

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY, 1948

GENERAL MORAL

“Invalidating ecclesiastical laws may be considered as not binding in certain circumstances *either* because the Church lacks the power to enforce them *or* because the Church would not wish to enforce them.” These words, though not an exact quotation, represent a conclusion expressed in this review several years ago by Hilary R. Werts, S.J.¹ A recent study of the same subject made by Father Lawrence Riley reaches a conclusion which is partly in agreement, partly at variance, with Father Werts.² Father Riley agrees that ecclesiastical invalidating laws may cease to bind by reason of lack of power in the legislator; he denies that an *epikeia* in the strict sense is ever applicable to these laws.

I am not interested here in taking sides in a debate between Fathers Werts and Riley. Emotionally, I favor Father Werts's conclusion because I feel more at ease in interpreting the will of the Church than in deciding the limits of her power. Naturally, however, I would not offer this emotional reaction as an objection against Father Riley's contention. But I find some of his points about limitation of power too intriguing to allow me to pass up entirely this occasion to make some reference to them. For instance, outlining the cases of restricted power, he says:

It cannot be denied that no lawmaker may impose an obligation, compliance with which would be either impossible or disproportionately difficult. This conclusion extends to invalidating as well as to other laws. Secondly, no legislator may demand that his law be obeyed if such observance would transgress, or necessitate the transgression of, a higher law. This is obviously true even when there is question of invalidating laws. These points have already been explained in connection with law in general, and consequently need not detain us here. However, it is appropriate here to consider other cases in which the urging of the obligation of a law would exceed the lawmaker's power—when, for example, to demand obedience would be equivalent to the confiscation, not the mere restriction, of an inherent and inalienable natural right.³

¹ “The Cessation of Invalidation in Grave Difficulty,” *THEOLOGICAL STUDIES*, IV (1943), 223–48.

² *The History, Nature and Use of EPIKEIA in Moral Theology* (Washington: Catholic University of America Press, 1948). This dissertation is a *magnum opus* (about 500 pages). I have read thoroughly only the last chapter, “*Epikeia* and Human Invalidating Laws,” pp. 373–458; and all my remarks here concern this chapter. From this careful reading and from glancing through the rest of the book, I should judge that the quality compares favorably with the quantity.

³ *Ibid.*, p. 410.

The third is the case that catches my attention. I wonder just what the author means by the confiscation of a right, in contradistinction to impossibility (physical or moral) and conflict with a higher law. For instance, I am thinking of a situation described in a novel I read many years ago. The girl, her father, and her fiancé were caught in a blizzard. Since it looked as if they might not come out alive, the boy and girl exchanged marriage consent before the one witness, the girl's father. Could we say that this marriage was valid? And if so, would the reason be that it would be beyond the power of the Church to insist on the observance of the juridical form, at least that of canon 1098, § 1? There were no children to legitimize; the only hardship apparent in the case would be the heartache of the lovers at their inability to marry before death. Yet there would be, in a sense, a complete confiscation of their right to marry; for, if they could not marry then, they could never marry.

Father Riley does not make it perfectly clear to me that he wants to go so far as to say that the Church cannot insist on the observance of the law in such circumstances. It is true that he does insist that "although the Church most certainly has the power to establish diriment impediments and to restrict thereby a Christian's right to marry, it has no power to suppress that right entirely. If an ecclesiastical law, otherwise just and commendable, would by reason of circumstances thus confiscate the natural right to marry, then insofar as that particular situation is concerned, the ecclesiastical law ceases to bind, precisely because the Church's power to urge the obligation of the law in those circumstances is no longer existent." It is true also that he extends his thesis to the form of marriage; in fact, one of his most pertinent illustrations concerns the form.

Yet in his very example about the form of marriage, the author uses certain expressions that engender a suspicion that he is not really talking about confiscation of right as distinct from extraordinary hardship or conflict with a higher law. He asks: "Is a Catholic, who without any fault of his own finds himself in such a situation, to be despoiled permanently of his natural right to marry, *with a possible consequence that his soul will be placed in jeopardy of loss?*" Again, at the conclusion of this example he insists that a human precept "cannot *perpetually or for a very long time* despoil a guiltless individual of his basic natural rights." I have italicized certain expressions which seem to indicate that Father Riley is thinking in terms of higher laws and extraordinary hardships even while discussing "confiscation of right" as a distinct excusing cause. Moreover, in arguing his point, he once more introduces the notion of hardship. "To confiscate the right to marry," he says, "would be, as Valton and Payen point out, equivalent

to forcing individuals against their will to a life of celibacy." A "life of celibacy" connotes extraordinary hardship, does it not? Father Riley would have made his point clearer had he used examples and arguments that stressed confiscation of right without hardship.

One can hardly read the discussion on invalidating laws without thinking of the shipwrecked priest on the desert isle. Father Riley has not overlooked this luckless gentleman. Of him (and of the deacon and subdeacon) he writes:

In this connection, the question may arise as to whether a priest in extraordinary circumstances (e.g., shipwrecked on an island from which there is no hope of being rescued), who finds the observance of the obligation of chastity extremely difficult, may marry. Without any detailed discussion of the point—for such would be inappropriate here—it would seem that a negative reply must be forthcoming. The priest, in freely receiving Sacred Orders, freely relinquished his right to marry. While it may be granted that he did not foresee such an extraordinary situation as now exists, the fact of the matter is that he freely and without any condition entered a state in regard to which there exists a diriment impediment to marriage. If, even in the most extraordinary situation the Church absolutely refuses to dispense a priest and thus allow him to contract marriage (and thereby implies that under no circumstances has he the right to marry, and likewise seems to imply that marriage is not the only means whereby he may be kept from serious sin), surely it is logical to conclude that such a priest cannot allege the existence of a right to marry and justify his attempt to contract a union when communication with ecclesiastical authorities is impossible. . . . With regard to deacons and subdeacons, it would seem that they likewise may not allege any right whatsoever to contract marriage, even in a situation such as the one envisioned. Consequently, it cannot logically be argued that in their regard the diriment impediment arising from Sacred Orders ceases on the basis of the theory that the Church has not the power to demand its observance.⁴

The priest has freely and irrevocably renounced his right to marry; therefore the Church is not confiscating it when she urges the law of celibacy—such is the argument. I might observe that one could concede this argument as regards the priest, yet question its application to the case of the hopelessly shipwrecked deacon or subdeacon. I have a sort of speculative interest in such deacons and subdeacons. I doubt if one can sustain the thesis that their assumption of the duty of celibacy has the same absoluteness as that of the priest. They assume it with a view to the reception of the priesthood; and it seems to me that they might legitimately argue that, if through no fault of their own the priesthood became unattainable, they would have good reason to be released from the duty of celibacy.

⁴ *Ibid.*, note 173, p. 418.

THEOLOGICAL VIRTUES

A young man who wants a position and who is certain that he will not get it if he is known to be a Catholic presents this problem: may he answer a question concerning the school he attended by putting the name of an *exclusively* non-Catholic School? Father J. McCarthy replies in the negative because such an answer is "tantamount to an implicit denial of the true Faith or, which is the same thing, to an implicit profession of a non-catholic religion."⁵ What if the young man put the name of a mixed or undenominational school? In this event, says Father McCarthy, he would be guilty "of a venial sin against the virtue of veracity, but not of a sin against faith."

In other words, though the young man seems to have a sufficient reason for hiding his faith, it is difficult to find a practical way of doing this that is in accord with sound moral principles. The only possible outlet seems to be a theory of "speech" which would hold that the answer to such a question need not be considered a "communication of ideas." Father McCarthy mentions this possibility:

It seems to us that the positive assertion of Titius implies, as it stands, more than dissimulation. Perhaps, there might be conceived the building up of a universe of discourse in which it would be generally understood that such a positive assertion should be interpreted, not at its face value, but as a mere evasion by Catholics of an unwarranted question. But, to our knowledge, this universe of discourse does not yet exist.

An interesting, and by no means purely speculative, problem concerns the Catholic girl who acts as organist for an undertaker. May she play the organ at the burial services of non-Catholics, even when these services assume a religious character? Father Francis J. Connell, C.S.S.R., answers by first distinguishing between private and public worship.⁶ If the non-Catholic services are merely private worship, the girl may play the organ, provided the hymns contain no heresy and no scandal is given. If the services are equivalently public worship, the girl may not be the organist.

How can one determine whether such services are public or private worship? Father Connell thinks that if a layman conducts the service, the criterion of public worship would be the following of a recognized non-Catholic ceremonial; but if the service is conducted by a clergyman, it must generally be considered public, even though an informal rite is followed "This would seem to be unquestionable," says Father Connell, "at least

⁵ "Implicit Denial of Faith," *Irish Ecclesiastical Record*, LXIX (1947), 1116-17.

⁶ "An Organist's Problem," *Ecclesiastical Review*, CXVIII (1948), 379-80.

if the clergyman is of an evangelical sect, since this informal, non-liturgical type of service would be his usual manner of giving public worship. Perhaps a service of this informal type conducted by an Episcopalian clergyman, who has a recognized ceremonial for public cult, could be regarded as an act of private worship."

Implicit in this question is another problem; namely, the precise character of participation that must be attributed to organ-playing. Father Connell considers this to be active participation, in the sense of canon 1258, §1. So does Father Lydon.⁷ So do I. It seems to me that if organ-playing is not active participation in a Protestant service, then the only way one could actively participate would be to officiate as minister. This point is clearly discussed in Father Bancroft's dissertation.⁸ He cites Vermeersch and Davis as holding that organ-playing may be explained as material cooperation; but he disagrees with them and shows that the weight of authority is so predominantly on his side as to make their opinion singular.

Asked whether a Catholic might play the organ in Protestant churches on feast days in order to make his living, the Holy Office replied: "It is illicit to play the organ in heretical churches while false worship is being carried on."⁹ Father Ignatius J. Szal apparently thinks that this response applies also to schismatic churches,¹⁰ but the validity of this application is not clear to me. The reply refers to false worship—something which is verified in the case of heretics, but not necessarily in the case of schismatics. In saying this I am not attempting to justify participation with schismatics; I merely assert that the reply cited seems not to refer to them.

Another problem pertinent to *communicatio in divinis* is indicated by this question in the *Clergy Review*: "A decision of the Holy See forbidding nurses to send for a non-Catholic minister to assist a non-Catholic patient in danger of death is mentioned by the manualists, who all explain it away. Could we have the text of that decision?"¹¹ The manualists might justly style this question "catty." And they might add, in defence of the verbal contortions that are sometimes manifest in the solution of this problem, that replies of the Holy See with regard to *communicatio in divinis* are seldom easy to interpret, and that these particular replies present unusual difficulties.

⁷ Cf. *The Priest*, IV (1948), 208.

⁸ *Communication in Religious Worship with Non-Catholics* (Washington: Catholic University of America Press, 1943), by John R. Bancroft, C.S.S.R.; see pp. 72-74.

⁹ *Coll. SCPF*, II, n. 1713.

¹⁰ *The Communication of Catholics with Schismatics* (Washington: Catholic University of America Press, 1948), p. 133.

¹¹ Cf. "Sending for Non-Catholic Minister," in *Clergy Review*, XXX (1948), 200-203.

The only official source in which I have been able to find the pertinent replies is the *Collectanea P. F.*¹² Under date of December 14, 1898, is the response to a query of the Superioress of the Little Sisters of the Poor. She states that occasionally among their old people, there is a dying non-Catholic who has resisted conversion and who insists on seeing a heretical minister. May the Sisters call the minister? The terse reply of the Holy Office, as recorded in the text, is this: "Detur decretum in *Colonien.* 15 Martii 1848, una cum declaratione 5 Febr. 1872 ad Vicarium Ap. Aegypti." The decree and the declaration are given in footnotes. In the Cologne decree it is asked whether Sisters in a hospital or Catholics in a private home may call a minister at the request of a non-Catholic patient. The cryptic answer is: "Juxta exposita non licere; et ad mentem: Mens est quod passive se habeant." Apparently this answer was not exceedingly helpful; hence in the declaration of 1872, it was explained that "passive se habeant" means that it is not licit to call the minister directly, but that a member of the patient's own sect might be used for this purpose. The declaration also said that the Catholic position should be clearly explained when the occasion presented itself.

The replies in *Collectanea P. F.* are very brief. Canon Mahoney quotes much longer versions, taken from Ferreres and Lehmkuhl. But, whether brief or lengthy, they confront us with the same problem: just what is meant by calling the minister? Was the Holy Office saying that *any* summoning of a minister is tantamount to formal cooperation in false worship; or was it saying that *in these cases* it would be formal cooperation; or was it insisting that, even though only material cooperation, it could *never* be permitted; or was it simply declaring that *in these cases* even material cooperation could not be justified? In his *Casus Conscientiae* published a few years after the last reply,¹³ Lehmkuhl distinguished between calling the minister "*ut ritum suum exercent*" and merely telling him that a patient wished to see him. The former would be formal cooperation, and banned by the decree; the latter would be merely material cooperation, and not necessarily illicit.

Lehmkuhl's distinctions may appear too subtle to some. Yet many authors, unable to believe that the Holy Office was outlawing all material cooperation in this matter and unable to see more than material cooperation in a mere "notifying a minister," have made a similar distinction. That is

¹² II, n. 2030.

¹³ I (1903), 218, nn. 426-28; the solution is unchanged in the fourth edition (1913), pp. 222-26.

what Canon Mahoney's questioner calls "explaining it away." As a matter of fact, although Canon Mahoney begins his own answer with the unqualified assertion that "summoning an heretical minister comes within this forbidden co-operation, since it is active and not merely passive," he concludes by allowing a Catholic "to let the minister know that a sick man wishes to see him, without specifying anything further." It is true that he apparently allows this only when a non-Catholic is not present to notify the minister; yet he could not allow it at all, if it were formal (or active) co-operation.

It seems to me that, without indulging in the mental and verbal gymnastics that so often characterize a discussion of this problem, we may adopt this simple rule *in our country*: when a non-Catholic patient asks to see his minister, a Sister or Catholic attendant may notify the minister that the patient wishes to see him.¹⁴ In the eyes of Catholics and non-Catholics alike this is nothing more than a professional courtesy, the refusal of which would not only unnecessarily offend non-Catholics but would also be deeply prejudicial to the Catholic cause. It must be kept in mind that Catholic patients in non-Catholic or non-sectarian hospitals ask for priests much more frequently than non-Catholics ask for ministers; and non-Catholic nurses and doctors are quite cooperative in calling and assisting the priest.

