CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY, 1950

INTRODUCTORY AND GENERAL

Jean-Pierre Gury, S.J., first published his *Compendium Theologiae Moralis* at Lyons in 1850. Though now a relic, the manual's influence on the moral theology of the last century cannot be doubted. It was the foundation for Sabetti-Barrett in the United States, for Tummulo-Iorio in Italy, for Ferreres in Spain, and for many others. In an article commemorating the centenary, Alfredo St. Boschi, S.J., brings out several points already well-known: for example, that Gury did much to restore the casuistic method in moral theology and to break down the last resistance of Jansenism; and one point of special ascetical interest today that is not so well-known, namely, that Gury was an ardent promotor of the devotion to the Immaculate Heart of Mary.[1]

In the course of his article Fr. Boschi refers to a recent criticism of moral theology manuals made by J. Creusen, S.J.[2] According to this criticism, the manuals of today are too negative, lack a logical order of presentation, and are characterized by a "naturalistic" approach. The negativism is manifested by a preoccupation with giving the nature and gravity of sins, while little is said about positive duties and even less about appropriate acts of supererogation. No doubt most moralists would agree that this is a defect of our modern manuals, but they might not be in perfect agreement as to the method of correcting the defect. Fr. Boschi's brief reference does not make Fr. Creusen's other criticisms sufficiently clear for comment.

The past year saw the beginning of two new manuals, one by A. Lanza, Archbishop of Reggio,[3] the other by L. J. Fanfani, O.P.[4] Reviews of both volumes are favorable. The Archbishop definitely commits himself to the probabilist system, and the Dominican moralist, while not clearly professing any system, is inclined to accept probabilism as the best practical system.

One reviewer of Fr. Fanfani's work brings out an interesting point concerning the use of probabilism.

[1] "Un moralista e la sua opera," in *Palestra del Clero*, XXIX (1950), 597–603.

[2] Fr. Creusen's remarks were made at a convention of moral professors. From a reference made in the Introduction to Fr. Fanfani's new manual (see below, footnote 4) I should judge that his speech was printed in *Perfice Munus!*, May, 1949, but I am not sure of this.

[3] *Theologia Moralis*, I (Rome: Marietti, 1949).

[4] *Manuale Theorico-Practicum Theologiae Moralis*, I (Rome: Libreria "Ferrari," 1950).

. . . It is held that when a probabiliorist confessor judges a penitent's dispositions according to probabiliorist principles, "poenitens tenetur parcere confessario"; assuming "parcere" to be a misprint for "parere," this seems to be in practice a little severe, for the penitent, if he wants to, may decline the view of this probabiliorist confessor and go to one who is a probabilist. The doctrine is nevertheless correct in principle; for a confessor, like anyone else, must act according to his own conscience; perhaps "parcere" is a correct reading, in the sense that the penitent ought to spare the probabiliorist confessor an argument about probabilism.[5]

Relative to this matter, let me state that in the section referred to by the reviewer Fr. Fanfani makes a not unusual distinction. He says that in those things that concern merely the licitness of actions to be placed (or omitted) by the penitent, the confessor may not impose his own system on a *probabilist* penitent (italics mine), but in those matters that concern the judgment of the penitent's disposition, the confessor must follow his own system.[6]

I am not criticising Fr. Fanfani in particular when I say that his distinction is neither realistic nor satisfactory. Why should authors so cautiously infer that the penitent must be a "probabilist"? Most penitents simply have no system of their own; they are neither probabiliorists, equiprobabilists, nor probabilists. But they are all entitled to have no obligation imposed on them which is not certain. And I fail to see how an obligation can be called certain if one is exempted from it by *any* of the moral systems legitimately allowed by the Church.[7]

As for the judgment concerning the penitent's disposition, no one can deny that this is the personal responsibility of the confessor. Yet it has never been clear to me how any definite moral system enters *directly* into this judgment, and I have sought in vain for helpful examples. Fr. Fanfani himself intimates that a difference of opinion over the extent of the obligation of making an integral confession might be pertinent. If he means *formal* integrity, I do not see the pertinence, for the differences among moral systems do not directly concern this problem. If he means material integrity (e.g., the duty of confessing doubtfully confessed mortal sins), he is referring to the duty of the penitent, and he is hardly consistent in first saying (as he does) that the confessor should allow the penitent freedom in those things which concern merely his own obligations, and then adding that the confessor must judge this particular obligation according to his own system. This seems like giving with the right hand and taking back with the left.

In the preceding paragraphs we have considered the case of imposing an

[5] *Clergy Review*, XXXIII (1950), 356.

[6] Fanfani, *op. cit.*, p. 364.

[7] Cf. *Emmanuel*, LVI (1950), 68.

obligation on a penitent. What of the case in which a penitent merely asks for information "regarding the lawfulness of a certain action or mode of conduct"? Francis J. Connell, C.SS.R., replies that the confessor "may not propose as sufficiently probable to be followed an opinion which he himself does not accept as such, even though it may be upheld by some theologians."[8] Fr. Connell cites Merkelbach in confirmation of his response.[9] Whatever may be the speculative value of this opinion, I think the wording is unfortunate and open to grave abuse. For one might well question whether the confessor is better qualified than the theologians to judge the probability of an opinion. Fr. Connell's reply seems to allow too much scope to the subjective attitude of the confessor. It would be advisable, it seems to me, at least to add a warning that confessors are to be slow to judge that an opinion is not probable when it is considered such by "some theologians." Theologians themselves are very hesitant about denying the probability of views defended by other theologians.[10]

A year ago I called attention to the first of a series of articles on scruples by Ernest F. Latko, O.F.M.[11] Since then, the four remaining articles of the series have been published.[12] The matter is much too technical to be summarized here, but I should like to recommend for careful perusal the second and third articles of the series, which describe the Vittoz method of treating scrupulosity. Speaking of the results of this treatment, Fr. Latko writes:

> The length of the treatment varies with the individual. It is recorded that the easier cases are cured in from three to six weeks; the most severe ones in about three months. After a complete cure the patient is asked to return for a check up, chiefly in order to correct any errors that might have crept into the mental gymnastics he has learned. This is of short duration.

This hopeful prognosis seems hardly credible. But it certainly merits open-minded investigation; and, if it is true, the method should be much more widely used; for the cure of severe scrupulosity within three months seems little short of miraculous.

A very practical problem concerning the confessions of the scrupulous is presented to James Madden:

[8] Advice Given by a Confessor," *American Ecclesiastical Review*, CXXII (1950), 467–68.

[9] *Summa Theologiae Moralis*, II (Paris, 1940), n. 107.

[10] For an illustration of the true theologian's attitude, see J. McCarthy, "The Nature of Extrinsic Probability," *Irish Ecclesiastical Record*, LXXIII (1950), 354–56.

[11] THEOLOGICAL STUDIES, XI (1950), 35.

[12] *Homiletic and Pastoral Review*, L (1950), 906–14; 1020–30; 1119–24; and LI (1950), 33–38.

Sempronia makes her confession: "I accuse myself of all the sins against the 5th, 6th, 8th, and 9th commandments." If questioning elucidates that a confessor has given her that formula for Confession, knowing her to be a victim of scruples, is there any need or advisability to question the penitent further to determine the gravity of the matter in so far as it relates to the integrity of the Confession? Are scrupulous persons incapable of mortal sin?[13]

Fr. Madden answers the last question by saying that, since scrupulosity is a mental illness, it is possible that it might be so severe as to render the patient incapable of sinning mortally; but he thinks this is seldom the case when a person is able to go about his ordinary work. He then indicates two reasons why the ordinary confessor of a scrupulous penitent may insist that the confession be confined to generalities. One reason is that the penitent has such a delicate conscience that he actually does not commit mortal sins, but merely fears that he does. A second reason is that the severely scrupulous are excused from the law of material integrity. Concerning the second reason he writes:

> God does not ask impossibilities, and it is inconceivable that He would impose the obligation of materially integral confession on one who would be thus impeded in his recovery from a malady which is one of the greatest hindrances to his spiritual progress. This is especially true of those who are scrupulous over the examination of conscience which they imagine is never performed with sufficient care, or who cannot examine themselves without reawakening the anxiety which disturbed them when engaged in affairs about which they suffer from scrupulosity.

From the foregoing one can readily conclude how Fr. Madden would answer the first of the questions put to him, which essentially comes to this: may an occasional confessor be content with a more or less generic accusation made by a scrupulous penitent once he knows that the penitent's regular confessor has instructed him to confess in this manner? The answer, of course, is in the affirmative; and Fr. Madden wisely adds, "to do otherwise may only be the occasion of a relapse."

The scrupulous are usually considered to be sincere persons whose error is on the side of exaggerated delicacy of conscience. John W. Stafford, C.S.V., questions this.[14] He says that a scrupulous person "wants to eat his cake and have it; he wants to do wrong but have no guilt for having done wrong." At first, Fr. Stafford seems to refer this analysis to all the scrupulous; later he introduces a needed qualification by saying that the analysis applies to

[13] *Australasian Catholic Record*, XXVII (1950), 41–44.

[14] "Psychology and Moral Problems," *Homiletic and Pastoral Review*, LI (1950), 118–24; see p. 123.

"many scrupulous people." I think that, with this essential qualification, what he says is undoubtedly true; but it is unfortunate that his discussion of such an important topic is limited to but a few paragraphs. As L. Hertling, S.J., points out, there are some cases of scrupulosity that are simply unconscious compromises with various capital sins.[15] But these illusions are not the only sources of scrupulosity, and a spiritual director must be extremely careful in drawing conclusions.

WAR

Discussing the use of the hydrogen bomb in a just war,[16] Fr. Connell expresses the following opinions: (1) Neither this bomb nor any other weapon may be used for the direct killing of non-combatants. Fr. Connell rejects the theory of total war and apparently accepts the classification of non-combatants made by John C. Ford, S.J.[17] (2) According to the moral law alone and apart from special agreement among the warring nations, the bomb may be used on a purely military objective, such as a fleet at sea, a body of troops, an ammunition dump, a railroad center, a road used by the enemy's trucks, etc. The reason for this is that the bomb is not substantially different from older weapons, even though much more devastating. (3) When the military objective cannot be destroyed without concomitant loss of civilian property and life, the principle of the double effect can be applicable. But when the concomitant civilian destruction would be vast (as would be the case if the bomb were dropped in the vicinity of a large city), the use of the bomb can be justified only when the military target "is one of supreme importance, such as the only factory in which the enemy is making his own superbombs, or the building in which all the war lords of the enemy are assembled." Later the author states that the bomb may not be used in the vicinity of a large city unless the citizens are given sufficient warning to allow them to evacuate to a safe zone. It is not clear to me whether he intends this qualification even when the military target is of supreme importance or whether it is to be applied only when less important military targets are to be destroyed.

Richard Ginder suggests that Fr. Connell has gravely underestimated the destructive force of the hydrogen bomb.[18] "We would say," he writes, "that if the H-Bomb is as terrible as represented . . . one can hardly imagine any

[15] *Theologia Ascetica* (Rome: Gregorian University Press, 1944), nn. 182–85.

[16] "Is the H-Bomb Right or Wrong?", *The Sign*, March, 1950, p. 11 ff.

[17] Cf. "The Morality of Obliteration Bombing," THEOLOGICAL STUDIES, V (1944), 261–309.

[18] "A Problem in Moral Theology," *The Priest*, VI (1950), 573–76.

legitimate target short of a fleet poised in mid-ocean. In other words, speaking practically, its use according to the norms of moral theology is next to impossible." Particularly impracticable, in Fr. Ginder's opinion, is the statement that the bomb might be used after warning. Military men would hardly give such a warning, lest it defeat their purpose; and, even if the warning were given, the citizens could not successfully get beyond the range of the harmful effects of the bomb.

