

## CURRENT THEOLOGY

### NOTES ON MORAL THEOLOGY

#### FUNDAMENTAL AND PASTORAL

What function can a purely natural law have in a supernatural order? Much Protestant theology, particularly Lutheran theology, rejects the natural law. A law based on an essentially corrupt nature can have no purpose in a Christian economy. How could such a law represent the will of God? A purely natural law has no value for a person redeemed by Christ. E. Hamel, S.J., in a study of the relation between the natural law and the law of Christ, admits that the natural law of itself is inadequate in a supernatural order.<sup>1</sup> But it is not something evil. Catholic theology distinguishes between nature *ut sic* and nature *ut hic*; that is, between nature disengaged from an historical setting and nature as it is realized historically, e.g., integral nature, fallen nature, redeemed nature. Nature *ut sic* is neither the work nor the effect of sin but the work of God and the image of the divine nature. The law built on this nature is a participation of the eternal law and is therefore in harmony with the will of God.

This law has a clear function in a supernatural economy. It is true that of itself it does not lead to eternal life; it is no more than a law of harmony. Man must accept the law of Christ, that is, the law of faith and charity, to be saved. Once he does this, the natural law becomes the means by which he expresses this faith and charity. Actually, Lutheran theology does not even consider the law of Christ a genuine law. Fr. Hamel brings out clearly the preceptive aspect of this law on which salvation itself depends. He recognizes, of course, that the New Testament does not contain a systematized moral theology. On the other hand, although systematized moral theology as it has been presented may have neglected certain aspects of New Testament teaching, particularly the elements of a more generous following of Christ, there is no opposition between it and the New Testament.

It is unfortunate that Protestant theology takes the negative attitude toward law mentioned above. It is even more unfortunate that Catholics sometimes adopt a similar attitude. In an article in the *Revue diocésaine de Tournai*, P. Hayoit defends the concept of law and obligation against those who try to throw discredit on them.<sup>2</sup> He sees no antinomy between esteem

EDITOR'S NOTE.—The present survey covers the period from January to June, 1958.

<sup>1</sup> "Loi naturelle et loi du Christ," *Sciences ecclésiastiques* 10 (Jan., 1958) 49-76.

<sup>2</sup> "La morale de l'obligation est-elle rationaliste?", *Revue diocésaine de Tournai* 13 (Jan., 1958) 1-14.

for duty and generosity. Nor does he have any sympathy with the attitude which attempts to exalt charity by belittling justice. Some writers almost leave the impression that justice is a vice and a sense of duty a pathological phenomenon.

Education to duty or discernment of obligation is an essential element in the formation of the Christian conscience. Although the Christian moral life is not limited to duty, a keen sense of duty is for the ordinary Christian an effective defense against the weakness of fallen nature. And in some situations, e.g., violent temptations, tragedies, etc., even the most generous may have to fall back on a sense of duty. Fr. Hayoit also points out that the desire to know one's obligation or duty may spring from genuine charity, e.g., in the case of a person who wants to perform an act of charity on Sunday. He remarks too that prudence will demand of some people that they do not attempt what goes beyond the call of duty, e.g., a life of perpetual chastity. Certainly, moral education should not stop with education to duty or obligation. But it would be as much of an error to omit instruction in duty as it would be to omit instruction in counsel.<sup>3</sup>

The objection to a morality of obligation or duty seems to arise from various sources. Some feel that it is unworthy for a human being to act from a motive of obligation or duty. Others are of the opinion that it is even unhealthy, that education to duty leads to compulsive conduct. Still others see in education to obligation or duty an impediment to a higher moral life. These last seem to fear that the axiom, "the minimum tends to become the maximum," may have application here. All these difficulties must be met in education to duty, but it would surely not be prudent to abandon such education because of the difficulties connected with it.

So strong is the opposition to a morality of obligation that some authors have attempted to trace the whole concept to a false metaphysics. L. Vereecke, C.S.S.R., for instance, finds the basis for the morality of obligation in Occam.<sup>4</sup> According to Occam the universe is a collection of independent entities, all of whom are unique. There is no such thing as a nature common to all and to which all must conform. Even in God there is no nature to which He must conform. There exists, then, no bridge between God and man or between men. The only basis for a relationship is the law, the will of God. According to Occam, then, good is that which is in conformity with the

<sup>3</sup> A very thoughtful and sensible critique of this trend in moral theology will be found in John C. Ford, S.J., and Gerald Kelly, S.J., *Contemporary Moral Theology* 1 (Westminster: Newman, 1958) 80-103.

<sup>4</sup> "L'Obligation morale selon Guillaume d'Ockham," *Vie spirituelle, Supplément* 45 (1958) 123-43.

will of God. It is submission to this will that makes something good, not conformity with nature—even with the divine nature. If God had willed otherwise, that act, not the present one, would be good. It follows that the only specific virtue in the moral life is obedience.

Fr. Verecke is admittedly not as successful in tracing this doctrine from Occam to the moralists as he is in explaining it. We cannot say, then, to what extent this teaching of Occam has actually influenced the methodology of moral theology. But it should be patent to all that the concept of obligation does not depend on a purely voluntaristic or positivistic concept of law. It is true that the natural law reflects the divine will just as the positive law does, but it does not do so in the same sense. The distinction between *malum quia prohibitum* and *prohibitum quia malum* is familiar to all who study moral theology. Some acts are evil antecedently to the divine will. There is a genuine metaphysical basis for obligation; it is not just a psychological phenomenon. One does not do justice to the notion of moral obligation by tracing it to a theory of voluntarism. Such a procedure merely throws discredit on a concept which is basic to Christian morality.

Although there can be no discussion of the fact of moral obligation, there is ample reason to discuss the best way of introducing it to the Christian conscience. M. Fargues takes up this subject in an article in the *Supplément* of *La vie spirituelle*.<sup>5</sup> It is her opinion that the religious life of the child awakens earlier than his moral life. She also maintains that there is a spontaneous response in children to religious concepts. Morality, on the other hand, seems to come totally from the outside. The child learns moral conduct from his parents; the law is what they wish, and this frequently goes against the child's wishes. Religious concepts, on the other hand, meet with a spontaneous and sympathetic inner response from the child.

Eventually the morality which the child learns from its parents must be related to religion. M. Fargues believes that proper integration of the moral conscience with the religious conscience will take place only if the child has already experienced the love of God as a joy and a pleasure. The child's first introduction to God, then, should not be that of One ruling over his activity, who demands good conduct and therefore effort. In the child's first religious experiences God should be identified with the Beautiful and the True. It is only when a child has had these experiences that his moral conscience can be properly integrated with his religious conscience. Only then may the child safely be introduced to God as a moral authority. I think all would agree with M. Fargues that the moral training of the

<sup>5</sup> "Vie morale et religieuse des enfants," *ibid.* 45 (1958) 158-74.

child should not prejudice its religious development. Thus, it is a mistake for parents to introduce God into the child's life only as a support for their own authority. Since such support would be needed chiefly when more disagreeable demands were made on the child, these appeals would run the risk of alienating the child from God. His religious life, and ultimately his moral growth, would be arrested.

The relation between religion, morality, and psychiatry is still a fertile field for discussion in periodical literature. Fortunately, these discussions are not charged with the hostile feelings that characterized them a few decades ago. Psychiatry today is accepted as a legitimate profession by the so-called religionists. Psychiatrists, for their part, no longer look upon religion and morality as artificial forces inhibiting natural dynamisms. Some have even gone so far as to recognize a religious dynamism in man which in their opinion is just as important as, if not more important than, libidinous or aggressive drives. Not all psychiatrists accept this position, but all are interested in establishing better relations between psychiatry on the one hand and religion and morality on the other.

I. A. Caruso cannot be classified with those who maintain that there is a religious drive in man, but he does believe that analysis, far from being detrimental to religion, actually exercises a positive influence.<sup>6</sup> The purpose of analysis is to purify human motivation, to remove all alien (unconscious) elements. In performing this function it actually frees man and prepares him for the practice of the spiritual life. Thus, for instance, it prepares man for theological charity by freeing him from an infantile, narcissistic love and bringing him to an altruistic love which is the basis for the theological virtue. Dr. Caruso does not want to create the impression, of course, that grace demands psychological maturity. He admits that God can bestow grace on anyone. An infant can be saved, a neurotic can be saved, a psychotic can be saved. Grace has no need for psychological equilibrium nor is it reserved for the psychologically normal. But the full expression of the Christian life will be more easily effected in the psychologically healthy person. I do not think anyone would question this position. Sanctifying grace comes to man not only *ex opere operato* but also *ex opere operantis*. This latter means of supernatural growth particularly depends on human acts. In increasing the capacity of the individual for human acts, the psychiatrist is preparing the terrain for grace.

<sup>6</sup> "Influences positives de la psychanalyse sur la vie religieuse," *ibid.* 44 (1958) 5-20. On the relation between psychoanalysis and religion, see also Ramon A. Di Nardo and Wilbur F. Wheeler, "Psychoanalysis and Pastoral Theology," *Homiletic and Pastoral Review* 58 (Feb., 1958) 469-75.

Although psychiatry and positive psychology may clear the path for a life of sanctity, it is not their function to make saints. On the other hand, it is not the function of pastoral activity to cure psychic defects any more than to cure pneumonia or some other physical ailment. A. Godin, S.J., brings out clearly the distinction between the function of pastoral activity and that of positive psychology (or psychiatry).<sup>7</sup> Positive psychology does not have for its object man's spiritual activity, that is, the independent activity of the soul. It deals with the composite as such (the psyche), whose activity depends intrinsically on the body. It is this part of man, the dynamic forces, mental structures, affective dispositions, etc., that interests the psychologist or psychiatrist. In other words, he is interested in that part of man which is to a great extent automatic, determined. Spiritual activity as such, which derives from man's intellect and will, does not concern him. But it is precisely with this activity that pastoral deals, since it is on this level that man leads his religious and moral life. Positive psychology and pastoral theology, therefore, pertain to two different aspects of human activity.

But Fr. Godin warns against the temptation to split man up into isolated components. Man is a unit. The activity of his spiritual faculties, although it is in itself independent, will be affected by the psyche. Although his conscious reactions may at times appear to be due exclusively to the effort of the will, they are found to be based on unconscious elements. These elements do not in any sense determine choice, but only tendency or inclination. In Thomistic terms the psychic life provides the *materia dispositiva* of the human act. Also, since man is a unity, spiritual activity leaves its mark on the psyche. There is then a certain interrelationship between man's spiritual and psychic life.

