

PROPORTIONALISM AND THE PILL:  
HOW DEVELOPMENTS IN THEORY LEAD TO  
CONTRADICTIONS TO PRACTICE

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ONE MAY BE TEMPTED to think that thirty years after the publication of *Humanae vitae* scholars have heard almost every argument for and against contraception and almost every argument for and against the moral theory most commonly invoked to justify contraception, namely, proportionalism. Authors on both sides of the matter have pointed out the connections between the theory of proportionalism and the practice of contraception. All proponents of proportionalism argue that this theory justifies the use of contraception at least under some circumstances, and most, but not all, critics of proportionalism hold that contraception is an intrinsically evil act that cannot be justified. As Edward Vacek notes:

An argument could be made that *Humanae vitae* has fueled the development of P[roportionalism] in Catholic thought, and that the birth control debate has been so drawn-out and intense precisely because it is really a debate over a style of moral reasoning and a vision of what it means to be human, not to mention over what God is doing in the world—therefore over much larger matters than the use of a pill.<sup>1</sup>

Vacek is absolutely correct in saying that *Humanae vitae* led to a greater and greater questioning of traditional formulations of

<sup>1</sup> Edward Vacek, "Proportionalism: One View of the Debate," *Theological Studies* 46 (1985): 293.

moral theory.<sup>2</sup> If one surveys the literature that began what was later called proportionalism,<sup>3</sup> one will find a recurring pattern; first basic principles are laid down and defended, and then, invariably, it is shown that these principles justify the use of contraception. John Finnis puts the point as follows:

The formal attack on the moral absolutes emerges, among Catholics, in response to the problem of contraception. Not in response to the desire to maintain a counter population deterrent strategy of annihilating retaliation; or to tell lies in military, police, or political operations; or to carry out therapeutic abortions; or to arrange homosexual unions; or to relieve inner tensions and disequilibria by masturbation; or to keep slaves; or to produce babies by impersonal artifice. Those desires were and are all urgent enough, but none of them precipitated the formal rejection of moral absolutes. The desire to practice and approve of contraception did.<sup>4</sup>

Indeed, early formulations of proportionalism, formulations that understood proportionate reason simply as the injunction to choose the lesser of two evils and lacked a developed application of the goodness/rightness distinction, seemed to justify the use of contraception in most cases. What has been overlooked, however, is how the development of proportionalism itself leads to the conclusion that the use of contraception, for the most part if not entirely, is illicit. In other words, proportionalism itself, given a proper understanding of proportionate reason and the goodness/rightness distinction, leads one to a rejection of the use of contraception.

Unlike consequentialism or act-utilitarianism, proportionalism is not mere maximization of premoral goods or minimization of premoral evils. Though maximization of premoral goods and minimization of premoral evils *primarily* define proportionate reason, there are other, secondary conditions that establish it as

<sup>2</sup> In his book *Proportionalism: The American Debate and Its European Roots* (Washington: Georgetown University, 1987), Bernard Hoose makes similar remarks (p. 37).

<sup>3</sup> See, for instance, *Readings in Moral Theology vol. 1: Moral Norms and Catholic Tradition*, ed. Charles E. Curran and Richard A. McCormick, S.J. (New York: Paulist Press, 1979); Christopher Kaczor, ed., *Proportionalism: For and Against* (Milwaukee: Marquette University Press, forthcoming).

<sup>4</sup> John Finnis, *Moral Absolutes* (Washington, D.C.: The Catholic University of America Press, 1991), 85.

well.<sup>5</sup> These conditions were worked out through the responses to critics who suggested that proportionalism justifies any sort of behavior whatever, even for example allowing a sheriff to frame and execute an innocent man to prevent a riot. Proportionalists responded by clarifying that proportionalism does not advocate the maximization of nonmoral goods irrespective of all other considerations. Certain secondary conditions must be met for there to be a truly proportionate reason.

