CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY

GENERAL MORAL

It would be extremely difficult these days for a moralist to indulge in complacency either in his own total adequacy or in that of the discipline he professes. Unlike Baltasar, he sees not one hand but many writing his *Mane, Thecel, Phares.*[1] Donald Weist, O.F.M.Cap.,[2] after summarizing the criticisms leveled against the current status of moral theology, suggests that "the remedy for these deficiencies lies in a return to the method and approach of the golden ages in scholastical and moral theology. Speculative moral theology treating the entire field of human Christian conduct according to the order of the virtues, as St. Thomas Aquinas did, should be restored to its position of prominence." Thereupon Fr. Weist proposes a graduate curriculum, preferably of four years' duration, which would include obligatory courses in dogmatic, moral, pastoral, ascetical, and mystical theology, and provide auxiliary courses in psychology, psychiatry, medicine, law, economics, sociology, etc. Thus, he suggests, might moral theology "fulfill its mission of being the science of Christian conduct according to the Gospel in all its phases."

None would challenge Fr. Weist's contention that a moral theologian cannot be properly so called until after prolonged concentration on the broader aspects of his subject. And perhaps some improvement at the graduate level of studies would facilitate that process. But many would feel, I think, that in outlining his proposed plan, Fr. Weist overestimates to some extent both the necessity and the efficacy of multiplied courses and additional hours in the lecture hall. Even these will not of themselves produce the finished theologian he envisions. I would prefer to think that

EDITOR'S NOTE.—The present survey covers the period from June to December, 1955.

[1] In recent years various new approaches to moral theology have been proposed by theologians. For an evaluation of these methods as they apply to the teaching of undergraduate theology, cf. M. Zalba, S.J., "Exposición de la moral cristiana. Sobre la acomodación al tiempo presente," *Estudios eclesiásticos* 29 (Jan.-Mar., 1955) 65–80. Fr. Zalba acknowledges most generously the value of the alternatives suggested. But these methods, he firmly maintains, cannot be substituted in our seminary classrooms except with detriment to our primary and essential purpose of training competent confessors and directors of souls.

[2] "Toward a Graduate Course in Moral Theology," *Bulletin, National Catholic Educational Association* 52 (Aug., 1955) 64–71.

the priest who has acquired his licentiate in sacred theology, and who shows a genuine aptitude for moral theology, is no longer so dependent upon classroom instruction, but is at least nascently a scholar. Under competent direction and effective sanction, he now becomes responsible to a large extent for his own education, as he must remain responsible for it forever after his doctorate has been awarded. Fr. Weist's program is an admirable *curriculum vitae*, but somewhat ambitious perhaps for even a graduate course of studies.

It will doubtless be a long time before moralists and psychologists refine the notion of human responsibility to their complete satisfaction. John C. Ford, S.J.,[3] does much to clear the atmosphere by summarizing the postulates and concessions which comprise our canonico-moral teaching on the matter of moral responsibility for sin and crime. In theory, as Fr. Ford demonstrates, our moral principles, the penal section of our Code, and several pertinent pronouncements of Pius XII, take ample cognizance of the qualifications to be made when judging the responsibility of those who are correctly classified as mentally ill. If in particular instances the fact of genuine mental abnormality affecting human liberty is demonstrable, no moralist or ecclesiastical judge will refuse to consider the diminution or even absence of human responsibility. The free will we defend does not operate in a vacuum independently of the hard facts of life and of the baffling implications of human emotions. But what must be denied is that normality is illusory and that we are all so emotionally sick as to make completely inapplicable the moralist's concept of human liberty.

One item in Fr. Ford's article appears to be of special significance. He takes the occasion to review a Rota case of 1941 in which the validity of matrimonial consent was attacked on the ground that the man, though manifestly intelligent, was afflicted with "constitutional immorality," which made it impossible for him to evaluate sufficiently the ethical side of the marriage act. Despite a good deal of expert testimony to this effect, the court eventually refused, because of insufficiency of psychological evidence, to declare the marriage null, but not before Msgr. Wynen, one of the presiding judges, had admitted as a matter of principle that it is not enough for freedom and imputability that there be a mere conceptual cognition; there is required in addition the ability to weigh and evaluate the substantial elements of the proposed action. That the lack of this "evaluative" consent should have been seriously considered as a factor in determining the validity of a matrimonial contract is a point which Fr. Ford considers

[3] "Criminal Responsibility in Canon Law and Catholic Thought," *Bulletin of the Guild of Catholic Psychiatrists* 3 (Dec., 1955) 3–22.

worthy of note, as does G. M. Fazzari, S.J., whose monograph on the case Fr. Ford also cites.

This notion of evaluative cognition is no novelty in moral theology. But it may be so taken for granted that some of its practical applications are overlooked. We would admit certainly that a child of four or five may have learned to distinguish between good and bad, and have come to predicate good or bad correctly of certain actions. But we would hesitate to say that the child appreciates the real significance of goodness and badness, that he has a full realization of their moral implications. The dawning of that evaluative concept is gradual in a child. It is impossible to say just when the realization comes, but until it does come it is impossible to conceive the child as guilty of real sin. That lack of appreciation, realization, evaluation of the meaning behind the concept of sin, while it need not in any way affect the freedom of the physical act, quite definitely affects its imputability as a morally culpable act. Knowledge requisite for subjective sin involves something substantially more than the ability to identify an act as sinful.

Does not the same distinction explain what we mean when we speak of a person under the influence of liquor as losing his moral inhibitions? All moralists admit that responsibility for sinful acts committed in such circumstances may be diminished to varying degrees. And yet many a person under the influence is still able to recognize a contemplated act as sinful. The fact of its being sinful, however, no longer makes any impression on him, or makes far less impression than it ordinarily would. And can it also be said perhaps of the person of hardened conscience that he eventually becomes so familiar with sin as to be no longer swayed by the realization of sin? Has he lost—culpably, of course, through his induced habit of deliberate sin—that evaluative concept of right and wrong necessary for unqualified guilt?

It is not destroying the notion of subjective sin to insist that this evaluative concept of evil is necessary for true guilt, or to admit the possibility of that concept's being temporarily or even permanently impaired, in people of otherwise normal intelligence, by some psychological abnormality. The difficulty in practice comes in the attempt to verify this exceptional phenomenon in individual cases. Usually it would be extremely hazardous to express the absolute conviction that an otherwise intelligent person lacks this moral perception. But there is reason to think that some do with respect to one or another or even all species of sin, and we should keep an open mind, as did the Rota in the case cited above, if legitimate psychological evidence to this effect can be presented.

While the principle of double effect endures, a moralist's life need never

be dull. S. Pani provokes a lively discussion in *Palestra del clero*[4] by proposing the case of an Alpine guide who finds himself and his party of mountain-climbers so precariously positioned that the rope which keeps them from crashing to their death just as effectively keeps him from advancing to safety. It is impossible for him to turn back, impossible for those behind him to move forward. If the rope which joins them is allowed to remain intact, all are doomed; by cutting the rope, the guide himself can escape while the others fall to their death. Fr. Pani calls it murder to cut the rope, and sees the case as perfectly identical with that of the expectant mother who stands to die, together with her inviable fetus, unless she submits to abortion. To hasten the death of that fetus even by a few moments, says Fr. Pani, is homicide. *A pari* the guide cannot be permitted to cut the rope.

F. Gastaldi[5] is quick to suggest a fallacy underlying the presumption that the guide's action is *occisio directa*, as would be the case in direct abortion. Cutting the rope is a morally indifferent act which in the circumstances admits of two immediate effects: the loss of several lives and the preservation of one. It is both *per se occisiva* and *per se praeservativa*. All that is required, therefore, to justify the act is to exclude from the guide's direct intention the death of his companions, and to verify a proportionate reason. The proportion *in casu*, says Fr. Gastaldi, is not to be sought by comparing the preservation of one life with the loss of several, but rather in balancing the worth of the guide's whole lifetime to come against the value of the very brief span of life of which his companions are deprived—for they are doomed to die very soon even if the rope is not severed. According to Fr. Gastaldi it is a clear case of the legitimate use of double effect. C. Salvatore, P.I.M.E., is most emphatic in his agreement,[6] while A. Mancini objects that one may not save his own life with means that involve certain and inevitable death to another.[7]

Unless one maintains that the principle of double effect is never applicable when the evil result is foreseen as certain and inevitable, there seems to be no reason to deny that the principle can be applied to this case. And certainly the classic examples of licit double effect do not substantiate any such restriction of the principle. When theologians, for example, permit a soldier at the sacrifice of his own life to blow up an enemy ship or fortress, they do so even on the supposition that death is absolutely certain, short of a

[4] 34 (Aug. 15, 1955) 765–66. [5] *Ibid.* (Sept. 15, 1955) 858.

