate and remote makes this apparent. Furthermore, I argued that the category of immediate material cooperation under duress is ruled out by the *Responsum's* affirmation that direct sterilization is an intrinsic evil. This brings me to my next point.

A central issue that Fr. Keenan did not address in his response to me is the Church's teaching that direct sterilization is an intrinsic evil. Church teaching is clear about the fact that there exist certain acts that are intrinsically evil which by reason of their object can never be ordered to the good of the person or to God. (*Veritatis splendor*, no. 80.) Furthermore Pope John Paul II has stated in *Veritatis splendor*, no.96:

When it is a matter of the moral norms prohibiting intrinsic evil, there are no privileges or exceptions for anyone. It makes no difference whether one is the master of the world or the "poorest of the poor" on the face of the earth. Before the demands of morality

we are all absolutely equal.⁴

It is also abundantly clear from the *Responsum* that the Church teaches that direct sterilization is an intrinsic evil. If direct sterilization is an intrinsic evil then it cannot be justified by any circumstances. Duress is nothing more than a circumstance of the moral object and as such can never transform an intrinsically evil act into something capable of being ordered to God and the good of the person. The point in my article, which I repeat here, is that to claim that a Catholic health care institution may permit direct sterilizations, by reason of immediate material cooperation under duress, is to claim that evil may be done so that some other good might be achieved. Unless Fr. Keenan wants to deny that direct sterilization is an intrinsic evil, then it is not possible to apply the principle of immediate material cooperation under duress to direct sterilization. In other words, one cannot come to the conclusion that in very limited instances Catholic health care facilities can permit direct sterilizations *unless* one claims that direct sterilization in that instance is not an intrinsic evil. But this would involve denying the teaching of the Church that direct sterilization is always a moral evil that harms the good of the person. Certainly, this is something that Fr. Keenan would want to avoid.

So when Fr. Keenan asks why I want to rule out applying the principle of immediate material cooperation under duress to direct sterilization. My reply is that the application of this form of cooperation is ruled out by the Church's teaching that direct sterilization is an intrinsic evil and that as such, it always, without exception, harms a human person.

If we understand the prohibition against sterilization in this way we can see why the magisterium is so insistent about the fact that direct sterilizations are absolutely prohibited under any circumstances in Catholic health care facilities. Direct sterilization is an act that impairs a person's capacity to act in a way especially befitting human moral agents, i.e. giving that gift of self that conspires with the Creator's gift of new life. It is an act that cannot be ordered to the ethical good of the person. Duress does not change this moral reality. There is never sufficient reason directly and deliberately to divest a person's future sexual activity of a fundamental element that is proper to it, namely its procreativity. To do so will always be intrinsically evil. Again, evil may not be done so that good may come of it.

In his response Fr. Keenan accuses me of violating an important insight regarding the interpretation of Church documents: laws which prohibit ought never to be interpreted more strictly than the law states.⁵ But this begs the question. Part of the point of my article was to inquire as to *what is* the moral doctrine of the Church with regard to direct sterilization and cooperation. The issue between Keenan and myself, after all, is what does

the Church teach? Keenan claims that my translation and interpretation of the *Responsum* is onerous and that he can see no warrant for an *a priori* prohibition of immediate material cooperation under duress regardless of an institution's survival. The question then is this: Have I given an onerous interpretation of Church teaching? Some recent statements by the papal magisterium confirm that my reading of the *Responsum* is not onerous or rigorous. If anything, I may have understated my explanation.