First, proportionate reason includes a *condition of necessity of cause*.<sup>6</sup> The premorally evil means used by the agent must stand in a necessary causal relationship to the premoral good sought. Hence, in the often-cited case of abortion to save the life of the mother, one may legitimately effect the death of the child in order to save the life of the mother because the killing and the saving stand in a necessary relationship to one another. On the other hand, a sheriff may not frame an innocent person for a murder he did not commit even in order to prevent a riot that will kill many others. There is no necessary relation between framing an innocent person and preventing a riot, hence the act contemplated by the sheriff lacks a proportionate reason.

Second, proportionate reason has a condition of *chronological simultaneity*. Proportionate reason is present only in the preservation of a good here and now, not some future good. One cannot have an abortion because one wants to avoid paying the unborn child's tuition; one cannot sleep with the prison guard to be reunited with one's family. On the other hand, one can kill in self-defense, since this killing preserves the good of life here and now.

Finally, proportionate reason excludes causing *more evil than necessary*. If one can defend oneself by injuring, rather than killing, then one should only injure. If one can defend oneself without even injuring, then one is obliged to take this course of

<sup>5</sup> I am indebted here to the summary of James Walter, "Proportionate Reason and Its Three Levels of Inquiry: Structuring the Ongoing Debate," *Louvain Studies* 10 (1984): 30-40, esp. 33-36, though I have changed his order of presentation and slightly altered the list itself.

<sup>6</sup> Richard A. McCormick and Paul Ramsey, eds., *Doing Evil to Achieve Good: Moral Choice in Conflict Situations* (Chicago: Loyola University Press, 1978), 238; Richard A. McCormick, *Notes on Moral Theology, 1965 through 1980* (Washington, D.C.: University Press of America, 1981), 718-719, hereafter, *Notes 1*.

action. This final secondary condition excludes the causing of *superfluous evil*.

According to revisionists, these three secondary conditions of proportionate reason (namely, the causal necessity of the evil to achieve the good, chronological simultaneity, and the curtailing of superfluous evil) sharply delineate proportionalism from straightforward consequentialism, especially if each is construed as a necessary rather than as a sufficient condition. Finally, of course, proportionalism demands that one must choose the lesser of two evils and in this it does not differ from consequentialism. How do these conditions relate to the use of contraception?

The condition of necessity, that there must be a causal necessity between the evil used and the good achieved, excludes, for example, the possibility of terror bombing, bombing innocent civilians to terrorize the enemy into submission. There is no necessary connection between these deaths and the capitulation of military leaders. Richard McCormick explains as follows:

extortion by definition accepts the necessity of doing nonmoral evil to get others to cease their wrongdoing. The acceptance of such a necessity is an implied denial of human freedom. But since human freedom is a basic value associated with other basic values (in this case, life) undermining it *also thereby undermines life*.<sup>7</sup>

In this context, "necessity" means that there is no other way imaginable to prevent greater loss of life, save the taking of life. If there is another way available, for example, the cessation of wrongdoing by others or heroic efforts on one's own part, then there is no necessary connection.

However, this causal necessity excludes many common grounds for the use of contraception, including financial well-being, stable family life, and desire to pursue a career. There is no necessary connection between these goods and the use of contraception. Some who use contraception never achieve the goods of stable family life, financial well-being, and career fulfillment. Some who do not use contraception do achieve the goods of stable family life, financial well-being, and career

<sup>7</sup> McCormick, *Doing Evil to Achieve Good*, 260.

fulfillment. There are undoubtedly other ways to secure these goods aside from contraception. The spouses themselves, family members, and the community can make or break efforts to achieve the goods in question. The only case in which there is the requisite necessary connection would be use of contraception in cases in which a pregnancy would endanger a woman's life or health. Here, it is the *pregnancy itself* that is the problem and not negative effects accidentally related to pregnancy that could be lessened or even alleviated with the help of others. Hence, either proportionalism is inconsistent in its invoking of the necessity condition in some cases (terror bombing) but not in other cases (contraception) or if the necessity condition is consistently applied then one is forced to reject many common justifications for the use of contraception, leaving only contraception to preserve the health of the mother.