J. McCarthy offers a more detailed rejection of Fr. Connell's position.[19] He does not agree that the bomb is substantially the same as the older weapons, because their effects were *per se* controllable, whereas the hydrogen bomb—if what scientists say of it is even approximately true—is a practically uncontrollable destructive force. Like Fr. Ginder, Fr. McCarthy believes that the discussion of using the bomb on a purely military objective is too theoretical and that the suggestion that the enemy must be warned is unrealistic. He therefore confines his analysis to the use of the bomb in or near centers of population. His plan is much the same as that followed by Fr. Ford in his article on obliteration bombing. He thinks that the use of the bomb in such areas is equivalently the direct killing of the innocent, and that, even if it could be explained as indirect, it could not be justified. His own summary is as follows:

> Our conclusion is that the hydrogen bomb is a grossly unlawful instrument of war and that no military necessity or advantage, no set of conceivable circumstances, however grave, can justify its use. Our fundamental reason for this conclusion is that the use of the hydrogen bomb—in populated areas, that is—inevitably involves the direct slaughter of innocent non-combatants. We might add, for completeness and to furnish a reply against possible objections, that the use of the hydrogen bomb should also be condemned as immoral—prescinding from the direct killing of non-combatants—on the grounds that it involves deliberate destruction which is out of all proportion to or does not compensate for any possible good which might be achieved.

I confess that I have little enthusiasm for entering personally into this discussion. The probability of using the hydrogen bomb still seems very remote, whereas the use of the A-bomb in the near future seems highly probable; and for this reason I think theologians would be much more realistic were they to continue the discussion of the morality of using the A-bomb.[20]

[19] "The Morality of the Hydrogen Bomb as a War Weapon," *Irish Ecclesiastical Record*, LXXIV (1950), 358–63.

[20] Cf. THEOLOGICAL STUDIES, X (1948), 77–79. In that discussion we considered only the bombing of civilian areas, and we concluded that such bombing could be justified only on the theory of "total war." I have talked to various scholars who approve of this

Nevertheless, since my survey includes only articles on the hydrogen bomb, I shall briefly indicate my impressions of the opinions already expressed.

All of us would undoubtedly agree that atomic weapons *should* be outlawed. Yet, in the supposition of a conflict between theistic, peace-seeking nations and atheistic, aggressive forces, such a compact is hardly possible. The atheist will choose his own weapon. Granted this supposition, I agree with Fr. Connell when he says that the use of the hydrogen bomb by the defensive nations *can be* justified. I also agree that when such a weapon is directed against a military target, the damage to civilians can be explained as indirect, even though it be terribly devastating. Finally, I think that Fr. McCarthy is wrong in saying that there can be no proportionate reason for permitting this devastation; for, in the supposition I am making (which is certainly not unrealistic), there is question of preserving the lives, as well as the religious and civic liberty, of more than half the world. I think that this is a sufficient compensating reason for almost any amount of damage indirectly inflicted on the citizens of the atheistic, aggressor nations.

In expressing this opinion, I am not condoning unnecessary damage. We can fervently (though perhaps vainly) hope that a future war will not involve the unnecessary damage that characterized the last war.[21] But, granted that the objectives are military targets, and granted the necessity of eliminating them in order to resist atheistic aggression, I am of the opinion that the concomitant civilian devastation can be justified. I would apply this opinion either to the use of a single H-bomb on a target of supreme importance or to the use of the A-bomb on a number of less important military targets. Even as I write these lines we seem to be on the verge of a conflict

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theory, but I have seen only one theological article that showed an inclination to accept it. None of the authors included in the present survey accepts it. Generally speaking, theologians would admit that the notion of "combatant" extends much beyond those actually enlisted in military service, but they would also say that there is a limit to this extension. And as long as there is such a limit, there is not total war, and the destruction of non-combatants can be justified only as an indirect and proportionate effect of an attack on a military target. For some thoughtful remarks on these topics, see E. J. Mahoney, *Questions and Answers, II* (London: Burns, Oates & Washbourne, 1949), q. 397, "Military Objectives," and q. 399, "The Atomic Bomb."

[21] For a splendid statement on the unjustifiable destruction caused in the last war, see "The Conduct of War," by Rear-Admiral H. G. Thursfield, in *The Church and the Atom*, pp. 118–20. This booklet is the Anglican report to which I referred in my survey two years ago. At that time I did not have a copy of the booklet and could merely cite Father McReavy's article on the report. Since then I have obtained the booklet and I would recommend it as a penetrating study of the morality of war and of modern warfare. See THEOLOGICAL STUDIES, X (1949), 78. And for other references to wholesome military attitudes on destruction, see "Morals in War," *Catholic Mind*, XLVIII (1950), 49–50.

for survival from which only a special providence can save us. A purely objective judgment is not easily made in such circumstances.[21a]

INDUSTRIAL RELATIONS

An expert in the field of industrial relations told me that in his opinion the most memorable publication of the year is the pastoral letter entitled *The Problem of the Worker in the Light of the Social Doctrine of the Church.*[22] This letter was issued by the Archbishops and Bishops of the Civil Province of Quebec under date of February 14, 1950. The authorized English version has 204 paragraphs and 106 reference notes. It completely covers the field of the workers' problem as it exists in the civil province of Quebec; it describes the problem itself, and carefully explains the principles and methods by which the problem is to be solved. From the bewildering number of excellent points that it covers, I am selecting only these three for special mention here: the statement on the Christian concept of work, the duty of joining a union, and the practical determination of the living wage.

Eleven paragraphs of the letter are devoted to the Christian concept of work (57–67).[23] The bishops censure big business for giving the machine the primacy over the laborer and thus inverting God's plan for industrial work. In the divine plan, work, being a domination of matter, is creative: the worker "continues in some way the work of creation by transforming and by rendering useful the created goods which have been put at his disposal by God, in order that he may attain his proper end." Work is also a service to humanity, as well as a means of developing and enriching the human personality of the worker. Finally, on the supernatural level, work done by one in the state of grace and with a right intention is a meritorious, redemptive service of God.

66 . . . The effort that he [the worker] expends, the trouble that he undergoes in working, makes a man a sharer in the mystery of redemptive suffering. Then, too, in the desire of serving others, by his work, man finds an opportunity of practising

[21a] Since these notes were sent to the editor a number of opinions on the morality of using the atomic bomb have been expressed by Catholics and non-Catholics. Nothing that has been said would affect my conclusions.

[22] The English version is published by Palm Publishers, Montreal, and is distributed in the United States by America Press, New York. For a good survey of the letter, see "Canadian Bishops on the Life of the Worker," by Benjamin L. Masse, S.J., *America*, LXXXIII (1950), 137–39; 171–72; 211–14.

[23] For another recent study of the meaning of work, see "Le Sens catholique du travail et de la civilisation," by A. de Bovis, S.J., *Nouvelle revue théologique*, LXXII (1950), 357–71; 468–78.

the commandment that Christ gave us of loving one another, of aiding one another. The whole of Tradition has recognized this Christian value of work, symbolized by the Divine Worker of Nazareth.

67. The farmer and artisan can easily realize in their work all its possibilities of human betterment and supernatural merit. It is otherwise for the industrial worker and for the majority of wage earners. For this saying of Pius XI is still true of too many: "from the factory dead matter goes out improved, whereas men there are corrupted and degraded."[24] Furthermore, the modern technique of production has led to a more marked separation between Capital and Labour, and has been the cause of many misunderstandings and conflicts. It is the rediscovered meaning of work and of its ends that will correct this deplorable situation, and re-establish order in professional relations. . . .

That the bishops are as much at home in suggesting practical rules as in expounding Christian theory is manifested by this realistic statement concerning the determination of the just wage: "In the present labour conditions, the collective agreement, negotiated with a free union, may be considered as the normal means of deciding on the just wage; the means, however, would cease to be legitimate if the agreement were the result of undue pressure." They do not suggest this as a permanent working rule. They visualize something better as the restoration of the social order moves on, and they express the hope that through meetings of mutual confidence employers and employed may discover means of "bettering the old and finding new formulas of remuneration."[25]

In the section on the workers' duties in the restoration of a Christian social order the letter has much to say about the nature and function of labor unions. And it insists not only on the right to join a union but on the duty of so doing:

101. Every man has the duty to see that all his professional interests are protected and secure. He has the duty to aim at obtaining for himself and his family all that is necessary to lead a truly human life, sheltered against the chances of the future. He has the duty to co-operate for the welfare of his fellow-citizens, especially those to whom he is united by common interests. He has the duty to collaborate for the restoration of a more balanced social order by favouring the respect of justice in all the activities of labour, industry and commerce. The isolated worker cannot achieve this. United with his fellow-workers, he will be able to perform that imperious social duty. In the present state of things, therefore, there is a moral obligation to take an active part in the professional organization.

[24] *Quadragesimo Anno*, Paulist Press edition, par. 153.
[25] Cf. the pastoral letter, n. 131.

This strong statement differs considerably from the opinion of some moralists that the duty of joining a union is present only in exceptional circumstances.[26] In favor of the latter it might be argued that in Quebec there are Catholic unions, whereas in the United States the workers cannot be sure their unions are conducted according to sound principles. In view of the recent Labor Day Statement of the Social Action Department of the NCWC,[27] I would question the validity of this defence. It seems to me that the arguments of the Quebec hierarchy are as pertinent in this and other countries as they are in Canada and that the duty of joining a union is the normal thing rather than the exception. John F. Cronin, S.S., clearly outlines the pros and cons of this question.[28] His own speculative position seems to be definitely on the side of the obligation to join a union, but his practical conclusion is ambiguous: he thinks we should explain to workers the necessity of the union for their protection and the common good but we should not insist on the personal obligation under pain of sin.

L'Ami du Clergé presents an interesting case on the living wage.[29] A conscientious employer now pays his servant a wage in complete accord with the teaching of the Church. But for many years he paid him a smaller wage which, however, was on a par with the "going wage" as paid by others for similar work. This man now wants to know whether he owes the servant any restitution for the years in which the smaller wage was paid. *L'Ami* answers that he does owe restitution if he paid less than the wage that was due in strict justice; and as a norm for strict justice *L'Ami* applies the words of *Rerum Novarum*: "the wage should not be less than enough to support a worker who is thrifty and upright." Does the "going wage" conform to this minimum norm? *L'Ami* admits that it does not necessarily conform, but believes that it is usually sufficient in a region where men are honest and not accustomed to take advantage of others. In the case proposed, it exempts the employer from restitution.

It is surprising that *L'Ami* cites *Rerum Novarum* for the papal teaching on the minimum just wage. Many theologians held that the doctrine of *Rerum Novarum* on the wage due in commutative justice referred to an individual wage; but it is hardly possible to explain the teaching of *Quadragesimo Anno* and *Divini Redemptoris* as referring to an individual wage. Leone Babbini makes much of these latter encyclicals in arguing that a

[26] E.g., Francis J. Connell, C.SS.R., *American Ecclesiastical Review*, CXXII (1950), 467.

[27] *Catholic Mind*, XLVIII (1950), 700–704. See also the digest of the statement of the Netherlands hierarchy "On Social Justice," *ibid.*, XLVII (1949), 748.

[28] *Catholic Social Principles* (Milwaukee: Bruce Publishing Co., 1950), pp. 418–21.

[29] *L'Ami*, Sept. 28, 1950, pp. 587–89.

family wage is due in commutative justice,[30] and he shows little patience with Iorio's contention that even after the *Divini Redemptoris* it is not certain that strict (commutative) justice demands a family wage.