But it is important for the pastor and the psychologist each to recognize his own function and use his own tools. The pastoral counselor does not aim at a psychic modification of his consultant's personality. Neither does he use such tools as systematic questionnaires, projective tests, analytic techniques. Fr. Godin warns that today, with all the emphasis on psychology, it is easy for a pastoral relationship to be converted almost imperceptibly into a psychological interview. The priest who is counseling a woman knows very well, if he is honest, when the relationship becomes too personal to retain its pastoral character. He may, however, without even realizing it,

<sup>7</sup> "Action thérapeutique et action pastorale," *Vie spirituelle, Supplément* 44 (1958) 21-30. Fr. Godin develops this subject also in an article entitled "Pastorale et psychologie," *Nouvelle revue théologique* 80 (Feb., 1958) 159-70.

slip into a clinical or therapeutic role. He must be on his guard always to keep the relationship on the pastoral level. Although he should know of and be aware of psychic phenomena, it is not his function to deal with them. Fr. Godin illustrates his point with the phenomenon of psychic transference.

Transference occurs when a client reacts to a counselor not only according to the latter's person but according to an image he sees in him. Thus a relationship of fear might be set up because of a childhood fear of his father. The patient has no real reason to fear the counselor himself, but due to a certain similarity of role he grafts on to this relationship with the counselor the original experience of fear in dealing with his father. As a result, he is a very passive, apprehensive, and submissive client. A pastoral counselor, not recognizing the element of transfer in the relationship, might easily mistake it for an authentic attitude of obedience, a supernatural manner of acting. He confuses, in other words, a religious or moral attitude freely chosen with an automatic psychic reaction. In a situation of this kind he might even without realizing it react in terms of his own psychic shortcomings, e.g., a need to dominate. A pastoral counselor must be able to distinguish between an automatic psychic reaction and a genuine religious attitude. But granted that he recognizes the transference, what is his next step? Here the distinction between the pastoral attitude and the psychological attitude becomes obvious. The pastor would try to introduce a relationship of obedience to God freely chosen where previously there existed only an automatic submission to man. He would do this without in any way trying to remove or explain the original transference. The psychologist, on the contrary, would attempt to make his client aware of the artificial nature of their relationship and try to remove it.

Fortunately, I think it can be said that the Catholic clergy has not succumbed to the temptation to substitute psychological counseling for pastoral counseling to the extent that the Protestant ministry has. One gets the impression that many Protestant ministers have abandoned the tools of the pastor for those of the psychological clinic.

Fr. Godin takes up the nature of the pastoral relationship in another article and gives an excellent analysis of it.<sup>8</sup> He tells us that it includes three distinct functions: comprehension, direction, and mediation. The good pastor, he says in speaking of the function of comprehension, is not only willing to lay down his life for his sheep but also to get to know them. He must get to know his parishioners individually and in their own situation. To acquire this comprehension Fr. Godin recommends highly the "warm

<sup>8</sup> "Les fonctions psychologiques dans la relation pastorale," *Nouvelle revue théologique* 80 (June, 1958) 606-14.

acceptance" advocated by Carl Rogers in his books on client-centered therapy.<sup>9</sup> This means the acceptance of the person with all his limitations and defects. Such acceptance should not, of course, be confused with approval. The aim of the counselor is not to confirm his client in error but to provide a climate in which he will more readily see it. A friendly attitude is clearly more suited to this purpose than a hostile one. This warm acceptance involves a patient and sympathetic hearing out of the client's problem.

I think this function of pastoral work is of the utmost importance. The priest receives a training in moral theology which gives him the answers to most personal problems of a moral nature. Equipped with the answers, he may be too quick to give them, with the confident expectation that the answer will solve the problem. The biggest problem in counseling is not simply to know the answer or to give it but to get the client to accept it. Carl Rogers in his treatises on counseling is perhaps a little optimistic in his belief that clients either have the answers to their problems or at least the inner capacity to arrive at them without direction. But it is true that many people do know the answers to their problems but are unwilling to accept them because of some emotional block. The main task of the counselor in many cases is to help the person break through this block. He does this by the warm acceptance mentioned above. The person who is allowed to talk out his problem in an atmosphere in which he does not have to defend himself or his conduct is in a position to arrive at his own solution, or at least a frame of mind in which he is willing to accept a solution. The whole reason why he cannot arrive at a solution outside of this atmosphere is the need he feels to defend himself. In an atmosphere in which he does not have to defend himself, his own intelligence can function unimpeded by emotion and arrive at the correct solution. The pastoral counselor must realize that a patient ear in many cases can be far more effective than a ready tongue.

Fr. Godin goes on to point out that the function of the priest goes beyond that of comprehension. Whether he wishes it or not, he represents certain values to his client. He is expected to furnish to consciences objective religious and moral truths. As we have already hinted, the aspect of counseling which calls for the greatest finesse is that of articulating this function of direction with that of comprehension and mediation. To effect this articulation, Fr. Godin makes some excellent suggestions. First of all, the pastoral relationship is ordinarily not that of superior and subject. It does not call,

<sup>9</sup> Carl R. Rogers has developed his ideas on counseling in *Counseling and Psychotherapy* (1942) and *Client-Centered Therapy* (1951) (Boston: Houghton Mifflin). A Catholic approach to this particular method of counseling is treated by Charles A. Curran, *Counseling in Catholic Life and Education* (New York: Macmillan, 1952).

then, for an exercise of authority or acceptance of solutions on the basis of obedience. This can be true even where there is question of some obligation to accept. The counselor must realize that his function is not merely to get clients to adopt good conduct exteriorly, but to do so freely and from solid motivation. It is his task to help build up this motivation. Finally, his counseling should never become so directive that it ends in alienating the conscience of his client. The client who ends up in a state of complete dependence on the counselor has not been helped.

These are certainly salutary suggestions. It has already been pointed out that the training of the cleric prepares him in a special way for direction and also that his main occupational hazard may be a tendency to be too directive. Although the pastoral counselor cannot be satisfied with a purely non-directive role, he must realize that direction, besides being premature, can also be excessive. An appeal to authority is a tempting short cut to the solution of a difficult counseling problem, even when it does not serve as a cover for the counselor's own ineptitude. It is also easier to take over a conscience than to educate it. The pastoral counselor must understand that there is no substitute for a patient, earnest effort that may exhaust all his ingenuity, if he is to develop an autonomous, balanced conscience in his client.

The final and most important element in pastoral counseling is that of mediation. The pastoral relationship does not stop with a psychological or even a pedagogical influence on a subject. Such counseling would degenerate into psychologism or moralism. Ultimately the priest is a mediator; his most important duty in counseling is theological. He must bring his client into more intimate relationship with the Divinity. His guiding norm should always be: He must increase, I must decrease. The clinical psychologist attempts to get the client to be himself. The pastor attempts to get his client to be another Christ.

The sex appetite is undoubtedly one of the most powerful dynamic forces in man. Normally, however, even the sex drive will not carry through to completion without at least a permissive attitude on the part of the will. But when it is reinforced by habit, it may reach the point where it cannot be controlled by the will. In these circumstances the external completion of the act will not always be an indication of a cooperative will. The pastoral counselor is frequently presented with the problem of solitary sin in this area. L. L. McReavy is asked about the adolescent who is honestly trying to overcome a habit of solitary sin but lapses on a particular occasion.<sup>10</sup> Would it be safe to tell the boy that there is no grave subjective guilt and

<sup>10</sup> *Clergy Review* 43 (May, 1958) 296-99.



that he should not be deterred from receiving Communion after such lapses even without previous confession?

Fr. McReavy carefully sets down the principles governing the influence of habit on human acts. According to these well-known principles, advertence and consent sufficient for serious guilt are compatible with the existence of a habit, although it may happen in an individual instance that the habit proved irresistible. In forming a judgment regarding guilt, he urges the pastor to note whether the pressure of the habit was experienced antecedent to moral deliberation or subsequent to it. If it were antecedent, there is reason to believe that it would seriously interfere with the deliberation. But if the pressure were subsequent to the deliberation, the chances of a fully voluntary act are notably increased.

Rather than tell the penitent simply that in his situation there will be no question of serious guilt, Fr. McReavy prefers to explain to him what is sufficient for grave guilt and let him make his own decision in the particular case. This is the only safe advice to give in these circumstances. Except in an anxiety case, where the anxiety itself is causing the trouble by focusing too much attention on sexual reactions, it is not advisable to make any general statement regarding guilt. Moreover, since in practice it is very difficult for a person to decide his own case, particularly when still under the influence of a strong habit, I prefer to bring a youngster in this situation to confession before receiving Communion. And even in the rare case where I might judge it advisable for a boy given to morbid self-scrutiny to omit confession, I would not feel secure in my judgment that this was the correct procedure until I saw clear signs of improvement. Normally, I feel that a boy needs the support of the confessional, or at least an abiding pastoral relationship, to recover from such a habit. I would not be in favor of putting him too much on his own until the force of the habit was so weakened that outside help was no longer needed.

When treating the subject of cooperation, some authors add to the ordinary divisions the distinction between *mediate* and *immediate* cooperation. They feel that this distinction will be of help in deciding those cases where the cooperation is not formal by reason of the intention of the person cooperating. Fr. Conway in the *Irish Ecclesiastical Record* cites as an example the case of a person who for fear of blackmail assists in a robbery, e.g., he empties one safe while the principal agent empties the other.<sup>11</sup> Since his will is against giving the help, the cooperation is not formal by reason of a bad intention. But since he does participate in the act, his cooperation is im-

<sup>11</sup> *Irish Ecclesiastical Record* 89 (Mar., 1958) 201. See also *Homiletic and Pastoral Review* 58 (Mar., 1958) 618-21.

mediate. Other authors, omitting this distinction, simply include under formal cooperation any help that would be classified as objectively sinful, whatever the intention of the cooperator.

I have never felt that the distinction between mediate and immediate cooperation was very helpful. If one could simply say that immediate cooperation was always wrong, it would be very useful, but exception must always be made for cases of justice. In fact, the case which Fr. Conway gives is to my mind a borderline case. Certainly if the cooperator opened the safe and emptied its contents at the point of a gun, no one would consider him formally guilty. The rightful owner would not be reasonably unwilling that he remove the money under the circumstances. Fr. Conway, perhaps, felt that there would be guilt because the blackmail was not a sufficient reason to say that the man was in extreme need. Another case that easily causes confusion is that of cooperation with a birth-controlling partner. This cooperation certainly seems to be immediate. Yet there are cases, although they are rare, where this cooperation would not be considered sinful. Such cases as these make one doubt the value of the distinction between mediate and immediate cooperation.

