

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY

RELIGIOUS LIFE

Does God sometimes grant temporary vocations, or are the departures of professed religious back into the secular world always indicative of some fault on the part of one or another human agent involved in the vocation? The question is one which in substance has long intrigued theologians. It is also a question which at present is provocative of much philosophizing and theologizing among young religious in their attempts to comprehend the dimensions of their commitment under vow to a lifetime in religion. Accordingly, independent discussion of this matter by two authors, both of them experienced religious, is as welcome as it is timely.

H. F. Smith, S.J.,¹ attacks the problem methodically by examining in turn the magisterium, Scripture, and the theologians for any evidence of authoritative acknowledgment of genuine temporary vocation to religious life. Up to the promulgation of our present Code of Canon Law, he finds in the teaching and practice of the Church no slightest indication that the notion of temporary vocation was ever seriously entertained. It was only with the Code's introduction of temporary religious vows that the question ever occurred. But Fr. Smith proceeds to point out that representative commentators on canon 488, 1° agree that no one may legitimately pronounce temporary vows in religion except with a concomitant intention to renew those vows upon their expiration. Hence even temporary vows are virtually or inchoatively perpetual and do not necessarily contribute to a valid concept of temporary vocation.

Fr. Smith's recourse to Scripture is exceedingly brief—as perhaps it must be—and comprises an appeal to a Thomistic comment on Lk 9:62 (the call of the rich young man) together with a concurring opinion of a modern exegete, John L. McKenzie, S.J., to the effect that vocation in the biblical sense “demands a total commitment with no reservations, even reservations which would be included in any conception of a normal life.”

In reviewing the opinions of several contemporary theologians on this matter, Fr. Smith first merely identifies Davis² and Farrell³ as favoring the notion of temporary vocation, and then proceeds to summarize in some

EDITOR'S NOTE.—The present survey covers the period from July to December, 1964.

¹ “Temporary Religious Vocation,” *Review for Religious* 23 (July, 1964) 433–44.

² H. Davis, S.J., *Moral and Pastoral Theology* 4 (New York: Sheed & Ward, 1958) 350.

³ E. Farrell, O.P., *The Theology of Religious Vocation* (St. Louis: Herder, 1951) p. 217.

greater detail the opposing view of Butler,⁴ Carpentier,⁵ and Galot.⁶ Readers should find this section of the article especially rewarding as it goes about laying a reasoned basis for Fr. Smith's own practical conclusions. He himself is first of all convinced that "temporary vocation would be a rare phenomenon accompanied by unusual circumstances." Consequently, he argues, this concept does not begin to suffice as explanation of the many departures from religious life. Fr. Smith maintains that an honest appraisal of defections from religion would uncover as causes thereof elements which are "humanly culpable and/or humanly corrigible." As deserving of greatest attention he proposes the following:

1. *Lack of vocation* with its counterparts: inadequate entrance standards and inadequate use of the standards which do exist.

2. *Loss of vocation* with its causes: on the part of the subject, infidelity; on the part of superiors, failure to enforce religious discipline, lack of Christian love and paternal government without which the total surrender of the religious subject becomes all but unendurable.

3. *Lack of willingness* to live out to the full the heroic commitment of unconditional vows. (This is the case in which major difficulties justify departure, but the departure nevertheless signalizes that one may be falling far short of the ideal of absolute fidelity to one's commitment to Christ.)

Only when these and all kindred reasons for the termination of religious vocation shed no light on a particular case is it at all sound to turn for an explanation to the notion of temporary vocation. For temporary vocation is itself an idea which is greatly in need of explanation and justification.

To W. F. Hogan, C.S.C.,⁷ the concept of temporary vocation is not only an erroneous notion but one which is extremely hazardous in several respects. Granted any general acceptance of the term as theologically meaningful, it is Fr. Hogan's fear that many professed religious would experience a lessening of conviction that theirs is an irrevocable commitment to a life of the counsels and would consequently fail to pursue their vocations with maximum vigor. By the same token, he predicts, some might approach perpetual vows in too casual a fashion, since subsequent expiration of their vocation—should that prove to have been and to be God's will—would justify request for release from vows. And on the part of superiors, less than

⁴ R. Butler, O.P., *Religious Vocation* (Chicago: Regnery, 1961) p. 29.

⁵ R. Carpentier, S.J., "Perseverance in the Religious Life," *Sister Formation Bulletin* 7 (Spring, 1961) 15-26.

⁶ J. Galot, S.J., "Vocation et fidélité," *Revue de communautés religieuses* 34 (1962) 13-24, 64-74.

⁷ "Temporary Vocation'—A Dangerous Euphemism," *Jurist* 24 (Oct., 1964) 456-61.

adequate care might be devoted to the selection of candidates to religion, with resultant scandal both within and without the religious institute.

After brief expression of these indirect arguments against the acceptability of the concept of temporary vocation, Fr. Hogan proposes a series of canonical reasons favoring his thesis. Beyond all question, these considerations do establish the fact that it is the mind of the Church that those who after postulancy and novitiate make reasonable decision to pronounce temporary vows should do so only in honest expectation of eventually committing themselves *in perpetuum* to life in religion; a fortiori does the Church also expect that those who take perpetual vows are dedicating themselves without condition or reservation. But it does not appear that Fr. Hogan's exclusively canonical approach to the question necessarily excludes all possibility of temporary vocation from God in certain rare and exceptional circumstances. In fact, despite Fr. Hogan's sincere disavowal of semantics, it becomes quite difficult to reconcile this paragraph of his with an insistence that any and all genuine vocation to religious life is necessarily a permanent one:

. . . God may even call an individual to religious life for a while in order to derive certain benefits from the time spent in religion and then make it evident that his place is not in a religious institute but in some other calling. But this is not a religious vocation even for the time spent in the institute; the vocation is to the other calling made manifest later and the time passed in the institute is merely a means to the further end. The vocation was apparent for a time, but not real, and it should not be called a temporary vocation to religious life.

Whatever may be one's convictions on the matter of temporary vocations, there remains the disturbing fact that an ever-increasing number of our young professed religious, both men and women, are obtaining canonical release from their institutes and returning to secular life. How many of these departures are motivated by problems of chastity, it would be impossible to say; but it should be no cause of scandal to assume that a certain percentage of such losses are due to one or another kind of difficulty encountered in the observance of the second vow. At the root of these difficulties, if certain psychologists are correct in their theory, there very often lies a failure on the part of religious subjects—and doubtlessly also on the part of some religious superiors and spiritual directors—to have recognized and acknowledged the essential relationship between one's psychosexual growth and the salutary practice of religious chastity. Although some aura of mystery still lingers in this area, the psychological atmosphere is considerably less hazy now than it was a generation ago, and none but the

crassly uninformed or misinformed would deny that sound psychology has its contributions to make to the ascetics of chastity in religious life.

One such offering is furnished by R. P. Vaughan, S.J.,⁸ and is based on the premise that "sexuality, like other human processes, follows a consistent pattern of growth."⁹ Insofar as this pattern effects and affects conscious response in terms of emotions, desires, attitudes, and the like, it is called psychosexual. From infancy to physical adulthood, there are theoretically several successive stages of development through which one must pass if he is to attain ultimately to adult sexuality—an achievement which is described as the ability to have satisfying heterosexual relationships. After describing these various phases of psychosexual growth, Fr. Vaughan calls attention to the fact that psychosexual maturity does not mean that one actually experiences heterosexual satisfaction but only that one's sexual appetite be properly attuned to such an object. And because "sexuality is an expression of the total self, he may choose to express himself in another way and still be a mature person."

What is the relevance of this theory to religious life? Fr. Vaughan explains it this way:

The religious is a person who has given himself entirely to God. His dedication excludes heterosexual experience. Yet if he is a mature person, he appreciates the value of his sex powers. He is fully aware of his attraction to the opposite sex but freely chooses not to give expression to this attraction so as to be able to express more fully his commitment to God. If he is psychologically healthy, he does not deny, distort, or repress his sexuality; he simply chooses another goal, which demands the sacrifice of the fulfillment of his sexual possibilities.

It is seldom construed as complimentary to an author to offer to paraphrase his expression of thought on a given subject in an attempt to clarify it for the benefit of third parties. However, perhaps a moralist may be pardoned if for his own benefit he tries to put into theological language his understanding of the thesis which Fr. Vaughan presents in predominantly psychological terminology. Is it perhaps true to say that the key concept in the evaluation of sexual maturity is really not sex at all or any of its

⁸ "Chastity and Psychosexual Development," *Review for Religious* 23 (Nov., 1964) 715-23.

⁹ It is important to note at the very beginning that sexuality here implies absolutely nothing in terms of either sin or virtue. As here understood, sexuality connotes nothing more or less than a human function destined to evolve gradually from its primitive form in the infant to its ultimate perfection in the mature adult. Although one's deliberate exercise of the function will necessarily be either virtuous or sinful according to circumstances, the function itself and its natural evolution are morally indifferent phenomena.

etymological derivatives but rather the notion of genuine love and the proper object of that love? Any psychosexually mature adult should recognize his sexuality (in its restricted genital sense) as being exclusively an invitation to that love which is properly experienced in its ultimate perfection only in the conjugal state. In order of time, this love would be visited first upon one's marital partner and subsequently, God willing, upon children, the fruit of conjugal love. Genital sex has no other essential or legitimate purpose for its being. No other utilization of it will serve as instrument in the achievement of one's supernatural end.

Both the aspirant to religious life and the already professed religious will also, if they are sexually mature, recognize in their sexuality the same potential for conjugal love. But in the ideal order of things both are so consumed with love of God that they feel more inclined to a total commitment to Him in a state of life which of its nature excludes conjugal love. Hence they renounce all deliberate exercise of sexual function in favor of this closer union with Christ. As Fr. Vaughan expresses it:

Every commitment calls for the expression of certain aspects of one's being and the abdication of others. The dedicated physician is sometimes called upon to sacrifice his attachment to family life; the statesman in foreign service, his attachment to his homeland. In the case of religious, the commitment calls for the sacrifice of sexual experience so as to give one's whole attention to divine things. The vow of chastity implies a positive expression of the self. It does not mean a mere blocking or repressing of the sex powers but rather a fuller reaching out to God through the medium of the higher powers under the guidance of grace. To achieve this goal, abdication of sexuality is the cost. The deeper the commitment to God and His world, the easier should be the practice of the vow—providing immaturity in psychosexual development does not hinder the practice.

Fr. Vaughan's "abdication of sexuality" in the above excerpt cannot possibly mean anything more than renouncement of sexual experience even in the conjugal state. It goes without saying that religious do not by virtue of their vow of chastity retire to a neuter gender; they remain as before, male and female, still in process of psychosexual growth. But how does life in religion make provision for development along these lines?

