

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY

In an address presented in the fall of 1962, Fr. Gerald Kelly, S.J., quite reasonably suggested that, despite present ecumenical trends, one of the most formidable obstacles to Christian unity is the Roman Catholic position on the matter of contraception.¹ Now less than two years later one can scarcely be blamed for wondering whether the same issue does not pose a threat of moral schism within our own ranks. Certainly one of the most significant facts in today's world of moral theology is the growing tendency among Catholics, both clerical and lay, to question one or another aspect of our teaching on artificial birth control. The challenge is articulated in various forms. A bishop in Holland, for instance, insinuates that for many married people avoidance of contraception is a moral impossibility;² a priest in England seriously doubts that procreation and education of children represent the primary end of every act of intercourse;³ in the popular literature several laymen express their impatience with the natural-law argument against onanism and evidence growing resentment at the theological argument based upon the teaching authority of the Church;⁴ and at least two representative Catholic theological journals publish long articles which attempt to justify the use of the progestational steroids for the purpose of fertility control through suppression of ovulation.⁵ Ignoring this ferment certainly will not make it subside. These Notes, therefore, will attempt to summarize certain current expressions of thought on the subject of contra-

EDITOR'S NOTE.—The present survey covers the period from July to December, 1963.

¹ "Christian Unity and Christian Marriage," *Theology Digest* 11 (Winter, 1963) 195-207.

² "Bishop Bekkers on Conjugal Life," *Herder Correspondence*, Oct., 1963, pp. 28-30. Commenting on the bishop's remarks, composed originally for transmission by television in Holland, F. J. Connell, C.S.S.R., concludes with this very pointed observation: "It would be interesting to know if the bishop believes that Catholics such as he described as not willing to give up contraception (but with a velleity to improve) can be admitted to the sacraments" (*American Ecclesiastical Review* 149 [July, 1963] 51-52).

³ *Clergy Review* 48 (July, 1963) 453.

⁴ Rosemary Ruether, "Marriage, Love, Children," *Jubilee* 11 (Dec., 1963) 17-20; Bruce Cooper, "An English Father Hopes the Council Will Act," *ibid.*, pp. 20-21; Louis Dupré, "Toward a Re-examination of the Catholic Position on Birth Control," *Cross Currents* 14 (Winter, 1964) 63-85.

⁵ W. van der Marck, O.P., "Vruchtbaarheidsregeling: poging tot antwoord op een nog open vraag," *Tijdschrift voor theologie* 3 (1963) 378-413; L. Janssens, "Morale conjugale et progestogènes," *Ephemerides theologicae Lovanienses* 39 (Oct.-Dec., 1963) 787-826.

ception as a partial basis on which to estimate the dimensions of the problem which we presently face.⁶

CATHOLIC TEACHING ON CONTRACEPTION

The complaint most often voiced with respect to Catholic teaching on contraception is that none of the rational arguments advanced in proof of the intrinsic evil of the practice is totally convincing. In honesty it must be admitted that the cogency of these arguments can be difficult to comprehend and even more difficult to communicate. But any tendency to write them off as worthless should be challenged. Perhaps with this thought in mind G. Kelly, S.J.,⁷ undertakes to examine several of the proofs commonly employed and to evaluate them as demonstrations of the reasonableness of the Catholic position.

As Fr. Kelly points out early in his article, the teaching of both Pius XI and Pius XII relative to contraception is based on a single principle, viz., the fact of an established design which God Himself has written unchangeably into the natural structure of the conjugal act. That man's freedom to deviate from this divine plan is limited to accidentals is most clearly declared, for example, in this excerpt from the 1951 address to the midwives:

Nature puts at man's disposal the whole chain of causes which will result in the appearance of a new human life. When once man has done his part and set in motion the marvelous process which will produce a new life, it is his bounden duty to let it take its course. He must not arrest the work of nature or impede its natural development.⁸

Immediately apparent in this passage is a calculated distinction between the *opus hominum* and the *opus naturae* as these terms apply to human generative function. The *opus hominum* is merely coitus, traditionally defined as *actus per se aptus ad generationem*. The postcoital processes, including spermigration through the uterus and tubes, pertain to the *opus naturae*. Both these phases of generative function are furthermore declared to be parts of a divine plan which man is not free to change. In other words, not only must the act of human coitus be allowed to remain in every instance *actus per se aptus ad generationem*, but nothing may be done directly to

⁶ The word "partial" is used advisedly, because there is no intention to make a comprehensive survey of these issues and also because new developments may easily take place before these Notes appear in print.

⁷ "Contraception and Natural Law," *Proceedings*, Eighteenth Annual Convention of the Catholic Theological Society of America (June 24-27, 1963) pp. 25-45.

⁸ AAS 43 (1951) 836.

interfere with the natural consequences of vaginal penetration and intra-vaginal semination.

It is this last assertion which prompts the critical question: Precisely why must this divinely predetermined pattern be acknowledged and respected as inviolable? Fr. Kelly's response would appear to throw some new light on the teleology of the generative act:

... why this inviolability? Because these things constitute the natural prelude to the *opus Dei*, which is the creation of a spiritual and immortal soul. Hence, according to the divine plan, these functions are life-giving—and the life that they help to give is human life. This is the ultimate and specific reason for their inviolability. Just as innocent human life itself is inviolable, so those things which immediately pertain to the beginning of human life are also inviolable.

