

THE CONTRACEPTIVE ISSUE: MORAL AND PASTORAL REFLECTIONS

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THE PRESENT article will concern itself with three areas of discussion that are of high significance in the current controversy over contraception: first, contraception and Vatican Council II; second, contraception and the theologians; third, oral contraceptives and the confessor.

CONTRACEPTION AND THE COUNCIL

Prior to the final months of Vatican II, there was much conjecture as to what, if anything, the Council would ultimately say about contraception. Among the well-informed it was commonly understood that the Pope had long since reserved to himself the final resolution of certain subsidiary questions related to contraception, but that the conciliar fathers were entirely free to proclaim again, either doctrinally or pastorally, the fundamental issue as contained in our Catholic tradition. That they did so in quite gingerly fashion is now a matter of history recorded within the Constitution *The Church in the Modern World*.¹

Under the subtitle "On Reconciling Conjugal Love with Respect for Life," §51 of this document first adverts to the practical domestic difficulties confronting married people today, and reminds them that "there cannot be a true contradiction between the divine law regarding the transmission of new life and the fostering of conjugal love." There follow a condemnation of abortion and infanticide, the assertion that the conjugal acts themselves must be treated with great respect, and a reiteration of the fact that the morality of conjugal behavior in this regard depends not only on good motives and sincerity of intention but also on objective criteria based on the nature of the person and the nature of his acts. Finally there occurs this explicit statement: "By virtue of these principles, members of the Church are not per-

¹ The only official text of the Constitution available at this writing is a duplicate of the document distributed to the Council fathers a few days before their final vote on the matter. Reference to *AAS*, therefore, is not yet possible.

mitted, in the regulation of procreation, to enter upon paths which are disapproved by the magisterium in its interpretation of the divine law." Appended to this sentence is a reference to footnote 14.

Judged solely on its own merits, this sentence in the body of the text would seem necessarily to relate to contraception. Footnote 14 conclusively confirms this interpretation; for it refers (1) to the very pages of *Casti connubii* which contain Pius XI's condemnation of contraception, (2) to the 1951 papal allocution to obstetrical nurses which contains explicit confirmation of *Casti connubii*, and (3) to the June, 1964, statement of Paul VI which promised a thorough review of the subject in the light of new knowledge that has been acquired over the years in various pertinent branches of learning. Beyond any doubt, therefore, the topic under discussion in footnote 14 and in the corresponding text is the generic subject of contraception.

Relevant to the footnote in question, this significant item is contributed by J. C. Ford, S.J.,² who was present on the Vatican scene when this section of the Constitution was undergoing final revision:

... when, by some as yet unexplained mishap, the exact page reference was omitted from the printed copy of the text given to the Council Fathers in the Aula at the general session of Dec. 2, the omission was immediately (a few hours later) called to the attention of the Holy Father. As a result, just before the vote on this chapter was taken on Dec. 4, it was publicly announced in the Aula by the General Secretary of the Council that this exact page reference was to be restored. Both the subcommission which prepared the text on marriage, and the mixed commission in its plenary session discussed this sentence of the text as well as this particular reference to the exact pages of *Casti connubii* before voting in favor of it and presenting it to the whole Council for final acceptance.

The Council voted overwhelmingly to accept the text along with that reference.³

What precisely, then, can the Council be said to have taught with respect to contraception? The answer is not an easy one. Certainly it must be said that in some sense the Council meant to ratify the rele-

² "Footnote on Contraception," *America* 114 (Jan. 22, 1966) 103-7. This letter to the editor was prompted by an article by R. A. McCormick, S.J., "The Council on Contraception," *ibid.* (Jan. 8, 1966) 47-48. In the course of his article Fr. McCormick had observed that "the Constitution on the Church in the Modern World says nothing explicitly about contraception." Subsequently (*ibid.*, Jan. 22, 1966, p. 107) he amended that statement with the acknowledgment that footnote 14 "must be taken into account in interpreting the pastoral constitution."

³ *Art. cit.*, p. 105.

vant teaching of *Casti connubii* and the corresponding doctrine contained in the 1951 allocution. Otherwise the references to those documents make no sense whatsoever. But was it an unrestricted ratification, or does the inclusion of the third reference make it necessary to qualify to some extent the Council's willingness to commit itself categorically to a resolution of the contraception problem? It would seem that the latter alternative is nearer the truth and that the Council wished to temper its confirmation of Pius XI and Pius XII with the same sentiments expressed by Paul VI in 1964.

It will be recalled that in the course of that 1964 address, and in a context of birth control, Paul stated: "We say frankly that We do not so far see any adequate reason for considering the relevant norms of Pius XII superseded and therefore no longer obligatory; they should, therefore, be regarded as valid, at least as long as We do not consider Ourselves in conscience obliged to modify them." There are those who maintain that the concluding phrase of this sentence concedes the mutability of our teaching on contraception and/or betrays doubt on Paul's part as to the certitude of that same teaching. Accordingly, as this interpretation perhaps would have it, the same papal doubt now attaches to the conciliar statement and makes it clear that our basic teaching on contraception is presently open to question.

This line of argument does not appear to be valid. First of all, was Paul in 1964 talking about contraception in general or only about the oral contraceptives? From the text of the address itself, there would appear to be no grounds for restricting his words to the more narrow consideration; for the Pope introduced his remarks with only a generic reference to birth control and later referred only to the "relevant norms of Pius XII," who had spoken at some length on the generic question in 1951 and had discussed the oral contraceptives in 1958. But it should also be remembered that two years ago by far the major point at issue among those who were then challenging our position on contraception was the morality of the oral contraceptives and not contraceptives in general. And why—if Paul was looking beyond the specific question of the moment to the broader issue of contraception in general—did he not relate his observations to those contained in *Casti connubii*, the modern *locus classicus* in any theological discussion of contraception? Pius XII in 1951 had done essentially nothing more than confirm what

his immediate predecessor had said on the generic subject, and to that extent Pius XII was a secondary source. It is difficult to understand how Paul, if he had in mind the total issue of contraception, could have ignored Pius XI on that occasion. On the other hand, since only Pius XII had discussed the oral contraceptives, only his name of the two was relevant if Paul was referring to the oral contraceptives alone.