Another secondary condition of proportionate reason is chronological simultaneity of the good and evil effects. McCormick puts the point in the following way:

Here [in the work of a critic of proportionalism] we have evil *now*—good *to come*. Thus it is sometimes said that adultery now justifies a future good. This misrepresents what Fuchs-Schüller-Böckle-Janssens-Scholz-Weber-Curran and many others are saying. What they are saying is that the good achieved *here and now* (though it may perdure into the future) is sometimes inseparable from premoral evil. Thus, an act of self-defense achieves *here and now* the good of preservation of life. A falsehood achieves *here and now* the protection of a professional secret. Taking property (food) of another saves the life of the taker *here and now*.<sup>8</sup>

When the condition of chronological simultaneity of good and evil effects is applied to the case of contraception, the result is that most uses of contraception become unjustified. For example, contraception used to avoid the costs that will be incurred at the birth and upbringing of a child is a case doing evil here and now for the sake of preventing an evil feared in the future. Contraception for the sake of family stability or career advancement likewise is doing evil now so that one may have some good or

<sup>8</sup> Richard A. McCormick, *Notes on Moral Theology, 1981-1984* (Washington, D.C.: University Press of America, 1984), 3 n. 10; hereafter, *Notes 2*.

avoid some evil in the future. Once again, the only cases of contraception that would be justified would be cases in which the life or the health of the woman would be threatened by the pregnancy itself.

Third, proportionate reason demands that one cause as little premoral evil as possible to secure the end in question. One should use deception in self-defense rather than injuring another if both means will secure safety. One should not kill if self-defense that merely injures the adversary will achieve the same goal. This aspect of proportion corresponds precisely to Thomas's use of the word in his famous treatment of self-defense in *STh* II-II, q. 64, a. 7.<sup>9</sup> The act of self-defense must be proportioned to the end of defense. Hence, one who uses more force than necessary in defending himself acts wrongly.

If one may not bring about superfluous evil in achieving the end, certain methods of contraception would seem to be excluded. For instance, the pill, Norplant, and IUD can act as abortifacients.<sup>10</sup> Particularly in association with smoking, women using oral contraceptives run a higher risk of cancer, blood clotting, strokes, and heart attacks.<sup>11</sup> Although these dire side effects are not usual, women taking oral contraceptives commonly report weight gain, mood swings, and increased irritability. The IUD is also not without its disadvantages. In the words of Hanna Klaus, M.D.:

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<sup>9</sup> On this famous article, see Thomas Cavanaugh, "Aquinas's Account of Double Effect," *The Thomist* 61 (1997): 107-21; Christopher Kaczor, "Double Effect from Gury to Knauer," *Theological Studies* (June 1998): 297-316.

<sup>10</sup> In the words of Dr. Hanna Klaus: "[Although oral contraceptives are not ipso facto abortifacient, it] is important to understand that there are four mechanisms of action of oral contraceptives: when the dose of estrogen and progesterone is high, the drugs suppress the LH (lutening hormone) surge, and ovulation does not occur. At all effective levels the cervical mucus is rendered hostile to sperm entry (becomes G mucus only), tubal motility is interfered with making conception less likely (or ectopic pregnancy more likely if conception occurs), and the endometrium is changed so that it is much thinner than normal and contains much fibrous tissue while the glands are suppressed to a large extent. Such an endometrium could not support the imbedding of the blastocyst, and would therefore cause it to abort" (Sr. Hanna Klaus, M.D., "The Reality of Contraception," *Catholic Dossier* 3, no. 5 (Sept.-Oct. 1997): 42.

<sup>11</sup> *Ibid.*

The IUD at the very least introduces a foreign object into the uterus. Plastic IUDs were primarily abortifacient. Later copper devices would prove to have a mixed action. Initially the copper produces a toxic fluid in the uterus which destroys spermatozoa in transit to the tube, and washes into the tube to destroy any ova. If the gametes succeeded in uniting, the embryo was usually destroyed before embedding. The IUD also interferes with normal tubal motility. . . . If the device is not inserted skillfully, the woman's uterus can be perforated. Even when properly placed, it can be the channel for bacteria or viruses to enter the uterus and cause pelvic infection.<sup>12</sup>

