

CURRENT THEOLOGY

NOTES ON MORAL THEOLOGY

FUNDAMENTAL AND PASTORAL

If moral theology has fallen into disrepute, it is because in modern times it has been associated, or even identified, with the method known as "casuistry." Originally condemned because of the moral laxity it fostered (a stigma from which it has never fully recovered), the casuistic method is criticized as much today for the rigidity of its conclusions which supposedly do not make sufficient allowance for the demands of the particular situation. In an article in *Sciences ecclésiastiques*, Edward F. Hamel, S.J., presents a much needed discussion of the value and limits of casuistry.¹ He shows how essential this method is for providing what might be called the "middle" principles of morality. Every age presents its own moral problems which call for their own solution. Casuistry is the procedure which bridges the gap between abstract moral principles and concrete problems.

Behind the attack on casuistry Fr. Hamel sees an attack on objective morality. Protestants argue that the natural law has lost its efficacy due to original sin. Man's salvation does not lie in the observation of precepts but only in charity. It is not what you do but why you do it that makes the difference between a good and a bad act.² The situationists object rather to the tyranny and the totalitarianism of objective morality. In general, the aim of the adversaries of objective morality is to substitute an intentional or a circumstantial morality where the intention or the individual circumstance is the basic determinant of the moral act.

Fr. Hamel admits that the casuistic method is not totally without blame for the hostility it has aroused. It has given rise to the complaint that it favors laxity because it has been limited to a large extent to working out a morality of obligation; that is, a minimal morality. While admitting that this is a necessary function of casuistry, he argues that it should not be the

EDITOR'S NOTE.—The present survey covers the period from January to June, 1959.

¹ "Valeur et limites de la casuistique," *Sciences ecclésiastiques* 11 (May, 1959) 147-73.

² Typical of this mentality is the statement of the Augustana Evangelical Lutheran Synod of 1954 on family planning: "So long as it causes no harm to those involved, either immediately or over an extended period, none of the methods for controlling the number and spacing of the births of children has any special merit or demerit. It is the spirit in which the means are used, rather than whether it is 'artificial' or 'natural' which defines its 'rightness' or 'wrongness.' 'Whatever ye do, do all to the glory of God' (I Cor. 10:31) is a principle pertinent to the use of the God-given reproductive power." Reprinted in *Social Action* 25 (Dec., 1958) 18.

sole function. There is no reason why casuistry should not be applied to the task of working out the more perfect solution—and not merely the minimal solution—of a moral problem.

He admits, too, that the situationists have been of help in pointing up the limits of casuistry. Although it is a necessary procedure in reducing moral principles to more concrete, and therefore more workable, norms, it never provides more than a general case solution. In other words, it never provides more than the major of the prudential syllogism. Casuistry is not a substitute for the virtue of prudence. This virtue must still function to relate the case solution to the individual situation; that is, to apply the general solution to this particular decision. The extent of the prudential inquiry will, of course, vary with the needs of the individual case, but the prudential judgment and precept must always bridge the gap between the casuistic solution and the moral act.

Thomas J. Wassmer, S.J., also feels that we owe a debt of gratitude to the situationists.³ They have given us a realization of the inadequacies that arise from any consideration of the determinants of morality in isolation from one another. He feels that our own moral theology has put too much emphasis on the object to the neglect of the circumstances of the moral act. When one considers the fact that there are so few acts which are in themselves intrinsically evil, he will understand how little morality can be decided merely from an analysis of the object. Unless the circumstances are considered, that is, unless the situation is considered, one can seldom come to a moral conclusion.

Fr. Wassmer is admittedly considering the term "object" in a much narrower sense than moralists ordinarily use it. They willingly admit that circumstances at times enter into the object and give it morality. Thus, for instance, the direct killing of an innocent person is wrong *ex objecto*, even though, strictly speaking, it is because the killer has no right to kill, a circumstance, that it is wrong. The same is true of stealing and many other acts. The circumstance is, as it were, absorbed into the object in these cases since, as far as human power goes, the two are inseparable. Moralists consider such acts wrong *ex objecto*. If one understands the term *malum ex objecto* in this sense, and this is certainly the most practical usage, there are many more acts which are sinful *ex objecto*.

³ "A Re-examination of Situation Ethics," *Catholic Educational Review* 57 (Jan., 1959) 29-37. Reprinted in the *Catholic Lawyer* 5 (Spring, 1959) 106-12. For other articles on situation ethics see Aidan M. Carr, O.F.M. Conv., "The Morality of Situation Ethics," *Catholic Lawyer* 5 (Winter, 1959) 67-83; also A. Boschi, S.J., "Etica della situazione," *Perfice munus* 34 (Mar., 1959) 152-63.

Similarly, the term "intrinsic evil" can be and is used in different senses. It can include anything that is *prohibitum quia malum* as opposed to what is *malum quia prohibitum*. This would include any action contrary to the natural law either by reason of object, circumstance, or end. The term can also be used to designate anything that is *malum ex objecto*, as opposed to what is extrinsically evil, i.e., evil by reason of some circumstance or evil purpose. Finally, it can be restricted to what is *absolutely* wrong *ex objecto*; that is, what God Himself cannot change, as opposed to what is wrong *relative* to human power. It is in this restricted sense that Fr. Wassmer uses the term.

I would agree with Fr. Wassmer that the circumstances should not be neglected in the consideration of the moral act, but I do not think this calls for a shift of emphasis from the object. I am inclined to think that the fault does not lie so much in the emphasis on the object as in a simplist approach that finds it easier to categorize than to analyze the individual moral act. It would obviously be an abuse to categorize an act as sinful in itself when the sinfulness would really depend on the circumstances. But in judging the morality of such acts as homicide, fornication, stealing, masturbation, calumny, etc., one is unquestionably dealing with sin categories (i.e., acts which are wrong *ex objecto*) that no circumstances will alter. One must certainly recognize the importance of circumstances where they determine morality, but he must also recognize their limits. This is precisely the failure of situation ethics; its reliance upon a kind of unanchored, free-floating prudence that admits no objective sin categories.

Should there be a moral theology for Christians and one for confessors? O. Lottin, O.S.B., agrees with many modern writers on the subject that there should.⁴ A moral theology for Christians should deal with virtue rather than vice. But it should not be a purely speculative treatise on virtue; it should present virtue in the concrete form in which it is found in the teaching and example of Christ and its goal should be nothing less than Christian perfection.

Such a moral theology may not be particularly suitable to the work of the confessor. He has to do for penitents what he can, which may often be much less than he would like to do. Since the Church has never limited her membership to a spiritual elite, there will always be countless mediocre Christians who need the ministry of the confessor, and he must be able and willing to deal with these penitents. To help them he must know the difference between precept and counsel, and since the sacrament of penance has

⁴"Morale pour chrétiens et morale pour confesseurs," *Ephemerides theologicae Lovanienses* 35 (Apr.-June, 1959) 410-22.

been instituted chiefly (though not exclusively) for the remission of mortal sin, he must know where to draw the line between mortal and venial sin. For this class of Christian he must also know what duties are certain and what ones are doubtful. Certainly the confessor should never become complacent with a minimal morality. He should always encourage his penitents to follow the teachings of the Gospel, although he will be realistic enough to recognize that many of them will never get beyond a subsistence level of morality.

There is no way of making a synthesis of these two approaches to morality, but Fr. Lottin urges at least a peaceful coexistence between them. The biblical moralist should not condemn the confessor's preoccupation with sin and *casus conscientiae*, nor should the confessor for his part regard as unrealistic a moral that perhaps is not practical for the confessional. What is needed is a clear recognition that both of these approaches have their use and that both are necessary.

A classic example of a principle that pertains more to the moral of the confessor than to that of the Christian is the principle which deals with the proximate occasion of sin. Although it may be of occasional use in a conflict of obligations, and therefore of use to even the most earnest Christian, it is not primarily an ascetical principle. On the other hand, it is not intended to be a permissive principle, but a restrictive one. It is not meant to encourage dangerous moral living but to set an absolute limit to those who insist on living dangerously. As such, it is not a principle of maximum moral security, nor even a practical norm for healthy moral conduct.

It was perhaps a failure to grasp this perspective that gave rise to the alarm expressed by a nameless author in the *Homiletic and Pastoral Review* over a recent treatment of the occasion of sin.⁵ John C. Ford, S.J., and Gerald Kelly, S.J., give an excellent summary and discussion of the moral teaching on this subject in their *Contemporary Moral Theology*.⁶ They reach the conclusion that in view of the dispute among reputable authors over the proximate occasion of sin, confessors are not justified in imposing the stricter opinion on their penitents. According to this stricter opinion, there is *always* an objectively grave sin when one exposes himself to the truly probable danger of sinning mortally without a proportionate reason. In the opinion of Frs. Ford and Kelly, the complete prudential judgment about a grave obligation to avoid any given occasion must take into account "not only the proximity in terms of degrees of probability of sin, but also the degrees

⁵ "Confused Consciences or Confused Confessors?", *Homiletic and Pastoral Review* 59 (Feb., 1959) 454-56.

⁶ Westminster: Newman, 1958. Cf. chapter 9.

of gravity of the sins in question, and the degrees of utility or necessity which may exist for entering the occasion." Throughout their discussion, they insist that the principle that obligations are not to be imposed unless the gravity is certain is the universal practical rule to be followed by all authors and confessors, regardless of their theoretical opinions.

The anonymous author argues that the position taken by Frs. Ford, Kelly, and many others is an abuse of probabilism, since this principle cannot be applied to the danger of formal sin. In answer, we can agree that no one can licitly put himself in a situation in which he will probably commit formal sin. All moralists admit that probabilism cannot be used to justify such rashness. But one can apply probabilism to a dispute over the *gravity* of the obligation to avoid such an occasion of sin. Where one group of authors holds that an act is gravely sinful and an equally reputable group holds that it is not, there is no obligation to follow the strict opinion. Therefore, if a reputable group of authors holds that it is not a serious sin for a person to put himself in an occasion in which he will probably commit serious sin, this opinion may be followed.

The anonymous author draws a parallel between risking probable danger of physical harm and risking probable danger of spiritual harm, remarking the surprisingly greater lenience allowed in dealing with the danger of spiritual harm. I believe this "lenience" can be explained by noting the difference between these two risks. Where there is question of danger of sin, the external circumstance is never more than an occasion (in the broad sense). But where there is danger of physical harm, the external circumstance is the cause. One who puts himself in circumstances in which death will probably result, puts himself, as it were, at the mercy of these circumstances. But when one puts himself in similar circumstances regarding sin, he still retains the physical capacity to master the circumstances. I believe it is this difference that accounts for the different approach to the occasion of sin.

The conflict between science and the philosophical concept of man as a free being is always a tempting subject for discussion. J. P. Schaller, O.P., argues that modern findings in clinical psychology and psychiatry showing the influence of chemical and instinctual elements on human conduct do not prejudice philosophical freedom.⁷ St. Thomas had already handled a similar problem in reconciling the influence of the heavenly bodies on man with the notion of human freedom. We might add also that theologians have long grappled with an even more difficult problem: the influence of grace on human freedom. The present findings represent just another aspect of the same problem. As a matter of fact, Fr. Schaller points out that the present

⁷ "Psychologie clinique et liberté humaine," *Angelicum* 36 (Jan.-Mar., 1959) 3-25.

study of psychosomatic interactions shows clearly that the mind influences the body as much as the body influences the mind—thus giving a new proof of the dynamic nature of the spiritual side of man.