Another way of expressing the same thought would be to say that just as man does not and cannot possess direct dominion over innocent human life once it has come into existence, so also does he lack direct dominion over the pattern of those processes upon which the beginning of human life immediately depends. Or, as J. L. Thomas, S.J., expressed it some few years ago:

... if we analyze the reproductive system we see that in it men and women carry the co-principles of life. But neither life nor the co-principles of life are under man's direct dominion. They pertain directly to the Creator. Hence, man cannot use sex primarily for his own pleasure but only according to the purpose which God gave it. This means that if man chooses to make use of sex, he may not interfere with the normal physiological process which his act has initiated. Whether conception then follows or not is not in his power to decide.⁹

It is noticeable that throughout his exposition of this papal argument against contraception Fr. Kelly speaks repeatedly of the "life-giving" purpose of the marital act. With that simple substitution of an Anglo-Saxon synonym for the more traditional term "procreative," he seems to have made the argument somehow more meaningful. It is relatively easy for human reason to understand why it must be that only God as Creator can possess perfect dominion over human life *in facto esse*. Granted, then, the ontological relationship between conjugal intercourse and life *in fieri*, it is no less than logical to conclude that the structure of the generative act, and its natural sequelae after the act has been freely elicited, should likewise lie beyond the direct control of mere human creatures.

Another item to be noted with respect to the papal argument is, as Fr.

⁹ *The Family Clinic* (Westminster, Md.: Newman, 1958) p. 186.

Kelly observes, the fact that its validity does not depend upon the truth of the proposition that procreation is the *primary* end of the conjugal act. Rather its cogency derives from the more easily established fact that procreation is an *essential* end of that act. Consequently we create unnecessary difficulties for ourselves if we insist, when using this argument, on stressing the primacy of procreation among the several ends of conjugal intercourse. Furthermore, by putting emphasis on "essential" rather than on "primary," we run less risk of seeming to forget that the conjugal act is of its essence not only a procreative entity but also an act of love, and that contraception also offends against the so-called secondary ends of marriage, particularly the expression and cultivation of conjugal love.

The remainder of the article is devoted to an appraisal of the several other arguments more or less commonly used in an effort to demonstrate the illicitness of contraception. Of this material, the most important in view of Fr. Kelly's purpose is contained in Parts 2 and 4 under the subheadings "The Indirect Argument against the Present Anglo-Protestant Majority Position" and "Contraception Destroys the Natural Symbolism of the Conjugal Act." By way of final conclusion to this excellent study, Fr. Kelly writes:

The best direct argument [against the licitness of contraception] should include an analysis of the conjugal act in its totality—namely, as a life-giving act of love. The materials for this argument are given in the first and fourth parts of my paper. When this argument is properly understood and is confirmed by the indirect argument presented in Part II, the natural-law case against contraception is very strong. By this I do not mean that there are no further challenges to Catholic theologians and philosophers. I mean simply that we already have good material for a more profound understanding of the immutable teaching of the Church and for the presentation of the Catholic position as reasonable.

At the beginning of this discussion of his, Fr. Kelly had stated that the purpose behind a theologian's scrutiny of the natural-law reasons against contraception is not to discover the truth (i.e., whether or not the practice is intrinsically wrong), but only the better to understand it for his own intellectual satisfaction and for the possible enlightenment of others. The truth itself, however, we already have most securely from the constant and explicit teaching of the Church that contraception is intrinsically immoral. That the Church does so teach and has constantly so taught can hardly be questioned. Even the Anglicans admitted, when they first approved of contraception, that this reversal of position was counter to tradition; they explained it as not a binding tradition. And to this day the Orthodox Church bears witness to the traditional character of Church teaching on this matter.

That this teaching is such as to command conformity with it in our human conduct is a statement that would not be contested by the theologically informed. That the Church will and must ever continue so to teach because of her irrevocable doctrinal commitment to the intrinsic immorality of contraception is a thesis which no recognized Catholic theologian has ever publicly questioned. That the immutability of this teaching is actually beyond all legitimate question is the burden of one of the most important chapters in the recent volume coauthored by J. C. Ford, S.J., and G. Kelly, S.J.¹⁰

The chapter in question is entitled "Can the Catholic Teaching [on Contraception] Change?" and the authors' ultimate answer after some twenty scholarly pages is a resounding, unequivocal negative. Their procedure within this section of the book consists in vindicating affirmative answers to these three questions: (1) Is the Catholic teaching irrevocable? (2) Is the Catholic teaching proposed infallibly? (3) Is this revealed doctrine? It would be a disservice to both the authors and their readers to attempt here a summary of the theological reasoning which substantiates their several conclusions. For present purposes it will suffice to quote merely the conclusions themselves:

1) The Church is so completely committed to the doctrine that contraception is intrinsically and gravely immoral that no substantial change in this teaching is possible. It is *irrevocable*.

2) It is not easy at present to assign a technical dogmatic note to the doctrine. But it is safe to say that it is "*at least definable doctrine*," and it is very likely already taught infallibly *ex iugi magisterio*.

3) Since the doctrine is at least definable, it must be included in some way within the object of infallibility. At the minimum, therefore, it is a part of the secondary object of infallibility and may be proposed as a truth which is absolutely *tenenda*. And there are good, though not yet convincing, reasons for holding that this doctrine is a part of the *depositum fidei* and can thus be infallibly taught as *credenda*.

The reason for calling attention here to the exclusively theological approach to the problem of contraception should be apparent to anyone who is at all aware of current trends in popular Catholic thinking. Whereas intelligent Catholics generally used to smile amusedly when non-Catholics in their naïveté expressed the conviction that Rome would one day be forced to follow the example of Lambeth and repudiate her traditional teaching on birth control, it is becoming quite commonplace to hear that same confident

¹⁰ *Contemporary Moral Theology 2: Marriage Questions* (Westminster, Md.: Newman, 1963).

prophecy voiced intramurally. And it is not only lay "liberals" who are lobbying the cause. Likewise among the clergy, even from among those who occupy academically high places, there are those who are not unwilling to predict honorable surrender soon in the face of overwhelming odds.

