RECENT CANON LAW AND MORAL THEOLOGY SOME IMPORTANT ITEMS

FUNDAMENTAL MORAL

IMPEDIMENTS OF THE HUMAN ACT. PSYCHOPATHOLOGY. Under these headings it will be convenient to refer to a small portion of the vast amount of literature which has appeared recently in the field of psychopathology or psychotherapy. Those who have given even a passing glance to such periodicals as the American publications, *Mental Hygiene* and the *American Journal of Sociology,* will immediately recognize that lay persons and non-Catholics are attempting to do, as part of a fuller program, what a priest often has occasion to do in the confessional. It would, of course, be stupid to think that a priest must be a psychiatrist to be a confessor; on the other hand, it would be silly also to pooh-pooh the whole science of psychotherapy as having nothing good and true in it. Catholic priests who are experts in this modern science may be expected to separate for us the chaff from the wheat; they, and the rest of us also, can detect some very substantial deficiencies in much of the modern output of articles and books.

The Reverend Father Schulte, O.M.Cap., has written a book on what the pastor of souls should know of nervous diseases. In the original it appears under the title, *Was der Seelsorger von nervösen Seelenleiten wissen muss.* It has been translated with the caption, *Nervous Mental Diseases.* (Coldwell, London, 343 pp.) In reviewing this work the Abbé A. Boutinaud, who has a reputation in his own name in this field, calls attention to the author's experience and scientific competence. In an article, titled "Psychologie et direction," [*Rev. Apolog.* N. S. 1 (Feb. 1939) 54-59] Boutinaud calls attention to the increased number of mental and nervous cases in Germany since the Great War and to Father Schulte's opportunity for study and experience. The book is praised especially for the treatment of the impediments to free acts, and applications to moral problems are made from acquired data in psychiatry and psychopathology. The book is very severe on Freudianism, and in this respect differs from the work of Father Bonnar, O.F.M., *The Catholic Doctor* (New York, 1938, 122 pp.) in which Freudian psycho-analysis, at least as a practical method of therapy, is given surprisingly sympathetic treatment. There is, moreover, in Schulte's work a long section on the victims of obsessions, and the important problem (more a European than an American one) of the vocation of psychopathological cases is discussed. Abbé Boutinaud has himself been devoted to this particular problem, and his own views appear in the article.

The appearance of Father Schulte's work in English has given occasion to J. S. Cammack, S.J., to publicize some very needed cautions. His article,

"Confessor and/or Psychotherapist," appeared in the *Clergy Review* [18 (Apr. 1940) 4, 290-303]. Father Cammack takes as his stepping-off place a phrase in the blurb of Schulte's book which promises "vast possibilities in the confessional in cases where medical science alone fails." The writer admits that there are similarities between the work of the box and some of the work of the clinic, but he lays stress also on the dissimilarities. Furthermore, he shows the dangers which may occur through the fixation of a psychopathological penitent on the priest; he calls attention to the amount of time a single penitent of the borderline sort may require; and he thinks that often the case should be treated in the parlor rather than in the confessional. While not fearing new advances in psychotherapy, the writer cautions priests against thinking that they can venture into this field merely upon reading Father Schulte's work; they are not to forget that their ministry in the Sacrament of Penance is a spiritual one.

Father Cammack's own work: *Moral Problems of Mental Defect* (Benziger, 1939) is a valuable contribution to the study of moral responsibility in the mentally abnormal. He discusses the influence of heredity and environment in cases of mental defect, and shows how unscientific are some of the conclusions that have been based on investigations like that made in the famous Jukes case; certain cases which English law styles "moral imbecillity" and "moral defect" are treated, and the author contends that both terms are erroneous and based on a false philosophy.

The author reaches the conclusion that theories of true *moral* insanity are not supported by the scientific evidence. Although the work does not attempt to provide detailed norms for judging the subjective responsibility of the mentally ill—in the present state of our knowledge this could scarcely be expected—yet it clears the ground for such an attempt by outlining the problem and cutting away much of the confusion that exists in modern scientific thought. The book contains a helpful bibliography and a glossary of technical terms.

For a descriptive article on the general manifestations of abnormal cases which are on the borderline between sanity and loss of responsibility one may consult "Psychopathic States," by Henry C. Schumacher, M.D., in the *Homiletic and Pastoral Review,* [40 (June 1940) 9,964-971]. A more thorough treatment of particular details will be found in "Irresistible Impulses: A Question of Moral Psychology," by Professor Rudolf Allers, in the *Ecclesiastical Review,* [100 (Mar. 1939) 3, 208-219]. The author makes several excellent points. The so-called irresistible impulses are conditioned by inward and outward circumstances; what may seem irresistible if judged in its outward circumstances may not be so inwardly. Again, irresistibility is not a fixed quality of an impulse; it varies with circumstances. Again, one must distinguish alleged and objective irresistibility;

the victim is often convinced that his impulse is irresistible; this persuasion is a common one among those outside the Church; they tend to hold that a pathological impulse is *ipso facto* irresistible. Furthermore, impulses are not resisted either because their rush is overpowering, or because the victim is self-convinced that resistance will mean mental anxiety and pain. In the second case, irresistibility is not a quality of the impulse, but accidental to it; it is not the impulse itself, but the tension and craving for relief which are not in fact resisted; this condition occurs frequently in the case of sexual temptations.

Confessors, then, should be aware and penitents should be made aware that many of the so-called irresistible impulses are not so in fact; they can be conquered; the rule of Saint Ignatius, to prepare for the onset during the time of quiet, is advantageous; blame should not be put on the unconscious, for what is called unconscious is often conscious, even if vaguely so; precaution should be taken against the fascination to remain in a situation where previously the impulse has not been resisted; defeatism is to be banished.

If priests can derive benefit from knowing something of the advances of modern psychotherapy, psychotherapists too could be immensely benefitted were they to inquire into Catholic Moral Theology. It is the merit of the *Grundriss der Pastoralmedizin* (Paderborn, 1935, Bonifatius-Druckerei) by A. Niedermeyer, that in a work destined principally for pastors a section is devoted to the instruction of doctors. Only two parts of this work have thus far appeared, the foundation and principles, entitled, *Grundlagen der pastoralmedizinischen Propädeutik,* and the first practical part, *Pastoralpsychiatrie.* The chapters on the health and diseases both of soul and body include all that is necessary for understanding the spiritual state of the sick.

On reading some of the literature which is appearing from non-Catholic sources one is impressed that there is much chaff in the wheat, that occasionally the trite is dressed up with an apparatus of scientific verbiage and that very often fundamental philosophical or religious considerations have been relegated to the background. In reporting cases fictitious names are often used, but the locale and conditions are so described that due secrecy is not kept. There is a note of confidence in certain reports of work done, and universally there is a feeling that more can be accomplished through *trained* workers. A typically optimistic report may be seen in the article, "Common Emotional Problems Encountered in a College Mental-Hygiene Service," [*Mental Hygiene,* 23 (Oct. 1939) 4, 544-557] by Harold D. Palmer, M.D., who has been engaged in psychiatric work at the University of Pennsylvania for seven years. There is no doubt that hundreds of young people have been helped; but if religion has been invoked to any great

extent in the achieving of the purposes envisaged it does not appear emphatically in the article; yet from the kind of work reported moral considerations are often involved. The article provokes the question if psychiatry is not becoming a substitute for religion or the confessional among many non-Catholics.

That the leaders of the science are conscious that many problems remain to be solved will be clear from the excellent exposé of the "Errors and Problems in Psychiatry," by Abraham Myerson, M.D. [*Mental Hygiene,* 24 (Jan. 1940) 1, 17-35] It is surprising to read in this essay, in view of the sureness found in others, that "we must accept the fact that as yet the genesis of the neuroses is not established and that scientific research has hardly begun in this field." Because of the pressure which is being exerted throughout the nation for the extension of sterilization, it is regrettable that the writer is not more emphatic in saying that as advance is made in therapeutics there should be a corresponding advance made in eugenics, "a eugenics, scientific, humane, non-fanatical, and with a chance of being accepted into the mores and legal structure of the American community."

SOCIOLOGY. DETERMINISM. There is, of course, a whole school, and a not uninfluential one, which rejects freedom of the will. For this school all cases, whether they be of insanity or criminality, belong to the psychiatrist's clinic. The best known writer in recent times to forward an extreme biological determinism is Professor Earnest M. Hooton of Harvard University. In *Crime and the Man,* (Harvard Univ. Press, xvi, 403), it is assumed that with the inheriting of the physical organism the entire mental, volitional and emotional qualities of the character are inherited and that all conduct, social behavior and cultural adjustment are completely determined. The book is a series of conclusions from thousands of experiments, which are to appear in three following volumes. It is obvious that Professor Hooton is good at anthropometric measurements, but that his effort at philosophical conclusion is vain.

Even those who do not subscribe to philosophic determinism seem to tend to classify certain cases as psychiatric when they are moral. In "Some Comments on the Psychopathology of Drug Addiction," [*Mental Hygiene,* 23 (Oct. 1939) 4, 567-582] Robert H. Felix, M.D., writes, "Thus we visualize addicts as individuals who, through drugs, are striving for the same goal as all mankind. Their methods of attainment are not socially acceptable . . . they are, however, psychiatric cases and not vicious felons. To consider them as vicious or fundamentally antisocial is to do them an injustice." One may remark in passing on the terms "not socially acceptable" and "antisocial." Without offering comment on what basic norm of morality the Doctor may hold, it seems that with the great number of writers in

this field he tends to hold that what is socially harmonizable is right and good, and what is not socially harmful is not wrong and bad. The norm comes dangerously near calling an action right because everyone is doing it.

