

## The 'morning-after' pill & victims of rape

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It has long been the popular impression that the so-called morning-after pill operates as an abortion-causing agent. It came as something of a surprise, then, when the Archbishop of Cologne, Cardinal Meisner, recently changed his earlier assessment of the morning-after pill after learning from scientists that new versions of this drug act as contraceptives rather than as abortifacients. "If a medication that hinders conception", he stated, "is used after a rape with the purpose of avoiding fertilisation, then this is acceptable in my view",<sup>i</sup> and it can be used in Catholic hospitals. He was led to apologise for the refusal of two Catholic hospitals to offer appropriate treatment of rape victims.

Perhaps in consequence of this statement, the Plenary Meeting of German bishops on 21 February 2013 in Trier announced that Catholic hospitals can provide contraceptive pills to rape victims in order to prevent fertilisation of an ovum, but not to stop the implantation of a fertilised ovum

In some quarters, the element of surprise at Cardinal Meisner's statement arises because the acceptance of a contraceptive pill is seen as a weakening of Pope Paul VI's stance against contraception in his 1968 encyclical *Humanae Vitae*.<sup>ii</sup> First of all, therefore, it is necessary to dispel the notion that there is any contradiction between the two positions.

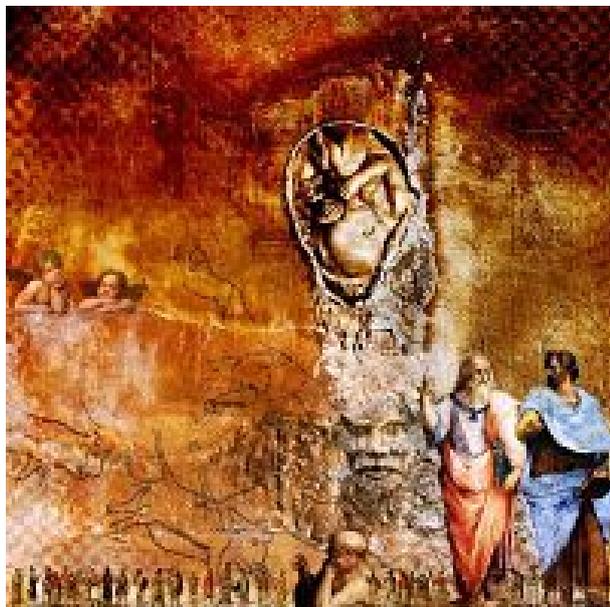
In the former situation, contraception is seen as a legitimate defence against a grave violation of personal integrity which is unwanted, unfree, and non-consensual. This position has been officially taken by the Church for over 50 years. In the early 1960s, during the time of civil war in what was then known as the Belgian Congo, insurgent groups targeted Catholic nuns for rape. The Holy Office of the Vatican (now called the Congregation for the Doctrine of Faith) stated that in this situation religious women were justified in protecting themselves against possible pregnancy as a result of rape by using contraceptives.<sup>iii</sup> A similar stand was adopted by the Church in 1993. At a time when women were in peril of mass rapes in Bosnia, the Vatican revived this position regarding the use of contraceptives, although it stated that in normal circumstances the condemnation of contraception remains in force.<sup>iv</sup>



persistence of belief \ desire pleats ... by jef safi \ pictosophizing, flickr cc

The reasoning underlying this teaching is that rape is by definition an act of violence against another person, in this case a woman who is forcibly constrained in an act that is on her part unfree and non-consensual. She may not be able to raise a defence against the rape itself and the depositing of sperm in her vagina, which is part of the unjust assault, but she can defend herself against its possible consequences, for in doing so she is not rejecting a child as a gift of love, as it is meant to be, but mounting a form of legitimate self-defence against unjust aggression. Her use of contraceptive medication is then morally justified as a protection against the unwanted consequences of an unwanted sexual act. As eminent moral theologian, Redemptorist Brian Johnstone, put it in an interview with John Allen already referred to, the Vatican decision about Nuns in the Congo “was seen as a protection against pregnancy arising from unwanted, unfree sexual intercourse”.

It is worth noting, Johnstone observes, that, although these instances of authoritative teaching relate specifically to nuns, from the moral perspective it makes no difference whatsoever whether a woman is a religious or not. The trauma may be aggravated in the case of women with a vow of chastity, but in either case rape remains a grave assault on the integrity of the human person. Hence it is a reasonable conclusion that non-religious



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women in serious danger of rape have the same freedom to defend themselves against a possible pregnancy as nuns.

