

Is "Safe Sex" a Lesser Evil?

What the Bishops Really Said -- and Did

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ON December 11, the Administrative Board of the United States Catholic Conference (USCC) issued a statement entitled "The Many Faces of AIDS: A Gospel Response." (For the text see *Origins*, December 24, 1987, pp. 481-89.) This statement both refers to and carries out a certain human act. The present essay is an ethical analysis and moral-theological evaluation of that act's *objective* morality. Nothing herein refers to or evaluates the hearts of those involved in the act.

The sentence most central to the act's expression is: "We are not promoting the use of prophylactics, but merely providing information that is part of the factual picture." The act's subject is referred to by the word "we" at the beginning of the sentence. The first person pronoun expresses self-reference by the subject who utters it. Therefore, since this "we" is the use of the first person plural in a collective statement, it refers to those making the statement, namely, the bishops who make up the administrative Board of the USCC. But this "we" also necessarily refers to those who actually provide the information, namely, persons engaged in public educational programs. Thus, those making the statement regard themselves as acting--and so for their own part really are acting--in unison with (that is, are formally cooperating with) those providing the information. In other words, the bishops making the statement hereby constitute themselves the subject of an act together with those actually providing the information.

Since the act is an act of providing information, one must consider two things to understand the act's object: *what* is communicated and *to whom* it is communicated.

What is communicated:

First, factual information about prophylactic devices or other practices proposed by some medical experts as potential means of preventing AIDS. The information in question is a matter of public

knowledge: that persons who might engage in either anal or vaginal sexual intercourse in which the AIDS virus could be transmitted can lessen the probability of its transmission *in any one sexual act* either by using a condom or by engaging instead in sexual behavior other than anal or vaginal intercourse.

Second, the indications that "abstinence outside of marriage and fidelity within marriage as well as the avoidance of intravenous drug abuse are the only morally correct and medically sure ways to prevent the spread of AIDS," that "so-called 'safe sex' practices are at best only partially effective," and that such practices "do not take into account either the real values at stake or the fundamental good of the human person." These three indications tend to discourage the use of condoms rather than to promote their use, and so verify the statement, "We are not promoting the use of prophylactics."

Third, a broad moral vision, which the bishops outline, is to serve as the ground of the communication.

To whom is this communicated? The "wide audience" of "public educational programs," an audience which includes "some people who will not act as they can and should" and "will not refrain from the type of sexual or drug abuse behavior which can transmit AIDS." Since part of what is communicated concerns fidelity within marriage, the wide audience explicitly and specifically includes married persons.

Moreover, since the next paragraph beginning "With regard to educational programs for those who have already been exposed to the disease" concerns those who are aware that they have already been exposed to AIDS, the wide audience is not limited to such persons. Therefore, it includes any person who will not refrain from sexual or drug abuse behavior which can transmit AIDS. Since the audience includes persons other than those who are aware that they already have been exposed to AIDS, this audience must include

those who have no more than a reasonable basis to *suspect* that AIDS could be transmitted in the behavior from which they will not refrain.

There are three groups of persons who have a reasonable basis to suspect that their sexual behavior can transmit AIDS. A large percentage of active homosexuals and bisexuals constitute one such group. A rather smaller percentage of heterosexuals who engage in premarital or extramarital intercourse constitute another such group. Included in this second group are some children beginning to engage in their first heterosexual acts, especially those children whose social situation includes sexual promiscuity, drug abuse, or both. A certain percentage of married couples—explicitly and specifically part of the wide audience—constitutes the third group.

This third group includes those married couples whose relationship is not exclusive, since at least one partner sometimes commits adultery. When such couples engage in marital intercourse, an AIDS infection acquired by extramarital intercourse can be transmitted during marital intercourse. The group of married couples at risk also includes some whose marital relationship is *exclusive*, but who might nevertheless transmit the AIDS virus through marital intercourse, because at least one partner abuses or has abused intravenous drugs, or has engaged in the past in sexual behavior in which AIDS might have been transmitted, or is a victim of rape, or has received blood or blood products which might have been infected with the AIDS virus, or has had some accident which might have caused AIDS infection. The last category includes certain health care workers who have reason to fear they might have been infected with AIDS and who cannot know whether they have been infected until sufficient time passes so that available tests would detect the infection.

The intention of the act is the purpose for which the information is provided. The information provided includes what is proposed by some medical experts as potential means of preventing AIDS. Therefore, the purpose of providing the information is not theoretical but practical. The practical purpose of providing the information is to bring about a change in behavior.