Even more than a touch of this humanitarian and pragmatic view of the relation of the individual to society is to be found in one of the deepest thinkers concerning law and right outside the Church. This is Dean Pound, the former Dean of Harvard Law School. In the *Fordham Law Review*, [9 (May 1940) 2, 196-232] there is an extended discussion of the philosophy of law of Dean Pound by Karl Kreilkamp, who is the author of *Metaphysical Foundations of Thomistic Jurisprudence*. The article, entitled "Dean Pound and the End of Law," quotes extensively from the writings of Dean Pound, sustaining the thesis that "there are parts of his views, and those not the least important, which are identical with corresponding parts of the Scholastic view. At the same time we find crucial omissions." Since the Dean holds that ultimately the end of law is the progressive unfolding of the human powers, he can go a long way against the biological determinists; but in the end he hands over the law to a new absolute, society; law has one moral measure, the will of society.

More data than has been previously gathered on the relation between intelligence and crime are to be found in the book of Simon H. Tulchin, *Intelligence and Crime: A Study of Penitentiary and Reformatory Offenders*, (University of Chicago Press, 166 pp.) 10,000 inmates were examined, and all possible details concerning their intelligence with relation to nativity, race, recidivism, age, height, weight, education, environment, marital status, employment and religion have been gathered. For non-criminal tables the author used the Army statistics. His conclusion is that feeblemindedness is no more common in the criminal than in the non-criminal classes, and that feeblemindedness cannot be said to be directly related to crime. In the tests it was found that those committed for fraud were the most intelligent; sexual offenders rated among the most stupid.

If determinism, either of the extreme or more moderate sort, is still too dominant a philosophy in the psychotherapeutical sciences, the special sort of determinism which stems from Freud is still widely appreciated. The entire November issue of the *American Journal of Sociology*, 45 (Nov. 1939), is devoted to an appraisal of his "permanent contribution to the understanding of human behavior." The most remarkable feature about this issue is its omission of any article on the fundamental philosophical principles of Freud. In a sense Freudianism was not welcomed among the sociologists, on the ground that it did not allow sufficiently for the influence of society and the environment on the conduct of the individual. Hence, in the articles mentioned, a certain coldness towards Freud is here and there noticeable, though many plea for the greater extension of his

principles in the field of sociology. The reading of the issue will prove that Freudianism is by no means dead; on the contrary, the issue itself will give, it seems, an impetus to its greater extension in the field of sociology as well as in that of psychiatry. The first article, by Havelock Ellis, rejoices, as one might expect, in the fact that Freud brought about a changed attitude towards sex, not initiating, but helping on a development movement—in which Ellis himself, of course, had his part. It is refreshing to find in the issue an adverse criticism by Salo Baron of Freud's *Moses and Monotheism* as history; A. L. Kroeber also notes that Freud's incursions into the origin and development of religion are weak historically, but valuable psychologically! Thus, both criticisms bear on Freud's applications; they fail to call to account his fundamental errors and deficiencies.

Why Freud and the Determinists have been received by so many non-Catholics in the fields of psychiatry and sociology is clearly explained in the excellent book of the Reverend Simon Deploige, *The Conflict Between Ethics and Sociology* (Herder, pp. 386). The author shows that in reaction to the exaltation of the individual and of individual liberty which is the mark of Rousseau, the Encyclopedists and the French Revolution, Comte set up the supremacy of society and the complete dependence of the individual. At the same time in Europe Hegel's metaphysical totalitarian theories and Marx's economic totalitarian theories were completing what Comte was doing through his inductive and positivistic methods. From these three, modern Communism, Racism, and Fascism stem. The result of the whole movement was that ethics and morality have been defined in terms of society, social utility and social environment, and hence right, wrong, duty, and law have become dominated by positivistic, pragmatic and humanitarian elements. Modern sociology has emphasized that man is a product of culture and environment, and as these are variable and progressive, there is no place for the immutable dicta of the natural law and of religion. The author cautions us to watch closely the dangerous way in which religion and ethics have been subordinated by such writers as Comte, Durkheim and Levy-Bruhl, whose works are accepted among the classics of the science of sociology. He urges the spread of Catholic works in this branch which is so popular in modern times.

To meet our needs Doctor William Schwer has contributed an excellent manual for Catholic sociologists in his *Catholic Social Theory* (Herder, 1940, xv, 360). The outstanding merits of this treatise are its logical and clear development; it also has brief historical sketches of sociological viewpoints, both erroneous and true; especially commendable are the chapters on the due place of the natural law in social theories and on the definition and aims of the state. In the chapter on the family Professor Schwer does well to emphasize the old concept of the *household* (*familia*), but he does

not point out with sufficient emphasis the practical effects which this concept should have on social theories. Merely as advice for a second edition, it may be said that this book would have been improved if, after the splendid historical and analytical developments, the author had summed up his conclusions in rigidly logical and brief definitions of such concepts as sociology, family, state, natural law, etc.

FUNDAMENTAL ETHICAL CONCEPTS. There is no doubt that the task of impregnating such modern sciences as sociology, psychotherapy, ethics and other disciplines related to human conduct with solidly certain principles of moral philosophy and moral theology, derived both from reason and revelation, is a tremendously difficult apostolate, and it belongs essentially to that work which the late Pontiff, Pius XI, called Catholic Action. Not only is there little common ground of thought between the modern thinkers and ourselves, because of their want of training in any systematic philosophy and their neglect of revelation, but even a common terminology is lacking. They tend to call the language of the *philosophia perennis* jargon, while we have been too neglectful of phrasing our truths in their ways, or at least in ways intelligible to them. The remarks of the Reverend James McLaughlin, S.T.L., in his article "Ethical Values and the Modern Mind," [*Irish Ecclesiastical Record,* 54 (Oct. 1939) 4, 392-404] are valuable in outlining the confused situation of the modern mind and the language which covers this confusion.

The moderns talk much of *Value,* which is the Scholastic *Good,* though it is not recognized as such. Confusion about *Value* and *Good* is prevalent because, a) Descartes' denial of the identity of being (actuality) and good (value) is widely admitted; b) the prejudice against an imposed authority from without, either through reason or revelation, makes any definition of value most subjective; c) the skepticism of Locke and Kant about the objectivity of the moral judgment is accepted without investigation; Kant's blind devotion to the duty imposed by the practical reason will not avail for the many as it did in the case of a Thomas Arnold; d) the recent stress on relativity in the physical sciences, along with the attempted tinkering of some scientists with ethical and religious problems (Eddington, Compton) is accepted in the way of confirming ethical relativity; e) the popularity of the philosophy of evolution which assumes the instability and changeableness of all systems has been applied to ethics and religion; f) Behaviorism, Determinism and much psychoanalysis has emphasized subjectivism; g) the popular sociological views, deriving through Durkheim and Levy-Bruhl from Comte are positivistic; ethics is a study of the evolution of the mores, and *Value* is ultimately determined by group consciousness and social reaction.

For the above reasons ethical relativity has been accepted very generally except by a few such as Urban in America and the small group of the Oxford Moralists, such as Moore, Taylor, and others. The relativists emphasize one proof for their stand, namely, that the diversity of moral custom which is discoverable through the study of history and anthropology, proves that there is no absolute standard of morals. This school takes no account of the works of such Catholic writers as Monsignor Leroy and Father William Schmidt, S.V.D., nor does it understand our distinction between the primary and secondary precepts of the natural law.

Again, while we hold that ethical predication rests primarily on the action, and we attribute goodness or badness to the agent because of the action, the modern schools tend to predicate good or bad of the agent. Our thinking is clearer because we hold to a norm (in their terms, this is a Value Principle) and to a law (in their terms, a Deontological Principle) and to an end (a Teleological Principle). We consider all these objectively; they do not, because some cling to an individualistic pragmatism, or more commonly now, to social utilitarianism which is only apparently less easy to defend.

These schools sheer away from metaphysical considerations. It is probable that the followers of positivistic ethics would not even read a metaphysical essay pertaining to their own science; it is even doubtful if they could follow such a discourse intelligently. There is, for instance, an excellent study of the "Roots of Obligation," by Walter Farrell, O.P., in the *Thomist* [1 (Apr. 1939) 1, 15-30]. It would be interesting to hear what a modern non-Catholic sociologist would make out of this; it would also be interesting to find out what we would make out of it were it translated into their terms. For the essay is an analysis of the Thomistic principles concerning obligation. It proposes the three integrating elements of obligation, the ordering of a means to an end, the intimation to make a decision, and the effective motion which results in the action. Further analysis considers which element plays the important part in causing the necessity or obligation of the action. Necessity in a free agent comes only from the efficient or final cause of the agent; the effect of the efficient cause is to make him free; that of the final cause is to bind him morally. The writer thus concludes that God as the ultimate end of man is the root of moral obligation. Hence the compulsion to strive according to an order to an end rests on the cause of all ordering; this is the Divine intellect which intimates, hence prescribes, to the human intellect the morally necessary order. Of the three elements of obligation, then, ordering, intimation and effective motion, obligation must be traced immediately and substantially to ordering; fundamentally and radically it is traced to motion as an effective relation.