[6] *Ibid.* (Dec. 1, 1955) 1102–4. Fr. Salvatore suggests that Fr. Pani perhaps allowed himself to be victimized by an association of ideas. The only parallel which Fr. Salvatore can imagine between this case and that of the aborted fetus entails the fanciful assimilation of a mountain-climber's rope to an umbilical cord.

[7] *Ibid.* (Nov. 1, 1955) 1002–3.

miracle. Those who speak of death as following *per accidens* in such cases are referring the term to the agent's intention (using it synonymously, therefore, with *praeter intentionem*) and not to the causal nexus between action and evil effect. As yet no moralist has limited the height from which the virgin may jump in order to escape the rapist. And to say that death occurs causally *per accidens* when she leaps from the fiftieth story penthouse could at best qualify as a theological *bon mot.*

I would have no hesitation, therefore, in agreeing with Fr. Gastaldi and Fr. Salvatore that in the case in question the evil effect, although certain, can none the less be indirect; for there is no contradiction, psychological or otherwise, in restricting one's intention to but one of two immediate and inevitable results of a single action. As for proportionate cause, over and above Fr. Gastaldi's solution this further point might also be suggested. The comparison is not between the death of several as opposed to the life of one, but rather between the death of all, if the rope is not cut, as contrasted with the death of all minus one if it is.

Is it sufficient in cases like this merely to exclude the evil effect from one's direct intention? L. L. McReavy seems to demand something psychologically more positive.[8] While illustrating the principle of legitimate self-sacrifice, he makes use of the now familiar example of the bomber pilot who finds it necessary to crash-dive his plane onto an enemy ship. The case itself needs no comment. But this statement of Fr. McReavy's does strike me as requiring somewhat more of the agent's intention than is customarily expressed in the enunciation or explanation of the principle of double effect: ". . . not only must he [the pilot] not intend his death, but he must hope that, by some lucky chance, his purpose may be achieved without it. . . ." One can readily see the psychological advantage of such a hope as more clearly manifesting the exclusion of all suicidal intent. But it seems to be asking too much, especially in situations which may in a legitimate sense be called hopeless, to insist on that more positive act of the will as an essential condition.

General treatises on natural law are perhaps more often than not read out of sheer sense of duty rather than with the expectation of encountering anything particularly vital. But "vital," I think, is a fair word to apply to the comments made by W. J. Kenealy, S.J.,[9] on one misconstruction of the traditional concept of natural law, contained in an article of G. W. Goble

[8] "Self-Sacrifice and Suicide—State Authorization," *Clergy Review* 40 (Sept., 1955) 534–37.

[9] "Whose Natural Law?", *Catholic Lawyer* 1 (Oct., 1955) 259–66. Prof. Goble's article, "Nature, Man and Law: The True Natural Law," appeared in *American Bar Association Journal* 41 (May, 1955) 403 ff.

of the Law Faculty of the University of Illinois. Having analyzed Prof. Goble's version of natural law as misrepresenting its very meaning and epistemological basis, Fr. Kenealy proceeds to an exposition of Scholastic teaching that is a model of clarity and incisiveness. There is nothing doctrinally novel in Fr. Kenealy's article, but it is stimulating to see how effectively our most elemental concepts can be utilized to meet the challenge of modern adversaries. What could have been a stodgy recitation of distinction and subdistinction turns out to be a brisk refresher course in this most basic of moral concepts. Incidentally, Fr. Kenealy's formal definition of natural law as "the mandatory aspect of the objective moral order" appeals to me as being more meaningful than many that are commonly used.

The relative obscurity of natural law constitutes the basis of J. C.H. Wu's thesis that civil jurisprudence has attained its highest perfection only where Christianity has been allowed to exert its influence.[10] This is an aspect of natural law which is not always appreciated in its practical consequences, even though in theory we hold that "divine revelation must be called morally necessary, so that those religious and moral truths which are not of their nature beyond the reach of reason, may, also in the present condition of the human race, be known by all with ease, with unwavering certitude, and without any admixture of error."[11] At its worst, disregard of this fact results in what Fr. Kenealy, in the article cited above, calls "the naive mentality which would say 'all we have to do to solve our problems is to apply the natural law' "—the attitude of which we are accused, no doubt, when our moral theology is criticized as being predominantly naturalistic. Personally, I do not believe that moralists generally err to that extreme. But we may tend at times to overestimate the power of natural reasoning alone to convince people of the malice of what is objectively sinful, and forget that the guidance of the Church is a practical necessity for full awareness of natural law. The cogency of many of our ethical arguments is not appreciated even by the majority of Catholics. It is their faith in the authority of the Church that convinces them of moral right and wrong. And many non-Catholics, who are aware of no obligation to heed that authority, deserve our patience rather than opprobrium for their failure to see eye to eye with us on some moral issues which we consider rudimental.

[10] "Christianity, the Natural Law, and the Common Law," *American Benedictine Review* 6 (Summer, 1955) 133–47.

[11] *Humani generis*, *AAS* 42 (1950) 562. Cf. A. C. Cotter, S.J., *The Encyclical "Humani Generis,"* pp. 5, 56–57.

Writing of epikeia, P. Hayoit puts major emphasis on a point which all professors doubtlessly employ as a salutary prefix or appendix to their classroom treatment of the subject, namely, the prudence and sincerity of judgment which must govern its use.[12] His admonition is one which bears repetition. Too easily, I am convinced, students can develop and maintain the mentality that epikeia is a legitimate form of juridical swindle to which they may have ready recourse whenever positive legislation eludes all other favorable interpretation. As Fr. Hayoit insists, if epikeia is to retain its respectability as a legitimate tool of interpretation, its use must be founded on a healthy respect for the law itself and be guided by nothing less than honesty in our attempt to appraise the legislator's will for certain exceptional circumstances. Abuse of epikeia soon engenders disdain for law and for authority, and can effectively annihilate the practical influence of both. There is more than a grain of truth in Prümmer's observation which Fr. Hayoit cites: "Verum plerumque quo indoctiores et imperitiores sunt homines, eo audacius adhibent epikeiam."[13]

MEDICINE

Hypnotism is a practice which the older theologians had good reason to view suspiciously either as a form of divination or as a tool of the medical quack. For a good many years a similar attitude was characteristic of the medical profession itself. But more recent research has made it impossible to ignore hypnotism's potential as a respectable medical procedure, either as an aid to psychotherapy or as a form of analgesic.[14] An article by S. T. DeLee, M.D., provides one sample of the respect with which hypnosis is now regarded by many reputable physicians.[15] Dr. DeLee reviews the history of hypnotism, evaluates its medical advantages and disadvantages as a procedure to be used in pregnancy and labor, and ultimately concludes that, if judiciously employed, another valuable technique will be available for mitigating the pain of parturition.[16]

[12] "L'usage de l'épikie," *Revue diocésaine de Tournai* 10 (Nov., 1955) 513–18.

[13] *Manuale theologiae moralis* 1, n. 231 (1931 ed.).

[14] Both *Ethical and Religious Directives for Catholic Hospitals* and the new Canadian *Moral Code* (*Code de morale*) explicitly approve the use of hypnosis for the cure of mental illness. Incidentally, a revised edition of the *Directives*, published late in 1955 by the Catholic Hospital Association (1438 So. Grand Blvd., St. Louis 4, Mo.), offers several new features which make it a distinct improvement over the original 1949 edition.

[15] "Hypnotism in Pregnancy and Labor," *Journal of the American Medical Association* 159 (Oct. 22, 1955) 750–54.

[16] A Subcommittee of the British Medical Association's Psychological Medicine Group Committee reports much more vaguely on the status of hypnotism as a medical tool.

Dr. DeLee presents his case with impressive conviction, but also with professional restraint. He insists that only properly qualified operators undertake to induce hypnosis, and only in carefully selected cases. He also admits that it is not an uncomplicated or inexpensive process, since to establish proper rapport pre-natal visits to the hypnotist may have to be frequent, and his presence will also be required as a safety factor during the greater part of labor and delivery.

According to the present state of the question, we cannot afford to dismiss hypnosis as a medical nonentity, but must be prepared to accept evidence of its medical value and to apply our moral principles to its use. If competent and conscientious physicians can assure us that hypnosis is medically sound, the moral problem will not be especially complicated. The precautions dictated by good medicine will also satisfy the demands of good morals.