Furthermore, it is by no means certain—and may eventually be provable as false if the documents are ever made generally available—that the papal commission referred to in Paul's 1964 address received any mandate to assess the theological validity of our fundamental thesis with respect to contraception. Footnote 14 states quite clearly that only "certain questions"—not the entire issue—require further investigation by the papal commission and are therefore transmitted by the Council. It is common knowledge that one of those items, and perhaps the most important one, is that of the oral contraceptives.

There would consequently appear to be good reason to believe that Paul in 1964 perhaps had in mind only the oral contraceptives when he spoke as he did in the sentence quoted above, and that he was assuming as irrevocably established our basic teaching on contraception in general. But even on the supposition that Paul was speaking of the broader issue, did the Pope on that occasion express any personal doubt as to the truth of the doctrine to which he referred? His own words in the first half of the sentence do not seem to admit of that interpretation, for he states that he does "not so far see any adequate reason for considering the relevant norms of Pius XII to be superseded and therefore no longer valid." Did he nonetheless concede the mutability of that doctrine? No one can reasonably deny that the second half of his sentence provides less than a univocal answer to this question, but it does not seem that Paul meant to grant anything more or less than this: While I do not at this time rule out the possibility that the teaching of Pius XII is subject to change, neither do I wish on this occasion to declare it to be changeable. In other words, Paul was merely expressing his willingness, despite absence of all discernible doubt on his own part, that various experts should put the teaching of Pius XII to the test in order to determine whether that teaching is universally applicable. Whether Paul had in mind con-

traception in general or only the oral contraceptives would seem to be a moot question.

In summary, therefore, there seems to be documentary justification for saying (1) that in June, 1964, Paul VI expressed no personal doubt as to the truth of Pius XII's teaching on contraception; (2) that, while Paul did not exclude the possibility of its being mutable teaching, neither did he at the time concede its mutability; (3) that it is not inconceivable that Paul was speaking then only of the oral contraceptives and not of contraceptives in general.

If the preceding is an acceptable interpretation of Pope Paul's remarks in 1964, it is not less tenable with regard to the Council's intent when it added to footnote 14 the reference to those remarks. The conciliar statement must therefore mean either one of two things: either (1) we ratify the teaching of Pius XI and Pius XII on contraception in general but do not wish to declare ourselves on the specific question of the oral contraceptives, since that is reserved to papal pronouncement; or (2) together with Paul VI "we do not so far see any adequate reason for considering the relevant norms of Pius XII superseded and therefore no longer obligatory"; we furthermore ratify the teaching of *Casti connubii*; and finally we respect the wish of the reigning pontiff that he be the one to make final authoritative assessment of any evidence presented by those who challenge the teaching of Pius XII on contraception.

It might be noted in passing that, since it was at papal insistence that the references to *Casti connubii* and to the 1951 allocution were added to the Constitution, it can scarcely be said that the Pope himself entertains any doubt as to the immorality of contraception, or that he is likely at any future date to reverse the substance of his predecessors' teaching on the matter.

As difficult as it is to determine in last detail the precise meaning of the Council's ratification of papal teaching on contraception, there would appear to be ample reason to challenge the substance of what G. Baum, O.S.A., offers in his interpretation of this chapter of the Constitution.⁴ On at least three doctrinal points Fr. Baum would appear to be seriously in error.

1) Fr. Baum maintains that the fundamental teaching of the Catho-

⁴ "Birth Control—What Happened?," *Commonweal* 83 (Dec. 24, 1965) 369–71.

lic Church with regard to contraception is now in doubt within the Church itself:

It is quite clear that in the difficult question of whether there is a morally significant difference between natural and artificial means of avoiding conception, there is real doubt in the Catholic Church: the Council Fathers, including cardinals, are not in agreement on the issue, nor are the Christian people, nor Catholic theologians, nor the papal commission.⁵

One would have to concede that at all levels enumerated in the excerpt just quoted there do *de facto* exist private, personal doubts about the morality of contraception. But that there is genuine theological justification for such doubts is to be denied most emphatically. As previously noted, no such doubt can be attributed to Paul VI, since he expressly declared himself convinced of the truth of the doctrine taught by Pius XII and thereafter insisted that the Council incorporate into the text of its treatment of marriage a reference to the condemnation of contraception in *Casti connubii*. No such doubt can be attributed to the Council as an authoritative teaching body, since what little it did say officially of contraception was said in accordance with papal condemnation of the practice. Consequently there can be no theologically defensible doubt among individual Catholics about the Church's insistence still upon the intrinsic immorality of contraception as a violation of divine law. There is no theological basis for asserting that the total question of contraception is now a debatable issue among Catholics, or that the prohibition of the practice is currently in abeyance pending further decision by Paul VI. Church teaching on the matter today is no less clear and commands no less assent and conformity of conduct than ever before.