It is rather common today, I think, that union contracts include specifications concerning decent working conditions; and, of course, conditions included in a contract are due in strict justice. But, supposing there are no explicit specifications, are certain minimum conditions implicitly included in the wage contract and therefore due in commutative justice? Fr. McCarthy answers in the affirmative and suggests this general formula for such minimum conditions: "The employer is bound in strict justice to provide, as far as the nature of the work allows, such working conditions as constitute the ordinary safeguards against serious injury to the soul, mind and body of his employees."[31] He admits that it is difficult to define these ordinary safeguards precisely and cites Leo XIII's suggestion that in this matter the state should intervene, if necessary. He thinks, however, that such state regulations as go beyond the minimum included in his general formula would not bind in strict justice.

I should add that Fr. McCarthy by no means limits the employer's duty to providing the minimum. This is merely the norm for commutative justice, apart from explicit contract. "But . . . beyond this sphere of strict justice," he writes, "there lies the wide field in which the great virtues of social justice and charity claim and must be accorded their due."

Speaking of the system of vocational groups urged by the Popes, the Netherlands hierarchy says that "in the years to come this will be the social question *par excellence*."[32] Perhaps it has already become such. Certainly there is a growing interest throughout the world in this papal program for the reorganization of economic society. Writing on this subject, William J. Smith, S.J., insists that the system of vocational groups is not merely a papal directive but a natural necessity for the well-being of society in its present stage of development.[33] He contends also that capitalism as it now exists in America is incompatible with this system and that it must be condemned. Fr. Cronin thinks it unwise to say that American capitalism should be condemned; he prefers to say that it needs reform.[34] G. Gilleman, S.J., reviews

[30] "Dal diritto al lavoro al salario familiare," *Palestra del Clero*, XXIX (1950), 817–22.

[31] "The Obligation of an Employer to Provide Decent Working Conditions," *Irish Ecclesiastical Record*, LXXII (1949), 542–45.

[32] *Catholic Mind*, XLVII (1949), 749.

[33] "The 'Catholic' Viewpoint on Industry Councils," *American Ecclesiastical Review*, CXXII (1950), 107–20.

[34] *Catholic Social Principles*, pp. 264–66. Fr. Smith, while praising the general excellence

an article published in *L'Osservatore Romano* and signed by the chief editor, Count della Torre, which denounces capitalism, without limits as to national boundaries, and which concludes with the interesting observation that "a marriage between the Church and capitalism . . . would be invalid according to any treatise *de matrimonio* on the grounds of *disparitas cultus*." Despite the Count's unyielding conclusion, Fr. Gilleman adds: "The Popes have never condemned capitalism in itself, but they have condemned its abuses and the pernicious theory of economic liberalism."[35]

One evil of capitalism as we have it is the withdrawing of personal responsibility from the private owner and handing it over to anonymous corporate groups. But, as Pius XII remarked in his address of June 3, 1950:

> A similar danger is likewise present when it is claimed that the wage-earners in a given industry have the right to economic joint-management, notably when the exercise of this right rests in reality, directly or indirectly, with organizations managed from outside the establishment.
>
> As a matter of fact, neither the nature of the labor contract nor the nature of the business enterprise in themselves admit necessarily of a right of this sort. It is unquestionable that the wage-earner and the employer are equally the subjects, not the objects, of a nation's economy. There is no question of denying this parity. It is already an established principle of social policy; it would be asserted still more effectively were that policy to be organized on the occupational level.[36]

As I understand it, these remarks of the Holy Father referred to certain Catholic reformers in Europe, notably in Germany, who were claiming participation in management as a right for the worker. The address occasioned much comment, and some wondered whether Pius XII was contradicting what Pius XI had said about the partnership of management and labor. On this subject Fr. Cronin writes:

> It would be a mistake to hold that this papal address modified in any manner the basic program of structural reform outlined by Pius XII's predecessor. On the contrary, the Holy Father noted that the reforms advocated in his address could best be worked out by a functionally organized society. On the broader level of economic life, in dealing with problems which transcend the individual company, labor and management are equals. But on the plant level such equality may not be demanded as a right.

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of the book, has severely criticized Fr. Cronin's position on capitalism. Personally, I like the moderate attitude that Fr. Cronin manifests here and throughout this very helpful book.

[35] Fr. Gilleman's remarks are in *Clergy Monthly*, XIV (1950), 149–51. Count della Torre's editorial was in *L'Osservatore*, May 8, 1949.

[36] *Catholic Mind*, LVIII (1950), 508.

It would be desirable, through collective bargaining and other methods, to achieve for the workingman a higher status than that of wage-earner. Such accommodations should be worked out through good will on both sides. But Catholic scholars would err in concentrating upon an alleged right, especially to the neglect of more vital problems, such as the "urgent problem . . . the imminent and permanent threat of unemployment."[37]

I had intended giving more space to this problem of "co-determination," but I find that the growing literature is too great for me to attempt to summarize. For instance, almost every issue of *America* from mid-July to October has something on the topic. And, as I write this, I note that the new publication, *Social Order*, promises an article entitled "Co-Determination in Germany" for its first number.[38] This will already be in print when my notes are published.

Stephen P. Ryan offers a calm, enlightening survey of the hopeful and not so hopeful aspects of Southern attitudes toward the Negro.[39] Among the unpleasant aspects is this picture of the laborer's plight: "In the fields of skilled and semi-skilled labor, the Negro has advanced but little. It is next to impossible for a colored man to become a painter, a plasterer, a carpenter or an electrician. The unions simply will not grant him membership."

In his survey of employer and union discrimination against racial and religious minorities, Fr. Cronin says that this practice is certainly against charity and very probably against justice. In fact, he thinks it is clearly against justice, but the kind of justice violated is obscure.[40]

It is unfortunate that in his further analysis of this problem Fr. Cronin uses only the example of the employer who denies a job to a properly qualified worker because of race, religion, or national origin. This is against social justice, he says, because it is against the common good. On the other hand, it does not seem to be against commutative justice because, though a man has a right to work, he has ordinarily no right to be employed by a particular person. This latter argument may have value regarding individual employers, but I suggest that it is not applicable to union discrimination. The union is not a private person. I should think that every worker has a strict right to an equal opportunity to join a union, and that to deny him this

[37] *America*, LXXXIII (1950), 462.

[38] *Social Order* is published by the Institute of Social Order, St. Louis, Mo. Up to the present year its circulation was limited to Jesuits, who used the magazine as a means of helping one another in the social apostolate. The limitation on circulation is now removed.

[39] "Racial Attitudes in the South Today," *America*, LXXXIV (1950), 157–59.

[40] *Catholic Social Principles*, pp. 318–21.

opportunity when he has given no occasion for such denial is a violation of commutative justice.

MEDICINE

We read so many statements by Protestant ministers favoring euthanasia that it is good to get an occasional glimpse of the other side of the picture. The new magazine, *Pastoral Psychology*, published an article for euthanasia by Joseph Fletcher, and one against euthanasia by John F. Conlin, M.D.[41] Of six communications published before the end of 1950, five are from ministers. Four of these definitely oppose euthanasia. Regarding Prof. Fletcher's article, one minister writes: "I cannot conceive of a Christian putting his stamp of approval on murder in any form. Here is a man who, because of his position as professor in a theological school, should be a Christian, yet he seems to think this form of murder is perfectly all right." Another followed Dr. Conlin's article with a commendation which ended thus: "Regretfully, I admit that many of my brother ministers are upholding euthanasia. This to me at first was disturbing, but articles like Dr. Conlin's give me more courage." A third plain statement by a minister is this: "When I read Dr. Joseph Fletcher's article on euthanasia some time ago, I wondered what had happend to Christian morality. But with the publication of the article by John F. Conlin in the September issue my faith in a Christian conscience is restored."

There may be many non-Catholic books on medical ethics, but the first one I have seen is *The Ethical Basis of Medical Practice*, by Willard L. Sperry, Dean of the Harvard Divinity School.[42] Like the ministers just quoted, Dean Sperry rejects euthanasia; yet it is not easy to discern the precise principle on which his rejection rests, unless it be the supreme need of preserving reverence for the life of the individual lest we be overcome by a totalitarian mentality. The author does not seem sure of any intrinsic reason why human life should command special reverence. Speaking of vivisection, he admits that he once helped to end the life of his suffering dog. "To this extent," he says, "I was a partner to euthanasia. The difference being, of course, that as far as we know the dog has not yet achieved the level of human self-consciousness."[43]

[41] The purpose of *Pastoral Psychology* is to promote mutual understanding and aid between ministers and psychiatrists. I was unable to procure the April number, which contains the article on euthanasia. Dr. Conlin's article, "Euthanasia: 'Unethical, Immoral,'" is in the September, 1950 number, pp. 35–38. The communications to which I refer are in June, pp. 54–55, and November, p. 6.

[42] New York: Paul B. Hoeber, Inc., 1950. [43] *Ibid.*, p. 184.

On the subject of prolonging life, Dean Sperry seems just as strict as, and perhaps even stricter than, many Catholic moralists. Moreover, some of his citations from physicians indicate a conviction on their part that they must do all that they possibly can to preserve life, never giving up hope. This corroborates what I suggested in my article on the duty of using artificial means to preserve life, namely, that in some cases professional standards may go beyond what is *per se* obligatory, and that it may be *per accidens* obligatory to encourage these standards for the common good.[44] However, here is one quotation from a physician which strikes me as manifesting the proper balance between extremes:

> I believe that some distinction should be made between an active attitude designing to end life and a passive attitude which allows a hopeless patient to die and does not involve the use of futile gestures. It seems to me that the doctor's job is to keep such a patient as free as possible from suffering either physical pain or mental anguish. This is quite different from deliberately ending his life, which seems to me contrary to the whole ethos of our profession.[45]

Not all physicians are capable of so clearly making a basic distinction. Nor are they all high-principled. Reviewing Dean Sperry's book, Walter G. Alvarez, M.D., says that the ministers who now oppose euthanasia would not do so if they had to spend a few years taking care of various types of sick people.[46] He then proceeds to give the old arguments for euthanasia, not omitting either *Utopia* or the sick horse; and he marvels that those who most oppose euthanasia are the churchmen, "those men who of all persons in the community one would think would be the kindest and most merciful."

Owing partly, no doubt, to the publicity given the Sander case, the literature of the past year contains an abundance of publications by priests, physicians, and the secular press, which ably refute the arguments offered by Dr. Alvarez and firmly establish the case against euthanasia. A rather complete survey of these publications can be found in *Linacre Quarterly*.[47] Here I would simply add a reference to "Euthanasia and Modern Morality," by Thomas Owen Martin,[48] which concerns various legal aspects of euthanasia; also to "Una discussione sulla Eutanasia," by Angelo Civera.[49] Fr. Civera's article contains nothing new, but it offers an excellent outline for

[44] THEOLOGICAL STUDIES, XI (1950), 203–20; see especially pp. 216–17. Cf. also *Linacre Quarterly*, August, 1950, pp. 10–12.

[45] Sperry, *op. cit.*, p. 134.

[46] "Ethics in Medicine," *GP*, Sept., 1950, 81–83. *GP* is a new journal for general practitioners; Dr. Alvarez is the editor.

[47] Nov., 1950, pp. 3–9.

[48] *Jurist*, X (1950), 437–64.

[49] *Palestra del Clero*, XXIX (1950), 588–93.

a refutation of the euthanasia movement. Euthanasia, he says, is condemned by science, reason, and faith. Science condemns it because the testimony of doctors themselves is that their profession is to heal, not kill. Reason condemns it as useless (for there are other means of alleviating pain), as impracticable (because it is too difficult to determine cases), and as unjust (because the sick are guilty of no crime). Faith condemns it, not only by confirming the principles of reason, but by showing the true value of suffering.