Is fluoridation of public water-supplies a form of experimentation that is morally objectionable? One British writer, identified only as Nimrod,[17] denies the right of the Ministry of Health "to indulge in mass medication schemes merely because such schemes appear to have solid practical advantages." Prescinding first from any risk to health involved, Nimrod expresses himself as opposed to all experimentation in public health matters, since "the experimental procedure adopted in one context could easily be adopted in other contexts where the purpose and effects of the experiment might be open to serious objection on moral grounds." Specifically in regard to fluoridation he raises the further objection:

> The toxicity of fluorides even in low concentrations has been testified to by the Director of the Oxford University Laboratory of Human Nutrition.... One factor which has to be reckoned with is that the margin between a harmless concentration and a toxic concentration of fluorides is extremely small. Anything resembling what the Director calls "playing about with" the mineral content of drinking water might therefore prove highly dangerous since there is no absolutely reliable means of ensuring that in any artificial alteration of the fluoride content of water, account is taken of local variations or abnormalities. However, variations

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Beyond the admission that "hypnotism is of value and may be the treatment of choice in some cases of so-called psychosomatic disorder and psychoneurosis," and that hypnosis is "a proper subject of inquiry by tried methods of medical research," the report does not commit itself to any appreciable extent. While it does not exclude hypnosis as an analgesic in childbirth, neither does it go on record as approving it for that purpose. Cf. *Catholic Medical Quarterly* 8 (April, 1955) 63–66.

[17] "The Fluoridation of Public Water Supplies," *Catholic Medical Quarterly* 8 (July, 1955) 99–101.

in the natural fluoride content of drinking water do exist, and while they may be quantitatively small they may nevertheless be qualitatively important since beyond a very limited threshold fluorine is known to be a highly toxic substance.

Nimrod is not alone in his opposition to fluoridation. Just how many would agree with him it is impossible to say, but in more than one quarter there has been vociferous objection raised against the practice in this country. Some of the "literature" on the subject, largely in the form of handbills and letters to the editor, savors so strongly of impassioned fanaticism that it simply must be discounted in the interests of objectivity. But there are also those whose opposition commands at least a respectful hearing. Since these men are medically qualified and profess to speak as such, their side of the story demands consideration.

F. B. Exner, M.D., writing in a reputable medical journal, presents as detailed a case for the opposition as I have seen.[18] His objections to fluoridation add up to substantially such allegations as these. (1) Drug-grade fluoride in carefully controlled doses helps to prevent dental caries in children only up to the age of eight or ten. Older children and adults do not benefit in any way. Public water-supplies are treated with commercial-grade fluoride intended for industrial use only. (2) Fluoride is admittedly a toxic substance which, if ingested in excessive amounts, can have seriously harmful effects on bone structure, arteries, kidneys, etc. This damage may not be discernible for as long as twenty years. (3) Fluoride is known to accumulate within the body, especially in elderly people and in those with impaired renal function. Many of our common foods already contain fluoride in natural form. And because individual consumption of water varies considerably, there is no effective way of controlling an entire community's intake of this toxic substance when it is added to public water-supplies even at the accepted ratio of only one part per million.

Coming as they do from presumably competent sources, objections such as these cannot be brushed lightly aside. On the other hand, it is difficult to ignore the eleven-year history of fluoridated water in this country. According to one estimate made in early 1955,[19] more than 22 million people in 1030 communities were then consuming it, and to my knowledge no *cause célèbre* has yet been invoked to substantiate the fear of genuine danger to health or life. Moreover, even though we need not grant infallibility to the American Medical Association, only a confirmed skeptic or cynic would

[18] "Fluoridation," *Northwest Medicine*, July, 1955, pp. 721–37; Oct., 1955, pp. 1105–20; Nov., 1955, pp. 1255–69.

[19] *Journal of the American Medical Association* 157 (Feb. 19, 1955) 668.

disregard entirely its endorsement of water fluoridation as "definitely beneficial in the reduction of dental caries in the younger age group, and . . . nontoxic in community water supplies up to one part per million."[20] Add to that substantially the same assurances from the American Dental Association and the Public Health Service—not to mention various local commissions of public health—and one is forced to admit that the argument from authority is decidedly strong in favor of fluoridation's being harmless.

Where does that leave the moralist who must trust others for his biochemical data? He is certainly not qualified to judge whether this whole controversy is medically legitimate, much less to decide the controversy itself. All he can do in these cases is give hypothetical answers and leave to competent scientists the task of establishing which hypothesis is factually correct. Unless it be morally certain that no genuine risk to health is involved in the practice of fluoridating public water-supplies, then valid objection can be raised on the grounds of unjustified experimentation on the part of public authority. But if it is evident that fluoridation entails no significant risk, and if substantial benefits are to be expected as a result, the worst that can be said against the practice would be that for the good of many, and with the consent of only the majority, it subjects all to a form of harmless medication to which a minority is forced to submit against its will. It strikes me that to insist on unanimous consent of subjects in these latter circumstances would be to restrict unduly the right of civil authority to secure the common good.

Until the actual facts are made clear to theologians, it is simply impossible to condone or condemn fluoridation absolutely on moral grounds. Meanwhile, we can at least hope that the facts are considerably more clear to public authorities. Otherwise there is food for thought in the statement by Dr. Exner that, "when a potentially dangerous substance . . . is added to a public water-supply, the burden should rest on those who add it to prove beyond reasonable doubt that it is safe for everyone."[21]

Illicit experimentation is usually a sign of insufficient appreciation of the right to life. But is there also a right to die that must be considered? F. T. Hodges, M.D.,[22] defends the patient's right to die, and does it perhaps more graphically, but no less correctly, than theologians usually do:

> . . . we cannot ever give the nudge, however subtle, that pushes the dying man, a little sooner, over the brink. . . . No action of ours must ever be a contributory

[20] *Ibid.* 155 (June 12, 1954) 654. [21] *Op. cit.*, p. 723.

[22] "The Right to Die," *California-Western Academy Monthly*, Dec., 1955, pp. 10–12. The substance of this statement was quoted also in *Time*, Jan. 6, 1956, p. 62.

cause, or a hastener, of death. . . . There has been too little said, however, of a legitimate right, a God-given right, . . . of the dying man. That is his *right to die.* So concerned is our profession with saving from death that we have sometimes forgotten that a man may be permitted to meet his waiting God without a man-made struggle. . . .

The hopelessly ill patient need not, through a distorted sense of professional duty, be subjected to heroic and extraordinary measures, whose only purpose can be prolongation of an existence that has become intolerable. But it must be the patient himself who declines the measures. . . . It is incumbent upon the profession to recognize this death-right. . . . Let us sense those times when we must not reach into the bottom of our medicine bags for agents to whip into a body tired unto death a final additionally exhausting further fight against death, a death for which the patient is already prepared. . . . There are times when the patient has legal, ethical, moral and religious justification of his request to be allowed to die in peace.

PRECEPTS

Would a Catholic be justified in writing "First Church of Christ" when answering a questionnaire which contains an inquiry about his religious affiliation? Without passing judgment on the nature of the mental reservation involved, J. F. Marbach declares that no reservation, whether strict or broad, is compatible with the duty to profess ourselves as Catholics.[23] In the situation such as the one described, one may not resort to ambiguities but must unequivocally assert his Catholicity.

I would agree with Fr. Marbach's implication that the moral principle governing such cases is of far greater importance than any attempt to decide the precise character of the reservation proposed in the question. But half a principle can be as unsatisfactory as none, and even in context Fr. Marbach's solution would seem to be based on something less than the totality of theological teaching on the matter. It is, of course, never permissible to deny the faith. And if it can be established that there is a positive duty in a given instance to identify oneself as Catholic, then one has no choice but to profess his faith. Perhaps that is the supposition on which Fr. Marbach answers as he does. But as an affirmative precept, the obligation to profess the faith binds *semper sed non pro semper,* and theologians unhesitatingly admit that concealing one's faith is not the same as denying it, that it is sometimes allowed, and may on occasion even be of obligation. They insist that the means employed be licit, and, as regards speech, they particularly require that the expression used be one which admits of some legitimate meaning other than denial of the true faith or profession of a false religion.

[23] *Priest* 11 (Oct., 1955) 833–34.