I have gone into this subject rather thoroughly because my own association with the medical profession has impressed me with the great harm that can come from a misunderstanding in this matter. I remember one case of a non-Catholic doctor who had been most cooperative in everything pertaining to the religious care of Catholic patients and in applying the Catholic doctrine concerning the baptism of dying infants. Then he was

¹⁴ This solution agrees substantially with the conclusion reached by Bancroft, *op. cit.*, p. 123, and with the opinion of Wouters, *Manuale T.M.*, I (1932), 392, n. 557, 6. Both think that a sufficient cause for merely notifying the minister is generally present in a country like ours. Both add the advice that a Catholic nurse should, if possible, help dying non-Catholics to make the acts necessary for salvation. I certainly agree with this suggestion; and I would encourage all nurses to use the card prepared by the Apostolate to Assist Dying Non-Catholics.

L'Ami (Jan. 8, 1948, p. 27), seems to think that a solution similar to mine is in conformity with the replies of the Holy Office. *L'Ami* is mainly interested, however, in another question, whether a Catholic wife may call the non-Catholic minister to arrange for the burial of her Protestant husband who has faithfully lived up to the *cautiones* in bringing up a large family; the solution is that she may safely do whatever is customary. Fr. Lydon, in *The Priest*, IV (1948), 207, admits the probability of my view, but seems to be inclined toward some kind of stricter solution. Father Ignatius Szal, *op. cit.*, pp. 146-47, treats the question of calling a Schismatic priest.

suddenly embittered by a passage in a Catholic book and refused further cooperation.¹⁵ It seems to me that we must avoid such unfortunate situations as much as possible without a sacrifice of principle. And I can see no sacrifice of principle, nor any disobedience to the Holy See, in the solution I have suggested.

One of the classic cases in treatises on the theological virtues concerns the obligation of denouncing one who is occultly leading others into sin. With his usual thoroughness, Father McCarthy discusses the case with special reference to these two questions: when is the obligation present; and, if it is present, must a confessor insist on it even to the point of refusing absolution?¹⁶ Prummer answers the second question with a blunt affirmative. Father McCarthy suggests several reasons for a somewhat more temperate view:

We are of the opinion that the confessor should strongly recommend denunciation rather than demand an undertaking to make it as a precondition for absolution. We have many reasons for this opinion. A confessor can never be sure that denunciation is a necessary means of correcting the evil. There will be other means. Nor can a confessor be certain that denunciation will be effective. And it should never be forgotten that, as we hinted earlier, denunciation may subjectively be almost insuperably difficult and distasteful. To solve this latter difficulty some writers suggest that the victim might make denunciation indirectly, through the confessor. We disagree with that suggestion. The procedure suggested might raise suspicion in the minds of some of the faithful regarding the observance of the seal. And the raising of such suspicion must be carefully avoided.

Another problem submitted to Father McCarthy refers to a doctor who has accidentally discovered while questioning a patient that she has been practicing some illicit form of birth control without knowing it is wrong. Must the doctor correct her false conscience?¹⁷ Father McCarthy's answer is that the doctor has no obligation *ex officio* to do this. "In the matter of giving spiritual advice, a doctor must be regarded as a private individual." The doctor may attempt to correct the false conscience if he has a well-founded hope of success; but he has no obligation, at least not *sub gravi*, to do so. "In our view," concludes Father McCarthy, "he is not gravely

¹⁵ The passage is in McFadden, *Medical Ethics for Nurses*, (1946), p. 333; Fr. McFadden does not even suggest that the Catholic might merely notify the minister.

¹⁶ "The Obligation of a Doctor to Correct the False Conscience of His Patient. The Obligation of Denunciation of Occult Delinquent Who Is Leading Others to Sin," *Irish Ecclesiastical Record*, LXIX (1947), 1002-06. I treat these questions here in the reverse order.

¹⁷ *Loc. cit.*

bound to volunteer the information; nor should he wantonly shatter his patient's good faith."

Under its medical aspect, the solution to this case might be more severe. If the birth-control practices are seriously injurious to the woman's health, the doctor has a grave obligation to inform her of the danger. The basis for this solution is thus clearly set forth by Father McCarthy:

A medical doctor is strictly bound in justice to give, to the best of his ability, accurate advice on what concerns their bodily and mental health to patients who consult him. We are told on good authority that the continued practice by a woman of sinful birth-control methods—even though instruments are not used—may easily lead to grave physical and psychological disorders. . . . There is question here of an obligation in justice.

The mention of doctors and birth control reminds us of a problem that becomes increasingly real in our own country. I refer to public espousal of the Planned Parenthood Association by members of the staffs of Catholic hospitals. Father Connell gives what seems to me the only possible moral solution to the problem when he says that the danger of scandal is too great to justify the retention of such men on the staff.¹⁸

Another of Father Connell's cases concerns bathing beauties and majorettes.¹⁹ Speaking of the bathing-beauty contest in which the "participants, garbed in the scantiest costumes, appear before the spectators to be gazed at and evaluated for perfection of physical beauty and form," and of the majorette who, clad in a short skirt, "marches before a band, twirling a baton and exhibiting a considerable amount of her anatomy," Father Connell says that such girls commit a mortal sin of scandal. The reason assigned is that in thus exhibiting themselves before large numbers of people, the girls are unjustifiably occasioning many mortal sins, at least of thought and desire. His conclusion from this analysis is best put in his own words:

I would not hesitate to tell a girl who is planning to enter a bathing beauty contest that if she does so she will be guilty of mortal sin. In support of this grave denunciation the words of St. Alphonsus (referring to a girl who knows that her presence will be the occasion of sins of desire on the part of a man) are appropriate: "I could not excuse her from mortal sin if, led by vanity, she would deliberately (*data opera*), offer herself to the gaze of the man, even though she does not intend to scandalize him" (*Theologia Moralis* [ed. Gaude, Rome, 1905], Lib. II, n. 53). Nor can I see how an easier judgment can be passed on a majorette, when her dress and actions are such as were described above. When the band which she leads is

¹⁸ "A 'Planned Parenthood' Problem," *Ecclesiastical Review*, CXIX (1948), 63-64.

¹⁹ "A Problem in Scandal," *Ecclesiastical Review*, CXVII (1947), 387-91.

under Catholic auspices, the scandal is much greater. For then people will naturally conclude that the Catholic Church has considerably relaxed its teachings on the sixth and ninth commandments, so that, despite Our Lord's teaching (*Matt.*, 5:28), it is only a slight failing to look with lust at a woman.

I have heard this solution debated again and again, generally with more vehemence than sweet reasonableness. One group of extremists solemnly canonizes the author; another group with equal solemnity anathematizes him. I have emerged from these bloody battles with a few impressions that may be timidly recorded here for what they are worth.

It seems to me that a sharp distinction should be made between bathing beauties and majorettes. In branding their conduct as mortally sinful, Father Connell limits the denunciation to one type of majorette; yet if one reads his complete response one will find in it a strong plea for Catholic institutions to do away entirely with majorettes. The majorette is not necessarily what Father Connell describes her; in fact, many majorettes are definitely not in that category. She is part of a show, a pageant; and she can act her part without immodesty. It is true that she adds an element of feminine charm to what would otherwise be a thoroughly masculine performance; but there is nothing immoral or un-Catholic in this. It is also true that she is usually "clad in a short skirt," though the shortness is not necessarily exceptional. The use of such costumes in theatrical performances, pageantry, skating contests, and so forth, seems to be so well established in our country that even refined people do not object to it. My conclusion from these observations is that it is neither necessary nor wise to insist that Catholic institutions do away with majorettes, though they should, of course, carefully avoid the extremes described by Father Connell.

As regards the beauty contests, my approach to this question would be somewhat different from Father Connell's. Since these contests all too frequently emphasize mere physical perfection, they contribute substantially to the modern degradation of womanhood, and they should be condemned, it seems to me, primarily on that score. I might add, however, that the present sponsors of the "Miss America Pageant" claim that talent, personality, and such things are of much greater importance than the purely physical aspects of the contest.²⁰ If this theory is actually reduced to practice, it might allow for a more considerate moral appraisal of the contest.

I do not object to Father Connell's argument concerning unjustifiable

²⁰ This is stated in the literature supplied by "The Miss America Pageant," Atlantic City, New Jersey.

scandal. Yet I think that if an argument is placed on this basis it is hardly safe to generalize and say that a girl would commit a mortal sin by entering *any* bathing-beauty contest. If we base the argument on scandal, in the sense of occasioning sins of impurity, then we must know whether the conditions described earlier in his response are verified: for example, the kinds of costumes worn, the positions assumed, the circumstances in which the contest is held, and so forth. I could not be "unhesitating" in pronouncing a thing gravely sinful unless I had accurate information on such things. If one may judge from pictures and descriptions of contests, such details may differ considerably. That may be one reason for some of the heated debates I have heard on the subject.

WAR

Perhaps the most challenging moral problem of modern warfare concerns the use of such things as obliteration bombing and the atomic bomb, especially in the destruction of cities. In suggesting a solution to this problem *L'Ami du clergé* distinguishes two concepts of war, the old and the new.²¹ According to the old concept of war the principle of self-defence was applicable only to the combatting forces; and, no matter how one explained this principle, all were agreed that the loss of civilian life could be justified only according to the principle of the indirect voluntary. This latter principle would demand that the killing of civilians be unintentional and justified by a proportionate reason. *L'Ami* believes that at least the proportionate reason would be lacking. In this it agrees with the second part of Father Ford's essay on obliteration bombing;²² it does not explicitly discuss whether the killing of civilians could be called indirect.

But, continues *L'Ami*, from the recent world wars, particularly the second, a new concept of war has emerged: total war, with one side an aggressor who acknowledges no moral restrictions and who is bent on the complete subjugation, even extermination, of the defensive nations. In this concept, which *L'Ami* seems to favor, the principle of legitimate self-defence is applied to nations as a whole and not merely to combatting forces. Even in this new concept, however, the application of the principle is limited to "necessary harm." While admitting that the limitation is hard to determine, *L'Ami* is inclined to the view that the atomic bomb and obliteration bombing

²¹ *L'Ami*, Nov. 27, 1947, pp. 824-26.

²² John C. Ford, S.J., "The Morality of Obliteration Bombing," *THEOLOGICAL STUDIES*, V (1944), 261-309. In the first section of his article, Father Ford argued that obliteration bombing includes the direct intent to kill the innocent; in the second section he showed that, even if it could be considered indirect, the killing would be unjustifiable for lack of a proportionate reason.

may be used to reduce an unscrupulous aggressor to helplessness as quickly and as completely as possible.

A most interesting discussion of this same question is presented by Father Lawrence L. McReavy in his critical survey of a report of a committee of Anglican scholars and divines.²⁸ I regret that I do not have the report itself at hand. From Father McReavy's article I gather that it contains a penetrating analysis of modern warfare and that many of its points could well be included in these notes. For the present, however, I must confine myself to what is said about the justifiable use of obliteration bombing and the atomic bomb.

In general, the Anglican committee is strongly against the use of such destructive bombing. Where the atomic bomb is concerned the committee makes a careful distinction even between military objectives. It declares that the use of the bomb against a *human* military objective (e.g., an army) is usually unjustifiable because, like poison gas and bacteriological warfare, "it causes death and aggravates suffering needlessly." It would, however, allow the use of the bomb on some important military objective (e.g., a fort) that could not be brought to terms by ordinary bombs, because "in such circumstances the suffering and death caused will not be needless. But in most imaginable situations the charge of inhumanity would lie."

Would the committee ever allow the use of the bomb against a predominantly civilian town? On this point Father McReavy writes:

Confronted with the situation which seems most likely to arise, in which one nation begins hostilities against another by launching an attack with atomic weapons upon its principal cities, they reply: 'first, that in all probability such an attack would, by threatening the existence of the community subjected to it, establish "a present imminent danger," which would justify all measures genuinely necessary to self-defence. Secondly, since in these circumstances the only hope of effective defence would lie in bringing overwhelming force to bear upon the enemy immediately, it seems that the use of atomic weapons would be genuinely necessary. Thirdly, since it would also be necessary to use these weapons in the most immediately efficacious way, whatever damage and casualties were inflicted in so doing could rightly be regarded as incidental to self-defence.'

In the section of the report contained in this quotation there is no explicit reference to the use of atomic bombs on cities; but Father McReavy, who has studied the report carefully, points out that the context concerns the

²⁸ "An Anglican Verdict on the Atomic Bomb," *Clergy Review*, XXX (1948), 1-10. The Anglican report, as cited by Fr. McReavy, is *The Church and the Atom*, published by The Press and Publications Board of the Church Assembly, Church House, Dean's Yard, Westminster, S.W.1.

bombing of predominantly civilian cities. He cannot accept the conclusion. He argues that since the atomic bomb is of its nature not merely a "block-buster" but a "town-buster," its use against a predominantly civilian town includes the intrinsically evil act of directly killing the innocent; hence even the principle of self-defence cannot justify it. After a thorough discussion of this point, he concludes:

I can conceive, therefore, of only two cases in which it might possibly be lawful to atomize a civilian town: first, if the *civilian population had been given timely and effective warning and opportunity to move out*, and the destruction of the town were really necessary as a deterrent; and secondly, if, like the American Oak Ridge, the town existed simply for the purpose of manufacturing atomic weapons, because in that case it could be classified as itself a weapon of aggression.

The issues here are so large and so complicated that it is difficult to advance any opinion without "some hesitation," as Father McReavy puts it. No doubt those who have suffered from the ravages wrought by an unprincipled aggressor in the last war and who look ahead to the horrifying prospect of defending themselves against an equally brutal and unprincipled aggressor are emotionally inclined to view the conclusions of *L'Ami* and the Anglican commission with some favor. Nevertheless, in the sphere of cold principle, Father McReavy's reasoning is not easily refuted. I am somewhat puzzled by the precise limitations of his second case; but aside from this, my head, if not my heart (which palpitates considerably when I think of "the next war"), nods him a grudging assent. In view of the nature of the atomic bomb, it seems to me that it cannot be aimed at a civilian town without intending to kill civilians; and unless our past notions of the innocent and the non-combatant are completely wrong today, it is impossible to justify the *direct* killing of such people. Incidentally, the majority report of the Anglican commission is said to have condemned the bombing of Nagasaki and Hiroshima as the use of an evil means for a good end. *L'Ami* reserves its judgment on this point. The reservation is based apparently on the inability to estimate whether, in the concrete circumstances, these drastic measures were really necessary to bring the aggressor to a state of impotence and to put a speedy end to the war. This makes a pattern with *L'Ami's* tendency to accept the concept of total war and to judge the morality of using the atomic bomb and obliteration bombing solely on the basis of their actual necessity for bringing the aggressor nation to a stop. And it seems to me that this is the real core of the problem: if one can accept the concept of total war, one can justify the use of atomic and obliteration bombing. Morally, the two notions stand or fall together.