PARTICULAR OBLIGATIONS

PROFESSIONAL SECRET. The obligation of a physician to respect his client's confidential disclosures, especially in cases of abortion and syphilis, is touched on editorially in the *Journal of the American Medical Association* [114 (Jan. 27, 1940) 4, 339]. The writer refers to the former view that the obligation of the secret was absolute; lately, it is said that doctors may reveal criminal abortions and prophylaxis against syphilis; they must reveal the names of syphilitics who have infected others to the health department, and may testify in court against them. This seems to the writer to be a justifiable stand, since the first aim of the physician is the suppression of disease; hence, the traditional attitude of secrecy must be abandoned for the good of the public health.

Courts in common law countries have uniformly recognized the privilege that a lawyer's client has, not to have his confidential communications to the lawyer revealed by the latter. The lawyer cannot testify in court on such matters without his client's permission. The relation of physician and patient would seem to call for a similar privilege, but at common law this relationship did not receive like protection. By statute, however, some states protect these secrets, as they do communications between priest and penitent. There would be no opposition from any quarter probably to the proposition that doctors have a special obligation not to reveal their clients' secrets, and that this obligation of theirs should in general be respected even in the courts. But to determine the limits of the privilege when there is an apparent conflict between the right of the individual to his secret and the right of society to protect itself and the common good, is a very different matter. Legislation on such points is naturally colored by the philosophy of state, and the philosophy of law, which is current. Just at present the trend is towards enlarging the rights of government where the public health is concerned. And when our laws are made by men who do not recognize the natural law, or conceive all "rights" to be state-created, there is grave danger that the balance between individual rights and the rights of society will be tipped in the wrong direction.

Reverend Walter McGuinn, S.J., director of the Boston College School of Social Work, has made a study of the professional secret in social service work. (*Le Secret Professionel dans le Service Sociale au point de vue de la loi naturelle et de la théologie morale.* Paris 1937). The fundamental principles of the natural law and the common teaching of theologians are here set forth and applied to the new problems which the great increase in social service work has occasioned. The essay is valuable because while aiming at a proper balance between individual and public rights, the author bases his conclusions on solid principles of natural law and Divine authority—

so that the true origin of the rights of the individual and the true origin of the rights of the state are not lost sight of. It is only in the light of such principles that justice can be served in the apparent conflict of rights.

CONSERVATION OF BODILY HEALTH. CRYMOTHERAPY. In view of the premature publicity which was given last winter to a method of inhibiting cancer or reducing its pain, the following notices from the *Journal of the American Medical Association* will enable confessors to judge of the morality of recommending the "freezing method" or *crymotherapy*. In his article, "Experimental Hibernation of Metastatic Growths," [*Journ. A.M.A.* 114 (June 8, 1940) 23, 2293-2298) Arkell M. Vaughn, M.D., reports his observations on six hopeless cases in which all other curative means had failed. Doctor Vaughn finds that "the procedure is precarious . . . death may occur at any moment . . . the expenses are high because very expert attendance is needed." Four of the six patients had breast cancers; the freezing lasted from nine to fifty-four hours; the lowest temperature recorded in any case was 83.2; the patients were between the ages of twenty-six and fifty-two. Four of the six died between the first and twenty-first day after crymotherapy; in the other two pain was relieved for two or three months, and this was the only beneficial result. The Doctor concludes: "In my opinion this procedure is hazardous and is not justifiable in the treatment of hopeless metastatic carcinoma."

In the issue of the week following there is editorial comment on another set of crymotherapeutic experiments [*Journ. A.M.A.* 114 (June 15, 1940) 24, 2391]. "In general these results seem to promise little or nothing for this method as a general treatment for carcinoma. Nevertheless, the therapeutic use of cold may be considerable. Such biological investigations as have been recorded have added greatly to scientific knowledge of the effects of cold on living tissue."

SEX AND PUBLIC HEALTH. It is noticeable that in the non-Catholic periodicals it is only rarely or incidentally that anything is said of preserving public health through a sounder moral health of the community or nation. The plea which Bascom Johnson makes for the necessity of religious and moral education through Church, school and home is welcome. His article, "The Prostitution Racket: Related Health Problems and a Suggested Remedy," [*Journ. of Social Hygiene*, 25 (May 1939) 5, 209-220] claims that the only real cure of the evil lies in a united public opinion of a healthy sort which brings pressure on the officers of the law to enforce the statutes. He shows that the licensed system of prostitution of France, Japan and other countries has failed and that in this country the evil is most malignant in the middle-man who is often able to protect his racket through the bribery of corrupt officials.

But while there are writers who deplore the present situation for one or another argument which rarely goes to the root of the trouble, there are doctrinaires who are urging on the worst instincts of the human race. Bertrand Russell's *Marriage and Morals* contends for the "new" morality, which offers a sex code completely liberated from the *perverting* influence of Christian asceticism. Comparing the manners of ancient Greece and Rome with our own, the writer finds that since there were in pagan times few inhibitions in the matter of sex, the pagan sex life was higher and purer than that of Christians. Russell deplores the change in sex morality which Christianity has wrought. On the other hand J. McCabe in his *The Social Record of Christianity* concludes from a study of classical times that the pagan and Christian attitudes towards sex do not greatly differ. Such authors are merely announcing publicly the corollary of the ethical evolutionists to whom human *mores* are nothing but animal instincts raised to the stature of a tabu.

The argument for public health in matters related to sex and sexual crimes has been used more widely in our day, it seems, than formerly. In the articles which have appeared occasionally in the *Ecclesiastical Review* since 1938, those who have contended that the state may postpone or prohibit marriage because one of the parties is infected with a social disease have based their arguments on public health. The Reverend Francis J. Connell, C.SS.R., has repeatedly called attention to the fact that the Church alone has the power of establishing impediments (even merely prohibitory ones) to the marriages of baptized persons. It is not denied, of course, that the state has greater power over the marriages of the non-baptized, and could perhaps prohibit the marriages of those who are diseased. Even in the case of baptized persons one seldom hears any objection to certain laws which in some sense establish "impediments" to marriage—for instance, the requirement of a marriage license, or the requirement that the parties must allow a certain number of days to elapse after getting the license before they marry. It is not always easy to say at just what point a regulation by the civil authority amounts to an invasion of the Church's exclusive jurisdiction over the marriages of Christians. Father Connell argues strongly that the laws requiring a medical certificate of freedom from disease are such an invasion.

A solution which would not be contrary to Catholic principles and would meet the practical necessities of the case adequately has been suggested in Massachusetts. The proposed legislation would oblige both parties to appear for an official examination; if one of the parties is infected, this is reported to the other, but the state would not further interfere with the freedom of the pair.

STERILIZATION. DECREE OF THE HOLY OFFICE, FEBRUARY 22, 1940. Most of the Catholic periodicals have referred to the decree of the Holy Office concerning sterilization and commented on it. The decree forbids the direct sterilization of either man or woman, permanent or temporary. The notes on this decree which appeared in *Periodica* [29 (Feb. 1940) 149 b-h] are valuable inasmuch as the writer (anonymous) has added the printed text of the pertinent sections of the *Casti Connubii* of Pius XI and the decree of the Holy Office of March 21, 1931, both of which documents reprobate the eugenic theory and its remedies for improving the human race.

The comments in *Periodica* note that sterilization is not castration; as a process it retains in their integrity the germinative glands, preventing generation, but not carnal congress. The disputed question whether total and irremediable double vasectomy constitutes impotency in the sense of Canon 1068 is not touched upon in the decree. By direct sterilization is meant an act which by its nature or by intention is immediately effective. An act is direct sterilization by its very nature when sterilization is the only immediate effect; an act is direct sterilization through the intention of the agent when the act has several effects but is definitely intended for its sterilizing effect as a means to an end. Indirect sterilization is not touched upon in the decree; it is to be judged according to the general principles which govern any therapeutic treatment which has multiple effects.

The motives which have been offered by modern proponents of eugenics are therapeutic, eugenic, social, psychic; direct sterilization for any of these motives is prohibited. The methods of sterilizing human beings are surgical, chemical, radioactive; direct sterilization through any of these processes is prohibited. Direct sterilization may be undertaken by public authority or through private initiative, and either of these may be done with or without the consent of the subject. The decree makes no distinction in forbidding direct sterilization. But the present decree quotes the decree of 1931, and the decree of 1931 refers to the *Casti Connubii;* in the *Casti Connubii* it is known that the Pontiff purposely abstained from touching on the question whether or not the state has the power of punishing grave offenses through the use of direct sterilization. Hence, it is *probable* that this question is not settled by the present decree.

The decree does not consider the sterilization of animals, for it uses *vir, mulier,* and not *mas, femina.* It prohibits the direct sterilization of a human being at any age, infancy, youth, adult. Finally, it has to do with the sterilization of persons, and not with the sterilization of acts of generation through mechanical or chemical means.