It is difficult to understand how one can reconcile with the principles of ecclesiology a conviction that the Church can change the substance of her teaching on contraception. Of those who think otherwise, some may be under the mistaken impression that our theological argument consists totally in a single paragraph from an encyclical and a confirmatory passage from a subsequent papal allocution, whereas in fact we can and do appeal to nothing less than "uninterrupted Christian tradition" which from time immemorial has steadfastly maintained that contraception is contrary to divine moral law. And although we do not yet possess a thoroughgoing historical study of the traditional Catholic theology of birth control, no evidence of a contrary tradition within the Church has ever been presented. The relative silence on this topic during some periods of theological history would be confirmatory of the peaceful possession maintained by the traditional teaching. To conclude, as do Frs. Ford and Kelly, that this teaching is at least definable, or even already *de fide ex iugi magisterio*, appears to be an inescapable consequent of basic theological premises. As Catholics, therefore, we face the fact that, however elusive one may find the rational arguments which sustain ecclesiastical doctrine on the point, our intellectual acceptance of the doctrine itself, and the conformity of human conduct thereto, are morally imperative. Acknowledgment of this fact does not, of course, preclude a continued effort to discover an expression of our rational arguments that will make them perhaps more convincing. The more clearly these principles are understood, the more securely can theological development take place. As was appositely stated within recent months,

We cannot rule out the possibility of further refinements of Catholic doctrine in regard to conjugal morality. Doctrine develops in this field as in others. But it develops by a process of distinguishing more clearly the various aspects of an activity and by drawing more precise moral conclusions, not by abandoning what was formerly taught in favor of a new and radically different teaching. The final authority remains, as always, the Holy See.¹¹

THE ORAL CONTRACEPTIVES

On the more specific level of the oral contraceptives, two independent articles, both of which would appear to qualify as at least theologically surprising, attempt to justify use of the progestational steroids for the avoid-

¹¹ *America* 110 (Mar. 7, 1964) 307.

ance of conception through the suppression of ovulation. This marks the first time, to my knowledge, that anyone in the name of Catholic moral theology has openly argued in detail against contrary doctrine as commonly taught by theologians for some six or more years and as explicitly confirmed by Pius XII.

After a lengthy and factually well-informed review of the theological literature on the subject of the steroids, W. van der Marck, O.P.,¹² correctly observes in summary that the common teaching of theologians up to the present had allowed for certain therapeutic uses of the drugs on the ground that sterility, if induced at all, would then be of the indirect variety and consequently subject to the application of the principle of double effect. Contraceptive use of the pills, however, has been condemned because it entails direct sterilization, a procedure which the author readily admits is intrinsically wrong. Since theologians generally up to now have recognized only the therapeutic and contraceptive purposes of the steroids, they have consistently maintained that use of the drugs for the direct purpose of inhibiting ovulation must be rejected as intrinsically evil.

It is at this point that Fr. van der Marck begins to disagree with common opinion by denying that the use of the pill for fertility control necessarily implies sterilization as a means to an end. His attempt to demonstrate that proposition involves him in several assertions which, in the interests only of theological truth, cannot be allowed to pass without serious challenge.

By fertility control Fr. van der Marck would seem clearly to mean the avoidance or postponement or regulation of conception. In relation to sterilization, therefore, fertility control stands as end in reference to means—an end which is in itself morally indifferent and in some instances positively good. Up to this point all would agree. But then by way of major premise it is Fr. van der Marck's contention that "In a human act, the means is not justified but is determined by the end." By this he apparently means that the various physical elements of an external activity do not become an action ("human act") having moral significance of any kind until they are united and determined in some moral species by the intention of the agent. "The typical quality," he says, "of the human act is precisely that the physically separated elements can, by human giving-of-meaning, become one by reason of the intended end. The intention determines what the human act is, not only as to the 'end' but also as to the 'means'."¹³ Since, therefore, the purpose of taking the pills is fertility control, the very practice of taking them for that reason should be specified in its totality not as sterilization but as fertility control, which, as already stipulated, is sometimes virtuous

¹² *Art. cit.* (supra n. 5).

¹³ *Ibid.*, p. 401.

and even a matter of moral obligation. And since this type of fertility control, like the practice of periodic continence, in no way vitiates the marital act itself, the evil of contraception cannot be predicated of one's use of the pills for the avoidance of conception.

For the sake of clarity, the preceding summary should perhaps be taken *per partes* for comment.

1) "*In a human act, the means is not justified but is determined by the end.*"

It must be admitted that a morally indifferent means very often in the concrete does receive its first moral specification from the proximate *finis operantis*. Thus, for example, the physical act of walking may assume its first moral tinge from the fact that the agent is walking to Sunday Mass. But certainly there are human acts which are performed as means to an end and which *ex objecto* and independently of any *finis operantis* are intrinsically evil acts. Granted, for example, an instance of the direct taking of innocent human life, one would not have to ascertain the agent's intention before identifying that act as being immutably the act of murder. And by the same token, if mass murder were to be employed as a means of population control, by no legitimate theological device could that perhaps laudable purpose absorb into itself the moral character of its means and make virtue out of vice. Altogether independently of any *finis operantis*, the act is specified or determined as murder and is revealed as intrinsically and unchangeably evil. Hence as a universal this principle proposed by Fr. van der Marck is not valid, nor does it appear to differ essentially from the fallacious "principle" which he disavows, viz., that a good end can justify an intrinsically evil means.

It is true that one does not have a human act on which to pass moral judgment until there is a *finis operantis*. And it is true that an external action or activity may be made up of several elements, extended in time and space, and that we do not have a morally significant whole on which to pass judgment until the mind has somehow unified these elements and considered them as one whole thing morally speaking. Furthermore, it is true that once the mind does consider an activity as a whole, there are times when this whole may receive its first morality from the *finis operantis*. But unless we admit that certain acts and actions have moral significance and are evil *ex objecto*, so that choosing them necessarily implies an evil *finis operantis*, then there is no meaning to the proposition that a good end cannot justify an evil means.