A war problem of smaller dimensions but not limited to the atomic age is that of espionage. A question put to Canon Mahoney reads as follows: "Are the activities of secret service agents lawful in discovering the military and political secrets of another country?"²⁴ Canon Mahoney answers that as long as war remains a possibility, "the State not only may but ought to try and discover the military secrets of a likely aggressor, and the political secrets also, as being related to aggression. It is, in effect, a legitimate method of self-defence, examples of which may be seen in the Old Testament. If, however, a country is unjustly preparing for war, the espionage incidental to it is also unlawful."

As a matter of fact, espionage is generally accompanied by bribery, various kinds of deceit, and even violence against innocent persons. Canon Mahoney admits this, but insists that one "must not condemn the activity itself as morally wrong solely because the agents employed in it are, more often than not, accustomed to use immoral means." As a spur to further discussion of this topic one might ask whether *de facto* it is humanly possible to separate espionage from the immoral means that accompany it.

MEDICINE

An entire number of *Cahiers Laënnec* deals with a newly-published code of medical ethics for French physicians, the code itself being published as a supplement.²⁵ It is a comprehensive code, resembling more the *Principles of Medical Ethics of the American Medical Association* than the codes ordinarily used in our Catholic hospitals.²⁶ Regarding vital moral issues, Charles Larère, Chaplain-director of the *Conférence Laënnec*, says that the only thing offensive to the Christian conscience is the toleration of therapeutic abortion (art. 32).²⁷ Despite seemingly great pressure from outside, French physicians refused to give a nod of approval to euthanasia (art. 23).

²⁴ "Justification of Espionage," *Clergy Review*, XXIX (1948), 184-85.

²⁵ Dec., 1947. *Cahiers Laënnec* is a quarterly publication sponsored by Les Amis de Laënnec, a society which seems to be similar to our Catholic Physicians' Guilds. I think that an award for the best current contributions in the field of medical ethics would unquestionably go to this publication. Each issue is devoted to some special topic, e.g. artificial insemination, hysterectomy, death, etc.. Publication began in 1935, was interrupted by the war through the years 1940-45, and began again in 1946.

²⁶ A single brief code was used by the Catholic hospitals of the United States and Canada for many years. Because of its inadequacy, several dioceses have prepared codes of their own: Los Angeles, Hartford, Grand Rapids, and Toledo. Still another code, sponsored by the Catholic Hospital Association, is now in preparation. For more information, see *Hospital Progress*, XXIX (1948); "Revising the Hospital Code," pp. 258-59, and "Non-Catholics and Our Code," pp. 328-30.

²⁷ Cf. "Le code, idéal de la profession médicale," in *Cahiers Laënnec*, Dec., 1947, pp. 30-41.

A previous issue of *Cahiers Laënnec* had been devoted exclusively to a discussion of abortion. In the first article of that number, Dr. L. Portes, President of the National Council of the Society of Physicians, shows how the progress of medicine has gradually eliminated the so-called indications for therapeutic abortion.²⁸ His remarks agree perfectly with Dr. Joseph L. McGoldrick's answer to the Blanshard charges and with scientific studies published in our own country and cited by Dr. McGoldrick.²⁹ This progress, says Dr. Portes, merely lends scientific confirmation to the moral position of the Catholic Church; and he looks for continued progress to the point of completely outmoding any indications for therapeutic abortion.

A depressing contrast to Dr. Portes's survey is a recent panel discussion reported in the *Journal of the American Medical Association*.³⁰ Here, among the possible "modern indications for therapeutic abortion," were discussed such things as German measles, hyperthyroidism, tuberculosis of the bladder, cancer of the breast, toxemia, Rh incompatibility, multiple sclerosis, tuberculosis in the husband, repeat cesarean sections, and—especially impressive—the mental condition of the woman resulting, for example, from the fact that she fears pregnancy or that the conception was incestuous. It is only fair to the doctors who took part in the discussion to state that they did not always agree that therapeutic abortion is indicated; but this fact only slightly softens the prevailing impression that most of the participants seemed to be utterly without regard for the inviolable rights of the unborn child. The one redeeming feature, to my mind, is found in the remarks interspersed by the moderator, Dr. Cosgrove, and especially in his concluding plea, first, for economic help for mothers who need long hospitalization in order to carry a child to term, and secondly, for "the ethical recognition that the fetus is a human being with all the potentialities of every human being."

Yet, even Dr. Cosgrove's otherwise wholesome remarks are clouded by certain statements. To the question, "How many cesarean sections should be allowed before a therapeutic abortion should be done?" he answers emphatically: "Well, what a foolish thing it is to do a therapeutic abortion just because a woman has had two or six or ten previous cesarean sections. Let her go ahead and have this further one by section." To this splendid answer he adds one morally jarring sentence: "Sterilize her then, if you like." Again, despite a strong plea for the rights of the fetus (as I have

²⁸ "L'avenir de l'avortement thérapeutique," in *Cahiers Laënnec*, Oct., 1946, pp. 3-12.

²⁹ "Mr. Blanshard in Medicine," in *The Homiletic and Pastoral Review*, XLVIII (1948) 358-64; reprinted in *Catholic Mind*, XLVI (1948), 233-40; and in *Hospital Progress*, XXIX (1948), 181-84, under a new title, "Does the Church Impede Medical Progress." Individual reprints were also made available in large quantities.

³⁰ Vol.137, May 22, 1948, pp. 331-36.

quoted) and for the necessity of preserving "the ethical sanctity of fetal life," he also urges that all recognize that the destruction of fetal life "is murder, only justifiable in the most extreme circumstances involving direct and imminent threat to the mother's life." Perhaps the main difference between Dr. Cosgrove and the theologian, at least as regards abortion, is one of terminology; perhaps he means that indirect abortion is justifiable in extreme circumstances? I sincerely trust that this is the case.

Unquestionably terminology is the basis for much misunderstanding between the theologian and the physician. For this reason Canon P. Tiberghien, professor of medical ethics at Lille, suggests that we limit the term "abortion" only to direct abortion and that we define it as "medical intervention, by operation or treatment, the *object* of which is the expulsion from the mother of an inviable fetus."

Canon Tiberghien's suggestion is contained in an address on the moral aspects of abortion given to members of the medical profession.⁸¹ Incidentally, though the content is not novel, the address manifests the fruit of twenty-five years of teaching medical ethics to medical students. For example, the canon warns doctors against substituting "common sense" for principle. Too often, he says, this "common sense" is simply the fallacy that a good end justifies the use of any means. Again, speaking of therapeutic abortion, he cautions them against the emotional effect of the slogan, "better one death than two deaths," and advises the use of such counter-slogans as "better two deaths than one murder," or "better two deaths than thousands of deaths"; the latter, he points out, is certain to be the case when the principle of therapeutic abortion is accepted.

The Catholic condemnation of therapeutic abortion is not infrequently misrepresented as meaning that in a crisis the doctor must always save the child in preference to the mother. It was reported to *L'Ami du clergé* that in a recent interview Pope Pius XII had insisted on this preference of child over mother. Fortunately Joseph Géraud,⁸² who treated this topic in *L'Ami*, was able to identify the "interview" as the Pope's address to the Sixth International Congress of Surgeons; and he found that the words on which the charge is based are these: "But it is no less forbidden, even with the design of saving the mother, directly to cause the death of a little one who is called, if not during the life here below, at least during the life to come, to a sublime and noble destiny."⁸³

⁸¹ "Principes et conscience morale," in *Cahiers Laënnec*, Oct., 1946, pp. 13-27.

⁸² *L'Ami*, July 29, 1948, pp. 485-87. The author, J. Géraud, seems to be a priest-psychiatrist; in another number of *L'Ami*, he signs himself S.T.D., M.D., with Diploma in Psychiatry.

⁸³ "The Surgeon's Noble Vocation," *Catholic Mind*, XLVI (1948), 488-92, is an English version of this papal discourse.

In correcting the misunderstanding Fr. Géraud also points out that this mother-or-child crisis is almost a nonentity in modern obstetrics—a statement which is in agreement with the words of Drs. Portes and McGoldrick and quite foreign to the tone of the panel discussion previously referred to. As instances of how the crisis might refer to the indirect killing of the fetus he mentions the removal of the cancerous uterus, the suppression of dangerous hemorrhage, and ectopic operations. It is interesting to note that in treating the last subject, he encourages doctors to try the Wallace operation (the transplanting of the ectopic fetus into the uterus). Fr. Bouscaren includes a complete account of Wallace's operation in *Ethics of Ectopic Operations*.³⁴ The sixth edition of De Lee's *Principles and Practice of Obstetrics* refers to it;³⁵ but a much later work by Stander makes no reference to it.³⁶ Not being a competent judge of the feasibility of this operation, I will not press Fr. Géraud's precise point; but I do insist now, as I insisted last year in these notes and elsewhere, that to adopt the rule of thumb of removing a pregnant tube as soon as it is discovered, is to block off forever any possibility of medical progress in the treatment of ectopics.³⁷

The theologians' attitude towards ectopic operations is one of the most seriously misrepresented of all medico-moral problems. The impression is apparently very widespread that the shift in theological opinion is to be attributed merely to a more subtle form of casuistry, without any reference to a changed presentation of medical facts. Despite the fact that Dr. McGoldrick's reply to Mr. Blanshard has been printed and reprinted, his presentation of the true state of affairs is so clear that I think it simply demands quoting here:

The medical attitude towards ectopic gestation illustrates the progress medicine has made in recent years. Textbooks of thirty or forty years ago displayed a meagre knowledge of the etiology and pathology of tubal pregnancy as compared with our present-day understanding of this problem. With our increased knowledge of the pathology of this condition, as with the advance made in other branches of medical science, our ideas and methods of treatment have changed greatly. Our methods of interpretation have not changed, and our reasoning processes are still conditioned by the same rules. But naturally, when doctors arrive at new facts, new corollaries follow. The churchmen do not establish medical facts. They can only give their moral pronouncements on the facts the doctors present to them. Could it be otherwise?

When competent medical men discovered, as a medical fact, that tubal preg-

³⁴ Milwaukee: The Bruce Publishing Company, 1944; see pp. 105-08.

³⁵ Philadelphia: W. B. Saunders Company, 1934; see p. 437.

³⁶ H. J. Stander, *Textbook of Obstetrics* (New York: D. Appleton-Century Company, 1945).

³⁷ Cf. "The Morality of Ectopic Operations," *Hospital Progress*, XXIX (1948), 27-29.

nancy by its pathological nature was not merely a future danger but an immediate and present danger to the life of the mother, Catholic moralists began to affirm that treatment of this pathological condition aimed at, and solely for the purpose of, saving the mother's life could not be certainly censored, even though the death of the fetus might ensue incidentally. Real sickness or pathology may always be treated. If in this situation the churchmen have applied their principles to a new set of facts, it is because of the changed medical data presented to them by us doctors. If there had been mistakes, it would have been because of misinformation from doctors, not because the churchmen were clerics or celibates.

"There are two medical specialties in which religious-minded doctors are urgently needed, obstetrics and psychiatry." These words of Father Raphael C. McCarthy, S.J.,⁸⁸ furnish my cue for moving from the moral problems of obstetrics to the equally important, though less tangible, problems of psychiatry. The same number of the *Linacre Quarterly* that contains Father McCarthy's article has two articles by psychiatrists, Fr. Pierre C. Simonart and Dr. Robert E. Britt, on the moral responsibility of the mentally ill.⁸⁹ Candidly, I would not attempt to digest or summarize these articles, because, in their published form, they are themselves but summaries. Even to quote selected passages might be misleading; hence, I will content myself with stating that the articles confirm and throw light on something of which we were already convinced, namely, that the responsibility of the mentally ill is always to some extent questionable.

Moralists lend a ready ear to the thesis of diminished or even non-existent responsibility of the mentally ill. It offers, it is true, many practical problems, but not the semblance of a denial of the doctrine of free will. But dynamic psychiatry generates a difficulty even about the responsibility of the "normal" individual. The genesis of the difficulty seems to run somewhat like this: In his study of cases, the psychiatrist becomes so deeply impressed by the influence of unconscious motivation that he suspects the existence of such influence in every apparently human act, even to the extent of taking the act out of the realm of "full responsibility," as described by moralists. In other words, even the Catholic psychiatrist, who holds fast to the theoretical doctrine of free will, is apt to find himself inclined towards this pernicious conclusion: "We do have the power of free will, but in any concrete case we cannot be sure of the measure of our responsibility."

⁸⁸ Cf. "Common Grounds for Psychiatrists and Priests," in *Linacre Quarterly*, October, 1947, pp. 1-4.

⁸⁹ *Ibid.*, pp. 8-15: "The Imputability of the Mental Patient," by Fr. Simonart; and pp. 16-25: "Moral Limitations in Mental Disease," by Dr. Britt.

If this conclusion merely meant that in no concrete case could we be sure that our responsibility is perfect (i.e., 100%), I would not label it pernicious. It might even be true; I cannot affirm or deny that. But it seems to me that in many cases it does not have this limited meaning; it means that the normal man in his ordinary apparently free acts is probably so much influenced by unconscious motivation that he cannot be certain of that degree of freedom which is required for a mortal sin. *That* conclusion is pernicious.

I am not capable of suggesting just how the problem of the unconscious can be successfully integrated into the Catholic doctrine of freedom. But I can suggest an approach to this problem which must be loyally followed by every Catholic. It is not enough to tackle the problem with a conviction of man's power to act freely; the Catholic must also be convinced that in many of his acts the normal man *does act* with sufficient freedom to merit great praise or blame before God, and also that in many acts the man is certain of this responsibility. This must be true; otherwise such doctrines as the necessity of confession, the canonization of saints, and many others are bereft of all practical meaning. Our religion, taken as a whole, is a religion to be lived, and it presupposes not only the remote power of responsibility, but also actual, serious responsibility, recognizable as such, in a large number of our acts. Any conclusion that throws doubt on this is pernicious, and must necessarily be false. Consequently, any interpretation of the findings concerning unconscious motivation that caters to this doubt should be immediately and firmly discarded.

I believe that the problem I have just outlined is the most serious one that confronts the Catholic student of dynamic psychiatry. And this is apparently the view of Fr. Tesson, of the Catholic Institute of Paris, who introduces a study of psychoanalysis in *Cahiers Laënnec* with a strong warning against overemphasizing the role of the unconscious.⁴⁰ He also cautions psychoanalysts against identifying the "superego" with conscience and "guilt feelings" with a sense of sin.

Immediately following this article in *Cahiers Laënnec* is a discussion of Freudian psychoanalysis by Dr. Ch-H. Nodet.⁴¹ Dr. Nodet distinguishes between Freud's metaphysics (i.e. his philosophical speculations), his psychology (which embraces the structure of the personality: id, ego, superego; the role of instincts in life; the complexes and so forth), and his therapeutic technique (i.e. uncovering of hidden conflicts through psychoanalytic inter-

⁴⁰ "Descriptions de la conscience morale et incidences psychiatriques," *Cahiers Laënnec*, May 1948, pp. 3-21.