There is an explicit phrase in the decree which states that direct steriliza-

tion is prohibited by the natural law. Hence there is question of more than merely disciplinary guidance here or of a merely positive law. There is, therefore, no longer place for those who suggested that former decrees concerning this matter were declarations of positive law, and that in certain cases of grave import sterilization could be allowed. Inasmuch as the decree of March 21, 1931 was concerned with eugenic sterilization, the present decree has a wider application, for its prohibits any direct sterilization.

While the stand of the Church is clear upon this matter, one finds confusion and doubt about it in some quarters, and in others, especially among certain eugenists and sociologists, direct approval of sterilization for eugenic purposes or for the prevention of crime. As an example of a somewhat timorous approval of sterilization one may consult the *Question Box* in the *Layman's Magazine* (Episcopal) (August, 1940). "Is there any religious objection to sterilization of persons who are mentally deficient?" Response: "I cannot see where any religious issue is involved. It is a matter of social regulation. For the protection of society we place some people in institutions and restrict their freedom. Sterilization would be simply a further social restriction which might be advisable. Our knowledge of the laws of heredity is far from complete and there would need to be stout safeguards in any statute which might be passed, but I do not believe it would need to violate religious principles."

An open plea for sterilization in the name of eugenics is to be found in the book of Henry Pratt Fairchild, *People: The Quantity and Quality of Population,* (Henry Holt, 1939, pp. 306). The author, organizer and first president of the Population Society of America and for some years president of the American Eugenic Society, begins his book with the ominous (to us) words: "If the birth rate of the United States should continue to decline as it has during most of the present century, by about the year 1975 there would be no babies born at all." After subscribing to the theory of evolution the writer does not surprise us by the statement on page 252 that, "Once society accepted the idea that man is really an animal, it was a simple process to transfer this principle (of eugenics) to the human field. The plant and animal breeder gets his results by selective mating. Let us do the same with mankind."

Such breeding is the task of positive eugenics; negative eugenics is concerned with the elimination of the undesirable . . . "no particular argument is required to prove that society would do well to get rid of its idiots, its insane and diseased persons, and its criminals. Insofar as the causes of these defects lie in heredity their treatment falls within the scope of eugenics." The author is cavalierly scant in his treatment of heredity,

but he would keep undesirable pairs apart—not through social segregation, because it is difficult, and "it is a pity to subject such persons to complete confinement during a large part of their lifetimes simply as a eugenic precaution, provided some other effective means is available. And there is such a means—physiological sterilization. . . . About thirty states in the union now have sterilization laws of some sort, though they differ widely in their application of them for eugenic purposes." (256, 258, 259) The eugenists will presumably undertake the humanly impossible task of mating the right pairs, and will supply them with the knowledge of the methods of birth control for the improving of the population. Birth control is the topic of the author's paean on pages 145-151: "the medical profession, which in the beginning was lukewarm toward the new movement, has greatly modified its attitude. . . . Essentially the same thing is true of the Church. The original attitude of religious denominations toward birth control was an almost universal one of opposition, but little by little the leadership of certain outspoken clergymen has brought about a reversal. Today the Roman Catholic Church is the only important religious body in western countries that offers organized opposition to the movement . . . it is reasonable to anticipate that within a very few years birth control will have established itself as one of those achievements of science and rational public sentiment upon which the human race laboriously builds its progress toward a more satisfactory individual life and a more orderly and stable social organization."

THE VORONOFF OPERATION. The Reverend P. O'Neil, D.C.L., has a discussion of the morality of the Voronoff operation, which is the grafting of a part of the testicle of a man or a monkey on the defective testicle of a patient, in a comment on "The Voronoff Operation," in the *Irish Ecclesiastical Record* [53 (Apr. 1939) 4, 415-418]. He notes that when the donor is human, forbidden mutilation occurs since a part of the body with an organic function is cut away. He answers the argument made from a parity with blood transfusion by showing that transfusion is not mutilation; it is followed by restoration and the health of the donor is not permanently impaired, and only slightly and temporarily injured through modern precautionary procedure. When the donor is a monkey, the same principles and arguments cannot be applied. The author denies that there is any justifying argument in the alleged parity with the use of animal flesh for food or of animal serums for immunization. Against permission for the operation the argument is not drawn from any mutilation of the monkey, but is built up on considerations of the dignity of the human nature of the patient. For the transplanted organ continues to function in an unnatural or non-human manner; secondly, it effects notable phyical

and psychological changes in the patient. These arguments lead Father O'Neil to conclude that the operation is not allowed, either on patients who are sick, or upon children with the eugenic purpose of producing a more virile and prolific race. It is to be noticed that the arguments are predominantly medical and that they suppose facts; doubtless further medical statistics will be supplied concerning the functioning of transplanted organs and their effect on the patient.

Several years ago in Italy the courts had to deal with a case in which a surgeon had transplanted a testicle from a young man to an older one in order to restore impaired virility. The surgeon was eventually acquitted of any crime, but the affair occasioned a discussion among moralists whether such a transplanting would ever be permissible. Some moralists would not permit it in any circumstances. Others were willing to admit the probability of the doctrine that where the function was not destroyed in the donor, only one testicle being removed, the operation did not amount to an intrinsically evil mutilation, and might be justified for sufficient reason.

ABORTIONS. STATISTICS. The appalling increase in abortions throughout the world is brought home to our attention in disparate notices which have recently appeared. From Finland the correspondent of the *Journal of the American Medical Association*, Doctor Aulis Apaialati, supplies pertinent data, [*Journ. A.M.A.* 113 (November 19, 1939) 21, 1893]. In 1901 out of a thousand cases of child-bearing women there were 1.9 abortions. In 1937 these had increased more than six times; there were 12.5 abortions out of a thousand cases. The fall in the birth-rate is indicated as follows: In 1901 there were 80.2 births to every thousand child-bearing women; in 1935 there were only 27 to the same number.

The news from the French correspondent is no better. Reporting in early 1940 [*Journ. A.M.A.* 114 (January 27, 1940) 4, 339] he writes that in fifty years since 1886 the number of annual births has fallen away from 907,000 to 630,000 in 1936 and to 610,000 births in 1938, in which year the deaths numbered 650,000. After the Great War of 1914 legislation was enacted to remedy the situation. In the law of 1923 contraceptive propaganda was barred; abortion cases were taken out of the hands of the juries (apparently because emotion rather than principle ruled them); full pardon was granted to women who revealed the name of the criminal abortionist; the physician's right to professional secrecy concerning those who sought criminal abortion was revoked. The effect of the law in remedying the evil may be questioned, since the writer notes that in French medical circles it is admitted, though no definite statistics are available, that abortions in general are more numerous than births, and among the married, abortions are five times more numerous than births;

the third child is the victim. The law of 1923 became so ineffective as almost to have passed into desuetude; its enactments were repeated in a law of 1939, except the clause concerning the pardon of informing women; a great many cases of false denunciation occasioned the omission of this section.

The situation in England is somewhat more definitely known (the difficulty of establishing statistics on criminal abortion is obvious) because of the inquiry which the Ministry of Health instituted; a Commission was appointed "to inquire into the prevalence of abortion," where abortion was understood of any expulsion of a fetus up to the twenty-eighth week of pregnancy. An excellent comment on this report is to be found in the article of the Reverend John McCarthy, D.C.L., "A Report on Abortion," [*Irish Ecclesiastical Record*, 55 (Apr. 1940) 4, 337-354]. The Commission found that births in England and Wales during the last five years averaged 600,000; abortions numbered 112,000; of these, therapeutic abortions (legal in England since 1929) are few; about forty per cent are criminal abortions; the rest are spontaneous abortions. The Commission remarks that its statistics on criminal abortions are an understatement; it is impossible to know how many of the "spontaneous" abortions were criminally procured or maliciously provoked. The law of 1929 made therapeutic abortion allowable if the *life* of the mother were endangered; in the Bourne case of 1938 the decision suggested the extension of this law to include the *health* of the mother. The reasons for abortions are to be found in poverty, undernourishment, bad housing, working mothers, social stigma, fear of delivery, and downright selfishness. In Soviet Russia between 1920 and 1936 social and economic grounds were admitted in justification of legal abortion. The Commission does not take a definite stand against such reasons. While it notes that professional abortionists are numerous, that abortifacient drugs are too easily obtained, and that the sale of contraceptives is increasing, the Commission cannot accept the view that the use of contraceptives is always wrong; it is against abortion "as essentially an undesirable operation which only exceptional circumstances can justify." The Commission seems to try to be amorally conservative, which makes it immorally lax. In general the Commission favors the modification of the law which followed the Bourne case, but it does not take any stand which would follow from Catholic principles; a minority report is included which goes against right principles, advising the spread of contraceptives for the prevention of abortion.

In the United States the situation has been described recently by Doctor Frederick W. Rice in his article, "A Catholic Physician's Views on Family

Limitation," [*Ecclesiastical Review*, 103 (July 1940) 1, 60-67]. Doctor Rice notes that "the number of pregnancies interfered with by the performance of abortion is almost unbelievable." The estimates for this country alone "vary between 500,000 and 1,500,000 annually—possibly one abortion for every birth, if the truth were known. We must expect continued increase in the abortion rate with the widespread publicity given to promoting contraceptives. The generally accepted assurances of safety are without basis, and when the contraceptives fail, recourse is had to abortion. Studies by the Milbank Foundation of 6654 pregnancies in 1500 women in a midwestern city have shown that illegal abortion was ten times as frequent in the case of women who had been using contraceptives."