Furthermore, it may reasonably be argued, though it is a moot point, that married women, too, in grave danger of conjugal rape by their husbands arguably have the same need to a legitimate defence against a possible pregnancy. They suffer in this instance from an unwanted, unfree, and unloving imposition of sexual intercourse, and hence may legitimately defend themselves against an unwanted outcome of sexual assault.

On the other hand, *Humanae Vitae* does not discuss contraception at all in such situations. It is concerned with the question of contraception in the context of free sexual intercourse within marriage. From the

opening paragraph the encyclical makes very clear that it is specifically addressing man and woman joined in marriage about the controverted issue of procreation, “for which married persons are the free and responsible collaborators of God the Creator” (n1). It goes on to speak of the mutual love of husband and wife which characteristically is meant to be fully *human, total* as a very special form of personal friendship and self-giving, *faithful* unto death, and *fruitful* in the giving of new life (n9).

It is this mutual love of husband and wife that leads them to undertake the challenging role of ‘responsible parenthood’, which according to Pope Paul “is exercised, either by the deliberate and generous decision to raise a numerous family, or by the decision, made for grave motives and with due respect for the moral law, to avoid for the time being, or even for an undetermined period, a new birth” (n10).

And it is their intimate acts of self-giving in sexual union that the encyclical teaches as a fundamental principle should be at least open to new life (n12).

The context determines the moral meaning of contraception in a particular situation. The encyclical does not address the use of condoms as a means to prevent AIDS, nor as a defence against the consequences of rape. It

is specifically limited to the free and consensual acts of sexual union of man and woman in marriage, although significantly it does grant that, in fact, “a conjugal act imposed upon one’s partner without regard for his or her condition and lawful desires is not a true act of love, and therefore denies an exigency of right moral order in the relationship between husband and wife” (n13). In other words, it is neither free nor consensual, and is in reality marital rape. Therefore, it is a reasonable argument that it is in the same category as any other act of rape, and can be resisted in the same manner as discussed above. Nor can marital rape be classed as a rare occurrence, as official documents commonly seem to imagine.

Thus far, the focus has been on the use of contraceptive pills *prior* to the occurrence of rape, and presupposes the existence of grave fear of rape which is immediate. This is not a mere theoretical possibility for any woman in any major modern city. The issue raised by Cardinal Meisner is the use of contraceptive medication *after* rape has occurred. Although no valid argument can be raised against the contraceptive function of the medication in this situation, other factors need to be taken into account.

The German bishops are not the first to address the remedial measures that may be taken following rape. Statements were made much earlier by the Joint Committee of Bishops’ Conferences of the USA, Scotland, Ireland, England, and Wales, and their investigation has continued.<sup>vi</sup> All pronouncements by Catholic authorities on the issue agree on ruling out pills whose principal effect is to cause abortion. The Catholic Church, as is well known, strongly opposes abortion on the basis that it unjustly removes, destroys or hinders the implantation in the womb of a fertilised ovum which is another individual human life. The Second Vatican Council stated: “Life must be protected with the utmost care from the moment of conception; abortion and infanticide are abominable crimes” (*Gaudium et Spes* n51). The US directive, *The Ethical & Religious Directives for Catholic Health Care Services*, sums up the commonly accepted position: “It is not permissible ... to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum”.<sup>vii</sup>

The name “morning-after” pill is to some extent a misnomer. Medication should be used as soon as possible following intercourse, and the sooner it is administered the more effective it is likely to be. Hence it is preferable to refer to it as “emergency contraception”.<sup>viii</sup> The emergency contraceptive drug marketed in Australia as Levonelle is a progestin-only medication that typically works up to 72 hours after intercourse. Its primary mechanism of action is to prevent fertilisation by inhibition of ovulation. The best currently available evidence is that it does not have any post-fertilisation effects such as the prevention of implantation, which is an abortifacient effect.<sup>ix</sup>

The same cannot be said of other drugs such as RU486 which is used as an “abortion pill”, and which is not approved for emergency contraceptive use in the US.<sup>x</sup> In 2008, the Congregation for the Doctrine of the Faith stated in its Instruction *Dignitas Personae*:

Alongside methods of preventing pregnancy which are, properly speaking contraceptive, that is, which prevent conception following from a sexual act, there are other technical means which act after fertilization, when the embryo is already constituted, either before or after implantation in the uterine wall. Such methods are interceptive if they interfere with the embryo before implantation and contragestative if they cause the elimination of the embryo once implanted... Therefore, the use of means of interception and contragestation fall within the sin of abortion and are gravely immoral.<sup>xi</sup>