⁴¹ "Psychanalyse et Morale," pp. 22-36.

views, and helping to personality readjustment). Dr. Nodet believes that Freud's philosophy must be rejected as materialistic, that much of his psychology is compatible with Catholic morality, and that psychoanalytic therapy is in itself morally harmless.

Fr. Joseph Géraud agrees that psychoanalysis as a therapeutic technique is in itself morally unobjectionable.⁴² Nevertheless, he calls attention to two very real dangers: first, that the analyst is apt to interpret his findings according to Freudian philosophy; and secondly that an unscrupulous analyst can readily take advantage of the emotional reactions of the patient that are included in the "transference." Aside from these dangers, he rather humorously observes, the most serious objection to the technique is that it is a luxury, a remedy available only to the wealthy.

It seems to me that the second danger mentioned is not limited to analysts; any unscrupulous doctor might take advantage of a patient. And even the first danger (the influence of a false philosophy of life) is very real in other branches of medicine, particularly in obstetrics. However, I believe that this danger is accentuated in the case of analysts precisely because they generally deny its existence. They say that their sole function is to help the patient to become aware of his problems; and that, once aware of the problem, the patient is left to solve it according to his own code. I have never been convinced by this doubtlessly sincere protest. It seems to me that if a man is imbued with certain principles of living it is a psychological impossibility for him to prescind from these in interpreting the intimate personality data that is revealed during a psychoanalysis.

I should like to mention two additional impressions that have struck me in the course of much reading about psychiatry in general and psychoanalysis in particular. The first is that Catholic scholars seem more and more willing to admit that Freud was indeed a genius; but they add that his own ability to use and interpret his finding was stunted by his inability to see the complete picture. Some of these scholars think that a Catholic, precisely because of his more adequate philosophy of life, is much better prepared to use these findings in a constructive way. The idea is well expressed in the following words of Dr. Karl Stern:

Moreover, those who believe in the primacy of the spirit are looking at these issues from a vantage point which Freud himself did not have. Had he himself known and recognized a psychology (knowledge of the *psyche*) other than natural, as explored by, let us say, Teresa of Avila, he would not have been shaken in any one of his fundamental discoveries, but his insights would have taken on a third

⁴² Cf. "Procédés actuels d'investigation de la conscience," in *L'Ami*, Aug. 12, 1948, pp. 513-18.

dimension, and he would, with his genius, have built something of a tremendous grandeur. As it is, he has supplied only one blueprint and it is for those who come later to add a few storeys. In this connection it is interesting to read his short and brilliant essay on Dostoevsky and *The Brothers Karamazov*. There he gave a penetrating analysis of the psychological background of Dostoevsky's own life; he was full of praise of the profound psychology displayed in the novel but he missed entirely the main point—the spiritual drama. He had a blind spot for it. Those among us, however, who “see both sides,” are at an advantage when it comes to the task of integration.⁴³

The second observation concerns the need of mutual understanding and cooperation on the part of priest and psychiatrist. In his article, Fr. Tesson urges psychoanalysts always to have a moral counsellor at hand when a cure involves profound repercussions in the moral field or some actual modification of the personality. Dr. Nodet expresses his conviction that moralist and analyst can be mutually helpful in solving many problems of the spiritual life, for example, the desire for penance, in which lofty motives can be mixed with a hidden masochistic strain. (Dr. Nodet, by the way, invites all moralists to be psychoanalyzed just to see how morally harmless it is!) Fr. R. McCarthy, in the paragraph from which I have already quoted one sentence writes:

There are two medical specialties in which religious-minded doctors are urgently needed, obstetrics and psychiatry. It is true, there are many Catholics eminent in both of these fields. Some of the outstanding psychiatrists of the country are exemplary members of the Church. There is need for more of them and it is to be earnestly hoped that many of our young men from our Catholic medical schools will take up this specialty. Psychiatry has ceased to be regarded as the stepchild of medicine. It not only has become “respectable” but has proved its value and need in these days when men and women are battered by the emotional strains of our complex modern life. To fulfill its functions perfectly, it must regard its patients not as sick bodies, but as sick *persons* with spiritual natures and spiritual destinies. It must recognize that a man who is to live a full, contented, healthy life must have moral ideals and live up to them. And one of the surest protections against devastating conflicts and a most effective means of recovering from them is a trust in a provident God, the aid of religion, and the hope of unending happiness. Such a goal can best be achieved by team work between a psychiatrist who knows something about sin and a priest who knows something about psychiatric symptoms.⁴⁴

In a former survey we considered the use of drugs to get a suspected criminal to reveal his crime or to enable a patient to reveal the source of

⁴³ “Religion and Psychiatry,” *Commonweal*, XLIX (1948), 30–33; quotation from p. 32.

⁴⁴ See footnote 38, *supra*; quotation from p. 4.

a disturbing anxiety.⁴⁵ A recent article by Fr. Géraud treats the same topics under the heading "Narcoanalysis," and expresses the same conclusions: namely, that the use of the drug on an unwilling suspect is simply a "moral robbery," whereas its use in medicine, with proper regard for the consent of the patient and proper respect for the professional secret is justifiable.⁴⁶ His concluding observation is rather startling; he says that narcoanalysis is a greater menace to our civilization than is the atomic bomb because, by threatening man's freedom to preserve his secrets, it strikes deeper at the roots of human dignity.

He also touches briefly on the morality of lobotomy. As a therapeutic technique, the operation is still in its infancy, he says; but he is of the opinion that, according to the knowledge we now possess, the operation may be allowed as a last resort. This topic is treated at greater length by Fr. Patrick O'Brien, C.M.⁴⁷ who thinks the operation may be allowed in the case of a true psychosis that is affective in character, truly disabling, and of sufficient duration to allow for a reasonable medical judgment that time or situational changes will not effect a cure. Like Fr. Géraud, he demands that other available therapy be tried first; and he adds the condition that there must be assurance of competent care for a long period after the operation.

A statement that was recently approved by a number of theologians and doctors runs as follows: "Lobotomy is morally justifiable as a last resort in attempting to cure those who suffer from serious mental illness. It is not allowed when less extreme measures are reasonably available or in cases in which the probability of harm outweighs the probability of benefit." Although I think that Fr. O'Brien's conditions are carefully worked out, I prefer this more general statement because it allows competent physicians more liberty in judging what mental conditions justify the operation.

From physician to embalmer! Asked when embalming may begin, Fr. Connell says the undertaker must wait one hour in the case of death from a long and wasting illness and three hours in the case of the sudden death of one who had enjoyed moderately good health.⁴⁸ For want of more pre-

⁴⁵ Cf. THEOLOGICAL STUDIES, VIII (1947), 104.

⁴⁶ See footnote 42, *supra*, especially pp. 515-18. And for a more complete treatment of this topic, see "Narcotherapy in Catholic Hospitals," *Hospital Progress*, XXIX (1948), 107-8.

⁴⁷ "Prefrontal Lobotomy: Its Present Moral Aspect," *Ecclesiastical Review*, CXIX (1948), 196-201. One of the most informative discussions of lobotomy I have seen is presented by Hugh J. Bihler, S. J., in the *Conference Bulletin of the Archdiocese of New York*, XXIV (1947), 86-92. See also *Hospital Progress*, XXIX (1948) 427-28.

⁴⁸ "How Soon May Embalming Begin?" *Ecclesiastical Review*, CXVIII (1948), 230.

cise knowledge about the moment of real death, every moralist would be practically forced to give an answer similar to Fr. Connell's regarding the time for embalming or for an autopsy. The more precise knowledge is certainly desirable. Writing in *Cahiers Laënnec*, Dr. Maurice d'Halluin distinguishes between apparent, relative, and absolute death.⁴⁹ According to this distinction, a person is apparently dead when latent life is present to such a degree that spontaneous resuscitation is possible; one is relatively, or clinically, dead, when resuscitation is impossible spontaneously, but not impossible when certain artificial means are used; and absolutely dead when resuscitation is entirely impossible.

I mention all this, not because it clarifies my own thinking, but because others may want to think it over. Personally, I am very much confused over certain aspects of the distinction between real and apparent death. I wonder if the time interval for licit autopsy or embalming must follow a perfect parallel with our theory about the conditional administration of the sacraments. For instance, if a man had just had his head crushed to a pulp, would we not administer the sacraments conditionally? Yet surely such a man is dead in the sense that he cannot be resuscitated; and embalming, even though it began immediately, would hardly make him more dead than he already is.

Another question on embalming: must the blood be buried? Father Connell thinks that in strict accordance with canon law and with the decree of the Holy Office concerning the burial of amputated members, the blood should be buried.⁵⁰ I have made a rather thorough study of the decree referred to, and I fail to see how either this decree or the general law applies to blood.⁵¹ Authors who try to interpret the decree think it refers only to *notable* or *major* parts of the body; and these expressions are used in the Toledo and Los Angeles Codes, respectively. It would be my opinion, first, that blood need not be considered as a *part* of the body, in the sense of the decree concerning burial; and secondly, even if it is a part, that it need not be considered a notable or major part, for such terms seem to refer to a part which retains its distinctively human characteristic even after separation from the body. I may be wrong; but I am willing to venture this opinion as a contribution to discussion.

⁴⁹ Cf. "Est-il possible de ressusciter un mort?" in *Cahiers Laënnec*, Dec., 1946, pp. 51-63. See also "L'Extrême-Onction conférée sous la condition 'Si Vivis,'" in *Revue Diocésaine de Tournai*, III (1948), 410-14.

⁵⁰ "A Moral Problem for Embalmers," *Ecclesiastical Review*, CXVIII (1948), 309-10.

⁵¹ For the text of the decree, as well as references to authors and diocesan codes, see "Disposal of Amputated Members," in *Hospital Progress*, XXIX (1948), 189 ff.

JUSTICE

The moral theology manuals do not formally treat the duties of landladies. But Fr. J. McCarthy throws considerable light on this homely and not impractical topic by outlining the landlady's duties in justice and charity towards all lodgers in general, and towards youthful lodgers in particular.⁵² Concerning justice, he writes:

The precise extent of her obligations in justice will depend upon the contract which has been entered upon between the parties. Broadly speaking, a landlady is bound in justice to provide the manner of lodging and food as contracted, and for the agreed sum. Further, this sum must not be exorbitant—that is, out of all proportion with the actual costs incurred, plus a reasonable profit. Which is another way of saying that a landlady may not lawfully take advantage of extreme scarcity of lodging accommodation to extract exorbitant rates. If there is an agreement to this effect, a landlady is also responsible for the property on her premises of lodgers and boarders—so that if it is stolen or damaged she must make good the loss. These are the main obligations in justice.

Her other general duties, which may be roughly grouped under "charity," are outlined as follows:

A landlady, as mistress of the house, should see to it that the conditions of residence do not constitute a danger or occasion of sin for her lodgers. Scandal and co-operation on her part assume an aggravated malice. In brief, a landlady is bound, as far as is reasonably possible, to ensure that a healthy moral and religious atmosphere pervades her house.

As for youthful lodgers, Fr. McCarthy thinks that the landlady must always exercise a quasi-parental function. This means that she must be especially concerned about their moral and physical well-being; see that they keep good hours; give timely admonitions; encourage them to be faithful to their religious duties; and so forth. (He is speaking for a Catholic country. "Attention to religious duties" might present a delicate problem for a Catholic landlady of non-Catholic lodgers.) These duties would be in justice, if there were an agreement with the parents; otherwise charity would be the source of the obligation. Fr. McCarthy concludes this topic on an appropriate apostolic note:

The conscientious landlady can make a distinct contribution to the problem of youth guidance. . . . We realize fully that the exercise of due control is no easy matter for a landlady. It will demand from her tact, sympathy and understanding. But it will merit for her the deep gratitude of anxious parents and, indeed,

⁵² "The Obligations of a Landlady towards her Lodgers," *Irish Ecclesiastical Record*, LXIX (1947), 1115-16.

the gratitude of many youthful lodgers—though, to them, at times, control may seem an irksome yoke and hindrance.

The farmer also has a problem. May he sell at the retail price directly to the consumer, thus obtaining for himself not only his basic price but also the profits of wholesaler and retailer? According to *L'Ami du clergé*, this is not a violation of commutative justice, because the consumer is getting the product at the just retail price.⁵³ However, if the law specifies the distinct prices to be paid by wholesaler, retailer, and consumer, *L'Ami* sees in the practice an offense against the public welfare, because such laws serve a definite purpose for the public good; for example, milk is usually supposed to be pasteurized before it reaches the consumer. And, even if the law does not specify the distinct prices, it is *L'Ami's* opinion that the farmer might violate equity in taking all the profit of the immediate transaction for himself instead of making some allowance for the benefit of the consumer.

The automobile dealer is next on this little tour. Does he "fail against justice, if he buys a new car, drives it a few miles, then sells it as a used car"? Fr. Connell's answer is that this practice is not an offense against a law stipulating a ceiling price for a new car.⁵⁴ The dealer, however, violates strict justice if he forces the buyer, because of his need, to pay more than the *pretium vulgare summum*. The practical difficulty in applying this answer lies mainly in determining just what is the *pretium vulgare summum*, especially in these days when demands for cars are so great. It seems to me that a law that stipulates only the price for the new car has been proved ineffective; it should at least add that a used car may not be sold for more than a new car of the same model.

Changing the subject from prices to wages, I should like to refer to a brief reply of Fr. Patrick J. Lydon to the effect that "according to *Quadragesimo Anno*," a living family wage is a matter of the natural law of justice.⁵⁵ The implication, I think, is that the title is commutative justice. Some authors do not admit that this title can be proved from *Quadragesimo Anno*; but a friend of mine who has studied this question much more thoroughly than I says that the position of these authors is untenable in the light of *Divini Redemptoris*. In this latter encyclical Pius XI expressly declared that he had taught in *Quadragesimo Anno* that a family wage is due in *strict justice*—and the ordinary meaning of that expression is commutative justice.^{56a} Personally, I am much impressed by this argument.

⁵³ *L'Ami*, Feb., 12, 1948, pp. 110-12.

⁵⁴ "A Problem in Justice," *Ecclesiastical Review*, CXVIII (1948), 382-83.

⁵⁵ Cf. *The Priest*, IV (1948), 358.

^{56a} Cf. *AAS*, XXIX (1937); Latin text is on p. 80, Italian on p. 118.

How large a family should be taken as the norm for a family wage? Robert J. Dixon suggests that "experience sets the family of three to four as a standard. Thus typical needs will be met and single men can afford to marry. Larger families will be at a disadvantage, but such discrimination is reduced when older children obtain part-time work that does not impair their health or education."⁵⁶ I presume that Mr. Dixon means children when he says "three to four." We could hardly take the child-and-a-half family as the basis for any sound social policy; to determine a family wage according to this norm would, it seems to me, merely encourage the drift towards small families.