2) Fr. Baum asserts that no future papal teaching with respect to contraception will be a definitive interpretation of divine law binding under all circumstances:

Since the conscience of the Church is so deeply divided on this issue and since the solution is in no way contained in divine revelation, the authoritative norms which the Pope himself, as universal teacher, will propose in due time, shall not be a definitive interpretation of divine law, binding under all circumstances, but rather offer an indispensable and precious guide for the Christian conscience.⁶

⁵ *Ibid.*, p. 371. ⁶ *Ibid.*

As indicated above, it cannot in truth be said that the conscience of the magisterium *as such* is divided on the matter of contraception. Popes in the past have declared in unequivocal terms what the unshaken conviction of the Church has always been. Never has any subsequent pope or council cast doubt upon the truth of this teaching. Therefore, if this particular premise of Fr. Baum's refers to the magisterium, it is again simply to be denied. If, however, it refers to personal doubts of subjects within the Church—whether those of laymen, priests, or prelates—the premise is theologically irrelevant to its conclusion. One essential function of the magisterium is to resolve doubts of this kind authoritatively, and one essential duty of individual Catholics is to accept such teaching and to conduct themselves accordingly. Furthermore, to maintain that the evil of contraception is in no way contained in revelation is merely to opt gratuitously for a theological position which has never been proven and which is perhaps unprovable. But, *dato non concesso*, even if this second premise of Fr. Baum's were to be proven, it does not follow that future papal teaching on contraception (e.g., condemnation of a new contraceptive device) could not demand of Catholics intellectual assent and conformity of conduct under all circumstances. The pope remains supreme within the Church as authoritative teacher in matters of faith and morals; and in this area his doctrinal decisions—even those dealing with matters not divinely revealed—unquestionably can have the force to oblige the consciences of Catholics.

3) Fr. Baum contends that, despite an illegitimate attempt to win conciliar confirmation of the teaching which applies the term "primary" or "secondary" to each of the several ends of marriage, the Council repudiated this doctrine and denied the possibility of arranging these ends in any hierarchical order:

... the present chapter transcends the old position according to which marriage must be understood in terms of its primary and secondary ends. The chapter teaches that the ends of marriage are the communion between two persons in love and the procreation and education of children. These ends are mutually related to one another so that they cannot be placed in a hierarchical order. . . .⁷

The first *modus* of the Secretariat of State (actually number 2 on the list) tried to insert into the text the traditional distinction between primary and secondary ends of marriage. . . .⁸

⁷ *Ibid.*, p. 369. ⁸ *Ibid.*, p. 370.

Realizing that this *modi [sic]* intended to change one of the main points of the whole chapter on marriage, a chapter approved by the general congregation, the theological commission could not accept it.⁹

Perhaps the most effective rejoinder to this interpretation of papal and conciliar intent is another quotation from Fr. Ford's letter to which reference has already been made:

I would like to add here a word of explanation about the omission of the terms "primary" and "secondary" in describing the ends of marriage. It was the intention of the framers of the text, and of the Council Fathers, to *prescind* from the problems connected with these terms. Among these problems one should include that of the true meaning of these terms and their suitability to express that meaning nowadays; perhaps also the question whether the doctrine of the hierarchy of ends, which had already undergone very considerable evolution in the course of the centuries, must not now be recognized as having evolved still further in modern theological thought, and if so in what sense. Problems of this kind are all under consideration by the Papal Commission.

It is clear from the *relatio* which presented the text in the Aula, and from the long discussions of the amendments to the text carried on in the subcommission, that there was no intent to prejudge any of these questions. The recurrent difficulty was to avoid a way of speaking which would seem to favor either side of questions still under debate. In emphasizing conjugal love and giving it the place it deserves in the systematic theology of marriage, the Council intended neither to reject the "hierarchy of ends" nor to reaffirm it, especially with the terminology "primary-secondary." This would have been premature in view of the above-mentioned problems still under discussion. The intent was to prescind from them and leave them in abeyance.¹⁰

It would be reading entirely too much into the conciliar Constitution to maintain that the doctrinal status of the question of contraception was affected in any substantial way by Vatican II. But to acknowledge the Council's abstention from any attempt to qualify traditional teaching is to concede that we are still committed as always before to the proposition that contraception is in every instance an offense against divine natural law. The Council's approbative reference to papal teaching on the matter can reasonably mean no less than that.

CONTRACEPTION AND THE THEOLOGIAN'S

Whenever C. B. Daly undertakes to discuss a theological problem, he usually does so with a thoroughness that leaves little to be desired.

⁹ *Ibid.*, pp. 370-71. ¹⁰ *Art. cit.*, pp. 106-7.

His recent analysis of natural-law morality is no exception to the rule and is an item that deserves most careful attention, especially on the part of those who are at all prone to disparage the notion of natural law and any system of moral theology based thereon.¹¹ Since, as Fr. Daly notes in his introduction, it is in a context of contraception that reference is currently most often made to natural law, it is consequently against that same background that he elects to express his own convictions on the matter.

It would be extremely difficult to do justice in summary to the content of Fr. Daly's article. What he has done in effect is to collate for his own theological assessment the more common allegations of those who favor the licitness of contraception. Some of these contentions take the form of adverse criticisms of the natural-law position, while others are asserted positively in defense of a dissident school of thought. Thus, for example, the traditional moral theology of contraception is said by some to be obstructive of theological progress and renewal, indiscernible to the majority of thinking men, expressive of no genuine consensus, and the biologicistic obsession of the celibate mentality. The "new" morality, on the other hand, delivers man from the bondage of law into a service of untrammelled love, acknowledges the superiority of rational nature over animal function, and restores individual conscience to its rightful place in the discernment of moral good and evil. The competence with which Fr. Daly treats these many issues, and the abundance of bibliographical detail with which he documents his work, are the chief reasons why nobody who is theologically or pastorally involved in the issue of contraception can afford to be unacquainted with the content of this remarkable study.

Speaking for the opposition, in a survey which must come very close to exhausting the representative literature on the subject, A. Valsecchi reviews the theological history of the oral contraceptives and ultimately commits himself in theory to a position favoring their moral acceptability when used judiciously by married women precisely for their sterilizing effect.¹² The historical, and by far the longer,

¹¹ "Natural Law Morality Today," *Christus Rex Journal of Sociology* 19 (July-Aug., 1965) 153-87; reprinted in *American Ecclesiastical Review* 153 (Dec., 1965) 361-98.