While speaking of cooperation, I would like to touch on another aspect of the problem which is often handled summarily by the authors but which is very practical today. It is the question of material cooperation in material sin. The fact that cooperation is taken up in the manuals under the virtue of charity indicates that in the minds of moralists the chief malice consists in helping another to commit sin, that is, to damage his soul. Where there is formal cooperation, the evil intention extends also to the virtue violated. But what about the case where the cooperation is material and given to a person committing only material sin? Since the principal agent is not committing formal sin, there does not seem to be any violation of charity in the cooperation. Moreover, according to some authors, where the cooperation is only material, there is no other virtue violated.<sup>12</sup> In practice, of course, cooperation can hardly remain material unless the cooperator has some reason for placing his act. If he has no reason, it is hard to see how his will is turned away from the sin. But granted that he does have some parallel reason and that his will consequently is directed away from the sin of the principal agent, according to the above opinion the cooperation does not seem to be sinful. Many authors do not agree with this opinion but hold that even in material cooperation there is a violation of the virtue which the principal agent transgresses. I must confess that I have not solved this problem to my own satisfaction, but I think that at least this much car-

<sup>12</sup> Noldin-Schmitt-Heinzel, *Summa theologiae moralis* 2, n. 118, a.

be said. Less reason will be required to justify material cooperation where the principal agent is not guilty of formal sin. In handling practical cases of this kind, I am usually more concerned about the danger of scandal than I am about the cooperation.

#### MEDICO-MORAL PROBLEMS

In an article in *Antonianum* B. Alaimo, O.F.M., continues his study of suicide.<sup>13</sup> The present article is devoted to an attempt to construct a legitimate definition of suicide. He identifies suicide with direct killing of self. He does not like to apply the term, except in a broad sense, to indirect killing of self. In formulating his definition he begins with the generally accepted understanding that suicide involves both an internal and an external element. It is when one begins to distinguish direct from indirect killing of self that opinions differ as to where the emphasis should be placed. Some hold that the distinction will be found in the internal, the psychological, element; others maintain that it must be looked for in the material act.

Those who put the emphasis on the psychological element consider killing direct when death is intended either as a means or as an end. Their opponents do not feel that this definition covers all cases of direct killing, particularly those in which the agent does not intend death either as a means or as an end. Fr. Alaimo cites as an example the case presented by Fr. Bender of the dying soldier on the battlefield who donates to a wounded friend his own blood, the loss of which will mean his own death.<sup>14</sup> Although the donor does not intend his own death here either as a means or an end, Fr. Bender maintains that this is direct killing precisely by reason of the act placed. Another case in point is that of therapeutic abortion. If the emphasis is put on the psychological element, it is difficult to classify it as direct killing, since the death of the fetus is not intended (at least explicitly) either as a means or as an end.

Since the psychological approach seems inadequate to cover these cases, some feel that the definition of suicide should include a reference to the material element, that is, the external act. They would define direct killing as that in which death is intended either as a means or as an end or results from an act that is directly or per se lethal. They understand, of course, that this inclusion does not provide a complete solution of the problem.

<sup>13</sup> "De suicidii definitione," *Antonianum* 33 (Jan.-Apr., 1958) 13-44. For Fr. Alaimo's first article on this subject, "De suicidii nomine et quibusdam definitionibus," see *ibid.* 31 (1956) 189-214.

<sup>14</sup> "Occisio directa et indirecta," *Angelicum* 28 (1951) 240.

There is still the question of determining what makes an act *per se* lethal, and here one can list a variety of responses. Some even appeal to the intention of the agent, a solution which seems to involve a vicious circle. Others maintain that an act is *per se* lethal when death certainly follows from it. Still others base the distinction between an act which is *per se* lethal and one that causes death accidentally on the greater or lesser frequency with which death follows. A final group looks to the nature of the act itself for the distinction. If the cause of its very nature produces death, the act is *per se* lethal; otherwise, the death is accidental. A *per se* cause of death then, according to this last opinion, is not one which produces its effect intentionally or certainly or habitually, but one which produces it of its very nature. It is this last distinction that Fr. Alaimo favors.

This definition would be adequate if it were clear that a cause can have only one *per se* effect. If that effect were death, the one who places the cause would be guilty of direct killing of self. But there are acts or causes which seem to have more than one *per se* effect. Thus, the death of the aviator and the destruction of the battleship both seem to be equally direct or *per se* effects of a dive-bombing. To determine whether such an act would involve suicide it would be necessary to find out the intention of the aviator. From an exclusive consideration of the external act, then, one could come to a conclusion of suicide only in a case where the act has one *per se* effect and that is death. From all this Fr. Alaimo concludes that an accurate definition of suicide would read somewhat as follows: It is an act or omission in which death is intended either as a means or an end or from which death follows as the only *per se* effect.<sup>15</sup>

Fr. Alaimo has presented a very clear analysis of the concept of direct killing of self, but I am wondering if his final definition does any more than enucleate what is contained in the original, strictly psychological definition. If the sole *per se* effect of an act is death, it can hardly escape the intention of the person who places the act. Presuming that he knows death to be the only immediate effect of his act, he must implicitly will it. Consequently, although Fr. Alaimo's definition makes explicit reference to the material act, nothing really new seems to be added to the psychological definition. I do not think this definition, then, will include Fr. Bender's case any more than the psychological definition. This last statement is not meant to be a reflection on Fr. Alaimo's definition. It rather reflects a doubt in my mind that this case must be considered a direct killing. I agree that a doctor

<sup>15</sup> The exact text of the definition reads as follows: "actio vel omissio, causa propriae mortis, scienter et voluntarie posita, mortem intendendo ut finem, vel eligendo ut medium, vel causando immediate et exclusive, absque legitima auctoritate" (p. 43).

would do wrong in taking blood from a soldier when it would mean his death and that the soldier himself could not legitimately give him permission for this, but I would argue from a different premise. Fr. Bender maintains that the act is wrong because taking the blood is in this case a per se cause of death, but I also think that jumping from a forty-story building is a per se cause of death. Fr. Bender (and many moralists with him) admits that this latter act can be permitted in certain circumstances; namely, when some equally immediate good can be achieved. In this case it does not constitute direct killing. Can he consistently hold that taking the blood is direct killing when it is not aimed at the death of the soldier but at some equally immediate good? To my mind the big difference between the two actions is not that one constitutes direct killing and the other indirect but that the one act would be classified as morally indifferent whereas the other involves a violation of corporal integrity. In the case of jumping from the building, then, the principle of the double effect can be applied. But the act of taking blood from a dying man involves the principle of totality rather than the principle of the double effect. Since in this case taking the blood would be for the good of another, it can hardly be justified in circumstances in which it causes the death of the donor. It is true that a considerable number of moralists allow organic transplantation, but never at the risk of the life of the donor. It is not because it involves direct killing, then, that taking the blood is wrong; it is rather because it involves an unjustifiable violation of corporal integrity.<sup>16</sup>

It is consoling today to find that the medical profession is subscribing more and more to the Church's position that there is no basis for distinguishing between therapeutic and criminal abortion. Quinten Scherman, M.D., in an article in the *Journal of Obstetrics and Gynecology* makes the statement that if one excludes socioeconomic reasons, one automatically eliminates all so-called therapeutic abortions for fetal reasons, and for the most part excludes therapeutic abortion for any reason.<sup>17</sup> The rate of abortion in the hospital in which he was practicing was as high as 1 to every 227 deliveries. His study revealed that a considerable portion of these were performed on unwed mothers with questionable indications for abortion. He makes a plea for the creation of boards to control abortions in hospitals. Such a board

<sup>16</sup> It seems to me that a similar argument can be presented to prove the immorality of direct abortion. A direct abortion involves an attack on the fetus, causing its death, for the good of the mother. Even if one were to attempt to deny that this constitutes direct killing, he cannot deny that it involves a direct attack on the fetus. An attack on one person leading to his death cannot be justified for the good of another.

<sup>17</sup> "Therapeutic Abortion," *Journal of Obstetrics and Gynecology* 11 (Mar., 1958) 323-5.

would have no place in a Catholic hospital, but the wisdom of the suggestion for hospitals where the incidence of abortion is still high can be appreciated.<sup>18</sup>

One of the reasons assigned for terminating a pregnancy, although a rare one, is the condition known as hydramnios. An infrequent occurrence, and one which ordinarily does not become acute before viability, it does create a problem if it occurs before viability. As Fr. Lynch stated in the last issue of these *Notes*, the doctor must follow the procedure which promotes the best interests of both mother and child.<sup>19</sup> In this connection abdominal puncture has been suggested as the procedure which would involve the least danger of abortion, but it has also been frowned upon because of other dangers. Arthur P. Barry, M.D., presents a report on several cases in which this procedure was used effectively and without causing rupture or other damage.<sup>20</sup> It also has the advantage over vaginal puncture that it can be repeated, as is frequently necessary in such cases, without danger of rupture. If it is as feasible as Dr. Barry claims, it would certainly be preferred to vaginal puncture.

What right does one have to modify the conditions of birth? The question as put to P. Delhaye in *L'Ami du clergé* concerned the right to determine the sex or number of offspring.<sup>21</sup> I do not know whether the question is as yet practical, but the possibility of predetermining the sex of a child has been discussed and also studied. I am not acquainted with any work done on the possibility of effecting twin births. But if it should become feasible to determine sex or the number of births, would it be morally permissible?

In answering the inquiry, Fr. Delhaye considers first the liceity of experimentation on human beings for this purpose. He points out that the real urgency that often occurs in therapeutic experimentation is totally absent here. There is no conceivable therapeutic need of predetermining sex or number of births. Moreover, any experimentation on healthy human beings would have to be carried on without any serious mutilations, injuries,

<sup>18</sup> Even the Planned Parenthood Federation in a statement summarizing the conclusions of a conference on abortion was willing to admit that "when current statutes are interpreted exactly as written, almost no therapeutic abortions performed today are legal, since with the improvement of modern medicine it rarely becomes necessary to perform an abortion to save life" (Mary Calderone, M.D., *Abortion in the United States*. [New York: Hoeber-Harper, 1958] p. 183). The members of the conference concluded from this that study should be given recommendations to broaden the legislation to admit psychiatric, humanitarian, and eugenic reasons for abortion.

<sup>19</sup> *THEOLOGICAL STUDIES* 19 (June, 1958) 181-82.

<sup>20</sup> "Hydramnios," *Journal of Obstetrics and Gynecology* 11 (June, 1958) 667-75.

<sup>21</sup> *L'Ami du clergé* 68 (May 15, 1958) 305-8.

or dangers to life. It is obvious, also, that respect must be had for the law of chastity in any experimentation in this field.

But if experimentation should prove successful, he finds no moral objection to determining sex unless the method used involves some sinful element. He can see advantages in the ability to determine sex. A family might have a very good reason for wanting a boy, e.g., where there are already five girls. He points out that the ability to determine sex might have prevented wars in the past. It might also help to restore the balance that is frequently lost during wars. He recognizes, however, that the ability to determine sex can work against the good of the community, since the common preference for a male child might easily upset the balance in sex that nature seems to provide. But if there is some serious reason for determining sex, he finds no fault with a recourse to a legitimate method of doing so. He is not so sure, at least in the present population situation, that there are actual reasons for effecting twin births. But granted a legitimate reason, as long as the method resorted to involved no sin, the practice in his opinion would not be otherwise morally objectionable.