Two years ago I mentioned some current attempts to determine absolutely grave matter in theft. In a very recent reply, Fr. J. McCarthy makes a tentative estimate of five to six pounds for Ireland.⁵⁷ He arrives at this estimate by considering older standards, when the purchasing power of money was greater; and he finds that it checks accurately with the norm recommended by J. Arendt, S.J., namely, "the weekly wage of the more favoured classes of general workers who have no special professional or highly technical training." I should find it gratifying if all moralists would adopt Arendt's method of making this estimate. It can be readily applied in any country or region at any given time; and universal adoption of it would do away with some of the rather wild estimates that occasionally appear in print.

I can close this section with a brief reference to the race question. Analysing compulsory segregation on the three-fold count of *objectum, finis, et circumstantiae*, John P. Markoe, S.J., brands it on all counts as a colossal injustice.⁵⁸ Considering the agent collectively, that is, as a moral unit, Fr. Markoe says that the dominant purpose, the *finis operantis*, is to maintain white superiority and to keep non-whites in a state of inferiority. This violates not only the moral law of love, but also the law of justice which commands us to render to every man his due. "The most fundamental right," says Fr. Markoe, "due the members, considered individually and collectively, of the various non-white groups is the natural, inalienable right to be treated with the respect, courtesy and dignity becoming a human person. But this right is denied by the advocates of white supremacy."

As for the *objectum* (compulsory segregation itself, with the various prac-

⁵⁶ "Moral Principles in Industrial Relations," *Catholic Mind*, XLVI (1948), 470-78; see p. 476.

⁵⁷ "The Absolute Standard of Grave Matter in Theft," *Irish Ecclesiastical Record*, LXX (1948), 937-40.

⁵⁸ "A Moral Appraisal of the Color Line," *Homiletic and Pastoral Review*, XLVIII (1948), 828-36.

tices by which it is manifested), here too Fr. Markoe finds the law of love violated and the moral principles of justice even more flagrantly abused by the restriction of "the free exercise of the natural and inalienable rights of the segregated. Compulsory segregation, whether enforced by law and ordinance or by social custom (the social pattern, as it is frequently called), ruthlessly maintained through intimidation and violence, unjustly restricts individual liberties." Finally, among the *circumstantiae*, he stresses the terrible frustration of individuals and groups as they find themselves continually and everywhere blocked by segregation from pursuing even moderate ambitions and fulfilling even modest desires.

It is with no feeling of racial or religious complacency that I turn from this article to the account of the gradual and cautious acceptance of Negroes in Catholic colleges, as told by Richard J. Roche, O.M.I.⁵⁹ Some Catholic papers have taken the facts painstakingly gathered by Fr. Roche as indicative of a great social achievement by our Catholic institutions. To me it merely shows how little we have done; and it makes me wonder how late we shall be in doing the remainder. One fact clearly emerges from Fr. Roche's splendid study: admitting Negroes does not close the school.

FAST AND ABSTINENCE

Since my first topic in this section concerns the absolute and relative norms of fasting, it seems advisable to begin by indicating clearly what I understand these terms to mean. Both refer primarily to the quantity of food allowed on a fast day at the two subsidiary repasts, breakfast and lunch. (I am using these two English words to translate *frustulum* and *collatio*; some may prefer to designate the latter as supper.) According to the absolute norm, there is a fixed limit for these repasts, which limit applies to everyone. This limit has been traditionally phrased in terms of two and eight ounces; but these are merely moral estimates, and it is certainly safe to describe the absolute norm as allowing "two or three" ounces for breakfast and "eight or ten" ounces for lunch.

The essence of the relative norm is that it allows to some extent for varying individual needs. Each one is allowed what he needs at breakfast and lunch in order to preserve his health and do his work. However, even the most ardent proponents of this norm agree that it has some limit. They agree that the combined quantity of the two minor repasts must not equal a second full meal; and they usually agree that it should fall notably short of this quantity, for example, sixteen to twenty ounces. But it should be noted

⁵⁹ *Catholic Colleges and the Negro Student* (Washington: Catholic University of America Press, 1948).

that they allow this quantity to be divided, according to individual needs, between the breakfast and supper; they do not set a hard and fast rule that allows only a meager breakfast.

Quantity is the primary difference between the absolute and relative norms, but not the only difference, particularly as regards breakfast. Though some explanations of the absolute norm are rather vague as to quality, it is rather commonly said that the breakfast is limited to "bread and coffee or some other drink." According to the relative standard, the only universal qualitative limit is that meat may not be taken at breakfast or lunch.

As far as I know, L. J. Twomey, S.J., was the first to publish an article in our country advocating the adoption of the relative norm.⁶⁰ After the publication of this article I participated in a number of discussions with canonists and moralists. The conclusions of these discussions, as I recall them, were the following: (1) If the bishop specifies the two-and-eight rule in his pastoral letter, the faithful in that diocese may not fulfill their fasting obligation by following the relative system, as it was explained above. They may follow the moral estimate of two-and-eight, which would be about three-and-ten; but if they cannot get along with this amount, they are not obliged to fast. (2) If the pastoral letter simply says "a little food in the morning and evening," or "a light breakfast and a light lunch" this might indicate approval of the relative system. (3) In those dioceses where the absolute norm is clearly enjoined the faithful who are excused or dispensed from the duty of fasting may certainly follow the relative norm as an act of personal mortification; and they are to be encouraged to do this.

Some years after the appearance of Fr. Twomey's article, Francis V. Courneen, S.J., published a survey of a growing tendency among canonists and moralists to advocate the relative norm.⁶¹ At the close of this enlightening survey, Fr. Courneen writes:

In conclusion, then, just how much is allowed at breakfast and at collation for a person who is fasting but needs something extra? Some authors say sixteen ounces in all; one or two authors seem to suggest even more. As things stand at present, if one should be asked how much over the two-ounce—eight-ounce limit is permitted nowadays, it appears that one should reply: First, if a person can conveniently fast on that amount, absolutely nothing extra; otherwise, whatever is really necessary, up to around sixteen ounces; these sixteen ounces can be divided as the person requires—into four for breakfast and twelve for collation, into six

⁶⁰ "The Lenten Fast: Is It an Insupportable Burden?" *Ecclesiastical Review*, XCIX (1938), 97-110.

⁶¹ "Recent Trends with Regard to Fasting," *THEOLOGICAL STUDIES*, VII (1946), 464-70.

and ten, into eight and eight, and so on. However, if the person needs much more than sixteen ounces, or if the mathematical juggling would make him scrupulous, he should be dispensed completely.⁶²

It seems to me that Fr. Courneen's conclusion needs at least a slight modification. I admit that his total of sixteen ounces for breakfast and lunch can be reconciled with a moral estimate of the absolute standard; but to extend the breakfast itself beyond two or three ounces is not in keeping with the absolute standard. Bishops who still enjoin the absolute standard usually make this quite clear by saying that only a small piece of bread or some such thing is allowed for breakfast. When the bishop makes such a stipulation, it is a clear sign to me that he is not approving the relative standard.

Many of us had hoped that after the publication of Fr. Twomey's article the American bishops would begin to favor the relative norm in their official fasting instructions. As a group, the bishops seem to have been scarcely influenced by the article. For several years I managed to get at least thirty Lenten pastorals from different parts of the country. With rare exceptions the absolute norm was constantly adhered to. Whether Fr. Courneen's article produced the desired impetus for change, I do not know.

The preceding paragraphs are an admittedly lengthy introduction to a brief mention of two recent articles, by Matthew Ramstein, O.F.M. Conv.,⁶³ and Joseph C. Kelley,⁶⁴ respectively. Both writers favor the adoption of the relative norm, and both must face the question: can the bishop approve the relative norm in his diocese if it is not the already existing custom? Fr. Ramstein solves the problem by saying that, since the majority of our people do not fast, there is no existing custom; hence the bishop can without scruple establish one. Fr. Kelley thinks that the absolute norm is still the general custom in our country; but he solves the problem by showing that the *probata consuetudo* of canon 1251 is not a custom in the strict sense, and that a new custom, capable of being approved, can arise in a very short time. He therefore suggests that for a year, or two, or three, the local Ordinaries could encourage those who cannot observe the absolute norm to fast according to the relative standard; after this brief interval of time the Ordinaries could approve the new usage and make it obligatory in their dioceses.

Fr. Kelley mentions that at the 1947 meeting of the Canon Law Society a number of canonists expressed the view that in the extraordinary cir-

⁶² Though he indicates a limit of sixteen ounces in this conclusion, a footnote contains a quotation approving of sixteen-twenty ounces; see p. 470.

⁶³ "The Absolute and Relative Norm of Fast," *The Priest*, IV (1948), 190-92.

⁶⁴ "Safeguarding the Ecclesiastical Law of Fast," *The Jurist*, VIII (1948), 145-69.

cumstances existing in our country the bishop would be justified in making an immediate change to the relative norm. I too believe that the bishop has the power to make an immediate change; however, since this is a canonists' problem, I leave it to them. But I certainly do wish the relative norm would be established soon in the United States, and since others are suggesting ways of phrasing pastoral instructions in this regard, I will take the liberty of suggesting the following:

Fasting consists in taking one full meal a day. The Church imposes no special restrictions regarding the food taken at this meal, except when the fast day is also a day of abstinence. The full meal may be taken at about noon or in the evening.

Besides the full meal, two light meals without meat are allowed. In general, enough should be taken at these meals to enable one to preserve health and to do one's duties properly. This amount varies with individuals; however, that some helpful rule may be had, the quantity of these two meals combined should not exceed twenty ounces. Those who need more than this to do their work and preserve their health are excused from fasting.

My next point has practical value only when the absolute norm is enjoined; hence I will phrase it accordingly: "In a diocese in which the absolute norm must be followed, may one who is fasting butter his bread at breakfast?" Winfrid Herbst, S.D.S., answers that it is reasonable to suppose that the bread may be buttered unless the bishop specifies to the contrary.⁶⁵ I checked this reply with all available American writers in my library; and the result surprised me. Only one, Edwin F. Healy, S.J., explicitly excludes butter.⁶⁶ Koch-Preuss more or less imply that the bread should be dry, but their treatment of breakfast is entirely *per transennam*.⁶⁷ Of the other authors, some do not try to determine the quality of the breakfast, and some say it should consist of bread and some drink.⁶⁸ These last-mentioned writers may mean dry bread; but their meaning certainly is not clear. I conclude that there is no overwhelming weight of opinion against Fr. Herbst; hence, I should say that the breakfast bread may be buttered at least sufficiently to make it palatable, unless the diocesan regulations positively exclude it.

In an article that the author himself admits to be iconoclastic, Fr. Edward S. Schwegler implies that the use of butter, jam, marmalade, and so forth, is so much a part of our American tradition that diocesan regulations may

⁶⁵ "Refresher on Fast and Abstinence," *The Priest*, IV (1948), 97-100.

⁶⁶ See *Moral Guidance* (1942), 268.

⁶⁷ See *Handbook of Moral Theology*, IV (1921), 372.

⁶⁸ Others checked were Sabetti, Jone, McHugh-Callan, Augustine, Bouscaren-Ellis, Ayrinhac, Browne, Lydon, and a few manuals for schools.

not justly exclude their use on the breakfast bread.⁶⁹ I think that this view is untenable. I doubt if such a nation-wide custom exists with regard to the Lenten fast; and even if it did, I doubt if a bishop would have to abide by it.

My next question is provoked by an article by Charles G. Fehrenbach, C.S.S.R., who upholds this thesis: "There is not the slightest doubt that all of these [i.e. the non-fasters] may eat meat as often as they wish on all days on which the Workingmen's indult is operative."⁷⁰ I have not the space to delineate and comment on his arguments; in fact, I could suggest further arguments for him to use. He could say that practically all American authors state, as Fr. Bouscaren puts it: "The exemption from abstinence under this indult applies to all meals, so that a person *who is not bound by the law of fast* could eat meat at all meals";⁷¹ or, as Fr. Lydon has it: "It is a general principle that anyone who is free from the obligation of fasting, e.g., a man of the age of sixty, may eat meat three times a day when meat is allowed."⁷² He could also refer to two replies of the Sacred Penitentiary; the first states that when an indult allowing meat is granted, those not bound to fast *ratione aetatis vel laboris* may eat meat several times a day; the second applies the same principle to those excused from fasting *ratione affectae valetudinis*.⁷³

All these points I concede. Yet I think that Fr. Fehrenbach and the authors just referred to are unwittingly breeding confusion by neglecting a very important point. That point is the expressed will of the bishop. Some bishops restrict the "meat once a day" not only to fasters but to non-fasters as well. I have seen pastoral letters in which this universal restriction was so clearly expressed that one would have to do absolute violence to the text to interpret it otherwise. Yet I know that in some of these dioceses the faithful were being hopelessly confused because some priests insisted that the text meant just what it said, whereas other priests told them they could eat meat several times a day, despite the clear contrary wording of the pastoral.

Can the bishop make this restriction? Sabetti refers to a reply of the Sacred Penitentiary to the Bishop of Buffalo to the effect that such a restriction "non expedit."⁷⁴ To me, this expression merely means that the

⁶⁹ "Revise the Lenten Regulations!" *Homiletic and Pastoral Review*, XLVIII (1948), 265-70; see p. 266.

⁷⁰ "Who Started It?" *The Priest*, IV (1948), 342-43.

⁷¹ Bouscaren-Ellis, *A Text and Commentary* (2nd printing, 1948), p. 639.

⁷² *Ready Answers in Canon Law* (2nd ed. 1937), p. 15.

⁷³ *Coll. SCPF*, I, n. 734; II, n. 1569.

⁷⁴ *Theol. Moral.*, n. 331, q. 4.

Holy See prefers that the restriction should not be made; it does not mean that the bishop has not the power to make it. Sabetti seems to have chosen the better part, therefore, when he says that those not fasting may eat meat several times a day unless the bishop limits the application of the indulgence to one meal. Slater followed the same cautious policy. Asked how often non-fasters could eat meat, he replied: "That depends on the extent of the dispensation, but unless there is an express limitation, it is generally understood that they may eat meat as often as they please."⁷⁵

To sum up this point: (1) It seems to be the mind of the Holy See that indulgences allowing bishops to dispense from abstinence should include the entire day; therefore, that those not bound to fast should be allowed meat as often as they wish. (2) However, since it is not clear that a bishop may not place a limitation, the expressed will of the bishop must govern the practice in his diocese. (3) Since much confusion pervades this question, it is desirable that the bishop would state very clearly just how he is communicating the dispensation.

Incidentally, before I leave the subject of the workingmen's privilege, I might mention that Fr. Schwegler is in favor of dropping the privilege. I think I would second this motion. At least, I would vote for an "either-or": either make it perfectly clear who is a workingman or discard the privilege.