The ambiguity of Fr. van der Marck's principle is further made evident in his use of an analogy between organic transplantation as related to mutilation, and fertility control as related to direct sterilization. For he seems

to be claiming that one's intention in charity to benefit one's neighbor by donating a bodily organ removes the entire procedure from the category of mutilation and transfers it to a new moral species of act. As Fr. van der Marck himself puts it, from the very first incision the total surgical process is one of transplantation and not mutilation. This can scarcely be admitted. Those who defend the licitness of organic transplantation would be the first to deny that the procedure is essentially anything less than a mutilation of the donor for the benefit of the recipient. Impairment of the donor's bodily integrity is a necessary means to providing the recipient with a healthy organ. It is precisely because organic transplantation remains a species of bodily mutilation, and because the principle of totality cannot serve to justify it, that theologians have turned to the principle of fraternal charity as to a second norm by which the morality of mutilation may sometimes perhaps be judged. Present teaching on organic transplants provides, as Fr. van der Marck remarks, a new insight into the morality of bodily mutilations. It does not do so, however, by removing transplants from the category of mutilation, but by invoking a principle other than the principle of totality in order to vindicate the licitness of this species of bodily mutilation.

From the beginning I was puzzled by the value which Fr. van der Marck seems to attribute to this alleged analogy between organic transplants and physiologic fertility control. For on the one hand, bodily mutilation in general is not intrinsically wrong in the absolute sense of that term, since it requires only proportionately serious reason to make it altogether licit. This is a traditional postulate of our moral theology as expressed in what is now known as the principle of totality. Direct sterilization of self, on the other hand, is a procedure which up to now has been rejected by the theological consensus as being absolutely forbidden, that is, so intrinsically evil that it can find no justifying cause or motive. Consequently, in an attempt to justify the suppression of ovulation for fertility control, there would seem to be no probative value, nor any real relevance, in appealing to the fact that many moralists within relatively recent years have acknowledged a second reason (fraternal charity) in vindication of certain mutilations suffered for the benefit of others.

Then the thought occurred that there are some theologians who maintain that all direct mutilations are intrinsically wrong in the absolute sense and that only mutilations of the indirect kind can be permitted for a proportionately serious reason. The relatively few moralists who so explain the theology of bodily mutilations will, as a very general rule, deny the licitness of organic transplantation from living donors, since it becomes simply impossible to establish as only indirect the mutilations involved in trans-

plants. On the supposition, therefore, that Fr. van der Marck is of that school, is it perhaps likely that in an attempt to find justification for organic transplants he felt constrained to "rescue" them somehow from the category of mutilations and that he found in the motive of fraternal charity the secret of that metamorphosis? If the conjecture is admissible as such, it may suggest some explanation of his attempted alchemy when faced with direct sterilization as a means of fertility control.

2) *Since the purpose of taking the pills is fertility control, the very practice of taking them should be specified as fertility control, which, as already stipulated, is sometimes virtuous and even a matter of obligation.*

One can readily agree that the ultimate purpose of taking the pills is the avoidance (at least temporary) of conception, and that the achievement of this ultimate purpose can be virtuous and even obligatory. But this ultimate purpose in the present instance is achieved only by means of an act which up to now has been universally recognized as already specified in the moral order by reason of its proximate *finis operis*. That act is the physical (temporary) suppression of ovulation to prevent conception. This necessarily means the temporary suppression of the generative function *as such*, that is, precisely as generative. And this is, by definition, that temporary direct sterilization which Fr. van der Marck himself apparently rejects, with the entire consensus, as being intrinsically immoral. As a matter of fact, if this is not a forbidden direct, temporary sterilization, then it is hard to see how there is any such thing. The ultimate purpose of the procedure (the fact that there is a legitimate intention of "fertility control") can no more change the procedure's moral species than it can justify the intrinsic evil of that species.

It should be noted that Fr. van der Marck does not deny that those who use the pills for fertility control directly intend suppression of ovulation, that is, a temporary suppression of generative function as such. His quarrel with common doctrine is based on his apparent contention that an agent's ultimate purpose (in this case, control of fertility) can endow with a new and acceptable moral species an act which theologians have universally characterized as intrinsically evil *ex objecto*. And if that truly is the premise on which he rests his case, one can scarcely be criticized for challenging it or for rejecting his ultimate conclusion that the pills may licitly be used for the avowed purpose of suppressing ovulation and thereby avoiding conception.

Earlier in his discussion Fr. van der Marck had more or less incidentally mentioned several authors who have suggested that the direct effect of the progestational steroids when used for fertility control is the postponement or delay of ovulation rather than any real suppression of ovulatory function,

and that consequently there is no question of sterilization in the genuine sense of that word. No further explanation of this theory is provided, although Fr. van der Marck does evince some sympathy for a solution along these lines. However, since this postulate is a principal feature of the second article in defense of the oral contraceptives, the point may be legitimately transmitted for the moment.

3) *Since this type of fertility control, like the practice of periodic continence, in no way vitiates the marital act itself, the evil of contraception cannot be predicated of one's use of the pills for the avoidance of conception.*

All are agreed that coitus performed at a time when ovulation is being deliberately suppressed can still satisfy the minimum requirements of *copula naturalis*, viz., vaginal penetration and intravaginal semination. Hence there need be no vitiation of that part of the total generative process which is the *opus hominum* or marital intercourse itself. Moreover, there is no interference with that phase of the generative *opus naturae* which is immediately consequent upon coitus and which consists in the migration of sperm through the uterus and tubes. However, there has been, prior to conjugal intercourse, direct interference with the *opus naturae* insofar as the process of ovulation has been inhibited. Although Pius XII, in a clear context of contraception, explicitly condemned only postcoital interference with the *opus naturae*, the same inviolability characterizes the generative *opus naturae* in its pre-coital phase. Theologians have universally conceded until now, and Fr. van der Marck still seems to concede, that the direct suppression of generative function as such (that is, direct sterilization) is intrinsically immoral. Thus, for example, he would doubtlessly concede that direct interference by means of ovariectomy, salpingectomy, or vasectomy with a view to nullifying the procreative potential of future intercourse would not only qualify as direct sterilization but, by virtue of one's intention, would attach the moral stigma of contraception to all future acts of coitus prior to sincere repentance.