Physicians seldom show interest in gonad transplantation, but for theologians this is still a problem of more than ordinary speculative interest. In an article devoted to this topic Fr. Babbini[50] uses the same arguments and reaches practically the same conclusions as were expressed by Bert J. Cunningham, C.M., in his dissertation.[51] Fr. Babbini thinks it probable that the law of fraternal charity allows the extension of the principle of mutilation to the case of sacrificing a part of one's own body for the sake of a proportionate good for one's neighbor.

The article cites an objection raised by Iorio to the effect that transplantation of a gonad would make parenthood doubtful because the child of the donee might possess the characteristics of the donor.[52] Fr. Babbini's answer to this is much the same as Fr. Cunningham's, who writes in his dissertation: "From a moral standpoint, however, it would seem safe to assert that since the one in whom the new ovary is grafted is the source of the blood supply of the infant, and is the one from whose substance the child is formed, she is, truly and properly, the mother of the child."[53] Fr. Cunningham also mentions a physician's observation that some children born of women who had received ovarian transplants definitely resembled their mothers. He admits, however, that this might be explained by the fact that the fertilized ova came from the unmolested ovaries.

Another typically modern problem is narcoanalysis. A survey by Jean-Marie Delor covers nineteen articles on this topic.[54] Some of the articles

[50] *Ibid.* (Apr. 15, 1950), pp. 347–50. Fr. Babbini's article, "Il trapianto delle glandole alla luce della morale," was occasioned by the expression of a stricter opinion in *Perfice Munus!*, Jan. 15, 1950.

[51] *The Morality of Organic Transplantation.* Cf. THEOLOGICAL STUDIES, VIII (1947), 97–101.

[52] *Theologia Moralis*, II (1939), n. 201.

[53] Cunningham, *op. cit.*, p. 55.

[54] "La Narcoanalyse et la morale," *Revue diocésaine de Tournai*, V (1950), 254–60. *Cahiers Laënnec* devoted two complete issues (Oct. and Dec., 1949) to narcoanalysis. These are included in Delor's survey. See also "Effraction de conscience ou diagnostic médical?", by Eugène Tesson, *Etudes*, CCLXV (1950), 319–39.

have already been mentioned in these notes;[55] and the general consensus of all the authors agrees with the two conclusions previously expressed here, namely, that narcoanalysis may be used, with due precautions, in the treatment of mental illness, but it may not be used to extract a confession from an accused man. Some of these authors, however, suggest a further question that we have not yet discussed. They ask whether the treatment may be used on a legitimately convicted man in order to determine the degree of responsibility. Some think that, since the treatment is for the good of the individual, it should be permitted. Others believe that narcosis is too dangerous an instrument to be allowed any connection with a legal procedure. Though I have no definite conviction in the matter, I am inclined to favor the latter view. For one thing, narcoanalysis does not always reveal the truth. Moreover, if the convicted man did relive his crime this might be taken as a confirmation of his guilt and render an appeal futile.

Reviewing the Church's teaching on sterilization, Fr. Civera cites the pertinent documents and concludes that all direct sterilization is intrinsically illicit.[56] Indirect sterilization, which is allowed for a proportionate reason, is described as an operation on the generative system which is directed solely to the removal or immunization of a dangerous part, but which also results in sterility. Aside from the dispute on punitive sterilization, all theologians would very likely agree with the content of his article, but some would object to the phrasing of his conclusions. Even after the decree of the Holy Office, February 24, 1940, some theologians say that direct sterilization is licit when required for the good of the body. This terminology has the advantage of conforming to the usual manner of speaking about mutilation, but the disadvantage of apparent conflict with the teaching of the Holy See. A simple terminology, acceptable to all theologians and in accord with the language of the Holy See, is certainly desirable.

Three cases on sterilization merit attention. The first case, solved by Fr. Madden, concerns the cutting or tying of healthy Fallopian tubes in order to prevent a dangerous pregnancy. Nothing is said explicitly about the precise source of this danger, but the whole tenor of the discussion refers to cases in which the disease is outside the reproductive system, e.g., a weak heart. Fr. Madden writes: "If the tubes are themselves diseased and are a source of danger, they may be removed with as little scruple as any other organ or part of the body. But in the case before us, *the tubes are not diseased. They perform their normal functions*, and in consequence pregnancy ensues." Later he says of these tubes that they "*faithfully* play the part in procreation

[55] Cf. THEOLOGICAL STUDIES, VIII (1947), 104; X (1949), 87–88; XI (1950), 44–45.

[56] "La Sterilizzazione nel giudizio della Chiesa," *Palestra del Clero*, XXIX (1950), 685–88.

which was intended by the Author of nature." His conclusion, of course, is that the operation is illicit.[57]

A second case, solved by Fr. Connell, is stated somewhat vaguely but seems to come to this: A woman must have cesarean sections because of some difficulty such as narrowness of the pelvis. The doctor wonders whether he may remove the uterus because "it is unable to perform its proper function of providing a normal birth for children that have developed in it." Fr. Connell rightly points out that, as the case is put, the "womb does not seem to be defective, inasmuch as it is able to shelter and to nurture the children that nature places within it; *and this is the proper function of the womb.*" He then goes beyond the case by adding:

> Secondly, even though the womb were defective in regard to the process of gestation and birth, it would be unlawful to excise it, unless it were also in some way harmful to the woman's physical well-being *independently of pregnancy.* A sterilizing operation based *merely* on the fact that another pregnancy will be dangerous to the woman is a bad means to a good end.[58]

In a later case Fr. Connell deals directly with the problem of the defective uterus. A woman who has had several cesareans is again pregnant, and the doctor judges that this time he will be unable to repair the uterus in such a way that it will safely stand another pregnancy. He wonders, therefore, whether he may remove the uterus when he performs the next cesarean section. Fr. Connell's complete answer is as follows:

> If the uterus will be a serious menace to the woman's life or health because of the scars—that is, if it is liable to rupture even though she does not become pregnant again—it may be removed on the occasion of the next Caesarean operation as an organ *subject to a pathological condition.* But if the danger of rupture will be brought on *only* by a future pregnancy, it may not be excised. For in this latter supposition, *it is the pregnancy, not the scars that will cause trouble;* hence, a hysterectomy in these circumstances would be eugenic sterilization, a bad means to a good end. If a couple in this situation fear dangerous complications from a future pregnancy, they may avert the risk by the only lawful measure available, abstinence from marital relations, either total or partial.[59]

[57] Cf. *Australasian Catholic Record,* XXVII (1950), 44–47; italicized words in quotations are mine.

[58] *American Ecclesiastical Review,* CXXI (1949), 507; italics in quotations here and in the next reference are mine.

[59] *Ibid.,* CXXIII (1950), 221. In this quotation Fr. Connell refers to the sterilization as "eugenic." In another place he defines eugenic sterilization as "that which has for its sole immediate purpose the frustrating of conception" (*ibid.,* CXXII (1950), 225). More commonly, I think, the term "eugenic" is applied only to the prevention of conception "for the good of the race."

I hardly need say that I agree with Fr. Madden's solution. In his case there is question of mutilating a healthy generative organ simply to prevent pregnancy; the existing pathological condition is outside the generative system and would not be affected in any way by the operation. I also agree with Fr. Connell in the first part of his solution to the second case, and for the same reason: the uterus is neither pathological nor the source of danger. But I do not agree with the remark he adds to this solution, nor do I agree with his solution to the third case. I think that when a uterus is so badly damaged that competent and conscientious obstetricians judge that it cannot be safely repaired, they are not obliged to repair it.[60] They may, with the consent of the patient, remove it as a pathological organ.

During the past decade I have discussed this case with many moral theologians and ethics professors. Some hold the opinion expressed by Fr. Connell; others agree with me. Practically all, regardless of their personal opinions, consider the problem to be exceptionally difficult. As a result of these many consultations, I am confident that my view is solidly probable, although I realize it is not certain. But obviously, if mine is probable, the opposing opinion is not certain and should not be presented as certain.

Someone might wonder why I refer only to discussion with other moralists and say nothing about the teaching of the standard manuals. I do this because my general impression gleaned from reading a number of representative authors is that their treatment covers only two extreme cases: the mutilation of a healthy generative system in order to avoid a pregnancy that would be dangerous by reason of a disease in some other organ; or the destruction of a generative organ which is affected by some disease such as cancer, which involves danger to life independently of function. I call these cases "extreme" because one is clearly a direct sterilization and the other is just as clearly indirect. The case we are considering is not identical with either. The uterus in this case is not a healthy organ; but neither does it involve danger to life independently of its function. It is easy to see how the simple criterion, "danger independently of pregnancy," can be used to distinguish the two extreme cases. But it is an oversimplification to apply that criterion when the root cause of the danger in pregnancy lies in the fact that a generative organ is so badly damaged that it cannot—to use the words of Frs. Madden and Connell—*faithfully* perform its *normal* and *proper* function.

[60] In my text I refer to "competent and conscientious obstetricians." These are not men who want to do a routine hysterectomy or fallectomy after two or three cesareans. They say that, with the perfection of modern cesarean surgery, it is very rare when a uterus cannot be repaired. But they also say that, granted that this rare condition should develop, the uterus should be removed "just like any other pathological organ."

How does my opinion square with official teaching? Speaking of mutilations in general, Pius XI said they are licit only "when no other provision can be made for the good of the whole body." If these words must be taken literally, it seems to follow that the damaged uterus may not be removed, for the patient has another way of protecting herself, sexual abstinence. But it would also follow that whenever a man had a choice between a mutilation of any organ and a severe diet or a long, expensive treatment, he would have to choose the diet or the expensive treatment.

An example or two may be useful. Suppose a man has a diseased gall bladder which can be kept under control only by following a severe diet which, if followed voluntarily, would be called heroic. Must he follow the diet, or may he simply have the organ removed? Or consider the case of a woman with an infected Fallopian tube. She can be relieved of the dangerous infection either by the surgical removal of the tube or by a lengthy treatment which is both very expensive and time-consuming.

Perhaps the case of the gall bladder is not practical. I offer it merely as an illustration. But, at least until recently the problem concerning the Fallopian tube was very practical. I would say without any hesitation that the man could have the gall bladder removed rather than go on the heroic diet, and I think it is at least probable that the woman would not have to undergo the expensive, time-consuming treatment to save the tube. Many, if not most, theologians would very likely agree with these solutions. And if they do, they must be interpreting Pius XI's words to mean that a mutilation is permissible when it is *morally* necessary for the good of the body, or, to put it another way, when it is the best reasonably available means of providing for the good of the body.

As a matter of fact, Fr. Connell himself does not take the Pope's statement literally. He allows transplantation, which is hardly good for the body of the donor. And he allows the removal of a healthy appendix when one is leaving for a distant region where proper surgical care may be lacking.[61] Yet this person has another way of protecting his life: he can stay home, where proper surgical care can be had. One might object that there is no proportion between the value of an appendix and the value of a uterus. The objection is not *ad rem*, because the sole point at issue is whether the papal statement means that a mutilation is *never* permissible as long as there is *any* other way of providing for the good of the body. Fr. Connell's solution to the appendix case shows that he agrees with me that the Pope's words need not be taken so strictly. And in explaining his solution he shows this even more clearly, for he writes: "According to Catholic moral principles, the mutilation or

[61] Cf. *American Ecclesiastical Review*, CXVI (1947), 143–44.

excision of a part of the body is permitted only when there is certainty or probability that benefit will thereby come to the whole body in sufficient measure to compensate for the harm that has been done." (He then adds his opinion that the principle may be extended to include transplantation for the good of another.)

I might add here that I see no essential difference in value between a healthy appendix and a damaged uterus. Fr. Connell, when challenged about applying his solution of the appendix case to the removal of the uterus, called attention to the great social value of the latter.[62] But he was speaking about a healthy uterus. What precise social value has a uterus which cannot perform its social function?