He makes a final observation that is pastorally significant. Human freedom is not a simple "given" in man; it is something he must work to preserve and extend. If man came into the world endowed with the immediate use of reason, his freedom would be much less prejudiced. But in a paradoxical sense, man is not capable of functioning freely until to some extent his freedom is already prejudiced. Growing to maturity means in a sense developing one's freedom by gradually extending control over instinctive forces and tendencies.

A traditional method of checking instinctual tendencies and assessing spiritual growth has always been the examination of conscience. In an article in *Manresa*, P. Meseguer, S.J., suggests that such an examination must now be complemented by an examination of the unconscious.⁸ This examination would not be concerned in any way with the detection of culpable failings; moral guilt can arise only from conscious and deliberate failings. Its purpose would be rather to bring to the surface tendencies to sin of which the examinee is not conscious, as well as to test the authenticity of virtuous conduct. Odier has remarked that in examining past conduct one should not be satisfied with the conclusion that it was good.⁹ Even if one finds that it was good, he must still inquire whether it was genuine or counterfeit, true or false. A good act may be false either because it is the product of a tyrannical superego rather than genuine virtue, or because it represents a rationalized instinctive drive. This type of self-knowledge obviously requires a more penetrating examination than is needed to distinguish between objectively good and bad conduct. But much of it will be accessible to an examination directed at the motivation behind good or bad conduct, or to other recognized techniques used in spiritual formation, such as spiritual counseling, reading, admonition, etc. To what extent psychiatric procedures and the techniques of clinical psychology should be employed in spiritual formation is a matter that calls for prudent investigation. Certainly, a novitiate should not be turned into a psychological clinic, and should not even have to depend on one. Spiritual health and psychological health are two different goals. But certain methods used in the psychological clinic may also prove useful in spiritual formation. Personally, I feel that great caution and prudence would have to be exercised in borrowing psychological tools.

Nicholas Hobbs, treating the relation between science, particularly psy-

⁸ "Autenticidad y 'examen de inconsciencia,'" *Manresa* 31 (Apr.-June, 1959) 139-46.

⁹ *Les deux sources de la vie morale* (Neuchâtel: Editions de la Baconnière, 1947) 158.

chology, and ethical behavior, points out the difficulties which science and the scientific approach have made for ethics.¹⁰ First of all, the probability theory which prevails in science leads to skepticism regarding any conceptual system based on absolutes, as are many ethical systems. A second source of difficulty comes from the findings of anthropologists. Ethical systems according to these findings seem to be merely the expression of a particular culture with no more than local validity. Finally, with increasing knowledge science has become more tentative about what it holds. Traditional ethical theories are not thought of as time-limited, any more than they are space-limited, whereas scientific theories are considered more and more the best formulation of which scientists are capable at a given point of history.

In spite of these conflicts, he feels that science can actually contribute to ethical conduct. Psychology, for instance, can contribute to ethical conduct by clarifying the process of decision-making. It can also increase the probability of the occurrence of ethically good conduct by freeing a person to act on ethically good hypotheses which he already has but cannot use. On the debit side, however, he realizes that an increasing knowledge of human behavior may lead to a more effective control over conduct not only by the person himself but also by others, thus leading to effective manipulation of one's fellow man. Developing psychological knowledge presents the same dilemma the development of nuclear physics has already faced: it increases the potency not only for good but also for evil.

There is considerable concern over this problem of manipulation today, particularly in the area of advertising. Behind the concern is the fear that man can be determined to act even by stimuli of which he is not conscious. The purely secular mentality is disturbed about the use of such influence only in so far as it is a violation of democratic processes. Others have expressed concern over the morality of prevailing psychologically upon the consumer public. First of all, I think it can be said that the problem is not altogether new. Advertising has been playing on human concupiscences to sell its products for a long time. Within acceptable moral limits, I do not see anything wrong with this appeal. Whether the so-called subliminal advertising is really effective is a disputed point, but even granted that it does prove effective, it may not be any more effective than the conscious suggestion used by current advertising. Whether the urge to buy comes from a conscious appeal or some unconscious source, it should not in the normal person assume the proportions of a compulsion but should be subject to rational decision.

The pastoral work of spiritual formation and direction is particularly indebted today to the findings of adolescent psychology. E. F. O'Doherty,

¹⁰ "Science and Ethical Behavior," *American Psychologist* 14 (May, 1959) 217-25.

in a very enlightening article on the spiritual formation of the adolescent, warns the spiritual director that the adolescent generally learns through the same channels the child uses: introjection, identification, and imitation.¹¹ Ordinarily he does not learn through adult processes; that is, through the acceptance of an abstract principle and the application of it as a standard to a concrete situation. The director should keep this in mind in attempting to direct his charges.

He also warns that a genuine understanding of adolescent phenomena is necessary for successful direction. The newly developed instinctual powers and expanded emotional capacity of the adolescent generate anxiety, since he is not sure of the nature and strength of these powers nor of his ability to control them. It would be a mistake to present religion as a cure for this anxiety; this is not the purpose of religion. Also, one finds in the adolescent a certain aversion for sex. It would be a mistake to confuse this with virtue. Finally, the director should be careful to distinguish between a certain intellectual interest in spiritual things and acquired spirituality. This interest is a good thing, but it is as far from genuine spirituality as a practice match is from the real contest.

One of the major problems encountered by the spiritual director in dealing with souls is the scrupulous conscience. In an article in the *Supplément de La vie spirituelle*, H. Gratton, O.M.I., lists the various forms that scruples take, remarking, however, that in spite of the variety a certain affective immaturity is common to all victims of scruples.¹² It is his opinion that the scrupulous have remained at an infantile affective level, especially in their relations with those who have authority. In the area of therapy he advises that where psychotherapy is called for a clear distinction be made between the spiritual director and the psychotherapist. As for the therapy itself, he seems to favor a nondirective type, feeling that the director should not assume responsibility for the penitent's conduct except in an acute crisis.

In the past I have thought that the nondirective type of counseling was not particularly adapted to the problem of the scrupulous penitent. Direction would seem to be the chief need of the scrupulant. To allow such a person the self-analysis that the nondirective type of therapy seems to encourage would actually tend to cater to the disorder. The scrupulant is already given to excessive self-analysis. I would like to have more information on the effects of such an approach before I would show much enthusiasm for Fr. Gratton's suggestion.

As in the direction of the scrupulous penitent, so in all contact with peni-

¹¹ "Spiritual Formation Of Adolescents," *Studies* 48 (Spring, 1959) 67-77.

¹² "Essai de psychologie pastorale sur le scrupule," *Vie spirituelle, Supplément* 48 (1st trimester, 1959) 95-123.

tents, the personal relationship between priest and penitent is of the utmost importance. The nature of this relationship will be affected to varying degrees by the image which the particular penitent has of the priest. A. Godin, S.J., considers a list of attitudes compiled by a hospital chaplain as a result of his experience.¹³ These are attitudes which the penitent brings with him to the relationship and are not the fruit of experiential knowledge of this particular priest. For example, some penitents look upon the priest as a kind of religious policeman who comes to check up on their religious conduct. This attitude leads them to protest their goodness, their avoidance of sin, etc., before any inquiries on the part of the priest.

What should be the reaction of the priest in the face of such preconceived attitudes? Fr. Godin warns that the priest should take cognizance of a tendency to respond blindly to such attitudes instead of trying to structure a relationship with the person. For instance, in the above example the priest might simply agree with the patient that he is a good Christian, etc., instead of trying to sound out his attitude by some such response as: "So you think I have come to check up on your religious life."

Anyone acquainted with the theory of client-centered therapy will recognize this technique suggested by Fr. Godin. It is not intended to reassure the person but rather to provoke the self-analysis necessary to gain an insight into his aprioristic attitude toward the priest. It can certainly be a very effective technique, but I am not sure that a hospital chaplain, for instance, would have the time to sound out the various attitudes he might run into among his hospital patients. He may have to content himself merely with reassuring them and then proceeding with his spiritual ministrations. But in an actual counseling situation, the technique can certainly be used profitably.

A few years back we discussed in these *Notes* the problem of deciding responsibility in criminal cases where there is question of insanity.¹⁴ The traditional knowledge of right and wrong test (M'Naghten Rule) plus the irresistible impulse test were discarded some time previously in the District of Columbia in favor of the so-called Durham Rule. According to the new rule a defendant could not be considered responsible if his crime was the product of some mental disease or defect. As the rule was modified in a series of cases, it came to include not only psychotics but psychoneurotics and even sociopaths.¹⁵ Moreover, the defense had to do nothing more than present

¹³ "Le transfert dans la relation pastorale," *Nouvelle revue théologique* 81 (Apr., 1959) 400-411. *Pastoral Psychology* 10 (Feb., 1959) is devoted completely to presenting Catholic viewpoints on pastoral psychology. It contains a wealth of valuable material on pastoral counseling.

¹⁴ THEOLOGICAL STUDIES 18 (1957) 565.

¹⁵ The term "sociopath" seems to refer to a psychopathic personality whose only abnormality is his repeated crimes against the community.

some evidence of mental disease, and the burden was then on the prosecution to prove that the defendant was sane, or if there was mental disease or defect, that the crime was not the product of this disease or defect. The second half of a symposium in the *Catholic Lawyer* deals with the problems to which the new rule has given rise. Oliver Gasch describes very graphically the predicament of the prosecution in a jurisdiction where this rule prevails.¹⁶ Once a plea of insanity is entered, the burden on the prosecution is such that it is practically impossible to win a conviction. And a plea of insanity is a distinct possibility in the majority of criminal cases under this rule. In fact, the rule is so all-embracing that some suspect that a new philosophy is making its way into our criminal law whereby treatment would be substituted for punishment in dealing with crime and criminals. According to this philosophy criminality and mental illness are two faces of the same coin.

To restore the balance and to protect the public, the 84th Congress passed Public Law 313 which provides for mandatory commitment of those found not guilty by reason of insanity, thus removing the judicial discretion which previously existed and in virtue of which a judge could release a person who, though insane at the time of the crime, was obviously completely recovered. Hugh J. McGee, in the same symposium, illustrates the problems this law has raised for the defense.¹⁷ Even if found not guilty by reason of insanity, his client would be subject to some kind of confinement. Since confinement (for an indefinite time) to the maximum security ward of a mental hospital is not preferable to anything less than capital punishment or a life sentence, defense lawyers are very reluctant to introduce a plea of insanity even in legitimate cases.

Although the law has restored some balance to the situation, it can hardly be considered an ideal solution of the problem. A final article in the symposium by Oley S. Cutler, S.J., takes a critical view of the Durham Rule and seems to favor the norm set down in the Model Penal Code of the American Law Institute.¹⁸ This code definitely eliminates an abnormality "manifested only by repeated criminal or otherwise antisocial conduct" as the basis for an insanity plea. It states that a person is not responsible for criminal conduct if at the time of such conduct "as a result of mental disease or defect he lacks *substantial* capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." This seems to

¹⁶ "Prosecution Problems under the Durham Rule," *Catholic Lawyer* 5 (Winter, 1959) 5-34.