This is a question which R. A. McCormick, S.J.,¹⁰ undertakes to answer, and he, too, sees the explanation in positive terms of elicited love:

To highlight the general importance of this [psychosexual] development, let me try to locate it in a somewhat larger (than clinical psychology) context, the context

¹⁰ "Psychosexual Development in Religious Life," *Review for Religious* 23 (Nov., 1964) 724-41.

of Christian living. The great commandment, in a sense the only commandment, is the love of God and of neighbor for God's sake. All other Christian duties are simply specifications of this command. But not only is this a command; God's commands are affirmations about ourselves. In telling us that the great commandment is love of God and neighbor, Christ was actually telling us what is good for us and what we are. He was saying that our own completion and fulfillment is to be found here, hence that ultimately our eternal happiness depends on love and is love. If one is to find his life, he must lose it—in the divestment of self which is love. This love we call charity to highlight its supernatural origin, efficiency, object, and purpose.

As Fr. McCormick proceeds to develop this theme of love of God with its concomitant essential of love for one's fellow man, and particularly as he leads the discussion into the area of personal friendships among religious, it becomes considerably more easy to understand how fidelity to the first and greatest commandment is our surest guarantee of salutary growth in what is called—perhaps less than felicitously—psychosexuality. It is doubtlessly safe to say that veterans in religious life would be quick to agree that the happiest and psychologically best adjusted of their fellow religious are those blessed with the greatest capacity for the love of friendship available within the religious family. Masters and mistresses of novices who are not so convinced would be especially well advised to reflect upon Fr. McCormick's entire article, with special attention to its last several pages.

CREMATION

An Instruction from the Holy Office on the subject of cremation¹¹ is not likely to have any tremendous impact on the Catholic custom of burying our dead. The document consists of a relatively long preamble followed by four disciplinary propositions. The substance of the preamble is merely an explanation of the evident fact that cremation is not a practice which can correctly be called intrinsically evil of itself, and that Church legislation with respect to cremation is merely positive law of human origin and consequently subject to change by proper ecclesiastical authority. Whereupon the Congregation proceeds to change the law but very little.

Its first directive is an insistence upon the retention of our custom of burying the dead. Local ordinaries are consequently advised to instruct and exhort their subjects not to have recourse to cremation unless forced by

¹¹ AAS 56 (Oct. 24, 1964) 822-23. One oddity with respect to this document is the fact that it was endorsed by the Holy Office as early as May 8, 1963, approved by Paul VI on July 5 following, and yet not promulgated until October, 1964. It is also unusual that the Holy Office should have undertaken to revamp canon law.

exceptional circumstances to do so. In recognition, however, of the fact that the ideal of Christian burial cannot always be conveniently realized, the Instruction in second instance decrees that two prescriptions of canon law are no longer to be applied universally, but only in cases where it is certain that the deceased who before death authorized the cremation of his body did so out of contempt for the Church and her teachings. Of the two canons in question, the first simply forbids the execution of any order for cremation,¹² while the second refuses ecclesiastical funeral rites for any deceased who before death had arranged for the cremation of his body.¹³ What this second proposition of the Instruction equivalently does, therefore, is to condone as a general rule the cremation of deceased Catholics who prior to death had so stipulated. Only when it is certain that contempt for the Church and her teachings motivated this decision is execution of the order for cremation forbidden and ecclesiastical obsequies refused. But burden of proof now rests on him who would impugn the motives of the deceased who had opted for cremation.

On the basis of this expression of discipline, it would appear that current ecclesiastical prohibition of cremation is reduced either to mere counsel or at worst to an obligation *sub levi*. For if in the objective order the law imposed an obligation *sub gravi*, how could the Church in theological consistency both condone formal co-operation in the execution of an order for cremation and also endorse virtually automatic concession of ecclesiastical obsequies to those who before death had authorized the cremation of their remains? Confirmation of this corollary would seem to be available in the Instruction's third mandate insofar as it decrees, with respect to those who decide in favor of the cremation of their bodies, that they are not for this reason to be denied the sacraments before death or refused public suffrages for the repose of their souls, unless again it be evident that their motives were certainly of a seriously sinful kind against faith or ecclesiastical authority.

The fourth and final directive underlines again the marked reluctance with which the Holy Office makes even these few concessions with regard to cremation. It is strictly forbidden that any religious funeral rites be performed at the actual scene of cremation, or even that a priest in his sacerdo-

¹² Can. 1203, §2: "If a person has in any way ordered that his body be cremated, it is illicit to obey such instructions; and if such a provision occur in a contract, last testament, or in any document whatsoever, it is to be disregarded."

¹³ Can. 1240, §1, 5°: "[The following] are deprived of ecclesiastical burial, unless before death they gave some sign of repentance: . . . those who gave orders that their bodies be cremated. . . ."

tal capacity should accompany the body to the crematorium. On this rather grim note the Instruction terminates.¹⁴

It seems rather unlikely that many Catholics in this country will in the near future be inclined to take advantage of the limited concessions granted in this document. Our traditional abhorrence of the practice of cremation is not likely to be easily eradicated, and it can be expected that the faithful generally will continue to consider burial as the truly Catholic way of disposing of human remains. However, one area in which this Instruction might be made to work to advantage is in our Catholic hospitals, which presently are often burdened with the responsibility of providing burial for major amputations and aborted fetuses.¹⁵ Not only is the financial burden a considerable item in many of these cases, but legal complications can also make the necessity of burial a genuine onus which threatens in some instances to become intolerable. If cremation in our hospitals could be allowed as a routine procedure with respect to amputations and spontaneous abortions, one major problem of hospital administration would be forever solved. Particularly in the light of this document, it would seem that local ordinaries would be thoroughly justified in issuing for their respective hospitals a *semel pro semper* authorization for cremation in these circumstances.

The Instruction could also prove helpful in another allied area. As W. Herbst, S.D.S.,¹⁶ reminds his readers, donation of one's body to a medical school for educational purposes is a most laudable decision. However, ultimate disposal of dissected parts and skeletal remains raises a moral problem for potential donors and for Catholic medical school authorities. Since burial of these remains is not generally practicable, incineration is left as the most feasible alternative, and many Catholics are doubtful about their right to endorse such a procedure. This situation would appear to be certainly one which would justify the cremation of human remains whenever

¹⁴ For additional brief comments on this Instruction—relevant even though apparently written before the official text in the *Acta* was available—cf. R. J. Banks, "Cremation," *Homiletic and Pastoral Review* 65 (Nov., 1964) 147; A. M. Carr, O.F.M.Conv., "Cremation of a Catholic," *ibid.* (Dec., 1964) 254-55; *Clergy Monthly* 28 (Oct., 1964) 350.

¹⁵ *Ethical and Religious Directives for Catholic Hospitals*, §59: "Major parts of the body should be buried in a cemetery when it is reasonably possible to do so. Moreover, the members of Catholics should, if possible, be buried in blessed ground. When burial is not reasonably possible, the burning of such members is permissible." §60: "The normal manner of disposing of a dead fetus, regardless of the degree of maturity, is suitable burial. A fetus may be burned only if sanitation or some similarly serious reason requires it."

¹⁶ "Another Look at Christian Burial," *Pastoral Life* 12 (Nov., 1964) 45-51. A catechetical synopsis of this article may be found in *Linacre Quarterly* 31 (Aug., 1964) 159-60, where it was reprinted from *Sunday Visitor*, Jan. 12, 1964.

—as in these circumstances is often the case—their burial would entail serious difficulty.¹⁷

CONTRACEPTION

Recent theological writing on the subject of contraception has generally addressed itself to one or more of the following areas of discussion: (1) the very basic question of the morality of birth control in general; (2) the current medical and moral status of the oral contraceptives; (3) a consequent confessional problem of no mean proportions; and (4) the nature and extent of our permissible toleration of contraception as practiced by others in presumably good faith. In the periodical literature, contributions to one or another phase of this discussion have for the most part been devoted to reflections on the proposals of those who two or more years ago began to question certain conclusions which up to that time had gone unchallenged in Catholic theological circles. It is the purpose of this section of the Notes to facilitate to some degree a judgment as to the current theological state of so crucial a question. Since in that process it would be impossible to conceal or to prescind from one's own convictions on the various issues at stake, the interests of courtesy might benefit from momentary aversion to this salutary suggestion:

It should be the hope of all concerned that the controversy [over contraception] . . . will be conducted with charity, understanding, and openness. Above all we should avoid the temptation to engage in caricature. Advocates of change should not assume that the man who accepts the common teaching on the immorality of positive contraception is an unthinking sheep who has timidly surrendered his freedom and integrity in the face of ecclesiastical authority. On the other hand, those who oppose change should not conclude that those who dissent are *ipso facto* destructive relativists who insist on picking and choosing those teachings of the Church that suit their selfish and egotistical whims.¹⁸

¹⁷ Fr. Herbst (*art. cit.*, p. 48) quotes the following excerpt from a private communication received from one of our Catholic medical schools in this country: "After the body has been received by us, it is thoroughly preserved by embalming. It is then stored until we use it for the study of anatomy. Students are assigned to a dissection which usually begins in fall at the opening of the academic year. The work continues throughout the year and dissection is usually not completed until the end of May. During the course of the year, all parts of the body are removed and incinerated. At the end of the year all remaining parts, which are mostly skeletal, are incinerated. The ashes are then taken out into the country and sprinkled on a plowed field. On rare occasions we incinerate the remains of one individual separately and turn the ashes over to the family. This is done only when a special request is made."

¹⁸ Eugene Fontinell, "Contraception and the Ethics of Relationships," in William Birmingham (ed.), *What Modern Catholics Think about Birth Control* (New York: Signet, 1964) p. 241.

Contraception in General

In the course of the last article he published before his death, G. Kelly, S.J.,¹⁹ took respectful issue with Bishop J. M. Reuss,²⁰ who had questioned the irrevocability of traditional Church teaching on contraception. Those who are acquainted with Ford-Kelly, *Contemporary Moral Theology 2: Marriage Questions*,²¹ will recall not only the minute detail into which the authors went in their investigation of this question but also the justifiable conviction with which they concluded to the immutability of our Catholic stand on the matter. Fr. Kelly's response to the issues raised by Bishop Reuss is in essence a synopsis of these previous reflections.

Although by no means as explicit as Fr. Kelly, M. Zalba, S.J.,²² leaves one with little choice but to infer that he would consider it theologically impossible for the Church ever to teach otherwise than it has up to now with regard both to contraception and to contraceptive sterilization. (With respect to the latter procedure, however, he offers, as will be seen later, a distinction which may be of help in solving certain specialized problems in that area.) Though Fr. Zalba refers to traditional teaching on contraception as "doctrina Catholica," it is by no means clear that he intends that term in its theologically technical sense. However, it would appear truly impossible to read this article of his without recognizing in Fr. Zalba an unshaken proponent of the teaching confirmed by both Pius XI and Pius XII.