The second official pronouncement to be considered is the Holy Office's condemnation of direct sterilization. I have already mentioned that interpretations of this reply are at least verbally at variance. And in former notes I discussed the value of my opinion with reference to the reply.[63] Let me simply state here that I think the meaning of the decree is completely safeguarded by saying that direct sterilization, in the sense of the decree, is a procedure designed precisely to suppress a healthy generative function. The uterus in our case is not healthy.

May I comment briefly on some of Fr. Connell's statements in the quotations given at the beginning of this discussion? He admits that gestation is the proper function of the uterus, yet he implies that the uterus is not in a pathological condition when it is unable to carry out this function. This is an arbitrary limitation of the meaning of "pathological." He insists that if the pregnant woman is reduced to danger of death from hemorrhage, this danger comes only from pregnancy, not from the previously damaged uterus. I think it would be more correct to say that the pregnancy is the *occasion* of the danger, and that the diseased uterus is the cause. At any rate, surely the morbidity of the uterus is at least a partial cause. Hence, it is not correct to say that the danger comes *solely* from the pregnancy.

I trust that this discussion has not become tedious. We can briefly conclude it by referring to a real case. A Catholic woman who has had seven children by cesarean section is now pregnant for the eighth time. The obstetrician who has brought her safely through all these deliveries—and who is obviously not a "sterilizer"—fears that when he does the eighth section he will find the uterus too much weakened for safe repair. He and the patient, both of whom wish to do what is morally right, ask the chaplain whether the uterus may be removed in case the physician's fears are verified.

[62] *Ibid.*, p. 470.

[63] THEOLOGICAL STUDIES, VIII (1947), 103.

What should be the chaplain's reply? If Fr. Connell's opinion is *certain*, he must say that the hysterectomy would be illicit. If my opinion is *solidly probable*, he must say that the hysterectomy is not forbidden. As a matter of fact, the chaplain was spared the necessity of making a final decision in this case. Shortly after the eighth child became viable the mother began to hemorrhage dangerously. Her life was saved by an emergency hysterectomy, exquisite treatment, and many transfusions. The baby died. It seems to me that, before we can assert categorically that a woman must choose between this kind of risk and sexual abstinence, we must give a great deal more thought to the problem of the damaged uterus.

In a former survey I mentioned a new code of medical ethics that had been published in France. An English translation of this code by R. O'Rahilly is now available in *The Catholic Medical Guardian*.[64]

CHASTITY

Fr. Babbini writes that, as a student of theology, he was much confused by the moralists' catalogues of the various "actus impudici" and their grading the sinfulness of these acts according to distance, duration, and so forth.[65] One can readily agree with the author's suggestion that these treatises ought to be revised. The distinctions and qualifications are more confusing than helpful. They should be replaced by a few definitely stated principles, illustrated by well-chosen examples.

Later in this article, and even more fully in a second article,[66] Fr. Babbini criticises moralists for failing to distinguish clearly between sensual and venereal pleasure. Initial genital motions, he says, are sensual, not venereal. Venereal pleasure is experienced only in the sexual orgasm.

The theory of the twofold genital pleasure was introduced by Joseph Alberti in the early part of this century. In his theory the erectile processes should be styled sensual, and only the orgasm and the *motus proxime praevii* should be called venereal. Antonelli sponsored the same theory, and Cappello formerly accepted it, at least partially.[67] Fr. Babbini cites Antonelli frequently. Alberti held at least verbally to a difference in degree of venereal pleasure, for he divided this pleasure into *perfecta* and *inchoata*. Fr. Babbini

[64] Oct., 1949, pp. 2–19.

[65] "Valutazione morale degli atti contrari al pudore," *Palestra del Clero*, XXIX (1950), 255–59.

[66] "La delectatio venerea," *ibid.*, pp. 628–30.

[67] For references to Alberti, Antonelli, and Cappello, and for an evaluation of the Alberti theory, see THEOLOGICAL STUDIES, I (1940), 117–29; also Vermeersch, *Periodica*, XXII (1933), 122*–129*. The fifth edition of Cappello's *De matrimonio* (1947), n. 140, has dropped the footnote in which he indicated approval of the Alberti theory.

does not wish to make the distinction, even verbally. According to him, only the processes that constitute the orgasm should be called venereal.

Obviously Fr. Babbini is interested in passing a milder judgment on certain acts that theologians commonly consider venereal, without at the same time denying the principle: "Extra matrimonium, luxuria directe voluntaria non admittit parvitatem materiae." One can readily understand this benignant attitude. But it is not good theology to hold a principle (which he does) that draws its main probative value from the common consent of theologians, under the guardianship of the Church, and then to explain the terms used in the principle in a way different from the theologians. Fr. Babbini may be correct in saying that greater clarity is desirable in the explanations and descriptions of venereal pleasure. But there is certainly no lack of clarity regarding the fact that the commonly accepted notion of venereal pleasure includes more than the sexual orgasm.

A lengthy discussion of the "privileges of engaged persons" in *L'Ami du Clergé* concludes with three well-phrased rules concerning the intimacies of courtship.[68] (1) Engaged persons have no right to do anything, interiorly or exteriorly, which would be a sin of lust for other unmarried people. (2) They do have a right to modest conduct which helps them to know each other better and which expresses and fosters their mutual love. (3) They are entitled to such decent intimacies, even though they give rise to an unintended evil effect.

In the body of the article *L'Ami* cites some rather severe opinions concerning visits, especially by St. Alphonsus. But the conclusion tempers this severity with the salutary suggestion that these opinions pertained to a state of society different from our own, and allowance has to be made for this in dealing with modern youth. They live in a different atmosphere, but they are not worse than the youth of former generations. But the very atmosphere in which they live calls for a more profound character training. To give them this training we must have their confidence; but we shall not preserve their confidence by trying to impose on them regulations and a regime that has long since gone out of date. These wise counsels are followed by a list of readings that *L'Ami* considers especially good on courtship and marriage.

In the course of an article entitled "Venereal Diseases: Some Aspects of the Problem,"[69] Dr. G. L. M. McElligott touches on the problem of supplying prophylactics to soldiers. One of his observations would be worth recalling when this issue is raised. He writes: "Here I can say from my personal experience as a medical officer during the war, that prophylactic packets

[68] Aug. 17, 1950, pp. 519–22.

[69] *Linacre*, (London), Oct., 1949, pp. 11–14.

carried on the person are, like the schoolboy's half-crown, liable to burn a hole in the pocket, and by giving a sense of security, false or otherwise, become an added incentive to fall by the way."

VARIOUS PRECEPTS

L'Ami du Clergé presents a good statement of maternal duties in replying to the question, may a mother abandon her child?[70] The answer considers particularly the case of the illegitimate child. As one would expect, much attention is given to the duty of providing for the child's character formation and religious training. But also great stress is laid on the supreme psychological importance of maternal tenderness during the first year or so of the baby's life. Because of the gravity of these duties, *L'Ami* takes a stern view of the two excuses for which moralists ordinarily allow the mother to relinquish the child: inability to provide for him, and danger to the mother's reputation. The first excuse is seldom, if ever, verified, in *L'Ami*'s opinion. The second is *per se* verified only when the case is entirely occult; but *L'Ami* admits that there might be other factors which would constitute a similar excuse: for example, the fact that the mother, in keeping the child, would be exposed to constant nagging and insults. Granted such excuses, the mother may relinquish the baby, but in doing so she is seriously obliged to make proper provision for its education, either by giving it to a person of known probity or by confiding it to an institution that guarantees the requisite care. *L'Ami* thinks that under no circumstances except the pressure of physical necessity may the mother give the child to a public institution that offers no security for the proper religious formation.

"It is difficult to reconcile prizefighting, as we have it today, with Catholic principles of morality. For, undoubtedly, the purpose of the fighters is to deal each other severe blows, and if possible to score a 'knock-out.' That grave injuries frequently come to those who follow prizefighting as a career is well known from experience."[71] This statement by Fr. Connell has received wide publicity. In the same reply he says that boxing, which he describes as "giving and parrying light blows without any intention of striking the opponent severely or inflicting injury," is permissible as recreation, exercise, and a test of one's skill. But boxing too may become sinful. To substantiate this last statement, the author refers to a passage in Aertnys-Damen, the complete text of which is as follows:

Non est duellum stricte dictum pugilatus seu certamen saepe lucri vel ostentationis causa pugnis institutum (*boxing*), etiamsi fiat ex condicto de loco et tempore;

[70] *L'Ami*, Sept. 7, 1950, pp. 536–40.

[71] *American Ecclesiastical Review*, CXXII (1950), 58–59.

quia arma de se lethalia non adhibentur. Nihilominus hujusmodi certamen facile illicitum fieri potest, leviter vel graviter pro gradu periculi magis vel minus probabilis laesionis vel etiam mortis: ut si debitae cautiones non observentur, vel si certamen eo tendat ut unus ex certantibus sensibus destituatur (*to knock out*).[72]

Martin E. Gounley, C.SS.R., takes exception to Fr. Connell's solution.[73] He says that Fr. Connell has offered no proof that there is a real probability of serious injury in prize fighting that is kept within state regulations. Fr. Gounley denies the probability. Moreover, he rejects Fr. Connell's interpretation of Damen. He says that Damen is obviously talking, not about boxing in the restricted meaning of Fr. Connell, but about prize fighting as we have it today. The state regulations provide the "debitae cautiones" required by Damen; and the clause which Damen himself has translated "to knock out," means rather "a fight to a finish" to Fr. Gounley. Such a fight, he says, is proscribed by state regulations and is not "prizefighting as we have it today."

Fr. Connell admits that his opinion might seem somewhat severe "in view of the widespread conviction of the American people that prizefighting is a 'good, clean sport.' " Fr. Gounley suggests that many of the clergy share this conviction, and he insists that one who argues against the conviction should present conclusive statistics and reasons. As a matter of fact, neither writer offers any statistics and neither cites any authority except Damen. This latter defect may spring from the fact that very few moralists treat the problem. But there are a few exceptions to this policy of silence, and it might have been well to refer to them.

Ubach condemned prize fighting as a form of duelling, and he was of the opinion that serious injuries are inflicted *per se*.[74] Iorio contradicts this and adds, with special reference to our country, that in the United States prize fighting is simply a national sport.[75] This implies that he does not consider it illicit. Joseph P. Donovan, C.M., expresses a view similar to Iorio's.[76] And Edwin F. Healy, S.J., has this to say:

> Boxing is a form of corporal exercise that tends to benefit the body in various ways. It develops quickness of eye. It strengthens the muscles. It improves one's powers of endurance. It helps to better coordination of the various parts of the body. It is, moreover, a wholesome form of recreation and has the same advantages as many other competitive sports.

[72] *Theologia Moralis*, I (1944), n. 586, 5°.
[73] *The Priest*, VI (1950), 437–39.
[74] Ubach, *Theologia Moralis*, I (1935), n. 528.
[75] Iorio, *Theologia Moralis*, II (1939), n. 234, 8°.
[76] *Homiletic and Pastoral Review*, XLIX (1949), 982–83.

The practice of professional boxers of trying, by means of a knockout, to render their opponent helpless is justifiable. These boxers do not do the opponent serious injury. Ordinarily the one who is thus knocked out is simply put into a state where he is unable, for a few minutes, to continue the bout. He is still conscious, though temporarily incapacitated. If at times the man is rendered unconscious, that is merely accidental.

What is to be said of 'slugging fests,'—that is, of prize fights where each boxer mercilessly pounds the other? These matches savor of brutality and so are reprehensible.