It is true that the mere intent not to procreate is not necessarily immoral, and it is true that the pill leaves the marriage act intact. But the contraceptive use of the pill differs essentially from periodic continence in this, that it combines sterilizing activity with sterilizing intent. It combines suppression of ovulation by direct physical interference with direct contraceptive intent. If this is not a forbidden, direct temporary sterilization, then what is?

Since Fr. van der Marck does not wish to say that the end justifies an intrinsically evil means, he is equivalently saying that the temporary physical suppression of generative function *as such* is not intrinsically evil. In

other words, he is maintaining that there is no such thing as a direct, temporary sterilization (at least in the female) which is intrinsically immoral. Furthermore, if, as he says, the good purpose of "fertility control" justifies the use of the pill, why would it not justify ovariectomy, salpingectomy, or vasectomy as contraceptive measures? These operations, too, all leave the marriage act intact, nor are they so intrinsically evil that they can never in any circumstances be licitly performed. And why would not "fertility control" justify and morally specify the use of an occlusive pessary as a means of birth control? This interference with generative function also, according to many, leaves the marriage act substantially intact, and there are undoubtedly legitimate, noncontraceptive reasons for sealing off at times the passage to the uterus.

The real meaning of Fr. van der Marck's position, then, seems to be that direct temporary sterilization of a woman is not intrinsically immoral. (And one wonders what external actions ever would be on these premises.) Such a position, in the face of the theological consensus, should be buttressed by theological reasons. And the reasons should be of such a kind as to exclude inadmissible consequences and corollaries as to sterilization and contraception in general. Merely to call the contraceptive use of the pill "fertility control" instead of calling it "direct, temporary sterilization" does not furnish any theological support for the position. Such terminology simply amounts to saying either that the end justifies the means or that the means is not immoral. The first is inadmissible. The second begs the question at issue.

The second attempt to prove that calculated suppression of ovulation by means of progesterone is not a sterilization is presented by L. Janssens¹⁴ and is based on his comparison of the physiology of periodic continence with the physiology of suppressed ovulation. The effective practice of periodic continence requires that husband and wife refrain from conjugal relations at that period of the month which is most proximate to the time of ovulation. In so doing, they deliberately see to it that the ovum which erupts each month from the ovary is not fertilized and that consequently it dies and is forever lost. By direct intent, therefore, according to Fr. Janssens, the generative potential of the ovum has been inhibited, and yet no moralist would think of calling this control of fertility a sterilization. Why, then, he goes on to ask, should suppression of ovulation be considered a sterilization? The ovary is merely put temporarily to rest, no ova are released in wasteful fashion to perish fruitlessly, and generative potential is conserved until such

¹⁴ *Art. cit.* (supra n. 5).

time as it again becomes feasible to allow ovulation and conception to occur.¹⁵

Only by disregarding the accepted meaning of sterilization could Fr. Janssens argue as he does. A species of mutilation, sterilization consists in that destruction or suppression of the generative function which leaves a person at least temporarily incapable of procreation, without impairment, however, of the ability to engage in sexual coitus. Inability to procreate, therefore, means in this context inability to produce in proper fashion that essential coprinciple of new life which one's sex is by nature designed to provide. For the human female, inability to ovulate necessarily entails some degree of sterility.

As is commonly known, the natural phenomenon of ovulation will, as a general rule, occur in women about once a month, and on each such occasion a single ovum will usually erupt from one or the other ovary and proceed by way of a Fallopian tube toward the uterus. Encounter with male sperm in the course of that transit will result in the union of these two coprinciples of human life, and conception will thereby have occurred. But if sperm has not been recently introduced into the female genital tract, the ovum is by nature designed to perish within relatively short time.¹⁶

If by means of human intervention this normal cycle of ovulation is disrupted in such fashion as to prevent the release of an ovum in any given month, the female generative function has been temporarily suppressed, the woman in question has been made incapable of conception at any time during that monthly period, and the notion of temporary sterilization has thereby been verified. This induction of reversible sterility becomes more strikingly evident as the suppression of ovarian function is repeated month after successive month. No euphemism of "putting the ovary to rest" can nullify the fact that the oral contraceptives, when used as such, inhibit a natural generative function and make it at least temporarily impossible for a woman to conceive. No euphemism of "regulating the cycle" can conceal the fact that the oral contraceptives, when used as such, control the ovulatory cycle only in the total sense of preventing any and all ovulation from occurring. Unless this repeated suppression of generative function be ac-

¹⁵ At one point in his article Fr. Janssens seemed about to defend only the licitness of using the pills in order to prolong the natural sterility which normally occurs during the period of lactation. However, he eventually broadened his scope to such an extent as to defend their use at any time by those married couples who can advance valid reasons for restricting their procreation of children to what prudence would judge to be for them a "generous fruitfulness."

¹⁶ In Fr. Janssens' estimation, this phenomenon of ovulation-menstruation in women somehow represents a pathological condition!

knowledged as sterilization, then that latter term is deprived of an essential meaning.

Essentially different from this repeated suppression of ovarian function is simple abstention from intercourse at the time of ovulation. In this latter instance, nothing is done to interfere with organic function or to deprive the ovum of any life-giving potential which it may of itself possess. It is true that, unless fecundated by a spermatozoon, the ovum remains a sterile thing with respect to the production of new human life. But this is as nature ordained, and never is there moral obligation to engage in conjugal intercourse in order that a given ovum may be fertilized. To refrain from marital relations and thus fail to fertilize an ovum is but to exercise a moral prerogative and is in no way theologically comparable with sterilization as induced by the oral contraceptive.

