CURRENT MORAL THEOLOGY AND CANON LAW.

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MORAL THEOLOGY

GENERAL MORAL. The preparation of these notes has been somewhat hampered by war conditions. Many of the European reviews have not come at all; others have arrived irregularly and late. Surprisingly enough, however, some of the German and Italian publications have appeared with regularity.

For instance in *Divus Thomas,* [19 (March 1941) 49], we find Dr. Mathias Thiel, O.S.B., contributing an article "Kultur und Sittlichkeit," which proceeds with a certain serene detachment from world conditions to consider and compare these two concepts philosophically. Dr. Thiel begins by explaining at length the method he will follow in going from the mere verbal knowledge of the concepts of culture and morality to a real knowledge of their content. He chooses a rather aprioristic method and then examines the concepts. His treatment of the nature of morality insists on the traditional scholastic view, in which the relationship of human acts to God as their last end is paramount. He discusses briefly a point raised some years ago by Dietrich von Hildebrand, "Die Idee der sittlichen Handlung" (*Jahrbuch für Philosophie und phaenomenologische Forschung.* Halle. 1930.), whether, namely, the human person is a subject of morality in the same immediate sense that human acts are. He decides that morality is an immediate property only of free human acts. He defines morality as the relationship of free [immanent] human acts to God as the objective which alone must be aimed at in all circumstances.

After distinguishing culture from other concepts (e.g., art) and examining what is proper to it he arrives at this definition: "Culture is the relationship between human *actio transiens* and that capacity for perfection which can be realized by nature only when man assists her by intellectual cooperation."

In the last part of his study Dr. Thiel examines more closely the relationship between the concepts of morality and culture, showing the points in which they coincide and differ. He insists that that form of culture will be best which preserves the natural order best, and thus is more easily integrated in the moral order. He ends by remarking that, "Unhappily there are comparatively few men who know how to harmonize their cultural and moral aims in such wise that each one is only of advantage to the other. The reason for this lies partly in their ignorance of the proper relationship between the two, but partly also in human weakness, which is to blame for the fact that our will so frequently lags far behind the understanding."

With an eye more to practical morality and confessional procedure, Dr. James W. O'Brien studies "An Aspect of Equiprobabilism," [*Ecclesiastical Review*, 104 (Febr. 1941) 97]. It is the old question between equiprobabilism and moderate probabilism, the latter being the system which in some circumstances allows the use of an opinion in favor of liberty which is admitted speculatively to be less probable than the opinion in favor of the law. Dr. O'Brien reexamines and restates that argument for equiprobabilism which is based on the idea that a more probable opinion is closer to the truth, or at least to certainty, than an admittedly less probable one. The distinction between truth and certainty is made by Dr. O'Brien. His conclusion is that this argument can be presented in telling form. And the last paragraph of his article shows why he considers it important to arrive at such a conclusion. "The real importance of the question is not that there is such a great practical difference between them [equiprobabilism and moderate probabilism] but that they represent two different states of mind. The one honestly strives to find out what is right; the other to make the moral law easier. Confessors are not so much judges anymore as attorneys for the defence. We have gone about as far as we dare in relieving people of their obligations." I suppose moderate probabilists will object emphatically (and with reason) to the implication that they are not honestly striving to find out what is right. At the same time it cannot be denied that some confessors give the impression that they are more anxious to be "kind" to a penitent than to defend the law of God,—or the rights of third parties. Whether this attitude is to be attributed to the teachings of moderate probabilism or to the weakness of human nature is another question.

In practice the question is very much complicated by the fact that most confessors are not moralists. They do not examine these problems for themselves, but act on the authority of others, either what they read in the manuals or what they were taught in the seminary. Hence the probabilities on which they proceed are often extrinsic in their regard. They do not give direct opinionative assent to the proposition: S is P; but rather they give certain assent to the statement: It is probable that S is P, because some competent moralist or moralists after personal examination have deemed it to be probable.

Now it can be argued very plausibly that such a moralist could not reasonably and prudently give direct opinionative assent to the proposition as long as its opposite seemed more probable to him (at least in ordinary circumstances). To do so would be to abuse the intellect which is naturally drawn to assent to what is represented to it as more probable, rather than to what it recognizes as less probable. And since by definition a proposition is not probable unless it has such weight as will actually draw assent from a reasonable and prudent man, no proposition

is probable unless it appears equiprobable (morally speaking) with its opposite at least to *some* prudent and reasonable man, i.e., to some competent moralist who has examined the matter for himself. If everyone recognizes it to be less probable than its opposite, then it is not probable at all, (in normal cases), for it cannot gain the direct prudent assent of anyone. If this view of moderate probabilism is correct, then it is true to say that a less probable opinion will not be a safe norm in practice unless there are competent authors who sponsor it as being at least equiprobable, morally speaking. Dr. O'Brien's essay will serve a good purpose if it stimulates inquiry into this problem, and thus helps to form in confessors an attitude toward their penitents which is neither too lax nor too severe.

Of all those who in modern times have helped to form the confessional practice of the Church St. Alphonsus is *facile princeps*. To commemorate the centennial year of his canonization Fr. G. Daly, C.SS.R., contributes a paper, "The Great Doctor of Moral Theology," [*Ecclesiastical Review*, 103 (Aug. 1940) 168]. St. Alphonsus fulfilled the ideal of a moralist. "Three factors combine to establish the intrinsic and personal value of a moral theologian's authority. The natural and supernatural qualities of mind and heart serve as a foundation; study and prayer are needed to develop these qualities; time and experience alone can give them their full expansion and plenitude of power. These basic requirements are made manifest in the life and writings of St. Alphonsus, the prince of moralists." His greatest gift perhaps was his power of selecting prudently among the thousands of opinions, some lax, many rigoristic, which were current in his time. His guiding norms were for the most part equiprobabilistic. The prodigious output of work which was his can only be explained by his "heroic vow 'never to lose an instant of time but to consecrate every moment to the service of God and the salvation of souls'. Under the constant pressure of this obligation he gave sixteen hours of the day to study and prayer."

It seems to be more than a coincidence that a great moralist of our own days had a somewhat similar vow and was well known to devote a similar amount of time daily to incessant labors in the field of moral theology. Fr. J. Creusen, S.J., writes very interestingly in the *Gregorianum*, [21 (Fasc. III, IV, 1940) 607], a paper entitled: "Le 'Voeu d'Abnégation' du R. P. Vermeersch, S.J. (1858-1936)." The vow was taken by Father Vermeersch on Christmas Day 1891, upon finishing the Long Retreat in his Tertianship. It reads in part: "Voveo . . . perpetuam et totalem abnegationem mei, juxta litteram et sensum ab eo qui me dirigit in spiritu approbatum et scripto consignatum." And he then explains in detail the exact meaning and obligation of the vow. For example: "Ne rien faire délibérément pour une satisfaction naturelle. . . . Quand, entre deux partis de quelque conséquence, précision faite de ce

voeu, je demeure flottant, ne sachant ce que vaut le mieux, prendre celui où apparaît le plus de renoncement: c'est-à-dire, celui que le monde ne prendrait pas." To those who knew him the discovery of this vow among his personal effects after his death came as an explanation of his own spiritual life and his spiritual direction of others. He worked prodigiously all his life in the scholarly pursuit of the truth in moral matters. In meeting the problems of our own times he can be compared to the great Doctor of Moral Theology, St. Alphonsus. Like the great Doctor he was extremely prudent and exact in his choice of opinions. His moral system was moderate probabilism. Future generations will not forget either his scholarship or his holiness of life.

It is more than twenty-five years now since Father Timothy Brosnahan, S.J., passed to his reward. And yet it was only this year that his work, *Prolegomena to Ethics,* saw the light in print. (New York. Fordham University Press. 1941). At the time of his death Father Brosnahan was working on a complete treatise on Ethics, which he was never destined to finish. The present work represents the first seventeen chapters (250 pp.) of that treatise. It is not a text-book but a work for the mature scholar, and it is because of its more extended treatment of such subjects as the nature of morality, and of human acts, imputability, etc., that notice is taken of it here. Moralists are indebted to its editor, Rev. Francis P. LeBuffe, S.J., and to the Fordham University Press, for having made it available to the public. The second part of the volume contains a digest of lectures for a complete course in Ethics. These are brief notes which served as outlines for Father Brosnahan (and many others) for class room lectures in Ethics. They have been long out of print and hence have been included in the present volume. Father Brosnahan is famous for his answer in 1900 to an attack on Jesuit education by the then President of Harvard, Dr. Charles W. Eliot. The same gifts of forceful and incisive thought that characterized that classic rebuttal make the present work a valuable and scholarly contribution to general moral theory.

IMPEDIMENTS TO HUMAN ACTS. A recurring problem for the confessor is the judgment to be passed on the moral responsibility of abnormal individuals. In *Homiletic and Pastoral Review,* [40 (June 1940) 964], Henry C. Schumacher, M.D., writes on "Psychopathic States," an article which was mentioned in these pages last year. Brief descriptions are given of the characteristics of "impulsive, aggressive psychopaths," "inadequate psychopaths," "alcoholics and drug addicts," and "sexual psychopaths." Although no norms are laid down for judging in particular cases what the degree of moral imputability may be in such individuals, it is made clear in general that many of them are incapable altogether, or to a large extent, of controlling themselves. It happens oftener, perhaps, than is generally

realized that a penitent's abnormal mental condition reduces his guilt and takes his actions out of the class of mortal sin. The confessor, without setting up as a psychiatrist, ought to have a sufficient acquaintance with general symptoms to be able to suspect at least the presence of such abnormalities.

It would be a mistake, however, for the confessor to misinterpret his rôle and try to play the doctor. Attempts to interpret the teaching of Our Lord in terms of modern mental healing and modern psychology fall flat and leave a bad taste in the mouth. David Seabury's book, *How Jesus Heals Our Minds Today,* (Boston. Little, Brown. 1941), is such an attempt. The book contains much common sense, for that is a virtue not foreign to Christianity nor to modern psychiatry. But to take what seems to be a rather superficial view of modern psychiatry and make it a point of departure for interpreting the teachings of Christ, is bound to fail from the Catholic point of view. A non-Catholic reviewer of the book in *Christendom,* [6 (Summer 1941) 450], finds that "there is little one can do but commend David Seabury for his latest book." There is no denying the abyss that separates the Catholic from the non-Catholic view of Christian truths and teaching.

Freud and Freudianism are always of interest to the moralist. For both the practical dangers of psychoanalysis and the purely materialistic philosophy of Freud, especially in sexual matters, have moral implications that cannot be escaped. In *Razón y Fe,* [120 (July-August 1940) 225 and 121 (Sept.-Oct. 1940) 62], Father Mesaguer contributes two articles entitled: "Balance de las principales aportaciones de Freud." In the first of these articles, "La exploracion de la inconsciencia y la neurosis," the author gives the history of the Freudian movement, and then examines critically, but hardly sympathetically, his psychoanalytic method, the interpretation of dreams, the psychic structure of the neurosis, and the psychoanalytical cure. In the second article, "El Freudismo especulativo," the more theoretical or philosophical tenets of Freudianism, especially in its sexual aspects and its hostility to morality and religion, are examined. His judgment on Freud is severe: "Animalis homo non percipit ea quae sunt Spiritus Dei." But of course he does not deny all merit to Freud: "The truth is that he has egregious merits and egregious demerits."

For English readers interested in the same theme, the work of Dr. Rudolf Allers, M.D., Ph.D., published last year, will probably be more available. *The Successful Error.* (New York. Sheed and Ward. 1940). The eminent psychologist examines Freudian psychoanalysis critically, as he is well prepared to do, and finds the whole system to be an error, though a successful one. Dr. Allers says: "I hold that psychoanalysis is an enormous and dangerous error. I desire to prevent as many people as possible—and primarily of course as many Christians as possible—from

falling a prey to this error." Dr. Allers holds that the method of psychoanalysis as a means of therapy cannot be separated from the Freudian materialistic philosophy. Both must be rejected together.

It is not merely in the field of psychological abnormality that the moralist finds interesting material. The physical deficiencies attendant upon endocrine disturbances often play a large part in the moral life of the individual. It is well worth while therefore to keep an eye on the literature in this field. Dr. R. G. Hoskins, Director of Research at the Memorial Foundation for Neuro-Endocrine Research at Harvard Medical School, has published a second volume: *Endocrinology,* (New York. W. W. Norton and Co. Inc. 1941). The book is similar to his former volume: *The Tides of Life,* (New York. W. W. Norton and Co. Inc. 1933), in that it is addressed to the general reader. But it is more complete, and of course introduces the latest results in endocrine research. Dr. Hoskin's work gives a complete view of the field for the non-specializing physician and the educated layman. It is obviously the work of a careful and scholarly mind.

As a practical example of a type of case where endocrinology touches on morals, may be cited: "The Treatment of Morbid Sex-Craving with the Aid of Testosterone Propionate," by H. S. Rubinstein, H. D. Shapiro, and Walter Freeman, [*American Journal of Psychiatry, 97* (Nov. 1940) 703]. It is not altogether a rarity for confessors to come across female penitents whose extraordinarily intense or frequent desires for sexual relief raise the suspicion of physical abnormality. Dr. Freeman and his collaborators found that when male sex hormone (testosterone propionate) was given in appropriate dosage to certain over-erotic women, a sufficiently depressing effect was set up in the anterior pituitary gland to cut down the sex-stimulating function of that organ to manageable proportions. Such treatment is still distinctly in the experimental stage, but nevertheless it is sufficiently developed to be worth a trial, especially in a case where a tortured conscience sees no other hope of relief. It will perhaps try the ingenuity of a confessor to get such a penitent to a doctor; and he may have added difficulty in finding a doctor who is *au courant* with this treatment, or one to whom the treatment could be tactfully suggested. But any physician could give the injections. The cost of the extract is considerable, not, however, exorbitant. The same extract administered to males in large doses may likewise result in a depression of the sexual function.

The following paragraph suggests another practical application of endocrinology along similar lines. It is taken from Eugen Steinach's *Sex and Life, Forty Years of Biological and Medical Experiments.* (New York. The Viking Press. 1940, p. 199). "All these types [various female disorders] . . . provide the most fertile field for hormone treatment, because

most frequently a small additional supply of hormone suffices to compensate for the deficiency. No matter how small the deficiency of hormone may be, it can nevertheless cause a variety of symptoms which may prove to be very harassing. Quite apart from painful menstruation and sterility, such a hormone insufficiency may also cause atrophy of the genital mucous membrane, thus lowering its resistance to external influence. This lowered resistance predisposes to inflammatory processes. Hormone administration in such cases arrests the process of disintegration and promotes regeneration of the mucous membrane. The occasional striking successes in cases of very annoying 'nervous' itch (technically termed pruritus) are based on this. Such pruritic disorders are relieved by hormone therapy. . . ."

Incidentally, another part of Dr. Steinach's work (Chapters twelve to fifteen) raises a moral problem which, though not exactly pertinent here, may be mentioned. He is best known for his surgical reactivation of senescent or prematurely senile men by vasoligature. The object of such operations is usually not so much to restore sexual functioning as to restore general health. The operation involves vasectomy at least on one side, and so involves partial or total mutilation of the procreative faculty. It would appear that an application of the principle of the double effect is not impossible in such cases.