Milk is the last item on this list. Fr. Schwegler argues that in this milk-drinking country milk should be considered a beverage, not food. I am definitely convinced that this should be the case; but candor prevents me from saying that it is the case. I have never found any first-class authority who would say that milk is not food, with regard to the Lenten fast. Although I look forward to the day when this attitude will change, I don't think I could reasonably say there is enough authority at present for holding that milk is not food.

However, the view that milk is food is not to be overrated. It refers only to whole milk. Skimmed milk may be considered a drink. And from this distinction between skimmed milk as a drink and whole milk as a food, it seems to follow logically that the food content of milk is limited to the cream it contains. I cannot, therefore, agree with Fr. Herbst that "if one would take a glass of milk [for lunch] one would already have consumed the greater part of the eight ounces allowed." Nor can I agree with Fr. Healy that sixteen ounces of milk would be considered as eight ounces of food.⁷⁶ Someone might legitimately ask me, how much food is in a glass of milk? My answer would be that I do not know exactly, but I think it is very little.

⁷⁵ *Casus*, I, 351.

⁷⁶ *Teacher's Manual for Moral Guidance*; see case 11, p. 68.

In fact, I am inclined to think one may, even now, apply the principle, "*parum pro nihilo reputatur*," to a glass of milk.

BAPTISM, EUCHARIST, PENANCE

A few years ago it was not uncommonly stated that we are not justified in conferring even conditional baptism on an unconscious, unknown, and dying adult. The trend of the past year is more optimistic. Joseph P. Donovan, C.M., allows conditional baptism on the basis that one out of six such adults in our country may be considered an "informal catechumen";⁷⁷ and Fr. Connell, endorsing the use of the opinion favoring conditional baptism, explains that "the best argument seems to be that on the law of averages there is some probability that every unknown individual is an unbaptized person who either explicitly or implicitly desires baptism."⁷⁸

What about the man who, though obviously wanting to lead a good life, has explicitly refused to be baptized? Can he be considered as implicitly wanting what he explicitly rejects; and on this basis may he be conditionally baptized when unconscious and dying? Defending the more lenient opinion that holds the desire to keep God's commandments as a probably sufficient intention for baptism, R. Saverimuthu, S.J., allows the conditional baptism of an adult pagan who is in his second childhood, and therefore equivalently *sensibus destitutus*.⁷⁹ The case, as explained, contains a clear exposition of the various opinions pertinent to this topic.

Then there is the question of conditionally baptizing the conscious convert from heresy. Expressing strong objection to the custom of conditionally baptizing all such converts, Fr. Messenger concludes his protest with these words:

If, then, we are bound to make an enquiry into each case, as Rome seems to declare, and if we can be sure that the matter and form used was adequate, and that the rite was seriously performed, and not in joke, can we not be sufficiently certain that the baptism was in fact valid? And in that case ought one to rebaptize conditionally?

If, as we unhesitatingly teach, a pagan or a Jew can baptize validly, although he disbelieves altogether in Christianity, why may not a Protestant have the necessary intention, in spite of his subjective error as to the nature, effect or necessity of baptism?⁸⁰

⁷⁷ *Homiletic and Pastoral Review*, XLVIII (1948), 293.

⁷⁸ "The Hospital Chaplain and the Administration of Baptism and Penance," *Ecclesiastical Review*, CXVIII (1948), 254-64; see p. 258.

⁷⁹ "Intention Required for Baptism," *Clergy Monthly*, XII (1948), 103-7.

⁸⁰ *Clergy Review*, XXIX (1948), 213-14.

Fr. Donovan would not give unqualified assent to these words. According to the thesis that he has been expounding and re-expounding for many years, he would say that it is not enough to know whether the minister seriously used the apparently correct matter and form; we must also know whether he used the words in a Catholic or a heretical sense.⁸¹ Hence we must examine the tenets of the sect relative to baptism, as well as the ceremonies that accompany the actual baptism. If these tenets and the practical ceremonies show that by baptism the sect means symbolic, in contradistinction to truly regenerative, baptism, then the baptism is presumptively invalid, even though the minister uses externally correct matter and form. This is his thesis on the "principle of the heretical ritual," which vitiates the *intentio ministri* and invalidates the baptism even when apparently correct matter and form are seriously used.

A concrete example will, I believe, better state the thesis. Suppose a sect (the Baptists, for example) openly and constantly professes its belief that baptism does not effect a rebirth but that it is only a symbol of a rebirth already effected by faith; and suppose that before actual baptism, this sect has a ceremony in which the candidate "must give proof that he has been born again by faith and therefore is worthy to profess his Christian character by baptism, and thus enter into social fellowship with those Christians who have already given ritualistic testimony of their new birth previously acquired by faith."⁸² And suppose further that, after such a ceremony, the minister confers baptism with the words: "On profession of thy faith in Our Lord and Savior Jesus Christ and in obedience to the Divine Command, I baptize thee (name of person) into the Name of the Father and of the Son and of the Holy Spirit. Amen."⁸³ Granted these suppositions, Fr. Donovan would say that the baptism is presumptively invalid because the tenets and the pre-baptismal ceremonies show that the minister intends to confer merely symbolic baptism—in other words, he is presumed to positively exclude real, regenerative baptism. Hence, in the absence of proof to the contrary, such baptisms may be declared certainly invalid.

⁸¹ Latest article, "Are Protestant Baptisms Valid?", *The Priest*, IV (1948), 503-8; 589-96. First articles on this topic, with replies by Valentine Schaaf, may be found in *Ecclesiastical Review*, LXXIV-VI (1926-27); three later articles, on baptisms of different sects are in *Ecclesiastical Review*, LXXXIV (1931); see also *Homiletic and Pastoral Review*, since 1938, for articles and replies to questions.

⁸² *Ecclesiastical Review*, LXXVI (1927), 158.

⁸³ This formula is quoted by Fr. Donovan in *Ecclesiastical Review*, LXXXIV (1931), 132; other formulae, agreeing with the Catholic *ad litteram*, may be seen in Goodwine, *The Reception of Converts* (Washington: Catholic University of America Press, 1944), 286, 288, and *passim*.

Whence is this "principle of the heretical ritual" derived? From the Nesqually Decree, especially the section on marriage, in which it is stated that the use of ceremonies involving the heretical concept of dissoluble marriage may be taken as indicating the exclusion of indissolubility in the marriage consent. Also from the *Apostolicae Curae* of Leo XIII, in which it is shown that heretical *animus* divested the Edwardine Ordinal of all reference to a sacrificing priesthood. Finally, from the fact that the words of consecration, used by true priests, but in circumstances indicating a merely commemorative signification, do not effect a valid consecration.

I have read and re-read these arguments in the various articles written by Fr. Donovan since 1926. It would be wrong for any sincere theologian lightly to brush them aside; but I do have grave doubts concerning their application to a baptism in which externally correct matter and form are used. There is no set form for marriage, beyond the fact that a contract must be made; and the meaning of the contract might readily be qualified by attendant circumstances. The very Nesqually Decree which gave this rule for marriage seems to be quite content with an examination of the essential rite of baptism. And as for the *Apostolicae Curae*, it does not take up the question of defective intention until it has already shown that the form was at least ambiguous; and it is to clarify the ambiguity that the other parts of the ritual are inspected. To the case of a clearly correct form, these words of the *Apostolicae Curae* seem to apply: "When anyone has rightly and seriously made use of the due form and the matter requisite for effecting and conferring a sacrament, he is considered by that very fact to have intended to do what the Church does."⁸⁴

In brief, I think that neither the Nesqually Decree nor the *Apostolicae Curae* gives Fr. Donovan's thesis the probative value that is needed for reducing it to practice. Personally, I think the argument based on the purely commemorative meaning of the words of consecration is stronger; yet even this does not have the required probative value when applied to baptism, in view of the fact that from Bellarmine to Leo XIII (at least) the constant policy of the Church was to consider heretical baptisms valid provided externally correct matter and form were seriously used. I have carefully read all of Fr. Donovan's articles and with equal care I have read Fr. Schaaf's replies; and I would not say that either emerged from the controversy as the undisputed victor. To put this concretely, Fr. Donovan's position did not impress me as being more than probable, and that position does not seem to have changed materially in twenty years.

In recent articles Fr. Donovan points to the fact that his opinion is being

⁸⁴ *Fontes CIC*, III, 501.

used more and more. An Officialis reports that he was able to reduce 8000 marriage cases to 800—an achievement that would have been impossible without recourse to the principles of heretical ritual of baptism and of marriage. Facts like these point only to one ultimate solution, it seems to me: these principles, together with their applications to baptism and marriage in our country, should be submitted to Rome for approval or rejection. If Fr. Donovan is right, thousands of people are being deprived of the opportunity of using the Pauline Privilege (not to mention those who might be entitled to have marriages declared null) in those dioceses in which the rule of presumptive validity (or presumptive probability) of baptisms is being adhered to. If he is wrong—and by this I mean, if his view is not certain—then the Pauline Privilege is being illegitimately applied (and marriages are being unjustly declared null) in thousands of other cases. Have not less important matters been referred for solution to the Holy Office?

A letter from a missionary informs *L'Ami du clergé* that an entire missionary institute refuses to allow its members to baptize the illegitimate children of Catholic parents, even when the parents themselves bring the children for baptism. Other priests have the same custom. They justify the refusal by saying that they have not sufficient assurance of the Catholic education of these children. *L'Ami* gives what seems to me the only defensible answer to this problem: namely, that no provision of the Code allows priests to refuse to baptize children of Catholic parents.⁸⁵ A rather ancient reply of the *S.C. de Propaganda* insisted that the sinful life of Catholic parents could not be offered as a justification for refusing to baptize the children, especially when the parents themselves request it.⁸⁶

Last year we gave considerable space in these notes to the question of saying Mass without a server, *devotionis causa*. I have one further reference to this topic. *L'Ami du clergé* cites two opinions of Cappello, one of which allows a priest who is already vested for Mass and has no server to say Mass without a server, while the second is the ordinary case of vesting and saying Mass without a server.⁸⁷ *L'Ami* would allow these as isolated cases, but it objects against Cappello, seemingly because he allows them habitually. I can find no basis in Cappello's text for such an interpretation; it seems to me that all the cases in which he allows Mass without a server refer to occasional, not habitual, conditions.

Several years ago I made a very thorough investigation of this question:

⁸⁵ *L'Ami*, Mar. 11, 1948, pp. 169-70.

⁸⁶ *Coll. SCPF*, I, n. 625.

⁸⁷ *L'Ami*, Oct. 14, 1948, p. 636; and see Cappello, *De Sacramentis*, I (1945), n. 703.

Is the generic confession of devotion valid and licit?⁸⁸ My conclusion was that such confession is certainly valid; that the few opinions against validity should be considered negligible in the light of the intrinsic arguments and the weight of authorities favoring validity. As for the licitness, my conclusion was that the affirmative opinion is solidly probable and therefore, granted the validity, also practically probable. With no little satisfaction I include here these recently-published confirmatory words of Fr. J. McCarthy:

It is our contention that this form of accusation, when only free matter is in question, provides all that is essential to the sacrament *ex parte confessionis*. It provides sufficient material for absolution and is, in every case, a valid confession of free matter.

But, cases of necessity apart, is a merely generic confession of free matter lawful? The theologians are not agreed on the reply to this question. The view that generic confession of free matter is lawful as well as valid has considerable and increasing support. It is, at the very least, solidly probable. We subscribe to this view. There is no evidence of any divine command to confess in number and kind sins which constitute only free matter.⁸⁹

Confessors will be helped if they keep these words in mind. They will not then doubt their right to give absolution to pious penitents who obviously have no necessary matter to confess, but who confess optional matter only in a generic way, for example: "I include all the sins of my life." They will, of course, encourage those penitents who can appreciate it to confess even small sins more specifically because this helps to more effective contrition and direction.

Incidentally, as regards the detailed confession of venial sins, *L'Ami du clergé* makes what seems to be a very appropriate distinction.⁹⁰ *L'Ami* believes that the venial sins that the penitent does not mention but for which he is sorry are forgiven in confession, but that the special effects of the sacrament do not touch these sins. In other words, the sacramental graces to avoid such sins for the future, to reduce the punishment due to them, and so forth, are not gained. As *L'Ami* very aptly puts it: it is one thing to be cured of a disease; it is quite another to be immunized against it.

L'Ami also presents a very practical case concerning the disposition re-

⁸⁸ Cf. "The Generic Confession of Devotion," *THEOLOGICAL STUDIES*, VI (1945), 358-79.

⁸⁹ "Generic Confession of Free Matter," *Irish Ecclesiastical Record*, LXX (1948), 531-33; see p. 532.

⁹⁰ *L'Ami*, May 13, 1948, pp. 315-16.

quired for absolution.⁹¹ A woman who is divorced from her lawful husband and has been living in invalid marriage with another man is now in the hospital with an incurable illness. She will certainly not leave the hospital alive; she wants to be reconciled to God. *L'Ami* observes that objectively speaking this woman has many obligations: reparation to her real husband; separation from her paramour; reparation of scandal. Ordinarily a willingness to fulfill these duties must be manifest before absolution can be given. But what if the case is quite occult, and what if the woman herself does not advert to these things: must the confessor remind her of them? *L'Ami* thinks this is unnecessary. Furthermore, what if her present "husband" continues to visit her in the hospital? *L'Ami* holds that the confessor need not make an issue over this unless he discovers from the confession that it is an occasion of sin to the parties or of scandal to others. All this is on the supposition that the case is dealt with entirely in the internal forum. I think I see this point of view, but I don't dare comment further on it lest I get myself hopelessly entangled in the "psychology of contrition."

Speaking of confessions in hospitals reminds one of the practical problem of confessions in wards. A confessor often wonders how he can safeguard the penitent's right to privacy. One way is to have the penitent moved to a private room. If this is impossible, then it is imperative that the confessor remember that the danger of having one's sins overheard is a sufficient reason to excuse from the obligation of material integrity. When this danger is present, the generic accusation even of mortal sins is sufficient; the specific accusation can be made later when the penitent has the requisite privacy. "It is far better," says Fr. Connell, in treating the present topic, "for the priest to make use of this principle than to adopt extraordinary measures to secure secrecy—for example, to put his ear practically into the penitent's mouth. . . ."⁹²

Is the pastor obliged to provide an opportunity for confession on Sunday morning? I will close this section with a brief reference to Fr. Connell's reply to the question.⁹³ It is his opinion that, despite the abuses that are almost inevitable, the pastor is not justified in laying down a hard and fast rule that confessions will not be heard on Sunday morning. For many people the desire to confess on Sunday morning is quite reasonable, and refusal to provide for them is contrary to canon 892, §1. I agree with this solution, and I would add a confirmation from the Instruction of the S. Congregation of the Sacraments of December 8, 1938: in promoting frequent

⁹¹ *L'Ami*, Nov. 27, 1947, p. 824.