G. Ermecke²³ likewise leaves no doubt as to his theoretical stand on this generic question. As the first among three theses which he proposes as representing unchangeable teaching of the Church, he asserts the proposition that every directly contraceptive interference with either the marital act or the sexual function is contrary to natural law and morally reprehensible. However, as one reads further in his article it becomes less and less clear in what precise sense Dr. Ermecke intends the term "directly contraceptive." Some of the procedures which he condones in practice would seem to qualify as direct contraceptive measures as that concept is commonly understood. Consequently it might be hazardous for either party to the current dialogue to claim him as a concurring authority.

¹⁹ "Confusion: Contraception and 'the Pill,'" *Theology Digest* 12 (Summer, 1964) 123-30.

²⁰ "Eheliche Hingabe und Zeugung," *Tübinger theologische Quartalschrift* 143 (1963) 454-76.

²¹ Westminster, Md.: Newman, 1963.

²² "Circa ordinem rectum in usu matrimonii Pius XI et Pius XII quid tradiderint," *Gregorianum* 45 (1964) 795-815.

²³ "Die Frage der Geburtenregelung," *Katholische Nachrichten-Agentur*, Aug. 12, 1964.

One has no such difficulty in interpreting L. L. McReavy,²⁴ who, after reviewing briefly the theological history of the question, concludes:

We find it difficult therefore to resist the conclusion that he [Pius XI] regarded his ruling on contraception as an authentic declaration of a moral truth contained in, and guaranteed by, the ordinary and universal teaching of the Church, which cannot mislead, and that it was for this same reason that it was pronounced by his successor, Pius XII, to be immutable.

Finally, F. F. Cardegna, S.J.,²⁵ whose theorizing on the anovulant drugs leaves him unconvinced that their use precisely as anovulants is necessarily included in any natural-law prohibition of contraception or direct sterilization, nonetheless asserts that the teaching of Pius XI and Pius XII "on those contraceptives which destroy the essential structure of the marriage act is so deeply rooted in the teaching of the Church that change here is extremely unlikely if not impossible."²⁶

The contrary opinion, however, has not been without its recent proponents. Since both authors contribute to a volume which undertakes to reconcile contraception with sanctity,²⁷ it is to be presumed that S. E. Kutz, C.S.B.,²⁸ and K. Conley, O.S.B.,²⁹ are of the conviction that the Church's teaching on onanism is not irreformable. Although neither one addresses himself to the theology of this precise question, both are explicit in their belief that the prohibition against contraception need not be interpreted by married people as an absolute admitting of no exception. To Fr. Kutz it seems that any truly serious and selfless reason suffices to divest an act of contraception of any sinful character. Fr. Conley suggests that the morality of an act of conjugal intercourse should be determined in accordance with the principle of totality, and that the *totum* involved should include the married couple, their children (including those still *in potentia*), and even the civil community. Consequently, he would argue, if conception here and now is contraindicated because of the serious harm it would inflict upon any

²⁴ "Immutability of the Church's Teaching on Contraception," *Clergy Review* 49 (Nov., 1964) 705-8.

²⁵ "Contraception, the Pill, and Responsible Parenthood," *THEOLOGICAL STUDIES* 25 (Dec., 1964) 611-36.

²⁶ Certainly not to be overlooked in the recent literature on this subject is the most scholarly treatise provided by Germain Grisez, Ph.D., in his *Contraception and Natural Law* (Milwaukee: Bruce, 1964). In the presentation of his natural-law argument against the licitness of contraception, Dr. Grisez presents the critics of our traditional position with a most formidable challenge which demands acknowledgment.

²⁷ *Contraception and Holiness* (New York: Herder and Herder, 1964).

²⁸ "Conscience and Contraception," *ibid.*, pp. 23-60.

²⁹ "Procreation and the Person," *ibid.*, pp. 61-71.

one or more of these parties involved, and if nonetheless the demands of conjugal love require conjugal intercourse, then contraceptive coitus *ad bonum totius* is justified. Both authors disclaim all affection for situationism in their ethical thought, but it is truly difficult to read them at length without developing the conviction that either situationism or mere wishful thinking dominates their reflections on the morality of contraception.

It remains for G. Baum, O.S.A.,³⁰ in his contribution to the same volume, to discuss the explicit question, "Can the Church Change Her Position on Birth Control?" This he proceeds to do by first contending that the Church has never yet employed an ex-cathedra statement for the communication of her teaching on this issue, and then by denying that the universal ordinary magisterium can properly be cited for traditional doctrine on the matter. Fr. Baum's first point may be readily conceded, as it *de facto* is by the vast majority of theologians. But certainly ecclesialogists would have serious fault to find with the rigor of his alleged requirements for a universal magisterium whose teaching would be beyond legitimate question:

In order to speak of universal magisterium and seek in it the infallible guidance of the Spirit we must presuppose that the consensus of the bishops is not the result of external conformity nor the effect of the authority of the pope on the bishops subject to him, but rather that the unanimous conviction regarding the meaning of the Gospel is one to which all the bishops have made their contribution, by listening to God's word, wrestling with the exigencies of truth, probing into the meaning of the Gospel for our day, and reflecting on the Christian convictions of their own people.

To accept as essential these requirements for the verification of doctrine which issues from the ordinary universal magisterium would be to deny the practical possibility of there ever being within our *corpus doctrinae* teaching which would carry this particular stamp of authority.

Be that as it may, Fr. Baum is satisfied that our traditional views on contraception rank doctrinally no higher than ordinary papal teaching which is not guaranteed to be infallible, and he confidently concludes that essential change in our teaching can, should, and will be made.

What conclusion, therefore, should be drawn from the most recent history of theological opinions on the generic question of birth control? Beyond any doubt, agitation of the issue has not subsided, despite Paul VI's plea one year ago for a moratorium.³¹ But if consideration is restricted to the convictions expressed by established theologians, there does not seem to be indication of any concerted movement in the direction of an opinion which

³⁰ *Ibid.*, pp. 311-44.

³¹ Cf. *infra* n. 36 and corresponding text.

would be substantially at variance with the theological position to which both Pius XI and Pius XII referred as the traditional teaching of the Church.

The Oral Contraceptives

It will be recalled that it was in 1957-58 that the standard theological journals throughout the world began discussion of the oral contraceptives as we know them today. Every such article which at that time came to general attention concluded with a theological rejection of the anovulant drugs except when their use was necessary for certain legitimate therapeutic purposes. It appeared to be altogether unanimous among recognized theologians that the contraceptive use of the pill could not be reconciled with the dictates of natural law because its purpose was achieved by means of a direct temporary sterilization accomplished by a calculated suppression of ovulation.

When in September of 1958 Pius XII confirmed this common teaching,³² theologians generally were surprised only by the fact that the Pope in the course of that address thought it necessary to rebuke certain unidentified moralists for having defended the contraceptive use of the pill. Nobody at the time seemed to know who these theologians were, nor did their identity ever become matter of general knowledge. However, there was very little discussion of this phase of the question, which was soon more or less forgotten.

Meanwhile in the medical literature the oral contraceptives were consistently represented as achieving their contraceptive effect by suppressing ovulation and thus making conception impossible. It was on the basis of this physiological allegation that moral theologians and Pius XII argued as they did against the licitness of the pill. And it should not be forgotten that in this respect the steroids have not changed essentially since the day they were first introduced, and that the pill under discussion today is for all theological purposes substantially the same as the one condemned by Pius XII. Although it is not inconceivable that Fr. Bernard Häring, C.S.S.R., was misquoted a year ago when interviewed with regard to the statement issued by the English hierarchy in relation to the morality of the anovulant drugs, nevertheless this statement imputed to him on that occasion is simply not consistent with either medical or theological fact:

The pill represents quite a new issue since Pius XII last spoke on the matter in 1958. It would seem to me that the statement of Archbishop Heenan bears the date of that year, not 1964. The word contraceptive referred then to condoms and diaphragms which interfere with the act of intercourse. Now we have the pills and the discussion is new.³³

³² A.A.S. 50 (1958) 735-36.

³³ *Herder Correspondence* 1 (July, 1964) 220.

Not only is it eminently clear from the pertinent section of the Allocution that Pius XII was speaking of the oral contraceptives and not those of a mechanical kind, but it is also beyond question that he condemned the drugs precisely inasmuch as they are utilized with direct intent to suppress ovulation for the purpose of avoiding conception—exactly the problem which still confronts us.

Mid-1963, therefore, found moral theologians generally agreed, and expressly confirmed in their opinion by Pius XII, that recourse to the anovulant drugs for the direct purpose of achieving their anovulatory effects would be subject to the same moral strictures as would be advanced against any direct temporary sterilization. Gradually, however, at about this time there began to develop domestic rumors of some theological discontent with this consensus, and by late autumn of that year rumor had materialized into readable fact with the virtually simultaneous appearance of three articles of European origin in defense of the oral contraceptives.⁸⁴ Subsequently Fr. Gerald Kelly, S.J.,⁸⁵ compiled a brief but penetrating analysis of all three articles and succeeded, it would appear, in exposing certain essential weaknesses inherent in each. In the interval, however, between these several challenges to common teaching and any opportunity on the part of others to answer those challenges, the real issues involved had been so obscured in the secular and religious press that confusion at the popular level reached monumental proportions. It was at this point that Paul VI intervened.

In the course of an address to a group of cardinals, June 23, 1964, the Pope introduced the subject of birth control. Though he did not explicitly restrict his discussion to the oral contraceptives, it is generally agreed that this was the topic paramount in his mind. After touching upon the complexity and delicacy of the matter, Paul reaffirmed the right of the Church to "proclaim the law of God in the light of scientific, social, and psychological truths," and assured his audience and the world at large that the question of birth control was being subjected to that very sort of study by scholars in every relevant specialty. The results of their research and deliberations he promised to communicate shortly, and he thereupon terminated his discussion with these words:

But meanwhile We say frankly that We do not so far see any adequate reason for considering the relevant norms of Pius XII to be superseded and therefore no longer obligatory; they should, therefore, be regarded as valid, at least as long as

⁸⁴ L. Janssens, "Morale conjugale et progestogènes," *Ephemerides theologicae Lovanienses* 39 (Oct.-Dec., 1963) 787-826; W. van der Marck, O.P., "Vruchtbaarheidsregeling: poging tot antwoord op een nog open vraag," *Tijdschrift voor theologie* 3 (1963) 378-413; J. M. Reuss, *art. cit.* (supra n. 20).

⁸⁵ *Art. cit.* (supra n. 19); see also THEOLOGICAL STUDIES 25 (June, 1964) 238-46.