The *hope* of those providing the information is that when persons who might engage in either anal or vaginal sexual intercourse in which the AIDS virus could be transmitted learn that they can lessen the probability of its transmission either by using a condom or by engaging instead in sexual behavior other than anal or vaginal intercourse, then they will choose

less unsafe rather than more unsafe practices.

Thus, the intention of the act is to encourage the persons concerned to choose to engage in less unsafe, rather than more unsafe acts.

An act whose intention is to encourage one potential choice rather than another is an act of giving advice. Anyone who gives advice wills that those to whom he gives it should accept it and choose to follow it. This willing of the one who gives advice is formal cooperation with the choice which he advises the other to make. Therefore, in providing this information, all who participate in the act formally cooperate with the choices they advise others to make.

But, as already shown, the bishops who make up the Administrative Board of the USCC, in making this statement, are agents of the act of providing the information. Therefore, these bishops formally cooperate with the choices of the relevant persons either to use a condom or to engage instead in sexual behavior other than anal or vaginal intercourse, rather than choose to engage without a condom in anal or vaginal intercourse in which the AIDS virus could be transmitted.

The analysis to this point now can be summarized in a simpler and more straightforward form.

In making this statement, the bishops who make up the Administrative Board of the USCC offer advice to persons who engage in either anal or vaginal intercourse in which the AIDS virus can be transmitted. They offer this advice to various groups of persons, including certain children beginning to engage in their first sexual acts with other persons and certain faithful married couples about to engage in marital intercourse. The advice they offer is: *Please recall, try to understand, accept, and act on the broad moral vision the Church teaches concerning human sexuality. You ought to abstain from intravenous drug abuse, from sexual intercourse if you are not married, and from extramarital intercourse if you are married. Moreover, anything else offers only limited safety. Still, if you are about to choose sexual behavior which can transmit AIDS, choose instead either to use a condom or to engage in sexual activity other than anal or vaginal intercourse.* In offering this advice, the bishops formally cooperate in all the choices which they advise the relevant persons in all three of the groups at risk to make.

Plainly, the bishops who made the statement believed that their act is morally acceptable. The statement expresses this belief by saying that the educational efforts to which it refers "could" include the relevant accurate information, for in the context

“could” expresses not possibility but moral permissibility. A backward reference on page 488, in a passage offering guidance for Catholic health care institutions, confirms this reading: “It would be permissible, in accord with what has been said earlier about not promoting ‘safe sex’ practices, to speak about the practices recommended by public health officials for limiting the spread of AIDS in the context of Catholic moral teaching.”

There are three reasons why this may have seemed so.

First, on pages 486-87, the bishops say: “The teaching of classical theologians might provide assistance as we search for a way to bring into balance the need for a full and authentic understanding of human sexuality in our society and the issues of the common good associated with the spread of disease.” Appended to this sentence is note 7, which contains references to St. Thomas and others concerning toleration. So the bishops thought their act might be justified by the classic teaching concerning toleration.

However, this teaching is irrelevant to the bishops’ act. For the concept of toleration requires two distinct moral agents, one of whom engages in a morally evil act, and the other of whom could, but does not prevent that act. But the act which needs to be justified is the bishops’ own act. Therefore, its justification by the teaching on toleration is logically impossible.

Second, the unmentioned but probable factor in the bishops’ thinking is a theological distinction concerning the use of condoms.

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Some people object against advising even a homosexual to use condoms because they think of condoms as contraceptives, and hold that contraception is wrong. But contraception, as *Humanae Vitae*, 14, defines it, is any act which proposes either as an end or as a means to impede procreation. Now, no use of condoms to prevent the transmission of AIDS virus (or any other disease) proposes either as an end or as a means to impede procreation. Therefore, advice to use condoms to prevent the transmission of the AIDS virus is not

advice to practice contraception.

For some years, various Catholic theologians in the United States, including some who uphold and some who dissent from the Church’s teaching concerning contraception, have accepted this distinction between condoms considered as contraceptives and as prophylactics. The bishops making the statement probably were informed about this distinction between the two uses of condoms. If they accepted the distinction, they probably thought that their advice would not be contrary to the Church’s teaching on contraception. If so, theologians who accept the analytic distinction would consider them correct. But the bishops probably also thought that possible concern about contraception was the main question about the justifiability of their act. If so, as will be shown next, they made a mistake.