¹⁷ "Defense Problems under the Durham Rule," *ibid.*, pp. 35-43.

¹⁸ "Insanity as a Defense in Criminal Law," *ibid.*, pp. 44-60. For another criticism of the Durham Rule, cf. J. B. Cumming, "Role of the Psychiatrist in Criminal Trials," *American Journal of Psychiatry* 115 (Dec., 1959) 491-97.

be a sane rule, allowing for cases of genuine irresponsibility but at the same time drawing a clear distinction between crime and mental disease. For those who are dissatisfied with the M'Naghten Rule but who rightly object to the Durham Rule, the rule of the Model Code seems to offer an acceptable alternative.

As controversial today as the question of criminal responsibility is the relation between positive law and natural law. Juridical positivists make positive law supreme and refuse to recognize any ethical or moral norms of conduct antecedent to positive law. In an article in *Periodica*, P. Huizing, S.J., calls this positivism ontological or metaphysical and, as might be expected, condemns it.¹⁹ Besides this metaphysical positivism, however, he recognizes a certain methodological positivism which is defended, or at least accepted, by many Catholic jurists. These jurists, while maintaining that all *jus* in the strict sense is positive, by no means deny the existence of ethical and moral norms outside the realm of positive legislation. Neither do they deny the ethical and moral aspects of positive law, but they maintain that these pertain to ethics and moral theology rather than to *jus* and come within the competence of the ethicist and moralist rather than the jurist.

Fr. Huizing admits that there is no objective truth at stake in such methodological positivism. As to the desirability of this approach from a methodological standpoint, he makes a distinction. If the methodology merely consists in restricting the notion of *jus*, admitting, however, that the juridical order contains ethical elements within its formal object, the system has merit. But if a sharp distinction is drawn between the purely external aspects of the law and the pertinent ethical aspects so that the latter are considered completely outside the scope of juridical science, students of law will be deprived of a full understanding of the nature of law.

As Fr. Huizing points out, there is reason in our present closed legal systems to make a distinction between the positive law or *jus* and ethical or moral norms. Certainly a distinction is made between moral science and juridical science, and this distinction is recognized even in relation to ecclesiastical law. A moralist is not expected to be a legal expert nor should a legal expert be expected to be an expert on morals. He is rightly expected to refer moral and ethical problems to a professional moralist or ethicist. It is not inconsistent, then, for him to refer *jus naturale* to ethics or moral theology rather than to law. Yet a knowledge of the ethical aspects of law is just as important for him as a knowledge of medical ethics is for the physician.

¹⁹ "De 'positivismo' quodam iuridico nota practica," *Periodica* 48/1 (1959) 77-100.

FIFTH COMMANDMENT

The young clerical student's textbook introduction to the subject of hypnosis is apt to be more confusing than enlightening. Although hypnosis has long been stripped of any connection with superstition or the preternatural, it is still treated in the moral manuals under the first commandment with such subjects as magic, divination, spiritism, etc. It must be candidly admitted that the phenomenon of hypnosis has thus far successfully eluded any satisfying philosophical explanation, but whatever may be the real explanation, there is no doubt that hypnosis is a purely natural phenomenon. From a moral standpoint it falls under the fifth commandment rather than the first. Moralists today classify it as a species of mutilation, since the subject under hypnosis, and to some extent under the influence of posthypnotic suggestion, is deprived of critical judgment and freedom.

In an article in *Linacre Quarterly*, Joseph T. Mangan, S.J., presents a moral evaluation of hypnosis for the benefit of Catholic physicians and dentists interested in the procedure.²⁰ One of the major problems connected with hypnosis is the moral danger involved. Some authors are inclined to discount this danger because they deny that a subject under hypnosis will carry out any immoral suggestion that goes against his convictions. Fr. Mangan points out, however, that in the opinion of others the degree of control over the subject depends entirely on the depth of the hypnosis rather than his personal moral convictions. Whatever may be said about the effectiveness of overt suggestion to immorality, experiments seem to indicate that a patient under hypnosis will more readily carry out an immoral act if circumstances are suggested previously that would make the action legitimate. Thus, the operator might suggest to a female patient that she was his wife before making his immoral suggestion. An unscrupulous operator, then, may be successful in this approach even in cases where an overt suggestion to immorality would meet resistance.

Current abuse of hypnosis for purposes of entertainment or recreation is condemned by Fr. Mangan as immoral, and the same judgment is made by Cecil L. Parres, C.M., in the *Homiletic and Pastoral Review*.²¹ I think that moralists would accept these judgments without hesitation. Fr. Parres considers such use of hypnosis venially sinful apart from any other dangers involved. Fr. Mangan says that it is gravely sinful but allows for parvity of matter. Although these two statements seem to differ, I do not think they are far apart. While it is a serious thing to alienate one's critical faculties

²⁰ "Hypnosis: A Medico-Moral Evaluation," *Linacre Quarterly* 26 (May, 1959) 39-48.

²¹ *Homiletic and Pastoral Review* 59 (May, 1959) 772-74.

without need, the ordinary hypnotic session does not last long enough to constitute, apart from other dangers, a serious privation of function. A distinction, too, might have to be made between the subject and the operator. The operator will more easily be guilty of serious sin by reason of making a practice of hypnotizing people for entertainment purposes.

An article in the *Journal of the American Medical Association* considers the basis for the decision to do a cesarean section.²² From a moral (as well as a medical) standpoint, since the cesarean section involves some impairment of uterine function, normal delivery is preferred. The authors of the present article feel that there has been too much emphasis on frequency of cesarean section in various hospitals as the chief test of obstetrical conservatism—or from our standpoint, the chief test of the observance of ethical standards. They argue that the frequency of maternal and fetal mortality is the more reliable test. Certainly, the number or rate of cesarean sections is at most a secondary and indicative test. A high rate of cesareans may call for further study, but one should be cautious in drawing any immediate conclusions. And obviously no doctor should let his own decision be based on percentage norms. On the other hand, fetal and maternal mortality are not the only considerations. Much more acceptable is the norm the authors set down at the end of their article; namely, that the decision to do a cesarean or not to do one should be based solely on the best interests of the mother and the child.

The ectopic pregnancy ordinarily presents a much more serious medico-moral problem than the cesarean section. This is particularly true in cases where the implantation takes place in an organ which cannot be removed without endangering the life of the mother. An article in *Obstetrics and Gynecology* reports on a case in which the diagnosis of abdominal pregnancy was made at six months gestation.²³ Surgery was intentionally deferred until the child should become viable, and this was done with no increased risk to the life of the mother. The surgery was finally performed at 36 weeks and resulted in the delivery of a healthy baby girl. Both mother and child came through the operation successfully. Cases like this indicate that the discovery of an abdominal pregnancy is not in itself a reason for pressing the panic button or resorting to an immoral procedure.

Another issue of *Obstetrics and Gynecology* describes a case which I include here more for its uniqueness than any actual moral problem it presented.²⁴

²² J. M. Harris and J. A. Nessim, "To Do or Not to Do a Cesarean Section," *Journal of the American Medical Association* 169 (Feb. 7, 1959) 570-76.

²³ W. B. Stromme *et al.*, "Abdominal Pregnancy," *Obstetrics and Gynecology* 13 (Jan., 1959) 109-13.

²⁴ Toshio Fujikura and Warren C. Hunter, "Retroperitoneal 'Fetus in Fetu,'" *Obstetrics and Gynecology* 13 (May, 1959) 109-13.

A fourteen-month-old girl was operated on for the removal of a mass which from X-ray study looked like a fetus. On removal the mass showed a body form similar to a stunted fetus. One theory advanced to explain such phenomena (fetus in fetu) is that it represents an incomplete twin which was included parasitically in the other twin at a very early stage of development.

What is to be done in cases of severe uterine hemorrhage during pregnancy? If the fetus is viable, this problem is open to a reasonably simple solution in the removal of the fetus. But if the fetus is not yet viable, such direct removal would constitute abortion. Ordinarily, the attending physician will resort to measures designed directly to stop a flow of blood, and such measures may prove effective. But is it permissible to curette the womb when all other measures to stop the bleeding have failed?

Obviously a curettage done with the intention of removing a live fetus would not be permissible. But if the fetus is already dead, it may and should be removed without delay. Hemorrhaging in these cases results from at least a partial detachment of the placenta from the uterine wall, and where the bleeding is severe, it is an indication that the placenta is either completely or almost completely detached. In this case either the fetus is already dead or else the deathblow has already been struck, and removal would be morally indicated. Unfortunately, there is at present no infallible or convenient objective method by which the suspected detachment of the placenta or death of the fetus can be quickly determined *in utero*. In an article in *Linacre Quarterly*, F. G. Stuart suggests that it would be permissible to curette when there is a sound presumption that the fetus is already dead, or at least that the placenta is detached.²⁵ He maintains that profuse bleeding in which the child's needed sustenance is bypassing him through the hemorrhagic flood provides a sound basis for this presumption.

I consider this a reasonable conclusion. In an area where direct knowledge is unobtainable, one can get moral certitude from presumptions. As long as the curettage is predicated on a legitimate presumption, it would be morally permissible. But an honest estimate of the status of the fetus must be made before the curettage would be allowed. The danger to the mother is not the primary determining factor in the decision.

A more delicate moral decision is at issue in a case presented to L. L. McReavy in the *Clergy Review*.²⁶ It is a case of eclampsia resulting from a diseased condition of the placenta. There is no reason for believing that the fetus, which is not yet viable, is dead, so the question comes to this: Would it be permissible to remove the diseased placenta with subsequent abortion

²⁵ "Curettage for Hemorrhage during Pregnancy," *Linacre Quarterly* 26 (Feb., 1959) 6-12.

²⁶ *Clergy Review* 44 (Mar., 1959) 180-83.

of the fetus? I believe this same question occurs in connection with carcinoma of the breast. It is believed that placental hormones stimulate the growth of the cancer. The presumption in both these cases is, of course, that there is no less radical means available and that delay to viability would endanger the life of the mother.

All moralists allow an operation on the mother, even when pregnant, if it is necessary to save her life. But they are just as unanimous in condemning any direct removal of the fetus to solve the problem. In the cases under discussion we are faced with this question: Does the removal of the placenta involve a maternal organ or does it constitute a direct attack on the fetus? This will depend on whether the placenta must be considered as part of the mother or part of the fetus. Fr. McReavy states, and this is correct as far as my knowledge of the medical facts goes, that part of it belongs to the mother and part to the fetus. While admitting that he does not know whether it is medically feasible to treat the maternal aspect of the placenta separately, he concludes theoretically that if this could be done, the subsequent abortion of the fetus would be indirect, even though it would be inevitable.

This case clearly calls for a very fine distinction and one which cannot be made until more is known about the nature of the placenta and placental diseases, but at least from a theoretical point of view Fr. McReavy's solution is based on solid principle.