¹² "La discussione morale sui progestativi: Rassegna bibliografica," *Scuola cattolica* 93 (May-Aug., 1965) 157-216.

portion of his article proceeds chronologically from 1957 to 1965 and summarizes briefly, but with substantial accuracy, the thinking of European, Australian, and American theologians on virtually every aspect of the problem. Included also, of course, are the relevant statements of Pius XII and Paul VI. Out of this prodigious amount of well-ordered data, Msgr. Valsecchi professes to find the basis of the thesis which he himself would propose at least tentatively.

By way of initial conclusion to his résumé of the literature, Msgr. Valsecchi observes that a distinction between the therapeutic and nontherapeutic uses of the progestins does not suffice to determine a line of demarcation between their licit and illicit uses. In substantiation of this claim he refers to several discussions which have been carried on over the years and in which a representative number of theologians have found justification for using the drugs designedly in some circumstances as sterilizing agents. He cites, for example, the opinions of those who would allow the progestins during the period of lactation in order to guarantee that cessation of ovulation which nature allegedly should provide during this time. Likewise to be noted, according to the Monsignor, are the favorable solutions given by some to the use of the anovulants in an attempt to regularize the ovulatory cycle and to their use by women known to be in danger of rape. Therapy, he maintains, cannot be invoked in justification of these procedures; consequently, the teaching of Pius XII, which restricted to their therapeutic uses all licit recourse to the progestins, is no longer adequate as an ethical norm.

It is true that in his 1958 discussion of the anovulant drugs Pius XII spoke of only the two basic problems involved in their use by married women. He first conceded the licitness of taking the drugs when medically necessary for the cure or control of certain organic disorders, since resultant sterility in these circumstances would be indirect and justified by sufficient reason; and he condemned as a forbidden species of direct sterilization a married woman's use of the drugs with the direct intention of suppressing ovulation for the purpose of birth control. Certain other peripheral problems, such as those mentioned by Msgr. Valsecchi, Pius XII did not choose to discuss. Consequently his is not a complete treatise on the morality of the anovulant drugs, and it would appear to be reading too much into the

papal statement to maintain that Pius was condoning all therapeutic use of the progestins while necessarily condemning any and all direct suppression of ovulation. More than once before it has been pointed out that in their discussions of contraception (including contraceptive sterilization) the popes have always spoken in a context of free and deliberate consent to conjugal intercourse—a supposition which is not verified in case of rape.¹³ Furthermore, those who have hypothetically defended the regularization of the ovulatory cycle by means of the progestational steroids have done so by demonstrating that temporary sterility in these cases would be indirect and that therapy would be involved at least in the sense of correcting an irregular ovulatory cycle.¹⁴ Similarly, suppression of ovulation during the lactation period has been defended by some on the therapeutic grounds that one would be merely guaranteeing an anovulatory period which nature should, but might not, provide.¹⁵

Be that as it may, Msgr. Valsecchi then proceeds to indicate two lines of thought which in his estimation lead toward the conclusion that not every contraceptive use of the progestins by married women is wrong. By way of first suggestion he proposes that the principle of totality be acknowledged as broad enough in scope to justify the sacrifice of reproductive potential not only for the physical good of the individual but also in the interests of the person's total well-being. Why, he asks, should married women be denied a right (that of temporary sterilization) which is granted to nuns in the Congo who are threatened with rape? Why should one and the same procedure be termed in the latter instance sterilization in a merely biological sense while in the former instance it is condemned as sterilization in the ethical sense?

It would appear that Msgr. Valsecchi is of the impression that the licitness of sterilization is to be judged according to the single principle of totality. At least as a very general rule, this is simply not so.¹⁶ By virtue of the principle of totality we are authorized to make *direct* disposition of individual members and functions of the body in the

¹³ Cf. THEOLOGICAL STUDIES 26 (1965) 261.

¹⁴ *Ibid.* 23 (1962) 243–45.

¹⁵ *Ibid.* 19 (1958) 550–51.

¹⁶ Cf. G. Kelly, S.J., "Pope Pius XII and the Principle of Totality," THEOLOGICAL STUDIES 16 (1955) 373–96, and "The Morality of Mutilation: Towards a Revision of the Treatise," *ibid.* 17 (1956) 322–44.

interests of the total person. But normally we may dispose only indirectly, if at all, of our ability to procreate, and consequently it is the principle of double effect, in addition to the principle of totality, which must decide most cases of sterilization. It is precisely and principally because the contraceptive use of the anovulants entails a direct sterilization that they are denied married women as a licit means of regulating conception. No extension, however legitimate, of the principle of totality will make any less direct the sterility induced by those who use the pills with the intention to suppress ovulation. Those who have tentatively proposed that women in danger of rape may directly sterilize themselves temporarily can legitimately come to this conclusion only by demonstrating that under the circumstances and by way of exception these women can rightfully claim this degree of direct disposition of their generative potential.¹⁷ But it is by no means certain that this right can be established.

The Monsignor's second consideration seems likewise to disregard the fact that normally we have no direct dominion over the human generative function. For he asks whether it is ethically imperative that we respect that frequency of ovulation in women which as a general rule nature has established, or does it suffice if a woman ovulates only as often as is necessary in order for her to bear that number of children which is judged most reasonable and fitting in view of all the circumstances of her marriage. In other words, he would seem to maintain that the process of ovulation is no less subject to a woman's direct dominion than are her other bodily functions, provided only that she allow herself to conceive often enough to fulfill the procreative purpose of her married life as a whole.