Although sterilization avoids the side effects associated with the IUD, it too is not without its drawbacks. In addition to being expensive and difficult to reverse, sterilization for women by means of tubal ligation brings with it an increased chance of ectopic pregnancy.<sup>13</sup> Other forms of contraception such as a diaphragm and the condom do not have these disadvantages. They are not abortifacients, nor do they have harmful side effects. They are both relatively inexpensive and easily reversible. If one is obliged to avoid causing superfluous evils, then one is obliged not to use many of the most common forms of contraception, the anovulant pill, the IUD, Norplant, and sterilization in favor of other means available, such as condoms and diaphragms, which bring about less superfluous evil in achieving the desired end.

Thus far, if consistently applied, no case of contraception would be licit on grounds given by proportionalists save for contraception used in cases in which a woman's health is endangered and the only forms of contraception that could be licitly used in such cases would be condoms or diaphragms. However, one must not forget that the primary condition of proportionate reason demands the maximization of premoral goods and minimization of premoral evils. The requirement is sometimes formulated as follows: given the choice between two evils, one must choose the lesser of two evils. As McCormick suggests, the only alternative would seem to be that in such conflict situations one must choose the greater of two evils, which seems clearly absurd.

<sup>12</sup> Ibid., 43. See also F. Alvarez, et al., "New Insights on the Mode of Action of Intra-uterine Contraceptive Devices in Women," *Fertility and Sterility* 49 (May 1988): 768-73.

<sup>13</sup> Klaus, "The Reality of Contraception," 43. See also H. B. Peterson, M.D., et al., "The Risk of Ectopic Pregnancy after Tubal Ligation," *New England Journal of Medicine* 336 (1997): 762-67.

Given that proportionalism holds that one must choose the lesser of two evils, it would seem commonsensical that, given the choice, one must choose something indifferent or good over something that is evil, even if only a premoral evil. Condoms and diaphragms are not entirely free from premoral evil. In the words of Richard McCormick:

Contraception represents a type of intrusion, a nuisance, an interference. That is clear from the description of the "perfect contraceptive": it must be inexpensive, effective, without side effects, aesthetically acceptable, and easy to use. Lack of these qualities would spell evils of some kind.<sup>14</sup>

Unlike condoms and diaphragms, Natural Family Planning (NFP) would seem to fulfill all the criteria laid down by McCormick for the "perfect contraceptive." Its only necessary expense is perhaps the time taken out from work or play to learn the method. Well aware of the difference between the "rhythm method" and NFP, McCormick echoes the findings of numerous scientific studies: "Natural family planning is a highly effective method."<sup>15</sup> When both are used properly, NFP's failure rate is roughly the same as the pill's. NFP has no side effects on male or female health. It is aesthetically acceptable insofar as it does not disturb the natural structure of the sexual act. Finally, NFP is easy to use, requiring no specialized technique or knowledge. James P. Hanigan acknowledges additional advantages of NFP over contraception:

Ironically, if one considers the virtues and relational dynamics needed to practice NFP effectively, one discovers many of the values and virtues advocated for marital relationships by revisionist and feminist theologians who emphasize "quality of relationship" norms to evaluate the morality of sexual behaviors. NFP, more than any other means of birth control, calls for honest communication, for mutual equality, for shared responsibility and joint decision-making between the sexual partners. The burden of responsible parenthood through the techniques of NFP, while still heavier on the woman than on the man, is not placed exclusively on the woman.<sup>16</sup>

<sup>14</sup> Richard McCormick, *Health Care and Medicine in the Catholic Tradition* (New York: The Crossroad Publishing Company, 1987), 98 and 99.

<sup>15</sup> *Ibid.*, 98.

<sup>16</sup> James Hanigan, "Veritatis Splendor and Sexual Ethics," in *Veritatis Splendor: American Responses* (Kansas City: Sheed & Ward, 1995), 212.

Given the advantages of NFP over all forms of contraception, considered purely within the framework of premoral goods and evils, the greater good is not difficult to discern. If one is required to choose the greater good or the lesser evil in avoiding pregnancy, NFP is obligatory and contraception impermissible.