There is an obvious connection between the use of contraceptives and abortion, for abortion is often the plank after shipwreck. An article appeared in *Fortune* (February, 1938, p. 45 ff.) entitled "The Accident of Birth." Along with a mention of the attitude of the Catholic Church on birth control, the ethical problems of manufacturers in the half-bootleg business of contraceptives, and some notice of past and needed legislation in the matter, the writer reports upon statistics which are pertinent to the topic of this section. "The birth-control industry is a $250,000,000-a-year business. . . . Of this big sum, spent almost entirely in an effort to prevent children, only $38,000,000 is spent upon male devices. . . . All the appalling balance of over $200,000,000 is spent by women. And these basic figures are reflected in the list of products." The author uses statistics drawn from more than 9,000 cases to show that contraceptives did not succeed except in one type, in forty-five or more per cent of the cases. The usage of the ordinary products put on the market, often with promises of certainty by the makers, were shown to fail in about fifty cases out of a hundred. It is not known how many of those who have unsuccessfully used contraceptives have recourse to the abortionist. It may be noticed that the *Journal of the American Medical Association* frequently calls attention editorially to the dangerous infections which may follow the use of particular abortifacient and contraceptive pastes. The *Journal* is concerned with medical rather than moral aspects of the use of such pastes, jellies, and salves.

DIVORCE. It is not surprising, then, that along with the increase of the sexual crimes we have mentioned there is an appalling increase in the divorce rate in our country. A study made by Samuel A. Stouffer and Lyle M. Spencer is reported in the *American Journal of Sociology* [44 (Jan. 1939) 4, 551-554] under the title, "Recent Increases in Marriage and Divorce." Comparing the years of 1932 and 1937 the statistics show that in 1937 there were 45,000 more marriages than in 1932; but there

were also 90,000 more divorces. In 1937 we had 1,426,000 marriages and 250,000 divorces.

The Living Church (Episcopalian) reports (August 21, 1940) a survey conducted in relation to the Canon on Divorce proposed for discussion in the General Convention in Kansas, October, 1940. The present provision of the Episcopalian Church is that remarriage may take place only after a divorce for adultery; of some 350 who answered the questionnaire, thirty-two per cent (32%) of the clergy and thirty-eight per cent (38%) of the laity favor the continuance of the present law. Nineteen (19) and thirteen per cent (13%) respectively would eliminate even this relaxation. But to the question: Do you favor permission for remarriage after divorce for any cause, when approved by Church authority? forty-nine per cent (49%) both of the clergy and laity answered affirmatively. In the editorial comment one finds something more heartening. "We can only hope and pray that any change in legislation that may be made will be guided by a sincere effort to follow the mind of Christ, and the tradition of the Holy Catholic Church, rather than to accommodate the Church's practice to that of the world and to lower the Christian moral standard to the level of the divorce court." At the meeting in October the General Convention decided to postpone the final decision on the new canon until 1943; even though liberalization has been mooted some fifteen years, it was felt that the issue should be tabled.

ARTIFICIAL IMPREGNATION. In medical and biological circles in recent years practices have been carried on which have provoked questions both in moral theology and dogma. Some of these practices are reported publicly, such as artificial insemination or fecundation or impregnation; and rumors are heard here and there concerning other practices analogous to such fecundation. Something is here said on what is known as certain as well as what is known only through hearsay.

There is a report of cases of artificial impregnation in the *Journal of the American Medical Association* [*Journ. A.M.A.* 114 (June 1, 1940) 22, 2183-2187] by William H. Cary, M.D., under the title, "Experience with Artificial Impregnation in Treating Sterility." After brief references to work done before 1907 and with fuller references to the research and methods after this time, Doctor Cary alludes to certain legal aspects of artificial insemination. He remarks that as yet there are no specific laws which are concerned with this method of semi-adoption; for his own legal protection the physician who performs the operation should see that the husband and wife sign documents clearing the physician of any responsibility for the results, whether these be negative (failure to have a child) or positive (any hereditary features of the offspring, physical or other).

It is noticeable that no moral considerations are introduced, and in judging the cases submitted, it is clear that no moral considerations were taken into account. For when Doctor Cary speaks of the responsibility in choosing the donor of the seed—a selection to be made out of general considerations of race and heredity—it is evident that in several of the cases reported the husband of the sterile marriage was not the donor.

The technic of the operation of artificial insemination is described, again, as will be seen, without advertence to moral aspects of this process, and the results of thirty-five (35) cases are reported. In seventeen (17) of these cases the husband was the sterile party; hence, the donor was a third party. Ten (10) of these artificial impregnations resulted in a successful pregnancy. In the eighteen (18) remaining cases the donor was the husband, and four (4) of them resulted in successful pregnancies.

On the morality of artificial fecundation the most recent thorough discussion will be found in the article, "The Morality of Artificial Fecundation," [*Ecclesiastical Review,* 101 (Aug. 1939) 2, 109-119] by Gerald Kelly, S.J. The process is one in which a woman is fertilized by some substitute for natural intercourse. Medically it has been used in cases of organic malformations, of functional disorders, or acidic vaginal conditions. It was Eschbach who first applied the ancient principles of moral theology to the medical practice which was beginning to be extended before the turn of the last century. In medical practice masturbation was the means adopted for obtaining the semen of the donor. Since this was not allowable, Eschbach, and with him, Lehmkuhl, declared against the process as forbidden. A different view was first taken by Palmieri and Berardi; since, in their view, the obtaining of the semen was carried out precisely for the purpose of fecundating a wife, it was thought that this was allowable, and could not be technically called masturbation. A decree of the Holy Office in 1897 declared that artificial impregnation was not allowed; whereupon, Palmieri and Berardi retracted. There was some argument on the meaning and implications of the decree, but all agreed that it declared artificial fecundation illicit insofar as it involved masturbatory processes; all agreed, though less emphatically, that it also forbade obtaining the semen by interrupted or condomistic intercourse.

Barring onanism and masturbation, moral theologians have attempted to determine if other methods of artificial fecundation might be licit. Through the exchange and refinement of opinion during forty years, two methods are now looked upon by practically all theologians as either certainly or probably licit, if defective organic or physiological conditions obtain. The first method consists in the insertion of some kind of instrument into the vagina to aid the passage of the semen to the womb. In the second method, the male deposits the semen in the vagina as best he can; then a doctor,

by means of a syringe, forces the semen further into the womb. Evidently, neither of these methods is artificial insemination in the strict sense, as they are merely aids to natural intercourse, not a substitute for it.

The third method is genuinely artificial. The semen is obtained from the male by some means which does not provoke venereal excitement, such as massage or the tapping of the epididymis. Concerning this method in particular Father Kelly puts and answers several questions. First, is it permissible between husband and wife? Six (6) authors hold that it is not allowed; seven (7) judge it to be at least probably licit. The first argument for the negative is that the right to propagate is restricted to the *normal* means of generation. Against this opinion, Father Kelly argues that though the mutual rights and obligations of the married couple must be so restricted, there is no proof that, if both wish it, they have not the right to propagate by any means which is not in itself sinful. Merkelbach, giving the second argument for the negative, holds that the means is morally wrong, an unnatural act in the same way as pollution and onanism. This Father Kelly denies. He considers that this act, though not normal, is not unnatural in the theological sense, for it involves no unnatural use of the venereal processes. The third argument for the negative, given by Ubach, is an attempted *reductio ad absurdum*; for he says that if the process is legitimate, then even normal persons may have recourse to it. Father Kelly answers this by asserting that moralists generally require some justifying cause for a departure from the normal; furthermore, he considers that the absurdity is rather on the other side for thinking that persons who might generate naturally would be prone to have recourse to a method which is positively unpleasant.

Father Kelly next puts the question: may an unmarried woman be artificially impregnated? It is clear from general principles that she may not, since a procreative act is permissible only to a wedded pair. The impregnation of an unmarried woman, no matter what the means used, is wrong for the same fundamental reason that fornication is wrong, namely, it is a disordered generative act, for it takes place between parties not united in wedlock.

The final question considered in Father Kelly's article is the artificial impregnation of a wife by a third party. The fact that this is not permissible is evident from the solution of the preceding question: the parties to the generation are not husband and wife. Nor would the consent of the husband change the solution, for these are rights that neither can waive.

In summary, to quote the author: "Artificial insemination involving pollution or onanism is never lawful; but if married persons who are unable to have natural fertile intercourse wish to resort to a means of impregnation which includes no abuse of the sexual functions, it is probable that they may do so. Between two parties who are not united together in marriage, no form of artificial fecundation is lawful."

DEFINITION OF SOCIAL JUSTICE. It is well known that a single definition of Social Justice has not received the approval of all Catholic writers. A list of the varying concepts was included in the Reverend J. D. Callahan's *Catholic Attitude Towards a Familial Minimum Wage* (Catholic Univ. Press, 1936). The differences of opinion or of emphasis and the confusion discoverable here and there have occasioned the article, "The Field of Social Justice," by Philip Hyland, O.P., in the *Thomist* [1 (Apr. 1939) 1, 295-330]. Laying down the position of Saint Thomas that justice is always based upon creditorship and debtorship and not on brotherliness, the author finds that some advocates of Social Justice extend its concept too far; thus, Msgr. John A. Ryan is cited, who accepts the definition of André Rocaries, S.J.: "Social Justice is the virtue which governs the relations of the members with society and the relations of society with its members, and which directs social and individual activities to the general good of the whole collective body and to the good of all and each of its members."