One feature of Fr. Janssens' discussion which is most difficult to comprehend is the fact of his prescinding totally from the teaching of Pius XII on the subject of the oral contraceptives. Most explicitly did Pius identify the contraceptive use of the pills with direct sterilization, and most emphatically did he assert that married people are not justified in suppressing ovulation in order to avoid or postpone conception. As Fr. John Ford, S.J., recently observed with regard to this papal teaching,

There can be no doubt that he [Pius] intended this teaching to be binding in conscience. He appeals to previous authoritative documents on direct sterilization, whether permanent or temporary. He appeals, for instance, to the Encyclical *Casti connubii* (1930), to a decree of the Holy Office published with papal approval (1940), and to several of his own allocutions, notably the Address to the Midwives (Oct. 29, 1951). . . .

It is true that theologians do not consider that such moral pronouncements are proposed to the faithful like an article of faith, taught with infallible authority. But it is part of Catholic teaching that even when the Pope does not use his supreme infallible power, his authoritative pronouncements call for acceptance, and, where moral matters are concerned, are binding in practice on the consciences of Catholics.¹⁷

Certainly it is a responsibility of theologians, if and when they propose opinions which depart from papal teaching, to show how the two doctrines can in truth be reconciled. Fr. van der Marck attempts to do so in the present instance by claiming to contribute a *tertium quid* to the dichotomy pro-

¹⁷ *Pilot* (Boston), Feb. 22, 1963, p. 7. These and other comments on the oral contraceptives made by Fr. Ford were contained in an NCWC news release which appeared in diocesan papers throughout the country.

posed by Pius XII when the latter spoke only of the therapeutic and contraceptive uses of the progestational steroids. Though I cannot agree that an intention to "control fertility" by suppressing ovulation differs in any essential respect from a contraceptive intent, nevertheless Fr. van der Marck did at least take cognizance of the fact that he was differing with papal doctrine, and he did attempt to show just cause for that difference. Fr. Janssens' failure to treat this extremely important aspect of his discussion is an omission which is not easily explained. However, it will be on intrinsic reasons that the opinions of both authors as stated on this question are judged. It would appear most likely that judgment by moral theologians will be generally adverse.¹⁸

Another puzzling statement regarding the oral contraceptives has been erroneously attributed to the bishops of the Netherlands. As reported in *Herder Correspondence*,

... the Dutch bishops have told their clergy in a letter that any judgment on the lawfulness or otherwise of the contraceptive pill should be suspended until the Vatican Council would be able to deal with this question. It was considered to be an issue that could not be decided by any individual Church province.¹⁹

Comparison of this news item with the document actually communicated to the Catholic clergy of Holland reveals on the part of the Herder publication a confusion of issues which is seriously misleading. Since this report has been widely discussed, and because the actual content of the episcopal instruction to which it refers may not be easily available to all interested parties in this country, it seems advisable to include here the text of the bishops' statement in its entirety:

Everyone realizes that the bishops are deeply concerned about the current problems in marriage. Clergy and faithful alike are waiting for us to give clear answers to those questions which are troubling the consciences of many.

In moral questions a decision eventually has to be made by a man according to his own conscience. But conscience must be guided in each decision by the law of God. The interpretation of the Divine Law is given to her children by the Church.

At the very time when so many new views on man, on the meaning of life, the purpose of sex and the notion of love in marriage are being expressed, there has been a remarkable development in biological and biochemical means of regulating and limiting human fertility. The Church is now confronted with questions which arise

¹⁸ It is my own conviction that neither Fr. van der Marck nor Fr. Janssens succeeds in establishing as probable the proposition which both defend, each in his own fashion, and that consequently their common conclusion may not be followed in practice.

¹⁹ *Herder Correspondence*, Oct., 1963, p. 30.

from conditions which are continually changing. It is impossible to provide one ready-made solution for every problem in a situation which is rapidly evolving.

The new contraceptive pill now being advertised can be no more acceptable as the answer to the problem of married people than the contraceptive instruments hitherto in use. But moral theologians are discussing whether there are any special circumstances in which the use of these pills could be justified.

Questions concerning marriage problems now confronting the Church cannot be decided by the bishops of one country. We hope that when the bishops of the whole world are gathered together in the Council these questions can be considered in a broader context.

Utrecht, August 10, 1963

The Bishops of the Netherlands.
[Utrecht, Haarlem, Breda,
's Hertogenbosch, Roermond,
Rotterdam, Groningen.]²⁰

It should be noted first of all that in the fourth paragraph as quoted above the seven bishops assert that as a solution of marriage problems the oral contraceptives are no more acceptable than are the better-known instrumental means of contraception. Consequently it is certainly not true, as the Herder report would have it, that in the estimation of the Dutch hierarchy "any judgment on the lawfulness or otherwise of the contraceptive pill should be suspended until the Vatican Council would be able to deal with this question." The bishops clearly declare that the pills are at least per se illicit as a method of contraception.

But what do the bishops mean when they thereupon concede that "moral theologians are discussing whether there are any special circumstances in which the use of these pills could be justified"? The answer to this question is by no means entirely clear. The bishops could have in mind certain more or less exceptional uses of the oral contraceptives, e.g., their use in an attempt to regularize the ovulatory cycle, or to guarantee suppression of ovulation during the period of lactation, or to prevent conception as the result of rape. These uses of the pill are procedures whose morality is still debated among moral theologians and hence still open to question.