We do not consider Ourselves in conscience obliged to modify them. In such an important matter it seems right that Catholics should want to follow a single law which the Church proposes authoritatively; and it seems, therefore, appropriate to recommend that no one for the time being presume to express himself in terms at variance with the extant norm.³⁶

It is very doubtful that either faction in what is now public controversy over the moral status of the oral contraceptives can derive much genuine solace from any literal interpretation of this papal dictum. The Pope neither affirmed nor denied the *de facto* mutability of the pertinent teaching of Pius XII, but merely promised to investigate the matter with every scientific tool at his disposal and to communicate his findings when they are complete. In the meantime, however, we as practical and practicing Catholics must face up to the fact that we currently do have from the supreme authority within the Church a most explicit mandate to observe the teaching of Pius XII on the matter of contraception, at least until such time as papal authority may discover adequate reason to change it. And Paul quite bluntly stated that up to the time of this address he had discovered no such reason.

The next significant episode in the recent domestic history of the pill was the publication last July of a pamphlet compiled by F. J. Ayd, M.D., and entitled *The Oral Contraceptives: Their Mode of Action*.³⁷ Theologically most important in Dr. Ayd's publication is the impressive array of medical authorities he summons in substantiation of the theory which maintains that it may not be only through the suppression of ovulation that the progestational steroids can achieve their contraceptive effect. Citation after citation from the best of gynecological sources would certainly appear to lend credence to the opinion of many medical authorities that inhibition of ovulation is not invariably the explanation of the manner in which the pills prevent pregnancy. There seems to be excellent reason to believe that the pill likewise so affects the cervical mucus as to impede the passage of sperm to the uterus, and also so affects the endometrium as to make impossible the nidation of a fertilized ovum. Quite representative of the strong evidence which Dr. Ayd marshals in support of this thesis is this excerpt from a statement made by E. Tyler, M.D., and H. Olsen, M.D., both highly respected in gynecological circles as most competent researchers:

Our preliminary studies enabled us to conclude that ovulation was often suppressed by the progestational compounds but that this suppression was not invariable. On the other hand there was a relatively consistent distortion of the pattern of endometrial development, so that it seemed unlikely that normal im-

³⁶ AAS 56 (July 31, 1964) 588-89.

³⁷ Washington, D.C.: NCWC, 1964.

plantation could occur in such endometria. Furthermore, the potent progestational compounds altered the quality of cervical mucus to make it less receptive to spermatozoa. There is apparently considerable individual variation among women in susceptibility to inhibition of ovulation.³⁸

It is not unlikely that Dr. Ayd will be criticized within his own profession for having stated too categorically conclusions which the gynecological authorities he cites have up to now advanced only tentatively. But even as hypotheses, the allegations collated in his article have very definite theological implications. For if the steroids so affect the cervical mucus as to make it an element hostile to spermatozoa and to their passage through the cervix, then there is no essential difference theologically between this effect of the pill and the use of spermicides or occlusive pessaries. Furthermore (in the event that some sperm should nonetheless survive and migrate in normal fashion through the uterus and tubes), if it is true that the steroids so affect the endometrium as to make it unreceptive with respect to a fertilized ovum, thus bringing about the immediate abortion of any embryo which might find its way into the uterus, then there is no essential difference theologically between this effect of the pill and any of the more common methods of inducing abortion. In other words, anyone who would now attempt to defend the licitness of the oral contraceptives must deal not only with the problem of direct sterilization but also with the possibility, or even the probability, that the issue is further complicated by the equivalently spermicidal and/or abortifacient potential of the drugs.³⁹

Up to the present, however, theological discussion of the oral contraceptives has revolved about their effectiveness as sterilizing agents, and it is within these limits for the most part that Fr. Cardegna⁴⁰ moves while propounding his reasons for suggesting that the Church may yet withdraw her current opposition to the contraceptive use of the steroids. In the second

³⁸ "Fertility Promoting and Inhibiting Effects of New Steroid Hormonal Substances," *Journal of American Medical Association* 169 (1959) 1843-54; quoted by Ayd, *op. cit.*, p. 7.

³⁹ Fr. Cardegna, *art. cit.* (supra n. 25) p. 617, n. 12, candidly acknowledges this difficulty and—on the supposition that direct suppression of ovulation could be established as licit—suggests that the problem might find a solution under the principle of double effect. The theoretical aspects of his proposal would make for most interesting speculative discussion. At the practical level, however, is there not good reason to wonder whether married couples, seriously intent upon regulating conception by use of the anovulants, would (or even could) intend only indirectly the equivalently spermicidal and/or the abortifacient effects of the drug in the event that its directly intended sterilizing effect should fail to materialize?

⁴⁰ *Art. cit.* (supra n. 25).

section of his three-part article, he espouses the thesis that was first advanced a year previously by Canon L. Janssens,⁴¹ when the latter proposed that the use of the anovulants to control pregnancy was the theological equivalent of periodic continence practiced for the same purpose. One reason for his equating the two is the unquestionable fact that the natural structure of the marital act is preserved intact both by the couple practicing rhythm properly and by the couple who are using the oral contraceptives. At least by implication, therefore, Fr. Janssens would maintain that the only method of contraception certainly forbidden by natural law and by the teaching of the Church is one which precludes a conjugal act (*opus hominum*) which is *per se aptus ad generationem*, e.g., the practice of withdrawal and condomistic or sodomitic intercourse. He could not logically find objection to tubal ligation or resection as a means of birth control, since these procedures need not affect the natural structure of conjugal intercourse. He would have difficulty demonstrating the immorality of using an occlusive pessary during conjugal relations, since intercourse of this kind at least probably fulfils the requirements of *copula naturalis et perfecta*.

Although this objection to Canon Janssens' position with respect to the pill is a form of indirect argumentation, it is nonetheless an extremely strong objection which neither he nor Fr. Cardegna, who acknowledges it honestly and at some length, seems to have answered satisfactorily. To suggest, as both do, that the pills do not really sterilize in any proper sense of the word but merely "put the ovaries into a quiescent state," would certainly seem to be, as observed by F. J. Connell, C.S.S.R.,⁴² to propose a distinction without a difference. A quiescent ovary is a nonfunctioning ovary. Positively to induce ovarian quiescence is to suppress ovarian function at least temporarily. To suppress ovarian function even temporarily is theologically a sterilization. Consequently, those who would defend the contraceptive use of the pills must demonstrate, if that is possible, that this species of direct sterilization is neither contrary to natural law nor included in papal condemnations of the practice. No argument yet advanced in this cause would seem to be valid.

Evidently J. Fuchs, S.J.,⁴³ is similarly convinced that proponents of the contraceptive use of the pill have not thus far conclusively established anything beyond the point that the enunciation of our principles with respect

⁴¹ *Art. cit.* (supra n. 34).

⁴² "Delaying Ovulation," *American Ecclesiastical Review* 151 (Dec., 1964) 408-9.

⁴³ "Diskussion um die 'Pille,'" *Stimmen der Zeit* 174 (Sept., 1964) 401-18. What for all practical purposes is an English translation of this article is contained in *Studies* 53 (Winter, 1964) 352-71, under the title "The Pill."

to contraception and sterilization is in sore need of considerable refinement if we are to resolve satisfactorily certain apparent contradictions in our application of those principles to newer and more complicated problems of marital life. Certainly no theologian, irrespective of his personal convictions as to the ultimate outcome of present disagreement, would be unwilling to admit that there is much work to be done along these lines or that the task surely rates highest priority on today's theological agenda.

One avenue of relevant investigation would lead to a statement of principle more precisely expressive of the intrinsic evil of direct sterilization. Despite their own inexactitude of expression at times in this regard, theologians would instantly agree that without qualification(s) one cannot correctly maintain as a universal that direct sterilization is intrinsically wrong. Punitive sterilization, for example, is undeniably direct, yet its probable licitness, *servatis servandis*, is still a defensible proposition. Nor does it suffice to restrict the principle to direct sterilization of the innocent, for—as the nuns-in-the-Congo case reminded us—there are circumstances which seem to cast doubt upon the universality of even that thesis. How, then, do we properly affirm the intrinsic evil of direct sterilization without formulating too extensive a principle and thus involving ourselves in inconsistencies and contradictions?

As M. Zalba, S.J.,⁴⁴ observes, our term "intrinsically evil" as predicated of certain human acts is by no means univocal, but admits of nuances of meaning according as it is applied to one or another species of human activity. When we say, for example, that blasphemy is intrinsically evil, we intend the term in its most absolute sense and mean to imply that under no circumstances whatsoever could anyone whosoever, even on divine authority, licitly indulge in an act of blasphemy. On the other hand, when we brand as intrinsically evil the direct taking of innocent human life, we imply something less in the category of *malum morale*, viz., an act that is evil due only to the fact that its agent lacks requisite authority for the performance of that act. Although no human authority can claim direct dominion over innocent human life, God as Creator certainly possesses that dominion and may exercise it either personally or vicariously. Implicit, therefore, in this second use of the term "intrinsically evil" is the supposition that the evil of the act derives from the fact that proper authority for performing it is lacking. Finally, when we speak, for example, of bodily mutilation as intrinsically evil, we have still a third meaning in mind, viz., that the act in itself is contrary to moral law only if performed without sufficient reason. Thus, for instance, wantonly to amputate a healthy limb can in

⁴⁴ *Art. cit.* (supra n. 22).

this sense be called intrinsically evil, whereas the same physical act becomes morally good and virtuous if amputation of a gangrenous limb is necessary in order to preserve the subject's life.⁴⁵

With these distinctions in mind one now faces the question: In which of these senses is the term "intrinsically evil" properly predicated of direct sterilization of the innocent? Certainly no one would maintain that such sterilization is intrinsically evil in the absolute sense and that consequently not even God could authorize it or Himself be its efficient cause. If God has perfect dominion over life itself, a fortiori He possesses no less dominion over human organic functions, even the generative. All, therefore, would agree that one or the other of the two remaining reasons must explain the intrinsic evil of direct sterilization. Those who defend traditional teaching in this respect would undoubtedly assert that the procedure is wrong unless the agent is authorized by God to intend it directly. They would also agree that if in one set of circumstances God in His wisdom were to authorize direct sterilization, while in essentially different circumstances He no less wisely were to refuse His approbation, divine law could not for that reason be accused of inconsistency or contradiction. We would then have an intrinsically evil act (in the sense explained) which in some circumstances would be permissible because properly authorized by God.

Divine authorization in present context, of course, usually implies authorization deducible and deduced from divine natural law. Just as natural law, for example, forbids the direct taking of innocent human life, so also it authorizes the killing (even direct, according to many authorities) of an unjust aggressor if this be necessary in order to preserve the life of the victim of unjust aggression. Yet this measure or degree of self-defense cannot find justification in natural law unless certain conditions, familiar to all students of moral theology, are verified. In this sense can God be said in one instance to authorize a particular human act and in another instance to refuse to countenance the selfsame type of act—and this without any semblance of contradiction.