And of the means suggested by authors, none is more commonly mentioned than the *verba ambigua.*

The first impulse of militant Catholics when questioned as to their religious beliefs is to state the bald truth without reluctance and regardless of possible consequences. That theirs is an admirable attitude cannot be questioned. But very rarely would the questionnaire of a prospective employer demand such profession of faith under pain of sin. In terms of strict duty and right, the licitness at times of evading such questions cannot be denied.

Msgr. James Madden[24] discusses the vexing question of servile work and retains, at least as a point of departure, the classical norm provided in the literal meaning of the word. Accordingly, at one end of the scale he classifies as immutably servile all heavy manual labor requiring great physical exertion. Neither the fact that one may undertake it for sheer pleasure and recreation, nor the fact that remuneration is not sought or received, will change the essentially servile character of this type of occupation. At the other extreme he puts the labor proper to scholars and members of the learned professions, whose occupations are unchangeably non-servile, even if indulged in for profit. As for the vast intermediate area, Msgr. Madden would invoke the common estimation of the conscientious faithful; and there, he concedes, the *finis operantis* becomes a determining factor in the sense that the faithful commonly believe that the pleasure motive eradicates all tinge of servility from some types of work, while the profit motive accentuates it. Custom, he believes, can best determine whether or not the law applies to occupations whose servile nature is not clearly evident.

A good number of moralists, I am sure, would be quite willing to accept this norm of customary interpretation, if and when it exists. And some Sunday occupations—such as knitting, puttering around the garden, and the like—seem to be generally looked on as legitimate by good Catholics in many localities. But at very best, common estimation qualifies as only a partial norm. There are numerous instances in which it is lacking, not only among the faithful but also among moralists themselves. We are still badly in need of a definition of servile work adapted to our own social environment—one that will create a common estimate rather than depend on it. Perhaps my own dissatisfaction with common estimation as a norm is that by implication it burdens the faithful with the conscience problem of adapting their ingrained traditional concept of servile work to changing social conditions. More appropriately, it would seem, that responsibility lies elsewhere.

[24] *Australasian Catholic Record* 32 (July, 1955) 236–38.

Although slavery as such is not the practical question in our day that it was a century and more ago, there is more than historical interest in the detailed study which J. D. Brokhage makes of Kenrick's moral teaching on that subject.[25] Brokhage's favorite technique—one that serves his purpose well—is that of repeated contrast between the theoretical notion of slavery, which Kenrick and other theologians defended as consonant with natural law, and the practical situation here in America to which those concepts were applied. It would appear difficult to escape the conclusion that, despite the contribution which Kenrick made to the speculative theology of the slavery question,

> . . . he failed insofar as he did not pointedly state that when he taught that slavery is not contrary to the natural law and when he permitted slavery to be continued for the sake of society he was not talking about slavery as it existed in practice in America, but slavery as defined by him and the theologians. Certainly no theologian could have permitted slavery as it frequently existed in practice in America.[26]

A. Nevett, S.J., does not hesitate to use the word "slavery" when discussing the status of many of India's laboring class.[27] His series of articles on the just wage is remarkable not only for its exposition of theory, but also for its practicality in the country for which he writes. After stating and clarifying the principles involved, Fr. Nevett considers the actual economic conditions in India, the pitifully low wages actually paid, the increase that could and should be made immediately effective, and the living family wage that should be the ultimate goal. Besides this series dealing with wages in general, Fr. Nevett, in another article, makes a most pertinent practical application to the case of those employed by priests and religious.[28] Again he speaks for India, but the problem is by no means merely academic in our own country. As Fr. Nevett points out, our self-dedication to the works of charity does not dispense us from the duties of justice.

But if we must be the dispensers of justice, we are also entitled to be its recipients. Moralists in general would very likely agree with L. L. McReavy's opinion that the obligation of contributing to the financial support of the Church emerges from natural law as one of legal or social justice, binding

[25] *Francis Patrick Kenrick's Opinion on Slavery* (Washington: Catholic University, 1955).

[26] *Ibid.*, p. 242.

[27] Fr. Nevett's discussion, published in six installments, began in *Social Action* 5 (May–June, 1955) and concluded *ibid.* 6 (Jan., 1956).

[28] "Servants of the Servants of God," *Clergy Monthly* 19 (July, 1955) 208–12.

in solidum on all Catholics.[29] Though he readily admits the obligation to be grave in itself, Fr. McReavy very wisely adds:

> To prove grave guilt against an individual defaulter, it would be necessary to establish, not merely that he had no reasonable excuse, but also that the Church or her ministers were, as a result of his default, gravely inconvenienced in their necessary work, or that the burden of the rest of the faithful in that locality was gravely increased. Since neither of these consequences is likely to follow, except perhaps in a parish dependent on one or two affluent families, authors commonly approve the dictum of Kenrick that individual defaulters are not lightly to be charged with grave sin.

One of the major contributions of the last semester is the study made by Gerald Kelly, S.J., of the principle of totality as expounded in various pronouncements of Pope Pius XII.[30] Because the article appeared in THEOLOGICAL STUDIES, it would be superfluous to summarize it in these notes. But I would like to indicate several points which Fr. Kelly makes in the course of this analysis and which strike me as being too important to admit of overemphasis.

First, with regard to the very formula in which the principle is commonly enunciated, Fr. Kelly shows ample reason to conclude that the terms *totum* and *necessarium* require the broad interpretation of "what is *truly useful* for the *total good of the person.*" To restrict these words to the meaning of "*absolutely necessary* for the good of the *physical* organism" would seem to narrow the principle within limits which do not adequately comprehend the teaching of Pius XII. Of no less practical importance is the seemingly inescapable conclusion that what the principle of totality allows under these conditions is *direct* mutilation, and that it does not of itself require recourse to double effect. There are admittedly cases where the further effects of mutilation (e.g., sterility) can be justified only by applying both principles in combination; but in its primary and less complicated applications the principle of totality states the right to "dispose directly and immediately of integral parts, members, and organs within the scope of their natural finality."[31] And finally, I would recommend for serious consideration and further discussion the observations made by Fr. Kelly in substantiation of his conviction, which he shares with others, that organic transplantation "is not irreconcilable with the papal teaching." This last

[29] *Clergy Review* 40 (Sept., 1955) 540–43.

[30] "Pope Pius XII and the Principle of Totality," THEOLOGICAL STUDIES 16 (Sept., 1955) 373–96.

[31] Pope Pius XII, Allocution to the First International Congress on the Histopathology of the Nervous System, *AAS* 44 (1952) 786–87. Quoted by Fr. Kelly, *op. cit.*, p. 375.

problem is by no means definitely settled, and—as all admit—those theologians who deny the lawfulness of transplantation have the easier row to hoe. But Fr. Kelly has gone further than anyone before him in a positive effort to fit that procedure into a compatible reference to the principle of totality.

For the time being at least, the moral case against prizefighting is more or less at a standstill. There is no new evidence to report and little need to repeat what has already been adduced by way of arguments and opinions. But it may be of interest to note the enlistment in the ranks of one more determined opponent of the so-called manly art. A. Boschi, S.J.,[32] does not content himself with half measures in the brief he has compiled against "la boxe"—his treatment of the problem is both thorough and competent. Although neither his arguments nor his conclusions differ materially from those to be found in the article by Eugene Hillman, C.S.Sp.,[33] and in G. C. Bernard's doctoral dissertation[34] (Boschi pays honest tribute to both), they none the less represent the independent objective thinking of one more theologian of repute. It has always been my own conviction that the most formidable objections to prizefighting are those which are educed from the *finis operantis* of the two principals—which generally would seem to be the direct intent to inflict serious bodily injury on each other—and from the appeal which the "sport" of its nature makes to the more brutal instincts of spectators. These to my mind are arguments which are not easily refuted.[35] But regardless of one's personal convictions, I do think that we should

[32] "Sport e Boxe: Per una giusta valutazione morale," *Palestra del clero* 34 (Sept. 1, 1955) 769–86; 34 (Sept. 15, 1955) 817–30; 34 (Oct. 1, 1955) 865–81.

[33] "The Morality of Boxing," THEOLOGICAL STUDIES 12 (1951) 301–19.

[34] *The Morality of Prizefighting* (Washington: Catholic University, 1952).