Ordinary medical treatment involves the use of remedies whose therapeutic value has been tested and it is directed solely at the good of the patient. Medical progress, however, depends on experimentation, even human experimentation. When the experimentation is done in the interests of the patient himself, this factor automatically controls the risk ventured. But when the experiment is carried on for the benefit of other patients, the danger of abuse becomes real. H. K. Beecher studies the various aspects of this knotty problem in an article in the *Journal of the American Medical Association*, devoting considerable comment to public statements on the legal and ethical norms made by important public groups and religious authorities.²⁷

From an analysis and comparison of the statements it becomes clear that all are in agreement regarding the need for consent for any experimentation. As a result of the Hitler atrocities there emerges also a healthy suspicion of experimentation done "for the good of society" or for the good of other patients, although such experimentation is by no means outlawed. In gen-

²⁷ "Experimentation in Man," *Journal of the American Medical Association* 169 (Jan. 31, 1959) 461-78.

eral, too, it can be said that all realized a limit should be set to the amount of risk allowed in experimentation, but with the exception of the statement of Pius XII, the statements were vague regarding the basis for this limit.²⁸ This was precisely because they were not clear regarding the extent to which an individual can alienate his own physical integrity in experimentation. Thus, for instance, Nuremberg Rule 5 reads: "No experiment should be conducted where there is an *a priori* reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects"; and Rule 6: "The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment." A report by the Public Health Council of the Netherlands takes a more conservative position. One statement from this report reads as follows: "If considerable risk is involved, the experiment is not in accord with the object and purpose of medicine." In general, although these statements may not be as precise in all respects as we would like them, there is evident in all of them a healthy and salutary regard for the rights of the individual and the dignity of the human person.

The consent of the patient is certainly required for any experimental remedy that involves risk. Is such consent always required before a physician can give a patient required treatment with known and tested remedies? The April issue of *Surgery, Gynecology and Obstetrics* carries an interesting panel discussion of a case of blood transfusion involving a Jehovah's Witness.²⁹ The patient needed some surgery, but it was dangerous to perform the surgery without a blood transfusion. Being a Jehovah's Witness, the patient refused the blood transfusion on religious grounds. The doctor, after getting conflicting advice from his confreres, went through with the surgery without benefit of the transfusion. The case stirred up so much interest in the hospital that the present panel discussion was the result.

Three alternatives were open to the doctor: to give the patient the blood against his wishes, to refuse to operate, or to operate and do the best he could without the blood. All the moral aspects of the case were touched on but no complete statement was given except by the chaplain, whose statement

²⁸ The familiar principle set down by Pius XII reads as follows: "The patient, then, has no right to involve his physical or psychic integrity in medical experiments or research when they entail serious destruction, mutilation, wounds or perils." Allocution to the First International Congress on the Histopathology of the Nervous System (Sept. 14, 1952); translation from *Linacre Quarterly* 19 (1952) 101.

²⁹ W. T. Fitts, Jr., and M. J. Orloff, "Blood Transfusion and Jehovah's Witness," *Surgery, Gynecology and Obstetrics* 108 (Apr., 1959) 502-7.

revealed some acquaintance with moral theology. The doctor on the panel argued that no man has a right to take his life, but if a doctor promised not to give him blood, he would have to abide by his promise. Paradoxically, the legal representative recommended giving the patient blood even against his wishes, although he was convinced that it was completely illegal to do so. The chaplain argued that the rights of the patient should be respected. This to my mind is the most prudent course to follow. Certainly the doctor should do everything he can to convince the patient that a blood transfusion in this case would be perfectly legitimate, but if he fails, I do not think that it would be prudent to violate his conscience, however erroneous it might be.

If it be granted that the doctor has no right to force treatment upon a patient, can the same thing be said of the state? E. Tesson, S.J., asks this question in reference to vaccination, noting the surprising silence of moralists on the subject.³⁰ Apparently, this question is being discussed in France, and some, in order to show that the state has no right to impose vaccination, have appealed to various statements of Pius XII which point out that the state has no direct right over the bodies of its subjects. Fr. Tesson comments that these statements are being used out of context when applied to vaccination. The Pope was speaking of such things as medical experimentation. But was he not expressing a general principle under which such procedures as vaccination should be included? Fr. Tesson appeals to the silence of moralists to indicate that they did not consider vaccination a case in point. Given the obvious fact of obligatory vaccination, some adverse comment should have been made by moralists if it was clearly contrary to this principle.

Fr. Tesson argues to the liceity of imposed vaccination from the obligation which the citizen himself has to undergo vaccination when he would otherwise be a menace to the community. Where the individual has such an obligation, the state may enforce it. The difference between vaccination and sterilization is that the individual himself has no right to be sterilized, much less an obligation. One might argue also that vaccination does not involve any serious violation of physical integrity.

The obligation to preserve life is usually not considered a burden. But as life itself becomes a burden, the desire to prolong it grows weaker. The problem recently has become more acute because of remedies easily available today that serve to prolong the life of the afflicted person (at least at some

³⁰ "Réflexion morale," *Cahiers Laënnec* 19 (Mar., 1959) 37-40. The whole issue is devoted to "Les vaccinations." Another difference between this case and the previous case is that the person with a contagious disease is a *public* menace. The Jehovah's Witness who refuses a blood transfusion endangers only his own life or health.

level) without in any way affecting the disease. Msgr. James J. Madden discusses the predicament of the person with an incurable cancer case who contracts pneumonia.³¹ The pneumonia can be cured with comparative ease but only to let the cancer eventually claim its victim. The inquirer asked whether the drugs taken to cure the pneumonia could under the circumstances be considered an extraordinary means.

Msgr. Madden responds that the use of antibiotics would have to be considered an ordinary means even in this case. The fact that the patient will eventually die of another disease does not excuse one from applying what would normally be considered an ordinary remedy for this one. In general, I tend to agree with Msgr. Madden's solution, although I have never been fully convinced that the presence of the cancer in a case like this should not affect one's judgment of the means in question. At least, I would like to hold that there comes a time in such cases when the use of antibiotics should be considered an extraordinary means.

Moralists have long been occupied with the distinction between real death and apparent death in connection with the administration of the last sacraments. It is only recently, however, that the medical profession has become concerned with the problem of restoring to life a person who is apparently dead because of heart failure. Are there moral issues connected with such resuscitation? Hamilton Southworth, in an editorial in the *American Journal of Medicine*, discusses the advisability of cardiac massage (outside an operating room) for restoring life to such patients.³² If the circulation is not restored in 3-5 minutes, the patient remains permanently disoriented, comatose, or even decerebrated. Fortunately such persons, even if revived, do not often survive for any long period, but some do live on for some time. The author states that no physician would want to bring life back to such a person under these circumstances. He, himself, is obviously opposed to any efforts to restore life after this interval has elapsed. From a moral viewpoint cardiac massage after such an interval (and even before) would undoubtedly be considered an extraordinary means. While a doctor should certainly comply with the wishes of relatives if they request it immediately after the apparent death, I think he should advise against any such measures after the 3-5 minute interval has elapsed.

Life at times becomes such a burden that some people break under the strain and seek relief in suicide. If such tragedies were predictable, many of them might be prevented. Unfortunately, popular belief has it that people who threaten suicide never really carry out their threats. A study in the

³¹ *Australasian Catholic Record* 36 (Jan., 1959) 35-41.

³² "Cardiorespiratory Resuscitation," *American Journal of Medicine* 26 (1959) 327-30.

American Journal of Psychiatry gives evidence that this belief is not well-founded.³³ An investigation of 134 successful suicides over a one-year period in the city of St. Louis indicated that over two-thirds (69%) had communicated their suicidal intents one or more times to friends, relatives, doctors, etc. Another interesting statistic was the number of successful suicides who were previously clinically ill. The study showed that 98% were probably in this category. If this is generally true of successful suicides, it certainly casts doubt on their responsibility, and where Catholics are concerned, gives reason to pause before any decision to deny ecclesiastical burial.

The awful destruction made possible by the discovery of nuclear energy has understandably weakened the will to war among the nations. Although this is in many respects a blessing, it can have the serious disadvantage of reinforcing the will to evil as much as it weakens the will to resist it. In an article in *THEOLOGICAL STUDIES*, John C. Murray, S.J., warns against certain extreme attitudes that would look upon war as either the greatest evil or the greatest good in the present world predicament.³⁴ He then lists the conditions required for a just war and comments on the relevance of this doctrine on war to the present international situation.

In speaking of the traditional requirement of limitation in reference to war, Fr. Murray refers to the oft-quoted statement of Pius XII regarding the immorality of the "employment of . . . means [which] entails such an extension of the evil that it entirely escapes the control of man." He comments that there are no weapons at present that escape the control of man. The effects of current nuclear weapons can be accurately measured. In an article in *Stimmen der Zeit*, G. Gundlach, S.J., throws some light on the meaning of this statement.³⁵ According to Fr. Gundlach the Pontiff was not speaking of the controllability of the weapons. He was referring rather to the *use* of these weapons. It was not the uncontrollable weapon that he was condemning but the uncontrolled use of such a weapon, that is, a use which would not be aimed at self-defense but annihilation of the enemy. This is more consistent with the information about atomic weapons which Fr. Murray refers to in the note cited above. Fr. Gundlach concludes that he was not setting down any new condition or limit but merely restating the traditional doctrine of war. The norm for the use of atomic weapons, then, is just like the norm for the use of less destructive weapons; they must be subject to the same moral control.

³³ E. Robins *et al.*, "The Communication of the Suicidal Intent," *American Journal of Psychiatry* 115 (Feb., 1959) 724-33.

³⁴ "Remarks on the Moral Problem of War," *THEOLOGICAL STUDIES* 20 (Mar., 1959) 40-61.

³⁵ "Die Lehre Pius XII. zum Atomkrieg," *Stimmen der Zeit* 164 (Apr., 1959) 1-13.

Fr. Gundlach goes on to argue that the cause to be defended can be so important that the right and duty to defend it is conceivable even if the only accomplishment of such a defense were a manifestation of the divine order and majesty. Even should the world be destroyed in the process, it would not affect the morality of the defense. The world is not eternal and there are greater values than the continuation of the world. Moreover, in the event that it should be destroyed in a just defense, it would not be the responsibility of the defender but of the unjust aggressor.

These are terrifying reflections and certainly no one wishes to see them realized. But they do make it imperative that war, especially today, be regarded as the *ultima ratio* and that all other means of solving international differences be exhausted before it be considered. No one was more opposed to war than the Pontiff who reiterated the conditions for a just war.

JUSTICE

Catholic social theory is wedded to the doctrine of private property. Traditionally, the institution of private property has been defended as a social requirement to protect human liberty, to provide security for the future, and to stimulate initiative and creativity. Edward Duff, S.J., in an excellent and optimistic review of the contemporary American scene, finds that the regime of private property envisioned by our social theorists does not exist.³⁶ As for productive enterprise, two-thirds of our economy is run by 500 corporations. Although these corporations have millions of stockholders, the total number of stockholders in the country still numbers only 10% of the total population. Moreover, stockholders in the modern corporation can hardly be called owners of productive property in the sense in which that term is understood by Catholic theorists. Many of them do not even have a vote in the company in which they own stock.