Far more practical than the ability to determine sex or number is the ability to detect the time of ovulation. This knowledge is useful not only to those who wish to avoid a pregnancy but also to those who wish to achieve one. Certain methods for determining the time of ovulation, e.g., uterine biopsy, examination of cervical plug, analysis of vaginal smears, charting of basal temperature, etc., are already available, but although all of them are useful, for one reason or another no one of them is entirely satisfactory. What is needed is some convenient, reliable method that does not demand the intervention of a physician. A recent study of the problem by Charles H. Birnberg, M.D., *et al.*, leads to the conclusion that it is feasible to determine the day of ovulation by detecting the increased dose of cervical glucose present on that day.<sup>22</sup> In the normal patient the maximum concentration of cervical glucose occurs on the theoretical day of ovulation. The presence of the glucose can be determined by inserting a tampon tipped with Tes-Tape in the vagina. The day on which the tape turns a dark green is the day of highest concentration, and therefore the day of ovulation. Previous to this day the tape might turn a light green for a few days. For those who desire children the day of darkest green would be the ideal day for marital relations. Proof for the fact that this day coincides with the day of ovulation rests on two experimental findings. Fresh *corpora lutea* (which begin to mature im-

<sup>22</sup> "Simple Test for Determining Ovulation Time," *Journal of the American Medical Association* 166 (Mar. 8, 1958) 1174-75.

mediately after ovulation) were found in patients undergoing abdominal surgery on the day of deepest green. Also, 70% of the patients artificially inseminated on that day became pregnant.

If the method is as effective as claimed, it will be useful not only to those who want children but also to those who have some legitimate reason to avoid them. Joseph B. Doyle, M.D., who is particularly interested in the use of the test to solve problems of sterility, has also given his attention to this aspect of the test.<sup>23</sup> He urges those who wish to avoid a pregnancy to abstain for three or four days after the day of deepest color change (to allow for a possible double ovulation). After that time the ovum will certainly be dead and the woman will be infertile for the rest of the period. He points out, however, that the antecedent negative tests cannot be used as a safe guide in the practice of rhythm. The fact that on a particular day before ovulation the tape when inserted does not turn dark green would not be a safe indication for intercourse on that day. Ovulation might take place on the next day and sperm remaining in the uterus from the previous day (or even the previous two or three days) would still be capable of fertilizing the ovum. While it is helpful, then, in determining the post-ovulatory period of sterility, it is not directly helpful in determining the limit of the sterile period previous to ovulation, that is, from the beginning of menstruation. But if a woman discovered from the use of the tape over a period of some months that ovulation occurs regularly on a definite day of every period, that information would certainly be helpful in determining the limit of pre-ovulatory intercourse in the practice of rhythm. But the negative results of the test before ovulation (that is, the fact that the tape does not turn dark green) are of no value and should not be relied on in the practice of rhythm.

There is obviously nothing wrong in using information regarding the time of ovulation in the practice of rhythm by those who have a legitimate reason for avoiding children. It would be wrong, however, to use it to escape an obligation. It would be even more wrong to put the information to the service of some kind of contraceptive practice during the fertile period.

Because of the abstinence it imposes, periodic continence has never been a popular method for controlling conception. If medical research eventually produces a method not only to detect ovulation but also to predict it with reasonable accuracy, the period of abstinence for those practicing rhythm

<sup>23</sup> Cf. *New York Times*, Apr. 24. The announcement of this use of the test was made before the American College of Surgeons and Gynecologists in Los Angeles. I am indebted to a private communication from Dr. Doyle for many of the above details. They have since appeared in the *Journal of the American Medical Association* 167 (July 19, 1958) 1464-69.



might be reduced to a week, or perhaps even less, out of the cycle. This would make the practice comparatively easy. In the meanwhile, those who are not concerned about, or perhaps not even aware of, the moral issues at stake will prefer methods that do not impose such restrictions and seem to give a better guarantee. The method of Onan is almost as old as the desire to avoid children. The more artificial methods popular today are of comparatively recent origin. Up to the present these methods have mostly taken the form of some preventive related to the sex act itself. More radical means in the form of sterilizing procedures have also been resorted to, but on a much less popular scale. As a secondary defense, even abortion is considered acceptable to many. But none of these methods have fulfilled the requirements of a completely satisfactory contraceptive. Research to find such a method is at present achieving some success in the form of an oral contraceptive. We say *some* success because it is not at all clear as yet that such contraceptives will be permanently effective, or if they are, that damaging side effects will not make them too dangerous to be desirable. There are those in the medical profession who think that a function so intimately related to the physiological and psychological good of the whole person cannot be suppressed on any prolonged basis without causing damage.

Prescinding from the medical feasibility of these contraceptives, we can consider the moral question involved. The moral problem is complicated by the fact that for the most part oral "contraceptives" are more than contraceptives. Some of them accomplish their purpose not by interfering with the individual act but by suppressing the generative function itself. Others achieve their effect by an attack on the fertilized ovum. In the former case there is the additional malice of the suppression of function. In the latter the whole moral species of the act is changed and it becomes an abortive measure.

Further complicating the moral discussion of the problem is the fact that the use of most fertility-related drugs is not in itself wrong. These drugs can serve perfectly legitimate purposes, e.g., the control of excessive menstruation. But there are some drugs which seem to serve no other purpose than contraception. For example, the drug hesperidin, discussed by Fr. Lynch several years ago, seems to render the ovum impenetrable to the male sperm.<sup>24</sup> It is hard to see what legitimate purpose such a drug could serve. But other drugs currently available, which have been shown effective, at least to some degree, in the control of fertility, have other legitimate uses. The morality of using these drugs will depend on the nature and importance of the reason for their use.

<sup>24</sup> Cf. *Linacre Quarterly* 20 (1953) 83-88, 119-23.

In a thorough analysis of the morality of physiological control of fertility, William J. Gibbons, S.J., finds no difficulty in the use of these drugs to cure pathological conditions as long as the pathology is serious enough to warrant any suppression of function that might accompany the use of the drug.<sup>25</sup> He also concludes that it would be permissible to use these drugs to regularize a pathologically irregular cycle even for the purpose of providing greater security in the practice of rhythm. Here the doctor does nothing more than try to correct a pathological condition, which is a perfectly legitimate goal. His final conclusion is that the use of the drug to prevent conception or destroy its product is morally wrong.

As mentioned above, Fr. Gibbons limits the use of the drug as a regulator of the cycle to pathological cases, that is, to cases where the irregularity is such that it goes beyond what would be considered normal. Would it be permissible to use the drug in cases where the irregularity was within the normal range but still such as to make the practice of periodic continence difficult? Would it be licit (if it were medically feasible) so to regularize the period that it would always be twenty-eight days and ovulation would always take place on the fourteenth day? I really do not see why it would not. I see no moral reason why one must be limited to what is normal. It seems to me that perfect regularity is as legitimate a goal as perfect health or perfect vision. As long as nothing is done to suppress ovulation in any particular cycle, I do not think the use of drugs to pin-point the day of ovulation can be considered sterilizing in any real sense. Sterilization does not consist in determining ovulation; it consists in suppressing it. I would feel quite sure that if the drug were used to determine ovulation accurately with a view to actually achieving a pregnancy, no one would object. If it is not wrong in this instance, I do not see why it must be questioned when used to avoid a pregnancy by those who have a legitimate reason to do so.

In an article in *Ephemerides theologicae Lovanienses*, L. Janssens also considers the morality of fertility drugs.<sup>26</sup> While he agrees in general with Fr. Gibbons' conclusions, he is inclined to allow for the direct suppression of ovulation to supply for a defect in the natural mechanism. That nature itself inhibits ovulation seems clear from the fact that it does not occur during pregnancy. It seems also that a natural mechanism suppresses ovulation during lactation. Sometimes, however, particularly in our modern

<sup>25</sup> "Physiological Control of Fertility: Process and Morality," *American Ecclesiastical Review* 138 (Apr., 1958) 246-77. Thomas K. Burch collaborated with Fr. Gibbons on this article.

<sup>26</sup> "L'Inhibition de l'ovulation est-elle moralement licite?", *Ephemerides theologicae Lovanienses* 34 (Apr.-June, 1958) 357-60.

civilization, the mechanism fails to function normally. To supply and guarantee this normal suppression of function during lactation, Fr. Janssens suggests that it would be permissible to have recourse to drugs. This would provide for the spacing of children which nature herself seems to provide among less civilized people. Spacing children by the practice of rhythm is particularly difficult, even impossible, at this time because the cycles when they occur during lactation are very irregular.

Fr. Janssens' opinion, then, seems to be that ovulation during lactation constitutes a pathological condition. It would be permissible to correct it by supplying with drugs for the defect in the natural mechanism. This is an interesting opinion and one that deserves considerable discussion and study. I do not feel competent to affirm or deny that the suppression of ovulation during lactation is a natural phenomenon and that when ovulation occurs at this time it is due to a defect in the natural inhibitory mechanism. But presuming that this is the case, the question to be decided is whether the use of drugs to substitute for, or reinforce, the natural mechanism must be classified as direct sterilization. If it does, it can hardly be justified. Undoubtedly, the procedure does involve a direct suppression of the generative function, but one can still question whether this suppression of function must be considered a true sterilization. I am inclined to think that sterilization in the true sense should refer to a suppression of normal function. When the suppression is aimed merely at returning the function to normal, I doubt that it involves illicit sterilization. In this case the drug is assisting rather than frustrating nature. My first reaction, then, is to agree with Fr. Janssens, but I think the problem needs a lot more discussion before a definitive answer can be given.

We have already mentioned that efforts to suppress ovulation by the use of drugs have not yet reached the stage where the results meet with all the demands of a satisfactory contraceptive. In the past, however, some members of the medical profession have felt that a safe method of preventing conception consists in the simple process of tubal ligation. Richard A. Grogan, M.D., in an article in the *Linacre Quarterly* speaks of an appalling increase in the incidence of this particular procedure.<sup>27</sup> Considering the fact that the indications for abortion have been drastically reduced, he concludes that the situation involves a downright medical contradiction. The main purpose of his article, however, is to show that tubal ligation is not the innocuous procedure it is thought to be. He cites the experience of one gynecological hospital attached to a university where tubal ligation for

<sup>27</sup> "What Price Tubal Ligation," *Linacre Quarterly* 25 (May, 1958) 68-70.

contraceptive purposes was for a long time considered safe gynecological procedure. But since 1943 it has been looked upon with disfavor because of the increasing number of patients who subsequent to ligation were admitted with superimposed gynecological problems necessitating hysterectomy. A study of 100 patients with previous tubal ligations shows that 90% had no bona fide medical indication for a sterilizing procedure. The complaints on readmission were for intractable pain and/or dysfunctional bleeding. According to the author, the study he made shows that tubal sterilization is a procedure which along with therapeutic abortion should be recognized as obsolete, since it is not only morally untenable but also medically unsound.