Perhaps it is not out of order here to remind the moralist that a little medical knowledge is a dangerous thing and that it is not the part of the confessor to be doctor or psychiatrist. On the other hand a lay acquaintance with topics such as the above may occasionally lead to beneficial results when thereby penitents are put in the hands of competent physicians. But the confessor must stick to his own task which is to apply the healing of Christ's grace to sick souls. The sickness is sin. Dr. G. Siegmund writes of "Schuld und Entsühning," [*Stimmen der Zeit*, 137 (July 1940) 324]. He says that "the modern man grasps feverishly at books with titles like 'Nervous Disorders and Their Remedy'; 'Mental Health'; 'Psychotherapy'; but the real sickness is one that only the Savior can cure." Dr. Siegmund discusses the psychology of guilt, and of contrition, in relation to the confessional. Our Lord is still "der Heiland," and "der Heilbringer" for the needs of our own times.

SINS AND VIRTUES. A fundamental problem in the theology of sin is tackled anew by C. Freithoff, O.P., in *Divus Thomas*, [18 (June-Sept. 1940) 157]. Under the title: "Warum die Sünde?" he discusses the age-old question why there is moral evil in the world. His treatment results in a clarification of the problem rather than a solution of it. After the theoretical exposition of his views he summarizes them in a more popular catechetical form. He proposes and answers, as far as an answer can be

found, thirteen questions. The first of these reads: "Welches ist der ausschlagende Grund, das Hugo den Gregor verleumdet? Es gibt keinen tieferen Grund als den freien Willen Hugos. . . ." And the last: "Aber warum trifft es nun *in particulari* gerade Hugo, dass er auf diese Weise [his sin having been permitted by God etc.] des Universums dienen soll? Hierüber hat Gott uns nicht geoffenbart. *Wir beugen uns* vor dem unergründlichen Mysterium!" The article contains a discussion of the sense in which evil is said to be "permitted" by God and by man, when man cooperates unwillingly in what is evil.

One's solution of the question "De obligatione vitandi probabile periculum peccandi" is likely to make a practical difference in one's handling of penitents who are faced with the occasion of sin. Under the above title Fr. Michael Fabregas, S.J., writes in *Periodica,* [30 (14 Apr. 1941) 20], a refutation of the arguments advanced by Fr. Francis Ter Haar, C.SS.R., to support the proposition that it is a mortal sin to expose oneself without proportionate cause to a danger of sinning which is here and now solidly probable. The dispute is not a new one but was occasioned anew by the second edition of Fr. Ter Haar's *Casus Conscientiae Vol. I,* (Taurini-Romae. Marietti. 1939). The same author's *De Occasionariis et Recidivis* appeared about the same time and was reviewed in THEOLOGICAL STUDIES.

It is the contention of Father Fabregas that the more severe opinion is not solidly proved and that we are at liberty in practice to follow the less exacting view. He argues subtly and with scholastic precision. He feels moreover that the whole thesis on avoiding merely probable danger is but an application of that principle of equiprobabilism: "In dubio de legis certae cessatione, concurrentibus argumentis aeque vel fere aeque probabilibus, sequenda est quae legi favet opinio." And of course being a moderate probabilist he is not ready to assent to that principle. However, he admits that for the most part he does not disagree with Father Ter Haar's practical solution of the cases of conscience, and would even take a stricter view in some instances.

To turn from the borderline of sin to the practice of virtue. Father Max Pribilla contributes to *Stimmen der Zeit,* [138 (Oct. 1940) 1 and 138 (Nov. 1940) 42], two articles on Fortitude. The first of these he devotes to an examination of the concept and properties of Fortitude; in the second, "Tapferkeit und Christentum," he outlines the place of Fortitude as a cardinal virtue in Christian history, and its place in the lives of present-day Catholics. He shows that there is no contradiction between Humility and Fortitude, and that those haters of Christianity lie who make it out to be a religion of weaklings. It is not difficult to imagine whom he had in mind. The article reads like a call to arms, to the practice of heroic virtue in difficult times.

"Vom Sinn der Demut" contributed to the same periodical, [137 (Jan. 1940) 120] by Erich Przywara, S.J., examines the nature of the virtue of humility. After showing that the concept was unknown to classical antiquity, he traces it through the New Testament (especially Philippians, II) to St. Augustine, St. Benedict, St. Thomas Aquinas, St. Ignatius Loyola, and St. Thérèse of the Child Jesus. The same subject is treated by Fr. Oddone, S.J., in relation to present day philosophies,—especially, one may be allowed to suspect, the philosophies of Mussolini and Hitler. In *Civiltà Cattolica,* [92 (1 March 1941) 329] he writes on: "La crisi dell' umiltà," emphasizing the perennial value of the true Christian spirit of humility for culture and civilization.

Other articles dealing with the virtues which may be mentioned are Msgr. H. T. Henry's "Fraternal Reconciliation" in *Homiletic and Pastoral Review,* [41 (Nov. 1940) 113], which deals with the preaching of this obligation to the people; and "La raison et la charité," by Fr. André Bremond, S.J., [*Gregorianum,* 21 (Fasc. I, 1940) 2] in which he refutes the contention of D. Brunschwicg that only a purely rational religion (as opposed to a revealed authoritative faith) can unite men in true charity.

POPULATION. FAMILY MORALITY. SEX MORALITY. Rev. Thomas Verner Moore, O.S.B., contributes to *Thought,* [16 (March 1941) 67] a paper entitled "Rights of Tomorrow's Children." The paper was read at the New England Conference on Tomorrow's Children, held at Harvard University, July 26, 1940. It is the author's contention that future generations of children have the *right* to receive from their parents a triple heritage of physical, intellectual and moral gifts, and that prospective parents therefore owe them the duty of holding these gifts in trust for them. These ideas are developed with reference to the obligations of parents, of the State, and of social groups.

It may seem unusual to some to speak of beings not yet in existence as having rights in the strict sense of the word. One sees statements in moral manuals at times that leave one with the impression that there can be no injustice except as between persons already in existence. But the more closely one examines the concept of a right, the more apparent it becomes that there is no contradiction in the assertion that people have strict obligations in justice toward their possible offspring. Dr. Moore's analogy of a trust held for merely possible issue is very telling. Although it is impossible to be guilty of effective injustice to a merely possible individual while he remains merely possible, it is not unphilosophical (and it certainly chimes with common sense) to say that one may be guilty of affective injustice to a person not yet in existence—and after he exists the injustice may become external. It is probably safe to say however that

this metaphysical problem was not uppermost in the minds of the Harvard Conference.

The Second New England Conference on Tomorrow's Children was held at Harvard, July 16, 17, and 18, 1941. The central theme was: "The Family in a World at War." To a round table discussion on "Development of the Family in Western Civilization," the Rev. Edgar Schmiedeler, O.S.B., of the National Catholic Welfare Council contributed a paper: "The Formative Period, Fifth-Tenth Centuries." This was followed by Rev. John C. O'Connell, S.J., of Boston College, "St. Thomas Aquinas and the Family." Other Catholic participants were Rev. John La Farge, S.J., speaking on "Christian Humanism and Christian Eugenics," and Rev. M. J. Ahern, S.J., of Weston College, acting as chairman of one of the symposia, and contributing to the discussion of "Conflicts of Value in the Twentieth Century."

Such a conference was bound to give voice to a great variety of views, from the traditional Catholic principles of family morality to open advocacy of contraception (by Joseph K. Folsom), and even of abortion (By Robert L. Dickinson). Dr. Carle C. Zimmerman's views on our population needs evoked some opposition in the newspapers from those who fear an increase in population in the United States.

The Institute of Catholic Social Studies which has been inaugurated this year at the Catholic University of America, under the directorship of Rev. John F. Cronin, S.S., Ph.D., ought to provide Catholics who take advantage of it with a well-rounded view of the Church's position on social questions. The Institute, through summer courses at Catholic University, aims at practical undergraduate instruction in the doctrine of the social Encyclicals. There are courses on such subjects as Labor Problems and Legislation, Farm Problems, Co-operatives and Credit Unions, Catholic Political Thought and American Democracy, etc. The complete course can be covered in three years. The Institute is designed to supplement and complete the work of the summer schools of Catholic Social Action given in many dioceses in recent years.

The general problem of population is a recurrent one and one closely connected with contraceptive practices. In *Homiletic and Pastoral Review,* [41 (Oct. 1940) 34] C. J. Woolen writes on "The Problem of Population." After rejecting various explanations of the declining birth-rate in Western civilization, he bases the phenomenon chiefly on ethical grounds. He is severe on "safe period" mentality and calls for a return to nature from the artificiality of modern life. "The first need of today, then, is for a reverence for nature. In that lies the solution of the problem of population."

In this connection Fr. Hermann A. Krose, S.J., who has previously written on comparative birth statistics for Catholic and non-Catholic Ger-

many, contributes two studies to *Stimmen der Zeit.* The first, "Geburtenrückgang in Klassischen Altertum," [138 (March 1941) 186] discusses Spengler's *Untergang des Abendlandes,* and disagrees with his analysis of that decline. The other, "Der Geburtenrückgang in der Schweiz," [137 Sept. 1940) 401] is a careful and competent study of the declining birth-rate in Switzerland with special reference to a comparison between Catholics and Protestants. Father Krose finds the religious element the most important in determining the better showing of Catholics in this regard.

"La famiglia Cristiana e la trasmissione della vita," by Rev. A. Brucculeri, S.J., in *Civiltà Cattolica,* [92 (3 May 1941) 187] gives a summary exposition of the Catholic attitude on contraceptive practices. The arguments from reason, from the Fathers, from ecclesiastical authority, and especially that of Pius XI speaking in the Encyclical *Casti Connubii,* are invoked to substantiate the Catholic thesis. One of the fundamental concepts in the exposition is that the family is something of sacred and religious origin, not merely of natural origin. "Nuptiae sunt divini juris et humani communicatio." (Digest. XXIII, 2.).

The use of the "Safe Period" as a means of birth prevention continues to be a source of discussion. From the medical point of view there does not seem to be unanimity as to its effectiveness. Two doctors who made a study of menstrual regularity and irregularity among the nurses in a hospital to which they were attached came to the conclusion a few years ago that the variations were so wide and the dangers of error, at least in the application of the method, so great that it was not practically effective or to be recommended. But Dr. John Rock of Boston came to a different conclusion from his personal clinical observations. (*Journal of the American Medical Association,* Dec. 1940). In his opinion the method is as safe as any, but he adds a word of warning against its use in cases where it is absolutely imperative to avoid conception. Dr. Rock, though a Catholic, is one of the originating petitioners to the Massachusetts legislature to repeal legislation which prevents doctors from giving contraceptive advice to their patients for therapeutic reasons.

In the same issue of the same periodical Dr. Rock writes on abortion. He treats the subject entirely from the medical viewpoint, as was to be expected in a medical publication, and the article has nothing to say as to the morality of therapeutic abortion. But in the *American Journal of Obstetrics and Gynecology,* [40 (Sept. 1940) 422] Rev. Thomas Verner Moore, O.S.B., M.D., writes on the "Moral Aspects of Therapeutic Abortion," and gives briefly and clearly a good summary of the Catholic and natural moral principles involved.

Ectopic gestation is treated anew both from the medical and the moral viewpoint in the *Ecclesiastical Review,* [105 (Aug. 1941) 81]. The medical part of the problem is described by Elmer A. Schlueter, M.D.,

of the *Institutum Divi Thomae*, Cincinnati, Ohio. To a moralist who is going to form a well grounded judgment on the morality of removing the ectopic fetus it is essential to master as far as a layman can the physical facts and the surgical technique involved. It would be too much, however, to expect every confessor to be conversant with the physiological and pathological lore which Dr. Schlueter has brought together here. The moral aspects of the case are treated by Rev. James W. O'Brien. He cites the pertinent decrees of the Holy Office, admits the probability of the opinion which allows the use of the double effect to remove the tube *in some cases*, but thinks that "with our present knowledge it is extremely difficult to defend as a general norm that the surgical removal of the tube is always licit." This is a conclusion in which most experts in the field of moral would undoubtedly concur, and notably Dr. Timothy L. Bouscaren, S.J., whose excellent monograph, *The Ethics of Ectopic Gestation*, seems not to have been cited by the author.

It is hardly an exaggeration to say that all sex morality is in a sense family morality. For it is only when sex is viewed as an integrating part of a whole moral system, in subordination to its purposes, which can be served only in conjugal society, that the system of sex morality taught by the Church under God makes sense. P. Bolovac writes a somewhat extended comment on August Adam's book, *Der Primat der Liebe*, (Kevelaer. Verlag Butzon & Bercker. 1939) under the title: "Einordnung der Sexualmoral," in *Stimmen der Zeit*, [137 (Sept. 1940) 408]. The book attempts to put sex morality in its proper setting. The sexual question is only a part of a higher and greater general question: What is the place of Christ in the world and amongst the things in the world, hence as regards property and possessions, art and science, economics and statecraft, marriage and society, music, theatre, dance, drink, etc.? It is viewed as a mistake to make the terms "morality and immorality" mean the same thing as "chastity and unchastity"—as is the custom with certain peoples. It ends only in giving to the sex question an importance it does not deserve, as if chastity were the greatest of virtues and unchastity the greatest of sins. "The primacy of chastity must be replaced by the primacy of love." Father Bolovac calls attention to the practical pastoral importance of sexual questions but agrees with Adam that questions of sexual morality should not be given that central emphasis which makes them seem to be more important than they are.

Their importance, however, in relation to family life seems to have been fully recognized by the French Government in the new "La Code de la Famille" published in 1939. A. C. Bolton writes in the *Clergy Review*, [19 (Aug. 1940) 95], an excellent commentary on this new code under the title, "The New French Family Laws. Fifty Years Too Late." These laws went into force in January, 1940 and had as their object the encour-

agement of bigger families, and the suppression of certain practices that threatened family life and race welfare. The laws provide for bonuses for families having children, loans to farming families, suppression of abortion, pornography, and dangerous narcotics, the regulation of traffic in alcohol, an extra tax on bachelors and childless families (after two years of marriage), the establishment of maternity homes, and many other social measures. So far no attempt seems to have been made to deal with the problem of the "special houses."

The author of the article remarks (what is obvious on a moment's reflection), that mere laws cannot make a moral or spiritual rejuvenation, and in the last analysis that is what is needed to compass the objectives these laws are aimed at. But in spite of many omissions in the present Code, Catholics should be grateful for such a good beginning. And he warns Englishmen not to listen to those government spokesmen who placidly tell the country there is no need for anxiety about the birth-rate. This is a warning that Americans can take to heart, too, in view of the statements made by some of our own Federal spokesmen. See, for example the *Boston Herald*, July 22, 1941, p. 10, in which there is a long letter entitled: "Four-Child Families Bad for the Nation," by Guy Irving Burch, Director Population Reference Bureau, Washington, D. C. It was intended as an answer to some statements allegedly made by Dr. Carle C. Zimmerman of Harvard. It is a plea for fewer children on the ground that we are in great danger of overpopulation.

THE SACRAMENTS. HOLY EUCHARIST. PENANCE. The war has been the occasion of some responses with regard to the administration of the sacraments. The Sacred Penitentiary was asked to interpret the faculty granted at the beginning of the war to absolve soldiers *en masse*, (*sub debitis conditionibus*), "imminenti aut commisso proelio." Present day methods of warfare make it so difficult to know when battle is about to be commenced, or make it so difficult for the chaplain to be present just before battle that the question was asked, what could be done when it is foreseen that it will be morally impossible or very difficult to absolve the soldiers all together, just before battle, or once it has started. The answer was: "In praedictis circumstantiis, juxta Theologiae moralis principia, licet, *statim ac necessarium judicabitur* milites turmatim absolvere. Sacerdotes autem sic absolventes ne omittant poenitentes docere absolutionem ita receptam non esse profuturam nisi rite dispositi fuerint, eisdemque obligationem manere integram confessionem suo tempore peragendi." [*AAS*, 32 (16 Dec. 1940) 571].