The first one is quoted at the beginning of this rejoinder. The June 1998 speech of the Holy Father to American bishops from Texas, Oklahoma and Arkansas is very important because it states that there are certain procedures that can never be performed at Catholic hospitals. The Holy Father classifies sterilization as one of these prohibited procedures together with abortion and euthanasia. The written text of the Pope's speech refers to the 1975 *Responsum*, *Quaecumque sterilizatio*. This is important because it shows how the Holy Father interprets the meaning of that document. The language he uses is far stronger than that which I used to explain the Church's teaching on direct sterilization. The Pope speaks of the Church's "absolute prohibition that such procedures be carried out in Catholic health care facilities." The language he uses is particularly forceful. He denounces "*any failure* to comply with this prohibition as both a grievous sin and a source of scandal." (Italics mine) It is truly hard to see how the Pope's interpretation of the teaching of the Church allows for any exception to the "absolute prohibition." It is equally hard to see how a Catholic health care institution would still be in observance of this absolute prohibition if it permitted some direct sterilizations in its facilities because it believed for reason of "duress," e.g. that if it did not permit direct sterilizations, then it could not contract physicians and thus could no longer offer any obstetric services. The very restrictive terminology that the Pope uses to explain the Church's teaching bars any exception to the prohibition of direct sterilizations in Catholic health care facilities and therefore excludes the application of the principle of immediate material cooperation under duress.

The importance of the Pope's classification of sterilization together with abortion and euthanasia should be noted. There is no room for the idea, proposed by Fr. Keenan in his response,⁶ that because direct sterilization is not death dealing that there is somehow greater room for material cooperation. It is true of course that sterilization is not as harmful to a person as abortion or euthanasia. It does not, therefore, follow however that because direct sterilization is less evil than abortion that we can give, in the presence of "duress," immediate material cooperation allowing sterilizations to be done for the sake of some other good.

The second statement from the magisterial authorities that confirms my reading of the Church's teaching is a letter from the Congregation of the

Doctrine of the Faith to the Bishop of Austin, Texas. This letter has become public.⁷ In this letter Archbishop Tarcisio Bertone stated that:

We call your attention to the *Responsum* of this Congregation of March 13, 1975, on the specific question of direct sterilization in hospitals under Catholic administration (cf. enclosure). This document clearly states that direct sterilization is absolutely forbidden (absolute interdicta). It is an intrinsic evil and as such can never be justified under any circumstances. Thus, direct sterilizations can never be part of the medical treatment provided to patients in a hospital which is under Catholic administration.

Again, close attention must be paid to the specific language that the magisterial authorities use. Direct sterilization is said to be "absolutely forbidden" and as such is an "intrinsic evil" and thus can "never" be part of treatment given to patients. There simply is no reason to believe that the Congregation leaves room for exceptions. Any other interpretation simply ignores the clear meaning of the restrictive language which the Congregation uses. The Congregation does not say that Catholic health care institutions are not forbidden under some circumstances to permit direct sterilizations. In fact it says that exact opposite. Therefore there is no reason to think that the Congregation believes that in some cases, no matter how rare, a Catholic health care institution might apply the principle of immediate material cooperation under duress and permit some direct sterilizations to take place in its facilities. Again, the magisterium's formulation of its interpretation of the *Responsum* rules out the application of this principle to direct sterilizations in Catholic health care facilities.

Certain events have also taken place which I believe also confirm the interpretations I gave in my article. At this writing, it is common knowledge that the Holy See, through the Congregation of the Doctrine of the Faith, has asked the National Catholic Conference of Bishops (NCCB) to revise certain sections of the Ethical and Religious Directives (ERD). Those sections have to do with partnerships with non-Catholic organizations as well as the sections which address the principle of cooperation located in the Appendix to the ERD. In correspondence from Cardinal Joseph Ratzinger to NCCB president Bishop Joseph Fiorenza the Holy See has indicated a number of concerns. The Holy See is concerned that the current form of the Appendix to the ERD can be used to conclude that intrinsically evil acts could be considered permissible if duress were present. The Holy See cautions that such a position cannot be reconciled with the Church's teaching in *Evangelium vitae*, no.74 and *Veritatis splendor*, nos.71-83. The category of duress is also a concern of the Holy See. It asks for an explanation of how an institution can be said to be to suffer duress and how

an institution can be considered an acting subject. While a number of these concerns go well beyond what I wrote about I believe that they also confirm some of the points that I made in my article.