[35] In a subsequent issue of *Palestra del clero* (35 [Jan. 1, 1956] 48–51), F. Robotti, O.P., replied to Fr. Boschi's article, and thereby occasioned in this country a newspaper cry of theological controversy and dark hints of intervention by the Holy See. Because the curiosity of readers may thus have been piqued, I am presenting (without comment) the gist of Fr. Robotti's remarks. He does not believe that prizefighting should be extolled to excess, especially by the clergy; but it is not, he maintains, intrinsically wrong, since homicidal intent cannot be imputed to the participants. Nor is prizefighting dangerous, since many pugilists have emerged unscathed from a long career of boxing, whose perils are not comparable to those of baseball. Prizefighters are not always motivated by desire for financial profit; many are primarily intent on developing that strength and agility required to defend themselves against the evil aggression of malefactors in this age of criminal violence. Indeed, says Fr. Robotti, one Bruno Rossi has eulogized boxing as "the most beautiful exhibition of strength, courage, and intelligence in all competitive sport." Gene Tunney, he notes, was named president of a national Catholic youth organization; Rocky Marciano is a good friend of his pastor; Mrs. Marciano lights a candle in honor of St. Anthony before each of her son's fights ("Gentilezza italica e cristiana!"); many boxers

temper very carefully any expression of opinion we may make on the subject outside of professional theological circles. At the present stage of the discussion there are too many uncertainties involved to warrant our accusing people of serious sin in this regard.

Writing on the more generic question of risking death or bodily injury, L. Bender, O.P.,[36] considers it essential to distinguish precisely between *occisio*, *mutilatio*, and *periculo vitam exponere*, and then further to differentiate between the direct and indirect species of each. Especially on the question of risking life, says Fr. Bender, many moralists have neglected to distinguish it properly from the notion of indirect killing, thus occasioning the impression that both problems are to be solved according to the same principle. He proposes, therefore, to demonstrate how the two notions differ and to formulate a principle which will discern the morality of risking life or bodily integrity.

The distinction between killing and risking life depends, according to Fr. Bender, on the agent's subjective certainty or uncertainty that death will actually ensue. Moral certainty of death establishes the act as one of killing (direct or indirect according as the action is *per se* or only *per accidens occisiva*); uncertainty (mere probability) that death will follow means that one is risking life. Directly to risk life is to intend the danger either as a means or as an end; indirect risk is verified when the action which creates risk is also immediately productive of some legitimate result which alone is intended while danger is merely tolerated. The circus performer, for example, whose routine involves genuine—not merely apparent—risk to life and limb, directly intends his danger as a means of attracting spectators. On the other hand, the rescue party that puts out in a small boat on a stormy sea to save a shipwrecked crew is directly intent only on saving lives, while enduring the concomitant peril to their own. Indirect risk, says Fr. Bender, is adequately treated in the authors. He restricts himself to the question of directly imperiling life or bodily integrity, and concludes that it is intrinsically evil, seriously so *ex genere suo*, but admits of parvity of matter if the danger involved is relatively slight.

There is much to be said in favor of clarifying the concept of risking one's life and of indicating what differences, if any, there are between the direct endangering of life and the direct taking of life. All moralists would agree, I think, with Fr. Bender's definitions of direct and indirect exposure to

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make the sign of the cross before the bell; and St. Paul alludes to boxing as exemplifying true Christian endeavor. And surely the Church would long since have intervened, as she did in the case of dueling, if boxing could truly be said to offend against Christian morality.

[36] "Vitam et integritatem corporis exponere," *Angelicum* 32 (Oct.–Dec., 1955) 368–76.

danger, and would likewise agree that his several examples are most apt illustrations of what is permissible and what is morally objectionable in this regard. In fact, it has always been my impression that, as far as risking one's life is concerned, authors generally maintain the very conclusion with which Fr. Bender eventually emerges, namely, that directly to intend danger to life is illicit, and that whatever is licit in this matter must be justified by virtue of the principle of double effect. But I wonder if in the development of his thesis Fr. Bender does not unnecessarily complicate the issue to some extent, first by identifying *occisio directa* with *actio per se occisiva*, and secondly by his insistence that legitimate mutilation must be indirect. The first item has already been dealt with at sufficient length in a previous survey,[37] and I can add only that the term "direct" is commonly used with reference to intention, either explicit or implicit. Fr. Bender himself employs the term in that intentional sense when distinguishing between the direct and indirect imperiling of life. It is difficult to understand why he avoids it when talking about *occisio*. As for his insistence that legitimate mutilation must be indirect—and Fr. Bender is not alone in this manner of speaking—many are convinced that it is both unrealistic and unnecessary to invoke double effect here. When a gangrenous leg or a diseased kidney is removed, can it be said in practical honesty that the amputation or the excision is not directly intended? And if the principle of totality is based upon the essential subordination of bodily part to whole, why must one deny direct intent to destroy the part in the necessary interests of that to which it is by nature ordained? Pius XII more than implies that it is direct mutilation which the principle of totality allows *ad bonum totius*.[38]

I mention this latter point because it has suggested a possible doubt as to the sense in which Fr. Bender's conclusion must be understood. In that conclusion it is stated that directly to endanger one's life or bodily integrity is intrinsically evil. Now that term "intrinsically evil" is not always employed by theologians in precisely the same sense. At the very least, it must always mean that an act is illicit not merely because prohibited by positive law, but because the elements intrinsic to the act are somehow opposed to natural law. But not all such acts contravene the objective moral order in exactly the same way. Blasphemy, for example, is opposed to it absolutely, and under no change of circumstances can it become licit. But many other acts are intrinsically evil because of some circumstance or condition which depends on the dominative power of God. Thus, for instance, direct killing is called intrinsically evil only on condition that it is done without authority from God, who has perfect and exclusive dominion over

[37] THEOLOGICAL STUDIES 14 (1953) 40–41.

human life. Direct mutilation in its turn can be condemned absolutely only when it is done unnecessarily, i.e., when not required for the good of the composite.[39]

When Fr. Bender predicates intrinsic evil of direct exposure of one's life to danger, does he intend to do so in that same absolute sense in which we would condemn suicide? Apparently he does, and I realize that theologians in general might agree with him. But an alternative occurs to me, at least as a question for consideration and discussion. Somewhere between suicide, which is intrinsically evil in the absolute sense, and mutilation, which becomes licit when it is necessary for the preservation of life or health, is there room for a direct endangering of one's life which could be justified on the grounds that it is necessary in order to avoid a greater danger to life in the future? I have in mind Fr. Ford's case of the wartime use of live ammunition in military training camps under circumstances which seemed to entail a direct intention to create a danger of death in order to equip soldiers for greater safety in battle.[40] In other words, is direct exposure to the danger of death necessarily and in every case tantamount to suicide or homicide, and hence intrinsically evil in the absolute sense? Or can it conceivably be properly ordered to a legitimate purpose, viz., avoidance of a greater future danger? It should be kept in mind that, by definition, exposing one's life to danger implies that death is no more than probable and not certain. The suggestion is presented merely as a nagging suspicion that a legitimate solution might be worked out along those lines.

CHASTITY AND MARRIAGE

D. J. West devotes approximately two-thirds of his book on homosexuality[41] to a consideration of its causes and possible cure. Even he confesses that his conclusions are only tentative, as in summary he appraises the theories advanced to explain why the homosexual is what he is:

> The available evidence indicates no definite relation to body build or glandular constitution, but suggests a connection with particular kinds of upbringing. For instance, the only boy who has a dominating, puritanical mother and no proper

[38] Cf. *supra* note 31 and corresponding text. In his 1944 address to the Roman Guild of St. Luke, Pius XII also stated: "Even though limited, man's power over his members is direct because they are constituent parts of his physical being." Cf. *Pio XII: Discorsi ai medici* (Rome: Orizzonte Medico, 1954) p. 11.

[39] As regards mutilation for the good of another person, cf. the remarks on organic transplantation, *supra*, pp. 180–81.

[40] Cf. THEOLOGICAL STUDIES 4 (1943) 586–87.

[41] *Homosexuality* (London: Duckworth, 1955).

father seems specially prone to homosexual developments. This kind of family background probably brings about its effect by provoking Œdipal conflicts and encouraging guilt feelings and sexual inhibitions. Social ineptitude, shyness, inferiority feelings, and any other factors tending to interfere still further with normal sexual contacts, may be expected to aggravate the situation. Exclusive homosexuality then presents itself as an alternative adjustment, a half-way refuge for those who find full adaptation to heterosexual life too difficult. In so far as the factors of seduction or of segregation of the sexes contribute to the outcome, in most cases they do no more than point the way to the homosexual outlet. Frustration of normal outlets is the primary cause.[42]

As for the possibility of cure, Dr. West inclines to a pessimistic view. For carefully selected cases he sees a slender hope in "the lengthy, costly, and exacting business of psychoanalysis," while other forms of treatment in his opinion hardly deserve consideration.