⁴⁵ Advertence to these several senses in which the term "intrinsically evil" is legitimately employed by Scholastic ethicists and moral theologians would serve to answer at least some of the seemingly embarrassing questions proposed by Fr. Michael O'Leary in the March, 1964, issue of *Jubilee*. It should also suggest certain qualifications necessary to make totally accurate this statement by Fr. Gregory Baum, O.S.A.: "To call an act intrinsically evil is to make a judgment which means, in the practical order, that no situation can be imagined in which it would be good and licit to perform such an act" (*op. cit.* [supra n. 27] p. 340). Fr. Baum has to be referring only to acts which are intrinsically evil in the absolute sense. Neither contraception nor direct sterilization of the innocent is properly alleged to be morally wrong in so absolute a sense of the term.

Partly on the strength of this analogy, it would appear legitimate to suggest that divine natural law need not and does not condemn all direct sterilization, even of the innocent, and that the Church in her teaching never deliberately chose to give that erroneous impression. If one may prescind for the moment from any question of eugenic or punitive sterilization and restrict discussion to contraceptive sterilization, it appears to be significant that our most important papal pronouncements on this topic were cast in a context of conjugal morality and with an eye to the ideals of Christian marriage, inclusive of all personalist values. Marital intercourse, therefore, was envisioned in terms of a free act of procreative love, and the moral norms governing conjugal intimacies were expounded accordingly. If in reference, therefore, to either contraception or sterilization the prohibitions of natural law were couched in universal absolutes, it could well have been because the popes were totally occupied with the immediate task at hand, viz., the inculcation of those virtues peculiar to the conjugal state, and that they were not at the time advertent to the broader issue of contraceptive sterilization as it extends also to extramarital circumstances. Consequently it perhaps should not be expected that papal principles propounded for the exigencies of the one situation should likewise be of universal application in an essentially different situation.

Most recent among theologians to subscribe to the validity of a distinction made along these lines is M. Zalba, S.J.,⁴⁶ who throughout his lengthy article repeatedly suggests that the direct contraceptive sterilization condemned by the popes is that sterilization which is motivated by one's intention to prevent conception from occurring after one's voluntary indulgence in sexual intercourse. According to this theory it would follow that the popes in their discussions of sterilization consistently prescinded from such exceptional problems as that raised by the plight of nuns (or of any woman, for that matter) in genuine danger of rape who might want to use a sterilizing procedure in order to avoid pregnancy as a possible consequence.

It should certainly not be difficult to concede that papal teaching relative to sterilization did not advert to cases in which the *opus hominum* in the total generative process is not a mutually free act. But how does one reconcile direct sterilization even in these unusual circumstances with the moral principles on which the popes depended for the solution of the problem with which they were actually dealing? For we have always maintained that the generative function was bestowed upon man primarily for the good of the species and not principally for his personal benefit. It is essentially first and foremost a social function. Hence the ability to procreate is not by nature

⁴⁶ *Art. cit.* (supra n. 22).

constituted and ordained in essential subordination to the total corporeal good of the individual, and consequently does not fall directly under man's dispositive dominion as do his other faculties when these latter threaten his personal well-being. Accordingly one may not directly intend his own sterility, whether permanent or temporary, for this is something which has been withheld from his powers of self-disposition.

It would seem that the theologians in formulating such doctrine as this have, like the popes, based their thinking on a latent assumption which as a very general rule is valid but which may not be verified in every conceivable case. Is it entirely true to say without qualification that we have absolutely no direct dominion over the generative function? A woman, for example, is certainly entitled to control her generative potential at least to the extent to which she is free to indulge in or refrain from coitus. Outside of marriage she has the obligation and the right to abstain from sexual intercourse; she is furthermore free to choose or to forgo marriage; finally, within marriage she is free (with due regard for her own chastity and the reasonable will of her husband) to engage in or refrain from the conjugal act. In other words, prior to her free decision to engage in the act designed to initiate the total process of generation, she exercises rightful control over her generative power. In that limited sense of her right to the use or nonuse of sexual intercourse, her generative function is subordinated to her personal good.

On the supposition now that a woman is faced with a genuine threat of rape with its concomitant risk of pregnancy, what is her right, if any, of direct dominion over her reproductive powers? Although *juxta suppositum* she is powerless to prevent coitus, the initial step in the generative process, is she entitled to prevent that coitus from eventuating in conception, even by directly inducing in herself a temporary state of sterility? It does not seem to be necessarily incompatible with either papal teaching or theological principle to suggest that the principle of totality may perhaps in these circumstances provide justification for her recourse to the anovulants for the temporary sterility which they will provide as protection against the injustice of having pregnancy forced upon her against her will. Since she is not obliged to commit her generative potential to the actual service of the species unless and until she voluntarily engages in sexual intercourse; since it is contrary to her total personal good to be forced against her will to conceive and bear an illegitimate child; and since no other means is at hand to protect her against this last indignity, recourse to direct temporary sterilization could perhaps be justified.

It is Fr. Zalba's suggestion that this latter species of direct sterilization be designated *sterilizatio sensu biologico* in contradistinction to the *sterilizatio directa sensu morali* which has been subjected over the years to repeated condemnation both by popes and by theologians. The terms themselves are relatively unimportant; but if the substance of the distinction proves valid, one seeming contradiction in our teaching on direct sterilization would seem to be dissipated.

But whatever may be the ultimate solution, speculative and practical, of subsidiary problems such as these, we are presently still confronted with the very basic question of the contraceptive use of the anovulants in the ordinary circumstances of married life. What is currently the objective moral status of this practice? In no spirit of triumphalism but in the interests only of sober theological truth, it would seem imperative to conclude that solid probability cannot as of now be attributed to the opinion which, for one or another adduced reason, condones this use of the oral contraceptives. Reference has already been made to some of the objections leveled against the intrinsic probability of the permissive opinion, and it remains for thoughtful theologians and the teaching Church to continue their careful appraisal of these pros and cons and thus bring the question ultimately to satisfactory speculative solution. Meanwhile, however, during whatever interval of time may elapse before the supreme pontiff again speaks authoritatively on the question, it would appear necessary to say that extrinsic probability cannot be conceded to the affirmative opinion nor can that opinion be licitly followed in practice. For it is basic to our moral theology that practical probability cannot be attributed to private theological opinion which contradicts papal teaching on the same issue. Theological probability can exist, can be acknowledged, and can with secure conscience be followed in practice only in areas where the teaching Church has never spoken authoritatively and where recognized theologians disagree for reasons which are not demonstrably fallacious. But no number of theologians, whatever be their dignity, can of their own authority establish probability for a proposition which papal doctrine clearly repudiates.

It cannot be denied that Pius XII condemned the contraceptive use of the anovulants—and again let it be said that these drugs functioned then in essentially the same fashion as now—on the grounds that it constituted a species of direct sterilization in contravention of natural law. This declaration of his was clearly of doctrinal rather than of mere disciplinary character. Some six years later, as already noted, Paul VI reconfirmed his predecessor's teaching on contraception and declared it to be binding in conscience

unless and until supreme Church authority should discover justification for change. Commenting on this passage from Pope Paul's address, J. Fuchs, S.J., offers this pertinent observation:

An outsider might fear that the words of Paul VI expressed an authoritarian morality: hierarchs impose a morality which the faithful, particularly for the sake of unity, must adhere to. Words like "valid norm" and "follow a single law" could even intensify this impression. If the Pope recognizes that no one should presume for the present to express himself contrary to the teaching of Pius XII, this is, in the first instance, the disciplinary word of a pastor spoken because of the unrest that has been stirred up among his flock. But when he speaks of valid norms and laws what he means is not, primarily, an ecclesiastical ordinance but a definite command as it has been recognized in the Church and has been laid down authoritatively in an ecclesiastical statement on doctrine. The Pope knows himself to be committed, as a member of the Church, to this doctrine as long as the Church—perhaps through him as Pope—does not believe that she must, unexpectedly, acquire a new understanding of the divine order. Perception of truth, also of moral truth, takes place in the Church of Christ; she is not without pastors, especially not without Peter.⁴⁷

In relation to the same words of Paul, F. F. Cardegna, S.J.,⁴⁸ despite his hope for a legitimate casuistry which will reveal the pill as licit, remarks that "Pope Paul made it perfectly clear that at the present time the norm of Pius XII must still be followed." Fr. Cardegna continues on to say that "Whether Pope Paul modifies the norms of Pius XII or not . . . he has already clearly implied that such a change is possible." This last observation would seem to read a bit too much into the papal concession. The Pope certainly affirmed by implication that Pius XII had not spoken in an infallible manner when discussing the oral contraceptives and that consequently we are justified in considering the possibility of change in that doctrine. However, with regard to the doctrinal content of Pius' conclusion relative to the pills, Paul does not seem to have implied that it was already evidently mutable. This would have been to anticipate the findings of his own commission appointed to investigate that very matter. He merely promised that the doctrine of Pius would be thoroughly examined in order to discover whether or not it could legitimately be subjected to change. In any event we are still, as of this writing, in conscience bound to acknowledge the teaching of Pius XII and to conduct ourselves accordingly.

A year ago considerable space was given in these pages to discussion of an article by W. van der Marck, O.P.,⁴⁹ who was among the first to attempt

⁴⁷ "The Pill," *Studies* 53 (Winter, 1964) 370.

⁴⁸ *Art. cit.* (supra n. 25) p. 636.

⁴⁹ *Art. cit.* (supra n. 34).

a theological defense of the contraceptive use of the pill. Since that time Fr. van der Marck has expanded his article to booklet length and made it available also in an English version.⁵⁰ It would be impossible within the confines of these Notes to treat at necessary length each and every statement of the many throughout the volume which are provocative of comment. Fr. van der Marck's essential thesis would appear to remain the same, viz., that the specification and hence the morality of any human act is ultimately dependent only upon the moral quality of the intention which motivates it. This may be a highly simplified and abbreviated version of what the second chapter of the book professes to establish; but that this is in substance what the author must ultimately mean seems inescapable as a conclusion. In the context of the oral contraceptives he would then stipulate by way of minor premise that, since the purpose of taking the pills is control of fertility, the practice of taking them should be specified not as sterilization but as fertility control, which is sometimes virtuous and even perhaps a matter of obligation.