Usually, revisionists acknowledge that NFP is an obligatory ideal but that this ideal, like many other ideals, must be tempered by realistic considerations. These considerations are of two kinds. First, NFP requires knowledge of the female reproductive system as well technical devices that may be too expensive or unavailable to some, such as thermometers for measuring body temperature in determining time of ovulation.<sup>17</sup> Second, and much more important, NFP "requires a high degree of motivation and mutuality on the part of the couple which cannot be readily presumed, training in the practice of the method and a good deal of self-knowledge and self-discipline on the part of the couple."<sup>18</sup> Not all couples can meet these demands; hence, given the practical alternatives, contraception may be justified.

The first objection has the theoretical drawback that it applies much better to forms of contraception than it does to NFP. Like NFP, the proper use of contraceptives requires knowledge, at least minimal, of the reproductive system. If sex-education experts are to be believed, one must learn how properly to use a condom or diaphragm. Presumably, before a doctor prescribes the pill or Norplant, he teaches the patient something about the drug so as to allow the patient an opportunity to give informed consent. In terms of technical devices, the requirements of NFP are much more modest than the requirements of artificial contraception. Strictly speaking no technical devices are needed for NFP, though a thermometer and chart may be useful. If buying a thermometer or a chart for NFP taxes the family budget, certainly a visit to the doctor, pill prescriptions, condoms, or diaphragms would be too expensive.

The second argument is more substantive. NFP is simply too demanding for couples. Not all couples have the heroic virtues necessary to abstain from intercourse for as long as nine to twelve

<sup>17</sup> *Ibid.*, 212-13.

<sup>18</sup> *Ibid.*, 212.

days per month. Morality does not demand the impossible. I *ought* to do such-and-such implies I *can* do such-and-such. Some people, good people, just cannot bring themselves to such a long period of abstention. Not everyone is called to heroism, and a lack of moral perfection should not be considered evil-doing in a moral sense.

To understand why this argument too fails on proportionalist grounds, one has to invoke a further distinction common to proportionalist writings, the distinction between goodness and rightness. Although in the early seventies proportionalists spoke of good and bad actions, through the intervention of William Frankena and more importantly Bruno Schüller they came to insist on distinguishing moral goodness and badness from rightness and wrongness.

Unfortunately, there is no precise definition of this distinction upon which all authors agree. Some scholars describe goodness as a disposition or striving to do and know what is right and rightness as action in accordance with nature or reason. "Acting from love (*agape*) is morally good," writes Bruno Schüller; "Doing what on the whole is impartially beneficial to all persons concerned is morally right. Therefore, an action may be morally bad because performed from pure selfishness, but nonetheless be morally right on account of its beneficial consequences."<sup>19</sup> Josef Fuchs offers this example of how to parse the distinction between goodness and rightness in a particular case:

Perhaps someone makes a great contribution to the well-being of humankind but is only motivated in his activity by egotism—for instance, in order to be honored. He has done the morally *right* thing, for he has created premoral human goods or values; but he is not morally *good*.<sup>20</sup>

What is common to all the ways in which the distinction is made is this: Goodness and badness refer to persons in their motivations and in their striving or failing to strive to do what is right;

<sup>19</sup> Bruno Schüller, "The Double Effect in Catholic Thought: A Reevaluation," in McCormick and Ramsey, eds., *Doing Evil to Achieve Good*, 165-92, at 183.

<sup>20</sup> Josef Fuchs, "Intrinsically Evil Acts?" in *Christian Ethics in a Secular Arena*, trans. Bernard Hoose and Brain McNeil (Washington D.C.: Georgetown University Press, 1984), 81.

rightness and wrongness refer to acts. According to this view, one cannot resolve any question of the rightness or wrongness of an act by reference to virtues, that is, the interior dispositions of a person. The virtues are habits of seeking and desiring to do what is right; they cannot determine what is right.