The commentator on this response in the *Periodica*, [30 (15 Apr. 1941) 138] Father I. M. Restrepo-Restrepo, S.J., takes occasion to discuss the

question of the distance which may intervene between priest and penitent without destroying that "moral presence" which theologians require for the validity of absolution. He mentions that when the Pope gives his blessing *Urbi et Orbi* on Easter Sunday everyone in St. Peter's immense piazza is considered present. But since there are various disputes on this question of distance he concludes: "The prudent advice seems to be to divide the soldiers into smaller divisions when their numbers are very great, both to make more sure the validity of the absolution, to prepare them better for receiving it, and in order that they may be instructed on the necessity of making an act at least of attrition, and of confessing all their sins afterwards." If necessary, a mechanical amplifier could be used for these instructions. In case of necessity the whole multitude can be absolved together, but with an implicit condition, in a case where it is so great that there is a doubt about the moral presence of some of the soldiers.

The Sacred Penitentiary, [*AAS*, 33 (10 March 1941) 73], also issued faculties to all priests who were detained in prison camps to hear the confessions of all those, whether prisoners or others, who were living in the same place with them, as long as they had not been deprived of the faculties their own Ordinaries had given them at home. It may not be long before our own chaplains will be called on to exercise their faculties under war conditions. The Sacred Congregation of the Consistory issued faculties for the army chaplains of all nations and regions "in quibus status belli aut militum ad arma convocatio adest vel forte aderit." [*AAS*, 30 (1939) 710]. The *Clergy Review*, [18 (Apr. 1940) 308] contains these faculties and a competent commentary on them that may prove useful.

In *Civiltà Cattolica*, (Jan. 4, 1941, p. 14) Fr. C. Piccirillo, S.J., gives a description of the way army chaplains are chosen and perform their duties in the Italian army. The information is quite detailed and cites the principal legal provisions that have made the army chaplain an integral part of the modern Italian army. Their success in getting large numbers of the soldiers to receive the sacraments at least at Easter time has been a great encouragement to zeal. In most cases over 90 per cent have made their Easter duty. Among other helps the army chaplains have had are the army regulations which make the use of scurrilous or blasphemous language punishable. They are assisted too, by a sort of ladies' auxiliary, which provides altar linens and furnishings, books and magazines, religious articles, and even gifts for those soldiers who for some reason or other are just being baptized or confirmed.

In order that the Midnight Mass might not have to be omitted entirely on account of blackouts, the Pope permitted its celebration on the afternoon before Christmas. The celebrant and communicants were to fast four

hours before the beginning of the mass. [*AAS*, 32 (16 Dec. 1940) 530]. A question submitted to the *Clergy Review*, [19 (Dec. 1940) 544], shows that the Church is not unmindful of the needs of the faithful in wartime and that the ordinary rules of the Eucharistic fast can be relaxed, a fact which is becoming more and more apparent nowadays. It appears that a person engaged in national defence work in England had received an indult to receive communion after fasting only three hours. The question was whether under such an indult communion could be received in the evening. The answer holds that the matter should be referred to the Ordinary, but gives several good reasons why a reply from him should be in the affirmative.

The whole question of the Eucharistic fast was treated in a systematic and detailed way in an article contributed by Father Louis J. Twomey, S.J., to the *Ecclesiastical Review*, [102 (May 1940) 405]. As a complete summary it would be hard to find a better treatment. To those not of the household of the Faith and even to lay persons, such a manner of exposition may seem unnecessarily casuistic, but to the priest who is constantly being asked such questions it is very helpful.

Although there is a tendency to relax nowadays the regulation of the Eucharistic fast more readily (by means of indults for particular cases) there is evident an increased vigilance on the part of the Church to see to it that due respect is shown for the Blessed Sacrament. The *Instructio Reservata* on daily communion and its possible abuse which appeared some time ago (Congregation of Sacraments, Dec. 8, 1938), was a step in this direction. This instruction gave rise to a minor problem which is treated by Father Ulpian Lopez, S.J., in *Periodica*, [29 (Dec. 1940) 302]. For the instruction forbids superiors to inquire whether or not their subjects go daily to communion. But a previous instruction by the same Congregation ("Quam Ingens," 27 Dec. 1930) had required Rectors of seminaries, and pastors in whose charge seminarians were placed (e.g. during the vacation time), to answer a questionnaire which contained among other things: "Num ad sacram synaxim crebro ac devote accedat?" And another form of the question reads: "An assiduus sit . . . ad frequentem aut etiam quotidianam communionem?" After noting the difference in scope of the two instructions Fr. Lopez concludes, "Quae cum ita sint, . . . non datur oppositio per se inter has duas Instructiones, sed bene inter se concordari possunt, ita ut utriusque, secundum proprium spiritum observantia impleri possit." And no doubt the chance of a practical conflict is slight. But in case such a conflict did arise it would seem that the later decree should be observed in order to safeguard the liberty of the individual, even if the earlier one suffers thereby.

The same Congregation of the Sacraments has issued an exhortation [*AAS*, 33 (18 Feb. 1941) 57] to the more zealous observance of the Instruction on

the Custody of the Blessed Sacrament given out three years ago. The exhortation begins by remarking that the Congregation is well aware with what solicitude that former instruction is observed, but finds it necessary nevertheless to urge Ordinaries to carry out its provisions faithfully, especially with regard to the administrative process in cases of sacrilegious theft of the sacred species.

The practice is becoming more frequent of introducing the clergy and laity of the Latin rite to the ways of the Oriental rite by holding "Oriental Days" on which mass is celebrated according to one of the Eastern rites and Holy Communion is distributed under two kinds to the faithful. Judging by a question submitted to *The Jurist* [1(Apr. 1941)149]), this is sometimes done not only in Seminaries and other religious institutions but even during parish missions. Dr. Hannan replies to the query about the lawfulness of this practice, giving the origin of the former prohibition of such promiscuity and indicating the modification of the discipline introduced by the Code. On the question whether a "just cause" is now required in order to permit the faithful to receive communion in a different rite there may be a difference of opinion. Cappello, *De Sacramentis,* I, n. 524 says: "Verba 'pietatis causa' ita sunt intellegenda, ut unicuique liceat, sacram communionem recipere in azymo vel in fermentato non solum quando urget necessitas seu causa gravis sed etiam *sola devotionis gratia,* i.e. absque ulla *peculiari* ratione." And although Noldin, *De Sacramentis,* n. 107, is also quoted as concurring in the view that the present law requires some *incommodum* to permit reception in a rite different from one's own, he says merely (in the place cited): "Quivis catholicus communionem sumere potest *ad libitum* in quavis ecclesia catholica cujuslibet ritus."

Father Charles J. Willis, S.M., writes in Latin on the "Jus Clavium juxta Sanctum Thomam," in *The Jurist* [1(Apr. 1941)108]. The article summarizes the doctrine of St. Thomas on the necessity of jurisdiction, the nature of jurisdiction, and its limitation in reserved cases, and extension *in articulo mortis.* St. Thomas held (with many others) that no jurisdiction was necessary for the absolution of venial sins, an opinion which though not explicitly condemned by Trent, is antiquated today. The doctrine of St. Thomas, however, writing in the thirteenth century, is shown to be in remarkable conformity to the Council of Trent and the present discipline of the Church.

The perennial question of Indulgences is treated by Fr. Francis J. Mutch in *Ecclesiastical Review* [103(Dec. 1940)533], not from the polemical standpoint, but with a view to instructing the clergy and faithful in a practical way. There is no doubt that it is a difficult thing to keep up to date on particular indulgences, and the minutiæ of varying circumstances and conditions can be very confusing. Since these conditions often affect validity, the title of the article is well-chosen: "Indulgences Gained and Lost."

Father Mutch gives clearly (and as briefly as the matter permits) an exposition of the meaning of the principal conditions attached to indulgences. The complexity of the matter is illustrated by the fact that even Father Mutch has had to add another article to bring out some points overlooked in the first one. The *Ecclesiastical Review* [105 (Aug. 1941) 138], continues the subject of "Indulgences: Gained and Lost." Among other interesting items is this: The plenary indulgence for the prayer "En ego O bone et dulcissime Jesu," can be gained every day, even if one goes to communion only once a week.

A correspondent to the *Irish Ecclesiastical Record* [77 (Apr. 1941) 356], brings to the editor's attention a prayer card widely distributed, it is said, among soldiers and civilians in England. The card contains acts of faith in the principal mysteries of religion and acts of hope, charity, and contrition, which include an intention of doing all that is necessary for salvation. The card has a companion letter which among other things states: "The acts of faith, hope, love, and contrition on the card are sufficient by themselves, if sincerely made, to place a person, baptized or unbaptized, in a state of grace." The correspondent takes exception to this statement because the card says nothing of the necessity of the sacraments of baptism and penance. Father J. McCarthy in answering shows that there is a true and a false sense in which this statement may be understood, but sees no objection to the card itself. A similar card has been in use in the United States, distributed by *The Apostolate to Aid the Dying* and as far as the present writer knows no one has taken exception to it. In fact it has been welcomed by priests who come in contact with non-Catholics, especially in hospitals, and does great good. Since it is intended primarily for the *dying*, it is easier in such circumstances to omit explicit instruction on the necessity of the sacraments.

In this connection it may not be too late to call attention to an instruction regarding the administration of the *sacraments themselves* to Russian Orthodox soldiers. Part of the instruction (which was issued by Msgr. Neveu, Apostolic Administrator of Moscow) appeared in the *Tablet*, Nov. 11, 1939. The instruction insists that not one Russian in ten is a formal schismatic and prescribes that if an Orthodox soldier is wounded or gravely ill, a chaplain called to minister to him is to have him make an act of faith *as explicitly as possible* in the authority of the visible head of the Church, and then confer on him the sacraments. This instruction is of interest both because of the official source from which it comes and because it seems to encourage the administering priest to take a large view of that phrase "as explicitly as possible." Similar problems are not uncommon in hospital practice in the United States. Many hospital chaplains here who have relied on the views expounded by Father Vermeersch in his *Periodica*, will find their practice confirmed by this instruction.

MORALITY AND THE WAR. It will suffice here to mention only a few of the endless articles and books that come forth daily on the war, pacifism, conscientious objection, and the use of just means in conducting the war.

"Traditional Catholic Principles and Modern Warfare," in *Ecclesiastical Review* [102 (June 1940) 506], is a good summary of what is being written on the subject by Catholics. The author, the Rev. Howard Kenna C.S.C., after stating the rather strict conditions of a just war set down by Catholic authors, and after duly and sympathetically noticing the views of near-pacifists like Rev. Gerald Vann, O.P., and E. I. Watkin, believes, nevertheless, that even a modern war may at times be just. He thinks that the Spanish Civil War and the German march on Central Europe have had the effect of making persons who till then were inclined to be pacifists, see that sometimes armed resistance, with all the horrors it entails, can be the lesser of two evils. "Summarily, a modern war can in the abstract be justified on the traditional principles. In the concrete the problem is much more complex but I am inclined to believe that it is a possibility. If you ask, is the present war just—I do not know, and thank God, I am not yet compelled to decide."

The work of Father Gerald Vann, O.P., *Morality and War* (London. Burnes Oates. 1939), which was finished before the war began, is given a rather comprehensive analysis by Canon E. J. Mahoney in the *Clergy Review* [13 (March 1940) 253]. Canon Mahoney, whose views can always be counted on to be well considered and scholarly, finds that Father Vann, though following traditional teaching, interprets it in such wise as to make it very difficult to concede the justice of a modern war. "But in our opinion," says Canon Mahoney, "this purpose of adhering to traditional principles is not achieved in those parts of the book which deal with the obligations of the individual conscience." For Father Vann seems to put on each individual the burden of deciding for himself whether a war is just, saying, "the point is that if he finds himself in possession of one single fact which invalidates his country's position, he is bound to judge that position unjustifiable and to act accordingly." Canon Mahoney's view of traditional teaching is that in the ordinary case, individuals "are under no obligation to weigh all the reasons and conditions required for a just war; they may take their part in it with a good conscience relying on the integrity of their rulers, particularly if the government is elected by the people, unless the wickedness of the war is absolutely manifest."

In a later contribution to a symposium entitled, *This War and Christian Ethics* (Oxford. Blackwell. 1940), Father Vann seems to have modified his views and leans more to the side of the traditional teaching as far as the problems of the individual conscience are concerned. The Symposium does not get very sympathetic treatment from its reviewer, "R.M.P." in the *Downside Review* [177 (Jan. 1941) 133], who evidently finds too much

pacifism for his taste, especially in the essays of the Catholic contributors. Canon Mahoney, too, is a good deal less than sympathetic with Mr. Donald Attwater's contribution: "The Modern Dilemma." [*Clergy Review*, 20 (Jan. 1941) 65]. Professional moralists naturally do not enjoy being lectured on morality by laymen. Cardinal Newman once remarked of William George Ward that he would change some of his views and not be quite so ready to heap obligations on the faithful if he had had the experience of sitting in the confessional.

Christopher Hollis, under the title "English Catholics," in *Clergy Review* [20 (March 1941) 189], calls on English Catholics to recognize the responsibility that has been cast upon them of preserving the cultural values of Rome for the world, especially the English-speaking world. This responsibility presses upon them especially because most other Catholics, for instance the Germans, the Italians, and the French, have apparently failed to do their part. It is these other Catholics to whom he refers when he says: "We have sadly to admit that there have been found many of us who fall short not only of Christian standards but even of the ethics of that high pagan world into which the Christian life was born." Even the Irish have failed the designs of Divine Providence: ". . . it would surely seem that, if ever a nation was chosen by Providence for a special mission, that nation was the Irish in these days. Yet the Irish have their own problems and grievances, and, rightly or wrongly have not yet shown themselves ready to accept as their providential task the preservation of the link between old Europe and the English-speaking world. Their minds are still on other and more local things. . . . Later, when the Irish are able to turn their minds from the past to the present, there may be a different story to tell. . . ." But the author finds consolation in the thought that there is one challenge the English Catholics, in spite of their small numbers and lack of influence, can bravely meet. That is the call to arms. The Catholics of England have made and can still make a glowing record of heroism in the service of their country and of God.

Hilaire Belloc, too, has written on *The Catholic and the War* (London. Burnes Oates. 1940). The book is not available to the present writer who must be content to take the liberty of transcribing some of Canon Mahoney's comments, *Clergy Review* [19 (Aug. 1940) 183]. Belloc maintains that a Catholic must, on the grounds of Catholic belief, support the allied cause, because it is the first duty of a Catholic to use his reason. It is not that Catholics as such must defend democracy. Democracy is not Catholic dogma, and may be tyranny. He does not even think the English political system of class government deserves to be called a democracy. But a Catholic must recognize that the powers behind Berlin and Moscow are not merely morally bad, but simply anarchic. Belloc shows that "there must always be a fixed and violent hostility between Communism and Christianity,

for that which is the chief obstacle to the Communist experiment is the chief foundation of the Christian commonwealth, namely the family, which cannot function naturally without property."