⁹² Cf. *Ecclesiastical Review*, CXVIII (1948), 260.

⁹³ "Sunday Morning Confessions," *Ecclesiastical Review*, CXIX (1948), 145-47.

Communion—as we are supposed to do—we should also provide opportunities for frequent confession, especially before Mass.

MARRIAGE

In an article entitled, "Treatment of Sterility: Insemination Timed by Rat Ovulation Test," Douglas P. Murphy, M.D., and Edmond J. Farris, Ph.D., tell of a comparatively high fertility achievement in almost hopelessly sterile couples by means of a procedure involving three steps: (1) examination of husband's sperm, the semen being procured by masturbation; (2) calculation of ovulation day by rat ovulation test; and (3) insemination at time considered best for fertilization with sperm procured by masturbation.⁹⁴ In another article Dr. Farris tells how pregnancy was achieved in several women by insemination at the properly calculated time of ovulation with the sperm of anonymous donors.⁹⁵

An entirely different story of a medical attempt to solve the infertility problem is told by Joseph B. Doyle, M.D., Director of the Sterility clinic at St. Elizabeth's Hospital, Boston.⁹⁶ Dr. Doyle uses a concave lucite spoon, which is inserted into the vagina before coitus in such a way that the spoon itself is directly under the cervix. The purpose of this is to protect the semen from the acid of the vagina and to provide the best possible conditions for the largest possible number of spermatozoa to penetrate through the cervical os. The complete procedure, as described by Dr. Doyle, is as follows: (1) The most probable ovulation date is calculated by a combination of the best available tests. (2) Coitus takes place at home, after the husband has inserted the spoon according to the doctor's instructions. (3) After the spoon has been left in place for at least thirty minutes to one hour, it is withdrawn, and the contents are placed in a jar. (4) The wife brings the jar to the doctor's office, and the doctor examines the sperm. (5) If there are appreciable numbers of active sperm still present, these are replaced in the vagina.

These cases bring us to a consideration of two of the most serious infertility problems that confront present-day doctors and moralists—sterility tests and artificial insemination. In one of the cases cited, insemination is effected by means of sperm of an anonymous donor. This is clearly contrary

⁹⁴ *Journal of the American Medical Association*, Vol. 138 (1948), 13-14.

⁹⁵ "Temperature Compared with Rat Test for Prediction of Human Ovulation," *ibid.*, pp. 560-63.

⁹⁶ "The Cervical Spoon: An Aid to Spermigration and Semen Sampling," *Bulletin of the New England Medical Center*, X (1948), 225-31. Besides this article, I have a long letter from Doctor Doyle in which he explains the entire spoon procedure in less technical language.

to our moral principles and need not concern us further. In another case the husband's sperm is obtained for analysis and insemination by means of masturbation. This, too, is definitely immoral. We cannot approve any sperm analysis or insemination which involves masturbation or its equivalent, namely, condomistic intercourse or withdrawal.

In Dr. Doyle's case, one method of artificial insemination is used which is entirely beyond reproach. I refer to the use of the spoon during legitimate coitus. This is what is sometimes called "artificial insemination in the *very* wide sense"; even the most rigorous opponents of artificial insemination do not object to this, because it is simply an aid to fertile intercourse and involves absolutely no interference with the conjugal act or with the *opus naturae* that follows the act. The Abbé Amanieu, who strongly condemns all other forms of artificial insemination, approves of this method as being something in keeping with human dignity; in fact, he insists that it should not be called artificial insemination in any sense.⁹⁷

As for the sperm test used by Dr. Doyle, very few, if any, theologians would advance any serious objection to the removal of the contents of the spoon after a reasonable time has been allowed for sperm migration; and I believe that most would consider the time allowed by him to be sufficient.

The last step in Dr. Doyle's procedure implies another form of artificial insemination. It has not an exact parallel in theological literature, but it resembles somewhat "artificial insemination in the wide sense"—by which term is usually meant the use of a syringe after intercourse to collect the semen and force it further into the feminine reproductive tract. Some authors (with Hürth) object to the syringe method because it constitutes an interference with the *opus naturae*; some (with Merkelbach) allow it if the semen is not drawn outside the confines of the vagina; and some (with Wouters) approve it without the restriction just mentioned. Since these various authors all seem to be speaking of an act which takes place immediately after intercourse, it is not clear to me just what their opinions would be with regard to Dr. Doyle's last step, which implies the removal of the semen only after a considerable time and then the replacement even later. My present view, briefly stated, is that the replacement is allowable because it seems to be a reasonable complement to the original legitimate coitus. I advance this opinion merely as tentative, and open to criticism by myself

⁹⁷ "L'insémination artificielle," *L'Ami du clergé*, Nov. 27, 1947, pp. 813-23; Feb. 12, 1948, pp. 101-9. The first of these articles gives the background of the question; the second treats of all forms of insemination between husband and wife. The third was to treat of "donor" insemination; but, since a recent number of *L'Ami* announced the Abbé's death, perhaps this article will not be published.

as well as by others; and I think it best not to dwell further on it here because it seems to be the least significant of the steps in Dr. Doyle's procedure. The main points in which he is interested, as I understand the matter, concern the use of the spoon to aid sperm migration and to obtain semen for analysis.

His report is only preliminary. If it proves successful it may render useless the discussion of other methods of obtaining semen for analysis and also eliminate at least some of the present debated questions concerning artificial insemination. For the time being, however, we certainly cannot ignore the other problems relative to semen testing and insemination. My plan, therefore, is to consider these two subjects more or less separately, with special reference to recent theological literature.

Several years ago, John J. Clifford, S.J., expressed the opinion that the following methods of obtaining semen for analysis might be considered as at least probably licit: extraction of seed after coitus from the vagina or the cervix; expression of seed from the testicles or epididymes by aspiration, or from the vesicles by rectal massage; the use of a perforated condom during intercourse, provided the perforations allow sufficient semen for generation to be deposited in the vagina; and the use of a vaginal cup after intercourse.⁹⁸ Another method, recommended by Fr. Davis and undoubtedly licit, is the expression of the remains of the semen from the male urethra after coitus.⁹⁹ The medical value of all these methods seems to be at most dubious. Yet, even a method of doubtful medical value is better than nothing; hence, until a more certainly effective method is at hand, moralists must be prepared to pronounce on the licitness of the doubtfully effective tests.

Some time after the appearance of Fr. Clifford's article Fr. Connell objected to the use of the perforated condom on the score that "it involves a direct purpose of ejecting some of the semen into a place not intended by nature—and the morality of the action is not changed by the fact that it is only a small amount."¹⁰⁰ Vermeersch had voiced a similar objection almost thirty years ago.¹⁰¹ A very recent objector is William Glover, S.M., who writes:

Per se, and directly, one wills to prevent the semen from entering the vagina, it is merely *per accidens* that some is permitted to enter. Thus, the use of a pierced

⁹⁸ "Sterility Tests and Their Morality," *Ecclesiastical Review*, CVII (1942), 358-67.

⁹⁹ *Moral and Pastoral Theology*, II (1943), 243, footnote.

¹⁰⁰ "The Catholic Doctor," *Ecclesiastical Review*, CXI (1944), 439-48; material referred to in the present notes is on p. 446.

¹⁰¹ Cf. *De Castitate* (Rome, 1921), 403, addendum for n. 241.

condom in collecting a specimen of semen for a sterility analysis, far from being *per se generativus* is, on the contrary, impeditive of generation.¹⁰²

Fr. Glover seems to have entirely overlooked the purpose served by the perforations. Obviously, by reason of the perforations, two things happen *per se* and *directly*: some semen is deposited in the vagina, and some is retained in the condom. Fr. J. McCarthy, who defends Fr. Clifford's opinion, gives us a more accurate analysis of the procedure:

In the normal male ejaculate there is a vast number of spermatozoa—one of which suffices for fecundation. Consequently, the use in intercourse of a condom, which is sufficiently perforated to allow the deposition of a considerable portion of the ejaculate in *vase mulieris*, cannot be said to make the act inept for generation. In other words, in this hypothesis of sufficient perforation, intercourse with a punctured condom is an *actus per se aptus ad prolis generationem*. The intercourse is substantially undistorted and natural. The procreation of offspring is not artificially prevented. It does not follow, of course, that intercourse with a perforated condom is always lawful. The procedure does involve some degree of interference with the natural act and, perhaps, some slight lessening of the chances of subsequent fecundation. All this would clearly be somehow unlawful if there is no justifying cause. But, in our opinion, it would be lawful for a grave cause. If the seminal specimens obtained by using a punctured condom are really useful for sterility tests and may thus be helpful towards curing sterile conditions—then there is present, we think, a sufficiently grave cause to justify the method.¹⁰³

The first statement—to the effect that one sperm suffices for fertilization—is perhaps too theoretical. Actually, a whole army of sperms seems necessary for breaking down the resistance of the ovum before the one fecundating cell can enter; hence we should be entirely out of the sphere of reality were we to say that the depositing of one sperm in the vagina would suffice to make the act *per se aptus ad generationem*.¹⁰⁴ Fortunately,

¹⁰² *Artificial Insemination Among Human Beings* (Washington: Catholic University of America Press, 1948) see pp. 75–76; a fairly large part of this dissertation is concerned with the means of obtaining semen, whether for tests or for insemination.

¹⁰³ "A Lawful Method of Procuring Seminal Specimens for Sterility Tests," *Irish Ecclesiastical Record*, LXX (1948), 533–36; see p. 534.

¹⁰⁴ Readers may be interested in this explanation, contained in Dr. Doyle's letter to me (see *supra*, note 96): "It has been shown that, although only one sperm is necessary for fertilization of the ovum, a large concentration of sperm must be present. It is now believed that the reason for this is not one of mere chance but that the unsuccessful dying sperm candidates release a very important enzyme called hyaluronidase. This enzyme is believed to be necessary to spread the jelly-like material—hyaluronic acid—which binds together the granulosa cells of the follicle adhering like a coating to the single-cell ovum as it is discharged from the ovary and swept into the tube."

Fr. McCarthy does not say this (though I have heard it said by others); he keeps his position perfectly safe by demanding that a considerable quantity of semen be deposited in the vagina.

Having made his analysis, he insists, against Fr. Connell, that the amount of semen retained in the condom does make a difference; and he objects to Fr. Connell's method of analyzing only one isolated part of the act, the retention of semen in the condom. Considered in its totality, he says, the act is a substantially natural marriage act; and that fact makes a great difference in estimating its moral value.

I am one of a group of moralists whose attitude towards the opinion defended by Frs. Clifford and McCarthy is one of "grudging approval." I call it grudging, because we realize that the perforated-condom procedure is psychologically offensive, and readily open to misunderstanding and abuse. Yet, it is also approval, because we are convinced of the intrinsic probability of the argument as explained by Fr. McCarthy, and we would allow doctors prudently to use the procedure in the absence of some more effective and less dangerous test. It seems safe to say that Frs. Clifford and McCarthy share this attitude.

An apparent digression may shed some light on this topic. With regard to the conjugal act, theologians speak of the normal act, which is performed without any interference with nature's purpose, and of an unnatural act (like onanism), which completely interferes with nature's purpose. Between these two extremes, there is an act (e.g., *copula dimidiata*) which, though not defeating the natural purpose, renders it more difficult of attainment. It is difficult to find an apt term to designate this last-mentioned act; for want of something better, let me call it abnormal, as distinguished from both the normal and the unnatural.

Whatever terms one uses to describe these differences, the differences themselves are not uncommon in theology. There is normal speech, in which the unvarnished truth is easily discernible; the lie, which completely obscures the truth; and the broad mental reservation, which leaves the truth discernible with difficulty. In the sphere of life, there is the normal conduct of preserving complete corporal integrity; there is suicide, which completely defeats the purpose of the body; and there is self-mutilation, which renders the purpose of the body (adequately considered) more difficult, but not impossible, of attainment.

In the terminology I have adopted, I would say that the lie and suicide are unnatural, whereas the broad mental reservation and self-mutilation are abnormal. The former defeat the *esse* of speech and the *vivere* of the body, whereas the latter are harmful only to the *bene esse* and the *bene*

vivere. The former are never justifiable; but the latter are permitted for a proportionate reason; this last expression does not mean a mere *finis operantis*, but rather certain objectively existing circumstances which modify the moral quality of the acts.

I have dwelt somewhat on this analysis because I think it helps to an understanding of the opinion justifying the use of a perforated condom for sterility tests. Those who hold the opinion would call this procedure abnormal, in contradistinction to the unnatural. They are not, therefore, open to the charge of violating the principle, "non sunt facienda mala ut eveniant bona." That principle cannot be applied, at least without restriction, to what I have termed abnormal acts.

To return to Fr. Clifford's summary: He allows the extraction of semen from the vagina or cervix, as well as the use of the vaginal cup, for sterility testing. Frs. Connell and Glover would allow the use of these methods about an hour after intercourse. It seems that those who allow the use of the perforated condom during intercourse ought logically to allow these methods even immediately after intercourse, if that is required for the effectiveness of the test.

Following Vermeersch's lead, Fr. Clifford also considers massage of the seminal vesicles and aspiration of testicles or epididymes as probably licit means of obtaining semen for analysis. Fr. Connell, Glover, and J. Mullin condemn these methods as being equivalently masturbation.¹⁰⁵ The arguments used by these writers are substantially those which Merkelbach leveled against Vermeersch; hence we might save time here by briefly considering Merkelbach's objections.¹⁰⁶

One of his arguments runs as follows: An act is specified by its term; but the term of pollution and of aspiration of the testicles is the same: the emission of semen without copula; therefore, these two acts have the same moral specification. The word that requires careful distinction in this syllogism is "term." The term of a pollution is really twofold. The first and most basic terminus is the sexual orgasm. It is to the orgasm that all the preceding psycho-physical processes are intrinsically directed; and it is in these processes that one finds the common specifying element of a venereal act. Seminal emission is simply an added specifying element in the case of the complete act of an adult, normal male. I will not expand on this because to me the equivocation used in the syllogism is obvious. In aspiration of the testicles, the processes that lead to and culminate in orgasm are totally

¹⁰⁵ Cf. *Clergy Review*, XXX (1948), 357-58.

¹⁰⁶ *Quaestiones de Castitate et Luxuria* (Liège, 1936), 60-62.

lacking; hence the term of this act is fundamentally different from a pollution.