But in spite of the fact that private property seems to be vanishing from the scene, Fr. Duff sees no indication that the social benefits identified in Scholastic theory with a regime of private property are disappearing. The American worker is still free; he has greater security than he had in the good old days of farm and famine; and there is no evidence that economic progress is slowing down. Fr. Duff suggests that in our present society such economic values as job seniority, pension rights, unemployment insurance, etc., may serve as a substitute for private property, or at least that the notion of private property can be extended to include them.

Personally, I am not so sure that we have drifted as far away from private ownership as the facts which Fr. Duff presents would seem to indicate. I

³⁶ "Property in the American Environment," *Social Order* 9 (Jan., 1959) 1-31.

do not think that the concept of private ownership calls for a completely atomized type of ownership. It seems to me that it is entirely consistent with a type of corporate ownership. In fact, this type of ownership seems an obvious necessity in a modern industrial society, and without it we would be forced to retire to a much simpler life or else be willing to surrender all heavy industry to public ownership. It is quite true that the stockholder in a large corporation today is not in a position to really exercise ownership rights, but I do not think that this privation is a necessary part of corporate ownership, nor one about which we can be complacent. It is an evil that should be corrected.

Whatever may be said for the need of refining or extending our notion of private property to fit contemporary facts, the Scholastic notions of justice and its various species, according to Raymond C. Jankauskas, S.J., need no adjustment. In an article in the *Review of Social Economy*, he subjects the notion of social justice to a rather ingenious empirical test, demonstrating that even the most modern cases involving economic problems can be handled adequately in familiar Scholastic categories.³⁷ Unfortunately, I found Fr. Jankauskas' treatment of legal justice a bit ambiguous. Although he used the term and was satisfied to identify social justice with it, he seemed inclined to reduce it to distributive justice, arguing that St. Thomas was satisfied with two kinds of justice, commutative and distributive.

It is quite true that St. Thomas spoke of only two kinds of particular justice; i.e., that justice which looks to what is due an individual, whether from the community (distributive justice) or from another individual (commutative justice). But he also speaks of the virtue of general or legal justice, which deals with what is owed to the community and directs the acts of other virtues to that goal. He says also that legal justice, besides being a general virtue, is also a special virtue, and he illustrates by drawing an analogy between legal justice and charity.³⁸ I would conclude from all this that a threefold division of justice is more Thomistic than a twofold division.

Anyone who has spent some time in Italy as a resident will appreciate the appeal for honesty and trust in buying and selling which Msgr. Donato Venditti makes in *Palestra del clero*.³⁹ He illustrates his appeal with two personal experiences. On one occasion he went to a secondhand store to buy a piece of furniture. The first price asked for the furniture was 400,000 lire. After considerable haggling he got the furniture for 300,000 lire, a price

³⁷ "The Concept of Social Justice: Some Current Applications," *Review of Social Economy* 17 (Mar., 1959) 34-50.

³⁸ *Sum. theol.* 2-2, q. 58, a. 7.

³⁹ "Disonestà commerciale," *Palestra del clero* 38 (Apr. 15, 1959) 444-45.

which he was certain allowed the dealer a good profit. But had he not been forewarned about the dealer's prices, he would have paid the 400,000 lire, which would certainly have been an unjust price. On another occasion he went to another store to make a purchase. When he gave the proprietor the full price asked for the goods the proprietor returned part of it to him. When the Monsignor showed surprise, the storekeeper advised him that he always has to set his prices higher than they should be because the customers simply refuse to buy at the price requested.

Msgr. Venditti notes the vicious circle in which buyers and sellers are caught in such an atmosphere. The buyer does not want to pay the price asked for because he presumes that the article is overpriced. On the other hand the merchant does not dare to put the real price on his goods because the customer simply will not buy at the first price requested. The remedy lies, of course, in prices that will be really fixed and just. Once the customer realizes that the merchant will not lower his price, no matter how much he haggles or how abusive he gets, buying and selling will be carried on in a much more businesslike atmosphere and will not be the occasion for the quarreling, abusive language, profanity, etc., that characterizes it now. However successful Msgr. Venditti's appeal may be, his experiences may help shed some light on moral treatises dealing with buying and selling which are written from this background.

Profiting by the ignorance of the consumer is one way of getting more than the just price for one's wares. Another way is to secure a monopoly in some market. Paul Crane investigates the morality of this particular procedure.⁴⁰ He argues from the general purpose of monopoly, which he says "is to thrust the price of an article above that which would prevail in the long run under competitive conditions," that it is contrary to commutative justice. He argues that it is also contrary to social justice because it cuts down on production, and therefore on employment, leading to a kind of economic stagnation. Fr. Crane does not exempt labor unions which attempt to gain control of the labor supply through the union shop, the closed shop, etc., from this judgment.

Fr. Crane's judgment of monopoly calls attention to one of the real dangers connected with it. The person who gets a monopoly over a market can certainly abuse his position and force unjust prices on the consumer by creating an artificial scarcity. But while moralists recognize the dangers of monopoly, they ordinarily do not consider it "immoral in itself." A monopoly can be a good thing; it can, for instance, protect one against the evils of unbridled competition. The classic example of this is the labor union, which

⁴⁰ "The Moral Aspect of Monopoly," *Month* 207 (Apr., 1959) 230-34.

prevents laboring men from undercutting each other in the labor market. Also, the monopoly given to an author or an inventor by a copyright or a patent protects him against plagiarizing or copying. It would certainly be wrong to obtain a monopoly through unjust means, but a competent businessman may obtain a monopoly in a market solely as the result of his superior ability. It is difficult in economic competition to keep a balance; and just as in sports competition, there may be a winner. Unquestionably, a manufacturer or merchant is not allowed to charge any price he pleases after he obtains a monopoly. Although moralists may dispute his right to charge the highest just price in a monopolistic situation, all are agreed that he may not go beyond what is just. But granted that it involves no injustice, a monopoly (or an oligopoly) cannot be considered immoral.

Traditional moral theory for the past several centuries has demanded the presence of theological fault before an obligation to make restitution for unjust damage could be imposed. Henri Renard, S.J., concludes from a study of St. Thomas that in his opinion theological fault is required only to impose retribution, i.e., punishment.⁴¹ It is not required to impose an obligation to make restitution. All that is required for this is that there be unjust damage, i.e., damage against the wishes of the owner. According to St. Thomas, then, although no punishment is due where there is no theological fault, there is an obligation to make restitution.

I am not prepared to agree with Fr. Renard that this is the opinion of St. Thomas, although I grant that he does not say explicitly that theological fault is required for restitution. Fr. Renard argues from St. Thomas' position that justice looks to objective equality. When damage is done, whether deliberate or not, that equality is disturbed and there is injustice. In order to remove this injustice, restitution must be made. I would be willing to admit that equality is disturbed even without theological fault. But this is not precisely the question. Equality is disturbed when a person's barn is struck by lightning or his rabbits devoured by a fox. What distinguishes damage by a human person from damage due to other causes is the part played by the human will. It is because the human will enters into the damage that the obligation of restitution arises. Where the will is absent, the personal element is removed, and there is no difference between damage thus caused by a human being and damage due to natural or nonhuman causes. In other words, it is not traceable to human failure and hence cannot give rise to an obligation of restitution. The human person can dissociate himself from it completely. St. Thomas seems to confirm this when he says

⁴¹ "An Approach to the Problem of Restitution," *Modern Schoolman* 36 (Jan., 1959) 77-89.

that a man cannot be called unjust by reason of accidental damage of this kind.⁴²

SACRAMENTS

The practice of infant baptism is frequently challenged as an invasion of the rights of the child. It commits the child for a lifetime to a rigid spiritual program at a time when it is impossible to consult his wishes. To justify the practice J.-C. Didier in *L'Ami du clergé* appeals to the solidarity of the human race.⁴³ The bond between the members of the human race is so close that they are often called upon to act for one another. Especially intimate is the bond between parents and children. Parents have to think, believe, and act for their children. The father believes that food is good for the child and gives it to him; he believes that care of health is good for the child and provides it; he believes that intellectual and moral instruction is needed and inculcates it. And just as he engages the child in the current of material, intellectual, and moral existence without consulting his wishes, he must also introduce him to the supernatural life even before he is capable of personal decision. It is extremely important that the child be endowed with the principle of supernatural activity before actual sin begins to take its toll. And it would be just as unrealistic to postpone the child's supernatural initiation as it would be to make other parental functions wait on the child's personal decision.

A much more delicate problem is raised when a child is committed to a religion without the consent of his parents. This can happen only when a child is baptized in danger of death, since it is only under this circumstance that the child may be baptized without the knowledge and consent of his parents. If the child actually succumbs, no problem arises. But when the child survives, hospital personnel, or those responsible for the baptism, are concerned about the child's commitment. What is the obligation to inform the parents of the baptism or of the child's commitment to the Catholic faith? What will be the spiritual status of the child when he comes of age?

In answering these questions in an article in *Hospital Progress*, I argued that it would not be advisable to reveal the baptism to parents who would resent it.⁴⁴ And even in a case where good Protestants would not be averse

⁴² *Sum. theol.* 2-2, q. 59, a. 2. Moralists also argue that restitution, although not a penalty in the strict sense, has something of the nature of a penalty. It should not be imposed, therefore, where there is no fault. When damage is accidental, no obligation to restitution exists.

⁴³ "Le baptême est-il une atteinte à la liberté de l'enfant?", *L'Ami du clergé* 69 (June 18, 1959) 394-95.

⁴⁴ "Questions about Baptism," *Hospital Progress* 40 (Apr., 1959) 64-66.

to an emergency baptism of this kind performed by a Catholic, it would not be prudent to mention any obligation to raise the child a Catholic. Protestant parents would ordinarily want the child raised in their own sect and would not react favorably to any other suggestion. In fact, there would be real danger that any suggestion of an obligation to raise the child a Catholic would turn them against the Church and make them resent the baptism.

As for his own personal obligations, if one is considering Church laws which bind all the validly baptized, the child baptized by a priest in an emergency will be no worse off than a child validly baptized by a Protestant minister. Whatever may be said of their theoretical obligations, since both are raised outside the Church, both will be in good faith regarding any ecclesiastical obligations. There are, however, certain marriage laws which bind those who are baptized *in the Catholic Church*, e.g., the obligation to observe the canonical form. A child baptized by a priest in an emergency would be bound by these laws. And if, as an adult, he failed to observe the canonical form, his marriage would not be considered valid in the eyes of the Church.

Again, since he would not be conscious of any obligation to these laws, his failure to observe them would not be culpable. Nor will the fact that the Church does not consider his marriage valid (if he is at all aware of this) concern him unless as an adult he becomes interested in the Church. Even in that event, his previous baptism will do him no harm and may actually work to his advantage. If, for instance, he had become involved in a second marriage, the Church could validate it by reason of the invalidity of the first marriage. So hospital personnel should never be deterred from baptizing infants in danger of death because of anxiety over complications arising from the possible survival of such infants.