However, it remains possible that these are not the problems to which the bishops refer. It may be that the point at issue in this sentence is whether in certain exceptional circumstances the steroids may be used by married

²⁰ This translation is taken from *Clergy Review* 49 (Feb., 1964) 114. According to Msgr. L. L. McReavy, it was sent by Cardinal Alfrink, Archbishop of Utrecht, to the English hierarchy upon request from the latter. The original Dutch version of the document may be found in *Katholiek archief* 18 (Sept. 13, 1963) 938.

people as a means of suppressing ovulation and thus avoiding conception. This is a question which, according to the explicit teaching of Pius XII and of theologians generally, has always been answered with a categorical negative. One now has to acknowledge, however, that certain attempts are currently being made to justify some modification of that solution, and such perhaps is the simple concession of fact which the bishops make in this sentence.²¹ On the assumption that this conjecture is correct, what would follow therefrom in terms of episcopal attitude in Holland toward commonly accepted teaching on this point?

The answer would seem to be implicit in the final paragraph of the instruction, where the bishops declare themselves unauthorized to pronounce on certain current marriage questions. If these questions include the suggestion that our condemnation of the oral contraceptives need not be as absolute as Pius XII asserted it to be, it is clear why the bishops disclaim the authority to ratify such a proposal. No bishop or group of bishops is competent to authorize usages which are in open contravention of the letter of papal doctrine. Theoretically, an ecumenical council or another pope could modify Pius XII's noninfallible teaching on the oral contraceptives. But prior to so unlikely an event, no lesser authority within the Church is competent to exempt the faithful from their practical obligation of complying with extant papal pronouncement on that matter. Consequently, in deferring to Vatican II on the issue of the oral contraceptives, the Dutch bishops seem to have implicitly acknowledged the authoritative character of Pius XII's teaching on the subject. In other words, it is not any initial moral appraisal of the oral contraceptives which the bishops are referring to the Council. This we already have. Rather it is the ratification of any departure from extant papal teaching on the matter which this document declares must be reserved to the judgment of the supreme teaching authority in the Church.

Do the Dutch bishops mean to imply that in their estimation the teaching of Pius XII would or could undergo substantial change if the issue of the oral contraceptives should be considered by the Council? Or are they merely conceding the theoretical possibility of an ecumenical council's revising a noninfallible papal pronouncement? On the sole basis of this instruction, one can only surmise what their thoughts on that matter may be.

²¹ A mid-March news dispatch from NCWC, reproduced in papers throughout the country, has made it common knowledge that for over a year theological controversy has been carried on in Holland over the licitness of the contraceptive use of the pills. In view of this fact, it perhaps should not be too readily assumed that this is not the theological discussion to which the bishops in their instruction refer.

But in any event one cannot legitimately conclude that the Dutch hierarchy authorized their priests to consider the contraceptive use of the antifertility pills as presently a morally moot question.

CO-OPERATION IN CONTRACEPTION

Although it is not altogether impossible, neither is it at all likely that non-Catholic convictions as regards contraception will undergo any substantial change in the foreseeable future. Particularly since religious leaders of various Protestant denominations have commonly endorsed the view that the demands of responsible parenthood can make birth control by whatever means not only licit but also at times obligatory, it would be naive of us to expect that our own doctrinal intransigence with respect to the moral status of onanism will affect either the marital conduct or the good faith of non-Catholics generally. Consequently we can look forward to an indefinite continuation of a situation which requires that as Catholics we coexist peaceably, but without moral compromise, in a civil society which is divided in principle on this question of contraception. The prospect is replete with possible conscience conflicts, some of which can be resolved with relative ease, while others might require the wisdom of Solomon for a mutually acceptable solution.

One such problem is proposed to D. F. O'Callaghan²² by a correspondent who inquires about the licitness of holding shares in a company engaged in the production of commodities which serve an immoral purpose. Fr. O'Callaghan can scarcely be blamed for concretizing the question in terms of a pharmaceutical house which manufactures contraceptives, whether of the physical or chemical kind. He stipulates initially, of course, that investment in such a company may never assume the nature of formal co-operation with the moral evil entailed. Consequently, if items whose purpose is exclusively contraceptive constitute the sole or major product manufactured by a particular company, the prohibition against formal co-operation in sin would appear to preclude investment in and profit from the organization. On the other hand, if the manufacture of contraceptives represents a relatively minor side line for a company whose principal products are legitimate pharmaceuticals, or if the contraceptive items admit also of likely uses which are licit, it becomes considerably less difficult to verify one's investment as no more than material co-operation which can be justified by proportionately serious reason.

²² "Investment and the Moral Law," *Irish Ecclesiastical Record* 100 (Oct., 1963) 250-56.

Fr. O'Callaghan's statement of principles would appear to be altogether sound, as would also their generic application to that species of co-operation which stockholders exercise with respect to the policies and products of a manufacturing concern. It would seem safe to say that, as a very general rule, our Catholic people need not feel obliged to divest themselves of stock which they may hold in the standard pharmaceutical companies whose products are commonly displayed in our drugstores. In the vast majority of cases, any interests which these companies may have in the contraceptive field either are of relatively minor importance in the over-all picture or else constitute a financial structure distinct and separate from the mother company. Those Catholics who would be most inclined to invest in pharmaceuticals would also be most likely able to identify the more notorious among the producers of contraceptives.

No reasonable non-Catholic would resent the conscientious Catholic's unwillingness thus to contribute to a profit from the production or sale of contraceptives. So private a matter of personal conscience is immune from legitimate criticism. But when the Catholic as functioning member of the civic community consults his conscience on matters pertaining to the public interests, then it is that he risks the accusation of trying to impose upon the community at large convictions which are peculiarly Catholic. One of our most delicate problems of conscience at the present time relates to the proper formulation and implementation of public policy with regard to such controverted issues as contraception.