Theologians who liken boxing to dueling and condemn it as such evidently do not understand the sport as it is engaged in here in this country.[77]

Like Fr. Healy, Fr. Ford thought that Ubach did not understand a boxing match. He added that, so far as cruelty is concerned, Ubach might have made a stronger case "if he pointed at some of our American professional wrestling matches. At these matches the agony of the wrestlers may be for the most part simulated, but the simulated sufferings are presented for the delight of the audience."[78] I judge from this that Fr. Ford believes that in our professional wrestling, much more than in prize fighting, there is an appeal to sentiments of cruelty in the spectators.

The foregoing survey of moralists' opinions about prize fighting is certainly skimpy. But these are all the opinions I could find. And they are enough to show that not all moralists think the widespread conviction of the American people is erroneous.

The reader of a moralist's appraisal of prize fighting is apt to have a vague suspicion that perhaps this man is too theoretical. It is fortunate, therefore, that we can supplement the preceding material with a reference to "Let's Face the Facts about Boxing," by Timothy A. Murnane, Jr., who is introduced by his editor as "a former amateur boxer with experience in high school, college, Navy, A.A.U. and Golden Gloves competitions."[79]

Mr. Murnane would not agree with Fr. Healy that it is only accidental that a knock-out renders a man unconscious. He says that the trained fighter carries terrific power in his punch, and that in the midst of a fight he is not able to control the effects of the punch. "Most knock-out blows," he says, "are delivered to the head"; and, "since the head is the main target," he is not surprised at a physician's statement that "sixty out of every 100 boxers suffer sufficient brain injury to slow them up noticeably."

Brutality is the chief object of Mr. Murnane's condemnation. He thinks

[77] *Teacher's Manual for Moral Guidance*, p. 44.
[78] THEOLOGICAL STUDIES, VI (1945), 540.
[79] *America*, LXXXIV (1950), 185–87.

that prize fighting as we have it caters to brutality on the part of both fighters and spectators. Of the participants, he writes: "Even when the fighter directs his attack at other parts of the body, it is generally a diversionary measure, to get an opening at the head. When one of the fighters is cut over the eye, his opponent directs his attack at the injured orb. If one's nose is smashed, it is a signal for even more vicious attack at that point. Fighters often finish the contest looking almost inhuman." As for the spectators, Mr. Murnane believes that "the excitement engendered by the combat they are witnessing causes many to lose control of themselves. Blood becomes heated; emotion overrules reason; base instincts prevail."

It has been mentioned earlier that Fr. Connell himself admits that there is a widespread conviction of the American people against his opinion. But Mr. Murnane points to many signs of a break in this widespread conviction. Very likely there will be much more discussion. And there should be such discussion before we form any final opinion on the matter. Certainly I am not competent to give a final opinion. Nevertheless, unless the further discussion should show a great deal of weakness in Mr. Murnane's statements I would cast my one lone vote against "prizefighting as we have it today."

The *Clergy Review* makes available a valuable memorandum submitted "on behalf of the Catholic Church in England and Wales to the Royal Commission on Betting, Lotteries and Gaming."[80] In this document the bishops clearly recognize both the right and the duty of the state to regulate gambling and their own duty to contribute their knowledge and experience towards the formulation of good laws. The memorandum is too concisely worded to admit of summary; hence I shall merely indicate the material found in the various sections.

The first section offers a clear exposition of the moral principles pertinent to betting and gambling. It includes Fr. Davis' excellent "Notes on Betting."[81] Of special interest is the observation on gambling and family problems made in the last paragraph of this section:

7. One of the main responsibilities of the Bishops is the preservation of the Catholic family. It seems to have been the experience of the parish priests that gambling, compared with other evils, is far less likely to lead to the breaking up of home life. It is our experience that such abuses as artificial birth control, conjugal infidelity coupled with facilities for divorce, and particularly excessive drinking constitute a far more frequent and destructive attack upon family and home. It is

[80] XXXIV (1950), 96–104, "A Catholic Statement on Betting."

[81] *Moral and Pastoral Theology*, II (1943), 404.

not our experience that Bishops receive reports of unhappy moral cases in which it is alleged that the disaster arose from betting and gambling.

The second section very realistically "gets down to cases." It considers the various forms of betting and gambling with reference to the evil effects that actually flow from them. Betting at horse races receives no censure; but attention is called to the fact that dog races are usually more available and thus create a danger of fostering the betting habit in people who can ill afford it. As for off-the-course betting, properly supervised credit booking occasions but little harm, but street booking does immeasurable harm, for instance, by getting housewives to bet and then leading to blackmail lest their husbands discover what they have done.

Games of chance played at home are usually conducted on a modest scale and occasion little evil. At clubs, much depends on the character of the club. At work, they are definitely harmful. Lotteries and pools do some good and but little harm, provided they are regulated and commercialization is avoided. The bishops mention in particular that pools provide many happy evenings in the home and thus help to keep the family together. To the objection that enormous sums of money are expended in these things they reply:

> We are not impressed by imposing totals of expenditure on gambling. It is far more important to consider how much per head it involves. Ten million people, for example, spending 2*s*. 6*d*. per week on pools would produce in one season a tremendous turnover of money, but it still is only 2*s*. 6*d*. per person per week. Numbers of excellent citizens spend more than this—very much more—on cigarettes and drink, but this is no reason for abolishing smoking or clamouring for prohibition.

The third section of the memorandum offers practical suggestions for good laws. It includes such points as these: restrict the number of people allowed to work in betting and gambling enterprises; allow no artificial stimulation of the gambling instinct by advertising; allow the humbler citizen who cannot afford credit to place an occasional cash bet; regulate dog racing very carefully; and so forth. One point of special interest to moralists is the suggestion that the moral obligation of gambling debts contracted within the law be clearly recognized and that proper legal provision be made for the recovery of such debts.

I fear that my skimming has not done justice to this memorandum. For a clear statement of principles and a prudent application of the principles to existing conditions it would be difficult to find its equal.

A man often takes short train journeys without paying a fare. Sometimes this happens because the conductor asks him for nothing, and sometimes

because the conductor has refused to take his money when he has explained that he has no ticket. *L'Ami du Clergé* holds this to be a violation of commutative justice.[82] In taking the train the man makes a contract with the railroad. He is obliged to fulfill his part of the contract, and the conductor's failure to collect the fare does not exempt him. *L'Ami* appeals to the analogy of taking merchandise from a store. One would not be exempt from paying simply because the clerk did not ask for the money or even because a clerk (who obviously has no right to give things away) refused to take the money A similar solution to this case of "riding without paying one's fare" is given by Charles E. Sheedy, C.S.C.[83] I have the impression that some moralists would take a milder view of these cases. At any rate, I have heard it suggested that commutative justice is violated only when one uses an unjust means to avoid paying his fare. I think that the solution given by *L'Ami* and Fr. Sheedy is the only one compatible with sound principles concerning contractual obligations.

In agreeing with *L'Ami* that justice is violated even when the conductor waives the fare, I am presuming that he has no right to do this. Obviously, if there is a reasonable presumption that the conductor is acting rightly, the traveler is entitled to act according to this presumption. But I doubt that such "reasonable presumptions" often exist.

Fr. Connell treats the case of those who obtain admission to a ball game or some other form of entertainment "by subterfuge."[84] He says that this is a violation of commutative justice and that *per se* restitution of the price of admission is required. He adds, however, that in some cases condonation might be presumed. "I believe," he says, "that the owners of a circus can be reasonably presumed to free from the obligation of restitution any small boy who has successfully evaded the watchful attendants and crawled into the tent." Of course, the small boy might also have good faith, or "blissful ignorance," in his favor. Be this as it may, the solution, besides conforming with principles, may help many of us to look back on our boyhood with considerable relief.

Is the unnecessary revelation of an occult serious sin to a prudent person who will not further reveal it a mortal sin? Is it an injustice to reveal unnecessarily a crime that was once public with the publicity of fact but is now long forgotten? And is it also an injustice to reveal without necessity a crime

[82] *L'Ami*, Oct. 27, 1949, pp. 651–53; solution signed by R.-M. B.

[83] *The Christian Virtues* (Notre Dame, Indiana: University of Notre Dame Press, 1949), p. 243. This college text is a good example of the positive approach to the teaching of Christian morality.

[84] *American Ecclesiastical Review*, CXXIII (1950), 382.

that was once juridically notorious when it is now forgotten and when the culprit has amended his life? Kenneth B. Moore, O. Carm., presents a good defense of the affirmative position in all these controverted questions.[85] As Fr. Moore admits, the apparent weight of authority against his answer to the third question is vast. Nevertheless, on intrinsic grounds, it is much easier to accept the theory that a rehabilitated criminal regains his right to a good name than it is to sponsor the claim that a judicial sentence deprives a man of this right, regardless of emendation.

A brief reference to the precepts of the Church will conclude this section. R. J. O'Donnell suggests that the Lenten regulations be simplified as follows: "No eating between meals. No meat on Wednesday and Friday."[86] Fr. O'Donnell is a pastor and realizes from experience that the regulations are ordinarily too complex. But his rules are perhaps an oversimplification. The laws would be simple enough, and at the same time well within the power of most people to observe, if we would (*a*) promote the relative norm of fasting, and (*b*) do away with the workingman's privilege. During the past Lent many dioceses followed the relative norm. And in one large diocese the Ordinary dropped the workingman's privilege, and, in its place, allowed everyone to eat meat *once* on the days for which the workingman's privilege is granted. This seems an ideal way of dissipating the confusion that has come to surround the privilege. The solution is within the competency of local Ordinaries by reason of the wide faculties granted during the war and still existing, though somewhat restricted by the decree of January 28, 1949.

"Can we hold that there is an established custom allowing servile work in England on holy days of obligation?" Canon Mahoney's reply to this question might well be applied to the United States, and it can be quoted without comment:

> Assuming that Catholics engaged in servile work in this country must either disregard the law or suffer serious loss, the simplest reply would be that this disregard is necessary and universal and that a lawful custom *contra legem* has existed from time immemorial. It is open to anyone to accept this view, which has at least the merit of simplicity.
>
> We think, however, that the assumption is not always verified, and would much prefer to explain the practically universal disregard of the law on the ground that in practically every instance a serious loss is involved; a view which leaves the law in existence, instead of extinguishing it altogether. The assumption is not verified in numbers of instances where employer and all the employed are Catholics, and where

[85] *The Moral Principles Governing the Sin of Detraction and an Application of these Principles to Specific Cases* (Washington: Catholic University Press, 1950).

[86] "Those Lenten Regulations," *The Priest*, VI (1950), 115–17.

the law can be observed without any injury at all, for example in a Catholic institution employing Catholic gardeners. We think that if no serious loss is feared the law must be observed, though there is ample room for leaving people, whether employers or employed, in good faith about their obligations.[87]

PENANCE

Canon 883 makes provision for confessional jurisdiction on sea voyages, and the *Motu Proprio* of December 16, 1947, extends this concession to journeys by air. Can one argue by analogy that the privilege also extends to train journeys? Canon Mahoney answers this question with his customary lucidity and moderation.[88] He cites the opinion of Cappello that canon 883 might be extended to a long train trip, such as a journey through Siberia, but he adds that commentators generally decline to extend the concession beyond the canon and the *Motu Proprio*. No doubt all would like to see some provision made for train journeys, but, as Canon Mahoney explains, "the difficulty is in defining the limits of such journeys. The fringes of the existing law have produced a number of casuistical questions in defining the nature of a voyage by sea and these will be increased if the faculty is extended to land journeys. If trains are included it will be difficult to exclude motor-cars, cycles, or even a journey on foot. A train journey across Siberia, as Cappello intimates, seems to call for some concession, but what of a train journey from Charing Cross to Waterloo?"