The *Motu Proprio Sacram communionem* allows the bishop to give permission for evening Masses whenever the good of the faithful (a notable part) calls for them. But no provision is made for the private need of either the priest or the individual lay person. The *Clergy Monthly* published an indult recently obtained for India which seems to be the first of its kind and allows the bishops to give permission for an evening Mass to a priest for his own private need.⁴⁵

The request for the indult originated in a problem which arises frequently in missionary countries. It often happens that a priest who cannot say Mass in the morning, because he has to make an early departure, cannot say it in the evening either, because there is no appreciable number of the laity who

⁴⁵ W. Nazareth and J. Sanders, S.J., "Indult for Evening Mass," *Clergy Monthly* 23 (Jan.-Feb., 1959) 28-33.

wish Mass at that time. The result is that the more a priest tours his mission, the more often is he deprived of Mass. To remedy this situation His Eminence, Cardinal Gracias, requested permission for such priests to say an evening Mass and received a favorable response from the Holy Office. Permission was given by the Holy Office to the local ordinaries to allow priests (1) who do not have time to celebrate in the morning because (2) they have to make a genuinely apostolic trip, to say an evening Mass. Although this need arises chiefly in missionary countries, we can hope that eventually any priest who is prevented from saying Mass in the morning because of apostolic work will be given the same opportunity.

A more universal problem faced by the priest saying a private Mass is the obligation of having a server. Miguel Campo, S.J., presents a brief historical study of the practice of having a server at Mass.⁴⁶ The so-called private Mass had its origin in the personal devotion of the priest and the faithful as well as the increase in the number of Masses desired for particular intentions, especially for the dead. Another reason was the great number of priests in monasteries. This multiplication of private Masses resulted in priests saying Mass alone, since many of them celebrated every day, and sometimes five and six times a day. This was true as early as the sixth century. A reaction set in, however, at the end of the ninth century when the legislation demanding the presence of a server (which was finally codified in can. 813) originated.

In dealing with the modern obligation Fr. Campo pays special attention to the Instruction of 1949. He argues that the four cases mentioned in the Instruction as causes excusing from the obligation are merely illustrative of more general principles. He agrees then with Gerald Kelly, S.J., that a serious inconvenience (illustrated in the Instruction by the example of the plague) excuses one from observing the law. While denying that devotion itself is an excusing cause, he admits that the devotion of the priest may be such that it would really be a serious inconvenience for him to omit Mass. I think that Fr. Campo has presented an eminently reasonable interpretation of the law. Those who are acquainted with Fr. Kelly's article on this subject will recognize the similarity of approach.⁴⁷

I suppose anyone who has gone through the course in moral theology has become entangled in the casuistry connected with the determination of the matter for consecration. Attempts to solve the problem of the ciborium left off the corporal, or hosts placed on or off the corporal without the knowledge of the celebrant, have left many a seminarian with a feeling of frustration. To

⁴⁶ "El ministro de la Misa privada," *Estudios eclesiásticos* 33 (Jan.-Mar., 1959) 57-76.

⁴⁷ Cf. *THEOLOGICAL STUDIES* 11 (1950) 577-83.

solve the speculative doubt about the consecration of such hosts, some authors recommend that the young priest make a *semel pro semper* intention to consecrate any hosts brought to the altar to be consecrated at the particular Mass in question. Stefano Tumbas, S.J., in *Palestra del clero* defends the position that this intention fulfils all the requirements of the virtual intention.⁴⁸ There can be no doubt, then, that it is sufficient for a valid consecration of such hosts. He sees no difficulty either about the liceity of making a general intention of this kind.

I have never been personally convinced either of the importance of this problem or the value of making a *semel pro semper* intention to solve it. I have questioned a number of priests over a period of years who made one or more of these intentions at ordination time. None of them could recall an occasion when he had to have recourse to such an intention. In fact, many of them had forgotten exactly what intention they had made. For my own part, I would not feel very secure relying on such a remote intention to guarantee the consecration of a host I did not even know was on (or off) the corporal.

The obligation to confess before receiving Communion is of ecclesiastical origin and hence allows for exceptions. One is excused from the law when there is need to communicate and there is no reasonable opportunity to confess. M. Huftier in *L'Ami du clergé* and U. Rocco, S.J., in *Palestra del clero* consider the hypothetical case of the religious woman in a small community who has committed a serious sin and cannot get to confession.⁴⁹ Both refer to a booklet by D. Iorio, *La comunione agl'infermi*, in which he allows an exception for those who live in small communities and cannot omit Communion on a feast day without risking their reputations. Fr. Rocco also points out that Iorio allows an exception also in a situation where the confessor would not be back for several days and the religious would have to omit Communion for the same period of time. Briefly, Cardinal Iorio does not seem to allow an exception where the religious would have to forego Communion on one ordinary day.

The two authors were both inclined to allow an exception in the case of religious in small communities, but neither was willing to admit any rule of thumb, e.g., if one's absence from Communion would be noticed, or if the only confessor available was the pastor, etc. Both felt that the individual case must be judged cautiously on its own merits. Fr. Rocco admitted the

⁴⁸ "L'Intenzione virtuale nella consecrazione delle particole," *Palestra del clero* 38 (Jan. 15, 1959) 69-74.

⁴⁹ *L'Ami du clergé* 69 (Feb. 26, 1959) 134-36; *Palestra del clero* 38 (May 15, 1959) 512-16. For a previous round of this same discussion, cf. Fr. Lynch's June survey, pp. 256-58.

necessity of communicating only where absenting one's self would be tantamount to self-accusation.

Only two questions related to the new Eucharistic legislation are discussed in current periodical literature. L. L. McReavy continues his discussion of the computation of time holding with the common opinion that it should be determined exactly.⁵⁰ A. Bride discusses the norm for distinguishing between liquid and solid foods.⁵¹ He casts his own vote for Vermeersch's norm; namely, that the judgment must be based on the condition of the food when it enters the mouth. But he does not feel that Cappello's opinion has been outlawed. The solution he gives to the case at hand, which deals with a person who must make his Easter duty but has taken a lozenge within the three-hour limit, is that it would be better for him to wait until the three-hour fast is completed before he receives Communion.⁵²

In an article on the sacrament of penance, E. Tesson, S.J., reminds both priest and penitent of the supernatural nature of the sacrament.⁵³ The confessional is not primarily a place one comes to for human consolation. If the penitent puts the emphasis solely on this aspect of the sacrament, he runs the risk of neglecting the grace of the sacrament. Also, the desire for consolation is apt to lead to an emphasis on the human qualities of the confessor. When the penitent does not get the warm reception and understanding he is looking for, but routine, or even brusque, treatment, he is apt to neglect the sacrament, thus depriving himself of much needed grace.

There is a similar danger for the priest. He is liable to limit his view to the natural aspects of the confessional. This is why he may find the preliminary phases of the sacrament more attractive. It is here that his human accomplishments, his experience, his understanding, his knowledge of psychology, etc., will be most useful. Without belittling the importance of this part of confessional work, Fr. Tesson insists that the principal function of the confessor is that of minister of absolution. This reminder is particularly important today when so much emphasis is put on counseling as an efficacious means of promoting perfection.

The security and confidence with which penitents approach sacramental confession depends to a large extent on the obligation of the seal. Andrea Gennaro, S.D.B., discusses a case involving an engaged couple who go to

⁵⁰ *Clergy Review* 44 (Jan., 1959) 36-37; (May, 1959) 302-4.

⁵¹ *L'Ami du clergé* 69 (Jan. 29, 1959) 76-80.

⁵² I have already manifested sufficient opposition to the opinion (Cappello's) that distinguishes between solid and liquid food according to its state when swallowed; cf. *THEOLOGICAL STUDIES* 19 (1958) 561-62.

⁵³ "Grandeurs et servitudes de la confession," *Christus* 6 (Jan., 1959) 84-100.

confession on opposite sides of a duplex confessional.⁵⁴ After hearing the confession of the man, the confessor opened the slide on the other side to hear the girl. Among other sins she confessed a sin against the sixth commandment with her fiancé. When asked who this was, she said that he was the man whose confession the priest just heard. Whereupon the confessor commented that her fiancé mentioned no such sin. He then advised her to tell him of his obligation to repeat the sacrilegious confession he had made.

Fr. Gennaro judges correctly that the confessor did seriously wrong in inquiring after the identity of the accomplice (can. 888, § 2). He also acted very imprudently and sinned seriously in revealing his omission to the girl. But since he did not reveal any sins confessed, he was not guilty of any direct violation of the seal. Fr. Gennaro admits that he was probably guilty of an indirect violation, since his conversation with the girl was certainly embarrassing to his previous penitent. Since there is no question here of any kind of revelation of confessional matter, I would prefer to consider the confessor's fault as that of an illicit use of confessional knowledge, and therefore a violation of can. 890, § 1, rather than can. 889, § 1.

John J. Lynch, S.J., has already called attention to the discussion that is going on regarding the nature and purpose of the sacrament of extreme unction.⁵⁵ P. Anciaux in an article in *Collectanea Mechliniensia* gives a brief history of the sacrament, showing the theological development it has undergone.⁵⁶ In the early practice of the Church the accent was on the healing powers of the sacrament, whereas systematic theology put the emphasis more on the finality of the sacrament. It was the "final" preparation of the soul for heaven and its purpose was to heal the soul rather than the body. Fr. Anciaux shows how both of these interpretations led to abuses whenever they were dissociated and isolated from each other. During the first period, the anointing was too often reduced to a quasi-magical remedy to be administered in any ailment. When the other interpretation became widespread, the sacrament was delayed as long as possible and most Christians began to look upon it as a blessing of the dead or dying. Both of these positions are extreme and empty the sacrament of all its meaning.

For a full appreciation of the meaning of the sacrament Fr. Anciaux says that one must not single out any one of its various effects but should recognize their complementarity. He must also understand that the sacrament is part of an organic whole, a sacramental economy, and that it cannot be isolated from that economy. It is truly the sacrament of the sick, but its mean-

⁵⁴ *Perfice munus* 34 (Mar., 1959) 150-51.

⁵⁵ THEOLOGICAL STUDIES 20 (1959) 260-62.

⁵⁶ "L'Onction des malades," *Collectanea Mechliniensia* 44 (Jan., 1959) 7-21.

ing will not be understood unless attention is paid to the religious significance of sickness, i.e., the relation between sickness and the Christian life, between sickness and sin, sickness and death, etc. Victory over sickness in this sense does not necessarily signify physical healing. A death accepted in union with Christ can be just as much a victory over sickness as physical recovery. Anyone who has come into contact with either of the extreme views mentioned by Fr. Anciaux will realize the need of this comprehensive view of the sacrament.

SEX, MARRIAGE, AND POPULATION

Traditionally, determination of sex has been a simple matter of anatomic observation. At times external genitalia that were ambiguous, and even misleading, gave rise to doubt or error where no further investigation was made, but even in these cases a study of gonadal tissue was sufficient to indicate the biological sex of the child. Doubt remained only in cases where there was evidence of both ovarian and testicular gonadal tissue, i.e., where there was true hermaphroditism. In recent times experiments have shown a sex difference in nuclear morphology in the form of a chromatin mass which is found much more frequently in cells from anatomical females than from males. There is no doubt that this chromatin test, as it is called, will prove helpful in making a decision where biological sex is otherwise ambiguous at birth.