Mr. Hollis, too, in the article referred to above, is under no illusions as to the hostility between the Russian Government and Christianity. "The evidence is, of course, overwhelming that Hitler and Stalin are both unmitigated enemies of the Christian religion. But it is no novelty for the Church to be thus attacked. . . . The novelty and the tragedy is that there should be an attack upon the Christian thing—an attack which hardly bothers to conceal its true nature—and that in country after country pious Catholics take their stand not for the defense of Christ but on account of the supposed interests of their own country." These words were written before England and Russia became engaged to one another as military allies in a common cause. Obviously a distinction must now be made between this common cause and the cause of Christ or the designs of Providence. No doubt it will be easy enough to make it, nor will any noticeable burden be put on the consciences of English Catholic soldiers who must now shake the hand and fight at the side of the "unmitigated enemies" of Christianity.

The attitude which the individual Christian soldier should adopt towards the war is treated from the German point of view by Father Alfred Delp, S.J., in *Stimmen der Zeit* [137 (Apr. 1940) 207]. Under the heading "Der Krieg als Geistige Leistung," he reviews first the opinions of some German philosphers of war (especially Karl v. Clausewicz, who wrote in the middle of the last century), to show that if man is not to be ruined by war and its horrors he must consider it as a spiritual task and master it. His treatment explicitly prescinds from the question of the moral permissibility of any given war, but takes war as it comes, a hard fact, in the midst of which, perhaps against his will, the soldier finds himself. The author feels that in the appeal to the virtue of *pietas* there can be found that element of spirituality that will rationalize and Christianize the waging of war. Not that war is to be glorified, but when the unhappy necessity is upon us we can direct even it to God—and this whether it ends in the victory of our nation, or whether we must sacrifice to it as "our fallen heroes have done" life itself.

Fallen Heroes! We will hear that phrase over and over again, it seems, in the next few years. Its bitterness may be somewhat assuaged by an appreciation of the place that the evils of war hold amongst the general evils of the universe. "Le Mal de la Guerre," by Georges Simard, O.M.I., is contributed to the *Revue de l'Université d'Ottawa* [10 (Jan.-March 1940) 29], in an attempt to show the rôle of war as one of the effects of original sin. The author concludes his study: "Such is war: an inevitable, incurable evil, the result of sin and the passions. Frequently iniquitous, sometimes just. . . . It invites us likewise to resignation and patience, and to the consoling thought that after all, even the bloodiest war cannot bring a second

death to man whom original sin has already condemned to one only death."

It was the horror of the last war that turned the minds of many thinkers, both Catholic and non-Catholic to the problem of pacifism and Christianity. "Military Service in the Infant Church," by Louis T. Miller, S.T.L., [*The Jurist,* 1 (July 1941) 255], throws light on the question of pacifism in early Christian times. It is especially interesting in view of a recent reprint of the work of the non-Catholic scholar Dr. C. J. Cadoux, *The Early Christian Attitude to War* (George Allen and Unwin, Ltd.). Dr. Cadoux, a convinced pacifist, published his work first immediately after the last war. He believes that his pacifistic views are supported by the teaching of Christ and the early Church. Father Miller examines the evidence offered by cases in which Christians were soldiers in the Roman army and concludes: "These incidents indicate that in practice the life of a soldier was harmonized with the professions of Christianity. Indeed in the *Constitutiones Apostolorum* it is provided that the soldier who seeks entrance into the Church may be admitted provided "he injure no one, is satisfied with his pay, and calumniates no one." Father Miller does not seem to cite the work of Cadoux.

It is interesting to see that in a later work, *Christian Pacifism Re-examined* (Oxford. Basil Blackwell. 1940), written during the first quiet months of the present war, Dr. Cadoux, according to the reviewer in *The Journal of Religion* [21 (Apr. 1941) 187], "has come to admit as a pacifist that pacifism is not a policy open to the nation under existing circumstances, and that, for the nation, resistance to aggression and to the spread of Nazi tyrrany is 'a second best' which the pacifist must recognize as such." In spite of this practical view the book gives a thoroughgoing exposition and defense of the arguments for pacifism.

The views of Dr. Cadoux in this latest book are summarized by him in an article (well worth reading) in the *Journal of Religion* (July, 1941). He struggles to elude the logical inconsistency involved in being a convinced pacifist himself and still believing that *others* (the English nation at present) are *justified* in using military measures. It would seem that this gap can be bridged only at the expense of the objectivity of the moral order. This paper is part of a symposium. The other part is an article by a "non-pacifist Christian" which examines the principal pacifistic arguments (without being aimed directly at Cadoux' views) and ends by taking a position substantially in accordance with that generally held by Catholic theologians. This Catholic position is well presented, incidentally, in a little pamphlet by Rev. Henry Davis, S.J., *War and Pacifism* (London. Catholic Truth Society. 1940).

Inconsistency seems to be no stumbling block to some pacifists. Nobody has shown this more trenchantly than F. J. C. Hearnshaw: "Is Christianity Committed to Pacifism?" in *Hibbert Journal* [39 (Oct. 1940) 83]. He asks of pacifists two questions. "They are, first, What do Christian Pacifists

hold to be the final authority in matters of faith and morals? Secondly, Do pacifists whether Christian or non-Christian admit that the use of force is ever justified in the suppression of evil, and, if so, what are its limits?" On the first point he concludes "that the Christian pacifist's final authority in matters of faith and morals is nothing higher than his own imagination, and it would be easy to show, did space permit, how defective this is." He deals with the second problem by proposing four embarrassing questions and letting the answers of well-known pacifists speak for themselves. The questions are: "Would you defend yourself if attacked?" "Would you resist an attack made upon your wife or daughter?" "Do you approve the use of police force in restraint of criminals?" "Do you consider the maintenance of an army and the waging of war in any circumstances justifiable?" The answers of men like C. E. M. Joad, Dr. C. H. G. MacGregor, Bertrand Russell, Dick Sheppard, etc., make interesting reading, for they reveal the practical inconsistencies which are unavoidable in the pacifistic position.

In "Pacifism and Christianity," *Christendom* [6 (Summer 1941) 397], Dwight J. Bradley makes a plea for the religious pacifist which is characterized by a certain vagueness in its concepts and generalizations. "Christianity has been pacifistic from the beginning. Its roots lie in the soil of Judaism which according to its basic tradition is committed to non-violence (meekness) as a way of life." And later: "The only important difference between modern pacifism and the Jewish tradition of prophetic non-violence, as well as the medieval Christian tradition of ascetical Orders and world-renouncing Protestant non-conformity, is a difference of historical setting and reaction within that setting. Modern pacifism is classical Jewish-Christian non-violent ethics expressed in terms of revulsion against the violent enormities and perversities of industrialized modernity." The author will have no truck with the "pacifism" of American isolationists. Their pacifism is not religious, but political, and he seems to say that their motives are largely selfishness or fear. He sees the presence of true pacifists in our democracy at the present time as a source of confusion to liberals, and at the same time views the protection which pacifists receive as a healthy sign.

It is only a step from pacifism to conscientious objection to military service. And since we have Catholic pacifists, at least in some sense of that word, we also find Catholic conscientious objectors, either to war in general or to the war in which it seems we are about to become engaged, or to military service. Catholics have taken rather extreme positions on both sides of the question. As far back as 1933, the French Archbishops, acting as the Executive Committee of *l'Action Catholique*, were asked for an opinion on conscientious objection to military service (in peace time). The question was occasioned by the trial of such a conscientious objector by the military court of Paris. The *Catholic News* (New York. March 11, 1933), quotes their reply in part: "Is it necessary to add that the Church would not sup-

port objections of conscience or vows which would tend to promote or forebode [sic] disobedience to just military laws? In these matters above all, no individual may set himself up as the competent judge. Conscience in such case is not a just and lawful conscience and such vows are not true vows." This point of view has led some Catholics at the present time to say that Catholics cannot be conscientious objectors at all.

At the opposite extreme stands Rt. Rev. Msgr. George Barry O'Toole of Catholic University. His pamphlet *War and Conscription at the Bar of Christian Morals* (New York. Catholic Worker Press. 1941) contains strong arguments to show the practical immorality of modern war, and he urges conscientious objection on Catholics. After giving the traditional requirements for a just war he applies them to present circumstances. "The three Thomistic conditions suffice to show that a just offensive war is practically impossible, particularly if one has in mind modern forms of warfare like the so-called *blitzkrieg* of the Germans, or the contemporary British marine blockade, both of which punish the guiltless non-combatants more than the possibly guilty governments and combatants." Later on he comes to the conclusion: "Nowadays no Christian can participate in an aggressive war without committing at least materially a mortal sin." And Msgr. O'Toole would probably consider our participation in the present war as an unjustified form of aggressive warfare, for speaking of the last war he says: "*After* the United States entered the last world war Congress . . . [conscripted] . . . an *expeditionary* army against Germany. This is a typical example of wartime conscription for an aggressive war of doubtful justification, and it is with reference to such conscription that I say the civilian is morally bound to be a conscientious objector, unless he is able with absolute certainty personally to assure himself of the justice of the war."

Msgr. O'Toole's pamphlet is a collection of the articles he wrote in 1939 and 1940 for the *Catholic Worker,* which has its own group of conscientious objectors. (See for example their letters in the issue of January, 1941, describing their experiences with various draft boards. See also the *Commonweal,* June 27, 1941, p. 227). In the article just quoted the question was of *wartime* conscription for expeditionary wars of doubtful justification. As regards the present draft law which is a *peace time* conscription, ostensibly for *national defense,* he takes a different view. It is not immoral to submit to it, but Catholics have a right to be conscientious objectors to it, because they have the right to follow the counsels of Christian perfection. Among these counsels Msgr. O'Toole relies on Our Lord's "injunction *not to resist evil,*" etc.

Wilfrid Parsons, S.J., writing in the *Commonweal,* June 27, 1941, p. 224, hits directly at this last opinion. After showing the *duties* which a citizen as such has to the state, he goes on to say with regard to the counsel of non-resistance: "First of all Our Lord's counsel has to do with personal insult,

not with a threat to one's life. Still less has it to do with the threat to the life of one upon whom others depend, for there a higher duty to protect oneself intervenes. Moreover, it has to do with the individual person, not with nations. Nations do not practice the counsels. In fact they are bound not to practice them for their function is that of justice, first of all to their own members, and then to other nations. If then the nation has this obligation, then each individual in the nation has the same obligation, proportionately and as far as he is called upon to exercise it by the government of the nation. This he has by his subjection to the common good of the community as above explained. Now it is of the nature of the counsel of perfection that it does not abrogate any duty that previously exists."

There is a middle ground of Catholic opinion which holds that in some circumstances conscientious objection is justifiable, in others not. Father Cyprian Emanuel submitted a lengthy report on the conscientious objector to war to the Ethics Committee of the Catholic Association for International Peace. A digest of this report appears in *Ecclesiastical Review* [103 (Sept. 1940) 228], and is reprinted in the *Catholic Mind* [38 (Oct. 22, 1940) 393]. He summarizes his conclusions: "I venture then the following conclusions concerning conscience and defensive warfare at the present time: a) as regards a war of self-defense in the true acceptation of the term, it would seem that all are subject to their country's call and would fail seriously in their patriotic obligations were they to resort to conscientious objection; b) in the case of a defensive war in the more general sense, in which, for example, our participation in the World War was termed self-defense, it would seem that all who think fit may refuse to take part on grounds of conscience, but that none is obliged to do so; of course the opposite is equally true; all who wish may participate in such a war without sinning, but none is obliged to do so in conscience; c) as soon as adequate supra-national machinery for the maintenance of international peace shall begin to function effectively, defensive war can no longer find justification, and all will then be strictly bound to become conscientious objectors."

Father Timothy J. Champoux, writing in the *Ecclesiastical Review* [104 (June 1941) 517], makes a good point in this connection. The justice or injustice of a particular war is a point on which the Church does not decide ordinarily. She makes no infallible pronouncements on these questions. Hence it may happen that an individual Catholic may be entirely convinced of the injustice of the war in which his country is engaged and hence be bound to be a conscientious objector. And this can happen either because the war is patently and objectively unjust or because he is subjectively but invincibly persuaded that it is unjust. In such cases a Catholic not only may but must be a conscientious objector. [Would it not be possible for instance that a German Catholic or an Italian Catholic could be convinced that the cause of the Axis is unjust? And whether *we* call this conviction

objective truth or invincible ignorance do we not say that such an individual is obliged to follow his conscience?] . . . "On the other hand it is difficult to see how a Catholic could be justified in objecting to wars in general and as intrinsically evil and thus refusing to obey conscription laws. Such an attitude would be equivalent to denying the principle of self-defense, the duty of patriotism as imposed by the fourth commandment, and consequently akin to heresy."

The Hierarchy of England issued to the English press on Sept. 15th, 1939, a joint declaration of loyalty to the King on the part of Catholics, which included the statement: "We have a profund conviction of the justice of our cause. Our nation in this conflict stands for freedom and for the liberty of the individual and the State." (This was before Britons and Bolshevists joined hands, of course.) It would appear on the other hand, that the Bishops of Germany and Italy have stood behind their governments in the present conflict. Certainly during the Ethiopian war one got the distinct impression that nobody in ecclesiastical circles in Italy even thought of an obligation to object conscientiously. In this country the Bishops made a pledge of loyalty immediately after our formal entrance into the World War in 1917. But up to the present in the United States there seems to be considerable disagreement among the Hierarchy, if not on the exact point of the justice of the coming war and conscientious objection to it, at least on the question whether we "ought" to enter it. Some of their official statements, says Father Emanuel, "point unmistakably in the direction of the legitimacy of conscientious objection to modern warfare." The English *Catholic Herald* (5 Jan. 1940), speaking of the justice of the war says: "For a Catholic to deny the opinion of the Hierarchy would be extremely rash." But when one cannot affirm the opinion of one Hierarchy without denying the opinion of another the temerity is not so apparent. Father Emanuel says of our own country: "After the Bishops' pledge of loyalty in 1917 all Catholics could without further study or discussion safely consider the war a justified war of self-defense; but it seems too much to say they were obliged to do so on the strength of this pledge alone. On the other hand, supported by episcopal statements [at the present time] one could scarcely be accused of shirking one's patriotic obligations were one to join the ranks of conscientious non-combatants, but again, no one is obliged to do so on the basis of these statements alone."

This seems to be the more consistent view. When the infallible Church has not spoken and will not speak on the justice of a given war, and when the Catholic Hierarchies of opposing enemy nations do speak on it and give opposite answers, and when moralists and theologians are still in the process of forming their opinions, the very least we can say is that, as far as confessional practice is concerned, the sincere conscientious objector is entitled to the

freedom of his conscience. The fact that he is a Catholic does not make it wrong for him to be a conscientious objector, too.

It is not merely the justice of the nation's cause that constrains the conscience of a Christian in war-time, but even granting that, there is the question of the lawfulness of the means employed to prosecute the war. Msgr. O'Toole (*op. cit.*) complains bitterly of the immoral practices which he considers to be inseparable from modern war. "In former days intentionally to kill the innocent was judged to be a violation of God's fifth Commandment—a black crime calling to high Heaven for vengeance. Hence the traditional distinction between the guilty *combatants* who might be licitly killed in war, and the guiltless *non-combatants* the intentional killing of whom was regarded as *murder*. Nowadays, however, the non-combatant no less than the combatant is considered to be a legitimate object of attack." Again "to palliate this extermination of the innocent [e.g. starvation resulting from British blockade] the miserable excuse is often given that it is justifiable on the score of *reprisal* for similar crimes committed by enemy combatants." And later on "Nowadays . . . immoral practices such as the bombing of civilian centers, the hate-propaganda, and the bloodthirsty bayonet-drill are an essential part of the official war program and are executed with the full approval of headquarters." The shooting of prisoners as a "military necessity" and practices incidental to "mopping up" are also mentioned. As for bayonet drill Msgr. O'Toole quotes a story told by Mr. Frederick J. Libby, executive secretary of the National Council for the Prevention of War: "A World War instructor in the bayonet drill told me once that a fellow instructor taught the drill with three words to correspond with the three essential motions of the body: 'G—— d—— you!' and with that the bayonet struck home."