It is sometimes stated in a context such as this that morality is entirely a personal matter beyond the competence of civil authority to legislate and sanction. That this assertion as a universal is fallacious is aptly demonstrated by W. J. Kenealy, S.J., as he undertakes to delineate that area of human activity which it is the function of civil legislation to control.²³ Moralists and jurists alike should readily agree with Fr. Kenealy's basic distinction between public and private morality, and should likewise concede that the role of civil law is properly restricted to those modes of human conduct which affect the common good:

Legality and morality are interrelated and interdependent. But they are not the same thing. Their respective fields overlap but they are not coextensive. Many criminal acts are sins, many sinful acts are crimes, but crime and sin are not identical. Certain crimes, such as the so-called public welfare offenses which penalize the overt act regardless of the mental element, can be committed without sin. Certain sins, such as simple lying and solitary masturbation, can be committed

²³ "Law and Morals," *Catholic Lawyer* 9 (Summer, 1963) 200-10, 264.

without crime. But lying which involves fraud or libel, and masturbation which involves public indecency, are both sins and crimes. They are crimes precisely because they offend against that aspect of the *common good* which is properly called *public morality*. It is not the purpose or function of civil law to penalize or prohibit an immoral act simply because it is immoral. The end of civil law is the common or public good of society. In the field of morals, therefore, its proper scope is not private morality, but public morality only.

This statement of principle is not, of course, novel doctrine, nor is it presented as such. Fr. Kenealy's chief reason for reviewing the question would seem to be his desire to apply the principle to two recommendations for new civil law made in recent years to the Illinois legislature. One such proposal would have broadened considerably the provisions under which therapeutic abortion could be legally performed, and the other would authorize the use of state funds to provide contraceptive devices and services to recipients of public welfare relief. It is the latter problem and Fr. Kenealy's treatment of it which bears on this present consideration of co-operation with others in their practice of contraception.

Of those in Illinois who opposed legislation which would subsidize the practice of contraception, some objected merely to the fact that the proposal, unless restricted to married women actually living with their husbands, would encourage adultery and fornication, which are contrary to the public policy of the state. Others objected to the bill in its entirety on the grounds that contraception is intrinsically immoral and that legal encouragement of the practice by state subsidization would also constitute an official policy of public immorality. It is Fr. Kenealy's contention that this latter attitude is not an instance of attempting to foist one's own religious beliefs upon others but rather an example of responsible civic concern for the common good. Opponents of socialized contraception need not be directly and immediately intent upon preventing the practice of contraception by private individuals. Rather they intend to prevent the state from becoming, contrary to the public interests, official patron of a practice which they recognize as intrinsically evil.

Fr. Kenealy is careful to point out the difference between laws which prohibit and penalize the private practice of contraception and those which authorize the expenditure of public funds to support and encourage the same practice. Of these two types of statute, the first is an unwarranted attempt to legislate private morality and hence an invalid exercise of civil authority. The second, by establishing an official policy of public immorality, militates directly against the common good and hence tends to defeat the very purpose

of civil authority. Consequently it becomes clear that, while a Catholic may in good conscience favor the repeal of such laws as penalize the private practice of contraceptives, he should nonetheless oppose most vigorously the passage of legislation which would make the state official patron of any species of objective immorality.

This discussion of Fr. Kenealy's serves as a reminder that there is a vast difference between toleration of another's material immorality and formal co-operation with the same. This is a distinction which tends to become obscured at times when discussion turns on respect for the sincere conscience convictions of non-Catholics with reference particularly to contraception. Beyond all question there are those non-Catholics who in total good faith believe that contraception is not only morally permissible but at times positively virtuous and even imperative. While we must and do concede that these individuals are not guilty of formal sin when they practice contraception, we are nevertheless forced to maintain that what they are doing is objectively wrong, and that in their practice of contraception they are committing at least material sin.

That one may not licitly co-operate formally even with the material sins of others is a rudimentary principle of our moral theology. This is ultimately the reason why the Catholic pharmacist, for instance, is not allowed to sell condoms even to those who practice onanism in good faith. But even more relevant to current issues, this is also the reason why certain basic distinctions must be made when we discuss population problems and the role which Catholics may legitimately play in the attempt to provide individuals and nations with effective methods of birth control. Whether the co-operation we are asked to provide be a matter of contributing funds, engaging in scientific research, instigating or supporting legislative proposals, or any other form of active assistance, we may not be indifferent to the nature of the specific activity with which we would thus be co-operating. The Catholic scientist, for example, with a view to making periodic continence a more reliable method of birth control, may most laudably investigate effective methods of predicting the time of ovulation. But he may not legitimately devote his genius to developing for popular use any device which would qualify as contraceptive. There are very strict limits, in other words, to the concessions which we as Catholics may make in the name of good fellowship when we sue for peace with even the sincerest of non-Catholics on the question of public policy with regard to birth control. Failure to advert to these limits may lead to oversimplification and excessive optimism on the part of some who seem to envision no great difficulty in implementing, to the mutual satisfaction of both Catholic and non-Catholic consciences, a program such as this

one proposed by Fr. John A. O'Brien:

I propose two measures: (1) that the President call a conference at the White House for discussion of measures to help the underdeveloped nations deal effectively with their urgent population problems and (2) that the National Institutes of Health be authorized to conduct a crash research program on human reproduction in all its phases. It is time to close ranks, time to end the cold war and to work together as brothers and good neighbors. The two measures proposed would go a long way, I think, toward solving the population problem and would thus help end the controversy on both birth control and the population problem not only in our country but in the underdeveloped countries as well.²⁴

Unless such programs as these were, *per impossibile*, to be planned and executed in total prescindion from contraceptive practices and devices, there would always remain for the Catholic participant the objective problem of his co-operation in the material sins of others. Perhaps not every such problem would prove insoluble without compromise of moral principle. But some such issues would defy all amicable solution short of repudiation of the Catholic position on either the intrinsic evil of contraception or formal co-operation in material sin.

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²⁴ "Let's End the War over Birth Control," *Christian Century* 80 (Nov. 6, 1963) 1361-64. The same article also appeared in *Ave Maria* 98 (Nov. 2, 1963) 5-8.