The curious aspect of these experiments is that anatomically normal males have at times shown a chromatin positive test (an indication of female nuclear or genetic sex). In an article in the *Lancet*, K. L. Moore reports that of 1,911 anatomically male infants 5 had sex chromatin patterns typical of the female.⁵⁷ He regarded these five cases as incidents of female-to-male sex reversal in which at some time during early fetal life the anatomic sex began to depart from the genetic sex of the fetus. As for the future of such infants, he suggests on the basis of other experiments that some of them may develop testicular dysfunction (and hence become sterile); others may become mentally subnormal. He also foresees the possibility that some of them may develop into normal fertile males. Another test is being carried on by Arthur G. Steinberg to recognize sex-reversed individuals by screening fathers of families composed of large numbers of girls.⁵⁸ Genetically female persons mated to normal females could be expected to have only female offspring.

The concluding sentence of the editorial on nuclear sex (genetic) in the *Journal of the American Medical Association* should reassure anyone who

⁵⁷ "Sex Reversal in Newborn Babies," *Lancet* 7066 (Jan. 31, 1959) 217-19.

⁵⁸ *Science* 129 (Feb. 13, 1959) 403.

fears that the chromatin test will work havoc with our present anatomic approach to sex: "The possibility of the existence of fertile sex reversed persons serves to stress the fact that the ultimate determination of sex should not be based on chromatin patterns alone but on a consideration of the total psychophysical personality."⁵⁹

This introduces us to what may be a more serious problem than a dichotomy between nuclear (genetic) sex and anatomical sex: a dichotomy between biological and psychological sex. If psychological sex identification were an automatic consequence of biological sex, no dichotomy could exist. But it is quite clear that psychological sex identification is, at least to some extent, acquired and therefore dependent on education. A dichotomy of this kind can arise from a mistake in biological sex identification at birth or it can arise from a perverted education. The *Journal of Urology* presents a panel discussion of problems which arise as the result of ambiguous biological sex, e.g., where the external genitalia do not correspond to the sex of the gonads.⁶⁰ Where these divergencies are recognized at birth, the only problem to be faced is that of biological correction through surgery and/or hormone treatment. Unfortunately, cases arise in which no ambiguity is detected at birth and a mistake is made in identifying the sex of the child. The panel was presented with the case of a four-year-old twin who had been raised as a boy because of the male appearance of the external genitalia at birth. Examination of the child at four years showed that the internal organs were female. At this stage any attempt to correct the situation would be complicated by the fact that the child had identified itself with the male sex. The thinking of the panel seemed to be that a change in psychological sex identification becomes increasingly difficult with age and that the best procedure in an older child or adolescent would be to try to tailor the genital organs to fit its psychological sex.

I find it difficult to understand how a youngster would be psychologically better off if the original error were perpetuated, unless, of course, it would be possible to keep him in ignorance of his true biological sex. It seems to me that once he was aware of the error, he would always be faced with a conflict. No amount of surgery can really solve this conflict, since no amount of surgery can effect a biological change in sex. Perpetuating an error of this type would obviously make a youngster a canonical misfit as far as marriage is concerned.

⁵⁹ "Nuclear Sex," *Journal of the American Medical Association* 170 (June 6, 1959) 678-79.

⁶⁰ Raymond G. Bunge, Moderator, "Panel Discussion: Determination of Sex and What to Do about It," *Journal of Urology* 81 (Jan., 1959) 13-24.

Error in psychological sex identification is understandable where there is biological confusion. The existence of sex perversions, however, is an indication that psychological sex confusion is possible even in cases where biological sex is unmistakable. This points up the importance of proper sex identification in the early education of the child. In an article in the *Psychological Review*, David B. Lynn points out that because of the early and intimate association of both male and female child with the mother, the male child must shift from an original identification with the mother to a masculine identification.⁶¹ As a result his masculine identification is weak at first but is gradually strengthened. The prestige of the male in our culture and the privileges of males tend to strengthen this identification. On the other hand, because of her early association with the mother, the girl's identification with her own sex is originally stronger. But again, the fact that she is raised in a masculine culture tends to have a weakening effect on her identification. As a result, while most males will be embarrassed in showing a preference for the female role, a larger proportion of females will show preference for the male role and adopt certain aspects of this role, e.g., males are normally very reluctant to adopt female dress habits whereas females today seem to show greater and greater preference for male dress.

In another article in this same *Review*, Thomas Colley questions the whole theory of identification with the parent of the same sex.⁶² Used in this connection the term identification seems to suppose the presence of a model after whom the child can pattern its behavior. While not underestimating the importance of imitation of a model, Colley stresses the role the attitude of the parents plays in the child's psychological sex determination. The mother will respond differently to a boy and a girl. The father will also differentiate his response. For the child this differential coloring provides the first major data for determining his position as a personality. The author refers to this difference in attitude as *antisexual* and *prosexual*, the *antisexual* attitude being assumed toward the child of the same sex, the *prosexual* attitude toward the child of the opposite sex.⁶³ The advantage of this theory over a theory that makes sex learning depend on identification with a model is that it provides for such learning even in the absence, physical or moral,

⁶¹ "A Note on Sex Differences in the Development of Masculine and Feminine Identification," *Psychological Review* 66 (Mar., 1959) 126-35.

⁶² "Nature and Origin of Psychological Sexual Identity," *Psychological Review* 66 (May, 1959) 165-77.

⁶³ I cannot agree that the parents should "court" the child of the opposite sex, as the author seems to recommend, but they should certainly treat boys as boys and girls as girls if they expect the children to achieve a healthy sexual identification.

of the parent of the same sex. The male child, for instance, gets information about his own status simply from the attitude of the mother.

Whatever may be said for these theories, it should be quite patent that in order to give proper sex education parents must be thoroughly members of their sex so that they will provide proper sexual models for their children, and they must also accept the biological sex of their children and treat them accordingly. Many of the pathological deviations that occur in sex attitudes can be traced to failures in both of these areas.

By the time youngsters reach the age of puberty their sex identification should be well established. If this identification is normal, they will usually begin to manifest an interest in members of the opposite sex. Although this interest is limited at this stage to the superficial aspects of the other sex, it naturally leads to a desire to associate. In an article in the *Homiletic and Pastoral Review*, Robert H. Springer, S.J., argues that from a moral standpoint such association does not have to look to marriage to be justified.⁶⁴ Although the older moralists did not view this social mingling of the sexes with favor, I think most American moralists would go along with Fr. Springer's judgment.

But I do not think that to prove his point it was necessary for Fr. Springer to appeal to the danger of abnormality if association with the other sex were cut off. The fact that such association is helpful is sufficient to justify it. As for the danger of abnormality, I would be more concerned by a lack of interest in such association than by a lack of the association itself. I would agree, then, with the nameless author who took issue with Fr. Springer that a boy with a vocation can forego such association without harm, although I have never been convinced that social mingling would do real harm to a vocation, except perhaps where a boy had already committed himself to seminary life.⁶⁵ Since the type of association that high-school adolescents engage in today, e.g., dating for parties, dancing, etc., seems to be colored by at least the remote intention of following the marriage vocation, it does not seem quite in keeping with the life of one who has already publicly committed himself to another vocation by entering a minor seminary.

Besides attempting to justify ordinary mingling between sexes during adolescence, Fr. Springer went on to show that there were serious reasons apart from the intention of marriage that might justify even a type of steady dating. I have to admit that I was not altogether clear regarding the

⁶⁴ "Adolescent Steady Dating: Is Marriage the Sole Justification?", *Homiletic and Pastoral Review* 59 (Jan., 1959) 333-38.

⁶⁵ "Confused Consciences or Confused Confessors?", *Homiletic and Pastoral Review* 59 (Feb., 1959) 452-56.

type of steady dating Fr. Springer was referring to in this section of his article. My own reaction to this whole practice, which I am sure Fr. Springer shares, is simply to discourage it. Even if one devotes himself to a theoretical discussion of reasons that might justify it, a false impression of favoring the practice is left. I would prefer to take a completely negative attitude toward the practice, without conceding, however, that it constitutes a proximate occasion of sin.

Fr. Springer pointed out wisely in his article that there are other facets to the problem of sexual morality among adolescents than that of steady dating. One of these is the problem of modern dress. Last year John J. Lynch, S.J., took issue with an anonymous article in which the "yardstick" approach to modesty was defended.⁶⁶ Misinterpreting Fr. Lynch's lack of enthusiasm for measurements as a measure of tolerance for lax standards, the author presents a new defense of the use of measurements.⁶⁷ I am inclined to agree with Fr. Lynch that the solution to current lax standards of modesty lies more in cultivating a sense of modesty than in measurements. There may be something to be said for the opinion that girls because of their inexperience do not appreciate the effect of sexual exposure or emphasis on those of the opposite sex, but this can hardly apply to their mothers—or especially to their fathers. If the parents are interested in modest dress for their children, they will be able to provide adequately without benefit of a list of measurements. And if the parents are not interested, I do not think that either they or their children will accept outside standards. The chief advantage I see to a list of measurements is that it may be of some help to fashion designers and storekeepers who do not have standards of their own but want to supply those who do.

On a more theoretical level Juan Rof Carballo inquiries into the extent to which sex immorality springs from a desire of sex pleasure.⁶⁸ While recognizing the force of instinctual craving for sex pleasure, he argues that the breakdown in sex morality stems more from a disturbance in what he calls the anaclitic and diatrophic tendencies of the instinct; that is, the need to be loved and the need to love. If one wants to trace the breakdown in sex morality to the disintegration of family life, he will find that it is not because it removes the training and discipline from the lives of the children, but rather because it disturbs their interpersonal relations. Where family life is disintegrated, the child's need to love and to be loved cannot be satisfied

⁶⁶ Cf. *THEOLOGICAL STUDIES* 19 (June, 1958) 183–87.

⁶⁷ "Confused Consciences or Confused Confessors?: II," *Homiletic and Pastoral Review* 59 (Mar., 1959) 519–26.

⁶⁸ "La sexualidad y la perspectiva del amor humano," *Razón y fe* 159 (Jan., 1959) 15–32.

and it is because this need has not been satisfied that the youngster by way of compensation has recourse to sex. I do not think that anyone would want to question the merit of this opinion, although it would be a mistake, of course, to look upon all sex violations as compensations.

What does nature demand of males who wish to enter a valid marriage union? Canonists and moralists today set down physical potency as a natural-law requisite for a valid marriage contract. In an article in the *Jurist*, Paul V. Harrington shows that opinion was not always unanimous on this point.⁶⁹ Some authors, including St. Thomas, held that a person who was impotent could contract a valid marriage if the partner was informed and was willing to enter into a contract with such a person. These authors held that the essence of the marriage contract was the spiritual union, not the physical union. Since the time of Sixtus V, however, this opinion has been gradually abandoned, and today moralists and canonists consider impotency an invalidating impediment from the natural law.

What constitutes impotency, particularly in the male, is not so easy to determine. The status of the vasectomized male has been discussed considerably over the past two decades. Fr. Harrington allies himself with those who hold the more lenient opinion that bilateral vasectomy does not constitute impotency. In other words, he does not demand for potency a direct testicular element in the ejaculation. In fact, he defends even the opinion that a castrated male remains potent provided that an erection and a normal ejaculation can be sustained by means of hormone injections.