Fr. Keenan takes exception to my claim that the *Responsum* does not allow for the idea that duress turns implicit formal cooperation into immediate material cooperation. But the Holy See in its correspondence objects to the "position that a form of cooperation that otherwise would be considered formal could be considered material and licit if the category of duress is present." The point here is very similar to what I argued but the Holy See's formulation is much better than mine.

Fr. Keenan also says that I "convict" him of violating an ecclesiology of communion. I was not trying to "convict" him of anything. My intention was to point out the consequences of his position — consequences that I have no doubt he does not intend. Surely, he would agree that if a Catholic health care institution were to act contrary to Church teaching by permitting intrinsically evil acts because of a misapplication of the principles of cooperation then the communion of a local Church would be harmed. The responsibility for the communion of the local Church with the universal Church after all does not fall to the bishop alone and it is certainly not untouched by the important work of Catholic health care institutions. The mention I made to the ecclesiology of communion was for the purpose of drawing attention to the broader ecclesial context in which Catholic health care institutions face questions about cooperation. I disagree with Keenan that this is "overwrought."

Clearly, the Holy See and the Bishops of the United States believe there have been not only misapplications of the principles of cooperation but misunderstandings of the Church's doctrine with regard to direct sterilization. Hopefully, the final revisions of the ERD will lead to a greater clarity about the principles of cooperation as well as greater awareness of the Church's teaching that direct sterilization is an intrinsic evil, and as such, can never be permitted in Catholic health care facilities.

References

1. *Acta Apostolicae Sede*, 91 (1999): 202-203. I have included in the text footnotes 16 and 17 which cite *Quaecumque sterilizatio* and *Veritatis splendor* respectively.
2. "Not an Excessive Claim, Nor a Divisive One, But a Traditional One: A Response to Lawrence Welch on Immediate Material Cooperation," *Linacre Quarterly*, 67 (November 2000):83-88.

3. Fr. Keenan also claims that his interpretation of immediate material cooperation is a traditional interpretation of a traditional principle. But this is an exaggeration. He claims to have found several authors who believed that immediate involvement in the object of an "intrinsically wrong" action was not necessarily implicit formal cooperation. Even if Fr. Keenan's interpretation of these authors is correct it is hard to see how this is sufficient to constitute the "traditional doctrine" that the *Responsum* says governs the application of the principles of cooperation. Fr. Keenan needs more than four authors before he can claim that his interpretation and application of immediate material cooperation is traditional. If we are going to do this kind of casuistry – the weight of these authors – and their opponents – also matters. Fr. Keenan appears to assert more than he demonstrates. Is there really a sufficient number of approved authors who believed that duress distinguished immediate material cooperation from implicit formal cooperation so as to be the traditional interpretation? What counts as "traditional" for Fr. Keenan and why? Secondly, Fr. Keenan himself admits that the authors he consults speak of cooperation with regard to individuals. It is inaccurate then to describe the application of those principles to corporate entities as traditional? Certainly it is problematic to go on to identify the concept of immediate material cooperation and its application to direct sterilization with the "Church's tradition." Fr. Keenan does this when he chides me for arguing against the application of immediate material cooperation to direct sterilization. He remarks that he sees "no need to restrict the Church's tradition now" (Keenan, 87). This is so large a use of the term "tradition," however, as to be unhelpful since it fails to distinguish the "Church's Tradition" from what may be a theological opinion held by a handful of authors.

4. The Holy Father, in the same encyclical, makes the point that when it comes to intrinsic evil there can be nothing that would allow for exceptions:

But the negative moral precepts, those prohibiting certain actions or kinds of behavior as intrinsically evil, do not allow for any legitimate exception. They do not leave room, in any morally acceptable way, for the "creativity" of any contrary determination whatsoever. Once the moral species of an action prohibited by a universal rule is concretely recognized, the only morally good act is that of obeying the moral law and of refraining from the action it forbids. (*Veritatis Splendor*, no. 67)

5. Keenan, 86.

6. Keenan, 85.

7. This letter has been quoted widely by a number of news organizations both Catholic and secular. The television news magazine *60 Minutes* showed and quoted from a copy of it on December, 10, 2000.