As a matter of fact, Merkelbach's objection can hardly be reconciled with his own definition or analysis of the malice of pollution. He defines pollution as "usus separatus completus genitalium et consequenter delectationis venereae satiativae sine concubitu."¹⁰⁷ Isn't he obviously speaking of that special use of the reproductive organs which is associated with venereal pleasure? With regard to the evil of pollution, he says that seminal emission adds a certain gravity in the case of men (viris), but he insists that the fundamental malice "in eo est, quod separatim et unice propter bonum individuale quis fruitur operatione, quae solum propter speciem amari et quaeri potest."¹⁰⁸ This fundamental malice is certainly not present in aspiration of semen from testicles or epididymes (nor in massage of the vesicles).

Another of Merkelbach's arguments is based on the words of St. Thomas to the effect that semen is "homo in potentia, et vita humana in potentia propinqua." With these words as a principle, Merkelbach argues that man's right over semen is limited in the same way as his right over life; it is a *dominium utile*, not a *dominium simpliciter*. Furthermore, the only use included in this right is that of expelling the semen in conjugal intercourse.

If this argument merely meant that man has no right to use semen contrary to its God-given nature, I could readily admit it. If that were the case, the only point for discussion would be the nature of semen; and this would bring us to Merkelbach's next objection against Vermeersch. But Merkelbach seems to have had something different in mind when he phrased the present objection. In fact, he seems to have attributed to semen something similar to human rights. He refuses to allow even a vaginal douche after rape. To the argument that the semen in the vagina merely represents a continuation of the unjust attack, he replies that the semen is already in possession; and he thinks that if the girl could expel the aggressor's semen she could *a fortiori* expel the fetus.¹⁰⁹

I find this argument baffling. I see a reason why older theologians, who thought that semen was the sole principle of life, would defend the inviolability of the aggressor's semen, just as we must consider the fertilized ovum inviolable. But I frankly cannot see how a theologian of this century, who knows of the existence of the ovum, can adhere to this ancient position. With A. Janssen, in his review of Merkelbach's *Quaestiones de Embryologia et de Ministratione Baptismatis*, I see an essential difference between a

¹⁰⁷ *Ibid.*, p. 53.

¹⁰⁸ *Ibid.*, p. 54.

¹⁰⁹ *Ibid.*, pp. 44-45.

fertilized ovum and the sperm before it penetrates the ovum.¹¹⁰ Whatever be the limitation of man's right over semen, it is not to be placed in the same category as his right over life.

The sole purpose of semen is to serve generation through coitus; this is the third of Merkelbach's objections. It impresses me. If the proposition is true, it undoubtedly undermines Vermeersch's opinion. I have given the objection much thought, and I find myself repeatedly reverting to a fundamental question: what is the proof for this assertion? I find no proof in the official teaching of the Church. Left to the use of mere reason, I test the proposition by analogies; and, far from confirming the proposition, these analogies incline me to deny it. Here is one such analogy.

I can well imagine that centuries ago some philosopher must have been impressed by the obvious fact that the purpose of blood is to serve the body by remaining within the blood vessels. Knowing of no other useful purpose of blood, he might have concluded that this is its only purpose. Today we should say that the principal purpose of blood is to serve the body directly by remaining within the blood vessels; and we should add that it can also serve the body indirectly when used in a blood count; and it can serve the neighbor when used in a blood transfusion.

As far as I know, neither reason nor faith forbids us to hold a similar hierarchy of purposes with regard to semen, provided we always safeguard our principles concerning the use of the generative faculty and the exclusive right of married people to generate offspring. I think that these principles are safeguarded if I hold that the principal purpose of semen is to serve generation directly through coitus, and that a subordinate purpose is to serve generation indirectly through sperm analysis. Whether we can complete the analogy with blood by allowing the use of semen for the good of the neighbor, I do not know. Certainly the analogy cannot include "donor insemination," because this clearly violates the principle that the right to generate is reserved to husband and wife. But suppose it were discovered that semen had certain medicinal properties, could we allow it to be used to cure a ravaging disease, or must we say that this would be contrary to God's design for semen? I do not pretend to know the definitive answer; yet, in the absence of proof to the contrary, I do not see how I could forbid the aspiration of semen from testicles or epididymes for this purpose.

In suggesting this line of argumentation against Merkelbach's position, I am aware of the fact that one of the classic arguments against sexual abuse is based on the apparent assumption that the sole purpose of semen is to

¹¹⁰ *Ephemerides Lovanienses*, IV (1927), 652; see also p. 79.

serve generation through coitus.¹¹¹ But I think that if this classic argument is examined more closely it will be seen that the real assumption is that this is the sole purpose of the generative function. I am also aware of the fact that eminent theologians warn against any analogy between semen and the bodily members or blood. I accept this warning as quite reasonable; but I believe that the dangers are sufficiently guarded against by holding fast to the principles concerning marital rights and the use of the generative faculty.

The preceding discussion of Merkelbach's objections may be defective; it represents, however, a sincere effort to appreciate his position. My conclusion is that he has not destroyed the probability of Vermeersch's opinion relative to aspiration and massage for sterility testing, and that these, as well as the other methods defended by Fr. Clifford as probably licit, may still be employed by doctors insofar as they are useful. If Dr. Doyle's procedure attains the success I hope for it, these other methods, as well as our discussion of them (which sometimes strikes me as fiddling while Rome burns), may become merely historical.

Now, a brief survey of recent theological literature on artificial insemination. Three rather comprehensive studies have appeared: by A. Gemelli, O.F.M.,¹¹² in Italy; by Abbé Amanieu,¹¹³ in France; and by Fr. Glover,¹¹⁴ in this country. A fourth contribution, by Abbé Jean Bernhard, is a profound discussion of artificial insemination in the light of the Church's interpretation of the marriage contract.¹¹⁵

All four writers reject "donor" insemination, as well as any form of insemination involving masturbation or unnatural intercourse. None objects

¹¹¹ Classic references are *De Malo*, XV, a. 2., and *C. Gent*, III, 122. St. Thomas certainly talks about semen, but the contexts clearly have to do with a particular use of semen, that is, with venereal acts. He is thinking, it seems to me, principally in terms of using the generative faculty.

¹¹² *La fecondazione artificiale* (Milan, 1947).

¹¹³ Cf. *supra*, footnote 97. In general, Abbé Amanieu's position is identical with that defended by Hürth (see *THEOLOGICAL STUDIES*, VIII, 106 ff.).

¹¹⁴ Cf. *supra*, footnote 102. The dissertation covers all aspects of artificial insemination, and it is especially valuable for information regarding the medical aspects of semen testing and insemination. In the moral section, when he treats of points legitimately debated by theologians, the author relies almost entirely on the arguments of Merkelbach that I have outlined in my text. I think the author overestimates these arguments and underestimates, not only the views of his adversaries, but also those of theologians who agree with his general conclusion.

¹¹⁵ "La fécondation artificielle et le contrat de mariage," *Nouvelle Revue théologique*, LXX (1948), 846-53.

to a procedure, such as the use of the cervical spoon, which neither substitutes for coitus nor interferes with the natural processes subsequent to coitus.¹¹⁶ All are of the opinion that even those forms of artificial insemination in the strict sense which some theologians hold to be probably licit (e.g., insemination with sperm obtained by aspiration of the epididymes) are forbidden.¹¹⁷ But they arrive at this conclusion by two distinct approaches. Fr. Glover finds all the suggested means unlawful; the others object rather to the insemination itself, independently of the means of obtaining the semen. Authors who follow this latter line of argumentation could admit that aspiration of semen from the testicles or epididymes is licit for seminal analysis, yet deny its licitness for insemination; whether these three authors would admit it is not clear.

A word about the attitude of these writers with reference to the use of a syringe after intercourse for the purpose of forcing the semen further into the feminine reproductive tract. Gemelli and Amanieu consider this an unjustifiable interference with the natural processes. Bernhard thinks that if the semen is not drawn beyond the confines of the vagina there is no real interference with the integrity of nature's processes. Glover's own opinion is against it, but he allows at least for the weight of extrinsic authority in favor of this method.

Lack of space has forced me to omit any number of interesting details from these collective writings. From this brief survey, however, and from my former notes on this topic, one can readily discern an ever-growing tendency of moralists to reject any form of insemination in the strict sense, irrespective of the means used for obtaining the semen. On two previous occasions I have defended the probable licitness of such insemination, provided the husband's sperm is obtained without abuse of the generative faculty.¹¹⁸ I should be blind not to see the growing trend against this opinion, and unreasonable not to respect it. Though not convinced by the arguments, I am certainly impressed by them. Since nothing would be gained by continuing this debate, I am retiring into a more peaceful (and perhaps more secure) atmosphere.

Fr. Ford once incorporated into his yearly survey an interesting discussion of the marriageability of a woman who has an artificial vagina. He also expressed a well-reasoned opinion to the effect that such a woman is not

¹¹⁶ I read only the parts of Gemelli's book that seemed pertinent to my survey; I found no mention of this precise point. The other writers mention this method with approval.

¹¹⁷ Insemination without coitus is insemination "in the strict sense."

¹¹⁸ Cf. *THEOLOGICAL STUDIES*, VIII (1947), 106-10; and "The Morality of Artificial Fecundation," *Ecclesiastical Review*, CI (1939), 109-18.

certainly impotent. Describing the typical case to be kept in mind when this problem is discussed, he wrote:

In the more frequent type of case the patient lacks the internal organs (womb, tubes, ovaries), but the external genitalia are normal, the secondary sex characteristics are normal, and she is capable of normal sexual feeling. But the inner part of the vaginal canal is lacking. The opening into the vagina is present, and the hymen may be there, but the opening is only one-half inch or so deep. The operation consists in plastic surgery (various techniques have been adopted, some more successful than others), by which an artificial passage of normal length is constructed, and intercourse which is comparable to normal intercourse for both husband and wife is made possible.¹¹⁹

Facts recounted in a recent article by Virgil S. Counseller, M.D., of the Mayo Clinic, and in the medical discussion following his article, agree substantially with Fr. Ford's account.¹²⁰ The doctors report a fair degree of success in reconstructing a vagina, at least to the extent of providing "satisfactory sexual relations."

The American doctors take marriageability for granted and apparently see no moral problem in these operations. A French doctor, Professeur Ombrédanne, of the Academy of Medicine, exhibits a definite awareness of the moral implications pertinent to such cases.¹²¹ He discusses hermaphrodites. He tries to help such people to "become one sex" by determining the prevailing characteristics, and then operating accordingly. He tells of one case in which he found a rudimentary vagina, successfully connected it with the uterus, and after hormone treatments was able to bring on irregular menstruation. He thinks that he was clearly justified in this operation; he believes that the patient is not only marriageable, but that she might even have children.

In a second case, the patient had pronounced feminine tendencies, a small clitoris, and a rudimentary uterus. A third patient, also predominantly feminine, had the clitoris, but no vagina or uterus. In each of these cases, Dr. Ombrédanne made the artificial vagina, but even in the case of the patient with the uterus he was unable to join the vagina to it. He believes that the mere presence of the uterus justified his procedure in the one case; but he is somewhat perplexed by the other case. He had solved his own perplexity by arguing that, with the vagina in the normal place and with the clitoris to afford sexual feeling, the patient ought not be con-

¹¹⁹ THEOLOGICAL STUDIES, V (1944), 533.

¹²⁰ "Congenital Absence of the Vagina," *Journal of the American Medical Association*, Vol. 136 (1948), 861-66.

¹²¹ "Le mariage des hermaphrodites," *Cahiers Laënnec*, June, 1947, pp. 3-10.

sidered impotent. However, he leaves the final judgment on this to the moralists. In a moral note appended to this article, Fr. Tesson expresses the same opinion as had Fr. Ford—namely, that none of the patients, even the third, is certainly impotent.¹²²

Dr. Ombrédanne also tells of certain predominantly masculine characters from whom he removed a rudimentary uterus in one case, and rudimentary uterus and ovaries in another. He thinks that, after he had corrected a hypospadias, such patients should be allowed to marry. It seems, however, that these patients, though possessing testicles and being capable of erection and orgasm, were incapable of ejaculating testicular fluid. Fr. Tesson reluctantly suggests that, in the light of the Rota decision mentioned in this review last year, the patients must be considered impotent. He has grave apprehensions about this decision and other incidents, yet he hopes that the speculative debate concerning the necessity of *verum semen* is not closed and that the day will come when the opinion contrary to that Rota decision will be given more consideration. Obviously he thinks that the vasectomized man should not be considered impotent.

Last year I painted a rather gloomy picture of the plight of the vasectomized man. Recent Roman decisions had all indicated that the condition is impotence, and a survey by Fr. Clifford of the possibilities of the repair operation offered but slight hope that the impediment could be avoided on the score of lack of perpetuity. However, while my notes were in the press, Dr. Vincent J. O'Connor published an account of repair operations that showed a high degree of success.¹²³ According to his conclusions (thirty-five to forty per cent success), the perpetuity, and therefore the impediment, seems doubtful.

Speaking of Rota decisions, I would advise anyone who likes a dramatic story, to read the recently-published account of a case concerning the "*intentio excludendi bonum fidei*."¹²⁴ The girl in the case, while engaged to one man was secretly having relations with another; and she continued this after her marriage. Finally, when her husband discovered this and confronted her with the evidence, she left him and went to live with her paramour. Having reviewed the evidence, which is presented in a fascinating manner, the Rota judges decided that this girl had certainly restricted the marriage contract by a positive intention to continue the illicit relationship and even to leave her husband rather than lose her paramour. "She could not re-

¹²² "Note théologique sur le mariage des hermaphrodites," *ibid.*, 11-13.

¹²³ "Anastomosis of Vas Deferens after Purposeful Division for Sterility," *Journal of the American Medical Association*, 136 (1948), pp. 162-63.

¹²⁴ Cf. *Periodica*, XXXVII (1948), 119-30.

serve to herself this power, this subjective right," runs the conclusion, "without at the same time refusing her husband the exclusive right to her body—in other words, without excluding the *bonum fidei*."

If I mistake not, such a case is not absolutely uncommon; and I wonder if it will be a precedent for many petitions. Should this be so, I rejoice that I am not a judge, for the distinction between the *propositum adulterandi* and the positive exclusion of the *bonum fidei* is elusive. Even in reading this remarkable case, one feels repeatedly frustrated in trying to apply the distinction.

All of us, no doubt, like to see a strong presentation of the moral arguments against contraception and the fallacies of the Planned Parenthood Association. Such a presentation—as masterly as any I have ever seen—is the address of William J. Kenealy, S.J., before the Joint Committee on Public Health of the Commonwealth of Massachusetts.¹²⁶ With this reference, I bring the 1948 survey to a close. In making the final draft I had to eliminate no small amount of the matter I had prepared. The year has been rich in interesting and valuable material for moralists.

St. Mary's College

Gerald Kelly, S. J.

¹²⁶ "Contraception—A Violation of God's Law," *Catholic Mind*, XLVI (1948), 552-64; the background of the address is clearly portrayed in *Information*, Nov., 1948, pp. 495-504.