It was suggested here last year⁵¹ that if Fr. van der Marck's theory were to be carried to its logical conclusion, there would be no human act which could be called intrinsically wrong or which could not be justified by reason of a good motive, and that consequently the consecrated principle, "A good end cannot justify an intrinsically evil means," would be without genuine significance. Apparently Fr. van der Marck would not disagree with this corollary or attempt to evade it, for he speaks in these terms with regard to direct abortion:

If one saves the life of the mother by a medical intervention . . . then one saves the life of the mother—because the removal of a foetus unable to be born is humanly acceptable. Whether this is done by the removal of the whole uterus or by crushing the skull of the unborn child (or by any other such procedure) perhaps affects the feelings but has nothing to do with morality. To make any distinction on this point would be pure hypocrisy if it were not a misunderstanding. If these actual concomitants of saving the mother's life are *not* humanly acceptable, then the medical intervention—once again in spite of so-called "good intentions"—is also nothing but murder. Here it should be clear that I am not incidentally advocating medically indicated abortion; I wish rather to make a plea for a clear distinction: an act may or may not be abortion as a *human* act, although *materially* and *externally* it is nevertheless exactly the same act. If doctors decide that the removal of a foetus is medically necessary, and if this is humanly acceptable, then

⁵⁰ *Love and Fertility: Contemporary Questions about Birth Regulation*, tr. C. A. Jarrott (London: Sheed & Ward, 1965).

⁵¹ THEOLOGICAL STUDIES 25 (June, 1964) 238-43.

it is *not* abortion (except perhaps in purely medical or physiological terms), and the principle that abortion is murder, still applies.⁶²

Later on in summation of his convictions with respect to birth control, Fr. van der Marck defends not only the oral contraceptives but also, at least by clear implication and for some circumstances, any and all contraceptive methods:

To keep physiological fertility carefully under control is not only not in conflict with the human fertility of love, but is even a requirement and function of it. This means that love sometimes requires the effective exclusion of the possibility of physiological procreation. The limits which should be set for this are those of the human "natural" law, that is, of love itself. Regarding this, the couple are completely free—that is to say, they have to orientate themselves to the welfare and happiness of each other and of the whole family. In other words, how they express their love under these circumstances is, in this sense, not a matter of indifference; here more than ever, the greatest tact and circumspection are required, while at the same time the effective exclusion of the physiological possibility of procreation is sometimes necessary (otherwise love would remain an empty word). One will do it in one way, and another in another way; what may be done today cannot, perhaps, be done tomorrow. It is precisely in this sense that the methods of birth-control constitute a problem.

In other words, technique as such is not relevant; but rather the question of whether technique serves one's egoism or one's love. Whether the fruits of love will be sweet or bitter depends on this question.⁶³

As already implied, numerous such passages in this book would appear to be vulnerable to serious criticism of an adverse kind. What does Fr. van der Marck actually mean, for example, when he states that human acts are to be judged morally good or evil insofar as they are "community-forming or community-breaking" (pp. 53-55) or inasmuch as they are "humanly acceptable" (pp. 59-60 *et passim*)? Does he truly believe that the principle of double effect is employed by any reputable moralist in order to condone murder in its technical sense (pp. 49-53)? What representative moral theologian can be proved guilty of what this book calls "materialism," which would seem to mean that, in the appraisal of the morality of human acts, end or intention is entirely ignored and only the act in its physical entity considered (p. 48)? By what honest criterion can the teaching of Pius XI and Pius XII with respect to contraception be termed "ambiguous" (p. 88)? These are not captious or quarrelsome questions. They are the sort of legitimate challenge that must be expected, and should be acknowledged,

⁶² *Op. cit.*, pp. 59-60.

⁶³ *Ibid.*, pp. 89-90.

by any author who proposes opinions which appear to depart drastically from traditional theological teaching and who does so in language which, in the respectful opinion of this reader, does not successfully avoid defects even worse than ambiguity.

A Pastoral Problem

Granted, therefore, the objective improbability, at least for the present, of any theory which would defend as practically licit the contraceptive use of the pill, there arises a pastoral problem whose implications are appallingly serious. It is now common knowledge for the world at large that Catholic doctrine with regard to contraception in general, and more particularly with respect to the oral contraceptives, is being questioned at almost every level within the Church. Cardinals, bishops, ordained theologians and other priests, trained philosophers and theologians among our articulate laymen, harried husbands and wives—virtually every echelon within the Church is represented in an interrogative chorus whose voices range from the stridently emotional to the rationally insistent. It would be irrelevant, even if it were not impossible, to determine exactly what percentage of theologians throughout the world entertain sincere intellectual doubts with regard to our traditional theology of contraception. The practical fact of the matter is that any adult literate Catholic at the present time can recite a litany of authorities, whether real or alleged, who have publicly expressed such doubts.

It remains now only to imagine a confessor confronted by a penitent who unquestionably has valid reason to avoid conception at least temporarily. She and her husband, by supposition thoroughly conversant with the controversy being waged over the oral contraceptives, and now persuaded that the moral issue is at best a doubtful one, accordingly have agreed to take advantage of what they sincerely believe to be a probably licit method of birth control, and are resolved to use the anovulant drugs for that purpose. May such a penitent be granted sacramental absolution while still of this persuasion with respect to her marital conduct in the future?

No conscientious confessor would deny that the question is a harsh one, a reminder that the sacramental power of the keys is for the priest not only the happy ability as a general rule to loose but sometimes also the grim responsibility to bind. That in either event the confessor should conduct himself always with Christlike compassion and love goes without saying. But no amount of Christian charity on the confessor's part can supply for the morally certain lack of essential disposition on the part of a particular penitent. The stark question, therefore, in present instance relates to this

penitent's eligibility for the reception of the sacrament of penance. May she be left in good faith with regard to the oral contraceptives and given absolution, or must attempt be made to correct her erroneous conscience and absolution withheld if she does not repudiate her resolve to make contraceptive use of the anovulants?

In the course of a discussion of this sort of situation, J. L. Thomas, S.J., allegedly asserted that a confessor cannot forbid the contraceptive use of the anovulants to those who are sincerely convinced of their permissibility.⁵⁴ It is not altogether clear precisely what Fr. Thomas had in mind on that occasion; but if he meant to imply that a priest must (or even may) grant absolution to penitents who, despite an awareness of Pope Paul's interim decision on the matter, nevertheless propose to disregard his dictum, then certainly the objection subsequently raised by P. E. McKeever⁵⁵ is most apposite. "While it is true," said Fr. McKeever, "that moral doctrine admits the use of probable opinions in certain types of cases, and this is apparently what Fr. Thomas had in mind, opinions have never been held to be probable after the kind of condemnation the Church has leveled against the pill." In other words, it is beyond legitimate doubt that our imaginary penitent is wrong in ascribing practical probability to the opinion permitting contraceptive use of the pill.

Must she be so informed by her present confessor? It would appear that she must be properly instructed and her attention called to the authoritative nature of Pope Paul's decision. For silence on this point on the part of the confessor could be construed only as acquiescence to her erroneous thinking and would therefore invariably be cause of serious scandal. Furthermore, absolution may be legitimately given only if the penitent renounces her original intention to use the pill contraceptively. Otherwise she must either admit that her proposed recourse to the pill will be, according to papal teaching, seriously wrong, or else she must insist that her determined course of action is objectively licit despite authoritative teaching to the contrary. In neither case can she be considered to be properly disposed for absolution; for in the first instance she has committed herself to a future mode of life which she recognizes as seriously sinful, and in the second hypothesis she has in serious matter rejected the authority of the ordinary magisterium. There may be psychological considerations which could suffice to explain how a knowledgeable Catholic could in subjective innocence either plan to live in a manner which she admits to be sinful or else prefer the theological opinions of ecclesiastical subordinates to the formal pronouncements of the magisterium. But if the situation be first viewed in the objective order, as it

⁵⁴ Reported in *America* 111 (Dec. 5, 1964) 730.

⁵⁵ *Ibid.*

logically should, the foregoing dilemma would seem to be per se inescapable except by accepting authoritative teaching and resolving to abide by it. Subjective considerations of a relevant kind certainly should not be overlooked in any attempt to determine the existential moral merits of such cases as they are encountered in the concrete. But one's initial point of departure in all such ventures must remain the objective order.

It is here at the objective level and in a context of basic theological principles that G. Baum, O.S.A., leaves himself exposed to serious criticism with respect to his concept of a confessor's responsibility in the presence of a penitent determined to adopt or to continue the practice of contraception. Three times within a single chapter Fr. Baum expounds this one strange thesis:

If married people who seek to live as Christians and try to be faithful to the demands of the Gospel, tell us that the dividing line which the Gospel cuts across their sexual existence does not always exclude the use of contraceptives, we must take their conviction very seriously. We have no right immediately to reply that they have been misled into subjectivism. The Christian conscience, constantly formed through Christ in the Church (through Scriptures, preaching, liturgy, sacramental life) is a sure guide to holiness. There are some difficult situations where the decisions of such a conscience formed through living contact with Christ may be questionable, but on the whole we would have to assert that a living Christian conscience in touch with Christ's teaching will be led into a holiness which is *objective*. In other words, the obedience to Christian conscience constantly formed does not only prevent us from sinning in the subjective order; it is also the most certain guide to a life conformed to the will of God (in the objective order) as expressed in his creation and redemption.⁵⁶

If therefore Christian couples who wish to subject themselves to the Gospel and form their conscience daily from their life with Christ in the Church, tell us that the demands of holiness in married life do not always exclude the use of contraceptives, the theologian must reflect on their conviction very seriously, *and unless he can prove, by a rational reflection guided by faith, that this conviction is wrong, against the order of God and nature, the presumption of truth is on the side of the married people.*⁵⁷

These are strong arguments against the traditional proofs that contraception is intrinsically evil. I find them convincing. If, therefore, Christian couples seeking to follow the Gospel and constantly forming their conscience from the eucharistic life of the Church, come to the conviction that the demands of fruitfulness and love which the nature of marriage makes on them, do not always exclude and sometimes counsel the use of contraceptives, we have no strong rational argument

⁵⁶ *Art. cit.* (supra n. 27) pp. 329-30.