With M. S. Gillet, O.P., Father Hyland considers Social Justice the same as Legal Justice; the difference lies in this that Social Justice emphasizes the final element, while Legal Justice emphasizes the formal element of the same thing. The author develops his proposition through six principal points; a) the *alterum* of Social Justice (SJ) is the common good; b) the debt to the common good is ordered to it immediately by the virtue, SJ; mediately by the imperated acts of this virtue; c) SJ resides and operates radically in the ruler of the state; d) it resides and operates formally in the subjects of the state; e) legislation is the embodiment of the ruler's (radical) SJ; f) legislation is the determinant of the subjects' (formal) SJ. The author then answers the objection that elements of Distributive Justice have been allowed to color his concept of Social Justice; there is some correlation of elements of Distributive Justice, but this is in relation to the social, physical and economic conditions of the citizens; the determinant of Social Justice is the law, and hence properly Social Justice falls in with the concept of Legal Justice.

Since legislation is the determinant of the acts of Social Justice, the lack or defect of social laws means that the ideals are yet to be reached. For as yet law is not completely effective in the matter of the common good; again, present legislation has been too greatly influenced by the

laissez-faire economics of the past; furthermore, the laws of city, state and federal legislative agencies are overlapping and not always harmonious; fourthly, the American party system has an immense influence on our type of legislation, and not always a beneficial influence; finally, the executive and the judiciary function slowly. Hence, there is a large field of legislation which is not touched or not properly cared for according to the demands of Social Justice. "In the meantime charity must fill the breach."

Because of the interest and importance of this question it will not be amiss to go back beyond the time considered in this review of Canon Law and Moral Theology to two excellent essays which are probably little known in English speaking countries. The first is by Kleinappel, "Der Begriff der *justitia socialis* und das Rundschreiben 40° *Anno,*" [Zeitschrift *für kath. Theol.*, 1934].

Next four years ago Johann B. Schuster, S.J., offered an excellent analysis of the relations of Legal and Distributive Justice to Social Justice in the *Quadrigesimo Anno* with special reference to the doctrine of the economist, Heinrich Pesch, S.J. This solid article appeared in *Scholastik* [11 (1936) 2,225-242] under the title, "Der Verhaltnis von *justitia legalis* und *distributiva* zur *justitia socialis* in *Quadrigesimo Anno* mit besonderen Berücksichtigung der Lehre von Heinrich Pesch, S.J." Pesch considered that SJ embraces both Legal and Distributive Justice, and thus stands in opposition to Commutative Justice; furthermore, SJ embraces *all* activities both in rulers and subjects which have to do with the corporate welfare of the state; hence, for the complete fulfilment of its purpose it embraces some obligations of charity as well as those of justice. Before the *Quadrigesimo Anno* Vermeersch and Prummer had likewise included Legal and Distributive Justice in the concept, and after the Encyclical many continued to do so. Pesch held that while Legal Justice is of more importance and is duly more emphasized than Distributive Justice, the equivalence of Legal Justice is too narrow a view of SJ.

With respect to the *Quadrigesimo Anno* it is to be noticed that the phrases *Justitia Legalis* and *Justitia Distributiva* are not found. But neither is the term *Justitia Socialis* used univocally throughout the text; at times, as in paragraph 88, where the topic is a regulative principle of economy, SJ includes Commutative Justice. Yet, generally, SJ is sharply set off from this. At times SJ is spoken of in the terms that fit Legal Justice, but it is noticeable that the whole question is treated on the supernatural plane, and, further, that the phrase *ad boni communis necessitates seu ad justitiae socialis normam* in paragraph 110 shows that a wider field is envisaged than is covered by Legal Justice; finally, since the social welfare is considered *in fieri,* Distributive Justice is undoubtedly concerned. It seems better to

say that the subject of the obligations of Social Justice is not man as man, but man in his social relations to the good of the community. In the author's treatment it is noticeable that the interpretation of the Encyclical is made in the light of the doctrine of Pesch as outlined in Pesch's *National-ökonomie,* 11, 274 ff. (fifth edition, 1925). In conclusion the article states that as yet there is no single interpretation of the Encyclical nor a single definition of Social Justice which satisfies all.

Another view of Social Justice which has not received much attention as yet, but which has much to recommend it, is that advanced by Donat, (*Ethica Generalis,* Edit. 5, n. 72). He inclines to the view that Social Justice is a virtue specifically distinct from the other kinds of justice. The formal object of this virtue is wealth which is privately owned, but it regards this wealth "quatenus ex prima sua destinatione *licet iam in privatam possessionem transierit, omnium utilitati* inservire debet, et *formaliter* non societatem ut talem sed *singulos* homines, sive solitarios, sive ad classes et ordines collectos, attamen omnes singulos respicit." In other words Social Justice has as its formal object the primary common destination of goods even when privately owned, and Social Justice might be therefore defined as that species of justice which requires that wealth, even when privately possessed, must serve the common use of all men.

It would seem that in this view some obligations which we have hitherto called obligations merely of charity (e.g., alms to the necessitous poor, distribution of superfluous goods to the poor, etc.,) would rise to the further dignity of obligations of justice. And the increasing emphasis on these obligations in Catholic thought today leads one to surmise that further development may succeed in "putting teeth in the laws of charity" by showing to what extent justice is involved. But speculation has not reached the point where one can *require* of the faithful the confession of sins against social justice as having a specifically distinct malice, much less as involving an obligation of restitution in the strict sense. But it is not to be forgotten that some of the Fathers of the Church have spoken of these obligations in terms strong enough to make them appear to be matters of justice.

The Encyclical on Atheistic Communism, (*Divini Redemptoris,* AAS 29 (1937) 92 ff.) throws further light on the notion of Social Justice but neither this nor the "Quadrigesimo Anno" solves the doubts which have arisen as to its true definition.

FAMILY WAGE. The Reverend Cornelius Lucey, D.D., faces the problem of the salary of the married workman in a very practical manner in the article, "Family Allowances," [*Irish Ecclesiastical Record,* 54 (Nov. 1939) 5, 470-481]. He first discusses the definition of a "living wage,"—that on which the workman can maintain a normal family in decency and comfort. The definition makes it clear that such a wage is not a "personal" wage,

nor a mere "subsistence" wage. But the author asks what is a normal family. If the common answer is given that it is five, the wife and three children being non-wage-earning, the impracticality of this is revealed as recalling that in a recent British census it was shown that one-tenth of the working families had more than four children and accounted for fifty-two per cent of the working-class children. Thus, even if the demands of the above considerations were fulfilled, one-half of the working-class children would not be provided for.

Of two solutions for the evil, apart from an unexpected reform of the employer-class in general, that of the birth-controllers is morally and even economically wrong. The other solution comes down to some form of family allowance. But in this case it should be noted that such extra allowances are to be *in addition* to a just family wage (at least, in addition to the minimum just wage); moreover, these allowances cannot be taken from the purse of the employer, for this would result (practically) in nothing else than the hiring of bachelors exclusively. The author notes that Catholic writers tend to fear any sort of family allowance scheme; for though they admit that there is nothing intrinsically wrong in the plan, they see the bogey of state socialism or state paternalism.

Three schemes of family allowance have been the object of experiment in recent times, the system whereby the state pays childhood pensions, the system of family insurance, and the system of equalization funds. In New Zealand since 1926 the state has paid two shillings weekly for each child under fifteen years beyond the third child, when the father is receiving less than four pounds weekly. The argument for this scheme is that the worker thus receives from the national income which is gathered through a tax levied on all; against the scheme is the fear of state paternalism and of an encroachment of state authority.

There are two forms of family insurance. In the compulsory form, the state, the employer, and the employee all contribute. This scheme has been tried in Italy since 1936; the worker deposits one per cent of his wage, the state one-half of one per cent and the employer two and one-half per cent. The worker receives from the fund four lire a week for every child. In the volunteer form of family insurance the same percentages are contributed by the worker and the employer, and something over twenty (20) lire a month is received for every child.

In France and Belgium the system of equalization funds or pools has been tried with various modifications. These funds are created by the employers, each contributing according to his total wage bill, or according to the number of all employees, single or married. The scheme originated in France through a M. Hamel in 1854; by 1929 there were 229 such

funds, and since 1932 the government has compelled every employer to join a fund. The usual rates paid to married employees are as follows; twenty-eight (28) francs a month for the first child; thirty-nine (39) for the second; forty-nine (49) for the third; sixty-six (66) for the fourth; seventy-three (73) for the fifth and following children up to their sixteenth year. In Belgium the state has entered as a contributor and a controller of the funds in order to make them more secure; in Australia there are other variants in which the system of funds and of family insurance are mingled.

Father Lucey thinks that the fears of Catholic sociologists and economists are exaggerated, that the experiments in Europe have shown that the dangers of socialism and paternalism are not great, and that the *Quadrigesimo Anno* (in paragraph 71) invites such experiments.