It is with a view to solving some of these problems for the individual consciences e.g., of Catholic airmen serving in the R. A. F., that Canon Mahoney and the Rev. Lawrence L. McCreavey have contributed articles on "Reprisals," to the *Clergy Review*, [19 (Dec. 1940) 471; 20 (Febr. 1941) 131; 20 (March 1941) 278]. Although the discussion is carried on under the heading "reprisals" the principal point at issue seems to be how far the Catholic can go in carrying out orders to drop bombs. Canon Mahoney, after showing that the *nocentes* and *innocentes* of classical theology should be translated *combatants* and *non-combatants*, goes on to express the opinion that these terms must now unfortunately be supplanted by *military objective* and *non-military objective*. He permits the bombing of military objectives and thinks "it is absolutely essential to allow a very wide latitude in defining what is a military objective in modern warfare. . . . It is our opinion that unless the opposite is manifest it may be assumed that the position he [i.e. a *British* pilot] is ordered directly to attack is a military objective, railways or roads facilitating the transit of troops, buildings which are being used for

billeting or training, factories producing munitions or other war material, offices or headquarters from which the enemy forces are being directed." As for the unintentional but foreseen deaths of non-combatants which are incident to the bombing, Canon Mahoney likewise goes far in permitting the individual airmen to act on orders. "They may unloose their bombs on a known military objective at the height directed by those in command, taking whatever precautions are possible to insure that the the target is reached."

Father McCreavey goes still farther, and arguing on an interpretation of the principle of self defence *cum moderamine inculpatae tutelae,* allows the destruction of non-military objectives, though not of course to the extent of permitting a direct attack on the lives of the innocent. "It can be lawful, in certain circumstances, to attack the *property* of enemy subjects, even that of the innocent, if there be any such. The reason for distinguishing thus between the lives and the property of the innocent is that [citing St. Alphonsus] 'as members of the state they can be punished for its crimes in those goods which are subject to the dominion of the state,' and whereas this cannot be said of their lives, which are subject to God alone, it can be said of their property. If, therefore, our airmen should be sent to smash the center of Berlin as a reprisal for the smashing of London, then as long as they do not directly intend to take lives but only to destroy property, it seems to me that they need have no scruples, at least on the score of the objective morality of their intention." The only question is whether there is a *moderamen inculpatae tutelae,* and he has no doubt there is, because of the nature of the present war and the methods used by the Germans. "In my view it is impossible to solve the problems of modern warfare, especially air warfare merely or even mainly on the basis of the old distinction between *nocentes* and *innocentes.* The innocent, that is to say, the harmless (if, apart from infants, there are any) are, of course, immune from direct attack on their lives; but in modern conditions the theologian cannot tell *who* they are, and the attacking airman does not know *where* they are. The chief practical criterion must therefore be the *moderamen justae tutelae.* Father McCreavey's practical conclusion seems to permit almost indiscriminate bombing of *property* on the part of *English* airmen.

Canon Mahoney is anxious to prevent the casual reader from being "appalled by the lengths to which moral theologians are stretching their principles," but Father McCreavey's final summing up shows that both are in agreement for the most part. He writes: "It would seem . . . we are in agreement on all points that really matter. They are: 1) that the State has the right to use violence against an unjust aggressor, but no more than is proportionate and necessary to the overcoming of his aggression; 2) that this involves, in special circumstances and within the limits defined, the right to destroy enemy property, civilian as well as military; 3) that in the modern economy, the vast majority of the enemy's non-combatant subjects is co-

operating in the aggression and is therefore a legitimate object of violent repression, in the measure warranted by legitimate self-defence; 4) that for a reason on which we are not entirely in agreement, this right violently to repress the co-operation of non-combatants does not extend to their direct slaughter."

Two months previously Canon Mahoney had spoken as follows, *Clergy Review*, [20 (Jan. 1941) 66]: "From the *Osservatore Romano*, 4 and 5 Sept. 1939 a telling extract is quoted against the lawfulness of air bombardments upon non-military objectives: 'Nothing more deeply wounds the civilized conscience than such transgressions of the very laws of humanity; the more so since for seven centuries the Church in her Councils has declared the inviolability of civilian populations—and, what is more, of their work, their fields, their workshops, their houses,—from every assault of war. . . . Reprisals against civilian populations are a monstrous thing. The innocent would still pay for the guilty. . . .'"

The general subject of reprisals has also received extensive treatment in a series of three articles contributed by A. Massineo S.J. to *Civiltà Cattolica*, [18 Jan. 1941, 15 Febr. 1941; and March 1941]. The first of these, "Le rappresaglie nella dottrina degli antichi" expounds the doctrine of Grotius, and then of Vittoria and Molina as to public and private reprisals. The treatment is scholarly but juristic rather than practical, though there is reference to reprisals by England, France and Germany in the present war. The same can be said of the second article: "Le rappresaglie in tempo di pace." It is an exposition of principles rather than an attempt to give practical direction to the soldier's conscience.

The third article, too, "Le rappresaglie e la guerra," is written from the viewpoint of the international lawyer. The *nature* of reprisals, as an exceptional deviation from well received laws, in order to redress by violence a wrong which cannot otherwise be vindicated, had been treated in the other articles. In the present article the author inquires into the lawfulness of those reprisals which have a resemblance to war strictly so-called, such as the occupation of part of the territory of another state, bombardment, etc. Concerning such reprisals he asks two questions. Are they lawful? How are they distinguished from war itself? In answering the first of these questions the author is supposing that the character of the reprisals is not such as to offend against natural law, and bases his answer that they are lawful on a realistic interpretation of the present state of international law. He illustrates the unjust use of reprisals by great powers against weaker ones by certain acts of the British and of the French seventy or eighty years ago.

The second part of the article, however, seems to be based on the confidence that there *are* some obligatory international rules of war left, which the contracting states are bound to observe. An act of reprisal is distinct

from an act of war inasmuch as it contravenes these rules of war. The reprisal is justified if the other party has already broken the rules. And even here no reprisals can ever be permitted which offend against norms of natural justice and "the universal requirements of humanity." The examples which Father Massineo gives of procedures which are contrary to nature and humanity are taken from the "Legge di guerra italiana dell' 8 luglio 1938 e dagli annessi della convenzione dell'Aia del 18 settembre 1907." The use of poison and poisoned weapons, dum-dum bullets, and many other practices are mentioned. Indeed one conceives a very high opinion of the humane ideals set up in these laws. And one would naturally infer that Father Massineo would not go nearly so far as his English brethren in permitting the smashing of the enemy from the air. But the difficulty is that these ideals are not considered inviolable natural prescriptions by modern governments. They are given no more force than a mere contractual obligation which ceases to bind when the other party fails to live up to his obligation (or even before). Father Massineo closes with a warning that the use of reprisals in war is extremely difficult to keep within reasonable control and that it often leads to ruinous cruelty which oversteps all the barriers set up by morals and law. But before we can hope for the day when reprisals will be no more, "many a false ideology which has poisoned the life of the people must fall, and the nations must rely on the sovereign rule of law, and on the cultivation of justice through harmonious collaboration . . . "

Of all the questions of conscience raised in war this one of "direct killing" (of the innocent, or of captured prisoners, or in sniping or mopping up) is undoubtedly the most pressing. It is the opinion of Msgr. Cronin in the new edition of *The Science of Ethics Vol. II* (Dublin. Gill and Co.) that in just war *all* direct killing even of enemy *combatants* is forbidden. He does not seem to mean that it is wrong to shoot them down, but one's intention must be self-defence. This is like the opinion which holds that a man cannot intend to remove a gangrened hand, but he can remove it intending to avoid death. Whatever can be said for this theory in the abstract, it seems in practice to demand a subtlety not likely to be found in a soldier with a gun in his hand.

Incidentally, the concept of direct killing is extremely well explained in *Periodica,* [29(15 Dec. 1940) 345] in connection with a recent decree of the Holy Office on the direct killing of the innocent by public authority. Though the question has not to do with war directly it has some pertinence here. "Num licitum sit, ex mandato auctoritatis publicae, directe occidere eos qui, quamvis nullum crimen morte dignum commiserint, tamen ob defectus psychicos vel physicos nationi prodesse iam non valent, eamque potius gravant eiusque vigori ac robori obstare censentur?" And the reply, which was to be expected: "Negative, cum sit iuri naturali ac divino positivo

contrarium." The annotations to this decree, written for the *Periodica,* are not signed, but seem from internal evidence to have been written by one of the consultors of the Holy Office. They are well worth reading for their clear exposition of the meaning of direct killing, and for their explanation of the reasons behind the decree, and the limits of subordination as between individual and state. But as to the immediate occasion which gave rise to the decree the commentator only remarks (rather slyly): "Quae fuerit *ansa* Decreti: an theorema quoddam quod spargebatur, aut praxis quae exercebatur, aut utraque ratio simul, Decreto non effertur."

It will not be long perhaps before all these questions of conscientious objection, of bombing and killing will become more immediately pressing for the American moralist. The impression made upon the present writer by reading the foregoing literature (and much more like it) is that the application of our moral principles to modern war leaves so much to be desired that we are not in a position to impose obligations on the consciences of the individual, whether he be a soldier with bayonet, or a conscientious objector, *except in the cases where violation of natural law is clear.*

CANON LAW.

THE JURIST. 1941 has seen the appearance of a new canonical journal, *The Jurist,* published under the auspices of the Faculty of Canon Law of the Catholic University of America, and in connection with the Canon Law Society of America. It is a quarterly, the first three numbers having issued in January, April and July. When first announced the project won the immediate approval of all who had a professional interest in juristic studies, and the appearance of the first numbers was eagerly anticipated. Now that they have arrived it is a pleasure to report that they more than fulfill the high expectations that were entertained of them. The splendid work of the Catholic University School of Canon Law is already known to everyone through the numerous scholarly dissertations that appear every year. But a review appearing regularly with a comprehensive scope, fills a need that the more specialized dissertations could not meet. *The Jurist* combines the scientific with the practical in just proportion, and the first issues warrant the belief that the scholars of the United States will make valuable contributions to the study of Canon Law. The Editors deserve our hearty congratulations.

CIVIL LAW AND CANON LAW. One of the outstanding features of the new periodical is the amount of space it gives to questions of civil law that touch on canon law, or the position of the Church in the United

States. Both in its articles and in the section called "Decrees and Decisions" there is a noticeable tendency to take into account what is going on in the field of civil law. This is a point of view which has been too long neglected. The laws of our country, in fact the whole policy of our government is under the direction of legislatures of whom the overwhelming majority are lawyers. For most of them, probably, their legal training has been the principal educative influence in their lives. What they learned at Law School is in a large measure their philosophy of life. It has been the usual thing for teaching clerics to study sociology, economics, education, political science and government, and thus to be in touch with the trends of thought on these subjects among non-Catholics. But there has been very little study of the law (the common law) carried on from a strictly Catholic viewpoint. Yet this is a subject that touches the welfare of the Church most deeply of all. If governmental policies, even the form of our government itself, undergo radical changes it will be due more to the philosophies of civil law current in our great universities than to any other branch of study. It is not an easy thing for the canonist to master even the language and the fundamentals of the common law, for it is so far removed, especially in its modern development, from the Code. It is a hopeful sign therefore to see a canonical journal ready to devote its pages (as the classical canonists and moralists did) to a study of the civil law by which we are actually governed.

In the first issue of *The Jurist* [1 (Jan. 1941) 20], Dr. Robert J. White contributes an article which illustrates this point of view: "Certain Aspects of the Legal Status of the Church in the United States." Among the points touched on are the fundamental bases of religious liberty under the Federal Constitution and the Bill of Rights, the various laws forbidding state aid to sectarian institutions, schools, hospitals; the question of state salaries to religious teachers, the religious garb controversy, Bible reading in public schools, transportation at public expense for parochial school students, public money for text-books in private schools, etc. Dr. White remarks: "It may be concluded fairly that the gains of the Church in regard to bus transportation, free text-books, and numerous additional services, such as medical and dental treatment and provisions for lunches and milk, represent merely a mitigation of historical prejudices and not a considered judgment and approval of the historic teaching claims of the Catholic Church."

One of the most important parts of the article is that in which the author discusses the Jehovah's Witnesses Flag Salute cases, especially the decision by Frankfurter and the majority of the Supreme Court in the Minersville case. The decision in that case refused to recognize the right of children to refuse to salute on religious grounds. Dr. White finds in the technique by which this decision was arrived at, a threat to the religious liberty guaranteed by

the Constitution. For Mr. Justice Frankfurter (in a subsidiary ground of his decision) thinks that as long as there remains an appeal to "the remedial channels of the democratic process" i.e. to the ballot box, the Court should not pass upon the legislative judgment "except where the transgression of constitutional liberty is too plain for argument." Mr. Justice Stone in his dissent says of this point of view: "This seems to me no more than the surrender of the constitutional protection of the liberty of small minorities to the popular will."

Current American jurisprudence has been to some degree affected by the school of "legal realists"—whose philosophy if reduced to its logical consequences would leave very little of constitutional guarantees of liberty, whether religious, or non-religious, because it is a system which in its extreme form would do away with law itself. In *The Fordham Law Review,* [9 (Nov. 1940) 362] Walter B. Kennedy writes: "A Review of Legal Realism." The paper is a revision of an address delivered at the Section on Jurisprudence, Eighth American Scientific Congress, Washington, D. C., May 17, 1940. He criticizes the realists on the following counts: "1) Lack of consistent application of the scientific approach in its criticism of traditional law. 2) Overemphasis upon fact-finding and consequent submersion of principles and rules. 3) Absence of skepticism regarding the hypothetical theories of the social sciences. 4) The creation of a new form of word-magic and verbal gymnastics."

The writer refers to Oliver Wendell Holmes Jr. as the "father of real realism, who gave purpose and direction to their philosophy." Mr. Frankfurter's admiration for Holmes as a jurist is well known, but this is not to say of course that either Holmes or Frankfurter are realists of the type subjected to criticism by Mr. Kennedy. It will be interesting, nevertheless, to watch the future decisions of our Supreme Court and see to what extent the agnosticism (if not atheism), positivism, and pragmatism of Holmes' jurisprudence have undermined the principles of the founding fathers. How close did Holmes come to believing that might makes right?

There was a time when the common law of England was dominated by the Catholic philosophy. Bracton, *De Legibus et Consuetudinibus Angliae,* Vol. III, edited by George E. Woodbine, has recently appeared. (New Haven. Yale University Press. 1940) One more volume will be needed before the text will be complete. Bracton was a Catholic cleric, and his work, which is a classic source in the common law, is written in language that a scholastic can understand. In fact it is only in the light of his background of Catholic philosophy that his work can be correctly interpreted. He lived in an age when it was distinctly not the fashion to make little of rules, principles, and formulae. The discussion of such subjects as "Theoria legis mere poenalis et hodiernae leges civiles," by Ulpian Lopez in *Periodica,* [29 (15 Feb. 1940) 23] or "Begriff und Verpflichtung des posi-

tiven Gesetzes bei Gabriel Vazquez" in *Scholastik,* [15 (n. 4, 1940) 560] would not have been foreign to his mentality.