⁵⁷ *Ibid.*, p. 331 (emphasis added).

proving to them that they are being misled into subjectivism. The presumption of truth is on their side, since Christian conscience guided by Christ in the Church leads into objective holiness. *The burden of proof is on the side of the Church's official position.*⁵⁸

To the theologian, surely, these excerpts speak for themselves of an almost total dismissal of the *ecclesia docens* in the proper formation of a Christian conscience. Freedom of conscience for the Catholic can never mean that in the formation of moral judgments he is independent of the magisterium and free to prescind from its ordinary teaching except only in those areas where the absolute cogency of rational argument compels him to an intellectual assent totally divorced from faith. Within a most reasonable meaning of the term, the Catholic Church remains an authoritative institution with respect to the teaching of both faith and morals, and the Catholic who would disclaim this degree of subjection to the magisterium would find himself in a most awkward position from which to vindicate his total Catholicism. It is most difficult, for example, to see how Fr. Baum could reconcile this phase of his theology with these words of Pius XI which in *Casti connubii* follow immediately upon the condemnation of contraception:

We admonish, therefore, priests who hear confessions, and others who have the care of souls, in virtue of Our supreme authority and in Our solicitude for the salvation of souls, not to allow the faithful entrusted to them to err regarding this most grave law of God; much more, that they keep themselves immune from such false opinions, in no way conniving in them. If any confessor or pastor of souls, which may God forbid, lead the faithful entrusted to him into these errors or should at least confirm them by approval or by guilty silence, let him be mindful of the fact that he must render a strict account to God, the supreme Judge, for the betrayal of His sacred trust, and let him take to himself the words of Christ: "They are blind leaders of the blind. And if the blind lead the blind, both fall into the pit" (Mt. 15/14).⁵⁹

To deny that a confessor may concur with a penitent intent on the practice of contraception is by no means to endorse the simple but unpardonably cruel expedient of "laying down the law" on a brutal take-it-or-leave-it basis. Ideally one first attempts, with whatever combination of ingenuity and inspiration he may find at his command, to dissuade his penitent from contraceptive intent. Experienced confessors are well aware, however, that there is no set formula guaranteed to be universally successful; that "success" in some instances will mean no more than withholding absolution

⁵⁸ *Ibid.*, pp. 342-43 (emphasis added).

⁵⁹ *AAS* 22 (1930) 560.

with such graciousness as to leave the unabsolved still favorably disposed toward the Church, the sacrament, and the priesthood; and that prognosis in these cases is as a rule extremely poor. It is not surprising, then, that pastoral thinking has turned more and more insistently to the one last alternative which might justify the imparting of absolution to this type of recalcitrant penitent, viz., lack of serious subjective guilt despite the objective grave sinfulness of the practice they follow. Is there legitimate reason to believe that some, or even many, such penitents are, for one or another reason, not formally guilty of the onanism they practice?

Quite evidently aware of the extreme delicacy of this question, F. Timmermans, S.J.,⁶⁰ is understandably most reluctant to phrase his answer in universal terms. He feels constrained to deny, first of all, that invincible ignorance with respect to the grave sinfulness of contraception could truthfully be alleged in many cases as a factor excusing from subjective guilt. There are doubtlessly those who wonder whether in circumstances as desperate as their own God would consider contraception a blameworthy choice; there are likewise many who have been truly confused by the conflicting opinions attributed to clergymen and even to theologians. But Fr. Timmermans is inclined to diagnose most of these cases as illustrative of doubt rather than ignorance—doubt that should be definitely settled when first the problem is presented to a competent confessor or spiritual advisor. After then noting the fact that serious hardship cannot be invoked as valid cause excusing from the observance of a negative precept of natural law, he also excludes passion as an element affecting the substantial freedom of the act or the practice of contraception. As Fr. Timmermans observes, under impulse of passion a married couple could most understandably be impelled to an act of natural coitus; but the previous planning and preparation usually required for effectively contraceptive intercourse cannot be properly said to be the product of that species of passion which so affects freedom of the will as to destroy or greatly diminish moral responsibility. It is Fr. Timmermans' ultimate conclusion that Catholic onanists, at least as a very general rule, must be judged to be subjectively guilty of their practice of contraception and may be absolved only if they give reason for a confessor to believe that they are sufficiently determined to abandon the practice for the future.

This would appear to be the only solution which makes psychological and theological sense in the situation under discussion. There remains, however, one possible exception to this general rule, though its canonical

⁶⁰ "Birth Control—Advice in the Confessional," *Clergy Monthly* 28 (June-July, 1964) 225-28.

implications are not pleasant to contemplate. If at the present time in our confessionals, and in extrasacramental colloquia, some of the faithful are receiving with regard to contraception viva-voce instruction comparable to certain doctrine proposed by Catholic spokesmen in the literature—even in literature published long after Pope Paul's statement last June—then the practice of contraception in good faith is no mere academic question. Since genuineness of good faith in these cases is usually evidenced by the fact that contraception as such is never confessed, this problem is perhaps not often encountered by subsequent confessors. But if *per accidens* a penitent should reveal the existence of such a situation in his or her own case, the confessor who conscientiously adheres to traditional doctrine in this matter would appear to have no choice but to correct the erroneous conscience and to ascertain proper dispositions for the future before absolving.

Coexisting with Contraception

As the U.S. Supreme Court prepares to examine the constitutionality of Connecticut's birth-control legislation,⁶¹ a movement is under way in neighboring Massachusetts to bring about partial revision of that state's law as it applies to the sale of contraceptives and the dissemination of contraceptive information. The revision proposed in Massachusetts aims simply to legalize what is at present a technically illegal state-wide practice and allow registered pharmacists and physicians to stock and dispense contraceptives or to provide information as to their availability and use. In anticipation of such a move, J. L. Dorsey, M.D.,⁶² presents again some of the arguments advanced in the past in justification of a Catholic's co-operating, either in the legislature or at the polls, in the repeal of laws which are designed to impose upon all citizens the observance of a code of private morality which is acceptable to only a segment of the total population.

Moral theology would have no quarrel with the proper revision of any civil law whose formula is a product of defective jurisprudence. In some respects the Massachusetts birth-control law is deserving of such criticism. Its strictures exceed what is necessary by way of precautions for the protection of the common good and intrude despotically to some extent into the sanctum of private morality. By contrast, its enforcement is farcically almost nil, partly because of official indifference to the law itself and partly because total enforcement would be a practical impossibility. Principally

⁶¹ "Washington News," *Journal of American Medical Association* 190 (Dec. 21, 1964) adv. p. 15.

⁶² "Changing Attitudes toward the Massachusetts Birth-Control Law," *New England Journal of Medicine* 271 (Oct. 15, 1964) 823-27; cf. *America* 111 (Nov. 7, 1964) 544-45.

for these two reasons, which prescind almost totally from any difference of religious convictions, some revision of the law would appear to be highly desirable.

At the practical level, however, it is unfortunate that this legal question should have arisen again at a time when so much confusion exists in the public mind as regards the Catholic position on the morality of contraception. Now perhaps even more than previously there may be danger that an expression of willingness on our part to see the civil law revised would be misconstrued both by non-Catholics and by some Catholics as a substantial change in our moral view of contraception. This hazard is one to be avoided—though not, it would seem, by actively opposing the correction of legislation which by our own admission is juridically awry. It would appear to be the responsibility of diocesan authorities to clarify the issue for the faithful generally by distinguishing most clearly between the moral and the legal aspects of contraception and by indicating the sound reasons which favor the altogether licit removal of legal sanction from co-operation in a practice which nonetheless remains a violation of God's moral law.⁶³

While it is one thing to assist in the removal of an alleged legal obstacle to the practice of onanism, it is quite another question if one co-operates in a positive way with the distribution of contraceptive devices. A. M. Carr, O.F.M.Conv.,⁶⁴ considers the case of a Catholic salesman employed by a pharmaceutical firm which is about to launch a promotional campaign for a new oral contraceptive. Although this product has certain therapeutic uses which are morally unobjectionable, its principal value to the company is its contraceptive potential. The obvious question, therefore, concerns the licitness of the Catholic's continuation in employment which will involve him in the selling of oral contraceptives to druggists and doctors. The salesman, father of seven, is in his forties and is not optimistic about his financial prospects in the event that he will be required to give up his work and look for other employment. Fr. Carr eventually solves the case in terms of material co-operation which finds its justification—provided that scandal can be avoided—in the serious hardship to which the salesman would be subjected

⁶³ Cardinal Cushing has already done this for his Archdiocese of Boston. At a public hearing held in early March, legal counsel for His Eminence read for him a statement which made clear distinction between the moral and legal issues at stake and which disclaimed opposition to proper revision of current law. However, it was the Cardinal's stated opinion that the wording of the revision originally proposed was not in every respect legally satisfactory, and upon his recommendation the bill was returned to committee for further study.

⁶⁴ "Cooperation by Catholic Salesman in Distributing Pill," *Homiletic and Pastoral Review* 65 (Nov., 1964) 166-69.

if forced to resign his position with the drug company. Implicit in this solution is the supposition that the salesman does not promote sales of the drug by extolling its merits as a contraceptive, but either merely accepts unsolicited orders for the product or else promotes it only for its legitimate therapeutic uses.

In theory, and on the suppositions either expressed or implied by Fr. Carr, this solution would appear to be morally sound. There is reason, however, to wonder whether in realistic practice the same answer could correctly be given. If by drug salesman one means no more than a peripatetic clerk whose essential function would be merely to compile a dictated list of items, including oral contraceptives, which druggist or doctor has already determined to purchase, there would be little or no difficulty in identifying as only material the salesman's co-operation in the distribution of contraceptives. But considerably more than this is expected of the so-called detail man employed by a drug company. His primary function is to demonstrate, especially to physicians, the pharmaceutical merits of new drugs, and thus to persuade potential customers that his company's product is superior to that of competitors for the accomplishment of a specific medical purpose. The detail man advertises in Webster's sense of "emphasizing desirable qualities in order to arouse a desire to purchase." His essential job is that of persuasion. It stands to reason, therefore, that if a pharmaceutical house undertakes a promotional campaign to introduce a new oral contraceptive, its executives will not be content with detail men who are anything less than enthusiastically vocal, and convincingly so, with regard to the contraceptive advantages of the product. It does not seem possible to dismiss as only material co-operation this kind and degree of assistance in the dissemination of contraceptives. It would appear to qualify rather as formal co-operation, and as such could not be condoned regardless of consequences.

SACRAMENTS

Of the forty faculties granted to residential bishops in the first section of *Pastorale munus*,⁶⁵ well over half pertain to matters customarily treated in the tract *De sacramentis*. A. M. Bottom⁶⁶ provides a rather brief but informative commentary on the document as a whole and on most of those individual faculties which are not self-explanatory either in their official wording or in his paraphrase. Parish priests in particular will find his presentation a valuable adjunct to their own continuing education.

⁶⁵ *AAS* 56 (Jan. 31, 1964) 5-12. For an English version, cf. Bouscaren-O'Connor, *Canon Law Digest, 1963 Supplement*, under can. 329.

⁶⁶ "A Commentary on the Forty Faculties of *Pastorale munus*," *Jurist* 24 (Oct., 1964) 423-40.

The document's one item relating to the sacrament of confirmation represents a signal departure from previous practice; but because it affects only a relatively small number of priests, viz., hospital chaplains, it may be some little time before it receives in the periodical literature the notice it deserves. Principally for that reason attention is called here to the text of §13 of *Pastorale munus*:

To grant to chaplains of any kind of hospital, infant asylum, and prison the faculty to administer the sacrament of confirmation, in the absence of the pastor, to those of the faithful who are in danger of death. To be observed are the norms set forth by the Sacred Congregation of the Sacraments in its decree, *Spiritus Sancti munera*⁶⁷ of 14 September, 1946, for a priest administering the sacrament of confirmation.