Fr. McCarthy presents a thorough discussion, as well as refutation, of the opinion held by some authors that, despite the wording of canon 886, a confessor may still postpone absolution even when the penitent is clearly disposed.[89] His concluding paragraph states the case succinctly:

> It is our view, then, that when a confessor has no doubt about the dispositions of a penitent who asks for absolution, the absolution should be given and at once. Thus it is never of obligation to postpone the absolution of such a penitent. Nor is it even lawful. That is to say, the obligation lies the other way. The certainly disposed penitent has, we repeat, a right in justice to receive absolution at once. Failure to give it is, *per se*, a mortal sin. Of course, if a penitent freely consents, for a particular reason, to the postponement of absolution, this would be lawful. The penitent can forgo his right. And in these circumstances postponement of absolution would not be fraught with many of the disadvantages mentioned above and might serve some worthwhile purpose.

[87] "Servile Work on Holy Days," *Clergy Review*, XXXIV (1950), 319–22.

[88] "Confessions during a Train Journey," *ibid.*, XXXII (1949), 410–12.

[89] "Postponement of the Absolution of Certainly Disposed Penitents," *Irish Ecclesiastical Record*, LXXIII (1950), 537–41.

This strikes me as the only tenable opinion. Despite numerous citations from pre-Code authors, I question the present solid probability of the opinion which allows a confessor to postpone absolution of a certainly disposed penitent except with the freely given consent of the penitent. Moreover, granted that the opinion could be called solidly probable, I doubt that it could be reduced to practice. There is question, first, of a right to absolution which is certainly presumed to exist in favor of any penitent who fulfills the requisites for a good confession. Secondly, there is danger of spiritual harm to the penitent, as well as a danger of making confession odious. Under such conditions, *tutior pars sequenda est.* As for withholding absolution with the penitent's consent, this violates neither the canon nor the penitent's right. But I doubt that this course of action can produce any good which cannot be just as readily obtained without deferring absolution, and I would counsel confessors not to resort to it.[90]

L'Ami du Clergé has two cases of more than ordinary interest. The first concerns a confession made by a girl on the day before she is to be married.[91] She confesses an impure act, and the confessor asks whether this was with her fiancé. *L'Ami* says the confessor violates the law forbidding him to ask the name of an accomplice. There follows a clear discussion of the distinction between *materialis* and *formalis inquisitio complicis. L'Ami* points out that the confessor might ask whether the accomplice was married or unmarried, because such information would be needed to determine the species of the sin. (It might also be required as a preliminary step to discovering the impediment of crime.) Also, says *L'Ami*, if the girl were not confessing just before her marriage and if she mentioned several sins of impurity, the confessor might legitimately inquire whether these were all with the same person; and, should they be with the same person, he might ask whether they were keeping company with a view to marriage. These, and similar questions, might be required for integrity or for proper guidance of the penitent. If answers to the questions should happen to reveal the identity of the accomplice, this would be *per accidens.*

In the supposition that the confessor in the case had no good reason for his question, *L'Ami*'s solution is undoubtedly correct. But suppose he had good reason to suspect that fornication had been committed with someone other than the fiancé. According to *L'Ami*, he should avoid all questions and simply give some tactfully worded advice that would cover the dangerous situation; for example, a little talk on the evil of adultery. Prudence might sometimes call for this roundabout treatment, but one may well doubt that the law requires it.

[90] Cf. *Emmanuel*, LVI (1950), 198. [91] *L'Ami*, Sept. 28, 1950, pp. 590–91.

From *L'Ami*'s lengthy discussion of another case I am selecting only essential details.[92] An aging chaplain of a convent, who is also the confessor of the Sisters, is losing his hearing. He can understand the penitents when they speak slowly and distinctly, but often they do not do this. The bishop cannot spare another man for either the chaplaincy or the confessions. What should the chaplain do? Are the confessions valid and licit? Must he ask the Sisters to repeat their confessions, or must they do so even though not asked?

L'Ami first suggests the simple expedient of notifying the community as a group that the confessor is hard of hearing and that they should speak slowly and distinctly. That should cover most cases, and the confessor may then remind the individuals who seem to forget. But even should these precautions prove to be of no avail, the confessions would certainly be valid, because they would be at least generic confessions made in good faith. Moreover, since most of the confessions would contain only venial sins, and since the others would be made to this confessor because of an impossibility of going to another, the confessions would be licit.

When he does not clearly discern what is said, is the confessor obliged to ask the Sisters to repeat their accusations before he gives absolution? Not if he is reasonably sure that no serious sin was confessed, says *L'Ami*; on the other hand, if he has a sound suspicion that some sin was mortal, he should at least ask: "Did you confess anything you thought was serious?" As for the penitents, if they, on their part, have confessed a mortal sin and suspect that the confessor did not understand them, they should ask him about it. But if they have already left the confessional before they realize that he did not hear, they must tell this sin in their next confession, just as they would a forgotten sin. This supposes, of course, that they know they were not heard.

The following case, solved by J. Genicot, is not unfamiliar to moralists:

> Father James, chaplain to a high school, hears the confession of Basil who accuses himself of several bad actions against chastity, committed with another boy: "I am very sorry for these sins; but the other boy often solicits me to sin, and this is the reason of my frequent falls." Father James, full of zeal both for the common welfare and for the good name of the school, answered: "My son, you have the obligation to denounce that seducer to the Principal of the school. If you refuse to do so, I shall have to deny you absolution."[93]

In general, Fr. Genicot's solution follows the lines indicated by Genicot-Salsmans in their *Casus Conscientiae*,[94] and by Fr. McCarthy in a case

[92] *Ibid.*, July 13, 1950, pp. 445–48.
[93] *Clergy Monthly*, XIII (1949), 381–84.
[94] *Casus* 44.

reported in these notes two years ago.[95] Fr. James is found wanting on two counts. First, he could not be sure of the *objective* existence of the obligation to denounce until he know how much harm the corruptor was doing and weighed this against the inconvenience of denouncing. Secondly, even though the duty should objectively exist, it is more prudent to advise the denunciation without insisting on it under pain of denying absolution. On a third point, not mentioned in the case itself, Fr. Genicot finds a discrepancy between Genicot-Salsmans[96] and Fr. McCarthy. The former suggest that the confessor might make the denunciation himself, with the consent of the penitent; the latter considers this inadvisable. Fr. J. Genicot agrees with Fr. McCarthy.

May onanists be left in good faith? Fr. Babbini admits with Vermeersch that this is possible in very rare cases.[97] Ordinarily, however, penitents must be questioned when there is a solid reason for suspecting they are practising onanism, even in good faith. Fr. Babbini adds that it makes no difference whence this suspicion arises, so long as it is not from another's confession. Despite the authorities that might be cited in its favor, I think that the practice of using extra-confessional knowledge as a basis for asking embarrassing questions in the confessional tends to make the sacrament odious.

What is to be said about people who communicate frequently, even daily, but seldom, if ever, go to confession? The question is not impractical. *L'Ami* deals with it twice, once in a general way and once with reference to a "nervous" person.[98] The answer, of course, lies in distinguishing between what is obligatory and what is useful. Neither canon 906 nor canon 856 requires confession of those who have not sinned mortally. On the other hand, in view of the long-standing practice of the Church, and especially in view of Pius XII's statement in *Mystici Corporis*,[99] the utility of the frequent confession of venial sins cannot be doubted. The solution, therefore, is to inform the faithful of the manifold advantages of the practice and to urge them to follow it, but never to force it upon them.

MARRIAGE

Monitor Ecclesiasticus publishes a decision of the Metropolitan Court of New York declaring the marriage of a vasectomized man null by reason of

[95] Cf. THEOLOGICAL STUDIES, X (1949), 74; *Irish Ecclesiastical Record*, LXIX (1947), 1002–1006.

[96] *Theologia Moralis*, I (1946), n. 221.

[97] "L'obbligo d'interrogare i penitenti onanisti," *Palestra del Clero*, XXIX (1950), 334–35. See also *ibid.*, pp. 60–61, 810–11; and THEOLOGICAL STUDIES, XI (1950), 61–63. And for an excellent pastoral treatment of the confessions of onanists, see *L'Ami du Clergé*, Feb. 9, 1950, pp. 81–89.

antecedent and perpetual impotence.[100] The argumentation is clearly presented. The judges reject as improbable the opinion that the doubly-vasectomized man is not impotent. They also deny the existence of a sufficient probability of successful reintegration to constitute doubtful perpetuity.[101]

One can admire the clarity of this decision without agreeing with it. I prefer to say with Canon Mahoney [102] and Fr. Donovan [103] that the impediment is doubtful. Fr. Donovan, it is true, cites no recent material when expressing his view; but Canon Mahoney, after referring to some publications that are even more recent than those cited by the New York court,[104] and despite the fact that he favors the strict opinion, writes: "Owing to the haze, obscurity and uncertainty surrounding the whole subject it is at least doubtful whether the impediment exists, and therefore marriage may be permitted from canon 1068, §2." He adds that the same doubt justifies the introduction of nullity causes.

A Rota case of no little interest concerns a woman who had married with the intention of always frustrating conception by the use of such things as an occlusive pessary and destructive chemicals.[105] The Rota admits that the use of these instruments would not prevent intercourse from being the *copula perfecta* required for the consummation of marriage. It contends, nevertheless, that the marriage contract includes the right to something more than this. It includes the right to "actus vere conjugales," that is, "actus qui ex natura sua corpus mulieris subjiciant oneri praegnationis, gestationis, partus." The Rota, therefore, declared the marriage null by reason of defective consent.

William Giaquinta criticised the Rota for failing to distinguish clearly

[98] *L'Ami*, June 22, 1950, pp. 396–98; Oct. 12, 1950, pp. 619–20.

[99] *AAS*, XXXV (1943), 235. [100] LXXV (1950), 207–23.

[101] One of the reasons why the court rejects Vermeersch's opinion is that Sixtus V knew nothing about hormones. Did he know more about vasectomy and its effects? Again, discussing the possibility of repairing the vasa, the decision mentions that the man's doctor had performed two such operations, one of which was successful. This is not enough, says the court, to guarantee "59/100 verae probabilitatis de felicitate in operationibus similibus." Perhaps I have entirely missed the meaning of this statement, but it seems to suggest that only "greater probability" of successful restoration would constitute doubtful perpetuity. This would even exclude the hope offered by Dr. Vincent J. O'Connor when he achieved 35 to 40 per cent success in repair operations; cf. *Journal of the American Medical Association*, CXXXVI (1948), 162–63.

[102] "Male Sterilization and Impotence," *Clergy Review*, XXXIV (1950), 43–45.

[103] Cf. *Homiletic and Pastoral Review*, L (1950), 1154–58.

[104] For a number of recent references, see THEOLOGICAL STUDIES, IX (1948), 113–16; X (1949), 116; XI (1950), 71.

[105] Cf. *Ephemerides Juris Canonici*, IV (1948), 155–58.

between the *jus ad prolem* and the *jus ad actus per se aptos ad generationem.*[106] The former pertains to the purpose of marriage; only the latter belongs to the object of the contract. This criticism brought Francis Hürth, S.J., to the defense of the Rota.[107] Fr. Hürth argues that the marriage contract contains not only the positive right to coitus, but also a "negative right" —that is, a right to the omission of acts that would frustrate the natural effect of coitus. In proof of this he appeals to the spontaneous judgment of men that a woman violates her husband's *right* when, without his consent, she ejects the semen, has an abortion, or has herself sterilized. But all the conjugal rights are included in the contract. Hence, if this "negative right" exists—and everyone admits that it does—it must also be in the contract. Thus goes the argument. Having reported it, I leave further discussion to the *periliores.*

Fr. Hürth also discusses a reply of the Holy Office to this question: "An matrimonium haberi debeat inconsummatum, si essentialia elementa copulae posita sint a conjuge, qui ad unionem sexualem non pervenit nisi adhibitis mediis aphrodisiacis, rationis usum actu intercipientibus."[108] The official reply is a laconic "*Negative.*" The Holy Office simply says that in this case, in which the man at least places the necessary requisites for sexual union voluntarily, the plea of nonconsummation is not in order. It does not commit itself to further theorizing on the essence of consummation. But Fr. Hürth does not pass up this opportunity to defend the thesis that consummation need not be a free act; a marriage is consummated, he says, even when coitus is exacted through physical force.