The first of these articles attempts to show that the theory of merely penal laws (civil laws) cannot be reconciled with the mind of present day legislators. The author tries not to come to any rigoristic conclusions however. Although he holds that *all* just laws bind the conscience directly (*per se*) he admits frequent recourse to *epikeia* where civil law is concerned.

The second article is by Jakob Fellermeier, who had previously written a doctoral dissertation for the Gregorian University on a similar subject: *Das Obligationsprinzip bei Gabriel Vazquez,* (Rome. Scuola Salesiana del Libro. 1939). The opposition between the view of Suarez and Vazquez on the question of the fundamental source of obligation is well known, but this is the first monograph in which Vazquez' theory is competently and thoroughly explained. Vazquez' theory of obligation, based on the objective relationship of human acts to human nature, and not invoking the will of God as an immediate source, aims at excluding all positivism from the concept of *natural law* obligations. In the article on the concept and obligation of the *positive law* the author again compares Suarez and Vazquez. He finds that neither the one nor the other has a theory which sufficiently meets the problem, but that a synthesis of their views gives a satisfactory solution.

Among the legal provisions that often have an immediate bearing on conscience (both in their use and abuse) are the laws of prescription, or statutes of limitation, according to which, after the lapse of certain periods of time, and upon the fulfillment of certain conditions, one loses the right to bring an action, or even loses title to property. Rev. William F. Allen contributes "Outlawing of Suits," to *The Jurist,* [1 (July 1941) 233] in which he gives in outline the doctrine of the Code on this matter both for contentious litigation and criminal suits. A knowledge of the provisions of the Code with regard to the outlawing of criminal suits might at times be useful to ecclesiastical superiors even when not proceeding along strictly judicial lines. For there are times when the rigor of justice should be mitigated and the same considerations of policy that lead the legislator to outlaw criminal actions after a certain period of time, may well serve to show that an old offence is best perhaps forgotten.

It is not the part of the canonist to be acquainted with all the ins and outs of commercial law in the United States. But when chanceries and parishes are doing business on a large scale, e.g., building, insurance, etc., it is very useful, if not necessary, to have some elementary knowledge of business law. *New York Cases on Business Law,* (New York. Fordham University Press. 1940) is a work which is of value even outside New York, since the cases have been selected for the most part with a view to illustrating principles which are common to many States. The authors,

Joseph V. O'Neill and Bernard J. O'Connell, follow the case book method, but yield to the inadequacies of that method and of the beginner to the extent that they preface each section with definitions of the principal terms employed. As an illustration of the provisions by which suits are outlawed in the United States the reader is referred to p. 177, where the Statute of Limitations of the Civil Practice Act of New York is transcribed. No principal cases on this point are included however.

Formerly in the United States charitable institutions were largely immune from tort liability. But there is an increasing tendency to hold them liable, which is of some importance, e.g. to Catholic hospitals or orphanages, when accidents occur causing harm to patients or others. Sister Ann Joachim, O. P., (the only nun admitted to practice law before the Supreme Court of the United States) discusses the current trend in an article contributed to *Thought,* (June 1940) The decisions fall into three groups: some courts follow the old line and refuse to hold the charity liable for damages, others have denied any immunity, and a third group compromises, and depending on the circumstances grants or refuses the immunity.

Cases which refuse the immunity are on the increase. *The Jurist* [1 (Apr. 1941) 158] discusses fully a Florida case: Dan Nicholson v. Good Samaritan Hospital, in which the plaintiff sued for damages for injuries alleged to have been sustained through severe burns caused by the negligence of a nurse in the hospital. The Supreme Court of Florida held the defendant liable. The observations of the commentator in *The Jurist* attempt to show the weakness in the arguments of the court.

Many ecclesiastical superiors are worrying about the future of tax exemption for ecclesiastical properties. There are whisperings that justify their anxiety. Recently the New York Times, in reporting the sale of a church property, emphasized the fact that a *tax-payer* was succeeding to the title. *The Jurist,* [1 (Apr. 1941) 169] reports a recent decision of the tax commissioners of the District of Columbia by which they returned to the tax rolls the monastery of the Discalced Carmelites, following the adverse report of the Tax Exemption board. The grounds for refusing to consider the monastery (which housed theological students supported by free will offerings, and a chapel open to the public daily except Sunday) either a church, or a charitable, or an educational institution within the meaning of the exempting statute, are shown to be extremely flimsy. Yet such decisions if not contested may easily become precedents.

The legal recognition which will be given to a bequest for masses in the United States is not uniform in all the jurisdictions. It may be deemed a valid charitable trust, or an invalid charitable trust, a valid private trust, on an invalid private trust, a valid gift (when given to a specified priest) or finally a disposition sustainable as funeral expenses. The doctrine that such

bequests are invalid as superstitious uses has never had any currency in the United States, but the English Courts, clinging to an historic error, upheld it until 1919, when the House of Lords found for the first time that bequests for masses were not superstitious. An able discussion of all these theories as they are found in American law comes from the pen of Dr. Jerome D. Hannan in *The Jurist,* [1 (July 1941) 243] After reviewing the theories held by the various State courts the author indicates his own views as to what the legal status of a bequest for masses should be, distinguishing the cases in which masses are bequeathed to a priest, a bishop, indefinitely (to no one), to a church or institution, or the case where they are required of the incumbent of a founded institution. He shows by four arguments that masses bequeathed to a priest by name are not a trust in the legal sense, but a gift. Bequests to a bishop would seem to be a trust, etc.

A recent Massachusetts case, Mahoney v. Nollman, June 25, 1941, Mass. Adv. Sh. p. 1267, dealt with a case in which some thousands of dollars were bequeathed to two religious priests (mentioned by name) who were members of the Boston College community. The priests were both dead at the time of the litigation, which arose when the buyer of land from the residuary devisee refused to go through with the sale on the ground that the land was not clear, being subject to a lien for the bequest of masses. In fact the executors whose accounts had been approved in the absence of any objection, had never paid over the bequests. The Supreme Court of Massachusetts held that the bequests were a valid charitable trust, and hence the heirs of the priests were not competent to enforce the provisions of the will,—nor the college. The Court could appoint a trustee to carry out the trust, and the attorney general was competent to enforce it. The decision came as a surprise, not that the bequests were considered valid, but because of the form in which they were upheld.

RELIGIOUS. The Sacred Congregation of the Council was called on to decide a question which involved the right of a beneficiary to the fruits of his benefice after entering religion. The beneficiary was unable to observe the required residence and hence was unable to attend choir. The question was whether or not during his novitiate and temporary profession he would lose the fruits of his benefice. On the 13th of April 1940 the Congregation decided he was not entitled to such fruits. The decision is of some importance not only for the law of religious but particularly for the general interpretation of canons 420, 421, and 2381. It becomes apparent that canons 420 and 421 list the excusing causes (for absence) *taxative,* and that in the mind of the Congregation the present law of benefices "totam de integro ordinet legis prioris materiam" (can. 22). The commentators in *The Jurist,* [1 (Jan. 1941) 76] finds that the basic argument used by the Congregation

here "can well be applied to the solution of any problem involving the condition of residence. As is evident, culpability is not necessary. Mere absence suffices for incurring the loss of the fruits of a residential benefice." This principle may have practical applications in the residential benefices of the United States.

The Rev. Timothy J. Champoux writes on "The Clerical and Lay States versus the Religious State" in *The Jurist*, [1 (Apr. 1941) 135] The paper does not discuss, as one might expect, the old question about the comparative perfection of clerical and religious states of life, but merely makes an analysis of the meaning of lay, clerical, and religious states. "Catholic Action has been defined as an apostolate of the laity. . . . The apparent clerical status of women religious and lay brothers has generated some confusion. With this in mind we have attempted to delineate the structure of moral states in the Church." The author makes it clear that the division of members of the church into clergy and laity is absolutely adequate, i.e., everyone is either a cleric or a layman, and only those tonsured are clerics. The religious state, which looks more to the private perfection of individuals than the public order of the Church may be professed both by clergy and laity. A lay person e.g., a woman religious or a lay brother, does not cease to belong to the laity by becoming a religious.

Our present more or less definite ideas on the obligations involved in religious vows were arrived at only after considerable debate. In *Antonianum*, [16 (Apr. 1941) 131] Father Ferdinand M. Delorme, O.F.M., writes on "Fr. P. J. Olivi Quaestio de Voto Regulam Aliquam Profitentis." The question which Olivi, (died 1298), set himself to solve at the end of a lengthy period of dispute was: "Quaeritur an vovens evangelium [the reference is to the Franciscan form of profession] vel aliquam regulam simpliciter et absque determinatione teneatur observare omnia quae in eis sunt contenta ita quod semper peccet mortaliter contra quodcumque illorum agendo?" Fr. Delorme gives an introductory historical account of the dispute and then publishes for the first time with some critical apparatus the text of Fr. Olivi's *Quaestio*. Olivi's answer is what we would take for granted nowadays, that there is no such obligation. "Hujus autem rei evidens certitudo patet ex jure divino, patet regularum seu regularium statutorum intentione et modo, patet ex jure ecclesiastico seu positivo, patet ex praedicti voti forma et modo." He then proceeds to develop these proofs and answers the objections which in the style of St. Thomas he has proposed himself at the beginning of the *Quaestio*.

It is not with such questions that the present day spiritual director of religious has to concern himself. But there are others and by no means unimportant ones. Fr. Eugene J. Crawford of the Brooklyn diocese writes in the *Ecclesiastical Review*, [104 (May 1941) 424] an article on "The

Spiritual Direction of Sisters," which is recommended. He begins by giving some practical (and prudent) hints on the direction of sisters, and then summarizes and comments in a practical way on that part of the Code which deals with the confessions and confessors of religious women. The article closes with a description of the method used in Brooklyn to see to it that conferences are given regularly (once a month) to every religious house in the diocese. The conferences are given by the diocesan priests. "Practical experience has shown that the priests ordained from two to ten years provide the best available group from which to draw Conference Masters." The reason is that those who are over 10 years ordained are very likely to be confessors of the religious women, and whatever the young men lack in experience they make up in zeal and enthusiasm. And it may be added that what they lack in knowledge (theological and ascetical) of the principles and ideals of the religious life, can be at least in part supplied by diligent study.

Two dissertations may be mentioned here which can be of assistance to those engaged in the direction or government of religious. The first is *The Rights and Duties of Bishops Regarding Diocesan Sisterhoods*, by Rev. George A. Gallik (St. Paul. Wanderer Printing Co.) The dissertation was submitted to the Angelicum University in Rome and is particularly helpful in discussing those questions of jurisdiction which arise when a diocesan sisterhood has spread to other dioceses. The second: *Canonical Elections*, (Washington, D. C. Catholic University of America Press) is by Rev. Anscar Parsons, O. M. Cap. Questions concerning election are sometimes referred to a confessor of religious women. He will be wise, generally, not to take it on himself to advise in these matters unless he is a trained canonist—and even then only with prudent discretion. The present work therefore will be of practical use to the professional canonist rather than to the spiritual director.

The year 1942 will mark the appearance of a new review which is going to be of the first interest to religious, both men and women, clerical and lay, and most especially to confessors of religious women, conference masters, religious superiors, masters and mistresses of novices etc. Belgium and France have had for years now the *Revue des Communautés Religieuses* (Louvain and Paris) edited by Fathers Creusen and Jombart, but the United States with its many thousands of religious has had nothing comparable. *The Review for Religious* will attempt to meet this very real need, beginning January 15, 1942. It will appear every two months and will be edited from St. Mary's College, Kansas, by Rev. Adam C. Ellis, S.J., Professor of Canon Law, and formerly consultor to the Sacred Congregation of Religious, Rev. Augustine Ellard, S.J., Professor of Ascetical Theology, and Rev. Gerald Kelly, S.J., Professor of Moral Theology. All belong to the Jesuit School of

Theology at St. Mary's College, St. Mary's, Kansas, and they will be assisted in their work by the entire Theological Faculty as well as by many others. There will be 72 pages per issue, and the price, to be reduced later if possible, will be $2.00 per year. The first number will be mailed on Jan. 15, 1942.

The Editors announce that: "The periodical will include articles on subjects taken from Dogmatic Theology, Moral Theology, Ascetical Theology, Canon Law, Liturgical Theology, and Ecclesiastical History. The subjects will be chosen and developed with a view to the needs of our own Religious, that is, to increase their personal devotion and appreciation of these matters and to furnish a solid background for their respective apostolic works. Here, for instance, are some prospective articles: The Adorable Humanity of Christ; The Devotion to the Sacred Heart; The Holy Eucharist; The Prerogatives of Mary; Religious and the Mystical Body; Religious and the Liturgical Movement; The Moral Obligation of Keeping the Rules; The Vow of Poverty; Divine Service in Religious Oratories; Confessors and Chaplains of Religious; The Eucharistic Fast; Obligations Pertaining to the Sacrament of Penance."

"The foregoing list indicates only a few of the projected articles. We intend to have many articles treating such points as the following: explanations of the Canons dealing with the religious life; explanations of other points of Canon Law; expert commentaries on new decrees of the Holy See that are of interest to Religious, and particularly on those decrees which, according to canon 509, Religious superiors are bound to bring to the attention of their subjects; descriptions of the various Catholic systems of asceticism; hints for sacristans.

"To avoid the difficulty that many Religious will no doubt experience of being unable to spare the time for much personal reading, many of these articles will be so written as to be apt for community reading.

"Articles such as those listed above will form the body of the magazine. Besides these, we intend to have the following regular departments: A suggested subject for monthly recollection; a question-and-answer department; a book review section."

Communications should be addressed to *The Review for Religious*, St. Mary's College, St. Mary's, Kansas.

MATRIMONIAL QUESTIONS. *Periodica* [30 (15 Apr. 1941) 5], has an interesting excerpt from a recent Rota decision which is headed: "De cognitione aestimativa requisita in consensu matrimoniali." The case was decided early this year. The facts are not given, probably because it is not customary to allow them to be published so soon after the event, and, in any case the interesting part is the discussion of the law. (S.R.Rota. Causa Nullitatis Matrimonii coram Wynen. Febr. 25, 1941). The validity of the marriage was evidently attacked on the grounds that the man was a "moral imbecile", or "constitutionally immoral", so that even though he was rational in other

matters he was not sufficiently capable of *appreciating* the ethical side of the matrimonial contract.

Several experts all agreed in diagnosing his case as one of moral imbecility, and they presented elaborate arguments to show that according to modern psychology it is not enough merely to have an intellectual *concept* of an object proposed to the will, but in order that a person can be said to choose it deliberately, he must also have an intellectual *appreciation* of the object i.e., he must be able *to weigh its value*. The Rota finally decided that it was not clear that the marriage was invalid on the grounds alleged. The interesting thing is that the judge considered it necessary to discuss at length the psychological theory requiring an "appreciative perception" of the object, took the trouble to translate it into equivalent scholastic language, and recognized the possibility of deciding a case on such grounds. The opinion is much more sceptical about the possibility of true "moral insanity"—quoting various experts to show that they disagreed among themselves. Hence it insists that it is only with the extremest caution that such a mental disease can be admitted to be the reason why a person is incapable of that "appreciation of value" requisite in order that matrimonial consent be based on sufficiently mature deliberation.