BROKERS' GUILD. In the *Nouvelle Revue Théologique* [66 (March 1939) 3,326-337] J.-M. Laureys, S.J., gives an account of the Brokers' Guild of Brussels, which has been functioning for some ten years under the patronage of Saint Matthew. The guild is a genuine form of Catholic Action, having for its purpose to impregnate commercial and industrial life with thoroughly Catholic principles of justice and charity. In the monthly or fortnightly meetings of the guild questions which touch upon all the moral aspects of trading in stocks and bonds are considered. The guild professes "to sanctify our profession by the practice of the virtues belonging to it through the Grace of Christ, and to make shine out a Christian form of life, so that our times, quickened by morality and Christianity, may help and support us and make less difficult for us our integral duty as citizens."

MASS STIPENDS. Since the priest is bound in justice to say the Mass for the stipend, and the offerer is bound in justice to give the stipend, the age-old *casus celeber* of the difference between this transaction and a contract of sale and hire has arisen. Why is the transaction not simony, since it is an onerous contract bearing upon a spiritual thing? In three articles in the *Irish Ecclesiastical Record* [53 (June, 1939) 6, 593-612 and 54 (July-Aug. 1939) 35-57 and 159-176] the Reverend Thomas McDonnell, S.T.L., considers thoroughly the various solutions of the difficulty in articles, entitled "Stipends and Simony." He finds inadequate the attempt to solve the problem by considering the intention of the priest and the offerer; the mere intention not to have a sale does not unmake one. Neither is Laymann's "compensation for obligation" theory good, where the priest takes the stipend and gives his *obligation* (a temporal thing) to say the Mass. But this obligation is really a spiritual thing, and in any case is not distinguished from the object of it, the Mass. Moreover, such a theory would be invoked to prove that there is never simony in any case.

For a similar reason Arendt's "payment for surrender of liberty" theory is unavailing, where the money compensates for the *incommodum* of forfeiting liberty. But such a forfeiture is part and parcel of saying the Mass, and is merely a negative aspect of the obligation itself. The same considerations reject the "compensation for labor" theory, since the physical labor in question is the saying of Mass.

Del Giudice's "mandate" theory holds that the contract is gratuitous or mandatory, since the intention to say Mass, as an intention, is incapable of being the matter of a juridical contract. But it is clear that there is an obligation in justice and that the contract cannot be called gratuitous or merely mandatory.

The "innominate contract" theory (*do ut des*) has much to recommend it. It supposes that previous to any particular stipend there is an obligation on the faithful in general to support the clergy; hence in a particular case the obligation is not newly created; the offering of money covers an obligation already existing. The difficulty with this explanation is in moving from the general obligation to a particular obligation of justice. Gasparri points out that the general consideration is a good argument for justifying the sustenance of the clergy for ministrations in general; but it is the positive legislation of the Church which has allowed the particular obligations of a stipend, whereas it has forbidden several other forms. Vermeersch, developing Suarez, has provided the best solution of the difficulty in basing the contract on approved custom which has defined an obligation of the natural law. It is true that approved custom can be cited for the practice, for at the same time as the custom of offering for Masses arose (from the seventh to the thirteenth centuries) there was the custom of common offerings. In the common opinion of theologians approved custom of itself does not establish an obligation in justice; but here it defines and particularizes the obligatoin of the natural law; and in a very definite manner.

But a difficulty still remains, since the same line of reasoning would establish a strict obligation of justice in the matter of stole-fees. But here a distinction is to be made: the basic right to sustenance is from the natural law; approved custom has defined the application of this obligation in the case of stipends to individual sustenance, in the case of stole-fees to communal sustenance.

Father McDonnell concludes his study by denying that strictly there is a contract; the agreement between the offerer and the priest is *ad instar contractus*. There is an obligation in justice, which arises from the natural law as defined through approved custom. But strictly there is no pact, hence, no onerous pact, and hence, no simony. Father McDonnell's articles are a helpful discussion of a difficult point.

MATRIMONY

NON-CATHOLICS IN MATRIMONIAL COURTS. RECENT DECREE. Since the promulgation of the Code the question of the capacity of non-Catholics to plead before an ecclesiastical tribunal has twice been the subject of declarations of the Holy Office, and both decisions have touched upon the competence of a non-Catholic to act as plaintiff in the Church's matrimonial courts. Canon 87 declares that baptized persons have all the rights and duties of Christians, unless these rights are curtailed by an impediment affecting their union with Rome. Canon 1971, Sect. 1 n. 1 states that either husband or wife may impugn a marriage in all cases of separation and nullity, unless the person instituting the proceedings has been the cause of the impediment. Sect. 1 n. 2 of the same canon attributes to the *Promotor Justitiae* the same right "in impedimentis natura sua publicis." During the ten years following the promulgation of the Code there existed some difference of opinion as to the interpretation of the two canons just cited, especially in their application to mixed marriages.

Felix M. Cappello, S.J., in an article enttiled "De Acatholicorum Incapacitate Agendi in Foro Ecclesiastico" (*Miscellanea Vermeersch*, I, 393, Rome, 1935) summarized the pre-Code legislation and practice on this subject. The article points out that the pre-Code opinions on the subject led to the conclusion stated by Father Wernz, S.J. (*Jus Decretalium*, V, n. 169), namely, that ordinarily non-Catholics are not admitted to plead in Ecclesiastical courts; there are, however, cases when they can or uoght to be admitted, either as plaintiffs or defendants, as for instance, in trials dealing with mixed marriages. By 1928 it was felt necessary to issue a decree concerning the matter. A response of the Holy Office on Jan. 28, 1928 (20, AAS, 75) declares that a non-Catholic may not institute proceedings of nullity before an ecclesiastical court. This decision gave rise to a further question. Some authors held that the aforementioned ecclesiastical court referred exclusively to the Roman Rota, and that consequently it was possible for non-Catholics to appear even as plaintiffs (*actores*) in diocesan matrimonial courts. This difference has finally been settled by the response of the Holy Office, dated March 22, 1939 (31, AAS, 131), wherein it is stated that the response of Jan. 27, 1928 applies to diocesan tribunals as well as to the Rota. The response further decrees that the *Promotor Justitiae* in virtue of can. 1971 sect. 1 n. 2 may not impugn a marriage that has been denounced to him by a non-Catholic as null, unless in the judgment of the Ordinary the public good demands it.

The Reverend M. J. Fallon, D.C.L., has touched on this response in a practical way in his article, "Non-Catholic as Plaintiff in a Matrimonial Cause," in the *Irish Ecclesiastical Record* [54 (Oct. 1939) 4, 413]. After

reviewing the two canons and the two decrees, the writer states it as his view that the decree of March 22, 1939 applies to formal matrimonial processes, but not to the summary processes governed by canons 1990-1992. In these exceptional cases, if the existence of a diriment impediment is evident from an authentic document, the Ordinary may summarily declare the marriage null even in the case of non-Catholics. This was allowed before the Code, as will be seen by consulting *Fontes Cod. Iuris Can.* IV, nn. 1114, 1180, 1266, 1293. It was also allowed after the Code according to a private response of the Holy Office made to the Bishop of Harrisburg (Cf. Bouscaren, *Canon Law Digest,* II, p. 267). In this case an unbaptized woman had been married to a baptized non-Catholic. The woman, wishing to contract marriage before the Church with a Catholic, petitioned a declaration of the nullity of her first marriage on the grounds of disparity of worship.

CANON 1125. THE CHURCH'S POWER OVER MARRIAGE. The canon reads as follows: "The provisions regarding matrimony in the Constitutions, *Altitudo,* of Paul III, 1 June, 1537; *Romani Pontificis,* of Saint Pius V, 2 August, 1571; and *Populis,* of Gregory XIII, 25 January, 1585, and which were made for particular places, are extended to other countries also, in the same circumstances." The three Constitutions were dispositions enacted originally for mission countries. They refer only to bigamists. The three Constitutions are printed immediately following the last canon of the new Code, as the Sixth, Seventh, and Eighth Documents.

A discussion and analysis of the canon and especially of the Constitution of Gregory XIII appeared some four years ago in the *Miscellanea Vermeersch* (I, 279-302) by Timothy L. Bouscaren, S.J., under the title "An Inquiry into the Practical Application of Canon 1125 outside of Mission Territories." Among the principal conclusions the writer sets down the fact that the privilege of the canon transcends the limits of the Pauline Privilege. The conditions for the valid use of the power are, a) that the marriage be contracted by two unbaptized persons; b) that one of the parties be afterward converted to the Faith and desire to marry a Catholic; c) that it be proved at least extrajudicially that the other party cannot be reached with the interpellations, at least without evident danger of grave harm, or that the interpellations would be evidently useless. It is not required that the separation of the parties be the result of violent abduction comparable to the slave-raids of the Sixteenth Century; these were the circumstances behind the *Populis* of Pope Gregory, as we read in the Preamble; slave-raiders (they were Spanish and Portuguese) were operating in Angola, Ethiopia and Brazil and other countries of the Indies; married slaves were often taken, some of them already with more than one wife, and some

of them, after transportation to other places, taking other wives before they fell in with a missionary. The Reverend Francis P. Woods has also written on canon 1125 in his doctoral dissertation, *The Constitutions of Canon* 1125 (*Milwaukee,* 1935). He argues for the application of these Constitutions to countries like the United States, when pertinent cases arise.