Since the homosexual tendency is not readily susceptible to cure, West sees but one problem, that of alleviating the emotional turmoil engendered in the homosexual by the awareness that society's conventional morality brands his deviation as heinous. Although the author does express sympathy for the priest who "has to teach a set code which includes the rule that homosexual acts are wicked," he himself acknowledges no moral law requiring that homo-erotic propensities be suppressed. He would be content if the victim of these impulses, even though continuing to indulge them, could be brought to accept his status philosophically and escape neurotic conflict. Obviously, Dr. West's problem is far less complex than ours.

From Leo XIII to Pius XII, papal statements bearing on problems of marriage and family life provide a most comprehensive treatise on these subjects. Alvin Werth, O.F.M.Cap., and Clement Mihanovich have collaborated on an excellent collection of excerpts from these pronouncements ranging from the year 1878 to 1954.[43] The book should prove a most convenient and valuable reference for all priests who speak or write on these questions.

One sentence and a corresponding caption gave me pause as I paged through the book, and at the risk of appearing to cavil I would like to call attention to them. The sentence reads: "And if a woman's health is such that pregnancy would seriously endanger her life, complete sexual abstinence, with the help of God's grace, must be practiced" (p. 56). And under the caption, "If Risk of Motherhood Is Grave, Complete Abstinence Must Be

[42] *Ibid.*, p. 92.

[43] *Papal Pronouncements on Marriage and the Family: From Leo XIII to Pius XII* (Milwaukee: Bruce, 1955).

Practiced," there is quoted an excerpt from Pius XII's 1951 address to the Italian Catholic Union of Midwives (pp. 70–71). It strikes me that statements such as these, if presented to lay people without very careful explanation, could easily result in the formation of false consciences. Theoretically, no doubt, one can conceive circumstances which might oblige a married couple to abstain permanently from the use of marriage because of the grave danger mentioned. But very seldom in practice, I should think, would the obligation be so evident that we would be justified in insisting on it. Moralists are very reluctant to admit such an obligation even when pregnancy is quite likely to be dangerous. They do insist that *if* a woman is unwilling to risk such danger, then her only legitimate means of avoiding it is abstinence, either total or periodic. But they do not readily deny her the right to choose the risk if she prefers it, nor does it seem likely that such a prohibition could have been the intention of Pius XII in his address to the midwives. The pertinent passage of this Allocution, to all appearances, presupposes a couple's unwillingness to risk the possible dangerous consequences of normal marital relations. Of the remaining alternatives, Pius XII emphatically excludes that of contraception and only then concludes to the obligation of total abstention, which with the aid of grace is not impossible. "It should be noted," says one author, "that the Pope does not say that married people are obliged to avoid this risk [of dangerous pregnancy]. Certainly there are some cases in which they might lead a normal life and trust in divine providence. But a decision of this kind is very difficult and it should not be made without much prayer and sound spiritual guidance."[44]

Speaking of the married couple who are mutually willing and able to practice rhythm but who do so without sufficient reason, Msgr. James Madden states: "It cannot be established that the sin involved . . . is a serious one, if the matter be viewed theoretically."[45] The Monsignor is not alone in holding this opinion. After careful consideration of Pius XII's teaching on rhythm, certain other theologians also remain unconvinced that mortal sin can with certainty be imputed to those who, entirely without justifying cause, resort to this practice. This view merits the respect due to a legitimate theological opinion. But entirely apart from one's conviction on the speculative question, there are one or two pastoral considerations

[44] *Towards Happiness and Holiness in Marriage* (Washington: Family Life Bureau, 1955). This publication is a paper-bound series of eleven pamphlets (whose respective authors are unidentified), provided as a marriage preparation course for engaged couples. The passage quoted will be found on p. 15 of Lesson 6, "The Morals of Marriage."

[45] *Australasian Catholic Record* 32 (Oct., 1955) 332–37.

which should be kept in mind. The first is that this difference of opinion looms far larger in the theoretical order than it does in the practical. I think it is true that very few of those who bother to seek moral advice on this problem are practicing or contemplating rhythm without reason sufficient to justify their use of it—supposing always willingness and ability on the part of both husband and wife. Sometimes the reasons they allege are too readily dismissed as insignificant, either because of a confessor's failure to evaluate those reasons realistically from the penitent's point of view, or because of an exaggerated notion of what is required for justifying cause. If a truly prudent judgment is made in every instance, I am convinced that very seldom will we encounter the case envisioned by those who dispute about the grave sinfulness of practicing rhythm entirely without sufficient cause. And even if we do on occasion encounter such a case, this further observation of Msgr. Madden cannot be repeated too often:

> If there be no good reason why they should not contribute to the good of the race by bringing children into the world, he [the confessor] should endeavour to dissuade them from adopting what is known as the use of the "Safe Period"; but should they persist in their intention, he can scarcely deny them absolution for that reason alone, as it cannot be shown that they are bent on neglecting something which is imposed on a particular couple under pain of grave sin.[46]

John C. Ford, S.J., discusses the controversial question of double vasectomy in its relation to the diriment impediment of impotence.[47] By juxtaposing certain physiological and canonical data, he emerges with a most impressive case in favor of the minority view, which maintains that double vasectomy, even though certainly irreparable, does not establish beyond all legitimate doubt an incapacity for the *actus per se aptus ad generationem.* Because Fr. Ford does not waste words, no summary can communicate the full suasive force of his own close reasoning. But he does contribute substantially to the weight of the physiological argument against impotence in the doubly vasectomized, and he shows good reason for concluding that neither Rotal decisions nor the teaching of Pius XII require that the minority opinion be abandoned as untenable in practice.

Although moralists unanimously hold that donor insemination is patently illicit, the legal status of that practice is still in the process of evolution. A. F. LoGatto[48] reviews the trend of court decisions over the last thirty-

[46] *Ibid.*, p. 337.

[47] "Double Vasectomy and the Impediment of Impotence," THEOLOGICAL STUDIES 16 (Dec., 1955) 533–57.

[48] "Artificial Insemination: I—Legal Aspects," *Catholic Lawyer* 1 (July, 1955) 172–84.

five years and finds them "confusing and inconsistent" in their attempts to resolve the more obvious issues of adultery and illegitimacy. In this country, only the comparatively recent decision of the Superior Court of Cook County, Illinois, has declared unequivocally that donor insemination constitutes adultery on the part of the mother and that a child so conceived is illegitimate. Even apart from these more fundamental questions, Fr. LoGatto points out that both physician and donor may find themselves in legally precarious positions if they lend themselves to this practice, and he doubts the efficacy of any conceivable protective legislation to solve satisfactorily the multiple psychological, social, and juridical problems which even legalized donor insemination would of necessity create. In a subsequent installment the same author reviews the sociological and moral aspects of heterologous insemination.[49]

In much the same vein, T. H.[50] discusses artificial insemination as it has figured in English courts of law. Apparently, the legal issue there has been largely confined to whether homologous insemination satisfies the juridical concept of a consummated marriage. Despite one negative decision in this regard, the fact that consummation itself remains a nebulous concept in English law leaves even that problem as yet unsettled. As to the adulterous nature of donor insemination, no English court, according to T. H., has been called upon to decide that precise issue. And, rather bluntly, he suggests that it may not be altogether advisable to present our case against this practice in explicit terms of adultery. In popular estimation "the impersonal and mechanical process of insemination" is worlds removed from "the escapade in the hotel bedroom," and in ridiculing our identification of the two, many will remain unconvinced of the essential malice of donor insemination as a violation of the sanctity of marriage.

OTHER SACRAMENTS

L. Renwart, S.J., presents an analysis of a current controversy on internal versus external intention *faciendi quod facit ecclesia* in the administration of the sacraments.[51] Taking as his point of departure the condemnation by Alexander VIII of Farvacques' proposition,[52] Fr. Renwart maintains that

[49] *Ibid.* (Oct., 1955) 267–80.

[50] "Artificial Insemination: Some Legal Decisions and Their Wider Implications," *Catholic Medical Quarterly* 8 (July, 1955) 92–97. Presumably T. H. is Thomas Harper, the editor.

[51] "Intention du ministre et validité des sacrements," *Nouvelle revue théologique* 77 (Sept.–Oct., 1955) 800–821.