I wonder whether the "spontaneum et commune judicium hominum," to which Fr. Hürth appealed in the preceding case, would uphold this theory. And I wonder too how it can be squared with the doctrine that the consummation of a *matrimonium ratum* in some way perfects the already valid contract and makes it absolutely indissoluble.

What must be done to decrease the divorce rate; and, granted that there must be civil divorce, what co-operation is allowed to Catholic judges and lawyers? Edward R. Callahan, S. J., answers the first question in an illuminating article that portrays the divorce trend, especially in the United States, surveys the grounds and causes of divorce, and suggests remedies for the appalling situation.[109] The remote remedy, says Fr. Callahan, is the

[106] *Ibid.*, pp. 138–41.

[107] *Periodica*, XXXVIII (1949), 207–213.

[108] *Ibid.*, pp. 220–27. The same case, with Fr. Hürth's solution, is given by F. Lodos S.J., *Sal Terrae*, XXXVIII (1950), 92–94.

[109] "Divorce—A Survey," *Catholic Mind*, XLVIII (1950), 17–27; reprinted from *American Catholic Sociological Review*, IX (1948), 162–72.

death of our sensate culture, or, to put it positively, "a thoroughly Christian education of intellect and will." A proximate remedy, which might at least stop some of the hastiness, would be Federal regulation of divorce.

In a lengthy article which was occasioned, no doubt, by Pius XII's address to jurists, Peter M. Abellan, S.J., discusses the problem of the divorce sentence passed by a Catholic judge.[110] He calls attention to the fact that, even in those cases in which the state is manifestly infringing on the competence of the Church, the Church tolerates the practice of having Catholic judges pass sentence, provided they profess the correct doctrine concerning the competence of the Church and that they pass no sentence incompatible with the laws of God or the Church. In some cases, therefore, there is no practical difficulty; for example, when there is question of allowing a separation approved by the bishop; when a really invalid marriage is declared null; when a civil divorce is granted to those who are allowed the privilege of the faith; when separation or divorce is denied to those who have no right, even civilly, to it.

The acute problem in this matter concerns the pronouncing of a civil divorce in the case of marriage which is valid and indissoluble according to divine and canon law. Is such a sentence intrinsically evil? Fr. Abellan outlines the controversy and defends the negative opinion. It is material co-operation, justifiable under certain circumstances. He admits that great evils are connected with the sentence: for example, confirmation of the people in erroneous notions concerning the competency of the Church and the indissolubility of the marriage bond, the denial of civil protection to a valid marriage, the opportunity of forming a new and adulterous union. But the judge's co-operation is not "necessary"; he cannot prevent the evils simply by refusing the divorce sentence, because it could then be obtained from another judge or a higher court. Moreover, there are very grave reasons that warrant his co-operation: the necessity of having good judges, protection of an innocent spouse who could not get a simple decree of separation, and so forth.

From the preceding sketch of Fr. Abellan's article, it is immediately noted that he offers nothing new. But he does give an exceptionally lucid presentation of the old, and for this reason the article is well worth the reading.

Since the lawyer has greater liberty than the judge to refuse divorce cases, writes P. J. Lydon, his co-operation is less easily justified.[111] Fr.

[110] "De sententia fundata in lege injusta," *Periodica*, XXXIX (1950), 5–33.
[111] *The Priest*, VI (1950), 51–52.

Madden, in a thorough discussion of the lawyer's problems,[112] first explains these two rather general rules: for a Catholic client, the lawyer may certainly plead any divorce suit approved by ecclesiastical authorities; for a non-Catholic, he may take cases similar to those for which ecclesiastical approval is ordinarily given. He must, of course, always make the essential distinction between the marriage bond itself and the "civil bond"; he seeks only the nullification of the civil status of the marriage.

As for the case in which the client intends to take advantage of the civil dissolution to contract a new and invalid union, Fr. Madden believes the lawyer's material co-operation may be justified for such reasons as these: the danger of losing otherwise profitable clients, danger of serious detriment to his prestige among his legal colleagues, and the fact that "if he refuses all divorce work, he may miss many an opportunity to reconcile parties who otherwise would go to another solicitor who would proceed directly with the case." He admits that the problem of scandal must also be considered and that it might make a difference in the solution.

Fr. Madden's exposition supposes that the client has a truly valid reason for seeking the civil effects of a divorce. But I think he might have laid greater emphasis on this point, because in some of these complicated cases readers are apt to lose sight of the fundamental principle that a lawyer may never plead an unjust suit.

OTHER SACRAMENTS

It is no longer news that a reply of the Holy Office[113] finally settled the controversy over the presumptive validity of baptism conferred in certain Protestant sects.[114] Excellent commentaries on this reply are furnished by Ulric Beste, O.S.B.,[115] and by Frs. Creusen[116] and Hürth,[117] all consultors to

[112] "Members of the Legal Profession and Civil Divorce," *Australasian Catholic Record*, XXVII (1950), 142–49.

[113] The question asked by some American ordinaries was: "Utrum, in diiudicandis causis matrimonialibus, baptismus in sectis Discipulorum Christi, Presbyterianorum, Congregationalistarum, Baptistarum, Methodistarum collatus, posita necessaria materia et forma, praesumendus sit invalidus ob defectum requisitae in ministro intentionis faciendi quod facit Ecclesia vel quod Christus instituit, an vero praesumendus sit validus, nisi in casu particulari contrarium probetur." The answer: "*Negative* ad primam partem; *affirmative* ad secundum"; cf. *AAS*, XXXXI (1949), 650.

[114] For a survey of the controversy see THEOLOGICAL STUDIES, X (1949), 100–102.

[115] "The Minister's Intention in Baptism," *American Ecclesiastical Review*, CXXII (1950), 257–74.

[116] *Nouvelle Revue Théologique*, LXXII (1950), 522–30.

[117] *Periodica*, XXXIX (1950), 106–15.

the Holy Office. It is not necessary to give a complete survey of these articles, but it should be useful to recall briefly the main points stressed by the commentators.[118]

The reply is not concerned with the internal forum; consequently, it does not affect the practice of conferring conditional baptism when certainty of the fact or of the validity of a previous baptism cannot be established. Priests readily understand this. But some of the laity (e.g., nurses) have been confused by the newspaper accounts, and they wonder whether converts from the sects mentioned may still be conditionally baptized. Another point that has confused the laity is the fact that only five sects are mentioned. Does this mean that baptisms conferred in other sects are to be considered invalid? Obviously, this inference was not intended. The question concerned these five because they were particularly mentioned in the controversy. However, though the reply does not directly concern other sects, it may be extended to them by an *a pari* argument. In other words, as Fr. Hürth points out, granted the same conditions mentioned in the question, the same principle of presumptive validity of baptism should be used in marriage causes.

The reply does not affect the practice of granting a dispensation from disparity of cult, *ad cautelam*, for marriages between a Catholic and a doubtfully baptized Protestant. This is a marriage *case*, but not a marriage *cause*. The reply concerns only the latter. Fr. Beste explains the meaning of a marriage *cause* as follows:

> The matrimonial *causes* that the decree has in mind are marriages which had been previously contracted by a member of these sects and which are now being subjected to an examination, whether judicially or administratively, with the intent of either verifying the absolute indissolubility of bond or of ascertaining and eventually exploiting the possibility of a dissolution. It is needless to point out here what a decisive role baptism would play in processes of this kind not only with reference to the application of the Pauline or Petrine privilege, but also with regard to producing proofs that a marriage remained unconsummated *post baptismum utriusque partis*.

A final point—and perhaps the essential point of the reply—is that in this decision the Holy See is but reaffirming a principle that became too much obscured in our controversies, namely, that a minister who confers baptism with substantially correct matter and form is presumed to have at

[118] For briefer commentaries see *Australasian Catholic Record*, XXVII (1950), 235–37; *Clergy Monthly*, XIV (1950), 106–107; *Irish Ecclesiastical Record*, LXXIII (1950), 358–59; *Homiletic and Pastoral Review*, L (1950), 654–55.

least the prevailing intention of doing what the Church does, or what Christ instituted. This presumption is not absolute; it yields to contrary evidence. But only evidence, not mere doubt, will overthrow it "in diiudicandis causis matrimonialibus."

The story is told (pure fiction, I hope) of a seminarian who always crossed out the sections in his textbooks that his moral and canon law professors said were "impractical." Until a few years ago a young man with this proclivity would no doubt delete the entire section "de ministro confirmationis." But not today. Priests now need to know, not only the duties of the minister, but also the provisions of the decree, *Spiritus Sancti Munera*. For the study of this decree, as well as the later decrees of Propaganda and the Congregation for the Oriental Church, one can very profitably read *A Manual for the Extraordinary Minister of Confirmation*, by Thomas W. Smiddy.[119] As Canon Mahoney writes:

> Fr. Smiddy's English volume is of about the same size as those written on the subject in Latin by Pistoni and Zerba soon after the appearance of the document [*Spiritus Sancti Munera*]. But he has had the advantage of weighing the various opinions since given on disputed points, and we think that his work is by far the best yet published on the subject, and that it will be particularly useful to English priests.[120]

"May Holy Communion be given to a community of cloistered nuns on Holy Saturday morning in their chapel where Mass has not been celebrated that day but only in the neighboring parish church?" In answer to this question William J. Lallou writes:

> The answer to this difficulty involves an *excursus* into the region of moral theology, a land for which we do not possess a *visa*. However, we diffidently give the opinion that in the instance of cloistered nuns who would otherwise be deprived of Holy Communion on Easter Eve, the distribution of Holy Communion might take place in the convent chapel after the conclusion of the ceremonies of the day in the parish church.[121]

Fr. Lallou cites Cappello in defense of this practice.[122] As a matter of fact, Cappello is decidedly benign in his interpretation of canon 867, §3.[123] He

[119] Milwaukee: Bruce Publishing Company, 1949.

[120] *Clergy Review*, XXXIII (1950), 207.

[121] *American Ecclesiastical Review*, CXXIII (1950), 68–69.

[122] *De Sacramentis*, I (1945), n. 369.

[123] "In Sabbato Sancto sacra communio nequit fidelibus ministrari nisi inter Missarum sollemnia vel continuo ac statim ab iis expletis" (c. 867, §3).

thinks that the words, "continuo ac statim ab iis expletis," contain either no strict prohibition or such a slight prohibition that it admits of exception for any reasonable cause: for example, the fact that the faithful devoutly ask for Communion some time after the services are over. He is also of the opinion that in chapels where the Blessed Sacrament is legitimately reserved, but where Holy Saturday services are not held, Communion may be distributed, "dummodo justa et rationabilis causa illud suadeat."

Cappello expresses his opinions without reference to contrary views. Those who are interested in a real *excursus* into moral theology might find Regatillo more satisfactory because he explicitly discusses various opinions.[124] He concludes that there is at least solid extrinsic authority for allowing the distribution of Holy Communion, not only at a time much later than the conclusion of the Mass, but also in chapels in which the services were not held. This interpretation, he says, is defended in books and magazines of no small authority, and even in Rome itself. The opinion supposes, of course, the "justa et rationabilis causa" mentioned by Cappello. Regatillo thinks this condition would be fulfilled in the case of persons who are unable to attend the services, but who have a strong desire to receive Holy Communion.

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[124] *Jus Sacramentarium*, I (1945), n. 358.