How is the goodness/rightness distinction (GRD) justified? One argument given in favor of GRD is that it does not confuse the aretaic with the deontic realm of discourse.<sup>21</sup> Todd Salzman puts the point in the following way:

Aretaic terms concern *moral* predicates that designate the goodness or badness of the agent, his or her motive, intention or disposition. Aretaic terms apply to acts as well when the description of the moral nature of the act includes the motive or intention of the agent. Deontic terms concern predicates of right or wrong acts. . . . In discussion of concrete norms that concern deontic judgments on the rightness or wrongness of an act, it is best to avoid aretaic terms.<sup>22</sup>

Virtue, vice, holiness, sin, and salvation are aretaic terms. Rightness and wrongness are deontic terms. For revisionists, rightness is determined on the basis of the premoral goods and evils involved, but goodness is determined by whether or not agents seek to do what is right. Hence, to invoke virtues or vices in determining the rightness or wrongness of an action is to use aretaic terms in answer to a deontic question, confusing the issue.

How does this relate to contraception? Let us assume that it is an empirical fact that many people cannot bring themselves to practice NFP. People who lack the requisite virtues of temperance and self-denial will find it difficult, if not practically impossible, to abstain during times when they judge abstinence is required. Granting that this is the case, if we invoke the goodness/rightness distinction the inability of such people would not alter the character of contraception as right or wrong in the least. Right or wrong, according to those who hold the GRD, is a matter of the objective premoral goods and evils brought about by a given act. Virtue, seeking what is right, pertains to goodness, not rightness. If someone lacks the virtues to seek and effect that which is

<sup>21</sup> Todd Salzman, *Deontology and Teleology* (Leuven: Leuven University Press, 1995), 510-11.

<sup>22</sup> *Ibid.*

objectively right, the consistent revisionist must hold that the person is lacking in the fullness of moral goodness. Even supposing that people with excellence in all the virtues, including temperance, cannot practice NFP, this still would not alter the rightness or wrongness of contraception, for moral rightness in human action is maximizing premoral human goods or values. If contraception brings about more premoral evils than NFP, it is wrong, even if people, good people, cannot bring themselves to seek to use NFP. According to those who invoke the goodness/rightness distinction, to invoke the virtues or vices of people in determining the rightness or wrongness of an act is to confuse the aretaic with the deontic realm of discourse.<sup>23</sup> Hence, the GRD undercuts one of the most common arguments given in favor of contraception and against NFP.

For the sake of argument, suppose that the GRD itself fails. Would the proportionalist premise then be acceptable? Does *ought* imply that most *can*? Of course, a lot depends upon what is meant by "can." Surely, the sense meant is that most people cannot bring themselves to do it. If this principle is invoked, however, many more "laws" will have to be abandoned. A good place to start would be with those two fundamental laws which none of us have successfully kept.

"Teacher, which is the greatest commandment in the Law?" Jesus replied: "'Love the Lord your God with all your heart and with all your soul and with all your mind.' This is the first and greatest commandment. And the second is like it: 'Love your neighbor as yourself.'" (Matt 22:36-39)

These two laws in particular have not been obeyed since the beginning of human history. If we are to adjust the moral law to the practice of the people, then we will have to adjust it all the way down to its fundament.

Hence, proportionalism, though originally conceived as a way of justifying the use of contraception, in the course of clarifying itself and responding to objections ends by excluding the use of contraception. The development of the theory to exclude cases of bombing civilians in war or framing innocent people led to the

<sup>23</sup> *Ibid.*

conditions of necessity and chronological simultaneity in proportionate reason. These conditions exclude the most common motives for using contraception, including financial stability, family harmony, and career advancement. The condition of avoiding superfluous evil leads to the elimination of various means of contraception, including the pill. The principle that in conflict situations one should choose the lesser of two evils or the greater good leads to the conclusion that one should choose NFP over contraception. Finally, the goodness/rightness distinction undermines the frequently heard argument given in favor of contraception that the ideal of NFP is too difficult for most people to strive after or achieve because the common couple lacks the requisite virtues. Of course, I am not, in this discussion, taking any substantive views on the matters of proportionalism or contraception. Rather, I am only making the disquieting suggestion that either the developed view of proportionalism or approval of contraception must be abandoned by the many who advocate both.