The previous issue of *Periodica*, [29 (15 Dec. 1940) 269] had contained an article by Fr. Raymond Bidagor, S.J., "Circa ignorantiam naturae matrimonii", which treated a somewhat similar but more familiar problem. Is it necessary to the validity of marriage that the contracting parties have knowledge, even explicit knowledge, of the sexual act? After explaining in detail canon 1081 §2 on the object of consent, and canon 1082 §1 on the knowledge necessary for validity, the author explains the opinion of some modern authors who seem to require sexual knowledge for valid consent. He considers this opinion to be false, and even calls the opposite "sententia communis" (p. 279), and gives the arguments to support his view in detail. He holds, therefore, that it is sufficient to have the knowledge mentioned in canon 1082 §1: "Ut matrimonialis consensus haberi possit necesse est ut contrahentes saltem non ignorent matrimonium esse societatem permanentem inter virum et mulierem ad filios procreandos." And he does not include any knowledge of the sexual act as requisite. He concludes: "Quare horror post coniugium manifestatus, quo puella contendat nunquam actum adeo turpem ullo modo voluisse, ac proinde renuat consummare matrimonium, non necessario manifestat puellam nescivisse quae necessaria scitu esse dicuntur ad matrimonium contrahendum. . . . Unde duae puellae, aeque ignarae copulae, quarum una nihilominus *vellet*, sed altera *nollet* inire matrimonium si sciret copulam esse ad filios procreandos necessariam, utraque contraheret matrimonium valide."

Father Bidagor in defining the essential object of matrimonial consent, or the essence of marriage according to the Code, insists as canonists are

wont to do only on the "jus in corpus in ordine ad actus per se aptos" etc., as the adequate definition of the essential object. Writing in the *Homiletic and Pastoral Review,* [41 (July 1941) 969], Fr. J. A. McHugh, O.P., summarizes the work of an author who takes quite a different view of the essence of marriage. The author is Dr. Hubert Doms and his work is the much discussed *Meaning of Marriage.* (New York. Sheed and Ward. 1940), Dr. Doms does not of course wish to contradict Canon Law but he does insist that it would be better to drop the terminology of "primary" and "secondary" ends, and recognizing that the reciprocal fulfillment of the partners is the *personal* end of marriage, and childbearing its *biological* end, be content to look at the institution in this realistic way. Dr. Doms expounds and defends his theory with such acumen that it deserves more lengthy discussion than can be given here. Father McHugh's outline gives the gist; at a later time more will be said of it in an article in THEOLOGICAL STUDIES.

One of the problems connected with the primary end of marriage is the possibility of contracting a valid marriage on condition that birth control will be practiced, for a time, or forever. In the *Irish Ecclesiastical Record,* [77 (Jan. 1, 1941) 71, and 77 (Apr. 1941) 348], Father J. McCarthy goes into the question (proposed by a correspondent) in some detail. As is usual in questions involving consent, no apodictical answer is possible. All depends on the intent of the parties, and this is a most difficult question of fact which must generally be decided by presumptions; for the parties rarely have explicit intentions which distinguish between the granting of a right itself, and the use of the right. The present practice of the Rota seems to be to presume the invalidity of a consent which was made *on condition* that birth control will *always* be practiced, but to presume validity where the agreement is temporary.

But lest this practice raise false hopes in anyone it may be well to quote here a letter addressed to the Bishops of the United States on Sept. 23, 1938, by the Apostolic Delegate, on the handling of marriage cases. The letter contains some observations that the Sacred Congregation of the Sacraments desired to have communicated to the Ordinaries. The pertinent parts are published now by Bouscaren, *Canon Law Digest, Supplement* 1941 under canon 1960. "It is only right that the tribunals examine with benevolent kindness the cases presented by the laity and assist them in their difficulties of married life. But it would be a mistake to consider the ecclesiastical tribunal as a kind of clinic for unhappy marriages where the judges are bound to adjust unfortunate situations at all costs, or at least with exaggerated leniency. Such an erroneous attitude would wound the sacred bond of marriage, indissoluble by divine origin, and harm the very solidity of the family and society.

"It is imperative that tribunals and judges ever bear in mind the fundamental principle that a marriage, once celebrated, enjoys the favor of law,

a principle, which cannot and should not yield except when nullity is irrefutably proved. This *favor juris* must be safeguarded particularly in cases involving defects of consent, simulation, exclusion of the *bona matrimonii* and the like. For it is here that laxity may arise and the faithful, and perhaps even non-Catholics, be shocked and scandalized.

"As is well known the Holy See has been constrained to recall to mind not without good results, first through the Commission for the Interpretation of the Code, and again in the Instruction of August 15, 1936, the inability of consorts to impugn a marriage whose nullity was caused by their own culpability or vitiated consent. To permit such persons to prove their guilt, and so be liberated from a burdensome bond would be to reward the guilty party. Such procedure, by encouraging violations of the law, would be tantamount to its abrogation.

"Hence the case in which the Promoter of Justice can impugn the marriage, when the consorts are disqualified, is very rare indeed, not to say exceptional. The reason is that the Promoter of Justice, under the authority and guidance of the Bishop, can act solely to foster the public good. And the public good requires precisely that the culpable parties should not acquire freedom, as if in reward for their fault, but rather, *digna factis recipiant*, that they receive what is due their evil doing, and in this way serve as a warning to the rest of the faithful not to defile the celebration of Christian marriage with the exclusion of the *bona matrimonii* or with simulations of consent.

"The innocent consort can impugn the marriage invalidated by vitiated consent of the other party only when this consort is truly innocent, that is, when he or she has not in the least participated—not even only externally or by subterfuge—in the evil intent of the other party; and when moreover, he or she was ignorant of it before the marriage.

"In cases of exclusion of the *bona matrimonii*, conditions, simulations and the like, judges should bear in mind that ordinarily consorts who claim to have excluded the *bonum prolis* have in reality agreed to exclude the proper exercise of marriage prerogatives and duties, but not its basic rights. Hence in such cases the marriage is valid, except of course in the very rare instances where the evidence proves that the consorts have effectively excluded the very *jus radicale* and have had the positive will *se non obligandi* and not merely *obligationem assumptam violandi.*"

The United States has recently seen much legislation requiring medical examinations before marriage and even forbidding marriage to those who do not produce a certificate that they are free from venereal disease. Massachusetts is the latest state to have adopted legislation along these lines. But the Massachusetts law does not leave itself open to the same criticism as many of the others because it simply requires the medical examination, without forbidding the marriage of those who turn out to be diseased. The

legislators probably believe that very few couples will marry once they are both aware that one of them is dangerously infected. In the *Civiltà Cattolica,* [92 (19 Apr. 1941) 94] Fr. F. M. Cappello, S.J., treats a similar question. An Italian jurist, Funaioli, had held that if the state (Italy) made hereditary disease a perpetual impediment to marriage, the rights of the Church (under the Vatican Pact) would not be infringed. Cappello, without developing the idea that the Church alone has the power of instituting impediments to marriage where the baptized are concerned, shows that such legislation would not only violate the Concordat but would be a violation of natural law: "A legislative disposition which would forbid matrimony *absolutely and forever* to those who were affected with some hereditary disease, would be unjust, contrary to the principles of morality, violative of the natural rights belonging to each individual."

In the same article, which he calls "Esame di alcune recenti opinioni in Materia Matrimoniale," Cappello refutes the opinion that the constitutive element in matrimony is not the consent of the spouses, but the *pronunciamento* of the official who (acting for the government) celebrates the marriage. Finally he considers the view maintained by certain individuals not named, that "affiliation" (an institution something like adoption, but clearly distinct from it in Italian law) constitutes a diriment impediment to marriage in canon law in virtue of canon 1059. In his usual brisk style he demolishes the opinion.

The Church labors at a disadvantage in many respects nowadays in the enforcement of her marriage laws, and other laws affecting the social welfare of the community. Her authority does not extend or only doubtfully extends to the great mass of citizens, and even in the case of her own children she is unable to *enforce* her legislation. It was not always so. A recent work: *Papal Enforcement of Some Medieval Marriage Laws,* by Charles Edward Smith (University, Louisiana. State University Press. 1940), describes times when the Pope was able to sanction his decrees. The work deals principally with violations of the laws concerning consanguinity and affinity. It may be that in modern times when the Church is powerless to make effective laws on some of the social aspects of marriage, we may eventually see a willingness to allow the state to legislate on points which *per se* come within the competence of the ecclesiastical jurisdicition. And as she canonizes the civil law in the matter of adoption, or of contracts, she might without abdicating her authority extend this policy further.

Cappello has another set of minor matrimonial questions in *Jus Pontificium* [20 (1940) 25] "Questiones Peculiares de re Matrimoniali." In the first of these he inquires: "Utrum acatholici exempti a forma celebrationis matrimonii subsint, necne, normis praefinitis in can. 1133sq. ad simplicem convalidationem quod attinet?" These canons provide for the renewal of consent. Cappello shows that the required renewal is of merely ecclesiastical

origin and hence certainly not required in the case of nonbaptized persons. He furthermore defends ably the view that since it is a question of form, and baptized non-Catholics are exempt from form, they are also exempt from these provisions. The point could easily be of importance in settling the validity of a convert's marriage.

The other questions have to do with the principles laid down in canon 1014, which decrees: "Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur. . . ." and canon 1127: "In re dubia privilegium fidei gaudet favore juris." Cappello decides that both these principles are *juris divini.* With regard to the first one he argues that the Church could never permit the risk of violating the divine law, e.g., by allowing a second marriage when the first was doubtfully valid. However this point is not clear. The Church does permit such a risk when she allows the marriage of persons who are probably perpetually impotent. (Dr. Donovan refers to another comparable case i.e., the marriages of half brothers and sisters among pagans which have been allowed to stand on their conversion to the Church. *Homiletic,* [41 (June 1941) 894.]) It is one thing to say the Church will not permit this risk in case of a doubtfully valid previous marriage and another thing to say that she could not. The theological justification of such a permission if it were ever granted would rest on some theory of probabilism—the principle of which extends to divine as well as to human law.

Cappello treats these two principles in the abstract and without reference to any particular case. For a practical application to an actual case the reader is referred to "An Easy Hard Marriage Case," by Rev. Joseph P. Donovan, C.M., in *Homiletic and Pastoral Review,* [41 (July 1941) 1010]. By a course of reasoning which is too intricate to reproduce here, the author applies the principles of canons 1127, 1014, and 1070 §2, to his case, and avoids the danger of solving it "in an easy wrong way instead of in a hard right way."

One of the cases where the Church is considered adamant in applying the principle: "standum est pro valore prioris matrimonii" is the case of doubtful death of a spouse. In *Proof of Death in Pre-Nuptial Investigation* (Washington D. C. Catholic University of America Press. 1940), which was mentioned in these pages before, the author, Rev. Patrick W. Rice, shows how presumptions are made use of to arrive at the moral certitude required; and that this moral certitude even in the instruction of 1868 is made the equivalent of *maxima probabilitas.*

Another dissertation from Catholic University which deserves high praise is: *Supplied Jurisdiction According to Canon 209,* by Rev. Francis Sigismund Miaskiewicz. (Washington D. C. Catholic University of America Press. 1940.). The author gives a thorough historical review and competent commentary on the present legislation which covers all the problems which have

arisen in connection with this canon. The question of applying the canon to assistance at marriage is not an easy one, nor one to be answered yes or no. The author treats the question at length (40 pages). He does not believe the suppletory principle is applicable where only *one* marriage is concerned, for his fundamental norm of interpretation is that the canon looks to the common good, not to the good of individuals.

The same principle leads him to conclude that the broad application of the canon in the case of confessional jurisdicition made by such authors as Cappello, Vermeersch, and Vidal, will not stand up. His exposition of both sides of this much disputed point is probably the best that can be found anywhere. He states the arguments of both sides with great fulness and accuracy. But his conclusion that the interpretive theory lacks *all* probability and hence cannot even claim the benefit of the second half of the canon does not commend itself to the present writer. Apart from the argumentation which seems not to be flawless, it is a very bold assertion to say that an opinion which has been taught publicly in Rome for about thirty years, not in one university but in many, by some of the greatest modern canonists the Church has had, consultors to the Roman Congregations and of the Commission for Interpreting the Code, and which moreover has been taught by some of them not merely as a tenuously probable theory but as the only practical doctrine to follow,—it is a very bold thing to say that such an opinion is so devoid of probability that one is not justified in using the second part of canon 209 and putting it into practice.

ROMAN RESPONSES. CANONICAL VARIA. On April 9, 1940, Propaganda abolished the oath (hitherto imposed on missionaries to India) against the Malabar rites. [*AAS*, 32 (25 Sept. 1940) 381]. It was to be expected that some such step would be taken in view of the fact that some months before (Dec. 8, 1939) Propaganda had issued an instruction permitting certain Chinese rites and abolishing the oath against them. [*AAS*, 32 (22 Jan. 1940) 24.] This instruction followed upon a similar settlement of the problem made for Japan by the Apostolic Delegate under Pius XI. Dom Ernest Graf O.S.B. writes, *Homiletic and Pastoral Review*, [40 (July 1940) 1128]: "The measure thus taken is a momentous one. It disposes of a controversy that has done untold harm in the Chinese mission field. At last a Chinese may become a Christian without having to cease being a Chinaman, for it must be borne in mind that at first the Chinese converts were made to adopt the names, and even the surnames, of those who had baptized them, as well as many of the habits and customs of their western apostles." An extensive explanation of the Instruction is given by Father Tahera C.M.F., in *Commentarium pro Religiosis et Missionariis*, [(Jan. 1940) 5.]

The abolition of the oath against the Malabar Rites is made the subject of an excellent historical study by the eminent missiologist and sinologist Father

Pasquale d'Elia S.J., in *Civiltà Cattolica,* [91 (1 June 1940), 331]: "L'abolizione del Giuramento contro i Riti Malabarici in India." (He gives a briefer comment on the same decree in *Periodica,* [29 (Dec. 1940) 376].

Father d'Elia traces the historical origins of the controversy and gives an interesting description of the much disputed rites. People of cast were accustomed to wear hanging from the shoulder a cord of three or five strands. This usage was Christianized by a liturgical blessing approved by the Ordinary, and the priest "imposed" the cord as we do with scapulars nowadays. Christians usually ornamented these cords with a crucifix or a medal. These upper class people also wore the *kudumi,* i.e., their hair done up in a knot. The hindus of those days were accustomed to bathe publicly accompanying their ablutions with religious rites and prayers. DeNobili permitted the baths but forbade all superstition and required Christians to wear a crucifix or a medal conspicuously so that it would be apparent they were not taking part in false religious rites. The *tali* was also permitted, a golden charm or symbol which the groom hung about his bride's neck when they were married. DeNobili with the permission of the local ecclesiastical authorities, had also tolerated the adornment of the body with ashes and a pigment made from sandal wood (insisting that superstitious religious rites be omitted), and had likewise yielded to the brahmins' horror of spittal by omitting that part of the baptismal ceremony. These were the famous Malabar rites which occasioned the whole controversy. Whatever the merits of the original controversy, it is clear that today the Holy See is ready and even anxious to recognize that practices which at first sight seem to smack of religious error may turn out to be merely civil ceremonies, innocent of all superstition. Pius XII has said of the Chinese practices: "Whatever in these customs is not indissolubly linked with religious error will always be benevolently examined and whenever possible will be protected and promoted."