#### MISCELLANEA

The difficulties which moralists encounter in attempting to apply traditional norms regarding servile work to current problems have inspired numerous studies of the history of the Sunday observance. P. Delhaye gives a brief but thorough treatment of the obligation in *L'Ami du clergé*.<sup>28</sup> He shows how the early Christians, who were very sensitive to Judaizing attempts, were vigorously opposed to the Jewish prescription against servile work. To these Christians servile work was identified with sin; it was work which served the devil. Gradually, as the dangers of Judaizing subsided, this spiritual interpretation began to make way for a more material understanding of the term "servile work." In the course of time a number of different factors converged toward making the Christian Sunday a day of obligatory rest. One of these factors was the act of the civil authority itself which transferred to the Christian Sunday the legislation dealing with the old pagan feasts, prohibiting all judiciary and political activity as well as the exercise of the various arts.

In following the history of servile work, Fr. Delhaye finds that four different concepts were advanced over the centuries. Besides the spiritual concept already adverted to, he found that servile work was identified with: (1) work done by the serfs, (2) manual work, and (3) work done for gain. He points out that the opinion which identifies servile work with work for gain or profit goes back as far as the Scholastics of the Franciscan school. Unhappily this concept was lost sight of when Busenbaum adopted Cajetan's theory which put the emphasis on the nature of the work rather than the motive behind it and identified servile work with manual labor. Since Busenbaum's *Medulla* had such tremendous influence (it went through more

<sup>28</sup> "Le repos dominical," *L'Ami du clergé* 68 (Apr. 10, 1958) 225-34; (Apr. 17, 1958) 241-49.

than 200 editions and was made the text of the extensive commentaries of La Croix, St. Alphonsus, and Ballerini), it is easy to understand how Cajetan's theory soon dominated the field and continued to do so for centuries.

Fr. Delhaye emphasizes the point that the so-called exemption of liberal work allowed in medieval times is misunderstood. If one considers the whole of the legislation regarding the Sunday rest as it applied during the Middle Ages, he will see that it proscribed all secular pursuits. The three categories, servile work, forensic work, and business, covered the whole secular field. Intellectual work was engaged in by clerics and pertained directly or indirectly to theology; it was religious, therefore, rather than secular. So it was not precisely because it was liberal that it was exempted but rather because it was related to religion. To the extent that liberal studies were later secularized, they should have been included in the prohibition.

Fr. Delhaye's own preference is for the concept which puts the emphasis on the gain. Although this is the most popular theory among modern authors, it is not without its difficulties. I believe Fr. Delhaye would not make any distinction between manual work and liberal work; if it is work for gain, it should be prohibited. Others would prefer to retain the exception for liberal pursuits but limit the concept of servile work to manual work engaged in for profit or wages. I think it can be said that there is general dissatisfaction among moralists with Cajetan's theory of servile work, but there is not the same agreement regarding a substitute. There is reason to believe also that Cajetan's theory will have less and less meaning as our civilization develops. With the introduction of automation into industry, manual labor will be reduced to a minimum. Fr. Delhaye himself expresses a hope that the Holy See will ultimately provide a solution to the problem as it has done in regard to the Eucharistic fast. This may be the only way to arrive at a definitive solution. In the meanwhile we can only continue on the practical basis I suggested in these *Notes* three years ago and allow work done for exercise or recreation on the basis of custom. The lack of scandal can be considered an indication of such a custom.

Walter Reuther's proposal that the automobile industry, at least the more favored companies, share profits with their workers has revived the discussion regarding the right of the worker to a share in profits. Recent popes have all affirmed the liceity of the simple wage contract which does not include any share in profits. A share in profits, then, cannot be put on the same level with the just wage. A contract that would not provide for a just wage would not be licit, but the contract that does not provide for a share in profits is not necessarily illicit. The nature of the labor contract as such does not demand a share in profits.

Neither can an argument for sharing profits be drawn from the nature of the business enterprise. Some have tried to draw a parallel between the community in a particular industrial plant and the civil community, where the relationships between rulers and subjects are governed by legal and distributive justice. If such a relationship prevailed in a private industrial plant, it would undoubtedly call for a sharing of profits, that is, a proportionate distribution of income. But the business enterprise is not a public but a private society which owes its origin to a contract. It is governed primarily by contractual or commutative justice. The income of the business must be distributed on the basis of the individual contract rather than on the basis of distributive justice.

On the basis of the labor contract the laborer has no more right to share in what might be called ordinary profits than a stockholder has a right to wages. But moralists do raise the question of superfluous profits, that is, income that remains after the stockholders have received a reasonable return on their investment. Do workers have a right to a share in these profits? Some moralists maintain that the workers have a right in commutative justice to a share in these profits, at least if the "excess" is due to their efforts. Others hold that they have a right, but only in social justice. Still others hold that sharing these profits is an obligation in equity, or perhaps charity.<sup>29</sup> Pius XI in *Quadragesimo anno* went no further than to say that it would be advisable to include a share in profits in the labor contract, but his statement referred to general and not merely superfluous profits.

In a recent article on the subject Edward A. Keller, C.S.C., states that workers have no right to a share in ownership, profits, or management.<sup>30</sup> He concludes from this that it would be unjust for laborers to strike for a share in profits. Benjamin L. Masse, S.J., in a series of two articles in *America*, comes to the same conclusion.<sup>31</sup> I am inclined to agree with these authors that there is no right at all in commutative justice to a share in profits, but I also think that social justice, or at least equity, calls for a sharing of superfluous profits, especially where these are due to the efforts of

<sup>29</sup> Cf. E. F. Regatillo, S.J., and M. Zalba, S.J., *Summa theologiae moralis* 2, 814-17. Cf. also V. Vangheluwe, "De opificum iure consortii in lucris atque in curatione suscepti negotii," *Collationes Brugenses* 46 (1950) 365-80. I do not know how practical it is to treat superfluous profits, but since moralists discuss the subject, I thought it advisable to refer to their opinions. There are, of course, different ways in which such profits may be distributed among employees.

<sup>30</sup> "Profit Sharing: The Popes' Teaching," *Homiletic and Pastoral Review* 58 (June, 1958) 855-61.

<sup>31</sup> "War or Peace in Detroit," *America* 98 (Mar. 1, 1958) 626-29; "The Ethics of Profit Sharing," 99 (May 31, 1958) 285-87.

the laborers themselves. Regarding the further question of the right to strike to obtain such benefits, I think I would again have to distinguish. I would consider it unjust for laborers under a contract which had not yet come to term to strike for a share in profits not provided for in the contract. But once the contract has expired, I do not think there would be any injustice involved in a strike for a share in superfluous profits. On the other hand I agree with Fr. Masse that a share in superfluous profits would hardly be a sufficient reason for a strike and that it would ordinarily be illicit on this score.

What obligation does the civil authority have to control or ban obscene publications? Notwithstanding constitutional guarantees regarding freedom of speech, all forty-eight states have had statutes against obscenity. No state has felt any obligation to protect this kind of freedom. It is unfortunate, however, that the wording of these statutes has too often made only for confusion, leading at times to excessive regulation but more often, at least in recent years, discouraging efforts at enforcement. A recent decision of the Supreme Court helped to clear up some of the confusion by offering a definition of obscenity which in the opinion of Harold C. Gardiner, S.J., echoes ecclesiastical legislation on the point.<sup>32</sup> It considers a publication obscene when "to the average person applying contemporary community standards the dominant theme of the material as a whole appeals to prurient interest."<sup>33</sup>

In an article in the *Homiletic and Pastoral Review*, Albert F. Kaiser, C.P.P.S., takes issue with the Court for denying that two nudist magazines and a third devoted to homosexuality were to be considered obscene.<sup>34</sup> Since I have had no contact with any of these magazines, I am not in a position to take sides. I certainly hold no brief for those responsible for the publication or circulation of literature likely to do spiritual damage to anyone. It may be also that the judges of the Court underestimated the damaging character of these publications. But I cannot object with Fr. Kaiser when the norm set for obscenity is the effect on the "average" person. I would agree wholeheartedly that this is not the norm for personal moral decision. In making personal moral decisions the individual must take stock of his own moral fibre, which may not be average. But when one is setting down an objective norm for obscenity for legal purposes, I do not see how it can be based on the reactions of any individual or group of individuals. The only legitimate basis for such a definition is the common or average reaction.

<sup>32</sup> *Catholic Viewpoint on Censorship* (New York: Hanover House, 1958) p. 76.

<sup>33</sup> *Roth v. United States*, 354 U.S. 476 (1957).

<sup>34</sup> "Legal Concepts and Tests of Obscenity," *Homiletic and Pastoral Review* 58 (Apr., 1958) 670-76.

The limitations of legal action in providing protection emphasizes, to my mind, the importance of not relying too heavily on civil censorship of literature. The most effective protection must always come from the individual himself, or, if he is incapable of protecting himself, from his parents. Additional help may be needed, but even then the first appeal should not be made immediately to the government. Private groups may be able to provide the protection which individuals cannot provide for themselves. I would agree with Fr. Gardiner that the principle of subsidiarity can be applied here.<sup>35</sup> Appeal to the civil authority should ordinarily be the last resort. Some writers, perhaps unintentionally, leave the impression that the first responsibility to provide protection is with the government. It is only when the government fails that the individual or private groups must step in. Actually, the opposite is closer to the truth. Government intervention is necessary when the individual or the group proves inadequate.

The one point that received notice in the talk which Pius XII gave to the Thirteenth International Congress of Applied Psychologists was a reference to the use of narcoanalysis and the lie detector in judicial action.<sup>36</sup> In speaking of the limits of clinical psychology in dealing with the human person, he makes the following statement: "To anyone who is acquainted with your work it is clear that certain moral problems pose themselves. You are often aware of the objections that are raised when the psychologist penetrates the depths of another's personality. Thus, for example, the use of narcoanalysis, already discussed in psychotherapy, is considered illicit in judiciary action; so also the use of the machine for detecting lies, called the lie detector or polygraph."<sup>37</sup> Some drew from this an absolute condemnation of the use of the lie detector. I think this is too broad an interpretation of this statement. First of all, from the wording of the statement there is reason to believe that he was speaking of the legality rather than the morality of using lie detectors and narcoanalysis. He made mention, moreover, only of their use in court. He may have been referring, therefore, only to the fact that evidence obtained through narcoanalysis or the use of the lie detector is not admitted in court.<sup>38</sup>

<sup>35</sup> *Op. cit.*, p. 147.      <sup>36</sup> AAS 50 (May 26-28, 1958) 268-82.

<sup>37</sup> *Ibid.*, pp. 274-75: "Vous révélez en effet plusieurs fois les objections, que soulève la pénétration du psychologue dans l'intime de la personnalité d'autrui. Ainsi, par exemple, l'utilisation de la *narcoanalyse*, discutée déjà en psychothérapie, est considérée comme illicite dans l'action judiciaire; de même l'emploi de l'appareil à détecter le mensonge, qu'on appelle 'Lie-detector' ou 'poligrafo.'"