[52] "Valet baptismus collatus a ministro, qui omnem ritum externum formamque baptizandi observat, intus vero in corde suo apud se resolvit: Non intendo, quod facit Ecclesia" (*DB* 1318).

the thesis was condemned on doctrinal grounds and as defended by Farvacques, and not—as some would suggest—for merely historical reasons and for the ambiguities it contains. And despite the arguments to the contrary, the author of this article sees no essential difference between the doctrine of Farvacques and that of Catharinus, whose teaching on external intention has been adopted and adapted even by some modern theologians. Fr. Renwart is convinced that this theory of external intention is untenable, unless it be so explained as to differ only terminologically from the more common explanation of the internal intention required for valid administration of the sacraments. But if its proponents mean to affirm that, despite an interior resolve on the minister's part not to do what the Church does, the deliberate and serious conjunction of matter and form will none the less have sacramental efficacy—in this sense, Fr. Renwart believes, the theory of external intention must be denied.

Theologians all agree that the exclusive purpose of Trent in formulating its canon on ministerial intention was to condemn the Protestant thesis that denied the necessity of any intention whatsoever on the minister's part. The Council's use of the formula *faciendi quod facit ecclesia* was a deliberate device adopted in order to avoid the dispute among theologians as to the precise object of intention. It is also commonly admitted that Farvacques' doctrine, as he defended it, was not that of the Protestants. Recognizing the necessity of some genuine intention in the minister, Farvacques was intent upon restricting its essential content to the correct and serious performance of the external sacramental rite. Granted this minimum of intention in the proper conjunction of matter and form, the sacrament is necessarily valid, according to Farvacques, even though the minister may explicitly intend interiorly not to do what the Church does. His proposition as condemned, however, is in a sense ambiguous, since, taken at face value, it admits of a broader meaning than even Farvacques seems to have intended. It does not, for instance, express his stipulation of an intention *seriously* to perform the external rite or his willingness to concede that the rite performed in jest is certainly no sacrament. Hence, although most theologians are of the conviction that Farvacques' doctrine *as he defended it* was the object of Alexander's condemnation, others would prefer to think that it was the thesis as unhappily worded that was rejected. And even then, they point out, we cannot be entirely certain as to what note should be predicated of the thesis as it stands, since it was rejected *in globo* along with thirty other propositions with notes ranging all the way from temerarious to heretical *respective.*

As for Catharinus, the theologians who defend the sufficiency of external intention maintain, as they must, that his doctrine in no way coincides

with the condemned proposition, but is so qualified as to express only what is admissible in Farvacques' more generic thesis. Provided that the external rite is freely and faithfully observed in circumstances which make it clear that the minister is functioning publicly in the name of the Church, then the requisite intention *faciendi quod facit ecclesia* is necessarily verified. No contrary occult intention is capable of nullifying the sacramental effects of the proper external rite performed "librement, sérieusement, et en connaissance de cause." It is this doctrine which in Fr. Renwart's considered opinion differs in no essential way from that of Farvacques. While it is true, he says, that the external rite must be nothing less than a serious *voluntarium*, and that normally the ritual so observed is indicative of at least an implicit intention *faciendi quod facit ecclesia*, nevertheless an explicit occult intention to the contrary will effectively nullify all sacramental effects.

In a subsequent issue of the same periodical, H. Bouëssé, O.P.,[53] defends the interpretation of external intention which he had previously proposed in the fourth volume of his *Le Sauveur du monde*.[54] Fr. Bouëssé calls attention to his previous insistence upon "the social and ecclesiastical aspect of the sacramental action," which he further defines as that "vital context of request and assent whereby the minister explicitly and unequivocally agrees" to confer a sacrament, even though in the malice of his heart he secretly intends no more than the external ritual. In such a context, and only in such a context, the words he pronounces and the action he performs are capable of only a sacramental significance, and no occult intention to the contrary can deprive the external rite of the sacramental character which it possesses according to the will of Christ and His Church.

If I understand Fr. Bouëssé correctly, he means to restrict his application of external intention to a situation in which there are witnesses to the sacramental action—witnesses, moreover, who have positive reason for concluding in the context of circumstances that the priest is functioning seriously in his official role as minister of Christ. (Fr. Bouëssé speaks primarily of the sacraments of baptism and orders, and only *en tremblant* suggests an application to the Sacrifice of the Mass.) This would seem to be the "vital context of request and assent" which lends "a social and ecclesiastical aspect" to the external rite. Not only do these circumstances

[53] "Intention du ministre et validité des sacrements: Réflexions du R. P. Humbert Bouëssé, O.P.," *Nouvelle revue théologique* 78 (Dec., 1955) 1067–74. These remarks of Fr. Bouëssé are followed immediately (pp. 1075–77) by a few concluding words on the subject from Fr. Renwart.

[54] Chambéry-Leysse: Collège Théologique Dominicain, 1951; cf. pp. 351–69.

justify a practical certitude of proper intention on the minister's part, but, according to Fr. Bouëssé, they necessarily restrict to mere velleity any occult intention to the contrary.

It would be simply impossible in a few paragraphs to do justice to the opinions expressed by either Fr. Renwart or Fr. Bouëssé, and I can only hope that my attempt to synopsize them does not do positive injustice to either. Perhaps others who have read their articles in their entirety will conclude otherwise, but I must confess my own inability still to justify any intention less than that espoused by Fr. Renwart.

The obligation of confessional secrecy has dramatic possibilities which, perhaps, have been overdone by novelists and scenarists. But the *Catholic Lawyer*[55] reproduces an interesting first-hand record of two early nineteenth-century trials in this country involving privileged communications to clergymen. In the first, involving an indictment of one Daniel Phillips and wife for receiving stolen goods, a Catholic priest, who had been summoned to testify, "in a very becoming manner entreated that he might be excused" and invoked his obligation of absolute secrecy with respect to confessional knowledge. It was the decision of De Witt Clinton, then Mayor of New York and presiding at the trial, that despite the refusal of English courts of that day to recognize the inviolability of confessional secrecy according to the canons of the Roman Catholic Church, an American court was at liberty to rule otherwise. Accordingly, he declared in favor of the privilege claimed. A few years later, during a trial for manslaughter, the prosecuting attorney summoned as witness against the defendant a Protestant minister. Counsel for the defense challenged the admissibility of such testimony, since it was knowledge communicated to the witness in his capacity as minister of the gospel. However, since the minister himself claimed no privilege and was not unwilling to testify, his testimony was received in evidence. The defendant, incidentally, was acquitted.

As a result of this latter case, the New York legislature in 1828 enlarged upon the Clinton decision by enacting a statute which remains substantially the same to the present day: "No minister of the gospel, or priest of any denomination whatsoever, shall be allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination." Thirty states, the report concludes, now have statutes similar to the New York enactment. While the Federal Rules of Procedure do not explicitly declare as privileged such confessor-penitent communications, the general rule nevertheless seems to be recognized in federal courts.

[55] 1 (July, 1955) 199–213.

Even short of direct violation of the sacramental seal, authors are very severe (as is canon 890) in their judgment of any use of confessional knowledge, outside of confession, which tends *in gravamen paenitentis*. But somewhat neglected, it seems to me, is that notion of *gravamen* as it applies if the process is reversed, i.e., if extra-confessional knowledge is allowed to influence one's treatment of a penitent in the course of confession. A statement of A. Boschi, S.J., in *Perfice munus*[56] provides one practical example of what I mean. Basing his answer on the conviction that ninety-five per cent of married people in Italy are practicing onanism at the present time, Fr. Boschi expresses the belief that a confessor should regularly make inquiry about birth control of husbands and wives who do not confess it, unless he has positive evidence in a particular case that his penitent is truly a God-fearing person who abhors all sin. Fr. Boschi interprets this "statistic" as constituting presumption in every instance that the sin has been committed, and thus reconciles his answer with those responses of the Sacred Penitentiary which require at least a founded suspicion of onanism before the question is asked. In other words, asking the question should be the rule, omitting it should be the exception.

In a subsequent issue of the same publication, Giuseppe Rossino[57] undertakes to defend Fr. Boschi against the inevitable criticism which the latter's opinion provoked. Canon Rossino, too, insists that onanism is an alarmingly prevalent practice of married life: "L'onanismo è vizio commune; è la regola della vita coniugale." Appealing to the 1886 response of the Sacred Penitentiary, which affirmed the confessor's per se obligation to make prudent and discreet inquiry whenever he has founded suspicion that the sin of onanism is being concealed, Canon Rossino repeats Fr. Boschi's assertion that present circumstances create a necessary presumption that all married people practice birth control. Hence, only by way of exception is a confessor justified in not inquiring about onanism of married penitents who do not confess it.