What is to be said of methods of preventing pregnancy that are, properly speaking, contraceptive but neither interceptive nor contragestative, that is, abortifacient? Directive 36 in *Ethical & Religious Directives for Catholic Health Care Services* of the US Bishops Conference gives us a good lead: “A female who has been raped should be able to defend herself against a potential conception from the sexual assault. If, after appropriate testing,

there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization”.<sup>xii</sup>

In line with this directive, the usual protocols for ethical treatment after rape in Catholic health facilities have involved tests for any pre-existing pregnancy, as well as procedures for ascertaining whether the victim is at or nearing the time of ovulation, in order to determine whether a new conception is likely to result from the rape. Following these tests, which are fairly simple to administer, “emergency contraception” is offered only if the pregnancy test is negative and both personal and empirical data indicate that the woman is not at or near the time of ovulation. In this way, staff can be reasonably sure that the giving of medication to prevent fertilisation will not cause harm to the possible conception of any child.<sup>xiii</sup>

Obviously, the concern evidenced in these protocols arises out of the fear that the morning-after pill, if it acts pre-fertilisation, has a contraceptive effect and, if it acts post-fertilisation, could have an abortifacient effect by interfering with the endometrium or lining of the womb, and that is not acceptable according to Catholic teaching. As Pope John Paul said in his encyclical *Evangelium Vitae* (n58), whatever the reason for abortion, “however serious or tragic, (it) can never justify the deliberate killing of an innocent human being”. Hence, according to these protocols, the morning-after pill may not be used if there is reasonable risk that its administration would be inimical to new life already conceived or likely to be imminently conceived. In other words, if “emergency contraception” could become “emergency abortion”. However, if the assurance of scientists that a progestin-only morning-after pill such as Levonelle does not have an abortifacient effect is accepted, then there does not seem to be any reason not to use it in treatment of a rape victim.

This emergency contraception should of course be incorporated into the broad context of appropriate treatment. A woman who has been raped, even though she may shrink from the prospect of shame and notoriety, should seek proper medical care as soon as she can. It goes without saying that treatment in Catholic hospitals and health facilities should be sensitive and compassionate. Rape is a terrible and frightening experience. Any injuries such as cuts and bruises or worse may need to be given adequate attention. Health care providers also need to be prepared to cooperate with police gathering evidence for the prosecution of the rapist.

Most important is the provision of medical, psychological and spiritual counselling and support, no doubt needing to be ongoing, both to help the victim cope with the severe trauma of the assault and, in the rare case when this comes about, in facing the demands of a possible pregnancy. The situation of a mother carrying to term a child conceived through rape, however innocent it may itself be, is a demanding challenge requiring great depths of maturity and Christian fortitude, and requiring the support of the Christian community.

- i T Herteghan 'German Catholic Church may back some Morning-After Pills', *Reuters*, 5 February 2013
- ii *On the Regulation of Birth* (St Paul Publications, Homebush, 1975)
- iii Referred to by Brian Johnstone CSsR in John L Allen 'Exception to birth control ban raises questions', *National Catholic Reporter*
- iv See Andrew Brown, 'The Vatican Acts over Bosnian Rapes: birth control ban eased for women at risk', *Communion*, 20 July 1993
- v 'The 'Morning-After Pill', Rape Victims & Ethical & Religious Directives for Catholic Health Care Services', Catholic News Agency, <http://www.linacre.org/MornAffPillMcC.htm>.footnote (1)
- vi See *Origins* 15 (January 31, March 13) 1986: 16: (11 September) 1986
- vii 'The Morning-After Pill' p1
- viii See 'Emergency Contraception', Wikipedia [http://en.wikipedia.org/wiki/emergency\\_contraception.p.1](http://en.wikipedia.org/wiki/emergency_contraception.p.1)
- ix 'Emergency Contraception' pp1, 6, 7, footnotes 42, 114, 115, 120
- x 'Emergency Contraception' p2
- xi See [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_2008\\_dignitas-personae\\_enhtml](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_2008_dignitas-personae_enhtml)
- xii 'The Morning-After Pill' p1
- xiii 'The Morning-After Pill' pp2, 3; William Saunders, 'Ethical Treatment after Rape', <http://catholiceducation.org/articles/religion/re0566.html>