These excellent essays on the canon, here referred to though they were written some years ago, are mentioned because another fine historical and analytical study of one of the Constitutions appeared in the last fascicule of 1938 and in the first three of 1939 of *Periodica.* The essays together provide much light on the Canon. Since the canon reads that the powers granted are universalized "in the same circumstances," historical inquiry into the circumstances of the past is important. Pulhota Rayanna, S.J., has done this in the case of the Constitution of Saint Pius V in the article "De Constitutione S. Pii V, *Romani Pontificis.*" The canonical interpretation of such a document cannot omit the history of the situation which occasioned it, of the form in which the privilege or exemption was petitioned, the words of the document itself, and the subsequent way in which the grant was applied practically. The essay, therefore, deals in five parts with the history of the *Romani Pontificis,* with the comments of theologians, dogmatic and moral, with the use of the document in the jurisprudence of the Roman Congregations, with the doctrine of the Code on the Church's power over matrimony, and finally, with the author's interpretation of the Constitution.

Inquiry into the history of this document introduces the searcher into a maze of obscurities. But much can be made out with certainty. In their earliest years in Mexico missionaries were confronted with prospective converts who had several wives. The immediate policy of the missionary was to set in motion a search for the first wife. Two principal difficulties, constituting what was named 'hard circumstance' (*durities*) in the documents, were encountered. One was the frequent difficulty of finding the first wife, who may have been dismissed, deserted, or forgotten. The other (often a harder circumstance) was to persuade the prospective convert to give up the wife with whom he lived at present or whom he preferred. These circumstances obviously were the occasion of scruples on the part of the missionaries and about 1520 they petitioned Rome for guidance in the matter. In 1528 Paul III sent an instruction to Mexican missionaries. He laid it down that if the first wife could not be found, then the convert might take any of the subsequent wives who was willing to be baptized with him; if the first wife was known, then she was to be taken.

It is the historical fact that these dispositions were not observed. Very shortly it became the practice to let converts choose their wife at the

double baptism; in certain quarters there was no insistence at all on the interpellations of the first wife. Needless to say such abusive practices were reprehended by some of the missionaries, who nevertheless felt the extreme difficulties of the circumstances. It was this second situation which was reported to Rome after the middle of the century and was met with eventually in 1571 by the *Romani Pontificis* of Saint Pius V.

The Pope disposed of the cases which had already been settled by the missionaries and he laid down the legislation for subsequent practice. With regard to the past he said that the pair which had been baptized together were to continue to be spouses, no matter whether the woman had been the first wife or not. The reason given for this was 'hard circumstance' (*durities*), that is, the hard circumstances of breaking up unions already approved by missionaries and satisfactory to the parties involved. The Pope also noted that the difficulty of finding the first wife added to the difficulties already mentioned.

With regard to future practice Saint Pius V, by an exercise of his plenary apostolic power, declared that henceforth polygamous converts might take as their true wife the wife who was baptized with them. The enactment of the Constitution was an exception to the general law and also to the dispositions which had been laid down in 1201 by Innocent III in his letter, *Gaudemus* (Dennzinger-Bannwart, 407-408). Moreover, the privilege differs in striking details from the Pauline Privilege. First, the occasion of the Pauline Privilege is the withdrawal of the partner of a baptized person; in the Pian privilege the occasion is the hard circumstance of separation. The Pauline Privilege is apostolic legislation, deriving from the authority of Saint Paul; Pius invokes his plenary apostolic power as the successor of Peter. In the Pauline Privilege there are interpellations and they are a condition of validity; in the Pian privilege there is no question of interpellating.

It is gratifying to add to this description of the Latin essay of Father Rayanna, S.J., that the most pretentious discussion of Canon 1125 which has so far appeared is the English doctoral thesis of the Reverend Francis J. Burton, written at Catholic University, and published under the title, *A Commentary on Canon* 1125, (Catholic University Press, 1940). A most thorough canonical discussion follows the general lines of the essays of Father Bouscaren and Father Woods, mentioned above. The special feature of this two-hundred page commentary seems to be the chapter entitled, "Missions of the Sixteenth Century." Rayanna is particularly concerned with the Mexican missions; Father Burton takes a broader purview for the delineation of the historical background of the Constitutions which are mentioned in the Canon.

After discussing the pertinent data which have to do with the Line of Demarcation which Alexander VI drew for the Catholic nations which were busy colonizing the Americas, the author describes in turn the conditions in the missions of the West Indies, Mexico, Florida, and South America; then, turning to other continents, he treats of the missionary situation in Africa and Asia. This historical conspectus is followed by an outline of the difficulties which polygamy occasioned in the conversion of the natives. With this excellent outline of the situation in the missions one is enabled to understand more clearly how the procedure of the Roman authorities was governed, and also, considering the difficulties of communication at the time, how great were the obstacles to immediate decisions.

PRE-NUPTIAL INVESTIGATION. It is well known that the statutes of many civil governments are less strict in allowing another marriage after the presumed death of the first partner than those of the Church. In a doctoral thesis submitted to Catholic University the Reverend Patrick W. Rice offers a good discussion of the canonical procedure in the case of the disappearance and possible decease of a spouse under the title, *Proof of Death in Pre-Nuptial Investigation.* Since the second section of canon 1069 rules that second nuptials are permitted only when certain proof of the decease of the previous partner has been submitted to the scrutiny of legitimate ecclesiastical authority, severe, yet just laws of evidence are drawn up for the process of investigation. A principal document in this matter is the instruction of the Holy Office, issued on May 13, 1868. The general laws of procedure and the application to difficult cases are excellently treated in Father Rice's doctoral thesis.

MARITAL CONSENT. In articles which ran in the June, July and August numbers of the *Ecclesiastical Review* [100 (1939) 6, 481-497; 101 (1939) 31-49 and 131-151] the Reverend Francis Wanenmacher, D.C.L., has written an extended discussion on "Some Questions on Vitiated Marital Consent." The closeness of the reasoning in these articles and the numerous citations of cases which have occurred in the long practice of the Roman Rota would make even a lengthy analysis difficult. But the article should not go unnoticed; it is one of the most excellent analyses of vitiated consent to be found in English recently. Very aptly there followed upon these articles an essay of Professor Rudolf Allers of Catholic University on the "Annulment of Marriage by Lack of Consent because of Insanity," [*Ecclesiastical Review,* 101 (Oct. 1939) 4, 325-344]. Professor Allers touches upon the great difficulty which is encountered in these cases. They appear in the chanceries often many years after the marriage; sometimes the allegedly insane party has lucid intervals; the great difficulty is to know if ***at the time of the marital consent*** the person was sane and responsible. As far as

can be done in the light of present knowledge of insanity the writer divides and discusses various types of mental affliction and shows the limits and capacity of a present diagnosis in reconstructing the mental circumstances at the time of the consent. Incidentally the author notes that insanity in Canon Law (*amentia*) is not technically the same as the *amentia* of the scientists since the word is used among physicians of only one of the forms of mental disease.

ROTA CASES. FEES. The *Acta Apostolicae Sedis* for March 5, 1940, contains the summary of the marriage cases which were pleaded before the Rota during the year 1939. Of the fifty-nine (59) cases, fifty-six (56) were cases of a plea of nullity. Of the fifty-six (56) cases, forty-three (43) marriages were held to be valid, thirteen (13) were declared null. Fourteen (14) of the cases were appeals against a previous decision of the Rota; only three (3) were reversals of former decisions. The reasons alleged for nullity varied greatly; the most common cause was fear and force (*vis et metus*) which was pleaded alone in fifteen (15) cases and along with other reasons in nine (9) more. Defect of consent was pleaded eight (8) times, unfulfilled conditions or impotence, seven (7) times each. In the cases of impotence, three (3) were declared null out of the seven (7); two (2) of them were declared *ratum* but the judgment was accompanied by a recommendation for a dispensation *super rato*. Fourteen (14) of the cases were pleaded on the ground that a condition had infected the substance of the contract, divorce in six (6) cases, the *bonum prolis* in six (6) cases, and the exclusion of unity in two (2).

In twenty-six (26) cases of the fifty-nine (59) which were pleaded before the Rota, the tribunal granted the free service of advocates. The remaining cases were presumably charged for according to the scale of fees, which was issued on May 26, 1939. (*Acta Apostolicae Sedis*, 31, 622-625). The new scale of fees is laid down for the three-year period under the title "Procuratorum et advocatorum proventus pro causis actis coram tribunali sacrae Romanae Rotae." The minimum and the maximum fees in *lire* are named under each heading: for preliminary study of the cause, 200 *L.* to 1,000 *L.*; for introducing the cause, 100 *L.* to 200 *L.*; for preparing proofs and producing documents, 100 *L.* to 1,500 *L.*; for the proposal and preparation of incidental questions, 100 *L.* to 800 *L.*; expenses for the actual defense, 500 *L.* to 3,500 *L.* 2,000 *L.* are to be deposited with the tribunal; before the final drawing up of the account the presiding judge (*Ponens*) is to go over the bill. It will be seen that these fees are really nothing more than can support the court, even if they do this; the fact that in the case of those who are unable to pay the court supplies its services freely is more than sufficient answer to the charges made against the matrimonial courts in certain quarters in America.