Canon 1099 §1 n. 3 holds Orientals to the Latin form of marriage when they marry one belonging to the Latin rite. But Canon 98 §4 allows a woman of the Latin rite who marries an Oriental to join his rite either "on entering marriage" or during their married life. It seemed to some commentators, therefore, that such a woman could be considered no longer of the Latin rite at the moment of marriage, and hence she and her husband would not be bound to the Latin form but could marry according to the Oriental form of her husband's rite. The Code Commission (29 April 1940) when asked to decide this point held that in such a case the woman was still of the Latin rite at the moment of marriage and hence she and her husband were bound to the Latin form. This is the obvious sense of canon 1099 §1 n.3 and canon 98 §4 lends itself more naturally to such an interpretation.

The Congregation of the Oriental Church issued a decree on November 23, 1940 reserving to itself the permission to allow Catholics whether cleric or lay to transfer from one rite to another. The decree revokes therefore

the faculties conceded to Apostolic Nuncios and Delegates in "Nemini licere" Dec. 6, 1928. (*AAS*, 1928, p. 416).

According to canon 1099 §2 and its official interpretations, children born of non-Catholic parents, or even of one non-Catholic parent, though baptized in the Catholic Church, are not bound to the Catholic form of marriage if they have been brought up since infancy outside the Church. Some canonists were of the opinion that they were not bound by the impediment of *disparitas cultus* either, since for many of them (those marrying non-baptized persons) the exemption of canon 1099 §2, would be useless unless they were exempt from the impediment, too. But the Code Commission has decided (29 April 1940) in the opposite sense, the one more commonly held by canonists; such persons are bound by the law of canon 1070 on disparity of cult. Father J. Creusen S.J. comments on the response in *Periodica,* [29 (15 Dec. 1940) 389].

H. Beijersbergen S.J., solves an interesting case on the form of marriage in *Periodica,* [30 (15 Apr. 1941) 46]. "Peter and Anne, non-Catholics baptized outside the Catholic Church, have been receiving instructions from a priest in the Catholic faith for two years. The validity of their baptisms is morally certain; they have no further reasonable doubt about Catholic truths and have often said so to the priest, and they have, not once but many times, assisted devoutly at mass in places where they were not known, and have given other external signs of faith publicly. They want to be reconciled with the Church formally and contract their marriage according to the canonical form; but the parents of Peter are very hostile to the Catholic religion and Peter is very dependent on their financial assistance; consequently they defer their formal entry into the Church temporarily and contract a merely civil marriage. Is this marriage valid?" In solving the case, the author first reviews the principles on deferring one's profession of faith, then discusses the meaning of "conversi" in canon 1099 and decides that at most Peter and Anne are only doubtfully "conversi" within the meaning of that canon, and hence not certainly bound to the Catholic form. But even if they are "conversi" he maintains that their marriage is valid under canon 1098: "Si haberi vel adiri nequeat sine gravi incommodo parochus vel Ordinarius" etc. He concludes: "Petrus et Anna matrimonio civili valide iuncti sunt, idque si considerentur sive ut acatholici sive ut conversi."

On the receiving of converts from heresy into the Church, Dr. Joseph P. Donovan C.M., writes in the *Homiletic and Pastoral Review,* [41 (Apr. 1941) 699, and 41 (June 1941) 893], under the title: "Humiliating Converts Unjustifiably." He says: "Converts in all too many cases are made to submit to two humiliations, and seldom is either justifiable. 1) They are made to recant heresy and thereupon absolved from an excommunication which in almost every case has not been incurred. 2) After conditional

baptism given on solid doubt, in most instances, converts are asked to confess integrally their doubtful sins. The recantation is meaningless outside of a few exceptional cases. And the sacramental avowal of sins that may no longer exist is a tyrannizing over conscience, if this avowal is made because the impression is given that it is divinely mandatory."

Dr. Donovan argues with considerable plausibility in favor of his opinion in these matters, and the vigor and freshness of his point of view are sufficiently intriguing to make one almost forget a certain belligerency of tone in his condemnation of what has been the common practice. In the June issue a correspondent, who accepts his teaching on the first point (that ordinarily there is no need of a recantation of heresy), objects to the second proposition, making a distinction that smacks of equiprobabilism. Dr. Donovan holds his own in the response. The degree of actual humiliation to which the average convert is being subjected does not seem to be alarming or outrageous. Nevertheless, anyone who is seeking the truth of the matter (i. e., whether the obligation is there or not) cannot overlook Dr. Donovan's arguments.

An important book for Chancery offices, Provincials of Religious Orders, pastors, and other ecclesiastical superiors has been published by Dr. W. J. Doheny, C.S.C., *Practical Problems in Church Finance,* (Milwaukee Bruce. 1941). It deals with the alienation of Church property and the canonical restrictions on Church debt. One can get a good idea of the style and method of the book by consulting an article by the same author: "Church Finance and Problems of Alienation," in *The Jurist,* [1 (Apr. 1941) 97]. This article is merely an outline of the principal provisions of Canon Law with regard to alienation. It explains the nature of alienation, the required permission (for valid or licit alienation), and the manner of estimating, in view of the current exchange, the amount of money which may be alienated without permission. The book itself treats all these points more thoroughly. The method of presentation is clear, brief, and graphic; the book is well indexed, and its value is enhanced by two appendices, one of which contains forms of petitions to be addressed to the Holy See, and the other a letter of the Apostolic Delegate, Archbishop Cicognani, dated Nov. 13, 1936, and addressed to Ordinaries and Religious Superiors in the United States. This letter contains practical norms for applying the canons on alienation to our own circumstances in the United States. The actual text of the Sacred Congregation's instruction seems not to have been communicated.

The laws of domicile generally receive a rather thorough treatment in the clerical journals of countries where diocesan or provincial statutes provide for a division of funeral offerings based on the domiciliar or quasi-domiciliar status of the deceased. This is due, doubtless, partly to a love of the law, and partly to a desire to see justice done in the distribution. And apart from

all practical considerations, questions of this kind can be of interest to the speculative canonist, as Dr. M. J. Fallon remarks in *Irish Ecclesiastical Record,* [77 (Jan. 1941) 79]. His general problem is put in the form of a question: "Where has a wife who becomes insane a domicile or quasi-domicile?" And this question is sub-divided into five other questions to which he replies *seriatim.*

"1) Does a wife on becoming insane *ipso facto* lose the domicile of her husband and automatically acquire the domicile of her curator?" To this question Dr. Fallon answers in the negative in spite of the wording of canon 93 §1; and with reason, for the relationship of dependence which is the basic reason why wives necessarily acquire their husband's domicile cannot be said to be automatically severed by insanity. "2) Can a person have two legal [i.e. necessary] domiciles?" "Authors, while admitting the possibility of a person's having two or more voluntary domiciles, do not contemplate the possibility of the possession at the same time of two necessary or legal domiciles. They even exclude the possibility of the concurrence of a legal and voluntary domicile. . . . " "3) Is an insane wife (in an asylum) legitimately separated from her husband?" The author shows that such a state does not *per se* amount to legitimate separation, without the judicial or administrative intervention of the Ordinary; but he does not refer to the response of July 14th 1922, (*AAS,* vol. 14, p. 526) which would seem to confirm this view. "4) Can an insane wife acquire a domicile or quasi-domicile?" "Since canon 93 §2 refers to the acquisition of a voluntary domicile,—which an insane person is incapable of acquiring,—"the only domicile (or quasi-domicile) which an insane wife legitimately separated from her husband can obtain is a *necessary* domicile, this being the domicile of the curator, if it is clear that she has lost her husband's domicile." "5) Who is the *custos* of the insane wife?" It is not clear from the Code whether the curator is the one recognized by civil law, or one appointed by ecclesiastical authority. Dr. Fallon is of the opinion that where the Code is not clear, and where the civil authorities have not intervened by appointing a curator, the husband (he is speaking in view of the civil law in Ireland) has a right to consider himself the curator.

Another question of domicile is treated at length by Dr. Fallon in *Irish Ecclesiastical Record,* [77 (May 1941) 469.] The facts were as follows, submitted by a correspondent "As proof that a man relinquished his domicile in parish A and acquired a new domicile in parish B the following facts are alleged: 1) That the man came to reside and took up residence in a Home for Aged Gentlemen in parish B (where he remained until his death more than a year later). 2) That he told the Superior of the Home that it was his intention to end his days there. 3) That he put his farm in parish A up for public auction." The correspondent argues against these proofs with such show of reason that Dr. Fallon writes about 2000 words to show that although the

above facts might not be conclusive in the face of others not communicated, they do amount to strong evidence in favor of the acquisition of a new domicile. This seems to be the view that commends itself to common sense, too.

Another problem which occasionally calls for adjudication between pastors is raised by canon 1097 §2 "In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi justa causa excuset. . . ." An anonymous writer in the *Homiletic and Pastoral Review,* [41 (April 1941) 745], interprets this "just cause." "The Code demands only a reasonable motive to entitle the pastor of the groom to perform the marriage ceremony, for he is a proper pastor of the parties as well as the pastor of the bride. If there is a good reason why the marriage should be contracted in the groom's parish, the pastor of the groom has the right to officiate at the marriage, and he does not need the permission of the pastor of the bride. There is no grave obligation to have the marriage in the parish of the bride. Convenience and utility are sufficient reasons; even a slight reason is sufficient for going to the groom's pastor. But some reason is necessary, for the Code wants the bride's parish to be the place, and to deviate from this requires a just cause. . . . Some just causes permitting the marriage in the groom's parish would be the following: imminent departure; elopement; objections raised by parents; preference for a military chaplain; the fact that the bride made her First Communion in the parish of the groom, and her parents were married there; saving of expense; avoiding some inconvenience; forestalling an expected humiliation; refusal of the bride's pastor to marry, or his insisting on (e.g.) a Mass or a High Mass; prominence of the groom in his own parish; close friendship between the groom and his pastor. If any just cause is present there is no obligation of seeking (on the part of any other proper pastor) the permission of the bride's pastor. It would of course be expedient to notify him. If no just cause is present, then the canonical rule should be carried out, but when the parties wish to marry in the groom's parish, there is usually some justifying reason."

Dr. Fallon, writing in *Irish Ecclesiastical Record,* [77 (Apr. 1941) 361], in answer to a similar inquiry gives a comparable interpretation. But it is to be noted that particular diocesan law may modify these provisions of the Code to some extent, though not totally contravene them. "It is obvious," writes Dr. Fallon, "that the prescription of general law (can. 1097 §2) could prove to be a fruitful source of contention among parish priests, especially where the emoluments accrue to the priest who actually assists at the marriage. It is probably for this reason that particular law in some places has modified the general law, either by declaring that certain causes are not sufficient to justify marriages outside the bride's parish, or by always requiring the consent of the *parochus sponsae* for such marriages, or by assigning a certain portion of the emoluments to the *parochus sponsae* in such cases.

It is doubtful however, whether particular law can validly prescribe *sub gravi* that marriages be always celebrated *coram parocho sponsae*, as this would seem to be contrary to the provision of the general law expressed in canon 1097 §2, which, unlike canon 1097 §3, makes no exception for particular law."

"Sponsors and Testimonials" [*Ecclesiastical Review*, 104 (March 1941) 254] discusses the custom of demanding from the pastor of a sponsor at Baptism or Confirmation a testimonial as to his or her suitability. "Most priests make out such testimonials gladly for various good reasons which will be given below," says Father Edward S. Schwegler, the author of the article, "but some find the issuance of the testimonials quite a nuisance, and some may even refuse to give them. A recent response in the *Ecclesiastical Review* . . . would seem to uphold the latter in their negative attitude." The author, in a manner that is both practical and scholarly, proceeds to show the necessity of such testimonials in many cases. He explains the requirements of the canons for sponsers, describes the various types who sometimes present themselves in that capacity and comments on an Instruction of the Congregation of the Sacraments on Baptismal Sponsors [*AAS*, 18 (Nov. 25, 1925) 43]. One may feel that his conclusions are somewhat exacting in view of the fact that in actual practice not one case in a hundred calls for the active intervention of the sponsor to care for his spiritual child. Nevertheless, some such check is needed unless we are ready to reduce the whole idea of sponsorship to a mere formality, commemorative of something that once mattered.

The Jurist, [1 (July 1941) 225] contains "A Canonical Theory of Catholic Action" by Rev. Timothy J. Champoux D.C.L. "Catholic Action is defined as a participation of the laity in the apostolate of the hierarchy. Both 'laity' and 'hierarchy' are juridical concepts, though the term itself 'Catholic Action' is conspicuously absent from the Code of Canon Law. Therefore there is a current need to examine this lay apostolate in the light of canonical principles. What is the apostolate of the hierarchy? In what phase of the hierarchical apostolate may the laity participate? To what extent is this participation permitted by law? These questions find definite answers in the Code." Father Champoux gives us these answers in clear, summary form. He shows that the laity cannot, from the nature of the case, participate in the power of orders, nor in the power of jurisdiction insofar as this has to do with the power of *government*. The work of the laity must be restricted to participation in the *magisterial* power of the Church by which the Church propagates, conserves, and defends the faith. The extent to which this participation is permitted and required by Catholic Action is then explained; and such subjects as the necessity of a *missio canonica*, and the necessity of episcopal approbation even for private teaching are discussed.

Catholic Action is treated from a non-canonical standpoint and with particular reference to the Mystical Body and the spiritual life of the participants in "The Basis of Catholic Action" by Stanley B. James [*Ecclesiastical Review*, 105 (August 1941) 104]. But we await with particular interest a further treatment of this subject along canonical lines in which the place of such organizations as the Holy Name Society, and the Sodality of Our Lady, etc., would be discussed in more detail.

The 1941 Supplement to Father T. L. Bouscaren's indispensable *Canon Law Digest* has now appeared. (Milwaukee. Bruce. 1941). This work holds a unique place among the tools of the canon lawyer, since no other digest rivals it in completeness and usability. In addition to the fact that it is in English, thus making many documents available for immediate use in correspondence, etc., it takes special care to note everything of particular interest in the United States. For instance under canon 534 we find the text of the letter of the Apostolic Delegate on alienation of Church property, referred to above. And under canon 856 we find a translation of the "*Instructio Reservata*" on daily communion, which has not been brought to the attention of religious, or even of religious superiors, with as much diligence as the matter would seem to require. The Preface of the *Supplement* states "The present *Supplement of Canon Law Digest* adds the official documents of the past four years to those originally published in the first edition of Volume 2 in 1937. It contains the documents which have appeared in the *Acta Apostolicae Sedis* for the years 1937, 1938, 1939, and 1940. To these have also been added a number of documents first published recently in the *Sylloge praecipuorum documentorum recentium Summorum Pontificum et S. Congregationis de Propaganda Fide necnon aliarum SS. Congregationum Romanarum.* This *Sylloge*, officially published by the Sacred Congregation of Propaganda in 1939, is a distinct addition to available sources for the study of canon law. It contains authentic documents, many of which had never before been published, from the Sacred Congregation of Propaganda, the Holy Office, and other Sacred Congregations, and the Commission for the Interpretation of the Code, from 1907 to 1938. Consistently with our purpose to keep the *Canon Law Digest* a complete and up-to-date book of references for all official documents affecting the Code of Canon Law, we could not neglect this material. It has been included in the usual numerical order according to the canons which are principally affected."

And in addition to this material Father Bouscaren has taken the trouble to get hold of many private replies to Bishops and Chancellors in this country. No other single practical reference work in Canon Law is as valuable as this Digest. It is the hope of every canonist that it may never be allowed to lapse.