<sup>38</sup> Evidence obtained through the use of narcoanalysis or the lie detector is not admitted in American courts even when the results of the tests are negative. In the case *Henderson v. State of Oklahoma*, decided Apr. 18, 1951, the Supreme Court of the State of Oklahoma upheld the trial court's refusal to admit such evidence. The following reason



Nothing is said about the use of either of these procedures in criminal investigation or police interrogation. With the permission of the suspect, therefore, it would still be allowed to resort to either of these procedures.

Modern civil codes protect the defendant in a criminal case against any self-incriminating statement. In this country he is allowed to plead "not guilty" and has no obligation to take the stand. The question arises: Is this right to silence a purely legal privilege or is it a confirmation of a basic natural right? Historically, the law granting immunity from self-incriminating testimony supplanted a law imposing an obligation to confess a crime when questioned by a judge. If our fifth amendment is considered in relation to this former law, it would certainly be considered a privilege. But what if it is considered in relation to the natural law? Does it remove an obligation from the defendant which he would otherwise have from the natural law itself? Or does it merely confirm a natural right? In an article in the *Homiletic and Pastoral Review*, I expressed the opinion that there would not be any obligation to confess a crime independently of a law imposing such an obligation.<sup>39</sup>

It is difficult to find any solid basis for an obligation to confess. The state has the right and the duty to punish crime, but it is not clear that an obligation to confess flows from this right. If the only way the state could accomplish this function were through the confession of the criminal, a natural-law obligation to confess would certainly correspond to the state's right to punish. But the state has other means at its disposal to bring the criminal to justice. It is quite true that a man's right to his reputation is not absolute. It may and must give way at times to the common good. Thus, if another knows of a crime, he is ordinarily free to report it in spite of the subsequent loss of the criminal's reputation and freedom; in fact, he may even be obliged to report it, or at least witness to it. But there is a legitimate love of self involved when a man is faced with giving self-incriminating evidence. Moralists recognize this love of self as an excusing cause even for a witness. Where his testimony would involve danger either to himself or to near relatives, he would ordinarily not be obliged to give it. There are stronger reasons for taking this self-love into consideration in determining the de-

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is assigned: "It is therefore apparent that the efficacy of neither the lie detector nor the truth serum has gained that standing and scientific recognition nor demonstrated that degree of dependability to justify the courts in approving their use in criminal cases. Therefore, the trial court was not in error in sustaining the state's objection to the defendant's tender of the results of such test to which he contends he consented" (23 A.L.R. 2d 1305).

<sup>39</sup> "Right to Silence vs. Right to Proof," *Homiletic and Pastoral Review* 58 (Apr., 1958) 659-69.

fendant's obligation. The only difference between the witness and the defendant in this respect is that self-love excuses the witness from an obligation he would otherwise have; it seems to preclude any obligation on the part of the defendant.

Not all agree with this position. Some argue that in judicial procedure the relation between judge and defendant is that between superior and subject. This relationship establishes a natural-law obligation to answer truthfully, except in a situation, such as prevails in this country, where the positive law removes from the defendant the obligation to confess. One must certainly admit the general right of a superior to question his subjects and to obtain whatever information the good of the community demands, but it is not clear, as we have tried to point out, that the good of the community demands the confession of the criminal. In the absence of positive legislation, then, the obligation of a criminal to forego his right to reputation and freedom seems rather dubious. In confirmation of this opinion one might appeal to the fact that legislation demanding these confessions has been abandoned as the result of long experience with the evils associated with it. This seems to indicate that it conflicts with something basic in human nature.

#### THE SACRAMENTS

Church legislation firmly opposes any unnecessary delay in the baptism of infants. Yet in spite of the insistence on this legislation, which is founded on the necessity of baptism for salvation, Catholics do delay at times the baptism of their children. While for the most part reasons for delay have been on the practical level, e.g., carelessness and convenience, appeal has also been made to liturgical reasons. In recent years a revival of the discussion about the lot of unbaptized infants has created new interest in various opinions which explore other possible means of salvation. These opinions could conceivably provide a theoretical basis for the delay of baptism. If there are other ways of providing for the salvation of infants, the need for sacramental baptism loses its urgency.

A recent *monitum* of the Holy Office reiterates the stand of the Church against delaying baptism.<sup>40</sup> There is nothing new or unexpected in this aspect of the *monitum*. But it also makes reference to "certain opinions about

<sup>40</sup> The following is the text of the *monitum*: "Mos alicubi invaluit differendi collationem baptismatis ob conflictas rationes vel commoditatis vel indolis liturgicae. Cui dilationi favere queunt nonnullae sententiae solido quidem fundamento carentes, de sorte aeterna infantium sine baptismate decedentium. Quare haec Suprema Sacra Congregatio, Summo Pontifice adprobante, christifideles monet infantes quamprimum baptizandos esse iuxta praescriptum canonis 770. Parochos autem et concionatores hortatur ut huius obligationis executionem urgeant" (A.A.S. 50 [Feb. 24-27, 1958] 114).

the lot of unbaptized infants" which "can favor these delays." Whether anyone has actually appealed to one of these opinions to justify a delay in baptism is rather doubtful, and it would certainly have been against the mind of those who are sponsoring them. It was probably the danger of abuse rather than any actual abuse that prompted the Holy Office to make reference to these opinions. But more significant than the reference itself is the remark made almost parenthetically that these opinions are "without solid foundation."

Every priest has encountered the pastoral problem of trying to console a young mother with a stillborn child. He probably sensed the lack of enthusiastic response to the traditional explanation of the child's status and groped for words to offer some further hope to the distressed parents. In view of the above statement of the Holy Office, must all hope for the salvation of these infants be abandoned? L. Renwart, S.J., in commenting on this decree, reviews the various opinions that have been advanced regarding the lot of unbaptized infants.<sup>41</sup> He reaches the conclusion that it would be imprudent in the present state of the discussion of this question to tell parents that there is some other way besides baptism by which children can be saved. This does not, however, mean that no hope may be given them. The fact that the Church allows the discussion of this question to continue indicates that she has not yet sealed the lot of these infants, although she does not feel that opinions advanced up to the present are sufficiently well founded. It would be very imprudent, then, to rely on any particular opinion regarding the salvation of these infants. It is far better to have recourse to the inscrutable ways of divine Providence than to present as certain what is at most only an hypothesis.

As long as a child has not reached the age of reason, no intention is required of him for the validity of his baptism. But an adult must have at least an habitual intention to receive the sacrament validly. A missionary presents to J.-C. Didier in *L'Ami du clergé* a case which often enough occurs in missionary countries where whole families are baptized together.<sup>42</sup> A youngster five or six years old will chafe under the restraint imposed by the ceremony and use all his ingenuity to escape the font. It may require even physical restraint to force him to submit to the ceremony. Can such a baptism be considered valid?

This question has a long history of discussion behind it. Some of the Fathers of the Church actually saw in the fretting and cries of the youngster

<sup>41</sup> "Le baptême des enfants et les limbes," *Nouvelle revue théologique* 80 (May, 1958) 449-67.

<sup>42</sup> *L'Ami du clergé* 68 (Jan. 30, 1958) 72.

an appeal for baptism. Although he is not inclined to accept this rather idealistic interpretation of the child's conduct, Fr. Didier does not read into the child's conduct a refusal of salvation. It may indicate nothing more than a fear of the unknown. If so, it would prove the child's irresponsibility and failure to grasp the significance of the ceremony. But actually, he continues, one can hardly draw a conclusion from the child's conduct without some knowledge of his reasoning capacity. A case like this points up the importance of determining beforehand whether a child has sufficient use of reason to give rational consent. It is only when one knows whether or not the child has the use of reason that he can safely interpret his conduct. In family baptisms it should be easy enough to discover this. If children at the doubtful age accompany their parents to the pre-baptismal instructions, the priest will be able to form a judgment about their reasoning capacity from their reactions to the instructions.

William Conway takes up the problem of giving Communion to occult sinners.<sup>43</sup> He follows the standard advice that the priest should give Communion to them unless they receive in private or unless he can pass them up without drawing attention to the fact. This is certainly correct procedure, at least in principle. In practice, it would always be risky in my opinion to pass up a person at the altar rail when others are present. It would require unusual dexterity to deceive the server, if not the other communicants or members of the congregation. Moreover, in these days when there is such ample opportunity to confess, one can hardly be certain that a person at the altar rail is in a state of serious sin. In practice, the presumption will always be in favor of the person at the rail.

A more common problem connected with the reception of Communion is that of Catholics who, one might say, are living occultly in the state of grace. It is the problem of the invalidly married couple who are living together, but as brother and sister, in circumstances in which it would be difficult for them to separate. When the marriage is known to be invalid in their own parish, some authors state that they may still be permitted to receive the sacraments, but in a place where they are not known. The reason for this precaution is the scandal that would arise if they were to communicate in a church where they are known as an invalidly married couple.

Francis J. Connell, C.S.S.R., questions the prudence of this caution.<sup>44</sup> He argues that the major scandal arises from the fact that the two parties concerned are living in sin. Their first obligation is to remove this scandal, and this will not be effected by the occult reception of the sacraments. The

<sup>43</sup> *Irish Ecclesiastical Record* 89 (Apr., 1958) 278-81.

<sup>44</sup> *American Ecclesiastical Review* 138 (Feb., 1958) 130-31.

most effective means to remove it would be to have the couple publicly receive Communion in their own parish. From this their neighbors would conclude either that the marriage was fixed up or that they were living as brother and sister. I think Fr. Connell makes an excellent observation here. It is true that some might take scandal by misconstruing the actual situation, but I would be inclined to classify it as pharisaical scandal. But a public case of this kind should be handled in the external forum, that is, by the pastor or bishop. It would not be prudent for a confessor to attempt to give this permission. In fact, even where the invalidity of the marriage has remained occult, a confessor is ordinarily not in a position to handle it. In many dioceses today priests are instructed to refer these cases to the chancery office.

The texts of *Christus Dominus* and *Sacram communionem* both refer the limit of the three-hour and the one-hour fast for the priest celebrating to the beginning of Mass. An inquirer in *L'Ami du clergé* presents the opinion that this means the Offertory of the Mass, since the previous part of the rite is the pre-Mass rather than the Mass proper.<sup>45</sup> M. H. in his response admits that the inquirer is making a good theological distinction but states that the word "Mass" is used in a liturgical sense in the documents on the Eucharistic fast. Liturgically, the Mass is a whole which begins with the prayers at the foot of the altar. The inquirer, to support his opinion, brought attention to the customary interpretation of the fast before the Mass of Ordination. At this Mass custom allows the fast from the Offertory not only for the newly ordained priests (who begin to concelebrate at this time) but also for the ordaining bishop. The writer for *L'Ami*, however, responds that this is a special case and cannot be used as a general argument. I think that moralists in general would agree with M. H. on this point.