Interpretations such as this one offered by Msgr. Valsecchi represent substantial departures from our traditional teaching with respect both to direct sterilization, even temporary, and to the procreative purpose of each single act of conjugal intercourse. Since this is so, it would seem mandatory for those who espouse such opinions to give reasons more cogent than personal surmise that their premises are tenable. For example, simple disregard of an established distinction between direct and indirect sterilization does not appear to be a legitimate approach to the moral problems posed by the oral contraceptives.

¹⁷ Cf. *THEOLOGICAL STUDIES* 26 (1965) 261-62.

However, it would appear that the Monsignor's position in this matter is not substantially different from that defended by those who, while conceding that procreation is correctly termed an essential end of marriage as a state of life, nonetheless contend that procreation is not demonstrable as being an essential purpose of each single act of conjugal intercourse.

Sociologist J. L. Thomas, S.J., states the problem in these terms: "... an objective analysis of sex in marriage indicates that by the very designs of the Creator not the individual act but rather the total process of sexual engagement and commitment—normally involving a lifelong series of sexual activities—must be regarded as procreative."¹⁸ Because this statement is structured within the essential framework of traditional natural-law opposition to contraception, it provides a considerable amount of common ground for further discussion.

It would seem correct to interpret Fr. Thomas as admitting that contraception is contrary to natural law provided that contraception be understood to mean the free use of the generative faculty in such a way as deliberately to frustrate the over-all procreative purpose of a lifetime of marriage, viz., responsible parenthood. On the supposition, for instance, that raising a family of four children is sincerely judged to be the reasonable duty of a given couple, contraceptive measures enabling them deliberately to shirk this duty would be in violation of natural law; but granted willingness to assume procreative and educative responsibility for four, contraceptive measures employed to prevent births in excess of that number would not be morally reprehensible. It is significant that Fr. Thomas postulates "an objective analysis of sex in marriage" as his point of departure, for that is likewise the initial step in the traditional natural-law consideration of the essential ends of marriage. It is also helpful that the "designs of the Creator" are made synonymous with natural law, for that provides further guarantee that language need be no barrier to exchange of intellectual convictions.

Certainly all Scholastic ethicists would agree with Fr. Thomas that objective analysis reveals that one essential purpose of the human sexual faculty, as designed by God for use only in marriage, is pro-

¹⁸"The Church and Responsible Parenthood," *Theology Digest* 13 (Winter, 1965) 255-68.

creation. They would likewise agree, *sensu aiente*, that abuse of the sexual faculty in order to escape for the duration of marriage the minimum obligations of responsible parenthood is contrary to God's designs and therefore sinful. But traditional teaching would seem to go even further by asserting that each individual act of conjugal intercourse has procreation as an essential God-given purpose, and that consequently any single contraceptive act of intercourse is morally wrong. But in what precise sense can each and every act of human coitus be called designedly procreative? As do many others, Fr. Thomas points out that women are naturally sterile except for a relatively small portion of each successive month, and that by consequence it is clearly God's will that intercourse not be procreative during the vastly larger segment of the ovulatory cycle. Hence, he would conclude, it is clearly a fallacy to maintain that each single act of intercourse has procreation as an essential end.

The hazard at this point lies in the temptation to answer the question as asked by invoking any of the standard philosophical distinctions in an effort to clarify the speculative issue. Coinage of the *per se-per accidens* variety has never been legal tender in the pastoral market place. But recourse with Fr. Thomas to the evident will of God—if one adverts to the totality of His evident will in this respect—would seem to provide a practical answer which does not in truth sustain a valid argument in favor of even a single act of contraceptive intercourse. In fact, it does quite the opposite.

Admitting as we should that the physiology of the ovulatory cycle in woman reveals God's design that intercourse be sterile on most days of the month, must we not with the same honesty concede it to be His will also that on the remaining relatively few days intercourse be fertile? And if contraception is sinful only if and when it contravenes the will of God, must it not be acknowledged as sinful if practiced on those days which God is known to have made fertile? Furthermore, if contraceptive intercourse is practiced on days which are *de facto* sterile, is it not because the couple, uncertain of the temporal dimensions of the sterile period, are intent upon preventing conception in the event that this should be a time designed by God for fertile relations? In this last instance, their deliberate conduct is such as to flout the divine will in case it should be in conflict with their own intention. Hence, at

very least by virtue of evil intent, contraceptive intercourse in these circumstances becomes sinful.

It is in the light of these preceding considerations that these words of Pius XII would seem to have their greatest significance:

Nature puts at man's disposal the whole chain of causes which will result in the appearance of a new human life; it is for him to release this vital force and it is for nature to develop its course and bring it to completion. When once man has done his part and set in motion the marvelous process which will produce a new life, it is his bounden duty to let it take its course. He must not arrest it or frustrate its natural development.¹⁹

Accordingly, in the total process which of its nature is designed for the inception of human life, man's direct dominion is restricted to the *opus hominis*, i.e., to the act of conjugal intercourse. With due regard for both the procreative and the personalist ends of marriage, husband and wife are entirely free to decide if and when they shall engage in this life-giving act of love. But their direct dominion over the procreative process begins and ends with that gesture of total conjugal commitment. The rest is in the hands of God, by whose design (*opus naturae*), as Fr. Thomas concedes, woman can conceive only at relatively infrequent intervals during her childbearing years. But infrequent as they may be, these occasions are God-designated and thus removed from the direct and substantial control of human creatures. Any attempt or intention to make sterile the span of days which God has determined should be fruitful is usurpation of an exclusively divine right and consequently a contravention of the divine will.