I have already stated my preference for the more benign view of the status of the vasectomized man. The article which John C. Ford, S.J., wrote a few years back on this subject presented a very convincing case for this opinion.⁷⁰ But I should like to investigate the possibility which Fr. Harrington suggests for the castrated man a little further before casting a vote. At present I find it a little more difficult to reconcile this case with the *Cum frequenter* of Sixtus V than that of the vasectomized person, although I am certainly in sympathy with any efforts directed at making marriage available to these unfortunate people.

The dispute over the status of the vasectomized man has resulted in the past in some hesitancy to allow a man who had undergone such surgery to enter marriage. In 1939 the Holy Office ruled that those who had been vas-

⁶⁹ "The Impediment of Impotency and the Notion of Male Impotence," *Jurist* 19 (Jan., 1959) 29-66; (Apr., 1959) 187-211. For the medical aspects of this problem, cf. Charles J. E. Kickham, "The Impediment of Impotency and the Condition of Male Impotence," *Linacre Quarterly* 26 (Feb., 1959) 13-22; (May, 1959) 61-73.

⁷⁰ THEOLOGICAL STUDIES 16 (1955) 533-57.

ectomized in Germany under the Hitler regime should not be forbidden to marry. Edward F. Regatillo, S.J., now calls attention to a more recent response of the same Congregation.⁷¹ In a note to the Rota dated Sept. 28, 1957, the Holy Office ruled as follows: "In casu vasectomiae bilateralis matrimonium ad normam c. 1068, § 2, non esse impediendum."

Fr. Regatillo notes that this is a general response and not directed at a particular situation, as was the previous response to the German bishops. There is no need for hesitancy, therefore, in applying it anywhere. He points out, too, that the Holy Office makes no distinction between a doubt of fact and a doubt of law. Therefore, even if the vasectomy is not reversible, the marriage is not to be impeded. In other words, no marriage is to be impeded because of bilateral vasectomy. In appealing to can. 1068, § 2, however, the Holy Office made it clear that it did not intend to solve the speculative problem as to whether vasectomy actually constitutes impotency. This dispute may continue among canonists and moralists.

Alarm over the population problem has stimulated a renewed attack on the Church's teaching on contraception. In fact, Richard M. Fagley, who seems to be the spokesman for the World Council of Churches on this problem, urges in an article in *Social Action* that the churches of the ecumenical movement take a public stand on the subject of family planning.⁷² Since the reason he urges this stand is "to establish an effective counterweight to the erroneous Roman position at the international level," he seems to assume that it will favor family planning, by which he means contraception.

It is not always clear that Mr. Fagley's primary concern is the population problem. In the same article in which he complains of the obstacle which the Church puts in the way of solving this problem, he states that there is not much difference between the Catholic and the Protestant birth rate. He admits also that with the exception of Latin America the Catholic Church has little influence in those countries where the population problem is most acute. If Mr. Fagley is convinced of the truth of these facts, one wonders how valid a reason he has for considering the Church an obstacle to the solution of this problem.

It is extremely important in this whole discussion to distinguish carefully between the Church's attitude toward family planning and her attitude toward contraception. Unfortunately, even Catholic authors in the past have not always been as precise as they might have been. Alvah W. Sulloway in *Birth Control and Catholic Doctrine* takes advantage of this lack of precision

⁷¹ *Sal terrae* 47 (May, 1959) 292-95. Fr. Regatillo gives *L'Année canonique* 5 (Paris, 1958) 240-41 as his source for the note of the Holy Office.

⁷² "The Population Problem and Family Planning," *Social Action* 25 (Dec., 1958) 3-17.

and accuses Catholics of a change of doctrine on the subject of family planning when the rhythm theory was introduced.⁷³ In reply to this charge it can be said, first of all, that it was quite natural for these writers to try to offset the appeal of family planning at a time when the only method of accomplishing it without the practice of total abstinence was immoral. And it may be that some of these writers were not as precise as they might have been. But the popular writings of Catholic authors do not constitute the authoritative teaching of the Church. It is only recently that any authoritative statement at all has been made on family planning or limitation. This was the recent statement of Pius XII asserting an obligation to have children.⁷⁴ Even this obligation, however, was limited to those who make use of the marriage right and allowed for exceptions where serious reasons were present. Far from changing her teaching on family limitation when the rhythm method was introduced, the Church had not even fully formulated it. At any rate, it is quite clear today that the Church distinguishes between family limitation and contraception. A careful regard for this distinction by Catholic writers will go far toward clarifying issues in any discussion of the population problem with non-Catholics.⁷⁵

Non-Catholics who do recognize the distinction the Church makes between family limitation and contraception find it difficult to understand why the Church condemns contraception and allows the practice of rhythm. They regard this distinction between methods as quibbling. If the situation allows for family limitation, why not use the best and most convenient method available? To Catholics, of course, the difference between the licit use of rhythm and contraception is the same as the difference between working for a living and stealing. Non-Catholics are very sensitive to the evil of stealing because of the injury that it causes to others but they fail to recognize moral evil outside of this context of injury. Basically, this failure

⁷³ Boston: Beacon Press, 1959.

⁷⁴ Address to the Italian Catholic Union of Midwives, Oct. 29, 1951. For a translation of this address, cf. *Moral Questions Affecting Married Life* (Washington: National Catholic Welfare Conference).

⁷⁵ For an informative and careful treatment of the population problem from a Catholic viewpoint, see the articles by John L. Thomas, S.J., in *Social Order* 9 (Mar., 1959) pp. 119-27; (Apr., 1959) 145-57. The only book written on the subject with reference to Catholic teaching is *Overpopulation* by Anthony Zimmerman, S.V.D. (Washington: Catholic University of America, 1957). Although this is an excellent book in many respects, Fr. Zimmerman argues that the use of rhythm would not be allowed as a solution to a particular population problem. He is certainly entitled to his opinion, but it should not be credited with any more weight than a private opinion deserves. I have expressed my own opinion in the last edition of these *Notes*.

is due to that inability to appreciate objective morality to which we have already alluded at the beginning of these *Notes*.

Reflecting the moral controversy over methods of family limitation is the two-pronged research currently going on in the field of medicine to perfect these methods. In the field of contraception the new steroid drugs are arousing the greatest interest. An article in the *Journal of the American Medical Association* suggests that these steroids are useful for antifertility purposes.⁷⁶ A test of 715 patients over a total of 3,182 months of therapy showed a pregnancy rate of 8.6% as compared with 4% for other contraceptives. The conclusion would seem to be that while these drugs are useful for contraceptive purposes, they are still not as effective as the mechanical contraceptive.

In an article in the *American Journal of Psychiatry*, Alan F. Guttmacher points to certain drawbacks connected with the use of these so-called contraceptive pills.⁷⁷ The unfavorable side effects, e.g., nausea, headache, irregular vaginal bleeding, and loss of libido, tend to make the drugs a less desirable contraceptive. Dr. Guttmacher also points out that endocrinologists warn against the possible deleterious effects such a potent pituitary inhibitor may have on other endocrine functions besides ovulation. His summary statement reads as follows: "In summary, the pill is a potent contraceptive, its side effects and its potential dangers compel one to view its full acceptance with caution." One must infer from this that the perfect contraceptive has not yet been found.

In the same article he calls attention to a chemical substance currently being used in experimentation on rats. Conceptions occurred when the chemical was being used, but the fertilized eggs never left the fallopian tubes, degenerating there. Since it actually destroys the fertilized ovum, this chemical is obviously more than a simple contraceptive or sterilizing agent. As such, it is also more objectionable.

Keeping pace with research in the field of contraception is the work now going on to detect ovulation and the fertility period. A chemical method for detecting ovulation by testing urine samples is described in the *Journal of the American Medical Association*.⁷⁸ Since it is a test that obviously requires

⁷⁶ E. J. Tyler and H. J. Olson, "Fertility Promoting and Inhibiting Effects of New Steroid Hormonal Substances," *Journal of the American Medical Association* 169 (Apr. 18, 1959) 1843-54.

⁷⁷ "The Influence of Fertility Control upon Psychiatric Illness," *American Journal of Psychiatry* 115 (Feb., 1959) 683-91.

⁷⁸ M. G. Sevag and S. W. Colton, "Simple Chemical Method for the Determination of Ovulation in Women," *Journal of the American Medical Association* 170 (May 2, 1959) 13-18.

the use of laboratory facilities, it has certain inconveniences and may not be easily available to all. For the benefit of those interested in working out their periods in circumstances in which other tests are not available, Donald S. Murray has devised a formula for determining the day of ovulation for menstrual cycles not less than 23 days or more than 34.⁷⁹ The data he has gathered tends to confirm the conclusion that ovulation takes place between the tenth and fifteenth day regardless of the length of the cycle. The use of the equation he has worked out indicates that for a 24-day cycle ovulation can be expected on day 11.1 whereas in the 32-day cycle it can be expected on day 14.⁸⁰ A final contribution to the solution of this problem is an article by Joseph B. Doyle and Frank J. Ewers describing the Test-tape method of determining cervical glucose (and thus ovulation) with the use of a syringe-like instrument devised for inserting the tape.⁸¹

It is heartening to see the interest manifested recently in studying licit methods of family planning. It gives reason to expect that the hope of Pius XII "that science will succeed in providing this licit method with a sufficiently secure basis" will eventually be realized. Any success realized in making the rhythm method of family planning a secure and convenient method will go far not only toward easing the burden of Catholics but also in removing one of the current sources of friction with their non-Catholic brethren. If the rigorous stand the Church takes against contraception encourages the medical profession to find a method that will be acceptable from all angles, it will have accomplished in this area something similar to what has been accomplished in regard to therapeutic abortion.

Before this survey is concluded, mention should be made of an article on artificial insemination by Joseph T. Leonard, S.S.J. Fr. Leonard devotes himself to a study of the moral species of this particular sin.⁸² Presuming that the semen is obtained licitly and inseminated without any venereal reaction, there does not seem to be a violation of chastity, if it must be defined as the virtue which controls the appetite for sex pleasure. There is no inordinate pleasure experienced. Fr. Leonard concludes that the sin pertains to social justice since this procedure (as well as other sex sins) is contrary to the good of the species.

There is much to be said for this approach. Personally, I prefer to consider artificial insemination a violation of chastity, although to do so I

⁷⁹ "Statistical Method for Determining Ovulation in Women," *ibid.*, pp. 42-43.

⁸⁰ The fraction in day 11.1 is due to the fact that the formula is worked out on a complicated statistical basis.

⁸¹ "The Fertility Testor," *ibid.*, pp. 45-46.

⁸² "Artificial Insemination," *American Ecclesiastical Review* 140 (May, 1959) 301-7.

have to use a more comprehensive definition of this virtue. If chastity is limited to control of the appetite for sex pleasure, it obviously does not apply here. I prefer to regard chastity as the virtue which moderates the *use* of the generative faculty. If this definition is used, and it is not without a Thomistic foundation, it can include artificial insemination as well as any other immoral uses of sex.⁸³ If one follows the other classification and considers artificial insemination a violation of social justice, he has to admit that in the ordinary sex violation where inordinate pleasure is certainly experienced, there is a double malice, one against chastity and one against justice.

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⁸³ V. Vangheluwe has discussed this definition of chastity at length in "De temperantia stricte dicta eiusque partibus subjectivis," *Collationes Brugenses* 47 (Jan.-Feb., 1951) 38-48.