Another question that comes up in connection with the Eucharistic fast but which has not been discussed much in clerical journals is the fast from foods which dissolve in the mouth, e.g., lozenges, mints, Life Savers, etc., and are therefore in a liquid state when they are swallowed. Are they to be considered solid or liquid foods? The common understanding of the term "liquid food" is of something which is liquid when it is taken into the mouth, that is, something which you drink. This is also the interpretation which Cardinal Ottaviani gave in a response to a question regarding the fast.<sup>46</sup> But there have been authors in the past, and still are, who interpret the expression *per modum potus* in a sense which includes anything which is in a liquid state when swallowed. Although this opinion is held by reputable

<sup>45</sup> *L'Ami du clergé* 68 (Apr. 10, 1958) 235.

<sup>46</sup> Cf. *American Ecclesiastical Review* 137 (1957) 73-74.

authors, I must confess I do not have much sympathy with it. Once you depart from the common understanding of a term in matters of this kind, you get into the worst kind of casuistry. For example, I suppose that if one really tried, he could reduce most foods to a liquid state before swallowing them. This would virtually eliminate the three-hour fast. It seems to me that the Church has made the fast sufficiently liberal for all concerned, and I do not see any sense to the kind of casuistry that keeps hacking away at perfectly reasonable norms. While it may sharpen legal wits, it ends up by reducing perfectly clear and understandable legislation to juridical puzzles.

The penance imposed by the priest in the sacrament of penance ought to be some good work which serves both to chastise and to heal. J.-C. Didier is asked whether Holy Communion can be considered a salutary penance.<sup>47</sup> He advises the inquirer that although Communion in itself cannot be considered a chastisement or punishment, the penitent's desire for reparation becomes efficacious by being incorporated in the Sacrifice of Christ. Moreover, the effort involved in going to Communion an extra time has some element of chastisement in it. He concludes that Communion can be a salutary penance. But he warns against anything that would make the sacrament odious to the penitent. I would consider it unwise, for instance, to assign a penance of this kind in a situation where the need for confession would arise before the penance could be fulfilled.

Fr. Didier also takes up a practice resorted to in hearing the confessions of school children.<sup>48</sup> The children are divided up into small groups and assigned by group to the number of confessors available. Moreover, to facilitate the confessions, a penance is assigned publicly to all before the confessions. His own reaction to both of these practices is decidedly unfavorable. First of all, the children should be free to go to any confessor they wish and not be herded together in groups. Secondly, the penance is supposed to be imposed individually and according to the species and number of sins confessed. One might also add that an arrangement of this kind certainly does not make for the personal treatment that should prevail in the confessional. Particularly in their younger years, children should experience and learn to take advantage of a warm personal interest on the part of the confessor. This can hardly be fostered in an atmosphere where everything is under the direction of an expediter whose sole aim is to keep the traffic moving. It may be necessary at such times as Christmas and Easter to handle school children more expeditiously, but normally children should approach the confessional as individuals and not as a group. Moreover, even when a

<sup>47</sup> *L'Ami du clergé* 68 (Jan. 9, 1958) 30.      <sup>48</sup> *Ibid.*

certain expeditious handling is called for, assigning penances previously to the whole group is completely unjustifiable.

Francis J. Connell, C.S.S.R., takes up a practical problem connected with the use of common error to get jurisdiction to hear confessions.<sup>49</sup> The case occurred in a hospital room where the patient asked a visiting priest to hear his confession. Although he had no diocesan faculties, the priest heard the confession on the assumption that he would get jurisdiction from the Code because of common error. He felt that the fact that the patient wished to go to confession was sufficient reason for inducing the error.

Fr. Connell argues that the administration of the sacrament in this case was not only illicit but also invalid. He does not think that common error can be induced if the priest merely sits at the sick person's bedside and tells him to make his confession. I presume that the setting for this case was a private room and I would certainly agree with Fr. Connell that common error could not be established in such a situation. But I am not so sure that the priest could not set up common error in a ward. If he, for instance, simply went into a ward and announced that he would hear the confessions of anyone who wished to receive the sacrament, I certainly feel that such an announcement would establish a foundation for common error. It seems to me also that if he went into a ward, put on his stole, and sat next to the patient in a way in which it was obvious to all that he was going to hear the person's confession, common error would prevail. In both of these cases, however, although the confessions would be valid, the liceity of inducing common error would still have to be decided. If the priest could easily get faculties, or at least could easily bring in a priest with faculties, I do not think he could licitly set up common error.

#### SEX, MARRIAGE, AND POPULATION

Basic formation of correct attitudes toward sex must take place in the home and from an early age. It is not just a matter of instruction or formal training but involves the whole complexus not only of parent-child relationships but also of interparental relationships. Correct attitudes are of paramount importance in the successful practice of the virtue of chastity. Although mistakes are still made in this area, it should be obvious that a purely negative attitude toward sex is not and cannot be considered healthy in one who is destined to follow marriage as a vocation. But one might be tempted to conclude that such an attitude is quite proper in one who is destined to lead a life of celibacy. In an excellent article on the subject, William

<sup>49</sup> *American Ecclesiastical Review* 138 (Mar., 1958) 207-8.

Bertrams, S.J., offers some very valuable observations to anyone engaged in training others for the celibate life.<sup>50</sup> While it is true that this training ordinarily does not begin until adolescence and may be handicapped by attitudes already acquired in early home training, such suggestions as Fr. Bertrams offers will be useful to avoid any further prejudicing of the candidate.

He warns first against the approach that would reduce the sexual to the biological or the genital. The differences between man and woman are not purely genital, but pervade the whole personality and include the psychic as well as the physical part of the person. There is a complementarity in sex that runs through the gamut of personal perfections. If one takes this total view of sex, he will understand that there is much good to be derived from association with the opposite sex independently of any genital relationship, e.g., the association of a boy with his mother, his sister, or a nun in school. It is a mistake, then, in training for the celibate life to reduce the opposite sex to a genital object toward which the only reaction proper to a celibate is fear.

Even in connection with the genital itself and genital reactions he warns against certain unhealthy attitudes. The impression should not be given that certain parts of the body are bad and that all genital reactions must be considered purely as temptations. God did not make any "partes inhonestae." Also, spontaneous reactions to sex stimuli must be considered normal and natural phenomena, and failure to react to these stimuli would have to be regarded as a serious defect. One cannot condone the attitude that would wish to disown certain parts of the body or be free from all sexual reactions. Such an attitude, far from being proper or healthy in the celibate, would actually lead to hypersensitivity and induce rather than eliminate such reactions. It is a mistake, then, to reduce these reactions to temptations from which one should try to be free. They can be temptations, it is true, but in themselves they are perfectly normal reactions which one should not be without.

The attraction for the opposite sex is also something natural and something good, although it must be controlled. Since this control must be learned, Fr. Bertrams advises that some opportunity for association with the opposite sex be provided during seminary training. How can candidates for the celibate life learn the control they need if even ordinary contacts with the opposite sex are removed all during their training? While he realizes that some may abuse the freedom they are given, he prefers that a weakness of

<sup>50</sup> "De efformando in clericis genuino fundamento caelibatus suscipiendi," *Periodica* 47 (Mar. 15, 1958) 3-28.



this kind be manifested before rather than after ordination. He realizes also that a limit must be set to this association. Since friendship in the strict sense is a prelude to marital love, he would exclude any such friendship with members of the opposite sex. Dedication to Christ excludes any such sharing of friendship or affection.

At one time the celibate who led a life of voluntary sterility might have been classified as a slacker. Today at least one author has suggested the celibate life as the solution of the current population problem. The rapid increase in population is becoming a matter of growing concern to demographers. According to statistics the population of the world in historical times has doubled in ever shortening intervals, a rate of increase which has been persistent through wars, plagues, and other catastrophes destructive of population. The last interval within which the population doubled was 100 years and it is expected that it will double itself again in the next 50 or 60 years. Figures show that, even if it doubles only at the rate of once every hundred years, in 2500 years there will be standing room only on our local planet.

John L. Russell in an article in the *Month* considers several possible solutions to this problem and finds them all wanting except the one which involves a large increase in the number of celibate vocations.<sup>61</sup> He does not see any solution to the problem in contraception. Besides being immoral, it will be found inadequate because there will always be people who want to have children either because they like them or because the nation wants to expand. He does not even feel that the ideal solution will be found in the practice of periodic continence. A nation made up of all small families would not be healthy; neither would a marriage regulated by the calendar. The ideal solution will be found in a society where there will be a large number of celibates, and those who marry will be able to have as many children as they want.

While it is consoling to those who are concerned about the spread of contraception to know that some at least do not consider it an answer to the population problem, the solution which Mr. Russell recommends, although it may be ideal, does not sound too practical. The ability to lead a celibate life has always been considered the exception rather than the rule. It is not likely, then, that the future will see any increase in the number of celibate vocations sufficient to stem population growth.

It is certainly a pessimistic attitude that sees the solution of the population problem solely in a drastic reduction of the birth rate. Besides this

<sup>61</sup> "Christian Theology and the Population Problem," *Month* 205 (Apr., 1958) 197-208.

extreme attitude, George H. L. Zeegers, a Catholic expert in this field, tells us that another extreme attitude exists, an optimism that concentrates on the obligation of the world to provide economic and other related conditions for the material and cultural welfare of the expected world population.<sup>52</sup> Between these two positions are a large number of demographers looking for a solution in a wide variety of measures.

The Catholic social scientist naturally tends toward the optimistic attitude. Given his Catholic background, he is very reluctant to recommend a vast reduction in human production. Dr. Zeegers pleads for a sympathetic attitude toward those who do not share our point of view, which, he says, takes a good dose of the right dispositions. I think Dr. Zeegers has put his finger on a point which must be kept in mind in all dealing with non-Catholics. Ordinarily Catholics can be very understanding and tolerant where there is question of some Catholic dogma. They do not expect non-Catholics to understand or agree with their position. But this is not so true when the question at issue is one of the natural law. Since the natural law binds everyone, they are inclined to expect acceptance of natural-law precepts on the part of all, and where it is lacking, they tend to attribute it to bad faith. Yet many of the areas of difference of opinion pertain to what would be classified as remote conclusions from first moral principles. Unaided reason, according to our own theological principles, often finds it difficult, even morally impossible, to arrive at these conclusions. Although it is true that those outside the Church are just as bound by these precepts as Catholics, without the guidance of the Church they cannot readily arrive at a knowledge of them. One can understand, then, how very sincere and religious-minded non-Catholics, precisely because they do not enjoy the guidance of the Church, fail to appreciate the significance even of natural-law precepts. An appreciation of the fact that the Church is the medium not only of strictly supernatural revelation but also of a full and accurate grasp of natural moral and religious truths will prompt a more tolerant attitude toward those who, perhaps through no fault of their own, have been deprived of her guidance.