Beyond any question responsible parenthood remains as an essential end of the lifetime of any marriage. But never to be overlooked is the basic principle that not even the noblest of ends can justify recourse to intrinsically evil means. As a defiance of God's will that no conjugal act should by human contrivance be deprived of its God-given procreative potential, each single act of contraception becomes, at least by intent, intrinsically evil and therefore morally unacceptable as a means to achieving responsible parenthood. Once the ovulatory cycle in woman is conceded to be God-designed and thus expressive of the

¹⁹ AAS 43 (1951) 836.

divine will with respect to a variation in the procreative consequences of individual acts of conjugal intercourse, it would appear to be more difficult, rather than easier, to challenge natural-law teaching on contraception.

From what has preceded, one might conclude to a willingness on my part to concede that the integrity of the conjugal act need not be respected at times when the sterility of either partner is known for certain. This, however, does not necessarily follow, since only one of the essential ends of marriage (procreation) was considered in discussing Fr. Thomas' proposition. There is strong argument in defense of the thesis that only an integral act of conjugal intercourse qualifies as proper expression of conjugal love, and that for at least this one reason the integrity of even the sterile act of coitus must be preserved.²⁰ However, I am prescinding from this aspect of the question, since it is largely academic.

It is quite unlikely that our formulation of the natural-law argument against contraception will ever achieve that degree of clarity required to convince all of its cogency. Even of those who are altogether convinced of the evil of contraception, many rely almost exclusively upon the theological approach, which appeals to an uninterrupted tradition of ecclesiastical doctrine culminating in the solemn declaration voiced by Pius XI in *Casi connubii*. Only within very recent years has the conclusiveness of this papal teaching on the matter been openly challenged among Catholics. Now, however, it is by no means uncommon to hear comparison made between Pius XI and Augustine as having been for their respective eras primary obstructionists in the evolution of a sound moral theology of conjugal chastity. Augustine had canonized the procreational purpose of marriage because he found in procreation the one feature of conjugal intercourse which saved it from the stigma of serious sin. As current insinuation in some quarters would have it, could not Pius XI in similar fashion have been so blindly preoccupied with the generative value of marriage that he allowed himself to universalize unwarrantedly in his condemnation of contra-

²⁰ See, for example, P. M. Quay, S.J., "Contraception and Conjugal Love," *THEOLOGICAL STUDIES* 22 (1961) 18-40; J. S. Duhamel, S.J., *The Catholic Church and Birth Control* (New York: Paulist Press, 1962).

ception? Demands are loud for "re-evaluation" of dicta which, too long accepted uncritically, have imposed what are considered to be insufferable burdens of conscience on our married people.

By way of initial comment on allegations such as this, attention should be called to the lack of essential analogy between the teaching of a twentieth-century pope and that of a Father of the early Church, even when the basis of comparison lies in the fact that both pronounced doctrinally on conjugal morality in a manner which stresses the procreational purpose of marriage. It is one thing to acknowledge that Augustine was partially in error in his substantial theology of marriage. Theological giant that he was, he nonetheless taught as an individual bishop in a period when systematic theology was at best in its embryonic stages; handicapped by a personal background of Manicheism, he breathed an atmosphere still tainted with Gnostic and Pelagian heresies. It should be scarcely cause for wonder that in such theologically unfavorable circumstances Augustine's pioneering efforts in the field of conjugal morality did not avoid all substantial error. But it is no reflection on the teaching authority of the Church universal that error should have originated here.

It is entirely another matter to assume substantial error in the moral theology of *Casti connubii*. It was as supreme pontiff that Pius XI in that document addressed the entire Catholic world, and he spoke from the vantage point of centuries of theological tradition. Only after invoking his right to speak in the name of the universal Church, divinely commissioned to preserve the integrity of moral life, did Pius proclaim again, as "uninterrupted Christian tradition," our doctrine on contraception. That this was by papal intent not ex-cathedra teaching may be readily admitted. But to maintain that it could have been in the circumstances erroneous doctrine would seem to impugn the very providence of God with respect to His Church and her ordinary teaching mission. In a matter so serious and of such general concern—literally a matter of eternal life or death for millions—could God conceivably have allowed His vicar, even on one occasion, to misinform the faithful so outrageously? And is it not even more incredible, even to the point of being theologically impossible, that God could have permitted an entire tradition of such teaching to develop and to continue uninterruptedly and unopposed for centuries? Prac-

tical faith simply cannot reconcile error of this magnitude with any meaningful guarantee of divine assistance "*usque ad consummationem saeculi*."

THE ORAL CONTRACEPTIVES AND THE CONFESSOR

It may well be that before this article appears in print the Pope will have issued a decisive statement with regard to the moral status of the oral contraceptives and thereby have silenced the controversy which has occupied us so long. If so, these comments on certain pastoral aspects of the problem will be at very most of historical interest. However, in the event that we shall be forced to continue waiting for a papal decision on the matter, the following considerations are of some practical moment.

Would continued silence on the part of the Pope with respect to the contraceptive use of the progestins eventually create objective probability for the opinion which would defend this practice? Six months ago R. A. McCormick, S.J.,²¹ stated as his conviction that this question would have to be answered in the affirmative and that if Paul fails to speak "soon," a state of practical doubt will have to be acknowledged as existing within the teaching Church. Fr. McCormick refrained from specifying what minimum length of time would have to intervene before this state of affairs would begin to exist, but he left no doubt as to his belief that "in such a case it would be hard to deny the application of the principles of probabilism."

It is not likely that Fr. McCormick is alone in thinking as he does on this question. And because of the peculiar circumstances of this particular case, what he says would appear to be true, at least up to a point. That point is marked by the word "soon," which clamors for further specification. But first a preliminary observation or two.