It will be recalled that subsequent to the promulgation of *Spiritus Sancti munera* in favor of pastors, the bishops of this country petitioned the Holy See to extend to hospital chaplains substantially the same indult. What was actually granted in 1948 by way of response to this request was an indult so restricted in scope as to be of very questionable worth as a pastoral instrument.⁶⁸ The grant was limited to chaplains of maternity hospitals and institutions devoted to the care of children. These relatively few chaplains were authorized to confirm only canonical infants and were left powerless to administer the sacrament to any who had attained the use of reason. Where more than one chaplain was assigned to a given institution, only the head chaplain could be empowered to confirm, and his faculty could not be delegated, even by the ordinary, to any other. By and large it proved to be an unsatisfactory indult, renewal of which was discontinued several years ago by many bishops in this country. The present faculty promises to be pastorally a vast improvement.

As is evident from §13 of *Pastorale munus*, the chaplain of any kind of hospital, infant asylum, or prison is now eligible for authorization from his ordinary to confirm those who are in danger of death within his institution. If more than one priest should be assigned to a given chaplaincy, there seems to be no textual reason to restrict this privilege as before to the head chaplain only. Formal appointment as even assistant chaplain would seem to satisfy the requirements of current legislation. But whoever possesses the faculty may exercise it validly only within the confines of the institution to which he is assigned. This is clear from *Spiritus Sancti munera*, which restricts the confirmational powers of pastors to the territorial limits of their respective parishes. Finally, for the licit exercise of this faculty it is required that there

⁶⁷ AAS 38 (1946) 349-54; for an English version, cf. T. L. Bouscaren, S.J., *Canon Law Digest* 3, 303-8.

⁶⁸ Bouscaren-O'Connor, *Canon Law Digest* 4, 253-54.

be no bishop available to confirm and that the pastor in whose parochial territory the institution is located be likewise unavailable. This is a faculty which will appeal to the many zealous chaplains who so much regretted the inadequacies of the indult originally granted them.

With seeming good reason, F. J. Connell, C.S.S.R.,⁶⁹ takes exception to an incipient pastoral trend which would postpone the first confessions of children for several years beyond the time of their initial reception of Holy Communion. From the Dutch Diocese of Roermond, for instance, comes word of an episcopal directive which stipulates the second year of primary school as the proper time for admitting a youngster to First Communion, but without prior recourse to the sacrament of penance. According to a news summary of this instruction:

First Communion in the second year is then to be followed in the third by confession services of a non-sacramental kind, to be held preferably during Advent, Lent, and Whitsuntide, with the object of getting the children used to responsible reception of the Eucharist. These "confessions" are to be related to the child's mental environment and used for the formation of conscience.

In the following, the fourth year, the children are to be introduced to the sacrament of confession proper. This is to be done through a communal celebration, so as to emphasize the sacrament's social and ecclesiological character. But confession of sin and absolution are to be expressed individually, by way of preparation for private confession, which would become the rule at the beginning of the fifth school year.⁷⁰

Whatever may be the exact nature of these several steps in the educational process which culminates ultimately in sacramental confession, it would appear evident that the sacrament of penance is not received until the fourth or fifth year of primary school, two or three years subsequent to the reception of First Communion. It is with this inversion of customary sacramental order that Fr. Connell takes issue.

Several reasons are commonly alleged by those who favor some years' reception of Holy Communion before one's first sacramental confession. These include (1) a desire to protect the child from the erroneous notion that confession must necessarily precede every reception of the Eucharist; (2) a contention that subjective mortal sin is an impossibility before the age

⁶⁹ "First Communion without Confession," *American Ecclesiastical Review* 151 (Oct., 1964) 267-69. See also remarks by J. M. Pier, "Children's Confessions," *Priest* 20 (Nov., 1964) 994-96.

⁷⁰ "First Communion before Confession," *Herder Correspondence* 1 (Dec., 1964) 341-42. This news item includes also information of a priest in England who a year ago admitted to First Communion without previous confession some seventy children. He was subsequently directed by his bishop not to repeat the experiment.

of nine or ten; and (3) a conviction that children of seven or eight are incapable of adequate insight into the genuine meaning of confession and that too early an introduction to the mere mechanics of the judicial process will spoil them for future appreciation of the more essential values of this sacrament. Nonetheless Fr. Connell is firm in his conviction that traditional sacramental sequence is less fraught with danger and more in conformity with the teaching of the Church as expressed particularly in the Code of Canon Law and in the *Quam singulari* of Pope St. Pius X.

It would seem quite reasonable to maintain with Fr. Connell that in order to inculcate in children a proper concept of the relationship between the sacrament of penance and the Eucharist it is by no means necessary to exclude these neophyte communicants from the confessional over a period of several rational years. The number of weekday children communicants in so many of our parish churches would seem to attest to a child's ability, with proper instruction, to comprehend that confession is not a necessary prelude to each and every reception of Communion. Likewise open to challenge is any absolute and universal proposition that subjective mortal sin is a total impossibility for a child of seven or eight. As all of us would prefer to believe, formal mortal sin at so early an age may well be the rarest of psychological phenomena; but there is no available proof of its absolute impossibility. As Fr. Connell points out, the Church in her teaching on the sacrament of penance makes allowance for at least the possibility of subjectively serious sin even in one so young.⁷¹

But apart from all question of mortal sin, sound theology cannot doubt the possibility of at least venial sin on the part of children who have achieved that degree of the use of reason envisioned by the Council of Trent as sufficient for the initial reception of Communion. Granted the factual realization even once of this possibility, these youngsters are forever thereafter capable of receiving the graces of the sacrament of penance, and no pastor of souls can justify refusal of a subject's reasonable request for absolution and the grace which it imparts.⁷² As noted by Fr. Connell, *Quam singulari* leaves no doubt as to the mind of the Church on this matter: "The custom

⁷¹ In imposing the obligation of annual confession, which applies only to those who during the preceding year have been guilty of mortal sin, canon 906 includes any and all who have reached the use of reason.

⁷² In the case of children as young as the average first communicant, *Quam singulari*, as noted by Fr. Connell, advises: "The obligation of confession and Communion binding the child rests principally on those who must care for the child, that is, the parents, the confessor, the teachers and the parish priest" (DB 2140; DS 3533). As Fr. Connell points out, parents have primary responsibility in deciding whether the child is ready for confession and Communion. Their reasonable request that a youngster be allowed to confess before receiving First Communion cannot in justice be disallowed.

of not admitting children to confession when they have reached the use of reason, or of never absolving them, is to be altogether disapproved.⁷³

For these and other reasons of doctrinal and pastoral moment, it would appear most difficult to find justification for any attempt, however laudably motivated, to withhold the sacrament of penance from children capable and desirous of receiving it. If we maintain as true that confession is a personal encounter with Christ through the minister of His sacrament, we cannot, even in this singular context, ignore the will of Christ in their regard: "Let the little children come to me, and do not hinder them, for of such is the kingdom of heaven" (Mk 10:14).

A theological conversation piece could quite readily be assembled simply by juxtaposing three relatively recent private responses from the Holy Office pertaining to extraordinary methods of administering the Holy Eucharist to those who are sick and unable to receive Communion in customary fashion. The first,⁷⁴ undated but carrying the approbation of John XXIII, was granted in favor of a person who was incurably ill and unable to receive nourishment except through a tube fitted into his stomach. With certain precautions relative to reverence for the Blessed Sacrament, to the canons of modesty and decency, and to the danger of scandal or wonderment on the part of the faithful, this patient was permitted to receive Communion (presumably a portion of consecrated Host) through this tube. The privilege was restricted, however, to periods during which danger of death could be verified, and it could not otherwise be invoked except for the obligatory reception of paschal Communion.

The second rescript,⁷⁵ September 20, 1961, differs from the first only in the fact that, because of the patient's inability to ingest solid food of any kind or quantity, he was allowed to receive Communion tubally under the species of wine. The Holy Office went into some little detail as to the manner in which the consecrated species of wine was to be transported to the patient's bedside and transmitted through the gastric tube; but the text of the document contains no restriction as to the frequency with which the privilege could be used.

The third petition⁷⁶ to the Holy Office dealt with a case very similar to the second except that a nasal tube was involved. In its answer (1964) the Congregation refused to permit Communion under the species of wine to be

⁷³ DB 2143; DS 3535.

⁷⁴ Bouscaren-O'Connor, *Canon Law Digest, 1963 Supplement*, under can. 852.

⁷⁵ *Ibid.*

⁷⁶ Quoted by A. M. Carr, O.F.M.Conv., "Again: Communion through a Tube," *Homiletic and Pastoral Review* 64 (July, 1964) 889-90.

administered through the tube "because there is lacking the element of eating (*ratio manducationis*) which is necessarily required for going to Holy Communion."

How does one reconcile the negative answer in this third case with the concessions granted in the two previous instances, since in terms of *manducatio* no one of these cases differs essentially from any other? It would appear to be impossible to offer any explanation which does not leave the Holy Office in an awkward stance of inconsistency. Even if one were to maintain that a nasal tube is somehow less becoming than a gastric tube as a channel for transmitting the sacred species, *indecentia* was not the reason advanced for the Congregation's negative answer in the third instance.

Should then the first two cases have been given negative solutions on the grounds adduced by the Holy Office for its denial of the third petition? Theologically there would seem to be no imperative reason to say so. As remarked in essence by J. Rheidt, O.M.I.,⁷⁷ the words of Christ which ordained that we should "eat" His flesh and "drink" His blood need not be so interpreted as to place essential stress upon the oral preliminaries of receiving food or drink into the mouth, chewing, and swallowing. It was Christ's will that we be *nourished* by His body and blood; and the concept of nourishment is verified by the transmission of food or drink to the digestive system, whatever be the manner of its passage thereto. Certainly there is both intrinsic and extrinsic probability for the opinion which defends as valid and licit the reception of Holy Communion in this manner when circumstances warrant.⁷⁸ The precautions mentioned previously as emanating from the Holy Office should always, of course, be observed.

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⁷⁷ "Communion through a Tube: Means or End?," *ibid.* 65 (Nov., 1964) 106.

⁷⁸ See, e.g., Lugo, *De Eucharistia*, d. 1, s. 7, §114; Hürth-Abellan, *De sacramentis*, §203; F. Regatillo, *Ius sacramentarium*, §318; F. La Cava, "De receptione S. Eucharistiae per fistulam gastricam," *Periodica* 33 (1944) 161-69; M. Zalba, *Theologiae moralis summa* (2nd ed.) 3, §375, n. 38, and §412.