I cannot presume to vouch for the prevalence of onanism among Catholics in Italy, nor would I attempt to estimate any such ratio for this country. To my mind this type of "statistic" is entirely irrelevant in the confessional. Any given confession should be conducted on an exclusively individual basis, and presumption favors the sincerity of any penitent. It seems to me that the references of the Sacred Penitentiary to a founded suspicion or prudent doubt in this matter of birth control are not only legitimately, but far more

[56] "Difficoltà nell'interrogare e ammonire in confessione," *Perfice munus* 30 (July 1, 1955) 417–23.

[57] *Ibid.* (Oct. 1, 1955) 612–13.

prudently, understood as applying to the individual penitent and not to married people in general. The Church has always been most solicitous lest the sacrament of penance be made obnoxious to even a single soul, but obnoxious it would soon become if we started hearing confessions on the basis of statistics. A good many married Catholics lead exemplary lives, and they would rightfully resent being questioned, however adroitly, about birth control at every confession, when they give no grounds for being suspected of that practice. And we priests could easily acquire a reputation for pruriency if we acted on any such general principle. Certainly no confessor should allow mere timidity to prevent him from achieving integrity in confession when he has good reason to believe in an individual case that onanism is being practiced and not being properly confessed. Or, when he has been explicitly asked to help a penitent to confess, a prudent question regarding marital obligations is not out of place. But I am confident that Cappello, for instance, is expressing the sentiments of the best, if not the vast majority, of theologians when he states: "Married people who do not accuse themselves of onanism, and who give no reason for being suspected of this abuse, should not be questioned in this regard."[58] Fr. Cappello also includes this more general rule: "When dealing with those who are married, the confessor should never, generally speaking, be the first to make mention of conjugal relations."[59]

F. Cremin provides a very detailed and highly accurate summary of doctrine governing the law of confessional integrity.[60] As an outline for review purposes, students will find it most convenient, especially on disputed questions, where Fr. Cremin takes extreme care to distinguish certainties from probabilities and that which is obligatory from that which is pastorally advisable. His inclusion of scrupulosity among the causes constituting moral impossibility of integral confession, although not entirely unique among authors, is nevertheless an item deserving of note. I find it difficult, however, to be completely certain of Fr. Cremin's stand on the dispute whether a penitent may omit a serious sin in circumstances where confessing it would betray the identity of an accomplice. Fr. Cremin is quite within his rights in questioning the intrinsic probability of the more favorable opinion, as I think the majority of theologians are inclined to do. But whether he admits or denies extrinsic probability is not altogether clear. He would allow a penitent who is aware of the favorable opinion to take advantage of it if he chooses, and yet he eventually concludes with seeming

[58] *De sacramentis* 5, n. 821 (1947 ed.). [59] *Loc. cit.*

[60] "The Integrity of Confession," *Irish Theological Quarterly* 22 (July, 1955) 185–213.

certainty that one is obliged to confess such sins. Though I myself would prefer to defend the theoretical obligation to confess *in casu*, I am puzzled by Fr. Cremin's presentation of the problem.

Extreme unction has received a good deal of attention in recent months, especially with regard to the proper time for its administration. It cannot be denied that in too many instances this sacrament is so long delayed that some of its benefits are irretrievably lost. P. De Letter, S.J.,[61] fears that in the laudable effort to remedy this situation some theologians have overshot the mark and may be inculcating a concept of extreme unction which is not wholly correct. Fr. De Letter is wary of the disjunction employed when they ask, "Is extreme unction the sacrament of the sick or of the dying?"; he insists on a *tertium quid* as the proper answer:

> . . . the alternative, sacrament of the dying or sacrament of the sick, is misleading in the sense that it opposes two extreme positions which, when taken in their one-sidedness, are both incorrect and incomplete. According to the common Catholic idea of Extreme Unction . . . [it] must be said to be neither simply the sacrament of the dying nor simply the sacrament of the sick. It is not the sacrament of the dying, because the grace it confers . . . does not only regard the moment of dying but also, and perhaps even more, the preparation to that moment during the illness which is eventually to lead to it. It is not the sacrament of the sick, if by sickness we mean the state of bodily debility and of spiritual incapacity without any reference to its eventual outcome, death. . . .
>
> Extreme Unction is the sacrament of the sick in danger of death. This traditional formula is and remains the expression of its true nature. It holds a position between two extremes and unites what is true in each of them. Extreme Unction is meant for the sick but not without reference to approaching death. . . .[62]

Fr. De Letter admits that some antidote is needed against any remnant of that medieval misconception which reserved extreme unction to those only who were at death's very door and beyond the point of no return. But he fears that essential doctrine is imperiled if, in an effort to avoid that one extreme, theologians court the other by referring to extreme unction exclusively as "the sacrament of recovery" or by denying that it bears any essential relation to death. "To eliminate this perspective of death would be no longer to uphold the traditional idea of the sacrament."

L. L. McReavy also insists that extreme unction cannot be disassociated

[61] "The Meaning of Extreme Unction: I—Sacrament of the Dying or Sacrament of the Sick?", *Bijdragen* (Sept., 1955) pp. 258–62.

[62] *Ibid.*, pp. 261–62.

doctrinally from danger of death.[63] That this danger need not be proximate seems amply clear from Tridentine teaching, from the provisions of the Code, and from the manner in which moralists in general now explain the minimum requisites for valid and licit anointing. Fr. McReavy considers it certain, at least by ecclesiastical law, that the infirmity required for the reception of this sacrament cannot be verified except in relationship to the likelihood of death as its eventual outcome.

While discussing this same subject in *Vie spirituelle*,[64] F. Meurant had suggested that the norm of "profound illness" would be preferable to the danger-of-death rule in determining the proper subject of extreme unction. Is his view at variance with that of Fr. McReavy and Fr. De Letter? Taken out of context, a passage such as this might well provoke that question:

> It seems then that the clause "danger of death" is . . . only a simple disciplinary clause, a condition calculated to prevent abuses, but not at all a requisite for the reception of the sacrament, and that consequently nothing prevents the Church from softening that condition . . . by saying that it is verified in every true profound illness, and thus making of extreme unction the sacrament of all who are seriously ill and, above all, of those who are still curable and not only of those who are soon to die.[65]

However, the dominant theme of Fr. Meurant's article is to deplore the extremist attitude which reserves extreme unction to those who are at the very point of death and which denies its reception to many who are actually entitled to it according to the proper interpretation of canon 940. Judged in total context, his norm of "profound illness" does not appear to be proposed in contradistinction to probable danger of death. Rather, as Fr. Meurant explains and exemplifies it, it seems to be nothing less than the equivalent of probable danger as opposed to certain and imminent death. As he himself says, it is not our doctrine that requires modification, but mistaken concepts of that doctrine. Apparently, what Fr. Meurant desires from the Holy See is not that danger of death be withdrawn as a requirement for extreme unction, but that its interpretation in terms of probable danger be explicitly confirmed.

Perhaps the most difficult case in which to justify the administration of extreme unction to the dying is that of the person who up to the very moment of lapsing into unconsciousness has refused to receive the sacraments. But even in this ultimate of extreme cases, J. Genicot, S.J., concedes that the opinion which *secluso scandalo* permits conditional administration

[63] "Extreme Unction—How Near to Death?", *Clergy Review* 40 (Aug., 1955) 489–92.
[64] Mar., 1955, pp. 242–51. [65] *Ibid.*, pp. 249–50.

to the unconscious dying may be safely applied in practice.[66] It is not entirely clear whether Fr. Genicot himself recommends or merely condones anointing such people; but at least he readily acknowledges that those who would anoint are justified in so doing. Though he cites only Davis and E. Genicot as authorities, he clearly indicates that there are others who share this view and that these are *probati auctores*.

It is difficult for me to understand the reluctance of some priests to acknowledge our right to follow this opinion in practice. Perhaps they are simply not aware of the number and stature of those theologians who espouse it, or have not really considered the reasons adduced in its defense. But neither intrinsic reason nor extrinsic authority is lacking to justify the conclusion, most recently reiterated by L. L. McReavy, that "all three sacraments, Baptism, Penance, and Extreme Unction, may be given conditionally to the unconscious, whatever their previous dispositions may have been, provided always that scandal can be avoided."[67]

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[66] *Clergy Monthly* 19 (July, 1955) 225–29.

[67] "Ministering to Dying Non-Catholics," *Clergy Review* 40 (Feb., 1955) 79–90. Cf. also J. J. Danagher, C.M., "Administration of the Sacraments to Heretics and Schismatics," *Jurist* 13 (Oct., 1953) 357–81; and THEOLOGICAL STUDIES 13 (1952) 94–97.