Ordinarily it would appear to be inadmissible that mere silence on the part of one pope could so affect a preceding pope's explicit teaching on a matter as to remove that teaching from the realm of the certain into an area of solid objective doubt. However, there are circumstances in which silence speaks as loudly as words. If, for example, a pope is fully aware that papal teaching of the past is being openly and widely challenged by reputable theologians within the Church,

²¹ "Notes on Moral Theology," *THEOLOGICAL STUDIES* 26 (1965) 645-47.

and that the moral lives of the faithful are being seriously affected thereby, his refusal or failure to intervene effectively could eventually be interpreted only as willingness that the new doctrine be honored as tenable and followed in practice. In the present instance it must be admitted that Paul agreed to submit a theological question to methodical examination, that he reserved to himself final assessment of the data of investigation, and that he promised to make his report "soon." Unquestionably the Pope has publicly committed himself to the eventual formulation of a moral judgment which will confirm or qualify or nullify the teaching of Pius XII, although at the time the promise was made Paul expressed himself as satisfied with the truth of his predecessor's doctrine and declared it binding in conscience pending future clarification on his own part. Should he fail to keep that promise, his silence would seem ultimately equivalent to admitting his inability in conscience any longer to confirm what Pius XII taught and consequently would create a state of doubt to which probabilism would apply. The situation is perhaps unique in theological history.

But how soon is "soon" in present context? As ecclesiastical machinery turns, it is not always a short time by calendar standards. It should be noted that when Paul made his promise he spoke first of the work of the commission which had been appointed to study the problem, and then remarked: "[The question] is under study which, We may say, We hope will soon be concluded with the co-operation of many outstanding experts. We will therefore soon give the conclusions of it" Quite evidently Paul was then confident that within a relatively brief period necessary investigations would be completed and his consequent decision formulated. No less evidently this confidence was misplaced, and no conclusions have yet been reported to the world at large. Yet as recently as last February Paul was still referring to his 1964 address and reminding his audience that he had not as yet found it possible to revoke the restriction which he declared on that occasion.²² It can scarcely be said that the Pope has as yet consented by silence.

Burden of proof must be assumed by those who would challenge the

²² *Osservatore romano* 106 (Feb. 13, 1966). The reference occurred in the course of an address, Feb. 12, 1966, to the participants in a national congress of the Italian Women's Center.

teaching of Pius XII. And since Paul—almost two years after his initial *pro-tempore* confirmation of that teaching—is still by his own admission not persuaded that his predecessor's condemnation of the progestins can be called into question, his failure so far to decide the issue definitively would seem to be a patient concession of time to the dissident party rather than any tacit admission of doubt on his own part. While the work of the commission or its equivalent is allowed to continue, is it not still far too soon to assert that, lacking a second papal confirmation of Pius XII's teaching, we must consider ourselves on the verge of concluding to a state of doubt on Paul's part? Rather it would seem necessary to conclude that the teaching of Pius is still in firm possession at the magisterial level and will remain so unless Paul should now abandon or conclude his investigation of the matter without providing us within reasonable time thereafter with his promised decision.

For the disciples of the magisterium, however, no such singleness of conviction can be affirmed. Many people have already persuaded themselves erroneously that they are at liberty to form their own consciences with respect to the contraceptive use of the progestins. They were perhaps initially inclined toward this conviction by their own homespun arguments; but they have been more recently confirmed in their thinking by what they have heard in rectory parlors and in the confessional and by what they have read under banner headlines in their diocesan papers, where priests, theologians, and even prelates have been quoted as condoning the oral contraceptives or as at least questioning their sinfulness. It has to be admitted that many Catholics are presently practicing this form of contraception in sincere good faith, since they honestly can see no reason compelling them to honor the prohibitionist doctrine propounded by some churchmen and to disregard the more lenient teaching of other personages no less prominent in ecclesiastical circles.

This state of ineffable confusion by no means creates a situation of theological probabilism.²³ Probabilism necessarily says legitimate

²³ It is not Fr. McCormick's contention that the certainty of objectively clear Church teaching on the oral contraceptives can be called into doubt because of confusion engendered by misrepresentation of that teaching. But the following sample of theologizing, imputed to John L. Thomas, S.J., is typical of the failure of some to understand the essence

doubt among recognized theologians in an area where the Church has not taught authoritatively—a state of affairs which does not obtain with respect to the progestins, since we do have authoritative Church teaching in their regard. What we are facing at present among the faithful is an epidemic of invincibly erroneous consciences as regards the oral contraceptives. Many people have been led to believe most firmly in something which is objectively not even probably true, and below the level of supreme authority within the Church we do not have the apparatus necessary to shake their false convictions. What is truly needed if we hope to correct this tragedy of errors is a clear and uncompromising papal statement repudiating all misinterpretation of previous teaching and reasserting the Catholic position in unequivocal terms. Meanwhile more than a few of our misled people, by reason of inculpable error, are most likely innocent subjectively of what remains seriously sinful in the objective order.

Are they, therefore, entitled to absolution when they come to confession? The answer would appear to vary according to differing circumstances. As a very general rule, penitents in genuine good faith make no mention in confession of practices which they mistakenly consider permissible. When this is the case, no special problem exists for the confessor, since he knows nothing of his penitent's actual commitment to a practice of contraception. If, however, use of the oral contraceptives as a personal practice is mentioned by the penitent, presumption would seem to favor a lack of genuine good faith on her part and to betray instead a conscience which is at best doubtful. On the supposition that this state of mind can be ascertained, there will be no justification for absolution unless the penitent is willing to abandon the practice. To be resolved to continue acting with a doubtful conscience or in totally bad faith is to make oneself ineligible for absolution if serious matter is involved. In addition, any attempt to

of our doctrine with regard to probabilism. Fr. Thomas is alleged (*Newsweek*, Feb. 14, 1966, p. 62) to have stated: "I suppose there are in every American diocese responsible clergymen who are allowing conscientious, informed Catholic married couples to use the pill. Some are even writing letters to family doctors giving their permission to prescribe the pill. Yet they are not being reprimanded by their bishops or anyone in Rome. [This] means the question is in a state of existential probabilism. Since solid opinions and set behavior exist on both sides of the question, both sides must be considered probable." It would be immediately evident to any moral theologian that doubts and errors at this level are not what moralists have in mind when they endorse the theory of probabilism.

absolve penitents of this kind would most surely confirm them in their error and entail the additional high risk of scandalizing others of the faithful to whom they might relate the incident.