On page 489, the bishops offer advice to health care professionals acting at the personal level: “If it is obvious that the person will not act without bringing harm to others, then the traditional, Catholic wisdom with regard to one’s responsibility to avoid inflicting greater harm may be appropriately applied.” The “wisdom” mentioned here is not about toleration, but about counseling the lesser moral evil.

Many Catholic moralists have held that if one is in a position to give advice to a person who is about to do a great and seriously harmful moral evil, one may rightly attempt to dissuade the person from doing that great evil, even under certain conditions by suggesting *in the last resort* that the person do some less serious moral evil. The bishops give their advice to a wide audience *partly* made up of many persons about to do great and seriously harmful moral evils. The advice they give to *everyone* in this wide audience is to choose otherwise than they are about to do. Therefore, they probably thought that their act might be justified by this “traditional Catholic wisdom.”

With respect to persons who regularly engage in anal intercourse or extramarital vaginal intercourse in which the AIDS virus can be transmitted, a plausible argument can be made in terms of counseling the lesser evil to justify health care professionals’ advice to such persons to use condoms or to substitute other sexual behavior. However, a plausible argument also can be made for the view that the choice of a regular practice of unnatural sexual acts *each of which* has a lower probability of transmitting the AIDS virus rather than a regular practice of other sexual acts *each of which* has a higher probability of transmitting the virus is not the choice of a lesser moral evil. For both practices are

gravely immoral and both are very likely to result, sooner or later, in the transmission of the AIDS virus.

No matter how one morally evaluates health care professionals' advice to such persons, it is not easy to justify the bishops' act giving this advice. For offered by the bishops, this advice is sure to confuse many of the faithful and other people of good will about the immorality both of underlying sexual acts and the use of condoms for the purpose of contraception.

With respect to persons who do not regularly engage in anal intercourse or extramarital vaginal intercourse but who are beginning to or about to engage in acts of one of these kinds, a similar but much less plausible argument can be made on the basis of counseling the lesser evil to justify health care professionals' advice to choose less unsafe practices. For when health care professionals advise those who do not regularly engage in anal or vaginal intercourse in which the AIDS virus can be transmitted to choose less unsafe practices unless they choose to be chaste, this advice is sure to create in some people an illusion of greater safety than really exists. In creating this illusion, those who give the advice run the risk of encouraging some to engage in the less unsafe practices who otherwise would not engage in anal or extramarital vaginal intercourse but rather would be chaste.

It is very difficult if possible at all to justify the bishops' act of advising persons who are not already regularly engaging in anal or extramarital vaginal intercourse to choose less unsafe practices should these persons choose not to be chaste. Offered to this group, the advice is likely to have bad side effects in addition to those which follow from the giving of similar advice to persons who are habitually unchaste.

In the first place, the act of giving this advice presupposes and communicates pessimism about the possibility that persons not already habitually unchaste can live chastely with the help of God's grace. Those tempted to be unchaste who sense this pessimism are more likely to than they otherwise would be to give in to temptation. In the second place, this group certainly includes some persons, especially children beginning to engage in their first interpersonal sexual acts, who could be persuaded to try to be chaste if they were encouraged unambiguously to live chastely and discouraged from thinking that certain sexual practices are relatively safe. In the third place, even the loss of a single person's soul cannot be outweighed by the prevention of the death of everyone in the world due to the transmission of the AIDS virus.

The final group to be considered is made up of mar-

ried couples engaging in marital intercourse in which the AIDS virus could be transmitted. It must be remembered that under consideration here are not only those couples who are aware that one partner has been exposed to AIDS, but the much larger number of

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couples who have some reason to fear that one partner could be infected with the virus. When public health professionals advise such married persons as well as those engaging in illicit sexual activity to choose less unsafe alternatives, it is obvious that they are concerned only about the transmission of AIDS, not about the integrity of marital intercourse.

Catholic moral teaching never has forbidden husbands and wives who are at some risk of transmitting a serious disease to one another to accept the risk and to continue their conjugal life. These couples are not engaging in acts wrong in themselves, but in acts in themselves good and holy. But if they choose instead to engage in complete sexual acts such as condomistic intercourse or mutual masturbation (whether for contraception or for any other reason whatsoever), married couples do not engage in marital acts but rather engage in unnatural acts which are the matter of grave sin.

Thus, in advising certain married couples to replace marital intercourse with other acts--less unsafe in respect to the possibility of AIDS transmission but nonmarital in character--the bishops' advice is to choose something morally evil instead of the morally good alternative of marital intercourse with some risk of the transmission of the AIDS virus. Thus, the bishops' act of advising this group logically cannot be justified as counseling the lesser evil. ■

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