In another article on the subject of population, Frank Lorimer *et al.*, all non-Catholics, consider the possibility of cooperation among the various religious groups to solve the population problem.<sup>53</sup> While he recognizes that there are differences of opinion among religious groups regarding the ethics of various means suggested to solve the population problem, he does not feel

<sup>52</sup> "The Meaning of the Population Problem of the World," *Cross Currents* 8 (Winter, 1958) 19-23. Reprinted from *Sociaal Kompas* (1957, no. 2).

<sup>53</sup> "An Inquiry Concerning Some Ethical Principles Relating to Human Production," *Cross Currents* 8 (Winter, 1958) 24-42. Reprinted from *Sociaal Kompas* (1957, no. 2).

that conflicts arise from the differences themselves but rather from attempts on the part of one group to enforce its ideals through political action. It is his opinion that respect for ethical opinions must be advanced for the most part through education, indoctrination, and personal relations rather than through the instrumentality of police action and law.

He accepts wholeheartedly the Church's doctrine on abortion and refuses to consider it an answer to population growth. He has nothing against rhythm, but he feels that it is adapted to the needs only of the healthy, well-educated, and emotionally stable couple. Besides contraceptive methods he looks with some favor on sterilization. But rather than discuss points of disagreement, he would prefer religious groups to concentrate on areas of agreement and try to work from these. He suggests that the Catholic doctrine regarding the rational regulation of propagation is a good starting point. He is referring here to the teaching that a serious reason will excuse one from the obligation to propagate, and he asks whether in a critical population situation one may not even go farther and establish a duty not to procreate.

This is a challenging question and one that has not received up to the present sufficient attention from moralists. The emphasis has always been on the duty to procreate. But a study of the history of this duty will show that it has been related in the past to population needs. Scholastic theologians, for instance, maintained that the duty to procreate was incumbent on everyone immediately after the Fall and until such time as the population of the world was sufficiently provided for. After that it became a common obligation and no longer bound the individual. The individual would then be free to marry or not marry. Pius XII defined the obligation more precisely in his talk to the Italian midwives where he stated that it fell on married couples who made use of the marriage right, but again he related it to population needs. It should follow from all this that as population needs change one could expect the duty to procreate to adjust accordingly. I am inclined to think that in the present circumstances moralists would be reluctant to impose an obligation on a couple not to have any more children, but I also think that the present population situation would dictate a limit to the obligation to have children or at least a universal excusing cause after a couple has made a reasonable contribution.

At least one country, Japan, has already reduced a local population crisis to one of human propagation and has concentrated its efforts to solve the problem on a drastic reduction in births. The birth rate fell from 34.3 per 1000 in 1947 to 20 per 1000 in 1954. While this decline has eased the population problem, Thomas K. Burch, who has made a special study of the

Japanese experience, maintains that the methods used, sterilization, contraception, and abortion, have created other problems that may be just as serious.<sup>54</sup> There is first of all the problem of an aging population with all the difficulties and need for adjustment it carries with it. He notes also the harmful effects of abortion on Japanese women. Approximately 50% report postoperative troubles, even though the abortions are performed legally and in modern hospital surroundings. Finally, the publicity campaign carried on to promote birth control has harmed Japanese youth.

The concern about population growth has not discouraged to any perceptible degree the promoters of artificial insemination. This whole procedure is surrounded with such cloak-and-dagger secrecy that it is impossible to get accurate figures on the number of "syringe babies" in existence, and it may be that the number at present is not large, but promotion of artificial insemination is certainly not calculated to ease the population problem. Charles Larere reports on the discussion of the subject at the Seventeenth Congress of the Federation (French) of Obstetrical and Gynecological Societies.<sup>55</sup> The discussion did not concern itself with the population problem but rather with more immediate problems connected with the practice. Fr. Larere was particularly impressed by the report of Prof. Hartmann of Nancy on the moral, religious, and sociological aspects of artificial insemination. Among other dangers connected with the practice, Prof. Hartmann was concerned about the danger of alienating the affections of the husband and causing jealousy. Although he admits that the donor remains unknown personally, he maintains that he is known in a very real sense through the child. Through the child, then, the mother might easily experience a psychological attraction for the donor father. A sensitive husband will be quick to sense this attraction and resent it. Where there is a request for a second and a third child, since it is ordinarily made from the same donor, the resentment will grow. If one adds this resentment to the feelings of inferiority and embarrassment already caused by his sterile condition, one can understand how explosive the husband's attitude to such a family situation can be. The children, unfortunately, will be the innocent victims.

While speaking of artificial insemination, it will not be out of place to comment on the favorable comparison its proponents often make with

<sup>54</sup> "Postwar Japan: A Case Study in Population Policy and Social Disorganization," *American Catholic Sociological Review* 19 (Mar., 1958) 45-53.

<sup>55</sup> "A propos de l'insémination artificielle," *Cahiers Laënnec* 17 (Dec., 1957) 21-29. For an exhaustive study of artificial insemination which brings out all the problems connected with the practice, cf. A. Schellen, *Artificial Insemination in the Human* (Houston: Elsevier, 1958).

adoption. If a husband and wife can accept a child who is in no sense their own, the argument goes, how much more readily will they be able to accept one who is actually born by the wife. It has already been pointed out that this inequality in their relations to the child can actually be a source of serious friction between husband and wife. The comparison with adoption is completely inept for another reason also. From the viewpoint of the child there is a tremendous difference between adoption and donor insemination, and this is undoubtedly the reason why the whole process must be shrouded in secrecy. The adopted child has every reason to be grateful to the adoptive parents for what they have done and are doing for him. The product of artificial insemination, on the contrary, can do nothing but resent what the mother has done in bringing him into the world in a situation in which his father must always remain unknown. It is because of resentment of this kind that it is recommended that unwed mothers give their children out for adoption. The relation between the child and the mother is such that under ordinary circumstances further association would be harmful to both of them. The promoters of artificial insemination have found a practical solution for this problem in the secrecy with which the whole procedure is cloaked, but the recourse to secrecy is in itself an admission of the disordered nature of the practice.

Attention has already been drawn to the concern of demographers over the rapid growth of population. In view of this concern it is easy to understand that an obligation on the part of married couples to have children should be limited. Some years ago Gerald Kelly, S.J., argued that the obligation would not extend beyond four or five children.<sup>56</sup> In an article in the *American Ecclesiastical Review*, Edward McNally, S.J., takes issue with this opinion.<sup>57</sup> He argues, first of all, that the obligation to have children arises from the common good. It is regulated, then, by legal justice which follows a geometric rather than an arithmetic proportion in measuring obligations. The resultant number of children demanded of married couples will be determined by their capacity and will consequently differ from couple to couple. He concludes from this that a twenty-year-old bride will have more of an obligation than a thirty-five-year-old bride precisely because the twenty-year-old bride has more fertile years ahead of her and is therefore capable of a more numerous progeny.

<sup>56</sup> "Rhythm in Marriage: Duty and Idealism," *America* 87 (May 3, 1952) 128-30. The subject is also taken up in *Medico-Moral Problems* (St. Louis: Catholic Hospital Association, 1958) p. 174.

<sup>57</sup> "Extent of the Obligation to Conserve the Race," *American Ecclesiastical Review* 138 (Jan., 1958) 24-30.

I think I can accept Fr. McNally's argument here and at the same time continue to hold Fr. Kelly's basic principle that there is a limit to the obligation to procreate. Ultimately, this obligation to procreate is measured by the needs of the community, not by the total capacity of the contributors. The total capacity of the contributors may go far beyond these needs. We can illustrate this point from the example of taxation. Before beginning to assess the individual taxpayer, the government must first make an estimate of fiscal needs of the community. It is on the basis of these needs that the total tax load must be determined, not on the capacity of the individual taxpayer. When the assessment is finally made on the individual citizen, although it will be in proportion to his income, it need not exhaust his capacity to pay in any single case. Similarly, population needs may not exhaust the capacity of married couples to propagate. In fact, if some of the demographers are correct, this capacity, if realized, would soon turn the world into a slum. As we have already seen, these demographers, far from denying a limit to the obligation to propagate, think that an obligatory limit to childbearing should be put on the individual couple. The fact that the obligation to procreate arises from legal justice does not imply, then, that it must exhaust the individual capacity to procreate. Population needs may be satisfied before this capacity has been reached.

Moreover, although Fr. McNally is certainly correct in his statement that in legal and distributive justice burdens and benefits are not distributed on a basis of strict equality but rather in proportion to needs and capacities, equality is not necessarily ruled out. It may be that the capacities of individuals are somewhat similar. Where there is question of taxation, it is quite evident that individual capacities will differ, even apart from exemptions, reductions, etc., since individual incomes differ. But if one prescind from the age element, it is hard to see how the capacity to propagate, apart from excusing causes, can be differentiated. When Fr. Kelly set his limit (which is actually higher than that set by some authors), I believe he was thinking of the average couple who enter marriage during their twenties. If he were presented with the case of the delayed marriage vocation, I am sure he would agree that some allowance should be made. But if one considers the average marriage I am not sure how one could determine the obligation to propagate, apart from excusing causes, except on the presumption of equal capacities.

In a second argument Fr. McNally urges that generation as an end of the marital act demands more of it than that no single act be intrinsically perverted, i.e., contraceptive. In view of the talk given to the Italian midwives by Pius XII, I do not think there is any dispute over the existence of

an obligation to contribute to the good of the species in marital relations. A married couple does not satisfy its obligations merely by abstaining from contraception in marital relations. But this additional obligation, as Fr. McNally himself seems to admit, is measured by legal justice, which means that the ultimate norm is the needs of the community. It was precisely on the basis of these needs that Fr. Kelly argued to a limitation of the obligation. One can admit the further obligation, then, and still hold that there is a limit to it. But even if I were to hold with Fr. McNally that there is no limit to the obligation, I think that, with the growing alarm of our demographers over the population problem, one could readily admit, as I have already indicated, a general excusing cause at the point where according to Fr. Kelly's opinion the obligation would cease.

An article by Dr. P. Le Moal presents some interesting statistics on the methods of limiting children actually resorted to by a group of practicing Catholics in France.<sup>58</sup> 75% voluntarily limited the number of their children. Of these 32% did so by practicing continence, either periodic or habitual. 67% had recourse to contraceptive procedures, 49% exclusively, 18% in conjunction with periodic abstinence. The survey brought out the fact that the choice of method did not depend on the strength of the libido or the sexual history of the persons involved but solely on their moral and religious ideals. An important conclusion from the study was the fact that periodic continence, far from favoring infidelity, actually proved to be a guarantee against it. Those who used contraceptives were much more inclined to adultery. Some might be tempted to think that the abstinence involved in the practice of periodic continence would lead to a higher incidence of adultery and that the use of contraceptives would therefore be a protection against it. Such was not the case with this group.

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<sup>58</sup> "Continence conjugale et morale sexuelle," *Vie spirituelle, Supplément 44* (1958) 43-69.