There remains, however, the perhaps exceptional case in which a penitent for one or another reason reveals in confession that she has been and will be using the oral contraceptives out of a sincere conviction—seemingly confirmed by theologians whose authority she does not doubt—that their use has been condoned at least temporarily by the Church. In other words, the supposition now is that of a penitent who has been acting with an inculpably erroneous conscience and who presumably has not been formally guilty up to now of the sin of contraception. In this situation two questions suggest themselves: (1) May the confessor refrain from any attempt to correct her erroneous conscience? (2) If not, and if all his reasonable efforts fail to shake her good faith, may he absolve her of those other sins of which she has declared herself formally guilty?

It is common knowledge that there are circumstances in which penitents may and even should be left in good faith with regard to their erroneous moral judgments. The general principle, however, is usually expressed in this fashion: Instruct unless you judge that greater harm than good will result from the instruction. In our present case, one foreseeable harm resulting from an attempt to reform an erroneous conscience is the possibility that the penitent will become convinced of the sinfulness of the practice in question and will nonetheless continue it, thus turning material sin into formal. (It is not cynicism to say that the likelihood of effecting such a change of conviction in the course of one confession is normally minimal with this type of penitent when contraception is the issue at stake.) Another danger is that of alienating this penitent from confession and even from the Church. In both cases it is harm to the individual penitent that is being risked, and at least partial compensation for this danger can be found in the possibility that instruction will prove successful to the point of persuading the penitent to abandon contraception.

But if the confessor in these circumstances remains silent on the matter, the harm is considerably greater, especially where the common good is concerned. The penitent is now reconfirmed in her own moral error, since she can add one more name to her list of authorities favor-

ing licitness; and she is that much better equipped to provide serious scandal for others by relating that a certain confessor had no comment to make on her admission of using the pills. This latter danger, viz., that of contributing to the grave scandal of many people, is particularly acute at the present time when one of the favorite topics of conversation at almost any social gathering is birth control. The failure of confessors to insist upon the objective sinfulness of the oral contraceptives has been a major factor in creating the scandalous confusion which already exists. Consequently, reasoned and courteous remonstrance with penitents such as this would appear to be mandatory for the confessor, chiefly because of what is at stake for the common good.

On the supposition that remonstrance fails and that the penitent remains unshaken in her erroneous conviction that the course of action she contemplates is not sinful, it does not follow that she is as yet properly disposed for absolution. It has to be remembered that the sacrament of penance is not only an encounter with Christ; it is also an encounter with His Church through which Christ has chosen to operate in the sacramental forgiveness of sin. The Church's commission from Christ is not only to loose from sin but also on occasion to bind. The right and obligation to loose or to bind presupposes the right and obligation (1) to make authoritative declaration of the objective moral order, and (2) to make the granting of sacramental absolution partially dependent upon a penitent's sincere determination to adhere to that norm, at least in matters of serious import. Otherwise the Church's power in this respect would be illusory and individual conscience would be largely in command.

Since in the administration of the sacrament of penance the Church is personified in the individual priest, it becomes ultimately the confessor's responsibility to function authoritatively in the assessment and declaration of objective morality and in the imposition of objective criteria as obligatory norms of future conduct. Consequently, the confessor must look first to his own conscience and realize that it would be a betrayal of his priestly office to abdicate the Church's role of authority and to allow the personal convictions of penitents to supplant ecclesiastical teaching as the criterion of moral behavior. By no choice of his own, he must speak "as one having authority."

For this reason it would seem to follow that, although erroneous conscience may well have saved a person from subjective sin in the

past, refusal now to reform her conscience in accordance with the norms which her confessor declares to be taught by the Church would now make the same person ineligible for absolution. By way of parallel it might be noted that many parties to irreparably invalid marriages are totally convinced that in the eyes of God they are guilty of no sin. Nonetheless in the eyes of the Church they are unrepentant sinners as long as they continue to live as husband and wife, and the sacraments are consequently denied them. How God in His wisdom and mercy may deal directly with these souls is for us at present a mystery and a matter of hope. But the sacramental channels of grace are necessarily closed to them by the will of Christ as declared by His Church.

The question of scandal is also, of course, again a matter of major concern if absolution is given in these cases. As risky in this regard as is the negative gambit of silence in the face of an admission of contraceptive practice, it would appear to be even more detrimental to the penitent and more of a threat to the common good to absolve after proclaiming the sinfulness of a practice which is going to continue. For a confessor to tell his penitent, "I cannot agree with your belief in this matter, but I must respect your conscience convictions and therefore will give you absolution," is certainly to encourage moral subjectivism and derision of the sacrament both in the individual penitent and in any to whom she might relate the incident.

Another alternative might occasionally prove pastorally effective in cases of this kind. A confessor who realizes that, despite all his protestations to the contrary, his penitent remains firm in her belief that the oral contraceptives are permissible, might have recourse to a moratorium of sorts. If he can persuade the penitent to promise that she will (1) refrain from using the oral contraceptives at least until her next confession, (2) present the problem then to a second confessor, and (3) abide by his decision with respect to the progestins, absolution can be given. This solution offers the advantage of avoiding scandal without danger of alienating the penitent with what might appear to her to be an ill-considered refusal of the sacrament. The sufficiency of her present disposition for absolution is evidenced by the several promises she makes, and there is reasonable cause for hope that she will persevere in her willingness to accept the decision which the second confessor presumably will make against the licitness of the oral contraceptives.